

Item No. 04

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 182/2020

(With report dated 07.12.2020)

Rajpal Singh Kandhari & Anr.

Applicant(s)

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 09.04.2021

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

Applicant: Mr. Rahul Choudhary, Advocate

ORDER

1. Grievance in this application is against illegal extraction of ground water for the project Prateek Grand City, Plot Nos. 4/BS-01 & 4/BS-05, Siddhartha Vihar, Ghaziabad. The construction involved in the said project is said to be 57,350.830 sq. mtrs. & 97,565.680 sq. mtrs. Respectively. The ground water extraction is in violation of CGWA Guidelines, 2015. Built up area is 14,18,187.871 sq. mtrs. The Project Proponent has dug numerous borewells. The area is critical in terms of ground water availability. There is contamination of toxics in the ground water. No permission for extraction of ground water has been or can be granted except for drinking purposes. The Environmental Clearance (EC) for the project dated 11.11.2014 is subject to the condition that ground water will not be extracted for construction. Further reference has been made to the order of this Tribunal dated 20.07.2020 in Original

Application No. 176/2015, *Shailesh Singh v. Hotel Holiday Regency, Moradabad and Ors.*, prohibiting extraction of ground water in over exploited, critically exploited and semi-critically exploited (OCS) areas, without groundwater level and replenishment studies and impact Assessment. The applicant claims to have made a representation to the District Magistrate of Ghaziabad District; the Member Secretary, Central Ground Water Authority and the Member Secretary, Uttar Pradesh Pollution Control Board but no action has been taken.

2. A factual and action taken report was sought from the Committee comprising CPCB, State PCB, District Magistrate, Ghaziabad, Central Ground Water Authority (CGWA) and SEIAA, Uttar Pradesh.

3. Accordingly, the State PCB has filed its report on 07.12.2020 after carrying out inspection of the project. It has been found that there are illegal tubewells and fresh ground water was being used in the construction activity instead of using treated water. For such illegal violations, the Committee has recommended dismantling of borewells and recovery of compensation. The observations of the Committee are as follows:-

“Observation during the joint inspection visit dated 12.10.2020

- 1. 05 no. of tubewells have been found in the project area (3 no. of tubewells in basement of the towers and 02 no are in project construction site).*
- 2. Out of these tube wells, 04 no are having 4 to 6 "dia and 01 with 3⁰ dia pipe fitted with pumps. The depth of tube wells varies between 40- 50 mbgl, as informed by representative and contractors of the project.*
- 3. Fresh ground water is being illegally abstracted in notified and over-exploited block for construction purpose, whereas no any provision for abstraction of fresh ground water, except drinking and domestic purposes in OE blocks with restricted conditions subject to computation of water requirement as per NBC norms and relevant CGWA guidelines.*

4. Presently, only fresh ground water is being used in construction activity for this huge group housing project. Besides, in the basement of project site, the tube wells found after lots of insistence, as project representative was unwilling to show the basement area. Because of the observed attitude of project representative, there is strong likelihood that there might be other illegal tube wells operating in the premises of project area, which the representative has neither disclosed nor he has taken the team to such locations.
5. No treated water found to be in use for construction activity. Subsequently, SEAC's term was extended temporarily for a period of three months vide Office Order dated 13.11.2020. Meanwhile the project proponent had submitted a letter on dated 14.11.2020 (Copy enclosed in Annexure-2) to UPPCB, Ghaziabad mentioning that they have dismantled all the bore wells which was observed by the joint inspection committee on 12.10.2020. The nominated member of SEAC along with officers of Board inspected the site on 04.12.2020. The observations of the joint inspection dated 04.12.2020 is as follows—

1. The project representative Shri Rajesh Kumar Aggarwal, Vice President (Project) was present. The following observations have been made during the joint inspection visit on 04.12.2020. (Figure -01).

2. It was found that the 02 bore wells at the project construction sites have been dismantled temporarily. There is a possibility that they may use it again as it was not permanently closed (figure -02).

3. Out of 03 borewells in the basement, the project representative was telling that there is no bore well in the basement. Accordingly the joint inspection committee started, searching the whole basement area of around, plot area 154916 Sq. meters. Two bore wells were traced out (Figure-03) of which one was under running conditions but covered by construction debris. It seems they purposely tried to hide the same.

4. As in the major part of the basement area there was no light and the project team was not cooperating, the rest of the bore wells could not be traced out. However from the attitude of the project member it is suspected that there may be more numbers of borewells in the basement.

Proposed action and Recommendations

The main complaint was regarding illegal extraction of ground water for the project Ws. Prateek Grand City, Plot Nos. 4/8S-01 & 4/8S-05, Siddhartha Vihar, Ghaziabad without obtaining any consents/permits/licenses from the competent authority. Based on the observations made during the inspection conducted on 12/1/2020 & 04,12.2020 the Committee hereby draws the following action points & recommendations:-

- Project should be directed to permanently dismantle all bore wells unless permission is not obtained from competent authority.

- *Recommendation to Impose fine against project for illegal abstraction of ground water have been sent by Regional office, UPPCB, Ghaziabad to Regional office, CGWB, Lucknow in compliance of Honble Tribunal's orders in OA 593/2011 Paryavaran Suraksha Samiti & Ors. Vs Govt. of India & Ors. dated 28.08.2019.”*

4. We do not find any reason not to accept the report. Accordingly, we direct further action in terms of the above report. We also direct that the same Committee may make assessment of the compensation within one month, following due process of law. If the compensation is not paid within reasonable time, the State PCB may take coercive measures, including suspending the Consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. The sealing of illegal borewells may be ensured by the District Magistrate, Ghaziabad. Fresh potable water may not be allowed to be used in construction.

The application is disposed of.

A copy of this order be forwarded to the CPCB, State PCB, District Magistrate, Ghaziabad, CGWA and SEIAA, UP by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

April 9, 2021
Original Application No. 182/2020
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