

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

Original Application No. 164 of 2015

In the matter of:

1. Rajeev Suri
D-68 Defence Colony,
New Delhi- 110024

..... Applicant



Versus

1. Vice Chairman
Delhi Development Authority (DDA)
Vikas Sadan
New Delhi
2. The Secretary
Ministry of Urban Development (MoUD)
Nirman Bhawan, C- Wing,
Dr. Maulana Azad Road,
New Delhi- 110011
3. The Member Secretary,
State Environment Impact Assessment Authority (SEIAA)
Delhi Pollution Control Committee
4th floor, ISBT Building, Kashmere Gate
Delhi- 110006
4. The CEO
Delhi Jal Board,
Varunalaya Ph-II
Jhandewalan, Karol Bagh,
New Delhi- 110005
5. The Commissioner,
South Delhi Municipal Corporation (SDMC)
Dr. SPM Civic Centre
Minto Road
New Delhi- 100002
6. The Chief Secretary,
Government of NCT Delhi (GNCTD)
ITO, Near Yamuna Bridge,

Delhi- 110002

7. The Principal Committee
Yamuna Revitalization Plan 2017
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhavan, Jor Bagh Road
New Delhi- 110003

.....Respondents

Counsel for appellant:

Mr. Rajeev Suri, Applicant in person,

Counsel for Respondents:

Mr. Tarunvir Singh Khehar, Adv. for respondent nos. 1
Mr. Ardhendumauli Kumar Prasad with Mr. Jigdal G. Chankapa
And Ms. Priynaka Swami, Adv. for respondent no. 2
Mr. Narender Pal Singh and Mr. Dinesh Jindal Adv. for
respondent no. 3
Ms. Panchajanya Batra Singh, Adv. for respondent no. 4
Mr. Balendu Shekhar and Mr. Akshay Abrol, Adv. for respondent
no. 5
Ms. Sakshi Popli, Adv. for respondent no. 6
Mr. B.V. Niren, Adv. for respondent no. 7
Mr. Rajiv Bansal, Mr. Kush Sharma, Ms. Jasmeet Singh, Mr.
Jitender Singh and Mr. Naveen Chawla, Adv. for DDA.

Present:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

JUDGMENT

Per U.D. Salvi J.(Judicial Member)

Reserved on: 23rd December, 2015

Pronounced on: 19th April, 2016

1. The Applicant, resident of Defence Colony, New Delhi is seeking restitution/restoration of Kushak Nala running through Defence Colony, New Delhi following Reverse

Environment Impact Study conducted by independent body appointed by this Tribunal.

2. Succinctly, the Applicant contends that the Kushak Nala, a robust storm water drain acting as tributary to River Yamuna, has been reduced to a sewage drain and the problem of environmental damage is further compounded by series of acts and omissions committed by the Authorities particularly the Delhi Development Authority (for short DDA). According to the Applicant, the DDA undertook work of covering the Kushak drain without obtaining necessary environmental clearance, covered part of it and converted the same into a park, leaving the covered drain below to suffer negative environmental impacts. The Applicant further pleaded that the project of covering the drain envisaged the setting up of ETP for treating the drain water to be utilised for irrigating the park on the covered drain rather than for cleaning up River Yamuna; and the said ETP plant has been planned to treat a maximum of 30% of the volume of discharge received, thereby letting 67% of untreated sewage in Kushak Nala in noxious state and allowing to flow into River Yamuna; and no due precautions have been taken to prevent dumping of garbage and trash into the Kushak Nala; and due to closing of the drain, difficulty is posed to earthmoving equipment to carry out periodical cleaning and desilting work in Kushak Nala. Furthermore, the Applicant contends that the DDA had without foresight and vision concretized the floor of the drain thereby disturbing the

natural gradient and impacting the natural flow of the water through the drain; and this has resulted in stagnation of water and creation of cesspools and breeding home for disease and pestilence. It is also the case of the Applicant that the work of covering of drain has been left incomplete by the DDA and semi constructed drain with exposed rusted iron frames of RCC structure are posing health risk to children and animals by exposing them to life threatening disease like Tetanus; and there are no arrangements made for release of gases generated below the covered portion of the drain and gases leaked through inspection trap on the covered portion of the drain have adverse health impacts on the visitors to the park. Due to reduction of width of the natural drain there has been reduction of storm water carrying capacity of the drain and during heavy showers in the monsoon the water overflows in the neighbouring localities and even contaminates the drinking water supplies. According to the Applicant, the construction malba and debris continue to remain dumped in the Kushak Nala. All these ills, the Applicant submits can only be removed if there is proper restitution and restoration of Kushak Nala following Reverse Environmental Impact Study carried out by an independent body. Essentially, therefore, the present petition has been filed under Section 15 of the National Green Tribunal Act, 2010.

3. The Respondent No.1 DDA, Respondent No.3-DPCC to Respondent No.6 Government of NCT Delhi, Respondent No.7

Yamuna Revitalization Plan 2017, MoEF&CC have filed their replies. The primary objection is to the maintainability of the present Application on the ground of limitation which has been raised by Respondent No.1, 3 and 6. They contend that the work of the drain started on 24th April, 2009 and was completed/closed on 22nd October, 2014; and the present Application has been filed on 14th May, 2015 which is clearly beyond six months, and even if the period of limitation is reckoned to have been triggered on 22nd October, 2014, it is beyond six months and therefore liable to be dismissed as per Section 14 of the National Green Tribunal Act, 2010.

4. We have heard the parties and perused the record.
5. The Applicant is seeking restitution/restoration of Kushak Nala/Drain as a victim of the environmental damage arising on account of covering up of Kushak Nala/Drain without seeking necessary environmental clearance and other ill effects as narrated in his Application. Obviously, the Applicant has invoked the provisions of Section 15 of the National Green Tribunal Act, 2010 which reads as under:

“15. Relief, compensation and restitution. – (1) *The Tribunal may, by an order, provide,-*
(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
(b) for restitution of property damaged;
(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.
(2) *The relief and compensation and restitution of property or environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to the public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or as the case may be, compensation or relief received from, any other court or authority.”

6. Even assuming that the work of construction of the drain started on 24th April, 2009 or as revealed in the Application on April, 2010, one cannot be oblivious to the fact that the ill effects of construction could not have been manifest, the moment the construction work was undertaken. Ill effects of the construction gradually mounted with the progress in the construction. Every new stage in construction, therefore, gave rise to a fresh and distinct cause of action which can be regarded as recurrent cause of action, the ultimate stage being when the construction closed on 22nd October, 2014.

7. We have dealt with the issue of Recurrent cause of action and its effect vis-a-vis the triggering of the period of limitation in *Forward Foundation vs. State of Karnataka 2015 ALL (1) NGT Reporter (2) (Delhi) 81* case as follows:

30. Now, we would deal with the concept of recurring cause of action. The word ‘recurring’ means, something happening again and again and not that which occurs only

once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M. R. Gupta v. Union of India and others*, (1995) 5 SCC 628, the Court held that:

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be

paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1.”

31. *The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, 44 M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].*

32. *The principle that emerges from the above discussion is that the ‘cause of action’ satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression ‘cause of action first arose’ as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and*

satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

8. Essentially this being the case under Section 15 of the National Green Tribunal Act, 2010 and, there being incidence of the recurrent cause of action for initiation of the present proceedings, the contentions of the Respondents as raised hereinabove deserve to be rejected.

9. Let the matter proceed on merits.

.....,CP
(Swatanter Kumar)

.....,JM
(U.D. Salvi)

.....,JM
(M.S. Nambiar)

.....,EM
(B.S. Sajwan)

.....,EM
(Ranjan Chatterjee)