

School of Law, The NorthCap University
VIII Edition National Moot Court Competition
April 14th - 15th, 2023 | Gurugram

MOOT PROBLEM

State of North Western Province (NWP) is the most populated state in the country of Jambudvipa. Jambudvipa is a country located in the Southeast Asian peninsular region. With the growing population in the state and the need for parallel growth in urban infrastructure, the State and Municipal authorities started promoting high rise residential buildings in the newly developed Old Kanal area during early 2000's. State authorities started providing different economic incentives and tax benefits to promote private builders and construction firms to generate new residential plans during the entire decade, which ended up in a rampant growth in urban infrastructure in Old Kanal area. State of North Western Province had a large coastline; and since Old Kanal area geographically was closer to the coastline, there were concerns against unchecked infrastructure development and numerous other precautions were to be kept into consideration before allowing for any form of commercial/residential construction. However, simultaneously, there emerged a movement for a responsible and sustainable form infrastructure development amongst the stakeholders in the entire country. Jambudvipa, being a country located in a peninsular region, is most susceptible to climate change issues. Jambudvipa, despite being a third world nation, emerged as a global leader and committed to a responsible usage of natural resources in the coming years. For this purpose, the country, both at a central as well as at the state level started to revamp the legal structure and functionaries to equip the machinery with efficient training in order to recreate the administration sensitive towards a sustainable growth along with economic development. This slow yet steady movement along the years led to an aware citizenry asking for their rights through writ petitions and other legal tools in the arena of efficient usage of natural resources and environmental rights. It also eventually started to question the role of private players functioning entirely on a profit base in nexus with corrupt state authorities.

Sheldon Builders, one of the largest construction firms, based in Old Kanal came out with a project called Prosperity Village in the Greater Old Kanal Area, NWP, in the year 2004. The initial plan proposed to construct 05 towers of 09 floors each, covering a total area more than 5000 square metres. The plans were passed duly by the municipal authorities of Old Kanal Area and the initial construction was passed. Old Kanal area previously had no municipal body. In the year 1950, being a rural area, it had a gram panchayat taking local level administrative decisions with the help of state. In the year 1997, the gram panchayat was recognized as the municipal body, with the expansion of region and growth of population. The recognition process is a crucial part of local self-government empowerment but often leads to the lack of technical expertise required in order to address the issue of a fast-growing urban area.

Sheldon Builders had been famous for their sustainable designs and green certifications, even during the time when such certifications were not mandatory for builders to be procured by the municipal authorities. The firm applied for the certification by Leadership in Energy and Environmental (LEED) ratings which assess a building on its performance. Eventually, in the year 2011, NWP state passed a notification in the North Western Province Vikas Act 1984, introducing a concept of 'Green Building' as *"A green building is one which uses less water, optimizes energy efficiency, conserves natural resources, generates less waste and provides healthier spaces for occupants, compared to a conventional building."*

In order to promote such kind of infrastructure in the state, the notification mentioned to provide an additional FAR of 5% of the permissible/ availed FAR (excluding additional 15% of prescribed FAR for services), free of cost. An updated plan was proposed by Sheldon builders to NWP State and Old Kanal Municipal authorities where 06 towers of 11 floor each was to be built for the Prosperity Village project. The plan was duly passed by both the State and Municipal authority and reasons were given in writing that the updated plans were not in violation of any building bye-laws. The construction was continued according to the updated plan. Meanwhile, another residential society alongside Prosperity Village, was being constructed named Dream Houses, a project by EVR Builders. Construction of Dream Houses began in the year 2001, which consisted of 3 buildings with 7 floors each. With the construction of new towers introduced in the design of Prosperity Village, sunlight for the east facing flats in the Dream Houses society was going to be blocked. Dream Houses project was completed by the year 2012 and the flats went on for sale in the market.

Owing to its lucrative location, the flats were allotted by the year 2014 and the residents started to move into the flats by the year 2016. In the year 2015, another proposed plan by the Sheldon Builders was proposed totalling 08 towers of 15 floors each. The latest plan was also passed by the NWP state and Old Kanal municipal authorities. The construction, according to the latest plan was due to be completed in the year 2017. Residents of Dream House Project started to oppose the construction of the Prosperity Village, according to the latest plans. The registered resident welfare association of the Dream House visited Old Kanal Municipal Authority to question the grounds on which the updated plans of the construction of Prosperity Village was passed. Old Kanal Municipal Authority stated that construction of Prosperity Village's latest plans was in consonance with the building bye-laws and regulations entirely and there was no breach, whatsoever. The issue got severe media attention and debates started arising nationwide. Amidst the protests, the construction got completed in the year 2018 and the flats of Prosperity Village went on sale afterwards. Furthermore, during discussions in newsrooms, it was also questioned that municipal corporation has erred in providing permissions to Sheldon Builders and have gone out of the way affecting environmental and other human concerns with the construction. Noting the fact that the furnishing of top 03 floors of 02 buildings was still not completed. Representation from Sheldon Builders stated that the construction of Project violated no fire safety norms, building codes and minimum distance requirements. Furthermore, the buildings are Gold rated by Leadership in Energy and Environmental Design Leadership in energy and Environmental Design; recommended by the Bureau of Energy Efficiency for the provision of energy efficiency; and has completed fulfilling the parking and landscaping norms of the prevailing regulations.

Amidst all of this, another issue caught considerable media attention that Old Kanal Area being a coast line sub-city, has a body called North West Province Coastal Zone Management Authority (NWPCZMA). Under Environment Protection Act of 1986, a notification was issued in the year 1991 by the then Ministry of Environment and Forests. As per the notification, the coastal land upto the 500 metre from the High Tide Line and a stage of 100 metre along bank of estuaries, creeks, backwater and rivers subject to tidal fluctuations is called Coastal Regulation Zone. These areas are divided into 04 categories, out of which the area where Prosperity Village is located, fall into the Category 3. According to the same, Old Kanal Area Municipal Authority could have provided clearance to the plan for construction only after taking due concurrence from North West Province Coastal Zone Management Authority. With

the due media pressure, the NWPCZMA issued a show cause notice to both the Municipal Authority and Sheldon Builders, stating that the construction has not complied with Coastal Zone Regulations, and further construction, maintenance and sale of the flats should be stopped with immediate effect. However, it was noted that the Dream House Society fell slightly out of the danger as the region where the society was located, did not fall into CRZ categories.

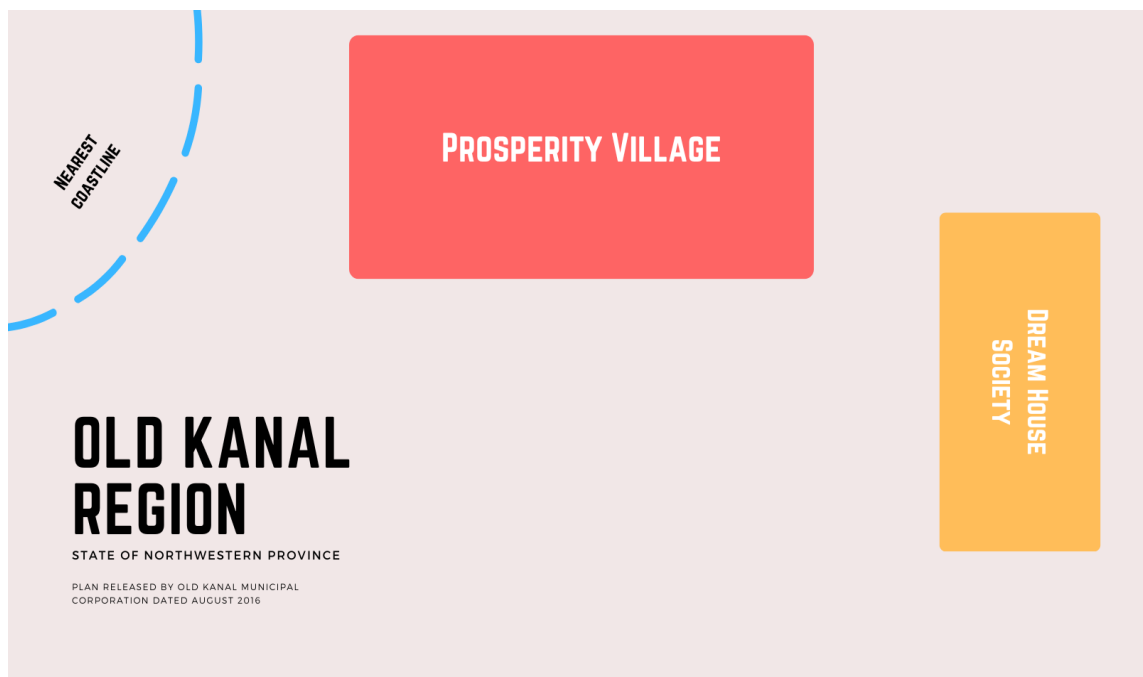
After the notice was issued to Sheldon Builders and Municipal Authority, a considerable media attention was drawn towards this issue, followed by debates and newsroom discussions. Sheldon builders approached the NWP High Court against the notice requesting a stay on the order and the court granted a preliminary stay stating that the approvals of municipal corporation during the entire project *prima facie* seems to have been in concurrence with NWPCZMA. Following this, NWPCZMA appealed to the Supreme Court against the stay order. Amidst the huge media attention, a representation from Dream House RWA requested the court to have a representation from their side since they are also one of the stakeholders affected directly by such construction. The case is up for arguments before the court.

NWPCZMA has appealed with Supreme Court and additionally have a representation from Dream House RWA as one of the stakeholders, as Appellant. Sheldon Builders along with the Old Kanal Municipal Authority are responding to the appeal in the instant case.

Note: Laws of Jambudvipa are in *pari-materia* with that of India.

Tentative issues:

1. Whether the construction of Prosperity Village with its latest plan, approvals and Green Building certification for sustainable design stands illegal?
2. Whether Old Kanal Municipal Authority has erred in providing permissions for the construction of Prosperity Village with non-concurrence from NWPCZMA?
3. Whether the non-concurrence of NWPCZMA approval in providing permissions for the construction of Prosperity Village illegal?
4. Whether the construction of Prosperity Village's latest design has hampered with right to sunlight and fresh air of residents of Dream House Society?
5. Whether fundamental right to sunlight and fresh air weighs above than urban development for residential purpose?



Annexure 1: Map of the region under question submitted before court