

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

.....

**Original Application No.315 of 2015
(M.A No. 821/2015)**

In the matter of:

RAJIV SAVARA

FCA

F-04-05, Triveni Commercial Complex
Sheikh Sarai Phase 1
New Delhi – 110017

.....Applicant

Verses

1. Darrameks Hotels & Developers Pvt. Ltd.

Through its Managing Director Mr. Arjun Mehra
(DIN: 01992952), 15, Ring Road, Lajpat Nagar, IV
New Delhi – 110024

2. Conservator of Forests, Bhagirathi Territorial Circle

Muni Ki Reti, Rishikesh Tehsil,
District TehriGarhwal- 249201, Uttarakhand

3. Uttarakhand Environment Protection & Pollution Control Board

Through its Member Secretary
29/20, Nemi Road, Dehradun -248 001, Uttarakhand

4. District Magistrate Tehri

Collectorate Campus
New Tehri Township
Tehri Garhwal – 249001

5. Pradhan, Gram Sabha Atali

P.O. Byasi
Distt. Tehri Garhwal – 249192
Uttarakhand

.....Respondents

Counsel for Applicant:

Mr. M. C. Mehta, Mr. Rahul Shukla and Ms. Katyani, Advs.

Counsel for Respondents:

Mr. V. Lakshmi Kumaran, Mr. Nikhil Singal, Mr. Vaibhav Dixit,
Mr. Jayant Dasgupta, Mr. Anil Dutt and Ms. Vindhya Mani,
Advs. for Respondent No. 1

Mr. D. Bharati Reddy, Adv. for Respondent Nos. 2 & 4
Mr. Mukesh Verma, Adv. for Respondent No. 3.

ORDER/JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Prof. A. R. Yousuf (Expert Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 15th December, 2015

Pronounced on: 21st March, 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?**

Prof. A. R. Yousuf (Expert Member)

The Applicant, a Chartered Accountant by profession, frequently visits Village Singtali, Gram Sabha Atali Post Office Byasi, District Tehri Garhwal, Uttarakhand as he has some landholding there. According to him illegal construction for commercial purposes as well as commercial activities on the river banks, the flood plains and the river bed of the Holy River Ganga in Rishikesh and upwards to Dev Prayag including on its head streams Alaknanda and Bhagirathi, are posing a serious threat and causing irreparable damage to the Holy River as well as importantly, to the environment and the wildlife. According to him illegal commercial construction and commercial activities are taking place on measured (naap) as well as unmeasured (benaap) land, i.e. Private and Government Land. Heavy machinery like JCBs, Bulldozers, Caterpillars and Earth Excavators are being used for levelling and clearing of the hillocks on the banks and the flood plains of the Holy River.

Blasting mechanisms have been used and continue to be deployed to cut-through the hillocks and the embankments of the Holy River. Debris produced as a consequence of these intense construction activities are being continuously dumped into the River valleys, its banks/ beds/ and flood plains thereby directly affecting the flow of the river and its ecology, blocking the streams, causing flash floods and water pollution amongst others.

2. The Applicant submits that rampant construction activities involving the usage of heavy machinery on the fragile Himalayan ecosystem can be witnessed from the town of Rishikesh and upstream all the way to Dev Prayag and in fact, beyond on its head streams Alaknanda and Bhagirathi. According to him one such construction site is on land admeasuring approximately 38,860 m², situated under Khata Khatauni No. 24, located in Village Singtali, Gram Sabha Atali, Post Office Byasi, District Tehri Garhwal, Uttarakhand acquired vide Sale Deed dated 19th November, 2009 and owned by Respondent No. 1 namely, Darrameks Hotels & Developers Private Limited.
3. The Applicant says that he has diligently approached various Authorities for seeking information as to whether the Respondent No. 1 namely Darrameks Hotels & Developers Private Limited sought prior-Environmental/Forest Clearances and other necessary permissions for such enormous commercial construction activity on the banks

and the flood plains of the Holy River (at village Singtali, Gram Sabha Atali, District Tehri Garhwal, Uttarakhand), but the officials didn't provide any information/documents in this context. Photographs from the construction site at Village Singtali, Gram Sabha Atali Post Office Byasi, District Tehri Garhwal-Uttarakhand taken on 25th May, 2015 and 27th July, 2015 have been annexed by the Applicant as Annexure A-2 colly with the application.

4. As per the Applicant 'The Environment Protection Act, 1986' casts a duty upon the Government to take all remedial measures to protect and improve the quality of the Environment and the Government must immediately take various steps for protecting the ecology of the River Ganga as the construction for commercial housing by the Respondent No. 1 is in gross infringement of Section 2(e) and 24(b) of the Water (Prevention and Control of Pollution) Act, 1974.
5. In view of this the Applicant has prayed for a direction to:
 - (i) Respondent No. 1 to stop the ongoing construction of the said Hotel/ River Resort and to demolish any and all civil structures constructed or under construction within the prohibited riverbed/ flood plain from the highest flood point of the Holy River. He further prays to remove all the resultant debris to a safe location such that these debris are not dumped in the river or its valley.

(ii) Respondent No. 2 and 3 along with Experts to visit the Project site of Respondent No. 1 and determine the losses caused to the holy river Ganga and to do Eco-restoration of the area as well as impose exemplary damages for the Ecological losses.

(iii) Respondent Nos. 2, 3 and 4 to remove illegal construction for commercial housing and commercial activities from the Banks/ flood plain of the Holy River Ganga in their respective areas.

6. Mr. Arjun Mehra, Managing Director of Darrameks Hotels & Developers Pvt. Ltd. (Respondent no. 1), having its registered office at 15, Ring Road, Lajpat Nagar IV, New Delhi-110024, filed a detailed reply to the application on 27th August, 2015. According to him the said company owns 3.888ha land located in Village Singthali, Tehsil Narendra Nagar, District Tehri Garhwal belonging to various Khasra No., including Khasra No. 1198, 1266, 1278, 1279, 1280 and 1281 that has been purchased from Mrs. Rakhminder Mehra w/o Mr. Ravinder Mehra in accordance with law and permission for 'Change of Land Use' of the said land to 'non-agricultural land', has also been approved by Assistant Collector vide letter dated 9th April, 2008.

7. Respondent No. 1 has constructed a hotel project and spa on the said property and is in the process of finishing the same. A detailed site map, showing the division of the said

land, has been annexed as Annexure R-5. The said Respondent states that they have complied with all the laws and regulations and obtained all the necessary approvals so that the environment and the ecology are not harmed in any manner whatsoever. He further submits that they are developing the Project to the highest of Indian as well as international standards and the Project is committed to sustainable development practices and they are not involved in any illegal construction for commercial purposes and have not constructed anything on the riverbanks, the flood plains, nor the bed of the river.

8. The answering Respondent further submits that the project is committed to providing a positive impact on the local environment, society and economy through ecotourism. The Hotel's ecotourism programs would implement a long-term sustainability management system that will address local environmental, social, cultural, economic, quality, health and safety issues. Amongst other initiatives, this would include:

- A strict mandate to zero discharge into the river.
- The promotion of recycling, energy efficiency, water conservation, and the creation of economic opportunities for local communities.
- Support for initiatives to improve local infrastructure and social community development including, among others, education, training, health and sanitation.

9. According to Respondent No. 1 his Consultants have designed the project on a closed-loop system with zero discharge into the river and modern methodologies of rainwater harvesting, water conservation, solar and thermal energy, low-flush fixtures, etc. will be used at the Project site. All sewage will be treated in an environment friendly manner using a modern Sewage Treatment Plant (for short STP), with excess water to be used in flushing, gardening, etc. Also, environment friendly scrubbers are used to clean the air discharged from kitchen, thus eliminating air pollution. The retaining stonewall systems at various locations of the Project will eliminate possibility of soil erosion and the owners have taken up the responsibility to plant thousands of plants and trees on the land that previously did not have such growth.
10. The Respondent No. 1 contends that in furtherance of the objective of protecting the environment and sustainable development, they duly applied and received approvals for the project site for construction of hotel from the Zila Panchayat (which approved the Site Plan of the area) as well as other local authorities. Further, the Respondent also got the relevant approvals and 'No Objection Certificates' (for short 'NOC') from the Fire Department thereby ensuring that the local laws and regulations are complied with. According to him the 'NOC' from the Forest authorities of the concerned area was received on 7th

February, 2013, wherein the Forest Department clearly noted that the said Project site and the construction is not within the forest limits and is at a considerable limit from the forest area.

11. Further, to comply with all the local as well as central laws, Respondent No. 1 applied to the Uttarakhand Environment Protection and Pollution Control Board (Respondent No. 3) for grant of 'Consent to Establish', and they were granted provisional Consent to Establish on 16th August, 2013 and the final Consent to Establish was granted on 2nd September, 2013. The Consent to Establish was extended by Respondent No. 3 on 27th September, 2014, and recently on 9th July, 2015, being the one which is still in place.
12. He further contends that even though he was not mandated by law to undertake and conduct an Environment Impact Assessment (for short 'EIA'), yet for his own satisfaction he went ahead and engaged an MoEF & CC accredited agency, AECOM, to conduct an Environment and Social Assessment of the Project and the AECOM has clearly opined that Project is 'extremely safe' and is not causing any negative impact on the environment and ecology. The report has also opined that the property of Respondent No. 1 is 'extremely safe' from any threat of flooding, and is much above the flood plain levels, and that no activity is being carried on the flood plain level. It is further submitted that during the unfortunate and massive floods

of Uttarakhand in the year 2013, the property of the respondent was well above the maximum flood level and 'AECOM' has also noted in the Report that the highest flood in the last 88 years reportedly took place in 2013 and its level remained 5 meters below the lowest portion of the Resort property, which is reportedly considered as extremely safe.

13. According to him, he has also undertaken specific geotechnical soil investigation to find out that the soil on which the property is constructed is fit for the same and that no damage would be done to the ecology. According to him the soil being excavated is being re-used on the Project site itself.
14. He further submits that he does not have any illegal commercial construction and commercial activities on the measured (naap) land and he is not constructing anything on unmeasured (benaap) land. It is further submitted that in the initial stages of construction some JCBs etc. were utilized, but only as per modern construction methodology in order to ensure structural safety and safety to the workers. It is further contended that construction of numerous retaining stonewalls using traditional artisanal techniques has also been undertaken for preventing any soil erosion and landslides, and for preservation of the natural environment, improvement of biodiversity,

amelioration of storm-water drainage, and improved heat absorption properties, in addition to other initiatives.

15. The Applicant vide his rejoinder dated 29th September, 2015 submitted that the Respondent No. 1 has still not received final approval from the Uttarakhand Tourism Development Board for setting up of the said project and the NOC granted was temporary in nature, i.e., “in principle” subject to certain actions to be taken by the Respondent No. 1 in connection with setting up the Spa resort in the impugned area. He further contends that the ‘NOC’ from the Fire Department is granted in the name of “Taj Vivanta Darrameks Hotels & Developers Pvt. Ltd.” and no such Company is registered with the Registrar of Companies. He further alleges that the Respondent No. 1 has encroached upon the government/revenue land adjacent to its property and constructed a concrete road on it, thereby violating the condition set in the NOC issued by the Forest department, wherein it was directed that no damage be caused to the forest, wild animals and vegetation.

16. The Applicant further alleges that the Respondent has not taken any prior approval from the Central Ground Water Authority, NGRBA, Ministry of Water Resources and Uttarakhand Irrigation Department for drawing of ground or surface water for construction of the project and for the future usage of the Hotel/Spa Resort. The Applicant also

states that the consultant agency 'AECOM' engaged by the Respondent No. 1 for the preparation of EIA is not competent as it was not a 'NABET' accredited agency for the purpose till 12th September, 2015.

17. It has further been stated in the Applicant's rejoinder that the Ministry of Environment, Forest & Climate Change, New Delhi, vide Notification dated 18th December, 2012 in respect of the eco-sensitive zones of Bhagirathi river decided *inter alia* as under:

“(5) The Zonal Master Plan shall be prepared based on watershed approach. It shall also ensure that there is no attempt to tamper with the natural boundaries of the river and tributaries through the construction of any kind of structures on the banks of the river and tributaries.

(12) No change of land use from green uses such as horticulture areas, agriculture, tea gardens, parks and others like places to non-green uses shall be permitted in the Zonal Master Plan. However, to meet the residence needs of the local residents due to the natural growth of existing local population, strictly limited conversion of agricultural lands shall be permitted, with the prior approval of the Central Government on the recommendation of the State Government.....”

18. It was further submitted by the Applicant that the builders/Hoteliers and other vested interest holders are bent upon encroaching the Government/ Revenue/ Forest land by doing illegal construction for their commercial benefits. Already the hotels/ resorts/ ashrams and the residential buildings are coming up on both sides of River Ganga and its tributaries upstream. Instead of making a

proper plan for saving the National River, Government of Uttarakhand is allowing all sorts of illegal commercial activities all along the banks of the holy River.

19. In his rejoinder the Applicant also referred to the interim orders passed on 2nd July, 2013 and 26th August, 2013 by the Tribunal in O. A. No. 151 of 2013 (*Legal Aid Committee, National Green Tribunal Bar Association vs Union of India & Ors.*), wherein the Respondents were directed to show:

“a) What ecological studies have so far been carried out by State of Uttarakhand and/ or by any of the Respondents:

b) What is the basis on which the massive constructions are being raised on the various hills of the State of Uttarakhand?

c) Whether such permissions to construct are backed by any data study or master/ zonal development plans, if any declared by the State of Uttarakhand. Further, whether any study had been carried out by any of the Respondents more particularly State of Uttarakhand in relation to environment and likelihood of damage to environment, loss of forest cover as a result of rampant road and building construction in the State of Uttarakhand.”

In the Order dated 26th August 2013, in the O. A. No. 151 of 2013 *Legal Aid Committee (supra)*, the Tribunal had passed the following directions:-

“1. We hereby prohibit any new construction in the entire eco-sensitive zone and more particularly on the river bed and river banks of the main Rivers and Tributaries. The above restrictions would not operate in so far as it relates to renovation or restoration of buildings/ houses which has been legally constructed.

2. Any new construction of any Project which is covered by the Notification of 2006 shall follow the procedure prescribed under the Notification. The other construction which are sought to be raised will be subject to clearance by the Monitoring Committee constituted under the Notification of 18th December, 2012.

5. We direct the State of Uttarakhand to place a complete and comprehensive list of illegal and unauthorized constructions, more particularly on the river beds/ banks and also state in the said Affidavit as to what is the extent of damage resulting from such illegal and unauthorized construction on the ecology and environment as well as in relation to the rivers in question and what will be extent of compensation payable by them on the principle of 'polluters pays' for damaging and degrading the environment of that area."

20. It has also been submitted by the Applicant that the Hon'ble Tribunal has repeatedly asked the Uttarakhand Government Authorities to check rising pollution in the holy River Ganga, but the Authorities have acted against the Order of this Tribunal by not discharging their duties in compliance to the directions of the Tribunal. The State Pollution Control Board has not even submitted the complete list of hotels/ resorts, ashrams located on the banks/ bed of the Holy River Ganga as was asked by this Hon'ble Tribunal.

21. An additional affidavit was filed by Respondent No. 1 on 26th October, 2015 stating that the Project has a total built up area of about 1,50,000 square feet which is approximately 14,000 m² and not more than this and the

whole project will be completed in this area and there will be no more construction to be done beyond this limit.

22. It has been contended by the Respondent No. 1 that “the project site is situated 5 meters above the Highest Flood Level (for short ‘HFL’) for past 88 years (as per the availability of records) as well as highest floods that struck Uttarakhand in 2013”. It was also submitted that the Project of Respondent No. 1 is not situated in any Eco-Sensitive Zone and unlike as contended by the Applicant, there is no activity being carried on in the eco-sensitive area of Bhagirathi River. It was stated that the southernmost point of the Bhagirathi Eco-Sensitive Zone is approximately 60-65 kilometers away from the Project site and the Project has a strict mandate of zero discharge into the river.
23. In the Additional Affidavit filed on 14th December, 2015 by the Respondent No. 1, it is stated that as per the directions of Hon’ble Tribunal in O.A. No. 10/2015 and O.A. No. 200/2014, in the case of *M. C. Mehta vs UOI and Ors and Indian Council of Enviro-legal Action vs NGRBA & Ors*, possibly about 5 – 10% of the property of Respondent No. 1 (part of some existing buildings) may fall under the 100 m zone measured from the middle of the river. It is further stated that the side on which this 5 – 10% of the property is situated is bounded by a high mountainous cliff and the highest point of the river which has ever reached the cliff is

much below the lowest point of the property. It is further stated that there was no law restricting the construction within this zone at the time these constructions were made.

24. Respondent No. 3, Uttarakhand Environment Protection & Pollution Control Board (for short 'UEPPCB'), has vide its reply dated 10th September, 2015 submitted that as per documents submitted by the Respondent No. 1/Project Proponent the proposed build up area of the units is below 20,000 m² and as per office record, Project Proponent has obtained 'NOC' from Divisional Forest Officer, Narendra Nagar, Muni ki Reti, Tehri Garhwal vide office Order no. - 1944/12-1(2) (NOC) dated 7th February, 2013 and from UEPPCB vide letter No. UEPPCB/ HO/ NOC-1835/2013/803 dated 2nd September, 2013.
25. The Deputy Conservator of Forests, Narendra Nagar has filed a reply on 2nd November, 2015 on behalf of Respondent No. 2 and 4 wherein it has been submitted that the Respondent No. 1 had applied for clearance of the project to D.F.O. Narendra Nagar who had given conditional 'NOC' to the Respondent No. 1 vide his letter No. 1944/12-1(2) dated 7th February, 2013 after examining the matter. This NOC clearly shows that the said land is neither Reserve forest nor it appears to be forest in question. This is basically Naap bhumi which is duly purchased by Respondent No. 1 and it is 300m far from the boundary of Reserve Forest. The reply is silent about the encroachment

and construction of road on the forest/government land by the project proponent.

26. Respondent No. 5 (Pradhan, Gram Sabha, Atali, P.O. Byasi, Dist. Tehri, Garhwal) vide affidavit dated 14th September, 2015, has stated that Respondent No. 1 is carrying on the construction as per the approvals granted to it by the Zila Panchayat and is carrying on its activities without harming the environment. She further states that it has not come to her knowledge at any point of time that Respondent No. 1 has undertaken any construction on river banks or the flood plains, or has done any dumping or thrown debris in to the holy river Ganga. Nor has there been any complaint regarding blasting. She further reiterates that the Zila Panchayat and the local villagers do not have any objection on the activities of Respondent No. 1.

27. Pursuant to the order of the Tribunal dated 14th August, 2015, a joint inspection was conducted by Shri A. R. Sinha, Member Secretary, State Environment Impact Assessment Authority (SEIAA), Uttarakhand and Mr. S. S. Rana, Regional Officer (I/c) UEPPCB, Dehradun, in presence of Mr. Mihir Bhatt, General Manager of the Hotel Project, on 9th September, 2015. The inspection team reported as under:-

“As per visual Inspection and Document submitted by the unit, Observations are as follows:

1. *Unit is under establishment at Village-Singtali Narendra nagar, Tehri, Garhwal.*

2. *Unit has got permission from Uttarakhand Govt. to purchase the said land vide letter no. 3364/XVIII(II)/2009-I(29)/09 dated 30/10/2009.*
 3. *Unit proponent has obtained no objection certificate from Divisional Forest Officer Narendranagar Muni ki Reti, Tehri, Garhwal vide office Order No. 1944/12-1(2) (pr A) dated 07/02/2013.*
 4. *Unit proponent has submitted the approved map, approved by Additional Chief Officer (appar Mukhya Adhikari) Zila Panchayat Tehri, Garhwal. As per approved map, the proposed buildup area is below 20,000m²; more over unit has submitted architecture report which showing the buildup area below 20,000 m².*
 5. *Unit proponent has got conditional consent to establish from Uttarakhand Environment Protection & Pollution Control Board vide letter no. UEPPCB/H.o/NOC-1835/2013/803 dated 02/09/2013.*
 6.
 7.
 8. *The proposed land has been converted as akrishak by revenue department Tehri, Garhwal.”*
28. As mentioned in his letter of 10th September, 2015 addressed to the Member Secretary, SEIAA, Ajabpur Kala, Dehradun, General Manager-Projects, M/s Darrameks Hotels & Developers Pvt. Ltd has indicated the GPS position of their impugned property as 30° 03’ 30” N latitude and 78° 28’ 57” E longitude.
29. From the above pleadings, the following points arise for determination before the Tribunal:
- I. Whether the impugned project falls within the eco-sensitive zone notified by MoEF vide Notification dated 8thDecember, 2012.

- II. Whether the project is covered by EIA Notification of 14th September, 2006.
- III. Whether the impugned property falls under any forest category.
- IV. Whether the Hotel and Spa project is a purely commercial activity, and can it be permitted on the banks of river Ganga, keeping its impact on environment in mind.
- V. What directions, if any, should be issued?

Issue I: Whether the impugned project falls within the eco-sensitive zone notified by MoEF vide Notification dated 18th December, 2012.

30. One of the pleas of the Applicant has been that the Ministry of Environment, Forest & Climate Change (MoEF & CC), New Delhi, vide Notification dated 18th December, 2012 in respect of the eco-sensitive zones of Bhagirathi river decided *inter alia* as under:

“(5)The Zonal Master Plan shall be prepared based on watershed approach. It shall also ensure that there is no attempt to tamper with the natural boundaries of the river and tributaries through the construction of any kind of structures on the banks of the river and tributaries.

(12) No change of land use from green uses such as horticulture areas, agriculture, tea gardens, parks and others like places to non-green uses shall be permitted in the Zonal Master Plan. However, to meet the residence needs of the local residents due to the natural growth of existing local population, strictly limited conversion of agricultural lands shall be permitted, with the prior approval of the Central Government on the recommendation of the State Government.”

31. Before we discuss the various restrictions/regulations put in place by the Central Government in respect of the 'Eco-sensitive Zone' of the River Bhagirathi and its impact on the construction of the impugned project, we need to know whether the impugned project area falls under the said eco-sensitive zone. In this context, we need to refer to the Notification issued by the Central Government through MoEF on 18th December, 2012. As per this notification, the Central Government has notified the entire watershed of about 100 kilometers stretch of the river Bhagirathi from Gaumukh to Uttarkashi covering an area of 4179.59 square kilometers as the 'Eco-sensitive Zone', in exercise of the powers conferred by sub-section (1) read with clause (v) and clause (xiv) of sub - section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986. The said 'Eco-sensitive Zone' is the entire watershed of about 100 kilometers stretch of the river Bhagirathi from Gaumukh to Uttarkashi covering an area of 4179.59 square kilometers. The 'Eco-sensitive Zone' abuts the Indo China border from East to North West. The 'Eco-sensitive Zone' has been notified to be bounded by:

31°05'46.54"N latitude and 79°25'11.65"E longitude towards east;
79°04'32.21"E longitude and 31°27'23.28"N latitude towards north;
30°51'03.95"N latitude and 78°22'57.78"E longitude towards west and
30° 39' 08.09"N latitude and 78° 31' 26.41"E longitude towards south.

32. The impugned project area is located at 30° 03' 30" N latitude and 78° 28' 57" E longitude, as is revealed in the letter of 10th September, 2015 addressed to the Member Secretary, SEIAA, Ajabpur Kala, Dehradun, by General Manager-Projects, M/s Darrameks Hotels & Developers Pvt. Ltd. [Annexure 7 to Joint Inspection Report Dated 16th September, 2015]. None of the parties have challenged the geo-referenced location submitted by the Respondent No. 1. Checking the given geo-referenced location of the impugned property in relation to the boundaries of the Eco-sensitive Zone notified by the Central government vide Notification dated 18th December, 2012 (as mentioned in Para 31 above), it is quite evident that the impugned area is fairly outside the boundaries of the eco-sensitive zone in respect of latitude, being further down south of the boundary by at least distance covered by about 36'. The said Notification has even given the list of villages in which the eco-sensitive zone, with area details, lies. This list does not include the names like Atali, Sagt(h)ali or Narendra Nagar, where the impugned piece of land is said to be located. The Respondent No. 2 and 4 have also stated in clear terms in their Reply of 2nd November, 2015 "that the land/area in question does not fall under any declared ecosensitive zone." Once it is clear that the area lies outside the notified eco-sensitive zone, the restrictions/regulations meant for eco-sensitive zone cannot be said to apply to the said area.

Issue II: Whether the project is covered by EIA Notification of 14th September, 2006.

33. The EIA Notification issued by the MoEF on 14 September, 2006 reads as under:-

“...in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section(3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.”

Entry 8(a) in the Schedule to this Notification specifies that Building and Construction Projects are to be treated as ‘B’ category Projects and any Building and Construction Project which is having $\geq 20,000$ m² but $< 1,50,000$ m² of built-up area requires prior environmental clearance from the State Level Environmental Impact Assessment Authority (for short ‘SEIAA’). Quite evidently all building and construction projects having built up area less than

20,000 m² are exempted from the rigors of EIA. An additional affidavit was filed by Respondent No. 1 on 26th October, 2015 stating that the Project has a total built up area of about 1,50,000 square feet which is approximately 14,000 m² and the whole project will be completed in this area and there will be no construction beyond this limit.

34. This is also verified by the Committee constituted by the Tribunal vide its order dated 14th August, 2015, as is evident from the Inspection Report submitted by this Committee on 16th September, 2015. Item 4 of this Report states that the *“Unit proponent has submitted the approved map, approved by Additional Chief Officer (appar Mukhya Adhikari) Zila Panchayat Tehri Garhwal. As per approved map, the proposed buildup area is below 20,000m²; more over unit has submitted architecture report which showing the buildup area below 20,000 m²”*. The said statement has not been challenged by any party. This being so the impugned project does not come under the ambit of the 2006 Notification and is exempted from obtaining prior Environmental Clearance. However, the impugned project being commercial in nature, it does come under the purview of various environment related Acts/Rules, which mandate the project proponent to obtain prior “Consent to Establish” and ‘Consent to Operate’ from the concerned Pollution Control Board. In this context the Respondent No. 1 has stated, which has not been challenged by any party,

that the 'UEPPCB' (Respondent No. 3) has granted him provisional Consent to Establish on 16th August, 2013 and final Consent to Establish on 2nd September, 2013. The said Consent to Establish was extended by Respondent No. 3 on 27th September, 2014, and again on 9th July, 2015, which is still in place. Since the impugned project is yet to be completed, the Consent to Operate and other relevant consents/NOCs are needed only at the time of commissioning of the project.

Issue III: Whether the impugned property falls under any forest category.

35. The Project Proponent/Respondent No. 1 has submitted that the impugned piece of land measuring 3.888ha land located in Village Singthali, Tehsil Narendra Nagar, District Tehri Garhwal belonging to various Khasra No., including Khasra No. 1198, 1266, 1278, 1279, 1280 and 1281, has been purchased from Mrs. Rakhminder Mehra w/o Mr. Ravinder Mehra in accordance with law and permission for 'Change of Land Use' of the said land to 'non-agricultural land', has also been approved by Assistant Collector vide letter dated 9th April, 2008. The Joint Committee constituted by the Tribunal has in its report commented thus:

"2. Unit has got permission from Uttarakhand Govt. to purchase the said land vide letter no. 3364/XVIII(II)/2009-I(29)/09 dated 30/10/2009.

3. Unit proponent has obtained no objection certificate from Divisional Forest Officer Narendra Nagar Munikireti Tehri Garhwal vide office Order No. 1944/12-1(2) (pr A) dated 07/02/2013.

9. The proposed land has been converted as akrishak by revenue department Tehri Garhwal.”

36. This fact has also been confirmed by the Respondent No. 2 and 4 (The State of Uttarakhand & State Forest Department) in their reply dated 2nd November, 2015, wherein it has been stated that “the Respondent No. 1 had applied for clearance of the project to D.F.O. Narendra Nagar who had given conditional N.O.C. to the Respondent No. 1 vide his letter No. 1944/12-1 (2) dated 07-02-2013 after examining the matter. This N.O.C. clearly shows that the said land is neither Reserve forest nor it appears to be forest in question. This is basically Naap bhumi which is duly purchased by Respondent No. no. 1 and it is 300 Mts. far from the boundary of Reserve Forest. This is also clear from para no. 6 of the original application where the Applicant has given the revenue record details of the land in question. These details is available only in case of naap or revenue land and not for reserve forest.” From these statements, supported by official letters to the effect, the picture becomes quite clear that the impugned project area fell originally under private agriculture land. This is substantiated by the observation of Assistant Collector, Narender Nagar in Revenue Suit No. 20/2008 titled ‘Smt. Rakhamander Mehra.....’ that “Smt. Rakhamander Mehra W/O Ravinder Mehra has got the land hold right from crop year 1404 in respect of Khata No. 25 category – kasankarmaniya right in village Singtali and the total land is

3.888 hec with revenue Rs. 33.10 and the Applicant wants to get the aforesaid land declared as non-agricultural land area". Accordingly the status of the land was changed to non-agriculture land (akrishak) by the order of the Assistant Collector dated 9th April, 2008. On the above stated facts we hold that the impugned property does not fall under any forest category.

Issue IV: Whether the impugned Hotel and Spa project is a purely commercial activity, and can it be permitted on the banks of river Ganga, keeping its impact on environment in mind.

37. It is well known that major part of Uttarakhand is ecologically and geologically fragile. Indiscriminate and unauthorized construction and development will be detrimental to the geographical and ecological characteristics of the State, particularly, when such construction activity, project or development is carried out right on the banks of a river or at the heights and slopes of hills which are ecologically sensitive. Such development would be completely opposed to the expected norms of Sustainable Development which finds a statutory expression in the provisions of Section 20 of the National Green Tribunal Act, 2010. Every area has to be developed keeping in mind the environmental and ecological limitations therein. It is evident that construction of any building/structure on the river banks, as at any other place, is possible only after clearing of existing plant cover

followed by levelling of the said area. Once the plant cover is removed or disturbed and levelling of the land is undertaken, the chances of soil erosion due to rainfall increase significantly. Being in the close proximity of the river, chances of the eroded soil to enter in to the river itself are quite high and this activity is responsible for raising the level of the river bed. This ultimately affects the water flow as well as the flooding pattern of the river. A proper plant cover along the river banks is very important for avoiding soil erosion from the banks that leads to siltation of river bed and results in flooding of the downstream. Therefore, protection of the plant cover along the river banks, whether falling in the flood plain or beyond/above it, is of utmost importance for the maintenance of ecological balance in this geologically and ecologically fragile zone.

38. It may be pointed out that a Writ Petition (PIL) No. 25 of 2013 was filed before the Hon'ble High Court of Uttarakhand at Nainital titled as "*Sanjay Vyas vs. State of Uttarakhand & ors*" for declaring prohibitory zone along the banks of Holy Ganga. The Hon'ble High Court of Uttarakhand noticed that in 1995 Hon'ble Supreme Court of India had passed the judgment that no construction would be made within 100 meter on the river banks of flowing river. In the year 2000, Government of Uttar Pradesh, of which Uttarakhand was a part then, had issued an order directing that no construction would be made

within 100 meter from the bank of River Ganga. The Hon'ble High Court of Uttarakhand while admitting the Writ Petition vide its order dated 26th August, 2013, directed the State of Uttarakhand through its Chief Secretary to ensure that henceforth no construction of permanent nature is permitted within 200 meters from the bank of any flowing river in the State. This order remained in force for a considerable time. However, the Writ Petition came to be finally dismissed vide order of the Hon'ble High Court of Uttarakhand dated 28th May, 2015 on the ground that the petitioner had no locus-standi for the case to be classified as a Public Interest Litigation. However, the Hon'ble High Court of Uttarakhand specifically granted liberty to any aggrieved party to approach the Hon'ble High Court of Uttarakhand seeking the appropriate relief. In the entire judgment dated 28th May, 2015, there was no specific direction contrary to the order of the Hon'ble High Court of Uttarakhand dated 26th August, 2013.

39. The Respondent No. 1 has pleaded that they have been quite mindful of their duties towards the environment and have complied with all the laws and regulations and obtained all the necessary approvals required for the construction of their project so that the environment and the ecology are not harmed in any manner whatsoever. According to him, the project is committed to sustainable development and is committed to providing a positive

impact on the local environment, society and economy through 'Ecotourism'.

40. **'Ecotourism'** is defined as Tourism to areas of ecological interest (typically exotic and often threatened natural environments), especially to support conservation efforts and observe wildlife in a manner so as to have the least possible adverse effect. It may be treated as a form of tourism involving visiting fragile, pristine and relatively undisturbed natural areas, intended as a low-impact and often small scale alternative to standard commercial (mass) tourism. Ecotourism is generally marked as 'eco-friendly' or environmentally sound. This is indeed the idea of ecotourism: low-impact, low-consumptive, and environmentally sensitive (Lumsdon and Swift (1998) in: *J. Sustainable Tourism* 6 (2):155-173). In practice, the term ecotourism is often used interchangeably with nature tourism, sustainable tourism, green tourism, environmentally appropriate tourism, environmentally responsible travel and so on. It may be noted that in all these definitions nature and conservation are placed at the root of ecotourism initiatives [*Björk, P. (2000) in: Int. J. Tourism Res. 2 (3): 189-202*]. The goal of ecotourism – low-impact, low-consumptive, and environmentally sensitive tourism – can be attained only when the said activity does not lead to the overexploitation of resources. It is a well known fact that one of the negative environmental impacts of tourism to protected natural areas is overcrowding that

leads to environmental stress [Ohmann L. F. (1973) *Ecological carrying capacity. USDA Forest Service General Technical Report NC-9: 24 – 28*]. As early as 1960 the Californian Public Outdoor Recreation Plan stated as one of its basic hypotheses "that each recreation resource type within a region has a maximum user carrying capacity (number of users per acre per day and season); when used beyond this capacity the character and quality of the resource are altered or destroyed". With this backdrop one would like to believe the claim made by Respondent No. 1 that the impugned Hotel and Spa Project is an ecotourism venture. But the claim made is not supported by any documentary evidence. The Environmental and Social Assessment Report placed on record by Respondent No. 1 does not contain any data in respect of the recreational carrying capacity of the area. Nor is there any data regarding the cumulative effect of the impugned hotel project together with other already existing similar projects on the environment and ecology of the area. On the above stated facts we hold that the impugned property cannot be treated as an ecotourism venture and is simply a commercial activity.

41. The contention of Respondent No. 1 is that in order to fulfill their obligations towards the conservation of environment, they obtained all the permissions necessary for the construction of the project. However, perusal of the NOCs

issued by various State Agencies point to the fact that the Respondent No. 1 has not complied with the conditions set in the NOCs/ consents issued in favour of the project. It may be pointed out here that the Principal Secretary, Uttarakhand Government, while conveying the grant of conditional permission by the Hon'ble Governor of Uttarakhand in favour of Darrameks Hotel & Developers for the purchase of impugned plot of land for tourism business vide No. 3664/XVIII (II)/2009 – 1 (29)09 dated 30.10.2009, has set 23 conditions to the purchaser of the land. The condition No. 14 mandates the project proponent thus:

“14. The unit shall ensure strict compliance of judgments of different Hon'ble Courts and relevant guidelines of Government of India related to construction etc. along the Ganga River.”

Further the 'NOC' issued on 15th November, 2013 by Police Chowki Vyashi, Police Station (PS) Muni ki Reti also mentions that the 'NOC' is subject to the construction of the hotel being under the guidelines given from time to time by the Court and State Government. We may note that even the Consent to Establish issued by Uttarakhand Environment Protection and Pollution Control Board (UEPPCB) to the project proponent vide letter No. UEPPCB/HO/N.O. C. -1835/2013/803, dated 2nd September, 2013 is conditional in nature and condition No. 23 mandates the project proponent to comply with

judgments of Hon'ble courts/orders of the government. The said condition states thus:

“23. The unit shall ensure compliance of judgements of Hon'ble Courts and relevant guidelines/orders of the Government of India/ State Government issued related to construction etc. along the bank of Ganga River and the Board may be apprised of the Compliance Report of the same before construction.”

42. In their Compliance Report dated 15th November, 2013 and 5th February, 2014 in response to the above referred Consent to Establish, the project proponent conveyed to the Member Secretary, UEPPCB that they are complying with all the conditions set. Particularly, in response to the condition no. 23 referred to in the preceding para it is mentioned thus: *“Point no. 23 is being followed”*. But in the light of the orders/directions issued by the State Government and Hon'ble High Court and Hon'ble Supreme Court, this is not the ground reality. The project proponent/Respondent No. 1 has himself conceded in the Additional Affidavit filed on 14th December, 2015 that possibly about 5 – 10% of the impugned property (part of some existing buildings) may fall under the 100 m zone measured from the middle of the river. However, it may be pointed out that none of the contending parties have placed any document on the record that would indicate as to which/how much portion of the impugned structure falls within the 100m zone from the middle of the river.

43. The 'Consent to Establish' the project was issued only on 2nd September, 2013, i.e., after the Hon'ble High Court of Uttarakhand passed its orders dated 26th August, 2013 in Writ Petition (PIL) No. 25 of 2013: *Sanjay Vyas Vs State of Uttarakhand & Others* wherein it directed the State of Uttarakhand, through its Secretary, to ensure that, henceforth, no construction of permanent nature is permitted within 200 meters from the bank of any flowing river of the State. The Hon'ble High Court of Uttarakhand, in the Public Interest Litigation No. W.P. (PIL) No. 103 of 2011: "*Dinesh Bhardwaj vs State of Uttarakhand and Others*" vide order dated 26th February, 2013 passed the following directions:

"14. It is made clear that although we have dealt specifically with the illegal construction said to have been made by the private respondents herein, but Respondent No. 2 directed to ensure that any construction made on the bank of the river Ganges subsequent to 2000 is removed/ The concerned Distt. Magistrate and Senior Superintendent of Police are directed to render all necessary help to Respondent no. 2 to carry out such demolitions. The Writ Petition is disposed of accordingly."

As the above referred directions of the Hon'ble High Court of Uttarakhand were in force at the time of start of construction of the impugned project, the project proponent was mandated to obey these orders, which clearly prohibited construction of any commercial unit within 200m of the river bank. However, he chose to ignore the

said directions and went on with the construction of the impugned project and as such is liable to face the consequences as per the law.

44. As pointed out in the preceding paras the High Court issued the directions on 26th August, 2013 and the consent to establish in favour of the project proponent was issued by the UEPPCB on 2nd September, 2013, while the police NOC was issued on 15th November, 2013. Accordingly both the issuing authorities must have been knowledge of the directions of the Hon'ble High Court, still no effort was taken by them in stopping the project proponent from committing the violations and the said condition in the above referred communications seems to have been put just as a formality. The Tribunal in its judgment in Original Application No. 87 of 2015 (*Social Action for Forest and Environment (Safe) vs Union of India & Ors*) held that:

“106. Responsibility lies upon the State to protect its environment, forest and rivers. Right to decent and clean environment is the right of every citizen. Thus, on the cumulative reading of Article 21, 48 A and Article 51 A (g) of the Constitution the State cannot be permitted to shirk its responsibility of conservation and protection of forests and environment on the plea of earning revenue.....

..... State is failing in its supervisory capacity and even private entrepreneurs have failed in their duties in complying with the conditions of the permission granted to them in accordance with law.....

107. We may also notice that the river Ganga from Gaumukh to Rishikesh which few years back was a river of pristine and without any pollution today,

because of various factors, of which camping is one, has altered water quality. It is absolutely necessary that a High Powered Committee is constituted to undertake a study taking Rapid Impact Assessment Report and all other relevant documents into consideration and to examine the entire matter de novo.

108. However, there would be no camping or camping site in the mid of the river or river bed and anywhere within the area which is less than 100 meters measured from the middle of the river upto 2 km beyond boundary of the Rishikesh upstream and not less than 200 meters measured from middle of the river there onwards till boundary of Haridwar downstream. (100 meters as a crow flies). We consider it appropriate to observe that the State of Uttarakhand while exercising powers in consonance with the provisions of the Act of 2012 should keep in mind 1 in 25 years flood plain as the guiding factor since it is a well-studied and documented limitation.

109. In any case no construction permanent or semi-permanent should be permitted in any circumstance..... Further the permission/license granted by the State is not an absolute right of the private entrepreneur and they must carry out each direction issued in the permission in its true spirit and substance. The concept of 'Back to Nature' ought not to be used for developing revenue at the cost of Environment and Ecology. River Ganga is not a river simply for our country, but it is a river that is worshiped and is a lifeline to a large population in our country. Therefore, this is a fit case where the Tribunal must issue interim directions till the proper Regulatory Regime comes into force in accordance."

45. In the light of the above, it was the responsibility of the State of Uttarakhand and its various instrumentalities to find out whether the said Hotel project could have been

permitted to be constructed in the impugned plot of land, which is contiguous with the river bed. However, it is noted that the concerned authorities do not seem to have visited the area and issued the NOCs without the application of mind. This fact gets substantiated by the later letters issued by the UEPPCB, which also contained the said condition, but the Agency never bothered to take action against the project proponent for the violations committed by it in view of the court/government orders that were in force at that point of time.

46. While disposing the matter in Original Application No. 87 of 2015; *Social Action for Forest and Environment vs Union of India and Ors* (Supra) the Tribunal on 10th December, 2015 directed, besides a number of other directions, inter alia, as under:

“110. 16. No structure of any kind would be permitted to be raised, temporary, semi-permanent or permanent. We make it clear that making of the cemented platforms or bricked walls would not be permitted within the limits afore stated. This will be done with reference to River Ganga Data maintained by the Central Water Commission. Within these 100 meters any construction activity what so ever would not be permitted under any circumstances. Wherever the road intervenes between 100 meters defined space, in that event, the camping can be permitted across the road towards the hill side.”

Issue V: Directions

47. Under the circumstances detailed out herein above and keeping in mind the ecological fragility of the area in question, following directions are issued:-

i. A Committee of following members is constituted to inspect the site and give its observations/recommendations in respect of the impugned project beyond 100m line vis-à-vis impact on the adjacent river. The Committee shall include:

1. Member Secretary, Central Pollution Control Board, New Delhi
2. Principal Scientist/Professor of Hydrology, to be nominated by the Director, NIH, Roorkee
3. Principal Scientist/Professor, Forest Ecology, to be nominated by Director, Forest Research Institute, Dehradun
4. Chief Engineer, Irrigation Department, Uttarakhand
5. Member Secretary, UEPPCB. He will act as the nodal officer.

ii. The Committee shall report on the following:

- a. What is the locational position of the impugned structure in relation to the 1:25year flood level?
- b. How much portion of the impugned structure lies within the 100m mark from the middle of the river?

- c. What impact, positive or negative, the impugned project on the whole shall have on the river flow as also on the ecology of the river?
- d. What impact the impugned project had/will have on the adjacent forest area?
- e. Whether the measures proposed by the Project Proponent for the management of sewage, municipal solid wastes and other wastes generated by the Hotel and Spa project are adequate?
- f. What recommendations would the Committee like to make for mitigating the negative impacts and on what basis?
- iii. The Committee shall submit its report within four weeks to the Registry for placement for final orders. Respondent No. 1 is prohibited from further construction on the impugned area until the above Committee submits its report to the Tribunal for final directions.
- iv. The Project proponent (Respondent No. 1) shall be liable to pay environmental compensation of Rs. 20 Lakh for violating the conditions set in the Consent to Establish issued by the UEPPCB and for disturbing the immediate/direct catchment of the river Ganga by changing the drainage pattern through the use of JCBs for levelling the area.
- v. The amount shall be deposited with the UEPPCB, which shall maintain a separate account for the purpose and shall use it only for restoration of the environment in the area.

48. With these directions, the Original Application is disposed off without any costs. M. A. 821/2015 does not survive as the main application is disposed off.



Justice Swatanter Kumar
Chairperson

Justice M. S. Nambiar
Judicial Member

Prof. A.R. Yousuf
Expert Member

Mr. Bikram Singh Sajwan
Expert Member

New Delhi,
March 21, 2016

NGT