

Item No. 04

(Court No.1)

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

(By Video Conferencing)

Original Application No. 980/2019  
(I.A. No. 63/2021 & I.A. No. 132/2021)

Harminder Singh & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 02.07.2021

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

Applicant: Mr. A.R. Takkar, Advocate with Ms. Shriya Takkar, Advocate

Respondents: Mr. Shyam Divan, Senior Advocate with Mr. Vishnu Shankar Jain,  
Advocate for Omaxe Ltd. and Omaxe Chandigarh Extension Developers  
Ltd. (R-9&10)  
Mr. Jaiveer Shergil, Advocate for applicant in IA 63/2021 (PCB Real  
Estate Pvt. Ltd.)

**ORDER**

1. Vide order dated 25.9.2019, a factual and action taken report was called for from a joint committee comprising the Additional Chief Secretary, Housing and Urban Development, Punjab, Secretary, Irrigation Department, Punjab and the SEIAA, Punjab with reference to the allegation that respondents 9 and 10 - Omaxe Ltd and Omaxe Chandigarh Extension Developers Pvt. Ltd. had set up residential complex project called 'The Lake' **obstructing the natural flow of river Sisvan by filling up and closing a part of it in village Bharoujian and diverting it to another place nearby in village Kansala, Sub Tehsil Majri, District SAS Nagar, Mohali.** The applicant relied upon Google

image photographs showing that there was a rivulet in the year 2003 and road has been constructed without making any culvert to maintain natural flow of the river. This resulted in potential for flooding and flooding actually took place.

2. The matter was thereafter considered on 03.03.2020 in the light of the report filed by the State of Punjab, **acknowledging the violations and suggesting remedies**. Accordingly, the Tribunal directed compliance of the recommendations and further directed steps against diversion of the river, filling up of the river and removing the illegal construction. The extract from the order is as follows:

*“2. Accordingly, a report has been filed on 01.11.2019 by the Department of Environment, Punjab Government, mentioning the steps taken and seeking further time. Further, report dated 05.12.2019 has been filed. Findings and recommendations of the committee are as follows:*

**“ 4.0 Findings of the committee:-**

- i. The committee observed that the natural flow of river Siswan was disturbed by M/s. Omaxe Chandigarh Extension Developer Pvt. Ltd. by providing pipes of 5’ diameter beneath the road, which are not sufficient to cater the discharge flowing in the river(Nadi).***
- ii. Area adjoining to the creek has also been filled with the construction debris thrown by M/s. Omaxe Chandigarh Extension Developer Pvt. Ltd.***

**5.0 Recommendations by the committee:-**

- i) GMADA will construct culverts at point A for passing 2000 cusecs of water and at point B for passing of 2650 cusecs of water after vetting drawings from the Water Resources Department.***
- ii) M/s. Omaxe Chandigarh Extension Developer Pvt. Ltd shall remove the debris from the water way of the natural drain and restore the level of the land to the original level. GMADA shall ensure the compliance of the notice issued by it.***
- iii) M/s. Omaxe Chandigarh Extension Developer Pvt. Ltd shall protect the left side of creek of the reach adjoining to “The Lake Project and the left edge of the road from point A to B along the creek with***

**the help of stone pitching as per the undertaking 22/10/2019 submitted by it. GMADA and Water Resource Department shall ensure the compliance of the same.”**

**3. Let the above recommendations be complied with and overseen by Secretary Irrigation Department, Punjab and Greater Mohali Area Development Authority (GMADA).**

**4. The State PCB may assess and recover compensation on ‘Polluter Pays’ principle. The GMADA may also enforce its directions in letter dated 28.03.2014, Annexure B-1 to the report. The Committee may look into the issue of diversion of river at village Kansala which has not been gone into so far. Illegal filling up of the river and raising illegal construction and remedial action be also examined by the Committee. The illegal construction may either have to be removed or compensation assessed and recovered. For this purpose, representatives of the Central Pollution Control Board (CPCB), IIT Roorkee and the State PCB will be a separate Committee. The nodal agency for compliance and coordination would be the State PCB. A report may be furnished before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in).”**

3. The matter was then considered on 1.10.2020 in the light of report of the SEIAA Punjab dated 8.9.2020, with a letter of the Chief Engineer that there was no obstruction to the flow of the river which stand was against the earlier stand of the GMADA in its letter dated 28.3.2014 and letter of the Omax itself dated 22.10.2019. The Tribunal thus held that the said report could not be accepted and a fresh report should be given by the Chief Secretary after reconciling the conflicting stands of the different officers. The operative part of the order is reproduced below:

“1&2...xxx.....xxx.....xxx

3. In pursuance of the above, a report dated 08.09.2020 from SEIAA, Punjab has been filed alongwith a letter of the Chief Engineer, Water Resources Department, Punjab as follows:

“With reference to above mentioned subject a detailed report was submitted vide this office letter 2344/3-drainage dated 27.11.2019. Vide reference letter, report has been desired by your office regarding illegal filling of river and diversion of river at Village Kansala.

In this regard, Superintending Engineer, Patiala Drainage Circle, Patiala vide his office letter no. 1210/4-L dated 19.06.2020 has submitted that **the flow of the creek passing through the**

***pipe culverts near ‘The Lake’ project again returns to the right side and runs through the old bed of river and flows downstream, at present, there is no obstruction in the natural flow of the river near village Kansala.”***

***4. Learned Counsel for the applicants submits that the above report does not show compliance of the order of this Tribunal. Mere statement that the flow of the river is not obstructed is not adequate and is in conflict with the earlier reports referred to in the order dated 03.03.2020. It is also pointed out that the matter has been dealt with only by the Executive Engineer of the Water Resources Department, without involvement of other concerned Departments, including GMADA, Housing and Urban Development Department, the Environment Department and the Irrigation Department.***

***5. In view of above, we direct the Chief Secretary, Punjab to call a meeting of the concerned departments viz. GMADA, the Housing and Urban Development Department, the Irrigation Department, and the Environment Department within one month to look into the matter and take remedial action and furnish a report after taking information from all the said departments within three months by e-mail at judicial- ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.”***

4. The matter was last considered on 24.02.2021 in the light of the report of the Chief Secretary, Punjab dated 23.02.2021 and the objections thereto by the applicant. The Tribunal also heard learned Counsel appearing for Respondent Nos. 9 and 10, who volunteered to appear, even though for which no formal notice had been issued to the said respondents. The Tribunal found from the report that natural course of the river had been changed which aspect has not been considered by the SEIAA, Punjab while granting Environmental Clearance (EC). However, the report of the Chief Secretary did not address the problem completely. Accordingly, the Tribunal found it necessary to require further investigation into the matter and remedial action. Accordingly, the Tribunal sought a further report from an independent Committee, which was earlier constituted to monitor compliance of certain NGT directions, headed by a former Judge of the

Punjab and Haryana High Court and comprising a former Chief Secretary and a former Member Secretary of the State PCB to suggest remedial measures after considering the rival view point of the parties and the concerned Departments. It was directed that the report of the Committee be placed on the website to which the parties can file objections which will be finally decided by this Tribunal. The operative part of the order is reproduced below:

*“6. Accordingly, report has been filed by the Chief Secretary, Punjab on 23.02.2021 as follows:-*

*“3. That the matter was discussed in the meeting headed by the deponent on 22.10.2020, in which the (i) Principal Secretary, Water Resources and Housing and Urban Development (Administrative Department for GMADA) (ii) Principal Secretary Science, Technology and Environment (iii) Member Secretary Punjab Pollution Control Board (iv) Chief Engineer/ Drainage -cum-Mining & Geology - I and (v) Superintending Engineer, Drainage Circle Patiala participated. **After detailed deliberations it was agreed that in view of the factual position brought out by the Chief Engineer Drainage, the following remedial measures, as proposed were found appropriate:***

- (i) That the 2 pipes of 5 feet diameter, being inadequate to take 700 cusec discharge of the tributary of Siswan River, need to be replaced with a bridge of 50 feet span at Point B in Annexure A. The cost should be paid for by Omaxe.*
- (ii) The cross section of Siswan’s Tributary needs to be restored to its original capacity of 700 cusec in the lake project area by Omaxe under the supervision of Drainage Wing of the Water Resources Department.*
- (iii) The illegal and unauthorized embankments created in the main bed of the Siswan River by private land owners, which divert and restrict the flow of water, away from their fields and towards and along VR 6 Master Plan Road need to be removed to restore the original course of the river.*
- (iv) Adequate flood protection works need to be carried out in the Siswan River (including plugging the 2 pipes of 5 feet diameter Point A in Annexure - A) and along its bank abutting VR-6 road.*

*4. That during the meeting held on 22.10.2020 the report dated 05.12.2019 was also considered, wherein certain recommendations were made. On the basis of*

**the said recommendations, the Chief Engineer, Department of Drainage made his suggestions.**

**5. That the remedial actions taken by the department on the aforesaid remedial measures are given point-wise as under:-**

- (i) That after completing all the technical and code formalities work for the construction of box culvert at point B has been started at site; excavation of one side of road has been completed. The photographs of excavated site is attached and marked as Annexure B.**
- (ii) That the work relating to restoration of Siswan's Tributary to its original land width/ capacity has been completed.**
- (iii) That the work relating to removal of the unauthorized embankment in the main bed of Siswan River will be completed after the harvesting of standing crops with the help of the Local Administration and the Police Authorities.**
- (v) That the point 'A' in Annexure A has been plugged and necessary flood protection work of providing wire crates filled with stones/ boulders in the shape of revetment alongside VR-6 Roads from Point 'A' to 'B' stands completed at site."**

**7. The applicant has filed objections to the effect that Environmental Clearance (EC) was granted without taking into account the fact of Siswan River passing through the project. There is diversion of the natural flow of the river to raise constructions. The report does not address the problem fully. Construction of bridge at point B will not solve the problem. There is need to make culverts at points A and B as contemplated in the earlier order of this Tribunal. There is need to restore the area affected by the illegal diversion of the river flow. The builder has filled up the course of the River and raised construction in the River bed in village Bharoujian and Kansala, resulting in irreversible damage to the environment.**

**8. We have duly considered the matter and also heard the representative of the State. The Builder in question, has also put in appearance. We have also considered the application filed by another builder-company, the PCB Real Estate Pvt. Ltd. seeking direction to restore the River Siswan which has been illegally obstructed affecting the inhabitants.**

**9. We find that since there is change of the natural course of River Siswan by the Builder and the SEIAA while granting EC failed to even consider this aspect, satisfactory remedial action has to be taken. While we appreciate the efforts of the Chief Secretary in personally intervening in the matter, the**

**remedy provided does not adequately address the problem. Mere construction of bridge may not be a solution in the circumstances. There is need to further examine the matter with the assistance of an independent Committee which may also visit to the site.**

**10. Accordingly, without expressing final view at this stage, we request the Committee headed by Justice Jasbir Singh, former Judge of Punjab and Haryana High Court (constituted to oversee certain environmental issues in the State of Punjab) to look into the matter after undertaking visit to the site and suggest remedial measures. The Committee will be at liberty to take technical assistance from any other experts/institutions and also consider the viewpoint of the rival parties, including concerned Departments. The Committee may give its report preferably by 30.04.2021 and also upload the same on website of PPCB simultaneously so that the concerned parties/Departments and the Chief Secretary, Punjab can access the same for further course of action, unless there are objections to the report in which case the Tribunal will resolve the issue. The report may be filed by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”**

5. In pursuance of above, the Committee has filed its report dated 27.04.2021. The report refers to earlier reports on the subject including letters of the concerned Departments and letter dated 22.10.2019 of Omaxe Chandigarh Extension Developers Pvt. Ltd. The Committee undertook a site visit on 15.03.2021 and deliberated upon the matter including interaction with the affected parties. Relevant extracts from the report are reproduced below:

**“2.1 Interim report submitted by Joint Committee in the matter related to OA No. 980 / 2019 titled as Harminder Singh & Anr V/s Union of India & Ors.**

*A Joint committee, constituted by the Hon'ble National Green Tribunal in its order dated 25.9.2019, submitted its interim report in matter on 1.11.2019 to the Hon'ble National Green Tribunal with its observations and prayer to the Hon'ble National Green Tribunal as under.*

**Observations**

**i) Construction waste was found dumped in the low-lying area along the road. The committee**

**directed the representative of the developer to get the debris removed immediately.**

- ii) During visit, flow in Siswan Nadi was very less and water was passing through the creek and was crossing the road at point A and B. The committee observed that only two pipes of 5 feet diameter are provided at both the above crossing points and same are insufficient to handle the peak discharge during the rainy season. The committee decided that Department of Water Resources will design culverts and other measures to be taken for the unhindered flow of Siswan Nadi and the creek joining it.**
- iii) The representative of M/s Omaxe Chandigarh Extension Developers Pvt. Ltd agreed in principle to comply with aforesaid observations.**
- iv) During visit, the committee also observed that a detailed survey is required to be carried out to calculate the flow, original bed levels and cross sections to design the culverts required at point A & B for which about 4 weeks time is required by the Department of Water Resources.**
- v) After 4 weeks time, Water Resource Department shall provide the design and drawing of the culverts and other measures to be taken, if any, to the committee based upon the peak flow of at least last 25 years.**
- vi) The committee also decided that an interim report be filed in the Hon'ble National Green Tribunal and also a request be made for seeking 4 weeks additional time, so that comprehensive report be filed.**

#### **Prayer**

**In view of the above, the Joint committee has requested the Hon'ble National Green Tribunal to extend the time limit to furnish the final report by another 4 weeks time to the committee as detailed survey is required to be carried out.**

- 2.2 Submission of final report by the Joint Committee, constituted by the Hon'ble National Green Tribunal in its order dated 25.9.2019, in OA No 980 of 2019 in the matter of Harminder Singh & Anr V/s Union of India & Ors by SEIAA, Punjab**

### **2.2.1 Findings of the Joint committee**

- i) The Committee observed that the natural flow of river Siswan was disturbed by M/s Omaxe Chandigarh Extension Developer Pvt. Ltd by providing pipes of 5' diameter beneath the road, which are not sufficient to cater the discharge flowing in the river (Nadi).*
- ii) Area adjoining to the creek has also been filled with the construction debris thrown by M/ s Omaxe Chandigarh Extension Developers Pvt. Ltd.*

### **2.2.2 Recommendations of the Joint Committee**

- i) GMADA will construct culverts at point A for passing 2000 cusecs of water and at point B for passing of 2650 cusecs of water after vetting drawings from the Department of Water Resources.***
- ii) M/s Omaxe Chandigarh Extension Developers Pvt. Ltd shall remove the debris from the water way of the natural drain and restore the Level of the land to the original level. GMADA shall ensure the compliance of the notice issued by it.***
- iii) M/s Omaxe Chandigarh Extension Developers Pvt. Ltd shall protect the left side of creek of the reach adjoining to 'The Lake' Project and the left edge of the road from point A to B along the creek with the help of stone pitching as per the undertaking 22/10/2019 submitted by it. GMADA and Department of Water Resources shall ensure the compliance of the same.***

### **2.3 Contents of the letter No. 2176-78 dated 22.10.2019 by the Chief Engineer, Drainage, Department of Water Resources, Punjab addressed to Chairman, SEIAA, Punjab.**

#### **Recommendations**

- i) During 2014, the Notice was issued to OMAXE company by the GMADA authorities and directed them to stop the pipe laying work.*
- ii) Similarly, notices under Canal & Drainage Act were issued during 2014 to the land owners to restore the natural flow.*

*Now, the Executive Engineer/Ropar Drainage, has taken up a matter with SDM/Kharar and revenue authorities of Majri Block again on 11.10.2019 and requested them to provide the names of the defaulters for diverting/obstructing the flow of Siswan Nadi, so that section 55 of the act could be invoked.*

**2.4 Contents of the letter No. 2940-41/3 — Drainage dated 27.11.2019 from Department of Water Resources addressed to the Chairman, SEIAA, Punjab.**

*In the interim report submitted by SEIAA, Punjab to Hon'ble National Green Tribunal it was desired as below:*

*"A detailed survey is required to be carried out to calculate the flow, original bed levels and cross sections to design the culverts required at point A & B for which 4 week time is required by the Department of Water Resources "*

***In this context, a detailed survey was carried out by the officials of Drainage Department and bed levels, bed widths etc., were noted. Based upon this survey, discharge has been calculated as no L-section was available. It was found that the existing pipe culverts (at point A&B) are inadequate for catering the calculated discharge. The following observations are submitted:***

***1. Discharge which passes through Siswan Nadi creek towards 'The Lake' Project has been calculated as 2000 cusecs. Thus, the culvert bridge (at point-A) must be designed for passing 2000 cusecs. In this regard, GMADA should get drawings of the culvert to cater said discharge checked/vetted from the Department of Water Resources at the earliest so that same could be constructed before the next flood season.***

***2. The discharge of creek coming from village Bharounjian has also been calculated as 650 cusecs, so another culvert bridge (at point B) must be designed to cater accumulating effect of (2000 cs. + 650 cs.) i.e 2650 cusecs in total. Drawings of the same may also be got vetted on the same pattern. It is pertinent to mention that no construction of any type & disposal of surplus material be allowed towards right side of the creek from point A to point B and level of this land should be brought to the original level. Subsequently, the left side of creek of this reach adjoining to 'The Lake' Project be protected with the help of stone pitching. Similarly, the left edge of the road from point A to B along the creek should also be protected with the help of stone pitching.***

***It is important to mention here that M/s Omaxe Chandigarh Extension Developers Pvt. Ltd has already submitted their consent for construction of***

**these culvert bridges vide letter No OCEDPL/DIR 2019-1, dated 22.10.19**

**2.5 Contents of letter no. 2687-3 - drainage dated 2.12.2019 from the Chief Engineer, Drainage, Department of Water Resources, Chandigarh addressed to Chairman, SEIAA**

*The Superintending Engineer, Drainage Circle Patiala vide his office letter no. 2970/4-L dated 2.12.2019 has reported that obstructions in the flow of creek coming from village Bharonjian have been removed and natural flow has been maintained. Activities of local land owners which were disturbing the flow of Siswan Nadi have also stopped, as a result of which, water flow has returned to its old natural course/ creek.*

**2.6 Contents of letter No. CE/GMADA/2019/820 dated 2.12.2019 from GMADA Mohali addressed to the Chairman, SEIAA**

- 1. That GMADA will construct culvert/bridge at point A & B as per the hydraulic data & levels to be supplied by Drainage Department.*
- 2. That during site visit of the Committee on 22<sup>nd</sup> October 2019, the representatives of the M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. were asked to get the debris removed from the water way of the natural drain, but till date nothing has been done by the Developer in this regard. A notice has been issued to the Developer vide this office letter No. 819 dated 2.12.19 to get the needful done within next three days and report.*
- 3. Regarding the letter issued to M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. by the then Divisional Engineer (PH-2) GMADA vide his letter No. 2322 dated 5.6.2014, it is submitted that this letter has been issued with reference to their letter dated 28.3.2014 vide which they have asked for the design of storm drainage scheme to be laid along the road. Although, the then Divisional Engineer (PH-2) GMADA issued notice to them that they are obstructing the flow of natural drain, yet they never bothered to submit any design of cross drainage work to be constructed on this road for free flow of water. It is lapse on the part of M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.*

**2.7 Contents of letter No. GMADA-DE (PH-2)-2014/2322 dated 5.6.2014 from GMADA, SAS Nagar addressed to Omaxe Chandigarh Extension Developers Pvt. Ltd.**

*Kindly refer to your letter under reference in which you had requested this office for submission of design of storm drainage for the road mentioned above. You were verbally informed by this office to send your proposal for this road,*

*it will be checked and compared with the storm drainage design of Mullanpur Area. But it is pity to mention here that Sub Divisional Engineer of this office has informed that you have undertaken the work of laying of storm water pipe without taking any approval. Furthermore, it has come to the notice of undersigned that you are diverting course of natural choe which is against the norm and violation of law of land.*

*You are directed to stop the work immediately and remove the pipes which have been laid by you without the prior approval of GMADA.*

**2.8 Contents of letter No. 966-67/3D dated 23.6.2020 from Chief Engineer, Drainage, Department of Water Resources, Chandigarh addressed to Chairman, SEIAA**

*With reference to above mentioned subject, a detailed report was submitted vide this office letter 2344/3-drainage dated 27.11.2019. Vide referenced letter, report has been desired by your office regarding illegal filling of river and diversion of river at village Kansala.*

*In this regard, Superintending Engineer, Patiala Drainage Circle, Patiala vide his office letter no 1210/4-L dated 19.6.2020 has submitted that the flow of the creek passing through the pipe culverts near 'The Lake' Project again returns to the right side and runs through the old bed of river and flows downstream. At present, there is no obstruction in the natural flow of the river near village Kansala.*

**2.9 Report dated 23.2.2021 filed by the Chief Secretary, Punjab to the Hon'ble National Green Tribunal**

**Para 3:** *That the matter was discussed in the meeting headed by the deponent on 22.10.2020, in which (i) Principal Secretary, Water Resources and Housing & Urban Development(Administrative Department for GMADA) (ii) Principal Secretary, Science, Technology and Environment (iii) Member Secretary Punjab Pollution Control Board, (iv) Chief Engineer/Drainage-cum-Mining & Geology-I and (v) Superintending Engineer, Drainage Circle Patiala participated. After detailed deliberations, it was agreed that in view of the factual position brought out by Chief Engineer Drainage, the following remedial measures, found appropriate:*

**(i) That the 2 pipes of 5' feet diameter, being inadequate to take 700 cusec discharge of the tributary of Siswan River, need to be replaced with a bridge of 50 feet span at Point B. The cost should be paid by Omaxe.**

**(ii) The cross section of Siswan's Tributary needs to be restored to its original capacity of 700**

**cusec in the Lake Project Area by Omaxe under the supervision of Drainage Wing of the Department of Water Resources.**

**(iii) The illegal and unauthorized embankments created in the main bed of the Siswan River by private land owners, which divert and restrict the flow of water, away from their fields and towards and along VR 6 Master Plan Road need to be removed to restore the original course of the river.**

**(iv) Adequate flood protection works need to be carried out in the Siswan River (Including plugging the 2 pipes of 5 feet diameter at Point A and along its bank abutting VR-6 road.**

**Para 4:** That during the meeting held on 22.10.2020, the report dated 05.12.2019 was also considered, wherein certain recommendations were made. On the basis of the said recommendations, the Chief Engineer, Department of Drainage made his suggestions.

**Para 5:** That the remedial action taken by the department on the aforesaid remedial measures are given point-wise as under.

- (i) That after completing all the technical and codal formalities, work for the construction of box culvert at point B has been started at site; excavation of one- side of road has been completed.*
- (ii) That the work relating to restoration of Siswan's Tributary to its original land width/capacity has been completed.*
- (iii) That the work relating to removal of the unauthorized embankments in the main bed of Siswan River will be completed after the harvesting of standing crops with the help of the Local Administration and the Police Authorities.*
- (iv) That the Point 'A' has been plugged and necessary flood protection work of providing wire crates filled with stones/boulders in the shape of revetment alongside VR-6 Road from Point 'A' to '13' stands completed at site.*

**2.10 Contents of the report number 1601-1603 dated 25.3.2021 of the committee constituted by Monitoring Committee**

- i) Demarcation of the site was carried on 18.3.2021 by Kanungo and area Patwari, Block Majri.*
- ii) After demarcation, the sajra plan of site is enclosed herewith.*

iii) The details of the key features as desired by the Monitoring Committee, is as under:

**1. Siswan river:**

- Storm water of 2000 cusec upto point A (shown in Blue Colour Hatch)
- Khasra nos. along with type of this land are 98 (Chahi), 145/1 (Nadi), 151/1 (Chahi and Barani) as per current jamabandi.

**2. Drain originating from Village Bharounjian:**

- The drain carrying storm water and wastewater of village Bharounjian and adjoining villages upto point B is marked in Blue Colour.
- Khasra nos. along with type of this land are 279 (Choe), 109 (Choe) as per current jamabandi.

**3. The road passing in front of Omaxe project, Point A and B** is marked in Purple colour. Khasra no. along with type of this land are 102 (Barani), 101 (Gair mumkin), 105 (Gair mumkin), 106 (Gair mumkin), 152, 107 (Gair mumkin), 108 (Barani), 109 (Choe) as per current jamabandi.

**4. The lake project developed by M/s Omaxe New Chandigarh Developers Pvt. Ltd.** is marked in Green Colour. Khasra no. along with type of this land are 124 (Plot), 142 (Plot), 190 (Plot), 191 (Plot), 141 (Plot), 125 (Chahi), 111 (Chahi), 93 (Chahi), 87 (Chahi), 92 (Gair mumkin), 112 (Gair mumkin), 121 (Gair mumkin), 126 (Gair mumkin), 139 (Gair mumkin), 138 (Gair mumkin), 137 (Gair mumkin), 136 (Gair mumkin), 135 (Gair mumkin), 134 (Gair mumkin), 127 (Gair mumkin), 120 (Gair mumkin), 113 (Gair mumkin), 114 (Gair mumkin), 115 (Gair mumkin), 91 (Gair mumkin), 88 (Chahi), 89 (Chahi), 90 (Gair mumkin), 116 (Gair mumkin), 117 (Chahi), 74 (Gair mumkin), 75 (Chahi), 68 (Chahi), 72 (Gair mumkin), 513 (Chahi), 512 (Chahi), 71 (Gair mumkin), 192 (Plot), 193 (Plot), 208 (Plot), 209 (Plot), 69 (Chahi), 84 (Chahi), 85 (Chahi), 86 (Chahi), 83 (Chahi) as per current jamabandi.

Sajra Map mentioning the Khasra Nos. of Siswan drain, drain originating from village Bharounjian, road passing in front of Omaxe Project, point A & B, Lake Project is annexed as per **Annexure-2.**

**2.11 Report of the Separate Committee comprising of officers of CPCB, IIT Roorkee and State PCB for assessment of compensation on illegal construction, if any, by M/s Omaxe Chandigarh Developer Pvt. Ltd. •**

*The Hon'ble National Green Tribunal vide its order dated 3.3.2020, constituted a separate committee, comprising of representatives of CPCB, In Rorkee and State PCB for assessment of compensation and its recovery due to illegal construction in river and diversion of river at village Kansala..*

*A separate committee of following officers visited the site on 29.7.2020 and submitted its finding and recommendations as under:*

- i) Sh. Suneel Dave, Additional Director, Central Pollution Control Board*
- ii) Prof. Zulfequar Ahmad, Deptt. of Civil Engineering, IIT Roorkee*
- iii) Sh. R.K. Ratra, SEE, Punjab Pollution Control Board*
- iv) Sh. Lavneet Kumar, Environment Engineer, Punjab Pollution Control Board, Regional Office, SAS Nagar*

### **2.11.1 Findings of the separate committee**

#### **Findings**

- i) Centerlines of the main course of the river Siswan and the Choe that comes from Bharounjian village are marked on the Google earth images dated 17/08/2007 and 09/07/2020 as shown in Fig.2. Other available Google earth images from year 2002 to 2020 have also been examined. It is apparent from the examined images that before the construction of the project i.e., year 2008, the Siswan river after crossing the Chandigarh —Kurali road was taking a left turn (towards east) and then crosses the project road at point 'A' and joins the natural choe coming villages Bharounjian and takes right turn (towards west), while crossing the project road at point-'B', thereafter, the river flows towards the village Kansala.*
- ii) Even after the ongoing construction of the project, the river Siswan crosses the project road at point 'A' and then return back at point 'B'. Due to narrow channel section of the river Siswan and the Choe, a major part of the flood water flows over their flood plain. Due to inadequate channel section to the river Siswan before its crossing with the project road, a part of the flood water follow straight path.*
- iii) Even before the construction of the project, the channel section of the river Siswan and Choe was not adequate to pass the flood discharge. A major part of the flood water in Siswan river was following straight path before the point-A as shown in Fig.1.*
- iv) After the commencement of the project, the confluence point of river Siswan and Choe was shifted by 300 feet (90m) approx. towards the northern side near Tower-Isbella of the project. It is also evident from the Fig. 2 that the development of the project has shifted*

*the main course of the river and Choe and also encroached their flood plain near Tower-Isbella. Such encroachment may result in more inundation of the area towards the right side (north) during high flow in the river and the Choe.*

- v) A bridge of 400 ft width is provided on river Siswan at its crossing with Chandigarh-Kurali road and culverts of 75 ft and 45 ft width are provided on the Choe joining to the river. Strangely, only two pipes of 5 ft. dia. each at point-'A' & 'B' are provided across the project road to pass the flow to the river.*
- vi) The historical 'Google earth images' reveal that the river Siswan has wandering behaviour at village Kansala. The main course to river near village Kansala during pre-and post construction of the project is shown in the Fig.3. Some patch of land towards right side of the river is low lying and gets inundated frequently during the monsoon period. The river has also eroded the right bank at some places. Inundation and some erosion towards the right bank of the river Siswan near the village Kansala can be attributed to natural change of the river.*

#### **2.11.2 Recommendations of the separate Committee**

- i) Provided two pipes each of 5 ft. diameter at the crossings of the Siswan river with the project road at points A and B are not adequate and would inundate the area towards west side of the project road even during, moderated flow in the river. Such obstruction in flow may divert the main channel and the river may follow a straight path in future which cause erosion of the agricultural land. To avoid such damage, it is recommended that culverts of suitable size be constructed at both the points A & B. The concerned Dept. may engage some expert agency to carry out study to design the culverts and the cost of the construction of the culverts shall be levied from M/S Omaxe Chandigarh Extension Developers Pvt. Ltd.***
- ii) The course of the river and Choe at their confluence have been shifted towards north and the left flood plain of the Choe and Siswan river have also been encroached near the confluence. To avoid the environmental damage in future, the committee recommends that the course of the river shall be restored to its original course as it was before the construction of the project. Alternatively, a suitable section of the Siswan river from point-A to B and the Choe from the Culvert on***

**Chandigarh —Kurali road to its confluence with Siswan river be excavated and debris be cleared so that flood water can be contained in the channelized section of the nearby area. The concerned Dept. may engage some expert agency to carry out study to fix the size of the section of the river and the Choe. The cost towards the restoration or the channelisation including, land cost is required to be borne by M/S Omaxe Chandigarh Extension Developers Pvt. Ltd.**

**iii) Inundation and some erosion towards the right bank, of the Siswan river near the Kansala village can be attributed to natural change of the river. However, to control loss of pricey land against erosion, It is recommended that the concerned department may take suitable measures to protect the right bank of the river near the Kansala village.**

**iv) The concerned department should hire an expert agency for studying, the damage caused to the flora and fauna / loss of ecology due to change in morphology of the river Siswan. The environmental damage and its restoration cost may be estimated by agency and be recovered from M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.**

### **3.0 Visit to the site by the Monitoring Committee alongwith other officers on 15.3.2021**

*The Monitoring Committee under the Chairmanship of Justice Jasbir Singh, Former Judge Punjab & Haryana High Court and now as Chairman of the Monitoring Committee in the presence of other officers of the State of Punjab (list of the officers is annexed as per Annexure -3) visited the site on 15.3.2021 and observed as under:*

#### **3.1 Observations of the Monitoring Committee made during its earlier visit to the site on 15.3.2021**

1. *Siswan, a non perennial river, is passing in between the villages Bharounjian and Kansala. At the time of visit, the Monitoring Committee observed lot of stagnation of water at Point A, as marked by the earlier committee. The said water is coming from a drain starting from bed of Siswan river. The Monitoring Committee also visited the site from where the said drain is started. At the time of visit, the officials of the departments stated that occupants of the land have illegally constructed the drain to save their crops and the same was brought upto Point A where it is stagnating. At Point A, earlier there were*

02 pipes each of 5 feet diameter to carry water to meet with another drain, description of which has been mentioned in the next para. Now these two pipes have been removed by management of Omaxe Project as stated by the residents of the area, resulting in stagnation of water at Point A.

2. Another natural occurring drain to carry the storm water and wastewater of village Bharounjian and other adjoining villages, is passing near Omaxe project, whose discharge has been estimated as 650 cusec by the earlier committee and the same is passed through 02 pipes each of diameter 5 feet and cross the main road in front of Omaxe project, which has been called as Point B. During the visit, it was observed that the management of Omaxe project has started the foundation work of new culvert, which shall replace the existing 02 pipes each of diameter 5 feet. As per the information supplied by the Omaxe management and other officers present during the visit, new culvert shall be constructed to cater the surface run off of village Bharounjian and other adjoining areas, which shall be about 650 cusec (assessed by the earlier committee).
3. The villagers of village Bharounjian informed that the flow of wastewater of the village has been obstructed and the same has not been allowed to discharge into the drain passing in front of Omaxe project. DDPO of the area informed that the flow has been obstructed to treat the same through pond system and thereafter it shall be allowed to discharge into drainage system.
4. Tehsildar of the area shown the Sajra Map mentioning the road constructed in front of Omaxe project, the drain carrying water upto Point A allegedly constructed by the occupants of the land to save their crops and drain meant to carry surface run off of villages Bharounjian and other adjoining villages.

**3.2 Recommendations/directions of Monitoring Committee to the officers of the department during its earlier visit to the site on 15.3.2021**

**A committee of the following officers is constituted.**

- i. Tehsildar of concerned area**
- ii. The Executive Engineer, Department Drainage/ Canal**
- iii. The Executive Engineer, GMADA**
- iv. DDPO of the area**
- v. District Town Planner of the area**
- vi. Any other concerned officer as desired by Tehsildar of the concerned area.**

***The Executive Engineer, Department of drainage/canal shall be a coordinating officer.***

***The committee shall demark the following features on the Sajra map and shall submit the same to the Monitoring Committee by 25.3.2021.***

- a) The drain carrying stagnated water, which was allegedly constructed by the occupants of the nearby land and carrying water upto Point A, which carry about 2000 cusec water (assessed by the earlier committee).***
- b) The drain carrying storm water and wastewater of village Bharounjian and other adjoining villages passing through Omaxe project and crossing the road at point B.***
- c) The road passing in front of Omaxe project, Point A and B.***
- d) The residential complex known as "The Lake" developed by M/s Omaxe Chandigarh developers Ltd.***

**3.3 *Drain starting from Siswan rivulet from the place almost parallel to first corner of the bridge and travelling parallel to Chandigarh Kharar Road and reaching to Point A (maximum discharge has been estimated as 2000 cusec)***

*The Monitoring Committee alongwith other officers visited about 1 Km long drain which has been constructed by the private land owner to divert the flow from their fields and reaching to point A. At this point, previously, these were 2 pipes each of diameters 5 feet to carry flow of drain beneath the road and merging the drain coming from the village Bharounjian and other adjoining villages carrying their wastewater and surface run off during rains, the estimated discharge of which is about 650 cusec, as monitored by the Committee of the State of Govt., constituted by Hon'ble National Green Tribunal. But now the water of this drain has been obstructed by removing these 2 pipes each of diameter 5' and water of this drain is stagnating at point A. Stone pitching has done along the road to make the free flow of water along the right side of road to further meet it at point B, from where it will lead to creek already built naturally to carry the flow in Siswan river.*

**3.4 *Drain carrying wastewater of the villages Bharounjian and other adjoining villages and surface run off during rains (maximum discharge has been estimated as 650 cusec)***

*The Monitoring Committee visited the drain carrying wastewater of adjoining villages (village Bharounjian and other villages to the Omaxe Project, (The Lake) and passing*

through the project and reaching to point B, where the construction work of box culvert has been started. This box culvert shall replace 2 pipe of each of diameter 5 feet. The box culvert shall be constructed to pass the estimated discharge of 650 cusec.

The residents of the villages claimed that the wastewater discharge from their villages has been cut off and stagnating at one place. DDPO claimed that the wastewater discharge of the villages has been cut off to disallow the untreated discharge into Siswan river. DDPO had been instructed on the spot to install in-situ bio remediation technology or pond system based on Seechewal Model or Thapar Model to treat the wastewater discharge of the villages before its temporary disposal into the drain and further leading to Siswan river till the arrangements for utilization of treated wastewater of villages for irrigation is made.

### **3.5 Details of the Khasra No., area and name of the owners of the land near The Lake Project**

On the directions of the Monitoring Committee to the Deputy Commissioner, SAS Nagar vide No. CMC/2021/1706 dated 30.3.2021 regarding submission of the details of the all the owners of the land containing the certain Khasra No. for the Jamma Bandi period 2000-2021, Naib Tehsildar, Majri, District SAS Nagar has submitted the details of the land owners in the Khasra No. as desired by the Monitoring Committee for the Jamabandi period 2013-14, which is annexed as per Annexure-4.

### **4.0 Visit to the site near "The Lake Project (Developed by M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.)," creek of Siswan river and natural Choe (a Tributary of Siswan river) passing through village Bharounjian, by the Monitoring Committee on 15.4.2021.**

#### **4.1 Observations of the Monitoring Committee**

The Monitoring Committee in the presence of the officers of the various departments, the list of which is enclosed as per **Annexure-5**, visited the creek of Siswan river, natural Choe (a tributary of Siswan river) passing through village Bharounjian and near Lake Project (Developed by M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.), on 15.4.2021 and observed as under:

1. The Monitoring Committee was provided with Google earth images of the year 2003, 2006, 2009 and 2015 showing that the creek maintained within the bed of Siswan river was crossing the road (now constructed as VR-6 road) at point A and after its confluence with natural Choe (a tributary of Siswan river) passing through village Bharounjian, it again crosses to road (now VR-6) at point B and thereafter joining to river

Siswan. Google earth images of the year 2003, 2006 and 2009 are annexed as per Annexures 6 to 8. Photograph showing the creek maintained in Siswan river bed and meeting at point A at VR-6 road is as per plates-1 and 2.

Google earth images of the year 2003, 2006, 2009 and 2015 also show the existence of natural Choe/drain (a tributary of river Siswan) passing through village Bharounjain and other adjoining villages and adjoining to The Lake Project (developed by M/s Omaxe Chandigarh Extension Developer Pvt Ltd.) and after its confluence with creek of Siswan River, the combined stream is crossing the road (VR-6 road) at point B and enters into Siswan River through two pipes each of diameter 5 feet but now a culvert to pass 650 cusec of water has been proposed to be constructed for which concreting of bed of natural drain/ choe at upstream of two pipes each of diameter 5' feet is being done. The photographs showing concreting being done to construct culvert and existence of two pipes each of diameter 5' feet at point B are mentioned as per plates 3 and 4.

The figure showing Siswan River, creek of Siswan River maintained in its bed, natural drain / choe (a tributary of river Siswan) passing through the villages and after their confluence, re-entry into Siswan River is as per figure-1.

These facts indicate that the creek maintained in Siswan river bed, natural drain / choe (a tributary of Siswan river) passing through village Bharounjain are in existence before the year 2003 and these creek and natural choe are maintaining their regular course in the area before the year 2003. M/s Omaxe Chandigarh Developer Pvt Ltd while constructing The Lake Project has disturbed the natural course of creek of Siswan river abutting to the project and part of natural drain / choe (a tributary of Siswan river). Therefore, course of natural drainage system of the area needs to be restored to its original course to maintain their natural / ecosystem system. The department of drainage has informed that the department had issued notices to the farmers of the area on 12.6.2014 to 16.6.2014 for raising embankments within the bed of Siswan river and creating a drain and again requesting Naib Tehsildar, Majri, vide letter dated 11.10.2019 to provide the names of the miscreants, who are responsible for reducing the water way of Nadi. The case in regard is pending before the Hon'ble Punjab and Haryana High Court as informed to the Monitoring Committee.

2. During the visit to the site by the Monitoring Committee on 15.4.2021, the representative of M/S Omaxe

*Chandigarh Extension Developers Pvt. Ltd. claimed that the private land owners had diverted the flow of Siswan river by digging a drain/creek within river bed, whereas, earlier the said developer has never raised any objection regarding digging of drain/creek within the river bed. Moreover, it has never made any representation/taken up the matter before any Department/authority of State regarding digging of such drain by the private land owner within the Siswan river bed.*

*Also, M/S Omaxe Chandigarh Extension Developers Pvt. Ltd. has already given an undertaking before the earlier Committee vide its letter No. OCEDPL/DIR/2019-1, dated 22.10.2019 for construction of culverts or any other option to make unobstructed flow of seasonal/rainy nallah/choe.*

- 3. The project developer with the concurrence of Department of Water Resources has constructed a pathway for the flow of water of Siswan river from Point A to C as mentioned in the map showing the area near 'The Lake Project', whereas, such pathway was not in existence before the start of the proceedings before the Hon'ble National Green Tribunal. The pathway provided between Point A to C may damage the road and create inundation. Further, on the way from Point A to C, there is private land and the owners of the said land may raise objections for construction of pathway for flow of water.*
- 4. The physical verification / visit made on 15.4.2021 by the Monitoring committee indicate that the creek maintained within Siswan river bed has been closed at point-A on VR-6 road and two pipes each of diameter 5 feet, provided underneath the road (VR-6 road) to pass the water and join to natural drain / choe of village Bharounjian near "The Lake Project", have been removed and water in the form of small pond is lying stagnating near point A (Plate-5).*
- 5. Stone pitching along bank of VR-6 road from point A to B has been made. The Chief Engineer, Department of Water Resources (Drainage) claimed that during flooding in Siswan river, the flow of water shall be maintained in flood plain along VR-6 road and there is no need to provide culvert at point A to pass the water to meet with natural drain / choe passing through village Bharounjian. However, the Monitoring Committee is of the view that natural flow of river, its creek and other natural drainage system cannot be disturbed to maintain balance between ecosystem and environment.*
- 6. The natural drain/choe passing through the village Bharounjian and carrying wastewater of the said village*

alongwith other adjoining villages needs to be restored to its original course having same width and depth by M/S Omaxe Chandigarh Extension Developers Pvt. Ltd. as it was before the year 2003.

7. During the last visit of the Monitoring Committee on 15/03/2021, the villagers of village Bharounjian informed that the flow of wastewater of the village has been obstructed and the same has not been allowed to discharge into natural drain passing through their village and near "The Lake Project". DDPO, Mohali informed that the flow has been obstructed to treat it through pond system and thereafter it shall be allowed to discharge into drainage system. The photograph showing the wastewater obstructed at the point upstream of The Lake Project is as per plate-6.

**i) The details of the Khasra Nos. of the area prepared by the Committee, constituted by the Monitoring Committee during its visit to the site on 15.3.2021, which is annexed as per Annexure-9, indicate as under. Siswan river:**

- Storm water of 2000 cusec upto point A (shown in Blue Colour Hatch)
- Khasra nos. along with type of this land are 98 (Chahi), 145/1 (Nadi), 151/1 (Chahi and Barani) as per current jamabandi.

**ii) Drain originating from Village Bharounjian:**

- The drain carrying storm water and wastewater of village Bharounjian and adjoining villages upto point B is marked in Blue Colour.
- Khasra nos. along with type of this land are 279 (Choe), 109 (Choe) as per current jamabandi.

**iii) The road passing in front of Omaxe project, Point A and B is marked in Purple colour. Khasra no. along with type of this land are 102 (Barani), 101 (Gair mumkin), 105 (Gair mumkin), 106 (Gairmumkin), 152, 107 (Gair mumkin), 108 (Barani), 109 (Choe) as per current jamabandi.**

**iv) The lake project developed by M/s Omaxe New Chandigarh Developers Pvt. Ltd. is marked in Green Colour. Khasra no. along with type of this land are 124 (Plot), 142 (Plot), 190 (Plot), 191 (Plot), 141 (Plot), 125 (Chahi), 111 (Chahi), 93 (Chahi), 87 (Chahi), 92 (Gair mumkin), 112 (Gair mumkin), 121 (Gair mumkin), 126 (Gair mumkin), 139 (Gair mumkin), 138 (Gair mumkin), 137 (Gair mumkin), 136 (Gair mumkin), 135 (Gair mumkin), 134 (Gair mumkin), 127 (Gair mumkin), 120 (Gair mumkin),**

113 (Gair mumkin), 114 (Gair mumkin), 115 (Gair mumkin), 91 (Gair mumkin), 88 (Chahi), 89 (Chahi), 90 (Gair mumkin), 116 (Gair mumkin), 117 (Chahi), 74 (Gair mumkin), 75 (Chahi), 68 (Chahi), 72 (Gair mumkin), 513 (Chahi), 512 (Chahi), 71 (Gair mumkin), 192 (Plot), 193 (Plot), 208 (Plot), 209 (Plot), 69 (Chahi), 84 (Chahi), 85 (Chahi), 86 (Chahi), 83 (Chahi) as per current jamabandi.

9. *Maximum quantity of water flow in creek of Siswan river as informed by the Department of Water Resources is 2000 cusec, thus there is need to design the culvert of adequate capacity by the department of drainage and the same needs to be constructed by GMADA under the supervision of Department of Water Resources at the cost of M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. in a time bound manner.*
10. *The Department of Water Resources, has also estimated the discharge of water in the natural drain / choe (a tributary of Siswan river) passing through village Bharounjian and near "The Lake Project" as 650 cusec and cumulative discharge of creek of Siswan river and natural choe shall be 2650 cusec (2000 cusec + 650 cusec) for which culvert of adequate capacity at point B shall be designed by Department of Water Resources and the same may be constructed by GMADA at the cost of M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. in a time bound manner."*

6. The conclusions and recommendations of the Committee are as follows:

#### **"4.2 Conclusions and recommendations of the Monitoring Committee**

1. *The perusal of the Google earth images of the year 2003, 2006 and 2009 indicate that Siswan river had maintained its part of natural flow in the form of creek within its bed and was reaching to point-A and after crossing the road / path way, it confluences with the natural drain / choe (a tributary of Siswan river) passing through the village Bharounjian. After mixing both the creek of river Siswan and natural drain, the combined stream was again entering into river Siswan after crossing the road at point B. All the said features showing the natural drainage system of the area have been mentioned in **figure-1** as shown above in aforesaid para.*

***But now the natural drainage system of the area has been disturbed by M/s Omaxe Chandigarh***

**Developers Pvt Ltd and 2 pipes each of diameter 5' (though these pipes were also not adequate to cater the flow of 2000 cusec), provided at point-A, have been removed and the creek water is stagnating near point A, whereas, during the pendency of the case in the Hon'ble National Green Tribunal, no such deviations in the system could have been made. It has been expressed by the Department of Water Resources that during floods in Siswan river, flow shall be maintained within the river bed. However, no natural drainage system of any area can be disturbed to maintain the balance between environment and ecosystem.**

**Therefore, the Monitoring Committee recommends that GMADA, SAS Nagar shall construct well designed culvert having adequate span to pass 2000 cusec of water underneath VR-6 road at point-A, for which necessary design and drawing shall be provided by Department of Water Resources within 01 month and culvert may be constructed by GMADA under the supervision of Department of Water Resources within 04 months. The cost of construction of culvert shall be borne by M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. for which M/s Omaxe Chandigarh Extension Developers Pvt. Ltd has already submitted their consent for construction of these culvert bridges vide letter No OCEDPL/DIR 2019-1, dated 22.10.19.**

- 2. After confluence of creek of Siswan river and natural drain (a tributary of Siswan river), it is crossing VR-6 road at point-B, where the discharge of water shall be 2650 cusec, as mentioned by Department of Water Resources. Therefore, a culvert at point B having adequate span length, to pass 2650 cusec a water, for which the necessary design and drawing shall be provided by the Department of Water Resources within 01 month, shall be constructed by GMADA within 04 months under the supervision of Department of Water Resources. The cost of construction of culvert may be borne by M/s Omaxe Chandigarh Extension Developers Pvt. Ltd for which M/s Omaxe Chandigarh Extension Developers Pvt. Ltd has already submitted their consent for construction of these culvert bridges vide letter No OCEDPL/DIR 2019-1, dated 22.10.19.**
- 3. Natural drain (a tributary of Siswan river) passing through village Bharounjian and near "The Lake Project" (developed by M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.), may be brought to its original course by M/s Omaxe**

**Chandigarh Developers Pvt Ltd by removing debris/ construction material and other obstructions created within the water way of natural drain. Its embankments and bed may be restored to its original level. The said works may be completed by M/s Omaxe Chandigarh Developers Pvt Ltd within 03 months.**

- 4. The wastewater of village Bharounjian and other adjoining villages may be treated adequately as per the design of Thapar model or Seechewal model by the Department of Rural Development and Panchayat within 04 months and the treated sewage may be utilized for irrigation of the nearby fields.**
- 5. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. shall protect both sides of the creek of the reach adjoining to "The Lake Project" (developed by M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.). GMADA and Department of Water Resource shall get compliance of the same.**
- 6. The management of M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. shall clean, desilt and maintain natural drain/ choe passing through their project and ensure its free flow in the drain without any obstruction even during flood in drain.**

7. Objections have been filed to the above report by the applicant. IA No. 132/2021 has been filed on behalf of the Respondent Nos. 9 and 10 seeking recall of orders dated 25.09.2019, 03.03.2020, 01.10.2020 and 24.02.2021. We have heard Shri A.R. Takkar, learned Counsel for the applicant, Shri Shyam Divan, learned Senior Counsel assisted by Shri Vishnu Shankar Jain, learned Counsel for Respondent Nos. 9 and 10 and Shri Jaiveer Shergil, learned Counsel for applicant in IA No. 63/2021 (PCB Real Estate Pvt. Pvt.), who supports the applicant and the report.

8. While according to the applicant and intervener in IA 63/2021, the report of the Monitoring Committee needs to be accepted to the effect that Respondent Nos. 9 and 10 have interfered with the normal flow of

the river in Village Bharoujian, needing remedial action, according to the applicant, the report does not cover the issue relating to Village Kansala which requires a further report.

9. Shri Shyam Divan, learned Senior Counsel for Respondent Nos. 9 and 10 submitted that constitution of a Committee without a formal notice to the said respondents is in violation of principles of natural justice particularly Rule 15 of the National Green Tribunal (Practice and Procedure) Rules, 2011. Written submissions titled “Skeletal Submissions” have also been filed on behalf of the said respondents inter-alia relying upon judgment of the Hon’ble Supreme Court in *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. & Ors.*, 2021 SCC Online SC 272, para nos. 172 and 173, as follows:

*“172. It is true that the rigors of CPC and the Evidence Act are not be applicable to Tribunals/Quasi-Judicial Authorities. These rigours do not even apply to Courts dealing with constitutional matters (refer the Explanation under Section 141 CPC).*

*173. Such a concession was incorporated in all Statutes by which quasi judicial Tribunals are created, solely with a view to avoid delay in the dispensation of justice. **But instead of eliminating delay, it has eliminated discipline in pleadings and procedure.”<sup>1</sup> (Emphasis in text)***

10. Reliance has also been placed on judgments of the Hon’ble Supreme Court in *Fazal Bhai Dhala v. Custodian General of Evacuee Property*, AIR 1961 SC 1397, *State of Orissa v. Dr. (Miss) Binapani Devi and Ors.*, AIR 1969 SC 1269, *Board of High School and Intermediate Education, U.P. and Ors. v. Kumari Chitra Srivastava and Ors.*, AIR 1970 SC 1039, *State of Assam and Ors. v. Mahendra Kumar Das and Ors.*, (1970) 1 SCC 709 and *Manipal Singh Tomar v. State of Uttar Pradesh and*

*Ors.*, (2013) 16 SCC 771 in support of the submission that principles of natural justice are mandatory.

11. We may first deal with the objections based on violation of principles of natural justice raised by Shri Shyam Divan in support of IA No. 132/2021.

12. There is no dispute with the proposition that principles of natural justice have to be followed and while delay caused on account of rigours of CPC and Evidence Act is to be avoided, it should not lead to indiscipline in pleadings and procedure. Question is whether infact in the facts and circumstances of the present case there is any violation of principles of natural justice in the present case.

13. We have carefully considered the submission but we are unable to find any merit in the contention of Shri Diwan that there is any violation of natural justice or any prejudice has been caused to Omax by the orders sought to be recalled on the ground that the said orders are *void ab initio*. The Tribunal has to follow the principles of natural justice as mandated under Section 19 of the NGT Act. However, the Tribunal has power to regulate its own procedure. Rule 15 of the NGT (Practice and Procedure) Rules, 2011 cannot also be said to have been violated as the same merely lays down procedure for service of a notice.

14. It is well settled that principles of natural justice are intended to ensure fairness in procedure and the said principles do not have any fix content. Reference may inter-alia be made to judgments of the Hon'ble Supreme Court in *Managing Director, ECIL v. B. Karunakar*, (1993) 4 SCC 727 and *Canara Bank v. V.K. Awasthy*, (2005) 6 SCC 321. Some relevant extracts on the subject are quoted below for ready reference:

**Canara Bank v. V.K. Awasthy, (2005) 6 SCC 321, at page 329:**

8. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. **It is the substance of justice which has to determine its form.**

14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. **What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case,** the framework of the statute under which the enquiry is held

18. .... As is rightly pointed out by learned counsel for the appellant, **unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief** to the employee concerned. It is to be noted that legal formulations cannot be divorced from the fact situation of the case.

**Union of India v. Tulsiram Patel, (1985) 3 SCC 398 at page 477 :**

97. **These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible.** These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed.

**ECIL v. B. Karunakar, (1993) 4 SCC 727, at page 751:**

20. ....the concept of natural justice has undergone a great deal of change in recent years. **What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case,** the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

**Shiv Sagar Tiwari v. Union of India, (1997) 1 SCC 444, at page 461 :**

49. ....*Natural justice is after all “no unruly horse, no lurking land mine” as characteristically stated by Krishna Iyer, J. in Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee. Its unnatural expansion without reference to these realities can be “exasperating” as observed by the learned Judge*

15. The Hon’ble Supreme Court held in *State of Meghalaya v. All Dimasa Students Union Hasao*, (2019) 8 SCC 177 that procedure to be followed by the Tribunal is flexible to advance interest of justice. Relevant observations are :

156. *Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What subsection meant to convey is that **the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings.** Sub section (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression “shall not be bound by the procedure laid down by CPC” is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of CPC inserted by Act 104 of 1976 with effect from 1-2- 1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:*

**“10-A. Commission for scientific investigations.—**(1) *Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.*

*(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule-9.”*

**157.** *Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. **Rule 10-A is enabling power to the courts to obtain report***

***from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10- rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above.”***

***160.*** Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words “may”, “such orders”, “gives such directions”, “as may be necessary or expedient”, “to give effect to its orders”, “order to prevent abuse of process”, are words which enable the Tribunal to pass orders and the above words confer wide discretion.

***163.*** The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, ***NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal.*** The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. CIT* [*L. Hirday Narain v. CIT*, (1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something.

***164.*** We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case.”

16. We may now see what are the orders which are said to be against natural justice. We have already mentioned earlier the substance of the four orders – 25.9.2019, 3.3.2020, 1.10.2020 and 24.2.2021. Vide **first order dated 25.09.2019**, the Tribunal noted the grievance and sought a factual and action taken report from the statutory regulators. According to Shri Diwan, report could not be called without hearing the Omax. We

are unable to accept the submission. No prejudice is shown by merely ascertaining facts. There is no legal requirement of prior hearing before seeking a factual report. By **second order of 03.03.2020**, the Tribunal directed compliance of the recommendations of the statutory regulators to the effect that there was pre-existing letter dated 28.3.2014 of GMADA and also letter dated 22.10.2019 of Omax to comply. If stand of Omax itself is to be enforced, where is the prejudice. The stand is not even now disputed. In any case, Omax could have moved this Tribunal, if it had grievance in that regard. **Third order dated 1.10.2020** found that Respondent Nos. 9 and 10 failed to comply with its earlier stand and officers of the State took contrary stands – one view being that there was diversion of the river while contrary view was that there was no diversion. Thus, the Tribunal sought reconciliation of conflict from the Chief Secretary to which no objection could be raised by anyone nor any prejudice was caused. All throughout even without formal notice, the Omax was duly associated in all proceedings which is clear from the appearance of Counsel for Omax before this Tribunal even without any notice. As mentioned in IA No. 132/2021 in para 7, the Counsel had instructions from Omax and on 15.7.2020, copy of application was duly provided to him. However, his appearance was marked when appeared before the Tribunal on 24.02.2021. He could certainly have appeared earlier, if he so wanted. The said para is reproduced below:

“ xxx.....xxx.....xxx  
7. On the instructions of the answering Respondents the Advocate for the answering Respondents had sought a copy of Original Application from the advocate of the applicants on 15.7.2020. **On 15.07.2020 the counsel for the applicant had sent the copy of the present Original Application through his email id. The appearance of respondents was recorded for the first time in the order dated 24.2.2021.**”

17. **Last order dated 24.02.2021** was passed in the presence of Counsel appearing for Respondent Nos. 9 and 10, even though formal notice was not issued. No grievance of prejudice by earlier orders was raised. Further, no prejudice was caused by the said order as the Committee was expressly required to give opportunity to the stake holders and such opportunity has infact been given. Further, the report could be accessed from website in terms of the said order and objections filed. We thus find that the prayer for recall of the said orders *de hors* the prejudice has no merit. We asked learned Senior Counsel for Respondent Nos. 9 and 10 to show any prejudice and to address on merits if Omax had any objection to its own stand in its letter dated 22.10.2019 which stand has been reiterated before the Committee. Only submission on merits made is that the report of the Chief Secretary, Punjab has annexed a map Annexure-B showing illegal bunds by the local land owners at PB-I and PB-2 which are obstructing the flow of the river. As observed by this Tribunal in para 7 of the order dated 24.02.2021, once Omax was found even in the report of the Chief Secretary as having diverted the river, the same had to be restored. Further, the Committee headed by a former Judge of the High Court and comprising former Chief Secretary of the State and former Member Secretary of the State PCB visited the site and gave opportunity to all the Stake holders and noted the admission of Omax that it has to restore the diversion of the river by making necessary culverts. Omax now wants to go back from its earlier stand by raising hyper technicality in the name of natural justice. Its stand is clearly unjust and unfair and not for justice, as forcefully pleaded against record. In para 4.1 of the report, it is mentioned that the Committee visited the site in the presence of persons mentioned in Annexure-5 which include Shri Daleep Moudgil, Vice President, Omaxe,

New Chandigarh. In para 4.1.2, the Committee considered and rejected the stand of Respondent Nos. 9 and 10 that private owners had diverted the flow. It was found that it was Respondent Nos. 9 and 10 who had disturbed the natural drainage system of the area due to which the creek water was stagnating which could be remedied by construction of a culvert. The land is to be provided by the Department of Water Resources and construction is to be carried out by the GMADA at the cost of Respondent Nos. 9 and 10 for which they have already given consent vide letter dated 22.10.2019.

18. Thus, the recommendations for remedial action by Respondent Nos. 9 and 10 is based on their own consent and attempt is to wriggle out from the same on the basis of hyper technicality of formal notice. There is thus absolutely no case for recall of orders dated 25.09.2019, 03.03.2020, 01.10.2020 and 24.02.2021 nor there is any ground to reject the report of the Committee which is hereby accepted. IA No. 132/2021 is dismissed.

19. We request the Committee to look into the issue in respect of Village Kansala and give a further supplementary report on the subject as far as possible within two months by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. It will be open to the concerned stakeholders to put forward their respective viewpoint before the Committee by way of written representation and/or personal appearance which may be duly considered by the Committee. The report of the Committee may be placed on the website of the State PCB for being accessed by all the stakeholders for their response to the report before the next date.

List for further consideration on 27.10.2021.

A copy of this order be forwarded to the Justice Jasbir Singh, former Judge Punjab and Haryana High Court and the Chief Secretary, Punjab by e-mail.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

July 2, 2021  
Original Application No. 980/2019  
I.A. No. 63/2021 & I.A. No. 132/2021  
DV