

Item No. 02&04

(Court No. 1)

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

(By Video Conferencing)

Execution Application No. 29/2021
IN
Original Application No. 159/2017

Veterans Forum for Transparency in Public Life Applicant

Versus

Chapra Nagar Parishad & Ors. Respondent(s)

Dr. Bishwanath Prasad Singh ----- Applicant in EA 29/2021

And

M.A. Nos. 70- 71/2021
IN
Execution Application No. 46/2018
IN
O. A. No. 234/2015

Veterans Forum for Transparency in Public Life Applicant

Versus

Chapra Nagar Nigam, Chapra & Ors. Respondent(s)

Devanti Devi ----- Applicant in MAs

Date of hearing: 18.10.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Dr. Bishwanath Prasad Singh, Applicant in person in E.A. No. 29/2021
and Original applicant in OA 234/2015

ORDER

1. This order will deal with E.A. No. 29/2021 in O.A. No. 159/2017
and M.A. Nos. 70-71/2021 in EA No. 46/2018 in OA 234/2015 as the

issue involved in both the matter relates to steps for scientific management of solid and liquid waste at Chapra, District Saran, Bihar.

2. Vide order dated 02.11.2017 in O.A. No. 159/2017, the Tribunal dealt with the grievance of collection and disposal of solid waste. On behalf of the Nagar Nigam it was stated that waste was being cleared. The Tribunal directed the Nagar Nigam to take effective steps in the matter. Execution Application now filed is that the Nagar Nigam failed to take any further action. The applicant approached the District Magistrate and State PCB. It is further stated that after the order in the OA, the Tribunal passed order of general applicability to all States on 14.12.2020 in O.A. No. 606/2018 laying down as follows:-

***“41a. In view of the fact that most of the statutory timelines have expired and directions of the Hon’ble Supreme Court and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, interim compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10 (mentioned in para 12 above). Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today. CPCB may prepare a template and issue an appropriate direction to the State PCBs/PCCs for undertaking such an assessment in the light thereof within one month.*”**

b. Legacy waste remediation was to ‘commence’ from 01.11.2019 in terms of order of this Tribunal dated

17.07.2019 in O.A. No. 519/2019 para 28¹ even though statutory timeline for ‘completing’ the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places and delay in clearing legacy waste is causing huge damage to environment in monetary terms as noted in para 33 above, pending assessment and recovery of such damage by the concerned State PCB within four months from today, continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today.”

3. Accordingly, the applicant seeks direction to the District Magistrate, Saran and the State PCB to take further remedial action for making land available for the waste management and also taking coercive measures as directed by this Tribunal.

4. E.A. No. 29/2021 seeks direction for making land available for the management of solid waste which is a matter to be looked into by the statutory authorities in terms of the directions already issued as per order in O.A. No. 606/2018, the Tribunal has in view of earlier binding orders of the Hon’ble Supreme Court required the Chief Secretary of the

¹ The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no reason why the same should not happen earlier, in view of serious implications on the environment and public health.

State to take coercive measures in case the waste is not managed as per rules.

5. We have heard the applicant in person. We are of the view that it will be appropriate that in terms of Section 25(2) of the NGT Act the execution is transferred to the jurisdictional Civil Court. Accordingly, a copy of order of this Tribunal dated 14.12.2020 in O.A. No. 606/2018 be forwarded to the District Judge, Saran for being entrusted to the jurisdictional Civil Court for further action in accordance with law.

E.A. No. 29/2021 is disposed of.

6. In MA 70-71/2021 in EA No. 46/2018, Devanti Devi has stated that she is a shopkeeper near *Khanua Nala*, Chapra and is being wrongly proceeded against as encroacher in purported compliance of orders of this Tribunal dated 8.3.2021 in OA 234/2015. She is one of the 200 shops allottees adjacent to the said drain. Earlier, vide order dated 25.07.2011 in CWJC No. 11846/2011, Patna High Court granted stay against coercive measures. The Bihar Urban Infrastructure Development Corporation Ltd. (BUDCO) initiated action for restoration of the drain affecting the shops at the distance of 200 meters from the drain. This Tribunal in OA. No. 234/2015 disposed of on 30.10.2017 considered the grievance against restoration of the drain. Further order was passed on 03.09.2019 in the light of the report that the drain was being cleaned. Thereafter, the matter was dealt with on 08.03.2021 in the light of the report of the Secretary, Urban Development, Bihar to the effect that encroachments from the drain will be removed. The Tribunal directed the Secretary, Urban Development, Bihar to ensure further action by continuous monitoring and also monitoring by the Chief Secretary once in every six months. In pursuance thereof, action is being taken to remove the shops treating them to be encroachment affecting the drain.

According to the applicant, her shop is not unauthorized structure nor it is encroachment.

7. None appears for the applicant. The applicant in original application is present in person and states that the order of this Tribunal should be given effect to.

8. We have considered the matter and find that Tribunal has directed Nagar Nigam and other authorities of the State to ensure that flow of the drain is not obstructed and its width is not reduced by any encroachment. Thereafter, the matter is dealt with by the Nagar Nigam and the District Magistrate in exercise of their statutory powers under the Municipal laws. The order of this Tribunal is an order *in rem* and does not deal with any individual shop being or not being encroachment. If at all there is any dispute in this regard, the same has to be adjudicated upon independently by the concerned local authorities or at any appropriate forum. All that is necessary under orders of this Tribunal is to ensure that the flow of the drain and width of the drain is not affected and the drain is maintained as per environment norms. The catchment area of the drain has to be kept free from any construction for maintenance of the drain, as laid down by the Hon'ble Supreme Court in *Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors*². If the authorities find that the construction is on the drain as appears to be the stand of the authorities in taking action, the authorities are certainly entitled to take legal action as per law. MA Nos. 70-71/2021 are accordingly dismissed.

Adarsh Kumar Goel, CP

² (2019) 18 SCC 494

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

October 18, 2021

E.A. No. 29/2021 in O.A. No. 159/2017

& M.A. No. 70-71/2021 in E.A. No. 46/2018 in

O. A. No. 234/2015

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