



Thinking NOIDA Twin Tower Judgement, Thinking Goa
In the background of the NOIDA Twin Tower demolition, it is important to look at what is happening in Goa, both in terms of the long and arduous (and therefore also expensive) legal redressal process for grievances against illegal constructions, and in terms of the liability of the erring authorities for negligence and breach of trust.

There is no doubt that the NOIDA twin tower demolition in Uttar Pradesh shall go down in the annals of history as a spectacular indicator that corruption can meet its Waterloo if the judiciary is responsive. But the question remains as to whether the judiciary in the country, including Goa, will make this example scalable across the country, and across different aggrieved sections of society, especially when the aggrieved sections hail from the marginalized sections of society.

The NOIDA twin tower case was not a public interest litigation case. The residents had complained about the illegalities in the construction of the twin towers. It was a struggle, therefore, beginning with complaints of residents of other towers on the same plot of land to local authorities, including police, about the illegality of the twin towers, which bore no fruit, then to a writ petition before the High Court of Allahabad seeking demolition and other reliefs, and finally to the residents having to defend their case before the Supreme Court in the appeal against the High Court judgement.

In what is popularly called the Noida Twin Tower case, the apex court of India affirmed the direction of the High Court to demolish, and set a time frame of three months to demolish it at the cost of the builder-developer, under the supervision of NOIDA in consultation with its own experts and experts from Central Building Research Institute, Roorkee, besides directing refund of amounts paid by the purchasers of the flats in the twin towers with 12 per cent interest per annum, and costs of rupees two crores to be paid to the Resident Welfare Association.

Oftentimes, even after a hard-won positive verdict from the Supreme Court, the State finds a way to circumvent this. The case of Cidade de Goa is a well known example. That this did not happen in NOIDA is as it should be, but could this be because residents in this case are from the upper middle crust of society – retired bureaucrats, professionals working in Delhi, and the like.

Delivering the NOIDA Twin Tower Case Judgement, Justice Dr. Dhananjay Chandrachud held that the grant of sanction by NOIDA in violation of the relevant building regulations affects the rights of every apartment owner, who is represented through the Residents Welfare Association and hence the latter are a 'person aggrieved' and was entitled to initiate the writ

proceedings. The Court further opined that there was a nefarious complicity of the planning authority in the violation by the developer of the provisions of law. The expression 'aggrieved' must mean anyone aggrieved by the particular decision in the Goa Town and Country Planning Act, for instance, but that is not how it has been perceived in the courts, despite the evolution of environmental jurisprudence.

Justice Chandrachud also remarked that "if the 'developer' is left with the unbridled discretion to define the content of the expression 'building block', this will defeat the purpose of prescribing minimum distances, leaving the health, safety and quality of life of flat buyers at the mercy of developers", thereby sending a clear message that no undue weightage needs to be given to the developer's interpretations of definitions in the law, where the meaning is rather clear from the context.

The developers' lawyer had sought to argue that the order of demolition would be "harsh and inequitable" because "the construction was carried out with the sanction of the authorities", that "600 persons had purchased flats in these towers", that "third party rights in favour of the purchasers had crystallised", that 28 floors in T-17 and 26 floors in T-16 were constructed as on 20 December 2013 when arguments were concluded before the High Court, and by the time that the judgment was delivered, 32 floors had been constructed. But the Apex Court clearly set out that the intent, purpose and object of a provision in a planning regulation must not be allowed to be defeated.

We have seen similar arguments being advanced in Goa, when litigation had barely commenced in the High Court of Bombay against CRZ violations by five-star hotels, where the judges were seen taking the view that the building is already constructed, the licences were duly given, the violators were granted loans by banks and authorities had granted subsidies". Or the divided house in respect of the illegal structures within 50 to 100 metres of the High Tide line at Bambolim, in the Aldeia de Goa complex, where Justice Roshan Dalvi had ordered demolition and Justice Reis had awarded what he styled as exemplary and punitive costs, of rupees twenty five lakhs, where five lakhs were to be paid to the petitioners People's Movement for Civic Action, and the remaining sum of Rs 20-lakh was directed to be deposited with the State Government so that such amount can be used by the State Government to avoid environmental and ecological degradation of the coastal belt of the State of Goa. One hopes that the tide will change now, and the judiciary all over, including Goa, will follow the path set by the Supreme Court now with the spectacular going up in smoke of the twin towers.

It is also worth remembering (although that was a grave case of a collapse of a building where 31 people had lost their lives) that way back in January 2014, the Goa Government of

the day had, constituted a committee headed by retired IAS officer V.K. Jha to, among other things, determine the administrative, procedural and statutory lapses of various departments and agencies to evaluate structural safety aspects of buildings already built or proposed to be built in the State and to recommend remedial measures, and to recommend measures that will help Government to formulate guidelines for future. The Committee was reported to have found the police culpable for not acting against the violations. But this issuance of completion certificate and occupancy certificate without checking compliance by the local self-Government and the town and country planning authorities, or acting in nefarious complicity, continues. Police inaction also continues. Complainants of other illegal constructions, since, are still stone walled at the first instance, by not even registering an FIR against the officials for colluding with the builder-developers in not complying with their obligations as per their brochures and approved plans and fire safety mandates, even at Canacona itself.

For how little time will the NOIDA twin tower Judgement be in public eye? For how long will Government overseeing violations or granting completion certificate or occupancy certificate, in visible contravention of the law, continue?

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