

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

Execution Application No.18/2017

In

O.A. No. 16/2014

(I.A. No. 163/2019)

Shri Hazi Ariff

Applicant(s)

Versus

State of U.P. &Ors.

Respondent(s)

Date of hearing: 08.04.2019

**CORAM:**

**HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER**

**HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s)

Mr. R. Venkataramanand

Mr. V. Senthil Kumar, Advocates

For Respondent(s)

Mr. Rachit Mittal and Ms. Tanvi Aggarwal, Advocates for R-5

Dr. Sandeep Singh, Advocate for State of UP

Mr. Daleep Dhyani, Advocate for R-4, UPPCB

Mr. Vishwajit Singh & Ms. Vijaya Singh, Advocates for R-2-GNN

Ms. Jagriti Singh, Advocate for R-6 and 19

Mr. Tushar Agarwal & Mr. Oorjasvi Goswami, Advocates for R-10

Mr. Nitesh Sachdeva & Mr. Neelesh Sinha, Advocates for R-12

Mr. Pawan Upadhyay and Mr. Akash Tyagi, Advocates for R-13

Mr. Ranjesh K. Sinha, Advocate

Ms. Shashi Bala, Advocate for Mr. Raj Kumar, Advocate for CPCB

Mr. Akshat Hanraria and Ms. Etisha Srivastava, Advocate for R-14

**ORDER**

This Execution Application has been filed for compliance of the order dated 7<sup>th</sup> October, 2016 passed in Original Application (16/2014). By the said order, following observations/directions were made:

*“In our considered view no construction of whatsoever nature should be allowed on Sahibabad Drain no. 1, Ghaziabad unless Environment Impact Assessment Study is duly done and the Respondent no. 5- GDA should remove all such encroachments on green belt area as per GMPD 2021 in Vaishalli Zone -5 in accordance with law. It is also necessary that all illegal and unauthorised construction on the Sahibabad drain no. 1 are removed in accordance with law. However, as regards the constructions raised on the said drain under valid permission/licenses granted by respondent no. 6 Ghaziabad Nagar Nigam it is necessary to carry out a study regarding environmental impacts of such constructions before any action is taken. Suffice to say that the punitive action solicited by the applicant either for violation of orders of this Tribunal or for violation of the Provisions of Water Act, 1974 and/or Environment Laws generally has to be sought from the Criminal Court of competent jurisdiction. Hence, the Order: The Expert Committee comprising of Professor C.R. Babu, Centre for Environment Management of degraded eco-system, School of Environment study University of Delhi, Dr. Brij Gopal, Professor JNU, Professor A.K. Gosain Professor of Civil Engineering IIT, Delhi is constituted with directions to carry out study of Sahibabad drain No. 1 Ghaziabad and answer the following points:-*

- 1. Whether construction carried on Sahibabad drain No. 1 in pursuance to the permission/ license granted by respondent no. 3- GNN namely the constructions carried out by respondent nos. 10 to 15, must be removed in environmental interest or can be tolerated with modification as required so as to beneficially integrate the same with the total scheme of Sahibabad drain No. 1 to carry the storm water.*
- 2. The committee shall also make recommendations as they feel necessary in the interest of environment.*
- 3. The expert Committee shall furnish its report with the recommendations to respondent nos. 2, 3, 4 and 5.*

4. *If the Expert Committee comes to the conclusion that the aforesaid constructions must be removed, the respondent no. 3- Ghaziabad Nagar Nigam shall take all such measures to remove the said construction/s at the expense of the concerned respondent.*
5. *If the Expert Committee recommends that such construction shall be allowed to be tolerated with modification as suggested, the concerned persons responsible for such construction namely, respondent nos. 10 to 15 shall carry out such modifications at their own cost and expenses within a period of three months from the date of submission of such report by the Expert Committee and the requisition made by the Respondent no.3- Ghaziabad Nagar Nigam in that regard to do so.*
6. *On submission of the report by the Expert Committee the respondent no. 3- Ghaziabad Nagar Nigam shall consider such report and make necessary requisition as suggested therein to the concerned persons. In the event of the failure to carry out such modifications as requisitioned the concerned structure shall be removed either by the concerned respondent or by the respondent no. 3 Ghaziabad Nagar Nigam at the expense of the concerned respondent.*
7. *The Respondent nos. 2, 3, 4 and 5 shall take all such measures for removal of all illegal and unauthorised constructions carried on Sahibabad drain No. 1 in accordance with law.*
8. *Respondent no. 3- Ghaziabad Nagar Nigam shall initially bear the cost and expense of the Expert Committee appointed for Study of Sahibabad drain No. 1 and recover the same from the respondent nos. 10 to 15.*
9. *Respondent nos. 10, 12 to 15 shall deposit an amount of Rs. two lakhs each with Respondent no. 3- Ghaziabad Nagar Nigam towards costs and expenses of the Expert Committee.*
10. *Respondent no. 3- Ghaziabad Nagar Nigam and Respondent no. 4 UPPCB are directed to take all such, lawful measures, both preventive and punitive for stopping flow of discharge of untreated sewage/industrial effluent in Sahibabad drain No. 1. No discharge of 66 C ci untreated sewage/industrial effluents, dumping of MSW or any other waste shall be allowed in Sahibabad drain No. 1.*
11. *No person shall be permitted by the Respondents either to put up any construction or carry on any other activities upon the Sahibabad drain No.1, which may obstruct free flow of water in the drain, without its Environmental Impact Assessment Study being duly done and considered.*

12. Respondent no. 3- Ghaziabad Nagar Nigam shall pay cost of Rs three lakhs to the applicant and respondents shall bear their own costs.

13. O.A No. 16 of 2014 stands disposed of accordingly. M.A Nos. M.A. No.102/2014, M.A. Nos. 451, 741, 1353, 1354, 1355 and 1356 of 2015 and M.A. No. 208/2016 also stand disposed of.”

In furtherance to the above order, an Expert Committee was constituted of the Members, mentioned hereinabove, in the final order passed by the Tribunal.

Subsequently, on 29<sup>th</sup> August, 2017, the Tribunal observed as follows:

“From the submission of all the side it is noticed that there is inaction on the part of the Committee to submit the report as sought. Though no time limit fixed for its report but order has spelled out that within 3 months the illegal structure had to be removed by the encroachers. Cumulative reading of the directions could lead to conclusion that this Tribunal wanted expeditious action and gave three months time to the violators to remove illegal construction which implies Committee had to complete its report early. None of the direction of the Tribunal which is spelled out in the order has been complied. Instead further time is sought. Hence, we pass the following direction.

1. The Committee comprising of Prof. C.R. Babu, Centre for Environment Management of degraded Eco-System, School of Environment study University of Delhi, Dr. Briij Gopal, Professor, JNU, Prof. A. K. Gossain, Professor of Civil Engineering IIT, Delhi shall conduct local inspection immediately assisted by the regional officer of the State Pollution Control Board and he shall be nodal officer and the State Pollution Control Board shall provide logistical support to the Committee to inspect the structure which are detailed in our previous order for the purpose of submitting report as called for by this Tribunal.

2. If the Committee have already collected sample of discharge of the effluent that report be filed.

3. The committee shall inspect and report to the tribunal within four week from now.

4. The District Magistrate shall ensure that the jurisdiction police provides required security cover to the members of the committee.

5. The Ghaziabad Nagar Nigam shall make available all such required documents and information that Committee

may need to determine the legality or otherwise of the structure in question.

6. The report of the Commission shall be filed within one month from now, copy of which be furnish to the Applicant and Ghaziabad Nagar Nigam.

7. Respondents are permitted to participate in the proceeding of the inspection for which purpose the Ghaziabad Nagar Nigam must keep them informed of the date after certaining it from the Committee.

8. The senior most Member of the Committee shall act as the Chairman of the Committee for finalisation of the Report.”

The said Committee had then filed a report and the same was ordered to be taken on record vide order dated 12<sup>th</sup> October, 2017. A perusal of the report of the Committee reveals that the Committee has made general observations as well as recommendations, which are as under:

#### “GENERAL OBSERVATIONS

1. Almost the entire drain through the industrial area has been covered. Only few, small stretches are open to sky particularly where the plots have not yet been fully developed. The entire area is filled with foul smell caused by high load of sewage and organic wastes that is releasing both ammonia and H<sub>2</sub>S due to highly anaerobic conditions. Huge amounts of sludge have accumulated in the drain as can be seen in open stretches. The areas are also loaded with all kinds of solid wastes and near the Express Building, rag pickers are at work. These wastes arc a direct health hazard to the people living the area. workers in different establishments and also those doing petty business along the roads. All the people passing through the area are exposed to foul smelling gases. The natural vegetation is practically non-existent. The industrial effluents appear to be toxic and interfering with the degradation of the organic waste.

2. The natural stormwater channel of Sahibabad has been turned into a sewage drain carrying the waste from the entire area — first to Hindon river and then into the river Yamuna. Only a small fraction of the wastewater from the drain is diverted to the STP in Indirapuram. Thus the drain is

*a major cause of pollution in River Hindon and downstream Yamuna.*

*3. The natural drain should have not been allowed to carry sewage and industrial wastewater in the first place. After the development of the Industrial area by the UPSIDC, the GNN allowed the industries to cover the drain after entering into a formal agreements and asking them to pay certain charges in lieu thereof. This act itself motivated by raising revenue is against the environment and the relevant provisions of the EPA. The industries on their part, extended the covered area to suit their needs — far beyond the permissions by the GNN. In our opinion, the GNN is to be faulted for entering into agreements for covering the drain and then turning a blind eye to the extensions and violations in the covered area.*

*4. It is practically impossible to clean the drain in the absence of adequate access through large openings at reasonable intervals.*

#### **RECOMMENDATIONS**

*We recommend the following actions to be taken.*

*1. All covers and encroachments of the drain including those of the five specific respondents (no. 10, 12, 13, 14,15) should be removed/demolished. The entire Sahibabad drain should be restored as a natural storm water drain and no sewage or industrial effluent should be allowed to be discharged into it.*

*2. As a first step to restoration all concrete covers over the drain and other constructions, if any should be removed/demolished. Then, the entire stretch of the drain should be thoroughly desilted with proper sloping banks to its natural cross sections. The banks of the drain should be protected by developing green cover with trees and tall grasses. All encroachments on to the road or the drain should be completely removed.*

*3. All sewage and industrial effluents should be segregated and not allowed to flow into the natural drain. We understand that the GNN is planning to implement a sewerage network in the unsewered areas of the Ghaziabad also. As far as the industrial effluents are concerned, the industrial area should be provided a separate common effluent treatment plant as per CPCB norms.*

4. After the restoration of the natural drain, a single access of appropriate width may be provided over the drain from the main road to each of the respective plots. The width of the access over the drain should not exceed 6 meters that shall permit proper maintenance of the drain below it.

5. While the construction of a sewerage network in the area may take some time, the demolition of the cover over the drains should be undertaken immediately and the free flow in the entire drain should be restored along with desiltation and removal of all solid wastes. This demolition of the covering will help regular cleaning of the drain and unrestricted flow of storm water.

6. We take this view of restoration of the drain as a natural storm water drain in the interest of the ecology and the environment of the entire region.

a. The flow of storm water from its catchment will allow the natural drain to recharge ground water, mitigate urban flooding and support rich bio-diversity.

b. The green cover along the drain will also help improve the micro-climate, reduce levels of pollutants especially particulate matter and dust and toxic gases in the atmosphere. It will improve the aesthetics and serve as the lungs of the city.

c. The clean water flowing through the natural drain will also enrich the aquatic biodiversity particularly the birds.

#### ADDITIONAL SUGGESTIONS

A. We note from the order of the NGT dated 7th October 2016, that the removal of the cover over certain parts of the Sahibabad drain was objected in light of an earlier judgment of the Hon'ble NGT that had spared some of the covered natural drains within Delhi. We observe that the Sahibabad drain no.1 passes through an industrial area and had been allowed to be covered by the GNN only recently and that too on a long lease against the consideration of the certain amounts to be paid annually by the lessee. Such a permission to cover the drain was against the considerations for the protection of the environment and the ecology of the area. In our view, a wrong decision on the part of the GNN is not justified under the present circumstances where almost the entire drain has been covered and getting choked with silt, sludge and solid waste creating nuisance and toxic gases in the air.

*B. We suggest in view of similar situation prevailing in almost every city of the country that the Hon'ble NGT may issue necessary directions in this regard to all local urban bodies not to allow covering of the natural storm water drains and not to permit the entry of any kind of sewage or industrial effluent into the natural drains. Wherever, the storm water drains are covered and a receiving sewage or effluents should be restored to the extent possible.”*

Therefore, the Respondent-Ghaziabad Nagar Nigam and all other concerning respondents representing the Government Authorities, such as Uttar Pradesh Industrial Development Corporation, Uttar Pradesh Pollution Control Board, Ghaziabad Development Authority, District Forest Officer and Uttar Pradesh Jal Nigam shall file point wise reply, in respect of each and every recommendation and action taken thereupon within two weeks from today, with an advance copy to the Counsels for the other side.

In view of the fact that this matter was initiated in the year 2014 and final order was passed by the Tribunal in the year 2016 but still the execution of the same by respondent-Authorities is yet to be completed, we shall consider on the next date of hearing, after considering the affidavits filed by the respective respondents, with regard to the deterrent order which are to be passed as against the defaulting respondents.

The UPPCB is directed to submit the lab analysis report, samples of which were taken by the Committee, before the next date of hearing.

List this matter on 3<sup>rd</sup> May, 2019.

**I.A. No. 163 of 2019**

Learned Counsel for the applicant prays for withdrawal of this application.

Consequently, I.A. No. 163 of 2019 stands dismissed as withdrawn.

Raghuvendra S. Rathore, JM

Dr. Satyawan Singh Garbyal, EM

April 08, 2019

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