

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

ORIGINAL APPLICATION NO. 892/2022

IN THE MATTER OF:

PREM MOHAN GAUR
S/O Shri Om Parkash Gaur
R/O Village Post Office Hajipur,
Tehsil Sohna, Gurugram,
Haryana

...Applicant(s)

Versus

- 1. National Highway Authority of India
Through Chairman,**
G5 & 6, Sector 10, Dwarka,
New Delhi-110075
- 2. Chief Minister of Haryana-cum-Chairperson
HPWWMA,**
4th Floor,
Haryana Civil Secretariat, Sector 1,
Chandigarh-160001
- 3. State of Haryana
Through Chief Secretary,**
Haryana Secretariat,
Chandigarh-160001
- 4. Union of India
Through Secretary,**
Ministry of Environment, Forest & Climate Change
Indira Paryavaran Bhawan,
Jorbagh Road, New Delhi - 110 003
- 5. Deputy Commissioner, Gurugram**
First Floor,
Mini Secretariat,
Gurugram-122001
- 6. Deputy Commissioner, Nuh**
Second Floor,
Mini Secretariat
Nuh-122107

- 7. Deputy Commissioner, Palwal**
Room No. 1, Second Floor,
Mini Secretariat, Palwal - 121102
- 8. Principle Chief Conservator of Forests (HoFF),
Department of Forests, Government of Haryana,**
C-18, Van Bhawan, Sector 6,
Panchkula, Haryana - 134109
- 9. Division Forest Officer,
Gurugram Forest Complex,**
Sohna Road, Near Court Complex
Gurugram-122001
- 10. Division Forest Officer, Nuh**
Gaushala Road, Forest Complex,
Nuh-122107
- 11. Sh. Parmender Singh**
Block Development and Panchayat Officer Sohna
BDPO Office Complex Sohna,
Gurugram-122103
- 12. Tehsildar, Sohna Tehsil**
First Floor, Sohna Bus Stand Complex,
Gurugram-122103
- 13. Block Development and Panchayat Officer Indri**
BDPO Office Complex Indri
Nuh-122103
- 14. The District Pond Management Officer-cum-Executive Engineer**
Water Services Division,
Nuh/Mewat
Irrigation and Water Resources Department,
Haryana - 122107
- 15. Sh. V.K. Joshi**
General Manager cum Project Director,
NHAI
CMU Mathura- Faridabad,
Plot No. 8, Near Toll Plaza Building,
Main Mathura Road, Sarai
Faridabad - 121003
- 16. Executive Engineer**
Palwal W/S Division,
Canal Colony, Near Aligarh Bridge,
Palwal - 121102
- 17. Executive Engineer**
Provincial Division,
PWD B&R Br. Nuh,
Near YMD College, Nuh, Haryana - 122107

...Respondent(s)

COUNSELS FOR APPLICANT(S):

Ms. Suruchi Mittal, Advocate

COUNSELS FOR RESPONDENT(S):

Mr. AP Singh and Mr. Shreyansh Rathi, Advocates for NHAI
Ms. Praveena Gautam and Mr. Pawan Shukla, Advocates
for MoEF&CC (Respondent 4)
Mr. Rahul Khurana, Advocate for Respondents-3, 5, 6, 9 and HSPCB

CORAM:

HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

RESERVED ON: NOVEMBER 21, 2023
PRONOUNCED ON: FEBRUARY 13, 2024

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. Aggrieved by the encroachment/covering/construction over the pond/water body and other violations at village Kiranj, Distgrict Nuh, State of Haryana by National Highway Authority of India (hereinafter referred to as '**NHAI**'), present Original Application (hereinafter referred to as '**OA**') has been filed by Shri Prem Mohan Gour, resident of village/Post Office Hajipur, Tehsil Sohna, Gurugram, State of Haryana under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**').

2. The facts in brief as stated in OA are that there is a pond with UID No. 01HRNUHINR0187KIRA001, identified under Haryana Pond and Waste Water Management Authority Act, 2018 (hereinafter referred to as '**HPWWMA Act, 2018**') at village Kiranj, District Nuh, State of Haryana. It was surrounded by a large number of trees. NHAI had to construct NH-148NA comprising construction of six Lane access-controlled Highway

from DND Maharani Bagh to Junction to near KMP Expressway with NH-148N Delhi-Vadodara Expressway Section of NH-148NA.

3. As per NHAI, this project is to improve connectivity particularly on economic corridors, border areas and remote areas with an aim of rapid and safe movement of cargo to boost exports. Near the pond, there was a forest area running in 15 acres with large number of trees. Forest land comprised of khasra nos. 3/10, 3/11, 3/20, 4/6, 4/15, 4/16 and 4/17 having area of 1k3m, 5k6m, 1k2m, 0k1m, 2k18m, 6k16m and 0k5m, respectively. In the course of execution of the project, NHAI illegally cut 441 trees in the area falling in village Hajipur; made over-bridges over revenue *rasta* of three villages i.e., Paroli (District Palwal), Hajipur (District Gurugram) and Kiranj (District Nuh) making them a water logging site causing health hazards to the local residents; demolished a mini-bridge over Gurugram canal, a culvert and made encroachment upon the water body of village Kiranj at khasra no. 91 and 92 creating a situation of water logging and flooding in the area.

4. Applicant has placed on record a copy of project note submitted by Project Director, Corridor Management Unit, NHAI, Mathura (at Faridabad) as annexure A1 which provides justification for locating the project in protected forest area (hereinafter referred to as '**Project Note**'). It was stated that Ministry of Road, Transport and Highways (hereinafter referred to as '**MoRTH**') has proposed Bharat Mala Pariyojana and Umbrella Scheme of road development project through NHAI, National Highway Industrial Development Corporation Ltd. (hereinafter referred to as '**NHIDCL**') and State Public Works Departments (hereinafter referred to as '**PWD**'). Pursuant to the above scheme, NHAI decided to construct 6 lane

access controlled highway from DND Maharani Bagh to Junction with Jaitpur-Pushta Road Section of NH- of NH-148NA (Design Ch 0.000 to 9.000) in the NCR of Delhi (PKG-I), PKG-II from Junction Jaitpur-Pushta Road to Junction Sec-62/65 road on Faridabad-Ballabhgarh Bypass of NH-148NA (Design Ch 9.00 to 33.00) including spur from Design Ch 13.200 to Junction with NH19 near Badarpur Border and PKG-III from Junction with Sec-62/65 dividing road on Faridabad-Ballabhgarh Bypass to Junction near KMP Expressway with NH-148N Delhi-A Vadodara Expressway Section of NH-148NA (Design Ch 33.00 to 59.063) in state of Haryana under Bharatmala Pariyojana (Lot-4/Package-1) to improve efficiency of freight movement.

5. Project stretch falls in States of Delhi and Haryana (Faridabad), which is situated in the Northern part of India. Delhi, officially National Capital Territory of Delhi (hereinafter referred to as '**NCT**'), is a city and a Union Territory of India. It is bordered by Haryana on three sides and by Uttar Pradesh to the East. NCT covers an area of 1,484 km². It is connected to other parts of India by five National Highways i.e., NH 44, NH 19 (Old NH 2), NH 75 (Old NH B 48), NH 9 and NH 24. Some important Pillars of Delhi's Road Infrastructures are Inner Ring Road, Outer Ring Road, Delhi Noida Direct flyover (DND), Delhi Gurgaon Expressway, Delhi Faridabad skyway etc.

6. The project note further said that the proposed road would act as prime artery for economic flow to this region. It will enhance economic development, provide employment opportunities to locals, strengthen tourist development, ensure road safety, provide better transportation facilities and other facilities such as way side amenities etc. Vehicles

operating cost will also be reduced due to improved road quality. The report further said that no forest area was identified along alignment but at some locations, (crossing point of roads/canal/drain), the proposed project falls in notified protected forest areas declared for management purposes and diversion of protected forest land in unavoidable.

7. Application was filed by NHAI seeking prior approval under Section 2 of Forest (Conservation) Act, 1980 (hereinafter referred to as '**FC Act, 1980**') wherein it gives details of forest land required i.e., 0.16 hectares in Gurugram. Copy of this application in Form A is Annexure A2 to OA.

8. In execution of the above project, NHAI has filled the only pond existed at village Kiranj in khasra no. 30/3 and 8 Marla of 30/8 i.e., the total area of 0.58 acres though, other land was available which could have been utilised without disturbing the pond. Reliance is placed on Supreme Court's judgment in ***Hinch Lal Tiwari vs. Kamla Devi, (2001) 6 SCC 496*** wherein Court emphasised upon the protection of ponds and other water bodies to maintain delicate ecological balance. Project has been executed in violation of the principle of sustainable development and National Forest Policy, 1988 which says that principal aim of policy was to ensure environmental stability and maintenance of ecological balance, the derivation of direct economic benefit was to be subordinate to principle aim of the policy. NHAI has executed the project in blatant violation of environmental laws within a stretch comprising about 3.5 kms of length falling in 3 villages namely Paroli (District Palwal), Hajipur (District Gurugram) and Kiranj (District Nuh).

9. On 17.01.2022, applicant made a complaint by an e-mail to Cabinet Secretary who forwarded the same to Secretary, Ministry of Environment,

Forest and Climate Change (hereinafter referred to as '**MoEF&CC**') for appropriate action. The e-mail complaint was later transferred to Principal Chief Conservator of Forest (hereinafter referred to as '**PCCF**'), Department of Forest, Haryana on 17.01.2022. Respondent 11 i.e., Parmender Singh, Block Development and Panchayat Officer, Sohna considered the complaint, visited the site and despite explaining him about illegal cutting of trees, diversion of Gochar land, encroachment/spoiling of panchayat rasta etc., no action was taken.

10. Applicant further stated that to cover up the issue of forest, a false Report was prepared by Divisional Forest Officer, Gurugram (respondent 9) stating that it is the Contractor of NHAI who has cut 241 trees from Gocharan Forest land of village Hajipur. The report did not mention anything about 200 Kikar/Mesquite trees which were cut at site. Report also did not mention about measurement taken of illegally diverted Gochar land.

11. Further an e-mail complaint dated 07.03.2022 was sent to Executive Engineer, Palwal, complaining encroachment on Panchayat nalla in village Kiranj.

12. NHAI had also blocked the culvert at Junction of the new Highway with the Palwal-Sohna-Rewari road, which was used for channelizing flood/monsoon water from one side of the road (Hajipur) to the other side (Kiranj), to the nalla with Kiranj, khasra no. 91 which further connected to Gurugram canal.

13. Applicant in view of the above complaint has prayed that construction of road on the pond in village Kiranj be removed and the pond

be restored to its original shape; NHAI should be required to pay environmental compensation under Section 15 of NGT Act 2010 for the damage caused to the environment; Hajipur wood lot forest land be restored to its original shape and form and NHAI be directed to pay environmental compensation; compensation should also be imposed upon NHAI for cutting illegally 441 trees and they should be required to undergo compensatory afforestation in village Hajipur forest land; for the purpose of environmental compensation for cutting the trees illegally, the concerned respondents be directed to evaluate trees in accordance with the report of the Committee appointed by Supreme Court in **SLP 25047/2018, Association for Protection of Democratic Rights & Another vs. State of West Bengal & Another**; NHAI should restore the culvert at the junction of NH-919 and NH-148NA; and action should also be taken against the officials who have shown inaction or collusion with NHAI in its illegal activities causing damage to environment.

14. There are some other prayers also with regard to alignment etc. of the over-bridge which are not within the jurisdiction of this Tribunal under Sections 14 and 15 of NGT Act, 2010, hence we are leaving those prayers.

Tribunal's order dated 14.12.2022:

15. OA was taken up for consideration on 14.12.2022. Tribunal found that the construction activities were already over but the date of construction was not disclosed and this could give rise to the issue of limitation. Hence, it required the applicant to give details of date of construction activities undertaken by NHAI.

Applicant's affidavit dated 09.01.2023:

16. Pursuant thereto, applicant filed an affidavit dated 09.01.2023 stating that construction and other activities were undertaken in 2021 i.e.,

within 5 years prior to the date when OA was filed and the work for construction of pond and road is still going on.

Tribunal's order dated 11.01.2023:

17. Thereafter, the matter was considered on 11.01.2023 and after noticing the complaint of applicant, Tribunal found that a substantial question relating to environment due to implementation of Schedule Enactments under NGT Act, 2010 has arisen but before taking any further action in the matter, a factual report would be required to be obtained for which a Joint Committee comprising Haryana State Pollution Control Board (hereinafter referred to as '**HSPCB**'), PCCF, Gurugram and District Magistrate, Gurugram was constituted.

Short Reply dated 15.03.2023 filed by District Magistrate, Gurugram

18. On behalf of District Magistrate, Gurugram, a short reply dated 15.03.2023 was filed stating that due to non-availability of representative of Haryana State PCB, inspection/joint visit of the site could not be undertaken. However, it also stated that the area of pond in village Kiranj and forest in village Hajipur on DND Faridabad Ballabgarh Bypass to KMP interchange stretch of Delhi Vadodara-Mumbai Expressway which is connected to Gurugram canal, touches three districts namely Nuh, Palwal and Gurugram. Hence, the officials of other two districts i.e., district Nuh and Palwal are also being contacted.

Joint Committee Report dated 11.07.2023 filed by Regional Officer, Palwal and Nuh Region, HSPCB

19. Joint Committee Report ultimately was filed through Regional Officer, Palwal and Nuh Region, HSPCB vide letter dated 11.07.2023. Report touches upon different aspects raised in OA i.e.,

- (i) Diversion of Hajipur village forest (wood lot/charagah)
- (ii) Violation of the principle of sustainable development due to destruction of natural resources in construction of new elevated NH-148NA which is not for any use to local public and no access in local area was provided.
- (iii) Cutting of 441 trees from Hajipur village forest and non-payment of compensation.
- (iv) Rendering 5 acres forest out of total 15 acres Hajipur forest inaccessible due to poorly planned construction highway forest into two halves.
- (v) Missing of 9800 trees from village Kiranj and 4400 trees from Hajipur, said to be planted by Forest Department in 2016-2017.
- (vi) Water logging sites of 2 rastas of village Hajipur i.e., khasra no. 51 and 52 due to construction of disoriented over-bridges over them and creating a breathing ground for spread of diseases.
- (vii) Blocking of culvert at the Junction of Sohna-Palwal highway.
- (viii) False pretext in seeking permission of cutting of trees i.e., the reason given is to provide connectivity to remote areas though no such connectivity was provided.
- (ix) Encroachment upon 2 nallas of village Kiranj i.e., khasra no. 91 and 92 which were connected to Gurugram canal which has blocked the way to evacuate water during flood situation.
- (x) Encroachment on 0.58 acre area of Panchayat Pond notified under HPWWMA and raising construction over the said pond

despite notice by Panchayat Department and without any permission from the Competent Authority.

- (xi) Cutting of 100 trees from the banks of nalla and village Kiranj pond without payment of any compensation.
- (xii) Diversion of forest land without permission from the Competent Authority for non-forest purposes and in violation of Forest Act, 1980.

20. Joint Committee has recorded its findings on the various aspects above noted after considering the stand of NHAI and other concerned authorities, as under:

- I) On the issue of diversion of Hajipur Village Forest (Woodlot)/Charagah, Committee has recorded its findings as under:

“It is a 15 acre (119K 16M) land at Khasra No. 3//10, 3//11, 3//20, 4//6, 4//15, 4//16, 4//17 owned by Hajipur Village Panchayat. Hajipur Village Panchayat Procedure Book Record of 1983 reveals that this land was given to Forest Department Sohna Range for one year to do plantation under a scheme and after one year the land was to be returned back to the Panchayat. The land is not categorized under Aravali Plantation Area/ PLPA-1900 Section 4 (Special) and 5 and protected/reserved forest.

The land is identified as Charagah in the Jamabandi of 2013-14. The NHAI has completed the construction of NH-148NA (which has been made operational in February 2023) through this land, after acquiring 2.2 acres (17K 11M) vide Award No. 1/2019-20 dated 03.02.2020 under the provisions of National Highway Act, 1956. Also, compensation for the same has been disbursed to the village Panchayat.”

- II) On the violation of principle of sustainable development due to destruction of natural resources by not providing any access to local people, Committee has said:

“There is no service road constructed or undergoing construction on any side of the new highway at the disputed site. If a service road is developed it will be beneficial for them.”

- III) On the issue of cutting of 441 trees in Hajipur village forest and non-payment of compensation, Committee has said as under:

*“**263 trees were cut** from the Hajipur Panchayat Land Area as per the record of Forest Department **without any permission**, out of which 22 were found under exempted category. An amount of Rs. 58,940.00 was paid by concessioner M/s. DRA Infra Pvt. Ltd. Ahmedabad – 380015 (Gujarat) due to violation of Section 4 (General) of PLPA, 1900, for cutting of 241 trees.”*

- IV) On the issue of making 5 acres forest out of total 15 acres Hajipur forest inaccessible, Joint Committee Report said:

*“The **new NH-148NA has been constructed through the Hajipur Village Panchayat Land (charagah)**, which has divided it into two halves. One of the halves with area of 3.34 acres (27K 11M) has been rendered completely inaccessible in the absence of any service road or any other right of way.”*

- V) On the question of missing of 19800 trees in village Kiranj and 4400 trees in Hajipur, findings of Joint Committee Report are as under:

“The Applicant relies on the plantation information of 19800 plants in Kiranj and 4400 plants in Hajipur, available at the Forest Department Haryana website accessible via the link: <https://haryanaforest.gov.in/cfp-plantation/>.

No record about survival of these plants could be provided by Gram Panchayat.”

- VI) On water logging of sites of two rastas of village Hajipur, findings of Joint Committee are as under:

*“There was no water logging at site during the site inspection. However, the **over-bridge made** over the Panchayat Rasta with 11 feet width having Khasra No. 51 has been made skew and thus, **disoriented the revenue***

Rasta. There is no drainage beside the new Highway for evacuating water in rainy season.

- VII) On the issue of blocking of culvert at the junction of Sohna-Palwal Highway, findings recorded by Joint Committee are as under:

“The peripheral structure of the culvert passing through the Palwal - Sohna Highway has been demolished and covered with Soil while constructing the new Highway (NH-148NA). This culvert served the purpose of evacuation flood water during heavy rainfall.”

- VIII) On the question of permission of cutting of trees obtained on false pretext, Joint Committee Report has said as under:

“While seeking permission to divert the protected forest land of (Plantation strip abutting Sohna-Palwal Highway) in Kiranj village revenue estate, NHAI submitted ‘Justification for locating the Project in Protected Forest Area’ note which states that “This project aim to improve connectivity particularly on economic corridors, border areas and to remote areas with an aim of rapid and safe movement of cargo to boost exports”. However, **there is no connectivity at this remote location of junction of new Highway NH-148NA and Sohna Palwal Highway, thus, depriving local residents from utilizing the NH-148NA.** In the lack of service road, the public has to travel via a much longer route to reach the entry & exit ramp constructed by NHAI at Old-NH2. Executive Engineer, Provincial Division, PWD B&R Nuh vide their Memo No 3253 dated 03 Mar 2022 addressed to the Deputy Commissioner Nuh, strongly recommended to provide access/interchange or a cut near to toll plaza at Village Kiranj for using of new National Highway, NH-148NA (DND Expressway).”

- IX) On the issue of encroachment on two nallahs of village Kiranj, the findings of Joint Committee are as under:

“The area corresponding to the two irrigation channels i.e. 12K 4M of Khasra No. 91 and approximately 1K 5M of Khasra No. 92 have been encroached by NHAI while constructing the new Highway NH-148NA. As per Naib Tehsildar Indri report, this area was not acquired by NHAI.

Irrigation Department issued a notice vide letter No.-186-90/2-A dated 19.04.2022, to the General Manager and Project Director, CMU Mathura (at Faridabad), NHAI about

illegally encroaching upon the Nala. Relevant translated portion of the notice is reproduced as “You have closed the Barsati-Nala in village Kiranj extending from the area of Gurugram Canal at R.D. 90000, on which illegal construction work is executing. This Barsati-Nala was 332 made to evacuate the rain water of village Kiranj, Hajipur and Khedli which has been closed by you. Due to which in the forthcoming rainy times, the danger of water-logging and flood exists.”

Another notice was also issued by BDPO Indri dated 26.07.2022 vide letter No. 1625 regarding encroachment of Barsaati-Nala highlighting that there is no other way of evacuating water from the village. The notice also highlighted that in the absence of the service road the farmers face difficulty in accessing their field on daily basis.”

- X) On the issue of encroachment of 0.58 acres land of Panchayat Pond, Joint Committee as said as under:

“The Pond is notified under the provisions of HPWWMA Act, 2018 and a Unique ID:01HRNUHINR0187KIRA001 was assigned to the pond.

*NHAI has acquired the 0.58 acre of land by following due procedure as per NH Act 1956 and Acquisition Act 2013, however, no permission was taken from HPWWMA (structure, water flow, etc) in any way. The BDPO Indri issued letter No. 1625 dated 26.07.2022, to the General Manager and Project Director, CMU-Mathura (Faridabad), NHAI stating that **the pond’s natural state has been illegally changed by filling it with soil violating Haryana Pond and Waste Water Management Authority Act, 2018 and various order of National Green Tribunal.***

The acquired pond was filled and the elevated new NH-148NA (DND) road has been made on it whose construction was completed in January 2023.”

- XI) On the question of cutting of 100 trees from the banks of nalla in village Kiranj without payment of compensation, Joint Committee has recorded its findings as under:

“The CAMPA amount submitted corresponds to the trees which were felled from the land belong to Forest Department. However, no compensation has been given for the entire stretch for the trees which stood on private farmer’s land Panchayat land or any other owner apart from Forest. From the Google Earth image it is clear that trees existed on the stretch where the new road has been developed. However, it is not feasible to count the number of trees from the same.

As per Compensation Award No. 01/2019-20 dated 03.02.2020 declared by DRO-cum-CALA states that “The land owners will cut their crops and trees if any sown as no compensation of crops and trees has been awarded.”

21. On the question of diversion of forest land without permission referring to NHAI stand that diversion was as per approval by Competent Authority of Forest Department, Joint Committee has recorded its findings observing that it is matter of record.

Response/Compliance Report dated 02.10.2023 filed by NHAI:

22. It is said that NHAI is a statutory body constituted under National Highway of India Act, 1988 (hereinafter referred to as ‘**NHAI Act 1988**’) for development, maintenance and management of national highways vested in it or entrusted to it. By virtue of Section 4 of National Highways Act, 1956 (hereinafter referred to as ‘**NH Act 1956**’), all national highways vest in Union. The Rules framed under NH Act 1956 provide that NHAI would act as executing agency in respect of stretch of national highways vested in or entrusted to it by Central Government. Section 11 of NHAI Act 1988 empowers Central Government to vest or entrust any national highway in NHAI. Government of India through Ministry of Road, Transport and Highway declared section from km. 33+000 to km. 59+063 of NH-148NA (approximately 26 kms.) as national highway. NHAI resolved to construct 6 lane access-controlled highway from junction with sector-62/65 dividing

road on Faridabad-Ballabhgarh Bypass to junction near KMP Expressway with NH-148N (Delhi Vadodara Expressway) Section of NH-148NA from km. 33+000 to km. 59+063 in State of Haryana. The present complaint is with regard to acquisition of land for development of economic corridor, inter corridors and feeder routs under Bharatmala Pariyojana at NH-148 NA to DND Faridabad Bypass Junction with Delhi Vadodara Expressway interchange at KMP on the stretch of land. Project in issue is of national importance and aims at providing hassle free, congestion free, smooth and time saving connectivity between destination points. Project has been developed with intention to reduce travel time as also fuel consumption which will result in reducing air pollution in the region. Land acquisition proceedings were carried out by Competent Authority cum DRO concerned for public purpose in public interest after following due process of law as per the provisions of NH Act 1956 read with the relevant provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as **'Acquisition Act 2013'**). Notification under Section 3(A) of NH Act 1956 was issued on 20.12.2018 and 13.05.2021 in respect of district Nuh. Notification under Section 3D of NH Act 1956 was issued on 05.12.2019 and 13.12.2021 respectively. On publication of declaration under Section 3D (1) of NH Act 1956, land absolutely vested in Central Government free from all encumbrances. As per revenue record, Khasra No. 30/3 and 30/8 revenue estate of Village Kiranj was recorded as Gair mumkin under ownership of Gram Panchayat. Compensation of land acquired has already been disbursed to Gram Panchayat, Kiranj by Competent Authority cum DRO Nuh. NHAI awarded contract of construction of work of highway to M/s Dineshchandra Giriraj Infra. Pvt. Ltd. (hereinafter referred to as

‘Concessionaire’) on 07.08.2020. Contract was executed on 21.10.2020 under Hybrid Annuity Model (hereinafter referred to as **‘HAM’**). HAM combines two infrastructure construction models, namely built, operate and transfer i.e., BOT and engineering, procurement and construction i.e., EPC.

23. EPC model comprises 40% of combination, while rest 60%, is BOT. EPC model denotes a process of infrastructure construction in which Government pays private parties to build roads. Responsibility of the private players ends with road construction. They are not involved in road maintenance, toll collection, or road ownership. The Government remains responsible for these things.

24. In BOT model of infrastructure construction, private players are involved for an extended period. They deal with constructing, operating and maintaining the roads for a specific period for example, 10 to 15 years. Roads are then handed back to the Government. Under BOT model, private players have to arrange funds for the project. Private players are paid a pre-fixed amount as an annuity for building and maintaining the roads. This annuity fee is known as BOT Annuity. Government bears the risk of toll revenue.

25. Under HAM, NHAI pays 40% of total project expenditure while remaining 60% is to be arranged by the road developer).

26. The work of the questioned project has been completed and is now operational and under maintenance.

27. The complaint is false with ulterior motive to get undue benefit and is an afterthought. The complainant has tried to pressurize NHAI by filing

several applications under Right to Information Act, 2005 (hereinafter referred to as '**RTI Act 2005**'). Concessionaire of NHAI in order to maintain ecology and environment has constructed a minor bridge without disturbing pond at Village Kiranj. The perusal of site shows that there is pond on right hand side of highway towards Sohna, situated in Revenue Estate of Village Kiranj (Nuh) and it is beyond the right of way of the project in question. The pond has not been touched by Concessionaire of NHAI while constructing highway in question. Various structures have been constructed by Concessionaire for cross movement of people as per the requirement assessed by DPR Consultant and reviewed by Independent Engineer. On the factual status of the grievance raised by applicant, NHAI has given its response on three heads i.e., pond at km. 54+500; culvert restoration and compensatory plantation as under:

“A. POND AT KM. 54+500:

- i. *It is kindly apprised that Highway crosses Haryana Irrigation Canal at Km. 54+500 and to maintain the ecology and environment, a minor bridge has been constructed over it without disturbing the pond. The Highway alignment at the location has been designed considering the guidelines for design of Horizontal & Vertical curves for Highways and as per relevant IRC Codes by the DPR Consultant duly considering all the features along the Highway and has been reviewed by Independent Engineer.*

However, as far as matter of encroachment on pond is concerned, the allegation is far away from the truth. The fact is that there is a pond on the right hand side of the highway in Village Kiranj which falls beyond the RoW of Highway and the same has not been disturbed by the Concessionaire of NHAI during the construction of the highway. The land measuring 3 Kanal 13 Marla and 8 Marla from Khasra no. 30//3 & 30//8 respectively, situated in the Revenue Estate of Village Kiranj, District Nuh was acquired vide notification u/s 3A and 3D of the NH Act 1956, Notification no. S.O. 6240 (E) dated 20.12.2018 and S.O.4367(E) dated 05.12.2019 respectively. After issuance of notification u/s 3D of the NH Act 1956, the notified land absolutely vest in the Central Government free from all

encumbrance. It is pertinent to mention that perusal of the notification u/s 3D of NH Act - 1956 reveals that the said land is Gair mumkin and Gram Panchayat is recorded as owner. As per revenue record khasra numbers 30//3 and 30//8 belongs to Gram Panchayat and compensation of the said acquired land stands disbursed to Gram Panchayat. It is also apprised that as per the record of this office, Gram Panchayat did not raise any objection in respect of acquisition under section 3C of NH-Act 1956. The pond in question on the right side of highway still exists at the site.

Relevant documents qua acquisition of aforementioned land (3D Gazette Notification) are annexed herewith and marked as ANNEXURE - A.

Graph omitted

Land Acquisition Plan

- ii. It is further submitted that the development of project Highway has caused no damage to the pond existing on right hand side of highway toward Sohna adjacent to Haryana Irrigation Canal. Further, NHAI through its concessionaire, in order to retain the functionality of Canal of Haryana Irrigation constructed Minor Bridge of size 3X 16.67m as per GAD approved by Haryana Irrigation Department in addition to various other structures provided all along the Highway.*

B. CULVERT RESTORATION:

- i. There is a culvert for passage of water on Sohna - Palwal Road near the VUP at Km. 53+100 on Project Highway. The culvert is observed to be beyond the RoW of Project Highway and has not been disturbed during construction of Highway. The said culvert has been constructed by PWD Department, Haryana and is beyond the RoW of National Highway which is for 2-lane width. Even on inspection, it was found that the culvert is fully intact however, with earth fill due to recent rains. Concessionaire of the project has cleared the culvert of any earth fill. Though, the same was not damaged as a result of the construction of National Highway. It is also kindly brought to the notice of Hon'ble Tribunal that a new VUP on the Sohna - Palwal road has been constructed with span arrangement 2x30m considering future widening from existing 2-lane to 4-lane, therefore width at location of crossing has increased.*

A photograph of the location clearly depicting the present position is herein as under: -

Photographs omitted

C. COMPENSATORY PLANTATION:

- i. *In respect of allegation of “number of trees cut/ illegally fell and compensatory plantation”, it is kindly apprised that during the DPR stage a joint site inspection with concerned forest officials was carried out to identify land/trees of forest department. Proposal as per identification of Forest Department was submitted by NHAI for approval of Forest Department and the permission was accorded by Forest Department vide letter no. 9-HRB080/2021 - CHA dated 14.06.2021 and letter no. ADM-D-3-9558/8935 dt. 07.12.2020 for use of forest land for non-forest purpose. An amount of Rs. 12,76,657.00 was deposited for Nuh District and Rs. 9,37,238.00 for Gurugram District against CAMPA fund which includes Compensatory Afforestation. Plantation for the same was to be carried out by concerned Forest Department. It is further submitted that NHAI has already deposited amounts as per demand of CALA for acquisition of land for highway development as per awards declared. Upon verification of site, only after payment of compensation to rightful landowners by CALA, the physical possession of land was handed over to NHAI for construction of Highway Project.*

Documents qua permission of Forest Department is annexed herewith and marked as ANNEXURE - B.

- ii. *Further, it is also pertinent to mention here that in view of its commitment towards betterment of environment, NHAI on its own, through its concessionaire has planted more than 6000 plant/trees on the Toll Plaza located at Km. 55+400 of project highway and recently more than 40,000 seed ball have also been sowed in the lands available within the RoW of National Highway on this particular section of project. It is also proposed to plant more trees/plants through Concessionaire.*

Pictures of plantation drives carried out from time to time on the Project Highway are as under:-

Photographs omitted.”

28. Further, NHAI on different issues raised by applicant/complainant has given its response in the form of a chart, as under:

S. No.	Contentions	NHAI's Response
1	<p>The NHAI has cut 441 trees from Hajipur woodlot, Forest Land without permission including that of 200 kikar/ mesquite (tree banned to cut in Haryana).</p>	<p>The allegation levelled by the complainant is false and hence denied. As already explained in para-C above, that during DPR stage joint site inspection with concerned forest officials was carried out to identify land/trees of Forest Department and necessary permissions were obtained from the Forest Department for diversion of Forest Land. The contents of para c above are reiterated here, the same has not been reproduced for the sake of brevity.</p> <p>It is further submitted that as per the damage report of Forest Department issued after ascertaining factual position, only 263 trees were cut and not 441 as alleged by the complainant. In this context, may kindly refer damage report furnished by DFO-Gurugram, wherein, it has been stated that the damage report No. 035/0502 dated 18.01.2022 was issued and compounded in accordance with section 68 of IFA, 1927 and compensation of Rs. 58,940 was received by Forest Department.</p>
2	<p>The NHAI diverted the Hajipur woodlot, Forest Land without taking approval from MoEF&CC in accordance with procedure laid down under Forest Conservation Act, 1980 and destroyed the woodlot by dividing it into two</p>	<p>In this regard, it is submitted that as per the report of Forest Department, there is no woodlot at Hajipur Village. So, the question of diverting the Hajipur woodlot or dividing the forest land into two halves does not arise.</p>

	<p><i>halves and one side being completely inaccessible from any side.</i></p>	<p><i>As regards the development and construction of the highway on the forest land, it is submitted that the work of development of project highway in the affected reach was undertaken only after receipt of “In-principal” approval from MoEF&CC. The contents of para C above are reiterated here, the same has not been reproduced for the sake of brevity.</i></p>
3	<p><i>The NHAI held in the Project Note containing justification for locating the Project in the forest land submitted to MoEF&CC via proposal No FP/HR/ROAD/44420/20 20 that “This project aim to improve connectivity particularly on economic corridors, border areas and remote areas with an aim of rapid and safe movement of cargo to boost exports”. However, no connectivity even the service road is absent from the area where land has been taken for highway including one pond, several protected trees, village woodlot/charagah land and two panchayti raastas.</i></p>	<p><i>It is submitted that the allegation raised by complainant regarding connectivity is totally misconceived. The complainant has failed to appreciate that present project provides crucial linkages and connectivity between various Towns and cities by providing linkages between various distant Highways.</i></p> <p><i>The project “Construction of 6 lane access - controlled highway from Junction with Sector 62/65 dividing road on Faridabad - Ballabgarh Bypass to Junction near KMP Expressway with NH-148 NA (Delhi Vadodara Expressway) Section of NH-148 NA (Design Ch. 33.000 to Ch. 59.063) in the State of Haryana on Hybrid Annuity Mode under Bhartmala Pariyojana” aims at providing hassle free, smooth and safe connectivity to road users travelling from Delhi - NCR to Delhi - Vadodara Expressway and has significantly reduced the travel time lowering the fuel emissions and environmental pollution levels in the area. Sufficient number of structures for cross movement and water</i></p>

		<p>passage have been constructed in the highway stretch in the said Greenfield section.</p> <p>In the matter of provisioning of service road, it is apprised that the Project length in urban area (brown field alignment) i.e. on Faridabad Bypass has provision of 3 lane service road on each side but in the pointed out reach the highway traverses through Greenfield therefore, no provision of Service Road has been given as per standard practice.</p>
4	<p>That the NHAI is only Concerned with minting money as denied access to the Project for local Residents by giving weightage to functioning of Toll Plaza while blatantly violating the principle of sustainable development and National Forest Policy 1988.</p>	<p>That the allegations are wrong and hence denied. It is submitted that the NHA1 was created through the promulgation of the National Highways Authority of India Act, 1988. Section 16(1) of the Act states that the function of NHAI is to develop, maintain and manage the National Highways and any other highways vested in, or entrusted to, it by the Government of India. However, the NHAI is not a profit making organization but to aim development of Highways for economic growth and development of the Nation in a sustainable manner</p>
5	<p>That the Deputy Commissioner Gurugram And the Block revenue Development and Panchayat Officer Sohna did not take any action despite the site visit by BDPO regarding Destruction of Hajipur woodlot Forest Land and spoiling the revenue rastas</p>	<p>The detail regarding the woodlot forest has already been given in the above paras and the same is reiterated and has not been repeated for the sake of brevity.</p> <p>The allegation with regard to spoiling of revenue rasta is totally vague as per site condition. It is however submitted that sufficient number</p>

	by NHAI.	of new structures for passage of local residents across the highway have been constructed in the entire section of highway. In a length of 20 Kms passing through green field alignment around 40 structures have been constructed to facilitate movement across highway.
6	That the Deputy Commissioner Palwal did not take any action to safeguard the Paroli village revenue rasta with Khasra No 98, which has become a site of water logging in Monsoon and connected to Hajipur Woodlot Forest Land and has been spoiled due to disoriented overbridge with improper dimensions, by NHAI in violation to Principal Secretary to Govt.Haryana, Development & Panchayat Department.	It is submitted that underpass at Km. 50+900 near Paroli Village has already been constructed to facilitate the movement across the Highway. It is further apprised that number of over bridges/Vehicular Underpasses/Minor Bridges and other structures etc. have been constructed as per the design of highway considering relevant codes and specifications duly reviewed by the Independent Engineer. There is no waterlogging in this Section of highway. The traffic is smoothly plying using the underpass. It is also clarified that as per the report of forest department there is no woodlot forest land at Hajipur. Therefore the spoiling of woodlot forest land does not arise.
7	The Haryana Forest Department made a faulty Forest Offence Report which did not include the 200 mesquite trees so cut from Hajipur Gochar Forest Land and held the contractor responsible for the offence instead of the NHAI violating EC Part B — General Condition (xiv) which stipulates “The	It is denied that the Haryana Forest Department made a faulty report. Reference is invited to damage report no. 035/0502 dated 18.01.2022 whereby due to violation of Section 4 (General) of PLPA, 1900 action has been initiated by the Forest Department. As such the offence stood compounded in accordance with section 68 of IFA, 1927 and

	<p>project proponent is responsible for compliance of all conditions in Environmental Clearance letter and project proponent cannot absolve himself/herself of the responsibility by shifting it to any contractor engaged by project proponent”.</p>	<p>penalty/compensation of Rs. 58,940 had been deposited by the concerned.</p> <p>Further, NHAI has not violated any of the conditions of The in-principle approval granted to it by the MoEF&CC</p>
8	<p>The Forest Department Haryana did not take concrete measures to stop destruction of pond, water-courses, illegitimate tree cutting and destruction of Haijpur Woodlot Forest Land despite multiple Reminders from MoEF&CC.</p>	<p>NHAI has acted pursuant to requisite permissions granted to it by various departments and has not done any destruction to pond, water-courses, etc. Further, it is submitted that as per Report of Forest Department there is no woodlot at Haijpur Village. So, the question of destroying the Haijpur Woodlot does not arise. The allegation raised against various Govt department is vague and incorrect.</p>
9	<p>That, Kiranj Panchayati Rasta which extends from National Highway-919 to Khasra No. 3//11/2 and falls on the right of Khasra No.7//5/1, 2//5, 2//16, 2//15, 3//11/1 which is a part of depression and form has been illegitimately blocked while constructing Upon a private pond abutting it thus leading to a water logging site with a danger of flood.</p>	<p>The said location is adjacent to Sohna — Palwal road crossing at Km. 53+100 of project highway. As detailed in above paras, underpass have been constructed with span arrangement 2x30m considering future widening from existing 2-lane to 4-lane of Sohna Pawal highway. As far as matter of flooding at the location is concerned, the said allegation is away from the truth. That a culvert is also at the same location across Sohna- Palwal road beyond RoW of project Highway and the same has not been damaged by the Concessionaire during construction. Rather, the same has been cleaned by</p>

		<p>Concessionaire. Further, underpass of 4X4m has been constructed at Km. 52+440 which is presently being used for cross movement of local villagers and another structure of size 3 X 3m has been constructed at Km. 52+705 for crossing of water as well as pedestrians. The reply given in Para B above may please be read as part & parcel of this Para also.</p>
10	<p>That the NHAI has encroached upon the Kiranj Panchayat Nala with Khasra No. 91 & 92 which served Hajipur as well as Kiranj.</p>	<p>It is submitted that Khasra number 90 has been acquired by CALA (DRO — Nuh) for Highway Development after following due procedure as envisaged under the National Highway Act- 1956 and relevant provisions of RFCTLARR Act -2013.</p> <p>Award for the said survey no. was declared by CALA. In so far as Survey No. 91 & 92 is concerned, the same have not been acquired and perusal of the Land Acquisition Plan reveals these Khasra numbers falls beyond the RoW of highway.</p>
11	<p>That the Project which Destructed the natural resources of local residents (Woodlot Forest Land, Pond, water-courses) is of no use to them as no access to the same has been given violating fundamental right to access for roads, despite The local M.P's recommendation and XEN PWD report made at direction of DC Nuh for the benefit of 3 lakh people in Accordance with Indian</p>	<p>The said project has been developed as access controlled highway in order to provide congestion free, smooth & time saving connectivity to road users. It is further submitted that the detailed reply regarding woodlot forest land & provision of Service Road has already been given in above paras. The highway has been constructed by the technical experts as per the approved drawing & design.</p>

	<i>Road Congress rules.</i>	
12	<i>The only Pond of Gram Panchayat Kiranj, notified under HPWWMA act has been filled for Project without taking NOC and despite the orders of Chief M.P. of Haryana.</i>	<i>The detailed reply regarding the pond has already been given in above paras. NHAI reiterates its stands as detailed in above paras of compliances report.</i>
13	<i>The mini-bridge of village Kiranj over the Gurugram Canal has been destroyed by NHAI.</i>	<i>Minor Bridge over canal has been constructed as per GAD approved by Haryana Irrigation Department. It is submitted that NHAI has not caused any damage to existing mini bridge of Village Kiranj over the Gurugram Canal.</i>
14	<i>The Hajipur Woodlot is Forest Land in accordance with its dictionary meaning as well as other laws laid by Hon'ble Supreme Court of India in various judgments from time to time.</i>	<i>The detailed reply regarding Hajipur woodlot has already been given in above paras. It is also submitted that DFO Gurugram has already clarified that the Hajipur village land was not categorized under Aravali plantation area/PLPA-1900 section 4 & 5 and Protected/Reserved Forest.</i>
15	<i>That trees were also cut illegitimately from the banks of Kiraninala and Kiranj pond.</i>	<i>NHAI has not cut any trees illegitimately from the banks of KiranjNala and Kiranj Pond.</i>
16	<i>The Block Development and Panchayat Officer Indri has sent the NHAI notice for encroaching over panchayat rasta, panchayat Water courses, illegitimately filling the pond of Kiranj village and not providing a service road for local residents to use.</i>	<i>NHAI has completely acted in accordance with law after procuring all the necessary permissions from the relevant departments for development of the project. It has not encroached the panchayati rasta or panchayati water resources, in any manner. It has only acted in furtherance to the permissions granted to it for the purpose of project in consideration and has always strived to sustainably</i>

		<i>develop its projects with minimum effect on the environment.</i>
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Objection dated 29.09.2023 filed by applicant to Joint Committee Status Report dated 11.07.2023:

29. Applicant has filed its reply/objections to Joint Committee's Status Report and alleged that certain material has been concealed by Joint Committee. The objections of applicant are reproduced as under:

- “2. *The joint committee at page 327 admits that principle of sustainable development has been violated by user agency as natural resources of local people have been encroached upon without giving any benefit of ongoing construction of NH-148NA as no service road has been provided infact the life of local people have been made more hard as they have to now travel long routes in daily commute owing to no entry and exit for local commute and blocking of village rastas and relevant finding are also at page 331 of the report.*
3. ***The joint committee report further at page 329 at top three lines admits that 3.34 acres (27 K 11 M) of the Hajipur Village woodlot has been rendered completely inaccessible and useless by dividing into two halves. However, continuous danger to life of people and animals in the area is not highlighted as now animals will have are crossing traffic at high speed on highway to the other half making road accidents on a daily basis a reality here.***
4. ***The joint committee report at page 330 admits that the over bridge over revenue rastas has been made skew and thus, disoriented the revenue rasta and there is no drainage for water in rainy season and will be water logging site in monsoon.***
5. ***The joint committee report at page 330 at last 4 lines admits that the culvert made for evacuating rain water has been blocked and illegally filled with soil and is likely to give rise to flood like situation in the area.***
6. ***The joint committee report at page 333 top three lines admits that two barsati nalas in Village Kiranj in Khasra no.91 & 92 have been encroached upon without being***

acquired. The nalas evacuated rain water to three villages and strategically connected to Gurugram Canal and when encroached illegally NHAI have created a flood like situation and even mentioned by BDPO Indri, in its letter dated 26.07.2022. The nalas are to be restored to their original condition by order of this Hon'ble Tribunal.

7. **The committee in its report at page 334 in most unambiguous and clear words states that the pond has been encroached in village kiranj without mandatory statutory permission under the HPWWMA, Act, 2018 and being aware of the violation made know by BDPO vide its letter dated 26.07.2022.** The trees being illegally cut from the banks of Nalas and village kiranj is also admitted at page 335.
8. However, the Committee, has suppressed the fact that the Haryana Pond and Waste Water Management Authority (HPWWMA) sent out five letters for action against construction on pond, over the course of 2 years when the construction work had not even started. However, the Deputy Commissioner, Nuh, BDPO Indri and subsequently, Project Director NHAI did not pay any heed to the letters and illegitimately and illegally continued constructing the road over the pond despite being aware of the legal violations being made. The HPWWMA letter with No. HPA/Legal/301/892-22/2023/57287-89 dated 25.01.2023 along with copy of previous four letters is attached as Annexure A53.
9. The Committee malafidely did not bring on record the findings of the Tehsildar Palwal who was a part of the Joint Site Inspection and clarified in a written statement that the NHAI has illegitimately constructed over and almost reduced by half, the 27 feet wide only Rasta of the Hajipur Village Forest (Woodlot)/ Charagah. The copy of the report of the Tehsildar Palwal is attached as Annexure A54.
10. That the Joint Committee Report hid the fact that the status of the Hajipur Village Forest (Woodlot)/ Charagah has been illegitimately changed in the Jamabandi's post 2013-14 while acquiring it for construction of the new highway. A representation of the same was given to the District Revenue Officer, Gurugram. Copy of the representation is attached as Annexure-A55.
11. The Committee did not provide any information about density of trees and nor brought on record any photograph from the forest despite being apprised that The Hon'ble Supreme Court in the matter of Narinder Singh & Ors Vs Divesh Bhutani & Ors i.e. Civil Appeal No. 10294 of 2013 has held that " 35....Hence, clauses (ii),

(iii) and (iv) of Section 2 apply to any forest land which may not be necessarily a reserved forest or a protected forest or a private forest governed by Chapter V under the 1927 Forest Act. Restrictions imposed by Section 2 (except clause (i) thereof) apply to every forest land in respect of which no declarations have been made either under the 1927 Forest Act or any other law relating to the forests in force in that State. Therefore, diluting the fact that prior permission by NHAI for diverting of the forest was mandatory from the Hajipur Village Panchayat under FCA, 1980 and such a permission was never taken.

12. *The Committee intentionally refrained from explaining about the Social Forestry scheme under which plantation was done in 1983 in the Hajipur Village Forest (Woodlot)/ Charagah. It is imperative to reproduce the relevant part of an article (which has a reference to Arnold and Stewart, 1991; Chambers et al., 1989; Jodha, 1986 and 1990; World Bank/USAID/GOI, 1988) defining Social Forestry which states “One of the largest interventions designed to increase the production of forest products on communal lands and strengthen local collective management has been the programme of communal woodlots established under Social Forestry programmes and projects in India. Social Forestry had its origins in the country in 1976, when a report of the National Commission of Agriculture recommended growing trees on lands accessible to village people in order to reduce the pressures on production forests caused by mounting rural demands for fuel, grazing and other forest products. This was to be achieved in a number of ways, one of which was to establish woodlots on non-arable communal land, to be managed collectively by the user community, through the panchayat system. Initiated in most states in the early 1980s, the programme expanded very rapidly.”*
13. *The DFO Gurugram, Sh Rajeev Tejyan misled the court by providing that “It is mentioned that a proposal for permission for the use of non-forest purpose was received from NHAI regarding the construction of DND Expressway under FCA, 1980.” However, he has intentionally omitted from quoting about the proposal number or bringing that on record as he is well aware of the fact that no such proposal was received regarding Hajipur Village Forest (Woodlot)/ Charagah. He has also avoided bringing on record 1983 plantation details like the area on which plantation was done or the number of trees planted, survived, etc.*
14. *The Committee suppressed the fact that no amount was given to the Hajipur Village Forest Panchayat as a compensation for 263 trees so cut. The **amount of Rs 58940 is the fine collected by***

the Forest Department Haryana for chopping trees without permission. It is imperative to note here that the Hon'orable NGT in the matter of Vijay Chawla Vs Ministry of Environment, Forest and Climate Change & Ors i.e. O.A. No. 2343/2022 has held that "Accordingly, while accepting the report to the effect that there are violations in cutting of trees and other activities, the status of deemed forest needs to be duly restored.....We fix compensation for such violations at Rs 10 Crores, taking the value of each tree at Rs. 2 lakhs. Apart from the said compensation and liability to restore the forest land, the PP will be required to do afforestation to the extent of 10 times in consultation with the DFO, Faridabad within three months from today."

15. The Committee did not bring on record the relevant excerpt from Handbook of using FCA, 1980 and FCR 2003 which states that "1.21. Ex-post Facto approval and Penal Provisions:

(i) *In cases where the proposal under FC Act has not been submitted and forest land is diverted without FC..... The land in question will not be considered as diverted under FCA1980 and the status of the land shall continue to be forest".*

NHAI reply dated 08.11.2023 filed on 09.11.2023 in response to the objections filed by applicant to Joint Committee Status Report:

30. Parawise response to various objections raised by applicant has been given by NHAI which is reproduced as under:

"7. That the contents of para no. 2 are wrong and denied. It is denied that the NHAI has violated the principles of sustainable development. It is submitted that NHAI is not a profit making organization but aims to develop Highways for economic growth and development of the Nation in a sustainable manner. It is submitted that the NHAI has given sufficient number of structures for cross movement of people and for passage of water in the highway stretch in the said Greenfield section. It is respectfully submitted that regarding the provisioning of service road, the NHAI qua the Project length in urban area (brown field alignment) i.e. on Faridabad Bypass has a provision of 3 lane service road on each side, however, qua the chainage of highway in consideration, the same traverses through Greenfield, thus, no provision of Service Road has been given as per standard practice. That the present project is being developed under Bharatmala Pariyojana. As per the guidelines, service road shall be constructed, limited to the built-up sections (both in the rural and roads shall be proposed to be constructed in the open rural

sections.

8. *That the contents of Paragraph No. 3 are wrong and denied. It is submitted that as per the report of Forest Department in response to the claim of the applicant at para 2(1), the land is not categorized under Aravali Plantation area/PLPA-1900 section 4 & 5 and Protected/Reserved Forest which goes to say that the Forest Land has not been divided into two halves as there exists no forest land at the site in issue (Village Hajipur). It is worth mentioning here that NHAI has given sufficient number of structures for cross movement of people and for passage of water in the Highway stretch in Greenfield section. The Hajipur Village (Nuh) is between chainage 51+150 and chainage 52+800 of stretch of NH -148NA. There are 2 cross structures of 4x4m in the said stretch of Village Hajipur. The village people have access from one side to the other side. Therefore, the contention that Hajipur land has been rendered completely inaccessible and useless is wrong and denied.*
9. *That the contents of Paragraph No. 4 are wrong and denied. It is submitted that there is no water logging in the section and sufficient no of structures for passage of local residents across the Highway have been construction in the entire section of Highway as per site conditions. It would not be out of place to mention here that in a length of 20 Km. passing through Green Field alignment, around 40 structures have been constructed to facilitated movement across Highway. It is also respectfully submitted that the Naib Tehsildar Sohna has also reported that Revenue Rasta of 2 Karam width which extends from Hajipur Village, cross beneath the DND Highway are being used in the public interest smoothly. Moreover, the DPR of the project is prepared by technical experts duly considering the site conditions & requirements and structures at various sites have been constructed.*
10. *That the contents of Paragraph No. 5 are wrong and denied. It is submitted that the culvert for passage of water on Sohna - Palwal Road near the VUP at Km. 53+100 on Project Highway has not been disturbed during construction of project Highway. The said culvert has been constructed by PWD Department, Haryana and is beyond the RoW of National Highway which is for 2-lane width. Even on inspection, it was found that the culvert is fully intact, however, was filled with soil due to recent rains. The concessionaire of the project highway, preemptively, has cleared the soil from the culvert. Further, a new VUP on the Sohna — Palwal road has also been constructed with span arrangement 2x30m considering future widening from existing 2-lane to 4-lane, therefore width at location of crossing has increased. Photographs providing the present location at the*

site have already been annexed by the NHAI at page no. 6 of the status/ compliance report.

11. *That the contents of Paragraph No. 6 are wrong and denied. It is clarified that regarding Survey No. 91 & 92, the same have not been acquired by NHAI for the purpose of Project Highway and perusal of the Land Acquisition Plan also reveals these Khasra numbers falls beyond the RoW of Highway. It is wrong to say that the rain water has been blocked on Gurugam Canal at Village Kiranj. It is submitted that for smooth passing of the water through Nala a culvert has been constructed and minor bridge on Gurugram Canal has also been constructed.*
12. *That the contents of Paragraph No. 7 are wrong and denied. It is submitted that the Project Highway crosses Haryana Irrigation Canal at Km. 54+500 and to maintain the ecology and environment, a minor bridge has been constructed over it without disturbing the pond on RHS. There is a pond on the right hand side on the Highway in Village Kiranj which falls beyond the RoW of Highway and the same not has been disbursed by the Concessionaire of NHAI during the construction of the Highway. The Highway alignment at the location has been designed considering the guidelines for design of Horizontal & Vertical curves for Highways and as per relevant IRC Codes by the DPR Consultant duly considering all the features along the Highway and has been reviewed by Independent Engineer. It is submitted that the notification under section 3A of the NH Act for District Nuh was issued on 20.12.2018 & 13.05.2021. Thereafter, the notification under section 3D of the Act was issued on 05.12.2019 & 13.12.2021 respectively. It would not be out of place to mention here that on the publication of the declaration under sub-section 1 of section 3D, the land shall vest absolutely in the Central Government free from all encumbrances. As per the revenue record, the land bearing Khasra No. 30//3 and 30//8 situated in the Revenue Estate of Village Kiranj was recorded as Gair mumkin under the ownership of Gram Panchayat in the revenue record and the same were notified u/s 3A & 3D on 20.12.2018 & 05.12.2019 respectively. **The report of Niab Tehsildar Indri states that a pond was registered in Khasra No. 30//3 & 30//8 vide rapat no. 246 dated 11.02.2020. Perusal of the same reveals that as per the revenue record there was no pond on the said land at the time of issuance of notification u/s 3A or 3D of the NH - Act.** The land has been acquired by Competent Authority cum DRO-Nuh as per revenue record. The compensation of the land acquired from above mentioned Khasras has already been disbursed to the Gram*

Panchayat, Kiranj by the Competent Authority cum DRO Nuh. It is worth mentioning here that the Gram Panchayat did not raise any objection during the acquisition proceedings. Thus, the contentions of Applicant qua encroachment of pond are wrong and denied. Furthermore, NHAI has already provided a detailed reply on the said contention status/compliance report dated 02.10.2023 and seeks liberty to rely upon the same.

13. *That the contents of Paragraph No. 8 are wrong and denied. It is submitted that the Concessionaire of the project has taken all due care during the construction of the project and the same has been constructed within the RoW and there is no stagnation of water near minor bridge at 54+580. There is no provisions of service road under the said project in Greenfield alignment.*
14. *That the contents of Paragraph No. 9 are disputed and denied. It is submitted that the Applicant under the guise of the present paragraph is trying to bring new set of facts and contentions before this Hon'ble Tribunal which were never raised in the Application and must not be allowed. Further, the Applicant, with malice, is trying to question the legitimacy of the report submitted by the joint committee which is not permissible and must be dissuaded by this Hon'ble Tribunal. Further, it is submitted that the Naib Tehsildar Sohna in response to applicants claim at para 2(6), stated that Khasra no. 51 & 52 are revenue rasta of 2 karam width (11ft.) which extends from Hajipur Village and crosses beneath DND Highway and are being used in public interest smoothly.*
15. *That the contents of Paragraph No. 10 are totally wrong and denied. It is submitted that the **NHAI had only conceptualized the present project in hand in the year 2017 for which notification under Section 3A of the NH Act, 1956 was issued on 20.12.2018 & 13.05.2021 and notification under Section 3D of the NH Act, 1956 was issued on 05.12.2019 & 13.12.2021.** Thus, the contentions of the Applicant regarding the change of Jamabandi for acquisition of new Highway is totally baseless and denied.*
16. *That the contents of Paragraph No. 11 & 13 are wrong and denied. It is submitted that as per the report of the Forest Department, the land of village Hajipur is not categorized under Aravli Plantation area/PLPA 1900 section 4 & 5 and protected/reserved Forest. The land of Village Hajipur which was under the ownership of Gram Panchayat has also been acquired for the project as per the law. The Gram Panchayat did not file any objection regarding the acquisition. The awarded amount of compensation of the said land have been*

*received by the Gram Panchayat. Further, the **NHAI has already taken requisite permission from the Forest Department qua diversion of the forest land required for the project.***

17. *That the contents of Paragraph No. 12 are wrong and denied. It is submitted that in view of its commitment towards betterment of Environment, NHAI on its own, through its Concessionaire has planted more than 6,000/- plants/trees on toll plaza located at Km. 55+400 of the project highway and recently more than 40,000/-seed ball have also been sowed in the lands available within the RoW of National Highway on this particular section of the project. It is also submitted that an amount of Rs. 1276657.00 was deposited for Nuh District and Rs. 937238.00 for Gurugam District against CAMPA funds which includes Compensatory Afforestation. Plantation for the same was to be carried out by the concerned Department.*
18. *That the contents of Paragraph No. 14 are wrong and denied. It is submitted that the NHAI has already deposited the compensations for land & structure, tube wells, trees, etc. as per award announced by CALA and stands disbursed to rightful owners. That some land under the ownership of Gram Panchayat Village Hajipur has also been acquired and the compensation of the same has been received by the Gram Panchayat without any protest. The Gram Panchayat Hajipur did not file any objection during the acquisition proceedings.*
19. *That the contents of Paragraph No. 15 are submission of the Applicant and merit no response. However, anything contrary to the admitted position is denied.”*

Applicant’s Response/Objection dated 23.10.2023 to NHAI Compliance Report dated 02.10.2023:

31. Applicant has given parawise reply as also specific objections to the response of NHAI in respect of pond, culvert restoration and compensatory plantation and also various points responded in the form of chart and applicant’s objections are reproduced as under:

- “7. *That the contents of para 7 are wrong and denied, in totality. The present complaint is about the destruction of the natural resources and environment of village Paroli, Hajipur and Kiranj while at the same time undermining the development of the area, which violates the basic principle of sustainable development*

while constructing NH-148NA. **There is no mandatory approval for diversion of Hajipur village forest taken and village pond in Kiranj has been built upon without any NOC from Irrigation department and other mandatory approvals of being a protected body under HPWWMA with UID no 01HRNUHINR0187KIRA001 has been reduced to one fourth, filled with soil to make road, leaving the village without water and other half, has also dried up, owing to closure of culvert and inlet into the pond.** Thus, it is not a just a petition challenging Land Acquisition by NHAI, as alleged.

8. That the contents of para 8 are being portrayed to overlook the statutory violations and environmental violations by user Agency, NHAI, which cannot be done as such. The user Agency being a statutory body and executing Agency cannot rob the three villages of Haryana and its residents of its water, trees and village forest and the plead national importance of the project. Air pollution has only increased with each successive highway, trees cutting and never reduced. What would have reduced air pollution is trees and forests which have been cut and built upon without following the due process of law or keeping in mind the principle of sustainable development, as such the natural resources in the area are liable to be restored to the extent possible and compensation for irreversible damage done, shall be payable by the User Agency under the Polluter pays principle. It is pertinent to mention here that the three villages and the nearby vicinity i.e. approximately 50 villages have been deprived of any connectivity to the new highway despite the project justification note that remote areas will be given connectivity, on the other hand highway has been built without any regard to local traffic movement and local people have to travel longer distances for same destination now. Therefore, it doesn't reduce any travel time or fuel consumption for local people on the other hand, the highway significantly increases it for them.
9. That in reply to para 9 of report it is submitted that the DRO-cum-Competent Authority for NHAI worked in contravention to NH Act, 1956 while acquiring the land and subsequently constructing NH-148NA. **Non-payment of amount corresponding to evaluation of trees as well as encroachment of Panchayati Rasta with Khasra No. 424, Nalas with Khasra No. 91 & 92 of village Kiranj is blatant violation of the said Act.** Also, it is imperative to note that cost for trees has to be a part of compensation as Section 3(b) of the NH Act, 1956 while defining land states that "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. And, Section 3F of the said Act, confers the

right of building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith only once the land is vested in Central Government as per Section 3D of the Act.

10. That in reply to para 10 of report it is submitted that **Khasra no30//3 and 30//8 has a notified pond under HPWWMA Act and even has a UID no in compliance of directions of this Hon'ble Tribunal. It is incomprehensible that UID numbered water body existence is being questioned by User Agency and puts question on the very exercise under taken by statutory body under HPWWMA Act. It is submitted that the acquisition of the Khasra No 30//3 and 30//8 which is a notified pond, is in contravention to Section 14 of the HPWWMA Act which prohibits disturbing the pond.** Also, the Hon'ble Supreme Court had excluded period from 15.03.2020 to 28.02.2022 from the limitation period due to the COVID-19 situation and Applicant raised first objection to NHAI on 11.11.2021 via email, which fact has been concealed by the User Agency. Also, the panchayat's were dissolved in Haryana and the BDPOs of the area were to exercise power and perform duties of the Gram Panchayat effective from 12th February 2021 as per the Order No. ECA-2/2021/803-1053, of the Governor of Haryana. **Notices were issued by the Haryana Pond and Waste Management Authority during that period and a subsequent notice was also issued by the BDPO Indri against NHAI, all of which are within the knowledge of NHAI and not put forth in this report and exhibits that essential material particulars are absent from the report under reply and is one sided report submitted which is merely an eye wash.** The same have already been supplied to the court with earlier objections and application and not reproduced herein for the sake of brevity.
11. That in reply to para 11 of report it is submitted that NHAI awarding the work of Construction of Highway to Concessionaire M/s Dinesh chandra Giriraj Infra. Pvt. Ltd on 07.08.2020 is matter of record and needs no reply. However, it is emphasized that the relevant time was a phase of COVID-19, which is an extra-ordinary circumstance in history, wherein people in order to save their lives and as per government norms were staying in their homes. Thus, giving the concessionaire objection-less platform to blatantly destroy environment. It is also, informed that during the same period while constructing, the concessionaire built a ramp for accessing the road from local region and subsequently spread rumours that area would be developed by giving access to the area. However, the ramp was closed after

completing the construction work of the road.

12. That contents para 12 of report are denied as wrong and misleading. It is specifically denied that the Petitioner has levelled any false allegations against the answering respondent with alleged ulterior motives for undue benefit, as alleged. It is submitted that **Petitioner has only brought to the notice of this Hon'ble Tribunal blatant violations of statutory provisions by NHAI and destruction of local natural resources without complying with law making user agency liable for compensation as well as restoration of the natural resources destroyed including village pond and woodlot.** The NHAI after blatantly violating the principle of sustainable development has no defence left and is therefore trying to mislead the court by raising allegations of ulterior motive against the applicant without any evidence. However, they admit in this para that multiple PGs were filed before approaching the Hon'ble Tribunal. Still, NHAI did not stop any violation.
13. The contents of para 13 are false and denied. The bridge has been constructed on the canal adjoining the pond. It clearly stated in the **notice by BDPO Indri as well as the joint committee report that construction has been done on the 0.58 acre area of the pond (i.e. on the pond itself by filling it with soil, resultantly the other half has also dried up and dead fishes are lying in the area).** The NHAI is trying to mislead the court by pointing out towards another pond which belongs to private owners and lies on the other side of the canal. It is imperative to note here that the destroyed pond was the only Panchayat pond in the entire village Kiranj and important water resources and protected body under HPWWMA Act has been destroyed without any mandatory approval and compliance. The photographs of the site are attached as Annexure A_56_(colly).
14. That contents para 14 of report are denied as wrong and misleading. It is submitted that the alleged various structures constructed by the concessionaire of NHAI for cross movement are made because NHAI while constructing has encroached upon and covered Panchayati rastas used by local people for cross movement and have to provide alternate route in such situation. But even here the law in the field provides that alternate route and rasta made should be equivalent to the rasta covered and used, however, in the present case the cross movement provided are less than the preexisting Panchayati Rastas/ roads over which the new road has been constructed, in one case as rastas is one half the original width and height is so low that agricultural

machinery cannot cross through it. Also, the DPR Consultant and the Independent Engineers have kept the dimensions of the road and that of cross- movement structures in contravention to site requirement for ulterior motives. These private firms are backed by the NHAI Project Director, V.K. Joshi for his unknown motives, is hiding the true facts of the site. It is the User Agency NHAI which seems to have ulterior motives and undue benefits.

15. *The contents of para 15 submitted by NHAI as a response to the order dated 12.07.2023 of this Hon'ble Tribunal are misleading. The factual status and the compliance report as follows has been incorrectly portrayed:*

A. POND AT KM. 54+500:

- i. *That in reply to the corresponding para it is submitted that the elevated road has been constructed in 0.58 acre of the 2 acre notified pond in blatant violation of HPWWMA Act. The Independent Engineers and the DPR Consultant work as per the directions of NHAI only and thus can't be relied upon. Also, there was ample amount of space in the vicinity of the pond to be consumed for constructing the new highway however, shortest route by building over the pond was chosen so as to save money.*

The pond in Khasra No. 30//3 and 30//8 in the revenue estate of village Kiranj, District Nuh was notified under Haryana Pond and Waste Water Management Authority Act (HPWWMA), 2018 with UID No. 01HRNUHINR0187KIRA001 requires a notification and NOC under the law before the same can be acquired for any purpose by any instrumentality of State. That the NHAI were required to take prior permission from HPWWMA under Haryana Pond and Waste Water Management Authority Act (HPWWMA), 2018 under Section 14 and is a punishable offence under Section 20 to 23 of the Act, 2018, which could be given only in public interest, whereas in the present case everything, land, water and trees of the people of the area has been taken by User Agency NHAI and without any balancing of interests for local people That construction over the pond is without compliance of mandatory provisions of Section 14 of the HPWWMA Act, the Pond is liable to restored to prevent damage to the environment and ensure availability of water to local people (ref also to principle laid down in Hinch Lal Tiwari Vs. Kamla Devi (2001) 6 SCC 496). This mandatory permission was intentionally skipped by NHAI so as to avoid giving benefit of access of the road to the local people for their personal interests. The relevant portion of the section 14 of HPWWMA Act is reproduced below:

“Provided further that the Authority may grant permission for any of the above prohibited uses, in public interest with the prior concurrence of the Government.”

*Multiple notices were issued by HPWWMA and subsequently by BDPO indri despite that the NHAI completed the construction on pond in January 2023 after the filing of this case, despite being completely aware that construction over the pond which is protected body is without mandatory permissions under law. This was done so as to portray in front of the court that the project was already completed and should not be disturbed but such conduct should not be condoned on the ground of project being completed as it amounts to NHAI taking benefit of their own wrong which is not permissible in law. The rule of law is given a complete go by if such conduct is condoned i.e. deliberately continuing construction over a protected water body without mandatory permission and despite notices by other authorities. The Google Earth photo of the site is attached as **Annexure 57**.*

- ii. *The pond existing on right side of the highway was never a part of the dispute and NHAI is now trying to mislead the Hon'ble court. It is the pond on the left hand side which has been illegally filled with soil and built upon and other half has now completely dried up owing to closure of inlets in the pond and destroying its natural state. However, at the same site the syphon connecting the canal to the pond on left has been completed destroyed as well as the Irrigation Nalas with Khasra No. 91 & 92 were also encroached upon by NHAI for which even BDPO Indri has given notices dated 26.07.2022 which are annexed with original application.*
- iii. *There is no compensation to any Gram panchayat till date and which can be seen that neither the amount of compensation of date of disbursal of compensation is mentioned by NHAI. At this juncture, it is important to note that the NHAI while building the Highway on a private pond of village Kiranj with Khasra No. 83, has created a water logging site by illegitimately blocking the Panchayati Rasta which extends from National Highway-919 to Khasra No. 3//11/2 and falls on the right of Khasra No. 7//5/1, 2//5, 2//16, 2//15, 3//11/1. Since, the area is a depression landform and the illegitimate elevated construction on the revenue rasta has closed all modes of water to spread over the fields, thus making it a water logging site. It is imperative to note here that the Haryana Canal and Drainage Act, 1974 came into force on 05.04.1976, in the State of Haryana and provides under Section 18 that without publication, in such form and manner as may be prescribed for inviting objections and suggestions in*

respect thereof within twenty-one days of its publication, there shall not be any alterations made to any works, embankments, structures, including outlets, supply and escape channels connected with such canals, channels or reservoirs maintained or controlled by the State Government for the supply of water. **However, neither was any such publication made and nor any NOC was taken prior to encroaching over the two panchayat irrigation channels of kiranj village, connected with the canal that too without any land acquisition by the user agency.** Also, mandatory guidelines dated 14.10.2013 regarding measures for proper utilization of unutilized/ abundant land (revenue rastas/ water channels) of Gram Panchayats from Principal Secretary to Govt Haryana, Development & Panchayat Department, Haryana provided that “...Wherever a water-course/channel passes through the area forming part of the planned urban development, and the continuation of such water course is found essential for serving any farmers situated outside such area, the Development agency may be allowed to use the land under such water course/channel in the interest of planned development of the area subject to the conations that the Development Agency shall have to develop an alternate water-course, through the shortest feasible alternate route, entailing equal or more land than that falling under watercourse proposed to be shifted/realigned.”

B. CULVERT RESTORATION:

- i. *That contents of the corresponding para are wrong and denied. It is submitted that the NHAI after creating a flood like situation in the area, is now alleging earth fill in the culvert due to rains which is absolutely misleading, as there has always been rains in the area around monsoon season but never an earth fill, which surprisingly and allegedly occurs for NHAI when an application is filed before this Hon’ble Tribunal. The earth fill in the culvert wasn’t because of the recent rains but due to the soil filled by NHAI while elevating land for road construction. The culvert was never a part of ROW, still it was damaged for easy movement of the trucks, used while constructing the road as initially there was a temporary ramp built at this site which has been removed now. This was also reported by the joint committee in the report that the peripheral structure of the culvert was demolished and the culvert was subsequently covered with soil. The peripheral structure still is missing as can be seen from the pictures provided by NHAI. Also, at the same location the Panchayat Rasta of Kiranj revenue estate with Khasra No. 424 has been encroached which has blocked the rasta for all farmers whose land abutted the same and was*

even reported by the joint committee report.

C. COMPENSATORY PLANTATION:

- i. That contents of the corresponding para are wrong and denied. It is submitted that highway is built alongside land of private owners who are farmers and there were trees all along the route, however, no compensation for trees which belonged to private land owners or any other owner apart from forest department was ever paid. The NHAI malafidely ensured that only those trees which are owned by forest department come on record of getting chopped whereas no account of other trees was kept. This fact is even admitted in the joint committee report. Moreover, the physical possession has been taken even of that land which has not been acquired i.e. the Panchayat Rasta and Irrigation Channels which have been encroached and destroyed making NHAI liable to the local people to provide equivalent rasta and irrigation channels which are encroached upon.
- ii. In this para the NHAI mentions about planting 6000 plants/trees in the Toll Plaza located at Km. 55+400, however, it is important to note that the Toll **Plaza itself has been built illegally by blocking the 8 Karam (44 feet) wide revenue rasta which connected Indri to village Kiranj. The work of construction of that 8 karam wide rasta was already allotted by PWD (B&R). However, NHAI being least bothered about the resources and benefits of the local area has blocked the path.** A letter about the matter, by Superintending Engineer, Gurugram Circle, PWD (B&R) is attached as **Annexure 58**.

Further herein below is the pointwise response to the claims of NHAI in relation to issues raised in the Original Application:

Sl no	Contention	NHAI Response	Applicant's Objections
1	The NHAI has cut 441 trees from Hajipur woodlot, Forest Land without permission including that of 200 kikar/mesquite (tree banned	The allegation levelled by the complainant is false and hence denied. As already explained in para-C above, that during DPR stage joint site inspection with concerned forest officials was carried out to identify land/trees of Forest	As already explained in para C above, that the trees owned by Panchayats, private owners or any entity apart from Forest Department were malafidely never brought on record before chopping them and neither was any compensation ever paid

	<p>to cut in Haryana)</p>	<p>Department and necessary permissions were obtained from the Forest Department for diversion of Forest Land. The contents of para c are reiterated here, the same has not been reproduced for the sake of brevity.</p> <p>It is further submitted that as per the damage report of Forest Department issued after ascertaining factual position, only 263 trees were cut and not 441 as alleged by the complainant. In this context, may kindly refer damage report furnished by DFO Gurugram, wherein, it has been stated that the damage report No. 035/0502 dated 18.01.2022 was issued and compounded in accordance with section 68 of IFA, 1927 and compensation of Rs. 58,940 was received by Forest Department.</p>	<p>about the same. This fact was even admitted in the joint committee report.</p> <p>As far as the number of trees cut is concerned, it is the fault of Forest Department Haryana which is evident from the fact that the damage report No. 035/0502 dated 18.01.2022 does not mention any recovery of chopped mesquite trees. Hence, they did not consider the 200 mesquite trees cut from site while calculating the number of trees. The concessionaire readily agreed to pay 58940 amount as penalty for illegitimately cutting trees as they were guilty of chopping the trees and were happy that the true number of trees have not come on record. Therefore, less penalty being imposed. This Hon'ble tribunal is apprised that this amount was only the penalty for cutting trees without permission however, no compensation of those trees was ever given to the Panchayat of village Hajipur. It is imperative to note that in the matter of <u>OA No. 234/2022,</u> <u>this Hon'ble tribunal has</u></p>
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			<u>held the cost of one tree cut as 2 lakh rupees.</u>
2	<p>The NHAI diverted the Hajipur woodlot, Forest Land without taking approval from MoEF&CC in accordance with the procedure laid down under Forest Conservation Act, 1980 and destroyed the woodlot by dividing it into two halves and one side being completely inaccessibly from any side.</p>	<p>In this regard, it is submitted that as per the report of Forest Department, there is no woodlot at Hajipur Village. So, the question of diverting the Hajipur woodlot or dividing the forest land into two halves does not arise.</p> <p>As regards the development and construction of the highway on the forest land, it is submitted that the work of development of project highway in the affected reach was undertaken only after receipt of “In-principal” approval from MoEF&CC. The contents of para C above are reiterated here, the same has not been reproduced for the sake of brevity</p>	<p>Vide objections submitted on 2 Oct 2023, it was informed that the DFO-Gurugram is intentionally suppressing the facts regarding the Hajipur village Woodlot. The joint committee report has already supplied that there was plantation done by Forest Department Haryana on the said land as per the old Panchayat record. However, the Forest Department has concealed from bringing the details of 1983 plantation on record.</p> <p>The said plantation was done as per Social Forestry Scheme, converting the land into a woodlot Forest and an article about the same is attached as Annexure 59. Moreover, this parcel of land was recorded as Charagah and Jungalat in the online Jamabandi of the year 2017-18. The State Government in collusion with NHAI has now illegitimately removed the status of charagah from the</p>

			<p>jamabandi. This objection was already raised in the objections filed on 2nd Oct 2023. Also, the Hon'ble Supreme Court has held in the matter of Narinder Singh & Ors Vs Divesh Bhutani & Ors i.e. Civil Appeal No. 10294 of 2013 has held that clauses (ii), (iii) & (iv) of section 2 of the FCA, 1980 applies to any forest land which may not be necessarily a reserved or protected forest. Also, in the same judgement it was held that if any revenue record mentions of a land to be a forest then it will be held as a forest only. The judgement has already been quoted in the petition earlier and not reproduced for the sake of brevity.</p> <p>Also, the NHAI did not take any permission from MoEF&CC regarding the Hajipur woodlot Forest.</p>
3	The NHAI held in the Project Note containing justification for locating the Project in the	It is submitted that the allegation raised by complainant regarding connectivity is totally misconceived. The complainant has	Apart from mentioning about connectivity in the Project Justification Note while diverting the forest land, the NHAI while replying to a Public Grievance with

<p>forest land submitted to MoEF&CC via proposal No. FP/HR/ROAD /4442 0/2020 that “This project aim to improve connectivity particularly on economic corridors, border areas and remote areas with an aim of rapid and safe movement of cargo to boost exports”. However, no connectivity even the service road is absent from the area where land has been taken for the highway including one pond, several protected trees, village woodlot/charagah land and two panchayti raastas.</p>	<p>failed to appreciate that present project provides crucial linkages and connectivity between various Towns and cities by providing linkages between various distant Highways The project “Construction of 6 lane access – controlled highway from Junction with Sector 62/65 Faridabad – Ballabgarh Bypass to Junction near KMP Expressway with NH-148 N (Delhi Vadodara Expressway with NH – 148NA (Design Ch. 33.000 to Ch 59.063) in the State of Haryana on Hybrid Annuity Mode under Bhartmala Paryojana” aims at providing hassle free, smooth and safe connectivity to road users travelling from Delhi – NCR to Delhi – Vadodara Expressway and has significantly reduced the travel time lowering the fuel emissions and environment al pollution levels in the area. Sufficient number of structures for cross movement and water passage</p>	<p>Reg No. MORTH/E/2022/10249 dated 06.07.2022 in their response with letter No. NHAI/CMU/MTR/PG/2 022/D-67131 dated 12.08.2022 has clearly stated that <u>“The grievance has been examined by the IE of the project and accordingly it is conveyed that six laining of DND NH. 148NA Faridabad-Sohna National Highway is being developed to connect Delhi to Sohna.”</u> The same response has been attached as Annexure 60. The Hon’ble Supreme Court in the matter of Dental Council of India vs Hari Prakash, (2001) 8 SCC 61 and Harbhajan Singh v. Press Council of India, (2002) 3 SCC 722 has held the words of a statute must prima facie be given their ordinary meaning. Also, the same was reiterated by the Apex Court vide the statement “that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation” in the</p>
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		<p>have been constructed in the highway stretch in the said Greenfield Section. In the matter of provisioning for service road, it is apprised that the project length in the urban area (brown field alignment) i.e. in Faridabad bypass has provision of 3 lane service road on each side but in the highway traverses through Greenfield therefore, no provision of Service Road has been given as per Standard practice.</p>	<p>matter of NHAI Vs Pandarinathan Govindarajulu & Anr. i.e. Civil Appeal Nos. 4035-4037 of 2020. It was also admitted by the joint committee report that the PWD report has recommended construction of access point for the area as per IRC norms and despite that no access has been given. It is imperative to understand that the project under dispute is not the entire Delhi-Vadodara-Mumbai Expressway but only the greenfield stretch from junction with Sector 62/65 dividing road on Faridabad – Ballabhgarh Bypass to junction near KMP Expressway i.e. Design Ch. 33.000 to Ch. 59.063 (26 kilometers). Hence, the statement that this stretch of the road provides crucial linkages between various distant Highways is incorrect and denied. Also, there is no such Standard which prohibits providing Service Road on Greenfield stretch. Rather, the 2018 guidelines on Land Acquisition for National Highways under The National Highway Act,</p>
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			<p>1956 vide it's point no. 9 regarding approach to development of NH along a Green-field alignment states that "(iii) The highway shall have provision for service roads, preferably of 10 mtrs width, with maximum access-control for the main carriageway. (iv) Access to the towns/cities/ establishments located on the existing National Highway, may be provided through spurs from the green-field route."</p>
4	<p>That the NHAI is only concerned with minting money as denied access to the Project for local residents by giving weightage to functioning of Toll Plaza while blatantly violating the principle of sustainable development and National Forest Policy 1988.</p>	<p>That the allegations are wrong and hence denied. It is submitted that the NHAI was created through the promulgation of the National Highways Authority of India Act, 1988. Section 16(1) of the Act states that the function of NHAI is to develop, maintain and manage the National Highways and any other highways vested in, or entrusted to, it by the government of India. However, the NHAI is not a profit making organization but to</p>	<p>The project is being built in Hybrid Annuity mode which means that 60% of the cost incurred for road construction has to be raised by the road developers (Private agencies), whose financial interest is associated with constructing highway at low cost. The private agencies/ concessionaires being backed by NHAI officials have also overlooked various environmental norms and laws while constructing the elevated highway so as to save money. Hence, making the local public</p>

		aim development of Highways for economic growth and development of the Nation in a sustainable manner.	suffer just for the sake of minting money. The principle of sustainable development has been blatantly violated as explained in objections and in original application.
5	That the Deputy Commissioner Gurugram and the Block revenue Development and Panchayat Officer Sohna did not take any action despite the site visit by BDPO regarding destruction of Hajipur woodlot Forest Land and spoiling the revenue rastas by NHAI.	The detail regarding the woodlot forest has already been given in the above paras and the same is reiterated and has not been repeated for the sake of brevity. The allegation with regarding to spoiling of rasta is totally vague as per site condition. It is however, submitted that sufficient number of new structures for passage of local residents across the highway have been constructed in the entire section of the highway. In a length of 20 KMs passing through greenfield alignment around 40 structures have been constructed to facilitate movement across highway.	The objections regarding the Forest Department, hiding the facts and working in collusion with NHAI have already been given in above paras and the same is reiterated and has not been repeated for the sake of brevity. Also, the copy of letter from Director General, Development & Panchayat Department, Haryana regarding the huge loss and suffering of villagers of Kiranj and Hajipur, forwarded to Deputy Commissioner Gurugram and Deputy Commissioner, Nuh is attached as Annexure 61. However, no action was taken to prevent destruction of the Hajipur Village Woodlot.
6	That the Deputy Commissioner Palwal did not take any	It is submitted that underpass at Km. 50+900 near Paroli Village has already been constructed to	The report of Tehsildar Palwal regarding this contention was hidden and not brought on record

<p>action to safeguard the Paroli village revenue rasta with Khasra No. 98, which has become a site of water logging in Monsoon and connected to Hajipur Woodlot Forest Land and has been spoiled due to disoriented overbridge with improper dimensions, by NHAI in violation to Principal Secretary to Govt. Haryana, Development & Panchayat Department</p>	<p>facilitate the movement across the Highway. It is further apprised that number of over bridges/ Vehicular Underpasses/ Minor bridges and other structures etc. have been constructed as per the design of highway considering relevant codes and specifications duly reviewed by the Independent Engineer. There is no water logging in this section of highway. The traffic is smoothly plying using the underpass. It is also clarified that as per the report of the forest department there is no woodlot forest land at Hajipur. Therefore the spoiling of woodlot forest land does not arise.</p>	<p>which was already supplied to this Hon'ble Tribunal vide objections raised on 2nd Oct 2023. It is evident from the report that the Panchayat rasta which was 5 karam wide (27.5 feet) is now only 13.3 feet at the site due to the encroachment by NHAI.</p> <p>The Hon'ble Court is also apprised that the NHAI has intentionally kept the width of the rasta less only to give benefit of cost saving to the concessionaires. As one of the NHAI representatives explained during the discussion post site visit by joint committee, that the height of the road elevation increases in correspondence of the width of the overbridge due to technical constraints. It is imperative to note here that the entire stretch is an elevated road but the section of the highway adjoining to this Panchayat Rasta which traverses through the Hajipur Village Woodlot Forest has been devoid of any elevation because if the true width of the Panchayat Rasta is to be maintained then the</p>
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			section through Forest also would have to be elevated. This would thus fail their malafide motives.
7	<p>The Haryana Forest Department made a faulty Forest Offence Report which did not include the 200 mesquitte trees so cut from Hajipur Gochar Forest Land and held the contractor responsible for the offence instead of the NHAI violating EC Part B – General Condition (xiv) which stipulates “The project proponent is responsible for compliance of all conditions in Environmental Clearance letter and project proponent cannot absolve himself/herself of the responsibility by shifting it to any contractor</p>	<p>It is denied that the Haryana Forest Department made a faulty report. Reference is invited to damage report no. 035/0502 dated 18.01.2022 whereby due to violation of Section 4 (General) of PLPA, 1900 action has been initiated by the Forest Department. As such the action stood compounded in accordance with section 68 of IFA, 1927 and penalty/compensation of Rs. 58,940 had been deposited by the concerned. Further, NHAI has not violated any of the conditions of the in-principle approval granted to it by the MoEF&CC.</p>	<p>The Haryana Forest Department’s said damage report is faulty because the report quotes 263 trees cut without any evidence regarding the number of trees. The contractor happily paid Rs.58,940/- as a penalty because they knew that the damage was much higher and they were penalized for much lower amount.</p> <p>Also, penalty was to be imposed on NHAI for <u>violating EC Part B – General Condition (xiv) which stipulates “The project proponent is responsible for compliance of all conditions in Environmental Clearance letter and project proponent cannot absolve himself/herself of the responsibility by shifting it to any contractor engaged by project proponent”.</u></p>

	<i>engaged by project proponent”.</i>		
8	<i>The Forest Department Haryana did not take concrete measures to stop destruction of pond, water courses, illegitimate tree cutting and destruction of Hajipur Woodlot Forest Land despite multiple reminders from MoEF&CC.</i>	<i>NHAI has acted pursuant to requisite permissions granted to it by various departments and has not done any destruction to pond, watercourses, etc. Further, it is submitted that as per report of Forest Department there is no woodlot at Hajipur Village. So, the question of destroying the Hajipur Woodlot does not arise. The allegation raised against various Govt department are vague and incorrect.</i>	<i>Notices have been issued to NHAI by BDPO Indri, Palwal Tehsildar, HPWWMA and even the joint inspection committee report found that pond has been filled with soil and built upon, yet NHAI has the audacity to deny the destruction of pond, water courses etc. NHAI has even taken the leverage to re-frame the objection of Application here to suit its reply, for original objection of applicant the, original application and joint inspection committee report be referred to. The details of State Government hiding facts were already supplied vide objections supplied to the Hon’ble Tribunal on 2nd October 2023. The same be read as part and parcel of the reply here and not repeated for the sake of brevity.</i>
9	<i>That, Kiranj Panchayati Rasta which extends from National Highway 919 to Khasra No. 3//11/2 and falls on the right of Khasra</i>	<i>The said location is adjacent to Sohna-Palwal road crossing at Km. 53+100 of project Highway. As detailed in above paras, underpass has been constructed with span arrangement 2x30m</i>	<i>This fact was admitted by the joint committee report. The Panchayat Rasta with Khasra No. 424 has been encroached by NHAI and the local farmers have no way to access their lands now. The land in this area is a</i>

	<p>No. 7//5/1,2//5, 2//16, 2//15, 3//11/1 which is a part of depression form and has been illegitimately blocked while constructing upon a private pond abutting it thus leading to a water logging site with a danger of flood.</p>	<p>considering future widening from existing 2- lane to 4-lane of Sohna-Palwal highway. As far as matter of flooding at the location is concerned, the said allegation is away from the truth. That a culvert is also at the same location across Sohna-Palwal road beyond RoW of project Highway and the same has not been damaged by the Concessionaire during construction. Rather, the same has been cleaned by Concessionaire. Further, underpass of 4x4m has been constructed at Km. 52+440 which is presently being used for cross movement of local villagers and another structure of size 3 X 3m has been constructed at Km. 52+705 for crossing of water as well as pedestrians. The reply given in Para B above may please be read as part & parcel of this para also.</p>	<p>site of depression where water logging happens which is evident from the fact that the PWD has strategically placed a culvert at this location.</p>
10	<p>That the NHAI has encroached upon the Kiranj Panchayat Nala with</p>	<p>It is submitted that Khasra number 90 has been acquired by CALA (DRO-Nuh) for Highway Development after following due</p>	<p>This fact was admitted by the joint committee report that the Kiranj Panchayat Nala with Khasra No. 91 & 92 have been encroached by NHAI. A notice was</p>

	<p><i>Khasra No. 91 & 92 which served Hajipur as well as Kiranj.</i></p>	<p><i>procedure as envisaged under the National Highways Act-1956 and relevant provisions of RFCTLARR Act-2013. Award for the said survey no. was declared by CALA. In so far as Survey No. 91 & 92 is concerned, the same have not been acquired and perusal of the Land Acquisition Plan reveals these Khasra numbers falls beyond the RoW of Highway.</i></p>	<p><i>also issued by the Irrigation Department regarding the same considering the danger of flooding in the area.</i></p>
11	<p><i>That the project which destructed the natural resources of local residents (Woodlot Forest Land, Pond, watercourses) is of no use to them as no access to the same has been given violating fundamental right to access for roads, despite the local Ministers recommendati on and XEN PWD report made at direction of DC Nuh for the benefit of 3</i></p>	<p><i>The said project has been developed as access controlled highway in order to provide congestion free, smooth & time saving connectivity to road users. It is further submitted that the detailed reply regarding woodlot forest land & provision of Service Road has already been given in above paras. The highway has been constructed by the technical experts as per the approved drawing & design.</i></p>	<p><i>There is no access to the road for local residents and the detailed objections about destruction of natural resources has already been given in above paras.</i></p>

	<i>lakh people in accordance with Indian Road Congress (IRC) rules.</i>		
12	<i>The only Pond of Gram Panchayat Kiranj, notified under HPWWMA act has been filled for Project without taking NOC and despite the orders of Chief Minister of Haryana.</i>	<i>The detailed reply regarding the pond has already been given in above paras. NHAI reiterates its stands as detailed in above paras of compliance s report.</i>	<i>The detailed reply regarding the destruction of pond has been given in above paras. Also, the 5 notices issues by HPWWMA apart from the notice of BDPO Indri were already provided to this hon'ble tribunal vide objections dated 2nd Oct 2023.</i>
13	<i>The mini-bridge of village Kiranj over the Gurugram Canal has been destroyed by NHAI.</i>	<i>Minor Bridge over canal has been constructed as per GAD approved by Haryana Irrigation Department. It is submitted that NHAI has not caused any damage to existing mini bridge of Village Kiranj over the Gurugram Canal.</i>	<i>The mini-bridge that was destroyed was later repaired by NHAI</i>
14	<i>The Hajipur Woodlot is Forest Land in accordance with it's dictionary meaning as well as other laws laid by Hon'ble Supreme Court of India</i>	<i>The detailed reply regarding Hajipur woodlot has already been given in above paras. It is also submitted that DFO Gurugram has already clarified that the Hajipur village land was not categorized under Aravali plantation</i>	<i>The detailed reply regarding Hajipur Woodlot Forest and the DFO Gurugram, hiding 1983 plantation record has been given above and not repeated here for the sake of brevity.</i>

	<i>in various judgements from time to time.</i>	<i>area/ PLPA1900 section 4 & 5 and Protected/ Reserved Forest.</i>	
15	<i>That trees were also cut illegitimately from the banks of Kiranj nala and Kiranj pond.</i>	<i>NHAI has not cut any trees illegitimately from the banks of Kiranj Nala and Kiranj Pond.</i>	<i>This fact was even admitted by the joint committee report that trees were cut from the banks of Kiranj Nala and Kiranj Pond</i>
16	<i>The Block Development and Panchayat Officer Indri has sent the NHAI notice for encroaching over panchayat rasta, panchayat water courses, illegitimately filling the pond of Kiranj village and not providing a service road for local residents to use.</i>	<i>NHAI has completely acted in accordance with law after procuring all the necessary permissions from the relevant departments for development of the project. It has not encroached the panchayati rasta or panchayati water resources, in any manner. It has only acted in furtherance to the permissions granted to it for the purpose of project in consideration and has always strived to sustainably develop its projects with minimum effect on the environment.</i>	<i>The NHAI has blatantly violated the principle of sustainable development. They have encroached upon the Panchayat Rasta, water courses and illegitimately filled the notified pond without taking any permission from HPWWMA. This fact was admitted by the joint committee report.</i>

32. Learned Counsel appearing for applicant contended that there is an attempt on the part of NHAI to explain various violations noted by Joint Committee in its factual Report dated 11.07.2023 but on certain aspects, the violations of environmental laws and norms on the part of NHAI are

evident and, therefore, NHAI should be directed to restore the position as it was and should also be saddled with responsibility of payment of environmental compensation in accordance with law. The issues highlighted by applicant are in the context of illegal diversion of forest land, cutting of 441 trees in Hajipur village forest, encroachment due to culvert deposit at junction at Sohna-Palwal Highway, encroachment of 2 nallahs of village Kiranj i.e., khasra no. 91 and 92, encroachment on village pond land and cutting of trees at the bank of nallahs of Kiranj pond.

33. Learned Counsel appearing for NHAI, on the contrary, referred to responses filed by NHAI and stated that though some constructions have been made but that is for the betterment of the public for providing smooth passage unobstructed, unhindered and clear. Therefore, it cannot be said that NHAI has committed any violation of environmental laws. However, he further stated that in case, Tribunal finds any construction made in violation of environmental laws, NHAI may be directed to remove the same though as a matter of fact, no such construction in violation of environmental laws has been made and hence, there is no question of further direction of payment of environmental compensation by NHAI.

34. The stand of Learned Counsel appearing for HSPCB and MoEF&CC is that Joint Committee Report is already on record and in the light thereof, Tribunal may pass appropriate order which shall be complied with by the authorities concerned.

ISSUE:

35. The only issue up for consideration in this OA is, “whether there is any violation of environmental laws and norms on the part of NHAI in execution of the project in question and if the answer is yes, what order

would be appropriate in the facts and circumstances of the case particularly, when the project has already been executed and is under operation”?

Consideration on Merits:

36. We may consider above issue on the specific acts of violation which are referred to in Joint Committee Report and pressed upon by Learned Counsel appearing for applicant as also in the light of response of NHAI.

37. **The first allegation** is regarding diversion of Hajipur village forest (woodlot/charagah) for construction of NH-148NA and that too without permission from the Competent Authority i.e., in violation of Section 2 of FC Act 1980.

38. The stand of NHAI is that the land was validly acquired under the provisions of NH Act 1956 read with Acquisition Act 2013 and compensation has been paid to Gram Panchayat. Divisional Forest Officer has taken a stand before Joint Committee that the diverted land was not categorised under Aravalli Plantation Area and is not a protected/reserved forest or land covered by Sections 4 and 5 of Punjab Land Preservation Act, 1900 (hereinafter referred to as **‘PLP Act 1900’**). It is further stated that for use of forest land for non-forest purposes, the permission was sought by NHAI under FC Act 1980 and it was granted by MoEF&CC vide letter dated 18.09.2019. Joint Committee has found that 15 acres of land at Khasra no. 3/10, 3/11, 3/20, 4/6, 4/15, 4/16 and 4/17 was village land under village Panchayat, Hajipur. It was given to Forest Department, Sohna Range, for plantation for one year under a scheme and was supposed to be returned to village Panchayat after one year. Admittedly, land is neither categorized under Aravalli Plantation area

nor falls within the purview of Sections 4 and 5 of PLP Act 1900 and also neither protected nor reserved forest. That being so, it is evident that the above land was a village land and acquired by NHAI under the provisions of NH Act 1956 read with Land Acquisition Act 2013. Therefore, after its acquisition, the ownership vested in Government of India. To this extent, we do not find any inconsistency in the stand of NHAI.

39. However, it is also evident from record that in Jamabandi of 2013-14, the said land was in the category of 'charagah'. Whether ownership of the land vest in the Gram Panchayat or Government of India but the fact remains that nature of the land was 'charagah' in the revenue record and its nature was never changed. A 'charagah' is a land which is for the benefit of the villagers for providing feed to the cattles in the village. The 'charagah' or 'gochar' land is meant for common use of villagers and its use could not have been changed due to change of ownership or due to acquisition unless such change is allowed in accordance with law. It is nobody's case including that of NHAI that user of land was ever allowed to be changed at any point of time in accordance with law. In fact it continued to be a 'charagah' or 'gochar' land.

40. In ***Rameshbhai Virabhai Chaudhari vs. The State of Gujarat & Others, Civil Appeal No. 5135/2021*** (arising out of SLP (Civil) No. 14222/2019) decided on 06.09.2021, it has been observed by Supreme Court that "*Gochar land can be used only for purposes for which it is permitted to be used. If there is a user contrary to the permissible user, whether by the State or by any third party, the same cannot go on.*"

41. The question, whether a land reserved/recorded as 'Gochar' can be changed in respect of its user for any other purposes has been answered

by Supreme Court in ***State of Jharkhand & Others vs. Pakur Jagran Manch & Others, (2011) 2 SCC 591*** wherein 4.40 acres of land in Thana No.24, Plot No.1061, Mouza Solagaria, Circle and District Pakur, State of Jharkhand was notified and recorded as Gochar (village grazing land) by issuing a notification under Section 24 of Santhal Parganas Settlement Regulations, 1872. Government of Jharkhand on 21.12.2005 authorised Executive Engineer, Rural Development, Special Division, Pakur to construct a hospital building on the said land in order to give effect to a direction issued by High Court of Jharkhand in *Writ Petition No. 5332/2001* with regard of effective implementation of national leprosy eradication programme and for improving standards of health of the tribal residents of the area. In Public Interest Litigation (*W.P. (PIL) No.6779/2006*), it was challenged before High Court that grazing land (Gochar) could not be used for any other purpose and therefore, construction of a hospital in the Gochar land should be prohibited. State Government thereupon issued a notification on 31.05.2007 under Section 38(2) of Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 de-notifying Gochar land in plot no. 1061 and declaring another land for the said purpose. Thereafter, it raised defense before High Court that since nature of Gochar land has changed by following procedure prescribed in law, therefore, there is no impediment in using the said land for construction of hospital. High Court negated the above stand of State Government vide judgment dated 17.08.2007, allowed Writ Petition and held as under:

“(i) The State had no authority to construct a hospital in the land earmarked as gochar meant for grazing of cattle. (ii) The notification dated 31.5.2007, denotifying and releasing the gochar in order to hand over the same to the health department for construction of a hospital, was not valid in law, having regard to the bar contained in section 38(1) read with sections 67 and 69 of the Tenancy Act.”

42. Supreme Court upheld the notification dated 31.05.2007 but observed that de-reservation of any Government land reserved as 'Gochar' should only be in exceptional circumstances and for valid reasons having regard to the importance of 'Gochar' in every village. Any requirement for public purposes should be met from available waste or unutilised land in the village and not 'Gochar'.

43. The importance of grazing land/Gochar in a village for use by village community is not disputed before us also. Poor villagers may not afford to purchase expensive feed and fodder for their domestic animals to provide them good health and nutrients foods. Grazing land provides economic support to these indigent people. It is a very source and means of livelihood for them. Besides, it is also a part of ecology. A grazing land helps a lot in maintaining ecological balance by providing domestic animals of the rural people, their natural habitation, natural home, natural environment and natural vegetation where they eat food/grass, drink water, get pure air, sunlight, rest, move and enjoy freedom from the shackles of farm house, freedom from the fetters of road and freedom from every iron bar. Their habitats are necessary and necessary to be preserved as otherwise it would be a perpetration of cruelty, torture, exploitation and degrading of domestic animals and unbalancing ecological system.

44. The judicial precedents referred above show that 'Gochar' land is for use of village community and cannot be used for any other purposes unless its user is changed by following the procedure prescribed in law if there is any enabling provision, otherwise nature of 'Gochar' land cannot be changed. Even acquisition of land by NHAI per se would not result in change of user of the land since the village community will continue to have

its common rights protected with regard to grazing of cattles and mere change of ownership will not demolish such right of common villagers/village community. The contention of NHAI that the land was acquired by it, therefore, would not entitle to change user of the land unless the same is obtained in accordance with law. There is nothing on record which shows that NHAI got the user of the land/nature of the land converted/changed so as to entitle it to use 'Gochar' land for a purpose other than as grazing land/Gochar land/Charagah. The construction raised on 'Gochar' land by NHAI, therefore, is clearly illegal and has resulted in damaging ecological balance for which purposes the land was identified and reserved as Gochar/grazing land/Charagah.

45. **The second violation**, as alleged/contended by applicant is illegal cutting of 441 trees in Hajipur village forest. Here also, NHAI has taken a stand that it has acquired the land in accordance with the procedure prescribed in law and paid compensation. Divisional Forest Officer has taken a stand before Joint Committee that Hajipur (Panchayat land) area falls under Section 4 (General) of PLP Act 1900 and cutting of trees without permission of Competent Authority of Forest Department is prohibited. After receiving the complaint, Forest Department found that 263 trees of different species were cut illegally which included 22 trees belonged to exempt category. Meaning thereby, if 22 trees are excluded, 241 trees were cut in violation of Section 4 (General) of PLA Act 1900. Forest Department prepared a damage report dated 18.01.2022 and since illegal cutting of trees was an offence, it was compounded under Section 68 of Indian Forest Act, 1927 (hereinafter referred to as '**IF Act 1927**') by levying penalty of Rs. 58,940/- which was paid by the Concessioner of NHAI. However, the said amount does not include the cost of damage caused to environment

due to illegal cutting of 241 trees i.e. environmental compensation. The factum that the trees were cut by Concessioner will not mitigate the liability of NHAI since the Concessioner was a contractor of NHAI and, therefore, NHAI being the principal is equally responsible and liable to pay environmental compensation for the damage caused to environment.

46. Learned Counsel for NHAI only referred to payment of Rs. 58,940/- towards compounding of the offence with reference to Section 68 of IF Act 1927 but could not show that for damage to environment, any environmental compensation was assessed and it has been paid by the violator i.e., NHAI or its Concessioner.

47. We, therefore, hold that NHAI is liable to pay environmental compensation for illegal cutting of 441 trees which has to be assessed as per the applicable principles and guidelines which we propose to do after examining other violations.

48. **The third violation** is about cutting of trees from the banks of nallahs of Kiranj pond. In this regard, NHAI has admitted of cutting of several trees but the actual number has not been disclosed nor the same was found feasible to be counted by Joint Committee due to lapse of time. NHAI however has stated that under Compensatory Afforestation Fund Management and Planning Authority (hereinafter referred to as '**CAMPA**') fund, it has deposited Rs. 12,76,657/-for Nuh district and Rs. 9,37,238/- for district Gurugram. Joint Committee has found that a large number of trees standing on private farmer's land were also cut but no compensation has been paid in respect thereof. CAMPA amount is in reference to the trees which were cut on the land belong to Forest Department. NHAI in its response has simply denied of cutting of any tree from the banks of Kiranj

nallah and Kiranj pond but has not given any reply to the findings of Joint Committee about illegal cutting of trees from private farmer's land and not payment of any compensation in regard thereof. We also find that due to illegal cutting of trees, damage has been caused to environment but neither such damage has been assessed in terms of environmental compensation nor paid by NHAI. Therefore, we hold on this aspect that NHAI is liable to pay environmental compensation for illegal cutting of trees from private farmer's land.

49. **The fourth violation** is about culvert at the junction of Sohna-Palwal Highway and new highway NH-148NA which has been blocked. Applicant claimed that it was developed in 1977 to evacuate flood water during heavy rain fall. At the same site, Panchayat rasta in village Kiranj has been encroached upon creating a closed area of depression at the site and thereby enhancing threat of flood.

50. The stand of NHAI is that a vehicular underpass of 60 meters has been provided on Sohna-Palwal Highway for cross movement of traffic and cross section of Sohna-Palwal Highway has not been disturbed. Cross structure for movement of villagers already constructed on existing rasta. However, revenue authorities i.e., Nayak Tehsildar, Indri has given its report which has been mentioned in Joint Committee Report stating that khasra no. 424 (1K 14m) of Kiranj village revenue estate is a revenue rasta which has been encroached to the extent of 19 Marla by NHAI while constructing DND highway. Joint Committee has recorded its findings that peripheral structure of the culvert passing through Palwal-Sohna Highway has been demolished and covered with soil while constructing new highway. It has also found that the culvert served the purpose of

evacuation of flood water during heavy rainfall. NHAI however in its response has said that culvert is fully intact but earth filled due to recent rains, the concessioner of the project has now cleared the culvert of any earth filled and there is no damage to culvert as a result of construction of National Highway. This stand of NHAI has been disputed by applicant in its objections and it is said that culvert was never a part of ROW but damaged for easy movement of trucks, used while constructing the road as initially there was a temporary ramp built at this site which has been removed now. Peripheral structure is still missing.

51. Damage to culvert due to absence of peripheral structure is clear from the photograph but we find that in the absence of anything to show as to how it has caused any damage to environment, this aspect cannot be taken to be a violation of environmental laws and norms and therefore, in our view, applicant may avail such remedy as permissible in law on this aspect before the appropriate forum.

52. **Fifth violation** is regarding encroachment of 2 nallahs of village Kiranj i.e., khasra no. 91 and 92 which were connected to Gurugram canal. Stand of NHAI is that it had raised construction as per approved plan. Revenue authority i.e., Naib Tehsildar Indri in its report has clearly stated that khasra no. 91 and 92 are nalla as per latest Jamabandi with an area of 16K 10M. The said land was acquired by NHAI but at the site DND highway has been constructed over 12K 4M of khasra no. 91 and approximately 1K 5M of khasra no. 92.

53. The finding of encroachment has also been recorded by Joint Committee in respect of the above nallahs which were used as irrigation channels. These are storm water drains and could not have been

obstructed or closed or encroached upon by NHAI as violation thereof results in serious damage to environment in as much as it prohibits water recharge to ground water, irrigation facilities to agricultural fields whereby also the water used in agriculture fields serves as a mode of water recharge for ground water and protects even surface water from being used or extracted or taken away.

54. This is a serious violation and would have deserved a direction for demolition of the construction raised thereon to obstruct the above nallahs/storm water drains but since it will affect the entire project and may cause damage to public revenue and public interest in other way also, we have to balance the interest of the villagers as also the general public using the road by applying principles of 'Sustainable Development' read with 'Polluter Pays', hence we are of the view that appropriate environmental compensation must be computed against NHAI and it is liable to pay the same.

55. **Sixth violation** is encroachment of village pond to the extent of 0.5 acres of area. It is not disputed before us that khasra no. 30/3 (area 8K 0M) and 30/8 (area 7K 16M) were registered as pond in revenue record of village Kiranj. Applicant claimed that 0.58 acres area of the said pond has been encroached upon and filled by NHAI in construction of the road. The defense of NHAI is that it has acquired the land in accordance with law and has constructed a minor bridge without disturbing the pond. However, the site report prepared by the revenue authorities shows that 4K 1M area of the total area of khasra no. 30/3 and 30/8 was acquired by NHAI and on the remaining un-acquired area, there is no encroachment. The revenue authorities however, have over looked the fact that even after acquisition

of the pond land it was not open to NHAI to fill in the pond as it is against environmental laws.

56. It is further not in dispute that in Haryana for development, protection, rejuvenation, conservation, construction, management of pond, utilization of pond water and treatment thereof, a Statute has been enacted i.e., HPWWMA Act 2018. It was published in Haryana Government Gazette (Extraordinary) dated 23.10.2018 and came into force under Section 1(2) on 23.10.2018. The above Act is applicable to ponds except those which are excluded under sub-section 1(3) which reads as under:

“1. (3) It applies to all ponds in the State but shall not apply to a pond-

- (i) having an area of less than 0.5 acres;*
- (ii) located in an area notified as forest; and*
- (iii) located on private land.”*

57. The pond is defined in Section 2(k) that a tank or lake or any other inland water body having an area of 0.5 acre or more is included within the definition of pond which reads as under:

“a tank or lake or any other inland water body having an area of 0.5 acre or more, whether it contains water or not, and mentioned in revenue records as talab, johar, tank or by any other name and includes green belt and the peripheral catchments areas, main feeder inlet and other inlets, bunds, weirs, sluices etc. but does not include wet lands as notified by the Government from time to time.”

58. For the management etc. of the pond, an authority i.e., Haryana Pond and Waste Water Management Authority is contemplated under the above Act and is constituted under Section 3 thereof.

59. Section 6 of HPWWMA Act, 2018 provides for the functions of the authority which included survey and study of ponds, its boundaries and protected area and it reads as under:

“6. The Authority shall perform the following functions, namely:-

(i) to survey and study pond, its boundaries and protected area;

(ii) to analyze water of pond for ascertaining its suitability for irrigation and other uses;

(iii) to take steps for regulation, control, protection, cleaning, beautification, conservation, reclamation, regeneration, restoration and construction of pond;

(iv) to make environmental impact assessment of pond;

(v) to prepare integrated plan for development of pond and removal of encroachment;

(vi) to promote community participation and awareness in cleaning, conservation, tourism and beautification of pond by organizing awareness programmes, workshops and seminars;

(vii) to develop infrastructure such as pumping machinery, channels and pipe systems for utilization of pond water and effluent of sewage effluent treatment plants for the purpose of irrigation;

(viii) any other function, as may be directed by the Government.”

60. Section 14 prohibits every person to raise any construction or structure over pond land, the catchment area etc. and reads as under:

“14. No person shall,-

(i) construct any structure on pond land, green belt and catchment area, occupy any pond land or part thereof or cause any obstruction in the natural or normal course of inflow or outflow of water into or from the pond on the upstream or down-stream without permission of the Authority;

(ii) dump debris, municipal or industrial waste, mud or earth soil into and around pond, green belt or catchment areas;

(iii) discharge untreated municipal waste or industrial effluent into pond directly or indirectly;

(iv) construct roads, bridges or other structures within the pond area including the pond bund without permission of the Authority;

(v) breach bund, waste weir including lowering or raising the height

of the waste weir from its original height or remove fence, boundary stones or any hoarding or any sign board erected by the Authority;

(vi) do any other act which is detrimental, directly or indirectly to pond: Provided that nothing in this Act shall prohibit the Authority to redefine water uses of pond or treated effluent of sewage treatment plant or effluent treatment plant, from time to time:

Provided further that the Authority may grant permission for any of the above prohibited uses, in public interest with the prior concurrence of the Government.”

61. Section 15 confers power upon the authority with regard to construction of development of pond and also prohibits anyone to undertake any activity whatsoever within the boundary of a pond otherwise than in accordance with the permission granted by the authority. Section 15 reads as under:

“15. (1) Notwithstanding anything contained in any State law, instrument or order, the construction and development of pond with effect from the commencement of this Act shall, vest in the Authority. No person shall undertake any activity, whatsoever, within the boundary of a pond otherwise than in accordance with the permission granted by the Authority:

Provided that the Authority shall not grant any permission unless it is satisfied that such permission shall not have adverse impact on construction and development of pond:

Provided further that the Government may, by order in writing, allow withdrawal and use of the water of pond for the purposes for which it was withdrawn and used immediately before the commencement of this Act to the extent such withdrawal does not affect adversely the conservation and development of pond.

(2) Notwithstanding anything contained in any other State law, the Authority may direct the Gram Panchayat or municipality to remove any building, structure or any other object of obstruction within the protected area and pond land:

Provided that no building, structure or any other object of obstruction shall be removed, without following such procedure, as may be prescribed.”

62. Violation of Sections 14 and 15 is an offence under Section 20 and on conviction the offender may be fined for a sum not exceeding Rs. twenty-

five thousand or to imprisonment not exceeding three months or both.

63. It is also not in dispute in the present case that the pond in question is one of such ponds which have been surveyed and identified by the authority under HPWWMA Act 2018 and has been given identification no. UID No. 01HRNUHINR0187KIRA001. Therefore, the pond in question was clearly protected by the provisions of HPWWMA Act 2018 and even if some part of the land of the pond was acquired by NHAI it had no authority to raise any construction or to fill in the pond or any part thereof in any manner without permission of the Competent Authority under the aforesaid Act. NHAI and its Concessioner, therefore, has acted illegally in raising construction over part of the pond as that has destroyed the pond to the extent construction has been raised over it.

64. Importance of maintenance of pond has been stressed upon by Supreme Court also in **Jagpal Singh & Ors. vs. State of Punjab & Ors., 2011 (11) SCC 396**. It has relied on the earlier decision in **Hinch Lal Tiwari vs Kamla Devi (supra)** where it was held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. A pond provides multifarious benefits to the ecology which included the availability of water to villagers, cattles etc. for various purposes, source of recharge of ground water, source of development of aquatic life and for maintenance of flora in the nearby area.

65. It is not the case of NHAI that for raising construction over part of the pond any permission as contemplated under HPWWMA Act 2018 was obtained from the Competent Authority.

66. In view of the above discussion, it is evident that NHAI has acted

wholly illegally by covering even some part of the pond land and raising construction over it. Ordinarily, this illegality on the part of NHAI would have justified to issue a direction for demolition of such illegal construction, restoration of pond in its original condition but when we consider huge construction of the entire road and the part whereof which covers the pond if demolish may affect the entire road, it will be a serious damage to public revenue and public interest, therefore, we have to balance the interest of both by applying the principles of sustainable development read with polluter pays. In our view, it would be appropriate to assess environmental compensation on account of the above violation liable to be paid by NHAI so that the same may be used for development of another pond to cover up the damage already caused to the environment.

67. The discussion made above shows that there are 5 types of serious violations on the part of NHAI wherein at least 2 violations would justify even demolition of the construction already raised but considering overall aspect of the matter and the principle of sustainable development, it would be appropriate, instead of directing demolition, to determine environmental compensation and to direct NHAI to pay the same.

How to determine environmental compensation:

68. There is one way where environmental compensation may be determined/computed separately for every violation and another way is to compute a cumulative amount covering all the violations noticed and discussed above. We proceed to consider the determination of compensation in the light of settled law on the subject i.e., the methodology which should normally be adopted for determination of environmental compensation.

Principle for Computation of Environmental Compensation:

69. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of NGT Act 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

“15. Relief, compensation and restitution-(1) *The Tribunal may, by an order, provide-*

a) **relief and compensation** to the victims of pollution and **other environmental damage arising under the enactments** specified in the Schedule I (including accident occurring while handling any hazardous substance);

b) **for restitution of property damaged;**

c) **for restitution of the environment** for such area or areas, as the Tribunal may think fit.

(2) *The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*

(3) *No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:*

Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) *The Tribunal may, **having regard to the damage** to public **health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of*

the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may, be, compensation or relief received from, any other Court or authority.

70. Sub-section 1 of Section 15 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I.

71. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment, as it may think fit.

72. Schedule II of NGT Act 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which items (a) to (f), (l), (m) and (n) relate to loss, damage etc. sustained to the person or individual or their property. Items (i) to (k) relate to harm, damage, destruction etc. of environment or environmental system including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act 2010 are as under:

“(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;”

73. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage.

74. The damage to environment covers a very wide variety of nature as is evident from definition of environment under Section 2(c) which is inclusive and says; ‘environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property’.

75. Section 20 of NGT Act 2010 requires Tribunal to apply principles of ‘Sustainable Development’, ‘Precautionary Principle’ and ‘Polluter Pays Principle’.

76. In the present case, environmental compensation has to be computed by applying ‘Polluter Pays’ Principle. This Principle was recognized as part of environmental law in India in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996) 3 SCC 212***. Certain industries producing assets were dumping their waste. Even untreated waste water was allowed to flow freely polluting atmosphere and sub-terrain supply of water which ultimately caused darkening and dirtiness of wells and the streams water rendering it unfit for human consumption. Certain environmentalists’ organizations broadly alleging severe damage to villager’s health, filed a Writ petition as PIL in 1989 before Supreme Court.

By that time, some of the units were already closed. Referring to Article 48-A in Directive Principles of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavour to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizens is to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature. Where a **Proponent has established its commercial unit and operate contrary to law flouting norms provided by law, Statutory Regulator is bound to act and if it fails, a judicial forum can direct it to act in accordance with law.** Referring to Oleum Gas leak case, i.e., *M.C. Mehta vs. Union of India, (1987) 1 SCC 395*, Court observed in para 58 that the constitution bench held that **enterprise must be held strictly liable for causing such harm as a part of social cost of carrying on the hazardous or inherently dangerous activity.** Hazardous or inherently harmful activities for private profits can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not.

77. Court also referred to its earlier decision in *Indian Council for Enviro Legal action vs. Union of India, (1995) 3 SCC 77*, wherein concerned Pollution Control Board identified about 22 industries responsible for causing pollution by discharge of their effluent and a direction was issued by Court observing that they were responsible to compensate the farmers. It was the duty of State Government to ensure that this amount was recovered from the industries and paid to the farmers. In para 67 of the judgment, Court said that the **question of**

liability of respondent units to defray the costs of remedial measures can also be looked into from another angle which has now come to be accepted universally as a sound principle, for example, ‘Polluter Pays’ principle. On this aspect, Court further observed as under:

*“67. ...The **Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution.** Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The ‘Polluter Pays’ principle was promoted by the Organization for Economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then, there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.*

*Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] OJC 328/1) makes it clear that **the cost of preventing and eliminating nuisances must in principle be borne by the polluter**’, and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay.”*

78. Court further said that **according to the above principle of ‘Polluter Pays’, responsibility for repairing the damage is that of the offending industry.** Sections 3 and 5 of Environment (Protection) Act,

1986 empower Central Government to give directions and take measures for giving effect to this principle. Court further said:

*“...In all the circumstances of the case, **we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986.** It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit.”*

79. The above principle has been followed in **Vellore Citizen Welfare Forum vs. Union of India, 1996 (5) SCC 647**. In para 25, direction no. 2 reads as under:

*2. The authority so constituted by the Central Government shall implement the “precautionary principle” and the “polluter pays” principle. The **authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment.** The authority shall lay down just and fair procedure for completing the exercise.*

80. In **Bittu Sehgal and Another vs Union of India & Others, (2001) 9 SCC 181**, referring the earlier judgments, Supreme Court has said that ‘Precautionary Principle’ and ‘Polluter Pays Principle’ have been accepted as part of the law of the land.

81. In **Research Foundation for Science vs. Union of India & Ors., (2005) 13 SCC 186**, in para 26 and 29, Court, on ‘Polluter Pays’ Principle, has said as under:

“26. The liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted

on applicability of precautionary principle and polluter-pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment. In order to fulfill the constitutional mandate various legislations have been enacted with attempt to solve the problem of environmental degradation.

29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.”

82. In **Karnataka Industrial Areas Development Board vs. C. Kenchappa & Others, (2006) 6 SCC 371**, principle of ‘Polluter Pays’ has been explained in detail referring to the earlier judgments in **Indian Council for Enviro-Legal Action vs. Union of India (supra)** and **Vellore Citizen Welfare Forum (supra)**.

83. Thus, broad principles of environmental laws are given particularly, in regard of liability of environmental compensation applying principle of ‘Polluter Pays’, but the methodology for assessing/determining compensation is not provided in the statute. Even Rules framed under NGT Act 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation. Computation of environmental compensation may involve some degree of

subjectivity but broadly it must be based on objective considerations as it saddles financial liability upon the violator.

84. Taking into consideration multifarious situations relating to violation of environmental laws *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

- (i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.
- (ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- (iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

85. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organizations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

86. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the

community at large regarding its source of livelihood, health etc.

87. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partial restoration/remediation/rejuvenation.

88. Determination/computation/assessment of environmental restoration/remediation/rejuvenation should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of “being punitive”. The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

89. To impose appropriate ‘environmental compensation’ for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of ‘Harmness cost’. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

90. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and further comprised of two components, i.e., risk assessment and risk description.

91. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied. As the term suggest, compensation means a return for loss or damage sustained. Therefore, it must always be just and not based on a whim or capricious.

92. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation. In some cases, a lump sum amount has been imposed.

93. Nature is extremely precious. It is difficult to price elements of nature like light, Oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond carrying capacity, results are harmful and dangerous. People do not understand the value of what nature

has given free. Recently, in COVID-19 Wave-II, scarcity of Oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of Oxygen. Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

94. In an article, '*the cost of pollution-Environmental Economics*' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as '**TPC**') can be applied. It combines the cost of abatement of environmental pollution and cost of pollution induced environmental damage. The formula comes to **TPC(z)=AC(z)+ED(z)**, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

95. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and this principle must also be given due consideration and be taken care.

96. Determination/assessment/computation of environmental

compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc. In such circumstances, it is the ultimate responsibility of court's to assess and compute environmental compensation, rationally.

97. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

98. **CPCB Guidelines:** This Tribunal, vide order dated 31.08.2018 passed in **OA 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others** observed that "*CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for*

protection of the environment". CPCB, accordingly, published a report on 15.07.2019, suggesting methodology for assessment of environmental compensation which may be levied or imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as "*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*" which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

"Cases considered for levying Environmental Compensation (EC):

- a) Discharges in violation of consent conditions, mainly prescribed standards/consent limits.*
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.*
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.*
- d) Accidental discharges lasting for short durations resulting into damage to the environment.*
- e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.*
- f) Injection of treated/partially treated/ untreated effluents to ground water."*

99. For the instances at item (a), (b) and (c), report says that 'Pollution Index' (hereinafter referred to as '**PI**') would be used as a basis to levy environmental compensation.

100. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

101. Since range of PI is 0 to 100, increase in value of PI denotes increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

$$“EC = PI \times N \times R \times S \times LF”$$

Where,

EC is Environmental Compensation in Rs.

*PI = **Pollution Index of industrial sector***
N =Number of days of violation took place
R =A factor in Rupees (₹) for EC
S =Factor for scale of operation
LF =Location factor”

102. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

“Note:

- a. The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for

calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.

- b. *N*, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- c. *R* is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider *R* as 250, as the Environmental Compensation in cases of violation.
- d. *S* could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- e. *LF*, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (*LF*) may be used:

Table No. 1.1: Location Factor Values

S. No	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

*Population of the city/town as per the latest Census of India

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. **However, for critically Polluted Areas, LF may be explored in future.**

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.

- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

103. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e. Rs.250/-. On what basis this minimum and maximum has been determined and why average suggested, is beyond comprehension. We do not find any material in the above report which may throw light for taking value of R as above.

104. Similarly, for determining value of S i.e. Factor for Scale of Operation

from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed.

105. The note further says that minimum environmental compensation would be Rs.5000/- per day. From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs.60,000/- per day and minimum Rs.10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover, classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example, pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

106. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided.

107. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

“a. Industrial Inspections for compliance verification

b. Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network

c. Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology

d. Investigations of environmental damages, preparation of DPRs

e. Remediation of contaminated sites

f. Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs.”

108. All the above, except item (e), relate to establishment/infrastructure for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

109. Chapter II of report deals with determination of environmental compensation for violations of **Graded Response Action Plan (GRAP)** in NCR. Here a fixed amount of environmental compensation has been recommended in table 2.1, as under:

“Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environmental Compensation
Industrial Emissions	<i>Severe +/-Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>

Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	<i>Target Date</i>	<i>Rs 1.0 Crore</i>
ii. Non-functional	<i>Very poor to Severe +</i>	<i>Rs 50.0 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 25.0 Lakh</i>
Construction sites (Offending plot more than 20,000 Sq.m.)	<i>Severe +/-Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
Solid waste/ garbage dumping in Industrial Estates	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
	<i>Moderate to Poo</i>	<i>Rs 10.0 Lakh</i>
Failure to water sprinkling on unpaved roads		
a) Hot-spots	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
b) Other than Hot-spots	<i>Very poor to Severe +</i>	<i>Rs 10.0 Lakh</i>

110. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal's order dated 06.12.2018 in **OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka**, stating, as under:

“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation

*to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. **The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.***

111. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

“Therefore, generalized formula for Environmental Compensation may be described as:

EC= Capital Cost Factor × Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility × (Waste or Sewage Management or Treatment Capacity Gap) + O&M Cost Factor × Marginal Average O&M Cost × (Waste or Sewage Management or Treatment Capacity Gap) × No. of Days for which facility was not available + Environmental Externality”

112. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:

“Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	75	Min. 0.05, Max. 0.10
201-500	85	Min. 0.25, Max. 0.35
501 and above	90	Min. 0.60, Max. 0.80

Table No. 3.2: Environmental externality for improper municipal solid waste management

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	15	Min. 0.01, Max. 0.05
201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.3
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000		Max. 0.80

113. CPCB has further recommend a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

“Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0

114. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from Rs.0.63 Crores to Rs.3 Crores and O & M cost around Rs.30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 Crore/MLD and annual O& M as 10% of combined capital cost. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted.

“EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility × (Total Generation -Operational Capacity)] + O&M Cost Factor × Marginal Average O&M Cost × (Total Generation- Operational

Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available

Alternatively;

EC (Lacs Rs.) = [17.5(Total Sewage Generation - Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) × N + Marginal Cost of Environmental Externality × (Total Sewage Generation-Operational Capacity) × N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD”

115. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body based on the following formula:

“EC = Capital Cost Factor × Marginal Average Cost for Waste Management × (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor × Marginal Average O&M Cost × (Per day waste generation-Per day waste disposed as per the Rules) × Number of days violation took place + Environmental Externality × N

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) × N + Marginal Cost of Environmental Externality × (Waste Generation-Waste Disposed as per the Rules) × N”

116. Here also, certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in cities/towns include cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only Rs.3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

117. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which read as under:

“Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	<i>Mega-City</i>	<i>Million-plus City</i>	<i>Class-I Town</i>	<i>Class-I Town</i>
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) <i>(assumed as 25% of waste generation for sample calculation)</i>	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	<i>Min. 1000 Max. 10000</i>	<i>Min. 500 Max. 5000</i>	<i>Min. 100 Max. 1000</i>	<i>Min. 100 Max. 1000</i>
Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	<i>Min. 1.0 Max. 10.0</i>	<i>Min. 0.5 Max. 5.0</i>	<i>Min. 0.1 Max. 1.0</i>	<i>Min. 0.1 Max. 1.0</i>

<i>Final EC (O&M Component) in Lacs. Rs./Day</i>	10.00	5.00	1.00	1.00
<i>Calculated Environmental Externality (Lacs Rs. Per Day)</i>	2.58	0.18	0.03	0.02
<i>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)</i>	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
<i>Final Environmental Externality (Lacs Rs. per day)</i>	0.80	0.25	0.03	0.02

118. Chapter IV deals with determination/computation of environmental compensation in case of “illegal extraction of ground water” and for this purpose report has referred to Tribunal’s order dated 03.01.2019 passed in **OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board & Ors.** The relevant extract of the order quoted in para 4.1 of the report is as under:

“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/ 12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”

119. Here, broadly, determination of environmental compensation refers to two major aspects i.e., illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

“ EC_{GW} = Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})

Where water Consumption is in m^3 /day and ECR_{GW} in Rs. / m^3

Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI**.

Time duration will be the period from which pump is operated illegally.

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW} .”

120. Depending on the category of the area for the purpose of ground water i.e. safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e. for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

“4.6.1 ECR_{GW} for Drinking and Domestic use:

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No	Area Category	Water Consumption (m^3 / day)			
		<2	2 to <5	5 to <25	25 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3.	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40
Minimum EC_{GW}=Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)					

4.6.2 ECRGW for Packaged drinking water units:

Sl. No	Area Category	Water Consumption (m^3 / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3			
1	Safe	12	18	24	30
2	Semi Critical	24	36	48	60
3.	Critical	36	48	66	90
4	Over-Exploited	48	72	96	120
Minimum EC_{GW} =Rs 1,00,000/-					

4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:

Sl. No	Area Category	Water Consumption (m^3 / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3			
1	Safe	15	21	30	40
2	Semi Critical	30	45	60	75
3.	Critical	45	60	85	115
4	Over-Exploited	60	90	120	150
Minimum EC_{GW} =Rs 1,00,000/					

4.6.4 ECRGW for Industrial Units:

Sl. No	Area Category	Water Consumption (m^3 / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3			
1	Safe	20	30	40	50
2	Semi Critical	40	60	80	100
3.	Critical	60	80	110	150
4	Over-Exploited	80	120	160	200
Minimum EC_{GW} =Rs 1,00,000/-					

121. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs.10,000/- if it is for domestic purposes, but in other matters, it would be Rs.50,000/-.

122. These recommendations by CPCB have not been given in the form of

a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be considered while determining environmental compensation in a given case, therefore, cannot be taken as readymade application to all situations for determining of environmental compensation. Moreover, on some aspects there is no suggestion, but it is deferred.

123. We also find that some crucial relevant aspects requiring application of 'Polluter Pays', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/computation/assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statutory mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of proponents due to violation of environmental law causing damage to environment. The loss and its remedy involve complex of components.

124. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was.

Moreover, its cost might be very high. It also cannot be doubted that once there is a pollution or damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable with mathematical precision. For example, a polluted air causes respiratory diseases but the people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

125. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are affected adversely and where violator has proceeded in violation of environmental laws relating to consents, clearances, permissions etc., to

penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

126. In respect of computation of compensation for illegal extraction of ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)*** directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

127. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

128. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings.

129. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose

environmental compensation upon Proponent/Violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB Guidelines have been applied while in many other, project cost has been made basis and, in some matters, other modes of computation have been applied.

130. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on.

131. In fact, quantum of EC should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporates the elements of inflation, quality of life, and economic prosperity.

132. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and

determination of environmental compensation for such violations, Tribunal in **OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

*“10. The compensation regime suggested by the CPCB may be adopted. **It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs.**”*

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues.”

133. The above recommendations i.e. in para 10, Tribunal said *“compensation regime suggested by the CPCB may be adopted. It will be **open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs**”*. It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. One Crore per month till non-compliance continues.

134. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in **OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others**, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on ‘Polluter Pays’ principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed

to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

135. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in **OA No. 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat)** and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

- i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,
- ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,
- iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,
- iv.) Shri Sundeep, Director, MoEF&CC, Delhi and
- v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi

136. Report was considered by Tribunal vide order dated 17.08.2020. Report said:

“8. *The Committee considered two approaches:*

(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.

(II) Approach 2: Computing a Simplified NPV for ecological damages.

9. *In the first approach, the criteria adopted is:*

- *Exceedance Factor (EF).*
- *Risk Factor (RF).*
- *Deterrence Factor (DF).*

10. *Approach 1 is demonstrated by Table 1 as follows:*

Table No. 01: Approach 1				
<i>Permitted</i>	<i>Total</i>	<i>Excess</i>	<i>Exceedance</i>	<i>Compensation</i>

Quantity (in MT or m^3)	Extraction (in MT or m^3)	Extraction (in MT or m^3)	in Extraction:	Charge (in Rs.)
X	Y	Z=Y-X	Z/X	$D * (1+RF+DF)$ Where $D=Z \times$ Market Value of the material per MT-or- m^3
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X \geq 0.71
				RF = 0.25, 0.50. 0.75, 1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:
 “Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

Total Ecological Costs (C) = Market Value adjusted for risk
 factor: $D * RF$ (refer Table 1).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. **The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years.** The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

<i>Severity</i>	<i>Mild</i>	<i>Moderate</i>	<i>Significant</i>	<i>Severe</i>
<i>Risk Level</i>	1	2	3	4
<i>Risk Factor</i>	0.25	0.50	0.75	1.0
<i>Discount Rate</i>	8%	7%	6%	5%

137. Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly, cost of remediation/restoration was also not taken into consideration.

138. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) ***in Ajay Kumar Negi vs Union of India, OA No. 183/2013***, Rs.5 Crores was imposed. (ii) In ***Naim Shariff vs M/s Das Offshore Application no. 15(THC) of 2016***, Rs.25 Crores was imposed (iii) ***Hazira Macchimar Samiti vs. Union of India***, Rs. 25 Crores was imposed.

139. In ***Goa Foundation vs. Union of India & Others (2014) 6 SCC 590***, Supreme Court relied on ***Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013) 8 SCC 209*** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., “Goan Iron Ore Permanent Fund” for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

140. In ***Goel Ganga Developers vs Union of India and Others, (2018) 18 SCC 257***, Tribunal imposed Rs.195 Crores compensation since construction project was executed without EC. Supreme Court made it **Rs.100 Crores or 10% of project cost whichever is higher**. Supreme Court also upheld Rs. 5 Crores imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

141. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019) 18 SCC 494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

142. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in ***Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil) No. 10584 of 2019*** (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to be value of illegally mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of compensation. 'Polluter Pays' principle as interpreted by

this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of “sustainable development” and as such the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

143. **When we consider the present case** in the light of the above discussion, we are of the view that a comprehensive and cumulative environmental compensation for all the violations would be appropriate to determine in the present case. Since NHAI has carried out a construction project, the principle for computation of environmental compensation upheld in **Goel Ganga (supra)**, in our view would be apt to follow.

144. Though NHAI itself has not disclosed its project cost and despite our repeated query, no information was given but the public domain contain an information that the estimated project cost of the construction of the road in question was about Rs. 908 Crores. Supreme Court in **Goel Ganga (supra)** has observed that environmental compensation may be upto 10% of the project cost and normally on an average basis, 5% should be imposed if no extra circumstances are available justifying higher quantum of environmental compensation. Following the above dictum, if we take project cost as Rs.908 Crores, 5% thereof, comes to Rs.45.4 Crores and by rounding of, we make it Rs.45 Crores. Accordingly, we are of the view that environmental compensation of Rs.45 Crores in the facts and circumstances of the case is just and appropriate to be levied upon NHAI and it should pay the same within three months by depositing it with HSPCB.

145. Before parting with the matter, we find it necessary to observe that NHAI is a statutory body. It is expected to behold as a responsible law abiding body. It may be that in the process of execution of its projects, some time may be consumed in obtaining statutory permissions etc. but these statutory permissions etc. are not mere formalities but have substantive, positive objectives and reasons particularly when relates to environment, and, therefore, must be obtained before execution of the work. It must follow environmental laws strictly in words and spirit. Statutory body like NHAI is not expected to proceed in execution of its work in flagrant violation of law particularly when it comes to the matter of environment, environmental laws and environmental norms. Damage to environment affects the fundamental right of clean and healthy air, water and atmosphere which is enshrined upon every person by virtue of Article 21 of the Constitution. When environmental laws are violated, meaning thereby the violator is also violating fundamental rights of the people of the country. The act of violation becomes more serious and condemnable when the violator is State or Statutory body or an instrumentality of the State. Execution of the work of the construction of highways, though in public interest and public welfare but construction activities of highways in violation of environmental laws cannot be said to be in public interest and public welfare. The protection of environment is responsibility of every person and citizen. There should not be any occasion to anyone to damage environment by proceeding to execute its work/project by violating environmental laws and norms and requirement of statutory provisions for clearance, no objection, consent etc. NHAI is expected to extremely watchful and careful in such cases.

146. Hundreds of trees in this case have been cut, part of pond land has

been damaged, storm water drains have been damaged and similar other environmental violations have committed by NHAI without following the statutory requirements which prohibits such activities without proper examination by the concerned authorities. The mere violations are sufficient to take penal action against the violator, besides remedial action, but when the violations are on the part of State or statutory body, in our view, situation demand severest action, as much as possible and permissible and no compassion is deserved in such matters. We hope and trust that NHAI in future shall take care in observance of requirement of law particularly environmental laws and norms and shall not repeat the violation thereof inviting severe civil, criminal and other action as provided in law.

147. In the light of the above discussion, **we partly allow OA** with the following directions:

- (i) We compute environmental compensation payable by NHAI to Rs.45 Crores and NHAI is directed to pay the said amount within three months by depositing it with HSPCB.
- (ii) In case of failure to deposit the amount of environmental compensation as directed above, damaged/encroached pond, Gochar/grazing land, nallahs etc. as discussed above, shall be restored to their original form, shape, size and composition by taking such steps, as are required/permitted in law. Appropriate steps for execution of above direction shall be taken by Chief Secretary of State of Haryana or his nominated authority, within two months after expiry of the period of three months granted for depositing compensation,

and such amount of compensation is not deposited.

- (iii) If environmental compensation is deposited by NHAI, the same shall be appropriated for restoration/rejuvenation of environment. The Plan for restoration/rejuvenation shall be prepared by a Joint Committee comprising (i) a Senior representative of MoEF&CC, (ii) Deputy Commissioner, District Gurugram, (iii) Deputy Commissioner, District Nuh, (iv) a representative of Principal Chief Conservator of Forest, Haryana, (v) a representative of Haryana Pond and Waste Water Management Authority, (vi) HSPCB and (vii) CPCB.
- (iv) CPCB shall be the nodal authority for coordinating with Joint Committee, constituted above, for preparation of rejuvenation Plan.
- (v) The Plan shall be prepared within three months, after deposit of environmental compensation and amount of environmental compensation shall be utilized within six months thereafter.
- (vi) Compliance Reports of above directions shall be submitted by Chief Secretary, Haryana and Member Secretary, HSPCB to Registrar General of this Tribunal by 15.11.2024 and if any further direction(s) is/are required, Registrar General shall place such Report before appropriate Bench of this Tribunal.

148. Copy of this judgment be forwarded to MoEF&CC, Deputy Commissioner, Gurugram, Deputy Commissioner, Nuh, Principal Chief

Conservator of Forest, Haryana, Haryana Pond and Waste Water Management Authority, HSPCB, CPCB and Chairman, NHAI by e-mail for compliance.

PRAKASH SHRIVASTAVA,
CHAIRPERSON

SUDHIR AGARWAL,
JUDICIAL MEMBER

DR. A. SENTHIL VEL,
EXPERT MEMBER

February 13, 2024
Original Application No. 892/2022
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