

Item No. 07

Court No. 1

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

(BY HYBRID MODE)

Original Application No. 329/2021
(I.A. No. 312/2022, I.A. No. 313/2022 & I.A. No. 12/2023)

Devanshu Bose

Applicant

Versus

Agra Development Authority & Ors.

Respondent(s)

Date of hearing: 18.01.2023

**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. Ajay Kumar Dwivedi, Vice Chairman, ADA with Dr. Rajiv Nanda, Senior Advocate & Mr. Manish Kumar Vikkey, Advocate for ADA

ORDER

1. Grievance in this application is against failure of the State authorities to prevent discharge of sewage on open land from 'Nalanda Town', a housing colony developed by a Builder at Shamshabad Road area of Agra, Uttar Pradesh. Sewage is estimated to be 1.45 Lakh Litres per day. Agra Development Authority (ADA) is primarily responsible for such failure.
2. Vide order dated 01.12.2021, the Tribunal sought a factual report in the matter from a joint Committee of ADA, District Magistrate, Agra and UPPCB. It was also directed that if budget was not available, necessary funds be raised by collecting charges from inhabitants for protection of environment and public health as per mandate of law under the Constitution and the Water (Prevention and Control of Pollution) Act, 1974.
3. The matter was thereafter considered on 24.03.2022 in light of report of the joint Committee dated 22.02.2022, acknowledging that sewage was

not being treated and was being discharged on land and also going to a drain. There was no sewer line. The Tribunal held that Agra Development Authority (ADA) had failed to perform its statutory obligation to protect environment and public health and directed ADA to deposit interim compensation of Rs. 25 Lakhs with District Magistrate, Agra for restoration of damage to the environment, as per 'polluter pays' principle. Township developed without requisite infrastructure was illegally allowed to be occupied. ADA was also directed to take remedial action to prevent discharge of untreated sewage in open, to be ensured by the Vice Chairman, ADA and overseen by Additional Chief Secretary, Urban Development, UP and State PCB, who were also directed to remain present by videoconferencing. The Tribunal referred to the mandate of law in the judgment of the Hon'ble Supreme Court *in (2017) 5 SCC 326, Paryavaran Suraksha Samiti Vs. Union of India* which required accountability of erring officer to be fixed in case requisite pollution control devices to prevent water pollution were not installed.

4. The matter was thereafter considered on 06.07.2022 in the light of report of the ADA dated 05.07.2022, report of the State PCB dated 28.06.2022 and report of the Urban Development Department, UP dated 04.07.2022. The Tribunal recorded disappointment at the state of affairs and the failure of the authorities to perform their duties. Housing colony was allowed to be set up without minimum mandatory norms of sewage management in violation of mandate of the Water (Prevention and Control of Pollution) Act, 1974 and judgement of the Hon'ble Supreme Court *inter alia in (2017) 5 SCC 326, Paryavaran Suraksha Samiti Vs. Union of India* followed by orders of this Tribunal in O.A No. 593/2017 and O.A No. 673/2018 which were quoted in the said order. The Tribunal accordingly directed taking of further remedial measures in mission mode by the ADA to be overseen by ACS, Urban Development, ACS, Housing and

Development, UP with ACS, UD being nodal agency. Further action taken report was required to be filed within three months.

5. In pursuance of above, an action taken report has been filed by the Principal Secretary, UD, U.P on 12.12.2022 to the effect that requisite STP has been set up at Nalanda Town Colony, Agra. Residential Welfare Association is to be formed who will maintain the STP in future. FIR has been lodged on 23.04.2022 against the developer. State PCB has levied compensation of Rs. 2,13,98,438/- for discharge of sewage in open against the developer. It is further stated that earlier sewage was being treated at Dhandhupura STP by transporting the same through tankers. Total capacity of sewage generation at Agra is 220.75 MLD against sewage generation of 286 MLD. Steps are being taken to increase the capacity at 398.35 MLD. Similar is that report of ADA dated 09.11.2022.

6. From the data presented, it is clear that on the one hand existing sewage treatment capacity available at Agra is only 220.75 MLD against 286 MLD generation of sewage. Thus, more than 85 MLD sewage is going untreated in River Yamuna or drains connected to it. In such factual situation, permitting setting up of colonies without infrastructure is against sustainable development principle. Under doctrine of public trust, the State has to protect environment by preventing pollution. Mere proposal to set up more capacity does not exonerate the act of enabling untreated sewage being discharged in the rivers.

7. We also note the draft Notification of MoEF&CC dated 25.02.2022 in context of sewage and solid waste management which is reproduced below:

“xxxxxx.....xxx
C. Management of sewage/waste water, Reuse and recycle of treated wastewater by dual plumbing system

10. Dual Plumbing System shall be implemented - one for supplying fresh water for drinking, cooking and bathing etc. and another for supply of treated water for flushing.

11. Only treated water shall be used for flushing.

12. In no case, sewage or untreated waste water generated within the project area shall be discharged through storm water drains or otherwise into water bodies nor discharged/injected into the ground water by any mode.

13. Subject to Clause (3) of this notification, the project authority may opt or avail to common off-site treatment facility, as feasible, for treatment with reuse & recycle of corresponding quantity of treated water through the dual plumbing system for flushing and other non-potable use.

A. For projects with built up area of 5,000 sq. mtrs. to 20,000 sq. mtrs. –

i. In areas where there is no municipal sewage network,

a. Either Onsite Sewage Treatment Systems with capacity to treat 100% waste water may be installed with appropriate tertiary treatment system with disinfection for black & grey water. Such treated water should be used with dual plumbing system for flushing and other non-potable use;

OR

b. In case of usage of septic tank, only black water shall be discharged in the septic tank. Grey water may be treated through natural treatment systems or other secondary treatment as feasible. Such treated water should be used with dual plumbing system for flushing and other non-potable use;

The excess treated water should conform to the general discharge norms of CPCB/MoEF&CC.

ii. In areas where there is municipal sewage network

a. Either Onsite Sewage Treatment Systems with capacity to treat 100% waste water may be installed with appropriate tertiary treatment system with disinfection for black & grey water. Such treated water should be used with dual plumbing system for flushing and other non-potable use;

OR

b. The project authority may opt to discharge only black water in such municipal sewage network subject to availability of trunk sewer line. For this purpose, two separate pipeline network– one for black water discharge and other for collection of grey water shall be installed. Grey water may be treated through natural treatment systems or other secondary treatment as

feasible. Such treated water should be used with dual plumbing system for flushing and other non-potable use;

B. For projects involving built-up area of 20,000 sq. mts. or more –

14. Subject to Clause (3) of this notification, Onsite Sewage Treatment Plant with capacity to treat 100% waste water generated within the project area through tertiary treatment shall be installed. Treated waste water shall be reused on site for landscape, flushing, HVAC, fire-fighting, and other end-uses.

15. The adequacy of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the authorized agency.

16. Discharge of excess treated wastewater outside the premises, after treatment in STP, should meet the discharge standards as notified by CPCB/MoEF&CC from time to time.

17. Wastewater and treated water quantification system through metering/sub-metering shall be installed.

18. Sludge from the onsite sewage treatment shall be collected, conveyed and disposed as per the Central Public Health and Environmental Engineering Organization (CPHEEO) Manual, Ministry of Housing and Urban Affairs, on Sewerage and Sewage Treatment Systems.

19. Where Common Sewage Treatment Plant facility has been availed, it shall be ensured that treated waste water is recycled back to respective building for reuse.”

8. In such fact situation, ADA has to ensure that no housing colony comes up without having requisite infrastructure for sewage management.

If there is failure, there will no remedy to prevent pollution of rivers.

9. In facts and circumstances discussed above, we hold that ADA is liable to pay further amount of Rs. 2 Crores towards compensation for restoration of damage to the environment over and above compensation of Rs. 25 lakhs earlier levied. This will be in addition to liability of the State for gap in generation and treatment of sewage. The amount may be deposited with State PCB for restoration measures in accordance with the

District Environment Plan. Likewise, the amount levied on the developer on recovery may also be utilized in the same manner along with amount of Rs. 25 lakhs earlier levied which is to have been deposited with the District Magistrate by ADA. The District Magistrate may remit the amount of Rs. 25 lakhs deposited with the State PCB.

10. I.A No. 312/2022 and I.A. No. 313/2022 have been filed by some other aggrieved residents with the grievance that ADA has failed to fulfil its obligation under Section 14(2) of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 and seeking direction for completing infrastructure before formation of RWA. Reference has also been made to order of the Allahabad High Court dated 15.12.2016 in *Writ Petition (C) No. 58986 of 2016*.

11. The applicant has filed *objections* to the stand of the authorities to that compliances have been ensured. ADA has filed reply to the said objections reiterating its stand that compliance has been done as per its further status report dated 12.12.2022. It is however stated that electricity connection is yet to be installed for running the STP.

12. Applicant has *also* filed additional affidavit and further written submissions dated 13.12.2022 pointing out inadequacy in compliance and also annexing a list of colonies in the area which have been set up without requisite sewage management facilities, followed by additional documents filed on 14.01.2023. The list of colonies in the area which are said to have been set up without requisite sewage management facilities are as follows:-

Sno	Village	Project Name	Area Size (In Sqm)	Sanctioned Year
1	Barauli Ahir	1. Jaipuria's Sunrise Green	5580.93	2019
		2. Sunrise Green Phase 2	30570	2006
		3. Sunrise Green Phase 3	30117	2006
		4. Govind Vihar-1	29914.33	2019
		5. Blue Square Homes Colony	7827	2018

		6. Kailash Residency-2	20700	2006
		7. Prempuri Colony	16384	2011
		8. Madhav City	2833.39	2014
		9. St Marys convent school	18992.17	2011
		10. Sham Vihar	3608	2004
		11. Meenakshi Puram Phase-1	7290	2004
		12. Madhav Vihar -2	15805.14	2006
		13. Gokul Vihar	6304.95	2004
		14. Kailash Residency	13700	2006
		15. Anupam Estate	12696.97	2009
		16. Vishwa Karma Garden	25379	2007
		17. Arihant Dream	6660	2011
		18. Icon Masons	36469.45	2006
		19. Pushpanjali Green	24176.61	2002
		20. Deeksha KRC Town PH2 Sec-D	23871.50	2010
		21. Sunrise Green Phase-1	15867	2008
		22. Anupam Gardens	26703	2006
		23. Sarojani Nagar	6894	2006
		24. Mahendra Enclave	18961	2004
		25. Anand Vihar	11153.57	2004
		26. Radhika Vihar	11663.59	2004
		27. Madhav Vihar	9387	2003
		28. Maruti Dham	14820.20	2004
		29. Raman Kunj	3111.00	2003
		30. Bibhav Vihar	28125.75	2005
		31. Sarojani Nagar Ext	2211	2006
		32. KPS Town (Green Park)	140920	2007
		33. Govind Vihar	30092	2007
		34. Jaipuria Sinrise Green	450475.6	2007
		35. Deeksha (KCR) Town	115930	2010
		36. Raj Enclave	4997	2003
		37. Minakshi Puram Ph-2	10970	2006
		38. Shyama Dham Ph-1	9243.75	2003
		39. Vinayak Vihar	27550	2003
		40. Ritika Vihar	7216	2004
		41. Vishwakarma Amazon	26150	2007
		42. Brij Enclave	3616	2002
2	Rajrai	1. Nalanda Ashiyana- 1	5296	2009
		2. Nalanda Ashiyana- 2	13440	2010
		3. Pushpanjali Archid	94190.80	2010
		4. Pushpanjali Archid Phase-I]	101264	2007
		5. Maruti Pravasham	48729.11	2011
		6. Krishna Enclave	16360	2006
		7. Gayatri Madhu Sudan City	52467	2011
		8. Gayatri Signature	12175	2009
		9. Wadhwa Palm Residency	21400	
		10. Kutumb	31440	2007
		11. Vimal City	23050	2006
		12. Gayatri Sun City	24602.37	2011
		13. Gayatri Vihar	15560	2007
		14. Gayatri Enclave	11528.17	2008
		15. Gayatri Upwan	13092	2009
		16. Dhram Ashiyana	13821.79	2006
		17. Krishna Greens	9350	2008

		18. Kailash Vihar -4	26115	2007
		19. Sanskar City	-	-
		20. RBN Reyal Estate	12290	2007

13. ADA has filed I.A. No. 12/2023 for impleadment of the developer.

14. We have heard learned counsel for the parties and considered the entirety of the matter.

15. It is patent that ADA has failed to prevent damage to the environment by permitting colonies to be set up without requisite infrastructure. Though STP is stated to have been now set up and made operational, it is also stated that electricity connection is yet to be granted. I.A No. 12/2023 filed by ADA for impleadment of the violator appears to be an unnecessary attempt to avoid its responsibility to take requisite action against the violator when it is all powerful to remedy the situation. ADA will be well advised to change its attitude and perform its statutory duties for protection of environment and enforcement of rule of law.

16. Let further remedial action be taken by the ADA in coordination with other concerned authorities expeditiously in accordance with law.

17. With regard to list of more colonies, ADA and State PCB may verify the grievance that they do not have requisite infrastructure for waste management and take remedial action in respect thereof as per law.

18. The ACS, Urban Development and ACS, Housing and Development, UP may oversee remedial action by calling an online meeting. State PCB may coordinate. An action taken report in this regard be filed by ACS, UD by email with the Registrar General, NGT by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF within six months. If any further direction is found necessary, he may place the matter before the Bench.

Subject to above, the application is disposed of.

A copy of this order be forwarded to ACS, Urban Development, ACS, Housing and Development, UP, State PCB and Agra Development Authority by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

January 18, 2023

Original Application No. 329/2021

(I.A. No. 312/2022, I.A. No. 313/2022 & I.A. No. 12/2023)

AB