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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**COCP-1502-2023 (O&M)
Reserved on: 09.10.2023
Pronounced on: 12.10.2023**

Gram Panchayat, Bari Karoran

...Petitioner

Versus

**Vikas Garg, IAS, Additional Chief Secretary-cum-Financial
Commissioner, Forest Department, Punjab and others**

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate,
Mr. Vishal Pundir, Advocate,
Ms. Aashna Aggarwal, Advocate
for the petitioner.

Mr. Kamaldip Singh Sidhu, Advocate
for applicant-proposed petitioner No.2
(in CM-18234-CII-2023).

Mr. Ayush Sarna, AAG, Punjab.

Ms. Anu Chatrath, Sr. Advocate with
Ms. Divya Sharma, Advocate
for respondent No.6-GMADA.

ARVIND SINGH SANGWAN, J.

On 18.05.2023, while issuing notice of motion, following order
was passed: -

“The petitioner alleges non-compliance of the order dated



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28.05.2014 passed in CWP No.22756 of 2013 and further for non-compliance of the orders dated 28.04.2016, 04.05.2016 and 06.05.2016 passed in CACP No.13 of 2016.

Learned senior counsel for the petitioner has argued that the Gram Panchayat, Village Bari Karoran, District Mohali, filed the aforesaid CWP No.22756 of 2013, for the larger interest of the inhabitants living in the revenue estate of the said village as they were facing great difficulty due to lack of civic amenities affecting their rights and the petitioner also prayed for quashing the two notifications No.39/578/2005-Ft-III/6087 and 39/578/2005-Ft-III-6085, both dated 13.08.2010 (Annexures P-2 and P-3, respectively) to the extent that they impose unnecessary restrictions with regard to the use of the land so de-notified under the Punjab Land Preservation Act, 1900.

Learned senior counsel for the petitioner has submitted that vide aforesaid notification dated 13.08.2010, the land measuring 265.59 hectares cultivated and habitated area of Village Nada were closed under Sections 4 and 5 of the Punjab Land Preservation Act, 1900, comprised in Khasra numbers as detailed in Annexure-1 of the land. Learned counsel for the petitioner has referred to the notification dated 13.08.2010 (Annexure P-2). The operative part of the same, reads as under:-

“5. (a) Whereas in compliance of the orders of the Hon’ble Supreme Court of India dated 9.9.2005, Ministry of Environment and Forests, Government of India vide F.No.8-19/2006-FC dated 16th March 2006 conveyed in-principle approval to de-list 65,670.26 ha. Cultivated and habitation areas closed under Punjab Land Preservation Act, 1900 from the list of forest areas for bonafide agricultural use and other livelihood needs subject to the

following conditions:

i) The State Government shall ensure that no commercial activity is permitted on such de-listed land.

ii) The de-listed land shall be used only for bona fide use for agriculture and for sustaining the livelihood of the people/owner of the land.

iii) A detailed list of such lands showing the land use and status of such land before 25.10.1980 and after that, upto 12.12.1996, shall be furnished to this Ministry before final approval.”

(b) Ministry of Environment and Forests, Government of India vide F.No.8-19/2006-FC dated 10th August, 2006 conveyed approval for delisting of 707.70 ha (265.59 ha. in Nada Village and 442.11 ha. in Karoran village) cultivated and habitation area closed under PLPA, 1900 from the list of forest areas subject to the following conditions:

i) The State Government shall ensure that no commercial activity is permitted on such de-listed land.

ii) The de-listed land shall be used only for bona fide use for agriculture and for sustaining the livelihood of the people/owner of the land.

iii) No further part compliance will be entertained in respect of remaining area/villages/districts.

6. Therefore, keeping in view the above, the Governor of Punjab is pleased to delist/denotify the land measuring 265.59 ha. cultivated and habitation area of

Village Nada closed under PLPA, 1900 comprised in the Khasra numbers as detailed in Annexure-1 and also from the list of forest areas as contained in Annexure-G enclosed with the affidavit dated 21.2.1997 of the State Government in Hon'ble Supreme Court of India in Writ Petition (Civil) No.202 of 1995. Consequently, the restrictions, regulations and prohibitions imposed under Section 4 & 5 of PLPA, 1900 shall cease to be applicable in the delisted areas.

7. The above deletion is subject to final judgments in Civil Appeal no.4682-4683 of 2005 of B.S. Sandhu vs. Government of India and others, Civil Appeal No.4798 of 2005 of Bhartiya Kisan Union TH Vice President vs State of Punjab and others, Civil Appeal No.4799-4800 of 2005 of Suresh Sharms and others vs B.S. Sandhu and others, Special Leave Petition (Criminal) No.7647 of 2009 with Criminal Misc. No.17535 of 2009 of Harsh Kumar Sharma vs Central Bureau of Investigation & others pending before Hon'ble Supreme Court of India.

8. This de-listed area will be administered in accordance with the decisions taken in the meeting held under Chairmanship of Worthy Chief Secretary, Punjab, on 26.4.2010 as contained in the proceedings issued vide Punjab Government Memo No.39/578/2005-Forest-3/2945 dated 4.5.2010 (copy enclosed in the Annexure-II)."

Learned senior counsel for the petitioner has submitted that thereafter when CWP No.22756 of 2013 was filed, this Court vide order dated 14.08.2014, disposed of the writ petition. The operative part of the said order, reads as under:-



“In a nutshell, the ratio of the judgment of the Hon’ble Supreme Court is that whether a land is a forest land or not would depend on the land records and merely because the land is notified under Section 3 of the PLPA would not ipso facto make it forest land. The second limb is that the land has to be recorded as forest land as on 25.10.1980 irrespective of its classification or ownership.

If we may say, the complete ground reality has changed in view thereof and learned Additional Advocate General cannot dispute the proposition that an exercise would have to be carried out by the State Government now to identify such land as is forest land as per the revenue record which he claims would take some time. He, however, states that insofar as the main notifications are concerned, which are predicated on the notification(s) under the PLPA, there would have to be segregation of land between forest land and non forest land.

The aforesaid course of action is something which cannot be disputed even by learned senior counsel for the petitioner who submits that the impugned notifications would only apply to such of the land which would be forest land. It is his case that the land in question, involved in the present proceedings, is not forest land, an aspect which would have to be verified by the State Government.

We, thus, dispose of the writ petition in the following agreed terms:

(i) It is for the State Government to proceed to identify the forest land in terms of the parameters laid down by the Hon’ble Supreme Court in Civil Appeal



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Nos.4682- 4683 of 2005 titled as B.S. Sandhu vs. Government of India and others, decided on 21.5.2014 based on the revenue record and the test laid therein;

(ii) The notifications would in substance apply only in case the land in question is forest land in the revenue record;

(iii) Insofar as land of the petitioner is concerned, the aforesaid exercise be carried out to take a call on whether what is alleged by the petitioner, i.e., it is not forest land is correct or not and a reasoned decision be communicated to the petitioner on or before 03.07.2014, as prayed by learned Additional Advocate General;

(iv) If the land in question is not forest land, then appropriate development works as per the Final Master Plan and Notified Area Committee of Naya Gaon should be undertaken as the claim is that the ground reality is really pathetic on account of all development works having stopped; and

(v) The directions already contained in the order dated 4.3.2014 for action qua construction unauthorisedly carried out on a proposed road and clearance of garbage would be implemented on or before 03.07.2014 with visible photographs.

The petition accordingly stands disposed of.

List for compliance on 11.07.2014.”

Learned senior counsel for the petitioner has further argued that when no action was taken, the contempt petition was filed in which certain directions were issued and against three CACP No.13, 14, 15 of 2016, were filed, in which on 28.04.2016, the following order was passed:-

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“Learned Senior counsel Sh. Puneet Bali, appearing for the caveator in CACP-13-2016 in COCP-831-2015 submits referring to certain affidavits filed by the officers concerned that they have demarcated 1092 acres of non-forest land which are found to be cultivable and habitable. They have in fact undertaken to develop the above extent of land. It is his submission that without prejudice to their stand taken in the contempt as well as in the appeal, if the above extent of land is developed in terms of the master plan and other Rules regulating the development within the reasonable time line fixed by this Court, he is prepared to even withdraw the main contempt petition in COCP-831-2015. That apart he will not have any objection for reading down the main observations made by the Hon'ble Single Bench in connection with the conduct of the officers concerned and the proposed contempt contemplated by the Single Bench in the order dated 01.04.2016. Learned Senior counsel Mr.A.K.Chopra, appearing for the caveators in CACP-15-2016 in COCP-1808-2015 submits that if it is verified and reported that a draft notification has already been issued including the entire lands in village Karoran and Nada and the same is acted upon the caveators in the above proceedings are prepared to withdraw the main contempt petition in COCP-1808-2015 itself.

Learned Additional Advocate General Mr. Vinod Bhardwaj seeks some time to get instructions from the State as regards the above concessions made by the counsel appearing for the respective caveators.

Mr. Tejender Pal Singh, Mr. Vikas Partap, IAS and

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Mr. K.B.S.Sidhu shall be present on 29.04.2016 at 10:00 AM to assist the Court.

Mr. Vishavjeet Khanna, IAS who has been directed to be present in the Court to face the contempt by the Single Bench is exempted from appearing till the disposal of this appeal.

Post the matter on 29.04.2016.

Copy of the order be given to A.G. Punjab under signature of the Special Secretary.

A photocopy of this order be placed in the file of connected cases.”

In CACP No.13 of 2016, again on 04.05.2016, the following order was passed:-

“Heard the submissions made by Sh. Ashok Aggarwal, Advocate General, Punjab for the appellants and Sh. Puneet Bali, Senior Counsel for the respondents.

Sh. K.S. Sidhu, IAS, ACS (Revenue), Sh. Vishwajeet Khanna, IAS, F.C. (Forest), Government of Punjab, Sh. Vikas Pratap, IAS, Secretary to Government of Punjab, Department of Local Government, Sh. D.S. Mangat, IAS, D.C., SAS Nagar and Sh. Paramjeet Singh, IFS were present in the Court. During the course of hearing, Sh. Vishwajeet Khanna, IAS, F.C. (Forest), Government of Punjab, Sh. Vikas Pratap, IAS, Secretary to Government of Punjab, Department of Local Government and Sh. D.S. Mangat, IAS, Deputy Commissioner, SAS Nagar swore to their individual affidavits and the same have been placed on record.

It is found that out of 1092 acres of land identified and demarcated as non-forest area by the State of

Punjab, approximately 588 acres of land which squarely fall within the Revenue Estate of village Karoran form part of Nagar Panchayat, Nayagaon. The remaining 504 acres of land are found to be non-forest area.

Learned Advocate General, Punjab appearing for the appellants submitted that as there was no Master Plan to develop the above 504 acres of land which also do not fall under the forest area, the individuals concerned may develop their respective lands subject to the laws which are applicable for such development. In this context, it is noticed that the Bench, while disposing of the main writ petition, observed that the notifications issued by the State would in substance apply only in case the land in question has been classified as forest land in the Government records.

In the light of the above observations, we are of the considered view that the restrictions imposed will not apply to 1092 acres of land identified as non-forest area, which, in fact, forms part of the notification issued on 30.08.2010 by the Department of Forest and Wild Life Preservation, State of Punjab.

We noticed that a direction has been issued in the order passed by the Bench on 28.05.2014 that the State shall, in terms of the order dated 04.03.2014, remove unauthorized construction put up on the proposed road and clear the garbage on or before 03.07.2014.

Of course, the learned Advocate General for the State of Punjab submitted that affidavits of the officers concerned have already been filed bringing to the notice of the Court that the above direction has been complied

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with. But Sh. Puneet Bali, Senior Counsel for the respondents brought to our notice that unauthorized construction on the proposed road are still in existence as the same have not been cleared. That apart, it is his submission that road running over there has not been properly metalled.

In the light of the affidavits filed by Sh. Vishwajeet Khanna, IAS, F.C. (Forest), Government of Punjab, Sh. Vikas Pratap, IAS, Secretary to Government of Punjab, Department of Local Government and Sh. D.S. Mangat, IAS, Deputy Commissioner, SAS Nagar and the consent expressed by the appellants for scrupulously adhering to the directions issued by the Court on 28.05.2014, learned Senior Counsel for the respondents submitted that the main contempt petition COCP No.831 of 2015 be listed before this Court itself for final disposal in the light of the agreed terms.

Sh. Vikas Pratap, IAS, Secretary to Government of Punjab, Department of Local Government shall file an affidavit setting out reasonable time frame for compliance of the directions issued by the Bench on 28.05.2014. We have proposed to disposed of the main COCP without prejudice to the rights of the parties and the appeal filed their against. The appearance of other officers who were present in the Court except Sh. Vikas Pratap, IAS, Secretary to Government of Punjab, Department of Local Government is dispensed with.

In the light of above, the registry is directed to list the main COCP No.831 of 2015 with this appeal for final disposal in the light of the agreed terms of the parties

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after obtaining necessary permission from the Hon'ble the Acting Chief Justice on 06.05.2016.”

It is submitted that subsequently in terms of the undertaking given by the respondents, the petitions were disposed of on 06.05.2016 with liberty to submit the representations.

Learned senior counsel for the petitioner has referred to the affidavit filed by the Deputy Commissioner, S.A.S. Nagar, Mohali, Financial Commissioner and the Secretary to Government of Punjab, Department of Local Government, wherein all the three respondents have categorically stated as under:-

“1. That 1092 acres of land situated in Village Karoran, which was delisted vide Notification No.39/578/2005-Ft-III/6087 and 39/578/2005-Ft-III/6085 dated 13.08.2010 has been identified and demarcated. The demarcation report has already been submitted before this Hon'ble Court by way of affidavit dated 30.09.2015 of Shri Tejinderpal Singh Sidhu, IAS, then Deputy Commissioner, Sahibzada Ajit Singh Nagar.”

It is submitted that despite a lapse of long period, the respondents have not issued any fresh notification or corrigendum with regard to 1092 acres of land, which is declared to non-forest land.

Notice of motion.

Mr. Ayush Sarna, AAG, Punjab, who is present in the Court, accepts notice on behalf of the respondents/State.

Notice be issued to the remaining respondents for 24.05.2023.

The respondents are directed to file a specific affidavit

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regarding the non-compliance and willful disobedience of the order passed by the Writ Court as well as the undertaking given before the contempt bench, failing which they will remain present before this Court on the next date of hearing.

Process dasti, as well.

Liberty is also granted to the petitioner to serve the respondents through e-mail.”

Thereafter, on 24.05.2023, following order was passed: -

“On request of learned senior counsel, respondent No. 6 is deleted from the array of parties of this petition.

In compliance with the previous order, separate affidavits of the Principal Secretary to Govt. of Punjab, Local Government as well as Divisional Forest Officer, SAS Nagar are filed today in Court.

As per affidavit of the Divisional Forest Officer, SAS Nagar, a reference is made to the notification dated 02.02.2018 to submit that in the schedule, it is stated that the area, which is closed under Section 4 of the Punjab Land Preservation Act, 1900, is defined by giving the area as well as details/khasra numbers.

In the affidavit, filed by the Principal Secretary to Govt. of Punjab, Local Government, it is stated that as per information supplied by the Executive Officer, Municipal Council, Naya Gaon (Annexure R/1-1), the Forest Department has provided the details bifurcating the forest and non-forest area and some development works are being carried out in the non-forest areas, however, both the affidavits are silent about the notification dated 02.02.2018 giving details of khasra numbers, which are declared as non-forest area under the said Act and are

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measuring about 1092 acres, as per affidavit of the Divisional Forest Officer, SAS Nagar.

Learned senior counsel for the petitioner further submits that since the residents of the village are facing continuous problems due to the fact that as and when any application is moved for undertaking development work or getting water connection or electricity connection etc., all the departments concerned refer to the notifications dated 13.08.2010 (Annexures P-2 and P-3) to submit that in both the notifications, the description of 1092 acres of land, which is excluded from forest area, is not given and that can be done only by issuing a corrigendum by the authorities concerned.

Let a fresh compliance affidavit limited to the extent of issuance of a corrigendum regarding 1092 acres of non-forest area be filed by respondent No. 1-Additional Chief Secretary-cum-Financial Commissioner, Forest Department, Punjab on or before the next date of hearing, failing which, he shall remain present in person before this Court on the next date of hearing.

Since a sufficient time has already passed and the petitioner has to file repeated litigation, let this case be again listed on 01.06.2023.”

On the adjourned date i.e. 01.06.2023, affidavit of the Financial Commissioner, Govt. of Punjab, Department of Forest & Wildlife Preservation, Punjab was filed and again the case was adjourned to 07.07.2023. The operative part of the order dated 01.06.2023 reads as under:-

“...Today, affidavit of Financial Commissioner, Department of Forest and Wildlife Preservation, Punjab along with corrigendum/draft notification has been filed. The draft corrigendum reads as under: -

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“Whereas the area mentioned in the Schedule of the notification of Village Nada (11B No.350) oand Karoran (HB No.352) were delisted/de-notified from the list of forest area as contained in Annexure-G enclosed with the affidavit dated 21.02.1997 of the State Government in Hon’ble Supreme Court of India in Writ Petition (Civil) No.202 of 1995 vide Notification No.39/578/2005-Ft-111/6085 dated 13.08.2010 and No.39/578/2005-Ft-111/6087 dated 13.08.2010 respectively.

2. Whereas in the Para 6 of the said notification mentioned that the restriction, regulation and prohibition imposed under Section 4 & 5 of Punjab Land Preservation Act 1900 shall cease to be applicable in the delisted area.

3. Whereas the Hon’ble High Court in COCP 1502 of 2023 directed to issue a corrigendum regarding 1092 acres.

4. Now, therefore in compliance to the above said directions and in continuation of the Notification No.39/1/2018/FT-111/1157844 dated 02.02.2018 it is clarified that the restriction, regulation and prohibition imposed under Section 4 & 5 of PLPA shall not be applicable in the delisted area comprised in the Khasra numbers as detailed in the Annexure-I of the Notification issued vide No.39/578/2005-Ft-111/6085 dated 13.08.2010 and No.39/578/2005-Ft-111/6087 dated 13.08.2010.”

Learned senior counsel for the petitioner submits that again in para No.4 of the corrigendum, it is only stated that restriction, regulation and prohibition imposed under Sections 4 & 5 of PLPA shall not be applicable in the delisted area



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comprised in khasra numbers qua 1092 acres, however, nothing is stated that the Urban Local Department is also issuing similar corrigendum.

Learned State counsel, on instructions, has submitted that this draft notification will apply to the entire area of 1092 acres in terms of the directions given by this Court vide order dated 28.04.2016, 04.05.2016 and 06.05.2016 passed in CACP-13, 14, 15 & 16-2016, which were passed in compliance of the previous order dated 28.05.2014 passed in CWP-22756-2013, as upheld by the Hon'ble Supreme Court.

In view of the undertaking given on behalf of the State, it is clear that draft notification will apply not only with regard to exemption regarding restriction, regulation and prohibition imposed under Sections 4 & 5 of PLPA, but will also apply to the Forest Department for grant of No Objection Certificate.

Since the three conditions imposed in 2010 notification, as reproduced above, already stands quashed in terms of the previous order passed by the writ Court as well as undertaking given before the contempt appellate Court, all the respondents including Local Govt. Department will be bound by the corrigendum and any act done by the said department in defiance of the corrigendum/draft notification will be termed as a willful disobedience of the orders of this Court, to be issued by both the departments in strict compliance of the order passed by this Court.

In view of the above, all the respondent departments will not raise any objection regarding providing civil amenities to the land owners like sanctioning of site plans, releasing of water connections/electricity connections and development of basic amenities.



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List again on 07.07.2023.”

On the adjourned date i.e. 07.07.2023, short reply by way of affidavit of Principal Secretary, Department of Local Govt., Punjab as well as status report by way of affidavit of Deputy Commissioner, U.T. Chandigarh were filed, in which again similar stand was taken that a notification is issued by the Department of Forest and Wildlife Preservation, Punjab that restriction, regulation and prohibition imposed under Sections 4 & 5 of PLPA shall not be applicable. Noticing the fact that an objection was seriously raised on behalf of the petitioner that no correct notification/corrigendum was issued regarding omitting three conditions, as noticed above, it was observed in the order that the respondents are taking the directions of the writ Court in a casual manner and are not adhering the majesty of law and Principal Secretary, Department of Local Govt., Punjab was directed to remain present on the next date of hearing i.e. 11.08.2023.

In the meantime, CM-12522-CII-2023 was filed and Department of Forest and Wildlife, Punjab was also directed to file the affidavit. On the next date of hearing i.e. 11.08.2023, following order was passed: -

“In response to previous order, Principal Secretary to Govt. of Punjab, Local Govt. Department filed his affidavit with regard to compliance of the order regarding three conditions, operative part of which reads as under:-

“In view of the decision dated 28.05.2014 in Civil Writ Petition No.22756 of 2013 regarding notification No.39/578/2005-Ft-III/6087 dated 13.08.2010 and 39/578/2005-Ft-III/6085 dated 13.08.2010 issued by the

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Department of Forest and Wildlife Protection, Punjab, affidavit filed by Financial Commissioner, Forest in CACP No.13 of 2013 in COCP No.831 of 2015, List of Khasra numbers and Map regarding forest and non-forest area sent to you by Divisional Forest Officer, SAS Nagar vide letter No.2348 dated 13.06.2017 and Notification No.39/01/2023-FT-6/4800 dated 03.07.2023 issued by the Department of Forest and Wildlife Protection, Punjab, action may be taken for approval of Building Plans for the area of village Nada and village Karoran which has been de-listed/de-notified under PLPa 1900 and is non-forest area.

Apart from this, the reference received from Chief Wildlife Warden Punjab vide No.3771 dated 21.07.2023 is sent to you for information and necessary action with a clarification that Master Plan Naya Gaon, Municipal Building Byelaws, eco-sensitive zone/catchment area and the ongoing litigation regarding shamalat area may be kept in view while taking necessary action.”

Learned senior counsel for the petitioner has referred to the letter dated 21.07.2023 attached with the reply, vide which the Govt. of Punjab, Department of Forest and Wildlife has directed the Director, Local Govt. Department, Punjab as under:-

“Apart from the above you are also informed that as per the guidelines of the Government of India unless an Eco-Sensitive Zone is notified around a resort, until then, only an area of 10 kilometers from the boundary of the Sanctuary is to be considered as Eco-Sensitive Zone.

This is for your information.”

*It is submitted that the observation made above that an area of 10 kilometers from the boundary of Sanctuary is to be considered as Eco-Sensitive Zone, is against the mandate of the judgment of the Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad Vs. Union of India and others, 2023 (6) Scale 760**, wherein it is observed as under: -*

*“58. It is further to be noted that on the date of filing of the present application, final notifications have been issued in respect of 474 Protected Areas whereas draft notifications have been issued in respect of 102 Protected Areas. 73 proposals are pending. As already discussed hereinabove, this Court has already found the said Guidelines to be reasonable and has accepted the same. The Court has also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each Sanctuary or National Park for maintaining ESZs. Though the Court has observed that a minimum width of one kilometre in ESZ ought to be maintained, in paragraph 56.6 of the order dated 3rd June 2022 (*supra*) itself, it has observed that minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned is required to approach Central Empowered Committee (CEC) and MoEF & CC. It has further observed that both these bodies shall give their respective recommendations before this Court and on that basis, the Court should pass appropriate order.*

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60. Insofar as the restriction on mining is concerned, we are of the considered view that it has been

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the consistent view of this Court that the mining activities within an area of one kilometre of the boundary of the Protected Areas will be hazardous for the wildlife. Though in the case of Goa Foundation (supra), the said directions were issued in respect of State of Goa, we find that such directions need to be issued on Pan-India basis.”

*Learned senior counsel thus submits that the letter dated 14.07.2023 refers to an area of one kilometer, whereas in the letter dated 21.07.2023, it is from the boundary of Sanctuary, to be considered as Eco-Sensitive Zone, which is contrary to the observations made by the Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad's** case (supra).*

Learned State counsel, on instructions from the Principal Secretary to Govt. of Punjab, Local Govt. Department, who is present in the Court, submits that office of Director, Local Govt. Department, Punjab has issued strict direction to the Executive Officer, Municipal Council, Naya Gaon and GMADA to implement the said directions for sanctioning of plans taking one kilometer from Eco-Sensitive Zone and in case, same are not followed, necessary action will be taken against the erring officials.

On the face of it, affidavits filed by the DC, Chandigarh, Executive Officer, Municipal Council, Naya Gaon, Chief Engineer Drainage, Water Resources Department, Punjab and DC, SAS Nagar (Mohali) are factually incorrect, therefore, notice of show cause is issued to them, as to why they have not complied with the directions.

List again on 15.09.2023.

In the meantime, fresh compliance affidavit of Financial Commissioner, Govt. of Punjab, Department of Forest & Wildlife



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Preservation, Punjab as well as GMADA be filed, stating therein that a fresh corrigendum/notification is issued that three conditions will not be applicable.

Local Commissioner will also submit the periodical report, after every two months, on the fee payable by the petitioner.

Personal appearance of Principal Secretary to Govt. of Punjab, Local Govt. Department is exempted.

A photocopy of this order be placed on the file of connected case.”

Again on 23.08.2023, with reference to para Nos.57 & 61 of **T.N. Godavarman Thirumulpad Vs. Union of India and others, 2023 (3) KLT 144**, it was observed that learned State counsel will clarify as to whether from eco-sensitive zone, area is 100 meter or 01 kilometer or 10 kilometer, as observed in the letter relied upon by the respondents.

Today, CM-18234-CII-2023 is filed on behalf of one Lakhveer Singh for being impleaded as party-petitioner No.2.

The applicant has submitted that he is a practising Advocate in this Court and has purchased 05 marlas of plot situated in the revenue estate of Village Karoran and mutation was sanctioned in his favour. When he started construction of his house, he approached the office of Executive Officer, Municipal Committee, Naya Gaon for sanctioning of the site plan, but it was refused verbally on the ground that there is no order of the State Govt. to sanction the site plan. Even the application filed by the applicant for providing electric connection was declined on the ground that first of all,



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NOC is to be taken. Similarly, Department of Water Supply and Sanitation, SAS Nagar also refused to provide water supply connection to the applicant, therefore, it is submitted that the applicant is also aggrieved against action of the respondents.

Since learned senior counsel for the petitioner has no objection, application is allowed and applicant Lakhveer Singh son of Sh. Binder Singh is impleaded as petitioner No.2 and is permitted to address the arguments at this stage.

As the case is listed for final arguments, the learned senior counsel for the petitioner has reiterated his arguments, as noticed above. He laid much emphasis on the prayer made in CWP-22756-2013, which reads as under: -

“Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the notifications No.39/578/2005-Ft-111/6087 and 39/578/2005-Ft-111/6085, both dated 13.08.2010 (Annexures P-8 and P-9) to the extent that they impose unnecessary restrictions with regard to the use of the land so de-notified under the Punjab Land Preservation Act, 1900;

Further to issue a writ in the nature of Certiorari quashing the letters dated 16.03.2006 and 10.08.2006 (Annexures P-10 and P-11) to the extent that they impose unnecessary restrictions over de-notified land as the same is the

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prerogative of the State Government under entry 18 list 2 schedule 7 of the Constitution of India.

Further to issue a writ in the nature of mandamus directing the respondents to accept the building plans and after scrutiny of the same, sanction the said building plans of the inhabitants of the area as per the final Master Plan – 2021 of the Notified Area Committee, Naya Gaon, which has been issued on 02.01.2009 (Annexure P-6), in order to secure planned growth of the area of Naya Gaon;

Further to issue a writ in the nature of mandamus directing the respondents to ensure implementation of the Final Master Plan – 2021 A.D. (Annexure P-6), which provides for a road from PGI, Chandigarh to village Kaimbala, passing through villages Karoran and Kansal and a road from Khuda Ali Sher to Kaimbala side as per the Map (Annexure P-14) of the Master Plan and marked as point “A to C”;

Further to issue a writ in the nature of mandamus directing the respondents to de-notify the remaining area falling in the revenue estate of villages Karoran and Nada, from the list of forest areas and consequently, remove the restrictions, regulations and prohibitions imposed under Section 4 & 5 of the Punjab Land Preservation Act, 1900 and to direct the respondents to provide basic amenities to the residents by



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making the N.A.C. functional by developing the area within their jurisdiction as also to make the area habitable with all basic amenities of roads, sewerage, electricity etc. etc.”

Learned senior counsel has submitted that while disposing of the writ petition, as many as 05 directions were issued, which are not being complied with. Learned senior counsel has referred to the notification dated 13.08.2010 and as per Clause 5, in compliance of the order of the Hon'ble Supreme Court dated 09.09.2005 and notification of the Ministry of Environment and Forests, Govt. of India dated 16.03.2006, approval to delist 65,670.26 hect. cultivated and habitation areas closed under Punjab Land Preservation Act, 1900 from the list of forest areas for bonafide agricultural use and other livelihood were subject to three conditions, as noticed above. It is argued that main thrust was for considering the bonafide agricultural use and other livelihood. It is submitted that the respondents are taking this decision of the Govt. itself in a very casual manner. Reliance is also placed on Clause 6 of this notification, wherein the Governor of Punjab had delisted/de-notified the land measuring 265.59 ha. in Village Nada as closed under PLPA, 1900 as per list attached with the notification as Annexure G and it is specifically held that “Consequently, the restrictions, regulations and prohibitions imposed under Section 4 & 5 of PLPA, 1900 shall cease to be applicable in the delisted areas”. Learned senior counsel has again submitted that even this part of the Govt.'s own decision is openly flouted by the respondents.



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The next argument raised by learned senior counsel for the petitioner is that when CACP-13, 14 & 15-2016 were filed, it was observed that a draft notification to withdraw three conditions has already been issued including the land in Villages Karoran and Nada, as per the order dated 28.04.2016. Again on adjourned date, considering the affidavits filed by the then Financial Commissioner (Forest), Govt. of Punjab, Secretary to Govt. of Punjab, Department of Local Govt. and Deputy Commissioner, SAS Nagar to scrupulously adhering to the directions dated 28.05.2014 (*qua which the present contempt petition is filed*), the case was adjourned to 06.05.2016 and finally, on 06.05.2016, the contempt appeals were disposed of in view of the affidavits of predecessors of the respondents. It is further submitted that not only this, in order to misguide the Court, in the affidavit dated 06.07.2023 filed by the Principal Secretary to Govt. of Punjab, Local Govt. Department, a letter dated 21.07.2023 was attached, however, its translation is not attached and only the translated copy of another letter dated 09.08.2023 was attached as Annexure R-4 with the said affidavit, in which there is a reference to the aforesaid letter dated 21.07.2023 issued by the Chief Wildlife Warden, Punjab regarding some clarification of the Master Plan of Naya Gaon, Municipal Building Byelaws, eco-sensitive zone etc.

Learned senior counsel has placed on record the translated copy of the letter dated 21.07.2023 attached as Annexure A-4 along with CM-14864-CII-2023. For a reference, this letter dated 21.07.2023 is reproduced as under: -

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“In relation to the above subject and the letter under reference, you are hereby informed that 100 meters area of Punjab surrounding Sukhna Wildlife Sanctuary as Eco-Sensitive Zone has been forwarded to the Government of India vide Government letter No.34/02/2023/FT-5/824 dated 9.2.2013. Pursuant to Government of India letter No.11/20/2018-ESZ dated 7.6.2023 this office vide letter No.3672 dated 12.07.2023 from the State Government dated 9.2.2023 as 100 meters of Punjab around Sukhna Wildlife Sanctuary. The proposal sent to declare the Eco-Sensitive Zone has also been confirmed. According to which the case of Sukhna Wildlife Sanctuary is covered under the judgment of the Hon’ble Supreme Court dated 26.04.2023.

Apart from the above you are also informed that as per the guidelines of the Government of India unless an Eco-Sensitive Zone is notified around a resort, until then, only an area of 10 kilometers from the boundary of the Sanctuary is to be declared as Eco-Sensitive Zone.

This is for your information.”

Learned senior counsel has argued that in the first part, though it is mentioned that it is 100 meters area surrounding Sukhna Wildlife Sanctuary as Eco-Sensitive Zone, however, without any basis, in the last line of this letter, it is mentioned that area is 10 kilometers. It is submitted that



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just to create a confusion and to frustrate the order of the writ Court, this has been mentioned, though in the judgment of the Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad's** case (supra), it is clearly observed in para No.61 that earlier directions in para No.56.1 of the order dated 03.06.2022 were modified and clarified that direction would not applicable to Eco-Sensitive Zone in respect of which a draft and final notification has been issued by MoEF & CC and in respect of the proposals, which were received by the Ministry. It is submitted that this matter is pending for the last many years and proposal was of 100 meters only, which now the respondents, in order to frustrate the order of the writ Court, have stated it to be 10 kilometers.

It is next argued that it is clear from the record that after quashing of the conditions mentioned in para No.5 of the notification dated 13.08.2010 by the writ Court, no fresh notification was issued either by the Department of Forests and Wildlife Preservation, Punjab or by the Department of Local Govt., Punjab, therefore, a totally false case has been set up that it is 10 kilometers as Eco-Sensitive Zone from the Sukhna Wildlife Sanctuary, which is even contrary to the observations made by the Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad's** case (supra).

Learned State counsel has argued that the State Govt. is adhering to the notifications regarding prohibited area/wildlife sanctuaries. It is submitted that as per judgment of the Hon'ble Supreme Court, since only the draft proposal has been passed, which has not attained finality, therefore, they



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are following operative part of the order in para No.66.

Learned State counsel submits that in order to maintain uniformity, initially it was proposed that eco-sensitive zone will be for 100 meters, however, later on, a draft corrigendum was issued with regard to declaration of non-forest area. It is submitted that in the corrigendum, though it is stated that provisions of Sections 4 & 5 of PLPA shall not be applicable, however, it is not clarified that persons having their house etc. like applicant/petitioner No.2 will get site plan sanctioned by the competent authority as well as electricity connection and water connection also from competent authority. It is further submitted that as per letter dated 03.07.2023, it is the Local Govt. Department to see as to whether the Forest Department, Punjab has formulated any scheme or not.

Learned State counsel has referred to the letter dated 09.08.2023 filed along with affidavit of Principal Secretary to Govt. of Punjab, Local Govt. Department, to submit that necessary clarification with regard to non-application of PLPA is made by the Director. It is submitted that in **T.N. Godavarman Thirumulpad's** case (supra), it is held that while giving environmental and forest clearances for project activities in ESZ and other areas outside the protected areas, Union of India and State Governments as well as U.T. Governments will follow provisions contained in the office memorandum dated 17.05.2022, which provides that project/activity covered under the schedule of EIA notification and located within 10 km of National Park or Sanctuary shall require prior consideration of National Board of



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Wildlife/Standing Committee for National Board of Wildlife. Learned senior counsel has also referred to office memorandum dated 17.05.2022 to submit that the State Govt. is acting as per the State notification, therefore, no further clarification is required. Reliance is also placed on the notification dated 03.07.2023, wherein it is stated that restriction, regulation and prohibition imposed under Sections 4 & 5 of PLPA shall not be applicable in the delisted area.

Learned State counsel has further referred to affidavit of Financial Commissioner, Department of Forest and Wildlife Preservation, Punjab dated 14.09.2023, wherein a notification dated 03.07.2023 is attached as Annexure R-1/1. The operative of the said notification reads as under: -

“4. Now, therefore in compliance to the above said directions and in continuation of the Notification No.39/1/2018/FT-1/1157844 dated 02.02.2018, it is clarified that the restriction, regulation and prohibition imposed under Sections 4 & 5 of PLPA shall not be applicable in the delisted area comprised in Khasra numbers as detailed in the Annexure-1 of the Notification issued vide No.39/578/2005-Ft-111/6085 dated 13.08.2010 and No.39/578/2005-Ft-111/6087 dated 13.08.2010.

5. This notification is issued with prior approval of the competent authority.”

Lastly, reliance is placed on the proceedings dated 26.04.2010 held under the Chairmanship of Chief Secretary, Punjab regarding exclusion



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of 56,047.65 ha area under cultivation and habitation closed under PLPS, 1900 of Ropar, Hoshiarpur, Nawanshahr, SAS Nagar (Mohali) and Gurdaspur from the list of forest areas. This is the notification, in which aforesaid three conditions were imposed, which were challenged in the main writ petition, wherein a statement was made on behalf of State of Punjab that three conditions will not be applicable.

Learned senior counsel for respondent No.6-GMADA has submitted that in fact, GMADA is following guidelines of the State Govt. and has not taken any decision on its own.

Similar stand is taken on behalf of U.T. Chandigarh and submits that no contempt is made out against U.T. Chandigarh.

In reply, learned senior counsel for the petitioner has placed on record some additional documents, which are taken on record as Mark 'A' (colly.), as they are not disputed by State counsel. The contents of the letter dated 09.02.2023 issued by the Additional Chief Secretary, Department of Forest and Wildlife Preservation, Punjab, informing the Govt. of India, Ministry of Environment, Forests & Climate Change, under the heading 'declaration of Eco-Sensitive Zone around Sukhna Wildlife Sanctuary for areas falling in the State of Punjab'. With reference to the order dated 03.06.2022 passed by the Hon'ble Supreme Court regarding minimum width of 01 km of the Eco-Sensitive Zone, it is recommended as under: -

"In view of Para 1, if the width of Eco-Sensitive Zone is kept as 1 km, it will affect the thickly populated villages of Karoran,



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Naya Gaon, Nada and Kansal. Resultantly, agricultural areas, hospitals, schools/colleges, religious places, factories, government/private institutions and general population of these villages will be very severely affected. The details of these affected areas are as follows:

Sr. No.	Name of village	Wood based industry	Agri-culture	Religious place	Hospital	School	Shops	Hotel	Houses	Estimated population
1.	Karoran	-	50 acre	3	1	2	300	4	2225	9250
2.	Naya Gaon	-	-	1	-	-	250	-	1100	4400
3.	Nada	-	-	1	-	-	20	-	300	1200
4.	Kansal	-	-	3	1	-	200	-	1753	8765
Total			50 acre	8	2	2	770	4	5378	23615

And if the width of Eco-Sensitive Zone is kept as 100 mtr., it will affect only two villages Karoran and Kansal. The details of the areas to be affected in these two villages are as follows:

Sr. No.	Name of village	Wood based industry	Agri-culture	Religious place	Hospital	School	Shops	Hotel	Houses	Estimated population
1.	Karoran	-	-	-	-	-	-	-	7	30
2.	Kansal	-	-	1	1	-	20	-	35	132
Total			-	1	1	-	20	-	42	162

It is clear from the above that if the width of the Eco-Sensitive Zone is kept as one kilometer in the area of Punjab adjacent to the Sukhna Wildlife Sanctuary, then due to the dense population of these concerned villages, many commercial institutions, religious places and agricultural areas (Table-1) will be affected and if the width of the Eco-Sensitive Zone is kept at 100 meters then as per Table-II very few people will be affected and Eco-Sensitive Zone area can be protected and managed with less issues involving general public.



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Keeping in view the above and agreeing with the recommendation of the Principal Chief Conservator of Forests (HoFF), Punjab, it is recommended that an Eco-Sensitive Zone of 100 meters in the area of Punjab adjacent to the Sukhna Wildlife Sanctuary be declared, in overwhelming public interest.”

In pursuance thereof, vide letter dated 12.07.2023, Chief Wildlife Warden, Punjab also informed the Ministry of Environment, Forests & Climate Change, Govt. of India that proposal to declare 100 meters area of Punjab surrounding Sukhna Wildlife Sanctuary as Eco-Sensitive Zone as sent by ACS (Forests) on 09.02.2023 is confirmed, in overwhelming public interest. Operative part of this letter reads as under: -

“With respect to your letter under reference on the subject cited above, it is informed that the Additional Chief Secretary, Govt. of Punjab, Department of Forests & Wildlife Preservation vide his letter No.34/02/2023-FT-5/824 dated 09.02.2023 had sent the proposal to the Government of India, MoEF&CC to declare only 100 meters area of Punjab surrounding Sukhna Wildlife Sanctuary as Eco-Sensitive Zone.

It is also informed that as directed by Joint Director, MoEF&CC vide their letter No.25/03/2015-ESZ-RE dated 24.02.2023, the same proposal had also been sent to Central Empowered Committee for comments vide this office No.602

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dated 26.04.2023.

In compliance of the Hon'ble Supreme Court of India order dated 26.04.2023, it is requested that the proposal to declare 100 meters area of Punjab surrounding Sukhna Wildlife Sanctuary as Eco-Sensitive Zone sent vide ACS (Forests) letter No.34/02/2023/FT-5/824 dated 09.02.2023 is hereby confirmed, in overwhelming public interest."

Reliance is also placed on another letter dated 07.06.2023 issued by the Ministry of Environment, Forests & Climate Change, Govt. of India addressed to all the Chief Secretaries of all the State Governments/UT Administrations regarding finalization and revised proposals in terms of the judgment of the Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad's** case (supra). As per ESZ proposals, vide letter dated 29.06.2022, at Sr. No.53 & 54, extent of area is referred to as 100 meter and with regard to status of publication of the draft, it is stated that it is yet to be published.

After hearing learned counsel for the parties, following undisputed facts emerge for consideration: -

- (a) CWP-22756-2013 was filed praying for quashing of the notifications dated 13.08.2010 to the extent that same are imposing unnecessary restrictions with regard to use of the land so notified under PLPA, with a further prayer to quash the earlier letters dated 16.03.2006 and 10.08.2006 to same extent. The writ



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petition was disposed of on 28.05.2014 with the following five conditions: -

*“(i) It is for the State Government to proceed to identify the forest land in terms of the parameters laid down by the Hon’ble Supreme Court in **Civil Appeal Nos.4682-4683 of 2005** titled as **B.S. Sandhu vs. Government of India and others, decided on 21.5.2014** based on the revenue record and the test laid therein;*

(ii) The notifications would in substance apply only in case the land in question is forest land in the revenue record;

(iii) Insofar as land of the petitioner is concerned, the aforesaid exercise be carried out to take a call on whether what is alleged by the petitioner, i.e., it is not forest land is correct or not and a reasoned decision be communicated to the petitioner on or before 03.07.2014, as prayed by learned Additional Advocate General;

(iv) If the land in question is not forest land, then appropriate development works as per the Final Master Plan and Notified Area Committee of Naya Gaon should be undertaken as the claim is that the ground reality is really pathetic on account of all development works having stopped; and



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(v) The directions already contained in the order dated 4.3.2014 for action qua construction unauthorisedly carried out on a proposed road and clearance of garbage would be implemented on or before 03.07.2014 with visible photographs.”

Thereafter, said judgment was upheld upto the Hon’ble Supreme Court in the order dated 14.08.2014 passed in SLP (C) No.16646 of 2014.

- (b) The petitioners filed contempt petition, wherein certain directions were issued and thereafter, the respondent-State filed three CACP-13, 14 & 15-2016, in which directions were issued on 28.04.2016, 04.05.2016 and 06.05.2016. In all the orders, the undertaking given by the Advocate General, Punjab was recorded that restrictions imposed will not apply to 1092 acres of land identified as non-forest area, which, in fact, forms part of the notification dated 13.08.2010 issued by the Department of Forests and Wildlife Preservation, Punjab. Reference was also made to the affidavits filed by the then Financial Commissioner, Govt. of Punjab, Department of Forests and Wildlife Preservation, Secretary to Government of Punjab, Department of Local Government as well as Deputy Commissioner, SAS Nagar to scrupulously adhering to the directions dated 28.05.2014 issued by the writ Court. The aforesaid contempt appeals were



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finally disposed of in view of undertaking given by the respondents.

- (c) The petitioner, thereafter, served advance notice of contempt to the respondents for not adhering to the directions of the writ Court as well as own undertaking given before the Bench, where the contempt appeals were pending. A perusal of the notification dated 13.08.2010 shows that it was observed that in terms of the order of the Hon'ble Supreme Court dated 09.09.2005 and the order dated 16.03.2006 of the Ministry of Environment and Forests, Govt. of India, 65,670.26 ha cultivated and habitation areas closed under PLPA from the list of forest areas for bonafide agricultural use and other livelihood were required subject to three conditions referred to above, qua which the main dispute stands settled upto the Hon'ble Supreme Court vide subsequent order dated 14.08.2014 passed in SLP (C) No.16646 of 2014. This notification is addressed to all the concerned departments of Punjab including Department of Revenue and Rehabilitation, Rural Development and Panchayat Department, Department of Local Govt., Housing Urban and Development Department, Industries and Commerce Department, PWD (B&R) and Principal Chief Conservator of Forests, therefore, it was well within the knowledge of all the concerned officers of the respondents.



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- (d) A period of 09 years has lapsed since 28.05.2014, when the order was passed by the writ Court and similarly, a long period of about 07 years has lapsed, when the orders were passed in CACPs based on undertaking given by the Advocate General, Punjab, on the basis of different affidavits filed by the respondents.
- (e) On the face of it, conduct of the respondents despite being given repeated time to comply with the directions, not only amounts to willful disobedience, but also reflects the adamant mind so much so that some of the subsequent communications are contrary to own undertaking given before the Court and also in not issuing the correct corrigendum despite the undertaking given before this Court. Repeated affidavits filed by all the respondents also reflects that they are trying to put the burden on each other instead of adhering to and comply with the directions of the Court and many citizens are facing great hardship as noticed above.

Accordingly, respondent No.1 i.e. present Additional Chief Secretary-cum-Financial Commissioner, Forest Department, Punjab, respondent No.2 i.e. present Principal Chief Conservator of Forests, SAS Nagar (Mohali) and respondent No.4 i.e. present Principal Secretary, Local Govt., Punjab are prima facie held guilty of violating the orders of this Court as well as undertaking given by them before the Court.



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Before fixing a date for pronouncing the order on quantum of sentence, they are given time till the next date of hearing to purge the contempt.

List again on 20.11.2023.

A copy of this order be sent to the Chief Secretary, Govt. of Punjab immediately, with a direction to file his compliance affidavit on or before the date fixed.

12.10.2023
vishnu

**[ARVIND SINGH SANGWAN]
JUDGE**