

BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH, BHOPAL

Original Application No. 20/2013

Shyam Narayan Chouksey Vs. Municipal Corporation, Bhopal &Ors.

and

M.A.No. 127/2013

M.A.No. 128/2013

M.A.No. 33/2013

CORAM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER
HON'BLE MR. P.S.RAO, EXPERT MEMBER

PRESENT : Applicant : Shri Shyam Narayan Chouksey

Respondent No.1 : Shri Asad Ullah Khan, Advocate
Shri Vishesh Garhpale, Commissioner

Respondent No. 2&3: Shri Sachin K.Verma, Advocate
with Shri Ayush Dev Bajpai, Advocate
Housing & Env. Dept., GOMP Shri S.N.Mishra, Principal Secretary
Revenue Dept., GOMP Shri P.K.Chaturvedi, Principal Secretary

Respondent No.4 &5: Shri V.H.Vaswani, Advocate
Intervener : Shri B.B.Dubey, Advocate
Shri S.K.Dubey, Advocate
Intervener : Shri Om Shankar Shrivastav, Advocate

Date and Remarks	Order of the Tribunal
Item No. 1 13 th November, 2013	<p>Heard the Learned Counsel for the parties.</p> <p><u>M.A.No. 33/2013</u></p> <p>So far as the M.A.No. 33/2013 filed by the applicant is concerned alleging that though demolition of constructions of the existing buildings, etc. has been carried out but the foundation of the same has not been removed, the Learned Counsel appearing for Bhopal Municipal Corporation (BMC) has submitted that the construction including the plinth level has been removed and at the level of the lake bed there is no construction visible. We are satisfied that so far as the structures upto plinth levels are concerned, they have been removed and as far as the foundation raised below the lake bed is concerned, as such there will be no obstruction for the water to accumulate / spread in the lake even if the construction below the lake bed is allowed to remain.</p> <p>In view of the above, M.A.No. 33/2013 stands disposed of.</p>

**O.A.No.
20/2013**

**13th November,
2013**

The Learned Counsel for the BMC states that the Municipal Corporation in collaboration with the District Administration will ensure that whatever constructions have been demolished, they would not be allowed to be raised again on the foundations even if they are existing within the area of the lake. In view of the above statement made by the Learned Counsel for the respondent, though no further constructions are required, we deem it proper to direct that the Bhopal Municipal Corporation and District Administration shall ensure that within the area of the lake no construction shall be allowed to be raised in future.

M.A.No. 128/2013

M.A.No. 128/2013 has been filed by respondent no. 3 for seeking exemption of personal appearance of the Collector, Bhopal in view of the submissions made in the Misc. Application relating to his duties being involved in the ensuing elections. Looking to the facts mentioned in the Misc. Application, we are inclined to consider the same and the personal appearance of the Collector, Bhopal for today is exempted.

M.A.No. 128/2013 stands disposed of.

M.A.No. 127/2013

M.A.No. 127/2013 has been filed by Shri S.A.Sobhani, Learned Counsel appearing for Shri Akbar Ali, Shri Nasreen Ali, Smt. Jameela Bi and Shri Shakeel Abbas requesting for a direction for summoning the record as mentioned in the Misc. Application, from the Bhopal Municipal Corporation. The Learned Counsel for BMC submits that he has not received the copy of the Misc. Application alongwith the aforesaid application which has been sought for production has been filed before the Tribunal. Accordingly, Shri S.A.Sobhani is directed to supply copy of the application alongwith the documents (complete set) to the Learned Counsel appearing for BMC. He may submit his reply to the Original Application as also to M.A.No. 127/2013.

**O.A.No.
20/2013**

**13th November,
2013**

The Learned Counsel appearing for the BMC has submitted a copy of the letter dated 25.07.2013 of which reference is found in our earlier order dated 24.10.2013 to the Chief Secretary and other functionaries of the State Government wherein the need for evolving a policy for resettlement and shifting of persons liable to be affected as a result of the drive for clearing the water body has been stressed. The aforesaid letter is ordered to be taken on record. Shri S.N.Mishra, Principal Secretary, Housing and Environment, GoMP and Shri P.K.Chaturvedi, Principal Secretary, Revenue, GoMP who are present in person have addressed the Tribunal on the steps taken so far by the Government for formulating a policy with regard to resettlement. It was pointed out that under the Land Revenue Code under Section 162 there is a provision with regard to taking a decision on providing title to trespassers/encroachers on revenue land. It was also pointed out by them that so far as the present controversy is concerned, the land covered and designated as water body, no title can be conferred and no constructions can be allowed to be permitted within the designated water body. As such the directions, *prima facie* relating to Section 162 would not suffice so far as the problem with regard to resettlement of persons liable to be affected as a result of restoring the area of 11.99 acres of land of the Siddique Hassan Khan Talab in the city of Bhopal. The Learned Revenue Secretary pointed out that the problem is more complex as several buildings including hospitals, hotels, multi storied buildings etc. have come up on the lake bed and adjoining areas. Be that as it may, we need to keep the water bodies, as far as possible in their original form and free from pollution as it is the primary concern and therefore, even if it requires removal of the constructions raised thereon and shifting of the affected persons necessary decisions will have to be taken on that behalf by the concerned authorities, as they may deem proper. We may add by way of caution that this will have to be done in accordance with the orders

**O.A.No.
20/2013**

**13th November,
2013**

issued by various Courts as mentioned in the Orders of the Hon'ble High Court of MP which were dealt with in our earlier part of the order dated 24.10.2013 where different categories of persons liable to be affected even considering the order of the Hon'ble High Court and also directions have been issued by the BMC as they have to be dealt with.

The Learned Counsel Shri Sachin K.Verma appearing on behalf of the State of Madhya Pradesh pointed out that as a result of ensuing elections at the end of November, 2013, framing of the policy and taking decision with regard to resettlement of persons liable to be affected as a result of such exercise not only in the city of Bhopal but also elsewhere, would require some time. The aforesaid issue was also reiterated by Principal Secretaries of different Departments present today before the Tribunal. Therefore, the matter may be posted in January, 2014.

We expect by that time, the respondents will come with definite proposals including identification of areas where such resettlement of persons liable to the affected can be taken up. In the meanwhile, we may only add, as was pointed by the intervener, that originally the Motia Talab (lake) was constructed to be used by people going for prayer in the Mosque which is one of the three lakes which form the entire water body and the present condition which is prevailing therein is that one cannot even pass near the lake due to pollution generated as a result of effluents being allowed to flow into the water body. The Learned Counsel for the BMC and for the State of MP would on the next date of hearing submit their proposal by way of affidavit as to whether the EPCO Project which has been prepared for the conservation as well as making the lakes in and around the city of Bhopal pollution free includes the aforesaid three lakes/tanks namely Siddique Hassan Khan Talab, Motiya Talab and Munshi Hussain Khan Talab and if so, what steps are recommended and what is the plan for this purpose.

The Learned Counsel for the BMC prays for further time to submit

**O.A.No.
20/2013**

**13th November,
2013**

and make compliance of the earlier order dated 24.10.2013 issued by the Tribunal regarding providing of revenue map with superimposition of the area covered by the decree holders who had raised the construction after having purchased the land and other directions contained in the said order.

The time prayed for is extended upto January, 2014.

Whatever applications, submissions and replies are to be made by parties shall be made three days in advance before the next date of hearing failing which cost of Rs. 10,000/- (Rupees Ten Thousand Only) will be imposed on the parties.

The matter be listed on **20.01.2014**.

.....JM
(DALIP SINGH)

.....EM
(P.S.RAO)

