

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

(By Video Conferencing)

Original Application No. 695/2019

Hardesh Kirar

Applicant

Versus

State of Madhya Pradesh

Respondent

Date of hearing: 10.08.2021

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

Respondent: Ms. Parul Bhadoria, Advocate for MPPCB

ORDER

1. Vide order dated 16.09.2019, a factual and action taken report was sought from Bhopal Municipal Corporation and State PCB with reference to the allegation of violation of environmental norms by M/s Raj Homes Colony by raising constructions on encroached government land, discharging untreated sewage at Village Kauluva, Bhopal and diverting the course of the said drain.

2. The matter was considered on 18.05.2020 in the light of the report of the joint Committee dated 31.10.2019, acknowledging the encroachment and diversion of the drain. The Tribunal directed the joint Committee to take further remedial action and furnish a report. The observations in the order are:-

"2. Accordingly, report dated 31.10.2019 has been filed by the State PCB on behalf of the joint Committee as follows:

- “1. A nala (public drain) is passing from 2 sides of complainant Shri Hradesh Kirar house / premise which has no boundary wall towards nala.
2. A boundary wall was constructed by M/s Raj Home Pvt. Ltd. around periphery of their land. The said nala was passing from outside of this boundary wall.
3. Before this monsoon season of year 2019 **complainant filled the nala stretch at back side of his house up to boundary wall of M/s Raj Home Pvt. Ltd. and laid down a 2 feet diameter hum pipe line for conveying sewage of nala.** But this pipe line is in adequate, so in monsoon season that area was submerged. So as an immediate measure an alternative earthen drain was dug out parallel to existing nala on other side of boundary wall by District Administration and Bhopal Municipal Corporation. Now sewage of this nala is flowing through this new earthen path. **Now complainant encroach the land of old nala path by filling it intermittently and said that he is the occupier of this encroached nala land.**

Site sketch and photographs showing field status are enclosed as Annexure I & 2.

Recommendation : -

As per site condition this is a clear case of nala encroachment made by complainant. Now complainant wants that channelization of newly dug out nala (parallel to old nala path) should be done by M/s Raj Homes Pvt. Ltd.”

3. The above report shows encroachment by the complainant himself and diversion of the drain for which remedial action may need to be taken.
4. Accordingly, let a joint Committee comprising representatives of the Bhopal Municipal Corporation, State PCB and the District Magistrate take further remedial action and furnish a compliance report before the next by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.
5. Since it is stated that the Municipal Corporation is not cooperating, let the Commissioner, Municipal Corporation take appropriate action against the person responsible for not complying with the directions of this Tribunal. Needless to say, order of this Tribunal is an executable and binding decree and violation thereof is a also a criminal offence, if the Municipal Corporation does not cooperate, the Commissioner, Municipal Corporation may be held personally accountable.

A copy of this order be sent to the Commissioner, Bhopal Municipal Corporation, State PCB and the District Magistrate by email for compliance.”

3. The matter was last considered on 06.10.2020 in the light of further report of State PCB dated 07.08.2020 seeking time for taking necessary steps in the matter. Accordingly, the Tribunal granted further time for compliance.

4. In pursuance of the above, a factual and action taken report has been filed on 09.07.2021 as follows:-

“In compliance of order dated 06.10.2020 in case of 695/2019 (Hirdesh Kirar v. Govt. of Madhya Pradesh) by the Hon’ble NGT, Bhopal Bench a joint Committee inspected the site on dated 16.03.2021 (status report of joint Committee is attached). The following were the main key points as mentioned in the status report:-

- 1. M/s Raj Homes to channelize the drain by increasing its depth and width behind the complainant’s house and to divert the flow of existing drain with the channelized drain.*
- 2. M/s Raj Homes to lay down as sewage network under PPP mode of Maholi Damkheda Sewage pumping House.*

In view of the above as per the verbal directions received from the Regional Officer, MPPCB Bhopal and HO Letter No. 751 dated 07.06.2021, an inspection was carried out by the undersigned on dated 16.06.2021 to update with the progress on the matter. During the inspection following key points were noted on the progress of work:-

- 1. The construction of channelized drain is under process parallel to the existing drain with increased width and depth of the channel. 70% of the channelization work has been completed as on the day of inspection.*
- 2. It was noted that a small portion of the wall has already been demolished to facilitate the construction work, the remaining portion of the wall will be demolished after the completion of channelization work and the flow of existing drain will be diverted to the channelized drain.*
- 3. The laying of sewage network under PPP mode to Maholi Damkheda Sewage Pumping House by M/s Raj Home has not started yet.*

With reference to the inspection, it is proposed that M/s Raj Homes be directed to complete the remaining channelization work of the drain of sewage network to the Maholi Damkheda Sewage Pumping Station at the earliest. The inspection report with photographs is being sent to you for further action.”

5. The report also annexes letter of the Regional Officer to the Legal Officer of the State PCB with a status report signed by some officers of the Bhopal Municipal Corporation, State PCB and SDM (Revenue) which refers to an agreement between the applicant and M/s Raj Homes, Bhopal dated 06.03.2021 to the effect that the applicant would get some land as settlement to withdraw the complaint.

6. It is a matter of surprise and regret that the State Authorities should be party to an illegal arrangement of environmental law not being enforced and the applicant being allowed some benefit for not pursuing this application. Such illegal arrangement to defeat law cannot be allowed. Neither the drain could be allowed to be polluted nor the same could be allowed to be diverted by any private arrangement. The State is bound by the doctrine of Public Trust to protect the drain against pollution as well as diversion. Encroachment and diversion of drain stands acknowledged in the earlier reports and direction of this Tribunal was to remedy the said illegality by preventing pollution, restoring its flow and making the violator of law accountable by way of recovering compensation on polluter pays principle and prosecution as per law. Not only the Authorities have failed to do their statutory duty under the Water (Prevention and Control of Pollution) Act, 1974, they have acted against law by encouraging an illegal agreement under which the Tribunal may not proceed with the matter further and the illegality may be condoned and perpetuated. Construction of open Nala/ drain alongside the existing natural nala is not a solution. It may lead to further encroachments and unhygienic conditions. There is need for scientific situation-analysis to design new drainage, taking dry weather flow and storm water into consideration.

7. Accordingly, we direct a joint Committee of CPCB, Secretary, Urban Development, M.P. and Member Secretary, MP State PCB to forthwith remedy the illegality by taking action against law violators by way of prosecution and recovery of compensation and restoring the flow of the drain, preventing discharge of sewage therein. Needless to say, in doing so, prescribed procedure be followed. At the same time, since two years have gone in the process, further action may be taken on day to day basis. The CPCB and Member Secretary, State PCB will be the nodal agency for coordination and compliance. We expect the higher Authorities of the State to take suitable action against the Officers who have colluded in illegal arrangement and prevented enforcement of law. An action taken report may be filed before the next date 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. The action may be overseen by the Secretary, Urban Development, MP.

List for further consideration on 16.11.2021.

A copy of this order be forwarded to the CPCB, Secretary, Urban Development, M.P. and Member Secretary, MP State PCB by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

August 10, 2021
Original Application No. 695/2019
A