

Item No. 06

(Court No.01)

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

(By Video Conferencing)

Original Application No.208/2022
(with I.A. No. 60/2022)

Prem Mohan Gaur

Applicant

Versus

National Highway Authority of India & Ors.

Respondent(s)

Date of hearing: 23.03.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Ms. Nivedita Sharma, Advocate

ORDER

1. Grievance in this application is against alleged illegal and unauthorized excavation, demolition of a *bundh* and construction over the submergence area of *Ghamroj Bundh* by the National Highways Authority of India (NHAI) to build rest area/parking bay for the trucks and buses for Toll Plaza on NH-248A, Sohna Road at Gurgaon without mandatory approvals from Irrigation Department under the Canal and Drainage Act and in violation of Ministry of Road Transport and Highway (MoRTH) guidelines.

2. According to the applicant, the construction of road will result in demolition of Bundh, affecting a water body in violations of law laid down in *Hinch Lal Tiwari v. Kamla Devi*, (2001) 6 SCC 496. This will further

violate Sohna Master Plan, 2031. This will also affect forest area in violation of Forest (Conservation) Act, 1980 as conditions in the Forest Department letter dated 09.08.2018 are not being followed. Toll Plaza and rest house will be constructed at the site of the *Bundh*.

3. The applicant filed representation dated 20.10.2020 to the Divisional Forest Officer, Gurgaon, District Town Planner Gurgaon, Deputy Commissioner, Gurgaon and State PCB but no action was taken. The applicant approached this Tribunal by way of OA No.259/2020. Vide order dated 09.11.2020, the Tribunal directed the joint Committee of Deputy Commissioner Gurgaon, Haryana State PCB, Divisional Forest Officer, Gurgaon look into grievance and take appropriate decision in accordance with law within one month. In pursuance of the said order, a joint Committee was constituted which undertook inspection and submitted a report dated 10.12.2020 to the effect that *Ghamroj* bund had been repaired and restored. This was not factually correct. Later, a fresh inspection was done on 18.08.2021 by Technical Officer (Forestry), Grade-1 from Integrated Regional Office, MoEF&CC, Chandigarh, of the site revealing that the bund was continually being damaged and still being constructed upon by Respondent no.1, user agency. Submergence area of the pond/ bund is being leveled by using heavy machineries/ JCBs etc. User Agency has also completed the work for laying of underground drainage pipeline from the proposed Rest Area. Passage to proposed rest area is being used by cutting about 7.5 meters wide area of *Ghamroj* Bundh. Thus, *Ghamroj* bund protected forest area is being utilized by the user agency for the purpose of construction of proposed Rest Area which violates the condition No. ((vi) i.e. "The forest land will not be used for any other purpose than that mentioned in the proposal" and condition No.(viii) i.e. "The forest land will not be used for any other

purpose than that mentioned in the proposal” of the Government of India, Ministry of Environment, Forests and Climate Change's approval order No.9-HRBI44/2017-CHA dated 9th August, 2018 and No.9-HRB204/2018-CHA dated 22nd November, 2019. Accordingly, the MoEF&CC directed the State Government through DFO concerned to retrieve the diverted forest land remaining unutilized after upgradation and strengthening of NH-248-A and save and restore protected forest area of *Ghamroj Bundh*. According to the applicant, protected forest including *Ghamroj Bundh* needs protection, as it helps in natural recharge zones for underground water table.

4. We have heard learned Counsel for the applicant. Our attention has been particularly drawn to the report of Shri Ravinder Singh, Technical Officer (Forestry), Grade – I dated 02.09.2021 submitted on 09.09.2021 through the Regional Officer, Chandigarh to the Under Secretary (ROHO), MoEF&CC, Indira Paryavaran Bhawan, Aliganj, Jor Bagh Road, New Delhi, after undertaking visit to the site, with following findings:

“18. It is evident from the site visit that:

- (i) User Agency as well as the State Government hid the facts while submitting both above referred project proposals for diversion of 51.126 hectares and supplementary proposal of 1.86 hectares of forest land in favour of Manager (Tech) NHAI, PIU Gurugram for upgradation and strengthening of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) under Forest Division and District Gurugram seeking prior approval under Section 2 of FCA, 1980 that the instant road project proposals also involves the construction of Rest Area over the protected area i.e. Ghamroj Band.*
- (ii) As per records available in this office, neither any project proposal for diversion of forest land for construction Rest Area at Ghamroj Bund on Rajasthan border-Buh-Gurugram Section of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) under Forest*

Division and District Gurugram has been received in this office nor any approval under Section 2 of FCA, 1980 has been accorded for the same till date.

- (iii) As per layout plan submitted by the user agency with above mentioned diversion proposals, two rest areas have been proposed on both side of the proposed road over the non-forest land. No requirement of any type of forest land for the construction of proposed Rest Areas was made by the user agency through State Government.*
- (iv) The project note on the above mentioned project proposals submitted by the user agency also does not mention about construction of proposed Rest Areas.*
- (v) Neither any NOC from the land owing agencies/Irrigation Department/etc. for use of land for construction of Rest Areas has been provided by the user agency inspite of involvement of Bund area in this case.*
- (vi) So far as the construction of the proposed Rest Area by NHAI over submergence area or pond area of Ghamroj Bund is concerned, only land owing agencies/authorities of the State Government viz. Irrigation Department/etc. can better reply on this subject. It is the prime responsibility of the Irrigation Department to save and preserve the natural/public water resources.*
- (vii) The Ministry of Environment, Forest and Climate Change diverted the protected forest areas of Ghamroj Bund for the widening of road under question but never permitted the user agency to demolish the Ghamroj Bund and construct the proposed Rest Area over it. It is the prime responsibility of the local government to protect and restore the Ghamroj Bund area in its original form.*
- (viii) I agreed with the applicant(s) that Hon'ble Supreme Court vide its order dated 25th July, 2001 in Appeal (Civil) No. 4787 of 2001 in the matter of "Hinch Lal Tiwari v. Kamla Devi and Others" stated that no part of any water body like pond, tanks, canals and water pathways could have been allotted for any abadi sites and there is need to protect all water bodies, channels and drains. As the construction of Rest Area is being done over private land (not forest land), it is the prime responsibility of the concerned department of the State Government to comply the Hon'ble Supreme Court's above order in letter and spirit.*
- (ix) The Sohna Master Plan, 2031 also advocated that the bundh has to be retained in its current state. An explanatory note issued in this regard by the town and country planning department on November 15,*

2012, mentions, "Sohna Town is surrounded by Aravali Ranges on eastern and western side. In the rainy season, run-off from these ranges passes through proposed urbanization through barsati Nallahs namely Mahandwara Nadi. Three bundhs namely Sohna bundh, Mohmmadpur bundh and Ghamroj bundh exist on the western side of the town to check the run-off and for recharging the underground water level.

- (iv) Both the above mentioned project proposals have been approved for upgradation and strengthening of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) whereas on the ground, Ghamroj Bund protected forest area is being utilized by the user agency for the purpose of construction of proposed Rest Area which violates the condition No. (vi) i.e., "The forest land will not be used for any other purpose than that mentioned in the proposal" and condition No. (viii) i.e., "the forest land will not be used for any other purpose than that mentioned in the proposal", of the Government of India, Ministry of Environment, Forest and Climate Change's forest clearance under Section - 2 of the FCA, 1980 vide approval order No. 9-HRB144/2017-CHA dated 9th August, 2018 and No. 9-HRB204/2018-CHA dated 22nd November, 2019 respectively. **Hence, user agency violates the provisions of FCA, 1980 in this case.**
- (x) The State Government through DFO concerned may kindly be directed **to retrieve the diverted forest land remaining unutilized after upgradation and strengthening of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) and save and restore protected forest area of Ghamroj Band."**

5. In view of above, the applicant filed representation on 03.12.2021 with the Deputy Commissioner, Gurgaon with a request to stay further construction at the site. The representation dated 06.12.2021 was also made to the Project Director, PIU Rewari, NHAI but no action has been taken as required. It is accordingly, submitted that intervention of this Tribunal under section 15 of the NGT Act is warranted.

6. Considering the above, we direct Respondents No. 1, 3, 4, 5 and 6 - NHAI, State of Haryana, MoEF&CC, Deputy Commissioner, Gurugram and PCCF (HoFF), Haryana to file their respective responses in the

matter within one month by e-mail which may indicate status of follow up action in respect of the report dated 02.09.2021, submitted on 09.09.2021.

List for further consideration on 06.07.2022.

A copy of this order be forwarded to NHAI, State of Haryana, MoEF&CC, Deputy Commissioner, Gurugram and PCCF (HoFF), Haryana by e-mail for compliance.

IA No. 60/2022

IA No. 60/2022 has been filed for interim stay on construction of Toll Plaza and rest areas at *Ghamroj* bundh site. While we are not granting any interim order without verification of facts, the concerned statutory authorities from whom response is being sought may look into the matter and ensure that no irreversible situation is created in respect of the bundh and forest in question. IA No. 60/2022 is disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

March 23, 2022
Original Application No.208/2022
I.A. No. 60/2022
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