

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

(By Video Conferencing)

Original Application No. 165/2021

Girja Shankar Rai & Ors.

Applicant(s)

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

**WITH**

Execution Application No. 02/2022  
IN

Original Application No. 114/2021  
(I.A. No. 164/2022)

Narendra Kushwaha

Applicant

Versus

State of Uttar Pradesh

Respondent

Date of hearing: 14.09.2022

**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**

Respondent(s): Mr. Amrit Abhijat, Principal Secretary, UD, Govt. of UP  
Mr. Sanjay Goel, Commissioner, Jhansi  
Mr. Ravindra Kumar, DM/VC JDA  
Mr. Pulkit Garg, Municipal Commissioner with Mr. Rachit Mittal,  
Advocate  
Ms. Soni Singh, Advocate for CPCB

**ORDER**

1. Since both the matters are inter-connected, the same are taken up together. Grievance in OA 165/2021 is against inaction of the statutory authorities in protecting *Laxmi Tal* at Jhansi from unauthorized encroachments and pollution and preventing entry of untreated sewage and sullage. Jhansi Development Authority has been constituted by the

State of UP and the Jhansi Master Plan 2021 has been prepared but in violation of the said Master Plan, there are illegal encroachments at Laxmi Tal where a big park is proposed to be developed for tourism. Large scale illegal plotting is being done. Jhansi Development Authority has taken action against some persons including 23 persons mentioned in the application. But the action initiated has not been completed. Large scale pollution is also taking place in the lake. The applicant has also filed a copy of order dated 29.03.2019 by the Jhansi Development Authority for removing encroachments under Section 27 of the UP Urban Development Act, 1973.

2. The application was considered along with O.A. No. 114/2021, *Narendra Kushwaha v. State of UP* and directions were issued for remedial action and filing of status report by several orders.

3. The matter was last considered on 25.01.2022 wherein reference was also made to the orders passed in OA No. 380/18, *Park Avenue Plot Holders Welfare Society & Anr. v. Union of India & Ors.* and OA No. 999/2019, *Dr. Ajay Kumar v. Union of India & Ors.*, in respect of similar problem at Meerut and order issued by State Government on 19.02.2020, directing prevention of illegal constructions against permitted land user in accordance with the provisions of Uttar Pradesh Urban Planning and Development Act, 1973. Reference was also made to the order of the Tribunal dated 28.05.2021 in OA No. 114/2021, *Narendra Kushwaha (Supra)*. The Tribunal considered the report filed by the District Magistrate, Jhansi dated 22.10.2021 mentioning the steps taken for removing the encroachment and prevention of pollution. Further reference was made to the report of the Additional Chief Secretary dated 21.01.2022 based on the information given by the District Administration. It was held that violations continued in spite of

orders of this Tribunal which called for further remediation. Some extracts from the said order are reproduced below:-

*“16. Further we find that none of the said reports can be said to comply Tribunal’s order in entirety. No report refers to District Environment Plan for which there was a specific direction. Reports also withhold information like quantity of sewage entering Laxmi Tal, water quality data, time for completion of TTP, action plan, if any, for desiltation and cleaning of water etc.*

*17. Maintenance of water body is prime responsibility of statutory authorities as well as statutory regulators under Environmental Laws and other enactments dealing with public health and similar issues. Similarly, a land reserved for green belt/park in the Master Plan whether belongs to State or private owners cannot be allowed to be used for raising any construction. With respect to the area reserved for ‘green belt/park’, it has been repeatedly held by Supreme Court that such spaces cannot be changed to residential or commercial one.*

*21. Despite the law of land referred above and the orders passed by Tribunal expressing similar views, we find that approach of concerned authorities is very casual, lackadaisical and non-serious. We do not find any element of commitment, sincerity, honest intention and will on the part of authorities in taking effective steps for preservation and protection of green belt/land reserved for park in Master Plan.*

***23. In the above backdrop of the facts, we find it appropriate to have an affirmation of factual report from a Committee comprising of different authorities and, therefore, we constitute a joint Committee comprising of MoEF&CC, CPCB, Department of Agriculture, UP, Department of Forest & Environment, UP and Divisional Commissioner, Jhansi, shall make spot inspection, examine relevant records and submit a factual report within two months. CPCB and Divisional Commissioner, Jhansi will be the nodal agency for coordination and compliance. First meeting of Committee shall be held within 15 days.***

***24. On the next day of hearing, Municipal Commissioner, Jhansi; Vice Chairman, Jhansi Development Authority; District Magistrate, Jhansi; Divisional Commissioner, Jhansi and Additional Chief Secretary, Urban Development, UP, shall also remain present in virtual mode.”***

4. In pursuance of above, Principal Secretary, UD, UP, Municipal Commissioner, Jhansi, Vice Chairman, Jhansi Development Authority and DM Jhansi are present in person. A report has been filed on 12.09.2022 by the Commissioner, Jhansi Division. The report mentions the steps taken to prevent pollution and to protect the water body i.e. Jhansi Tal. It is

stated that the water quality is not fit for bathing and thus, is of poor quality. Learned Principal Secretary, UD, UP, assures the Tribunal that by taking remedial action, the situation of pollution will be brought under control soon. With regard to encroachments, it is mentioned in the report of the Commissioner that action has been taken in some cases but there is a stay by the High Court in some matters out of those in which orders have been passed. Further, there is apprehension that taking action against encroachers may adversely affect law and order situation. It has also been observed that several beautification and catchment improvement works are underway and these need to be completed without further delay.

5. However, learned Principal Secretary, UD, UP, submits that upholding the law by removing the encroachment will in fact improve the law and order. We are of the view that the Rule of Law has to be upheld and it is absurd to say that if lawful action is taken law and order situation will deteriorate which means illegality should be tolerated and lawlessness allowed. It is responsibility of the State to protect Water bodies by way of completely stopping entry of sewage into the *Tal* which are significant for environment. The State is to act as trustee and not whimsically as thought by the Commissioner in taking an untenable plea to defeat the law. There is no question of deterioration of law and order in doing so.

6. In this view of the matter, we record the assurance of learned Principal Secretary, UD, UP that further remedial action will be taken for protection of water body by controlling the pollution and removing the encroachments, following due process of law. It appears that against 26 MLD of STPs only 8-10 MLD is treated which needs to be looked into and remedied. In absence of recharging source for the *Tal*, treated sewage

compliant with BOD and Fecal Coliform level may be used for filling the *Tal* and growing fisheries into it.

The Applications will stand disposed of.

A copy of this order be forwarded to the Principle Secretary, UD, UP, by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

September 14, 2022  
Original Application No. 165/2021  
With Execution Application No. 02/2022  
IN Original Application No. 114/2021  
(I.A. No. 164/2022)  
AB