

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

Execution Application No. 38/2017
IN
O.A. No. 180/2015 (M.A. No. 1339/2017)

Sushil Raghav

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 05.01.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Rahul Choudhary, Advocate

Respondent(s): Ms. Priyanka Swami, Advocate for State of UP
Mr. Raj Kumar, Advocate for CPCB
Mr. Vishwajit Singh, Advocate for Ghaziabad Nagar Nigam
Mr. Yagyawalkya Singh, Advocate for GDA
Dr. Indira Pratap Singh, Advocate for R-5

ORDER

1. This application seeks execution of directions of this Tribunal vide order dated 20.09.2016. The said order arose out of grievance of encroachment on a pond. The Tribunal, in the said order, found as follows:-

“6. As stated in the above paragraphs, khasra nos. 948, 514, 1419, 1316, 1422, 1445, 1446 and 1456 are pond, as recorded in the revenue records, and therefore, all encroachments on these khasra numbers would be deemed to be illegal and therefore, steps should be taken to remove such encroachments.”

2. Accordingly, it was directed:-

“15. (1 to 6) xxx xxx xxx

7. The State Government and the concerned authorities including the District Magistrate shall take steps to remove the

encroachments from the area in question including in terms of the orders of the Chief Secretary dated 15th May, 2013 and the order of the Tribunal dated 03rd December, 2014. In the event of default of compliance to this direction all the concerned authorities would be liable to be proceeded against in accordance with law.”

3. Aggrieved by the failure of the authorities to implement the above direction, the present execution application was filed on 09.11.2017. On 14.11.2017, notice was issued to the parties in the execution application including the State of UP, Ghaziabad Development Authority, District Magistrate Ghaziabad and Ghaziabad Municipal Corporation. The matter has been thereafter dealt with by this Tribunal in the last more than three years on various occasions. The affected parties have filed their response. On 10.07.2019, the District Magistrate Ghaziabad appeared in person and was given time to ascertain the extent of encroachments.. Accordingly, an affidavit has been filed on behalf of the State of UP as noted in the order of this Tribunal dated 19.08.2019 and thereafter a joint inspection report was also filed, as noted in the order dated 11.09.2019. The Tribunal dismissed the applications of some parties seeking to be impleaded, in view of the fact that the Tribunal had already adjudicated upon the matter and at the stage of execution, it was not necessary to implead new parties. We are informed by the learned counsel for the State that on account of farmers agitation there are difficulties. The said agitation is very recent while the order passed by the Tribunal is more than four years old.

4. From the compliance affidavit filed on behalf of the Ghaziabad Nagar Nigam on 19.09.2019, the current status of the execution is as follows:-

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Sl. No.	Khasra No.	Status on the site	Applicant's submission vide reply dated	Submission of the Answering Respondent

			17.08.2019	
1	514	Total area is 0.468 hectare situated in village Arthala is attached to the railway line on the spot. A vacant drum and construction material was found on the said Khasra. There are no permanent constructions	Till date there still exists large construction on Khasra no. 514 marked as pond. Further, construction activities are underway.	It is clearly mentioned in the Action Plan submitted to the District Magistrate that there is no permanent construction on the said Khasra.
2	1419	Total area is 0.3540 hectare which is recorded as lake out of which 0.2780 hectare land is registered under the Zamindari area (Milkiyat Sarkar) this strip of the land is registered as Hindon Lane, Pushta road and elevated road. There is a police chauki on land admeasuring 0.0840 hectares right under the elevated road. Land area of 0.0760 hectare comes under the Zamindar Abolition area which is registered as lake in the records and land admeasuring 0.0672 hectare land is vacant on the spot.	That the State of U.P. as per the judgment dated 20.09.2016 shall be responsible for ensuring that the Khasra as marked as pond shall be maintained and kept free from encroachment. Further that the construction highlighted by State of U.P. have not been removed till date.	1. With respect to the Hindon lane, pushta road and the elevated road it is submitted that the same has been developed by the project proponent i.e. GDA for which the environment clearance has been granted and the same has been subsequently allowed by this Hon'ble Tribunal by way of direction no. 1 contained in paragraph 15 of page 25 of the judgment dated 20.09.2016. 2. With regard to the police choki it is submitted that the demolition of the same does not fall under the power of Ghaziabad Nagar Nigam. Moreover, action in this regard can be taken only by the State. The rest of the area is vacant.
3	1422	Total area is 4.870 hectares out of which 0.7220 hectares is registered as river under non-Zamindari Abolition (Zamindari area)	Applicant has not commented upon the said khasra.	It is submitted that the land of this Khasra on the spot is covered with lake, park Pushta road and elevated road. Out of the entire area Pushta

		<i>(Milkiyat Sarkar). 4.148 hectares Khatauni recorded as Zamindari Abolition Area registered as lake.</i>		<i>road and elevated road is on 0.3700. There is water on 2.4480 hectares and a Priyadarshani park on 2.0520 hectares.</i>
4	1445	<i>Total area is 2.744 hectares recorded as lake. There are old houses and Abadi on this Khasra. The action of removing the encroachments from the illegal houses are going according to the law laid down under Section 67(1) of UP Revenue Code 2006 by the Tehsildar Ghaziabad.</i>	<i>Applicant has not commended upon the said khasra.</i>	<i>It is submitted here that the major action of encroachment and demolition of illegal constructions is required on this said khasra only as the encroachments and constructions are concentrated in this area. Therefore, the aforementioned Action Plan has been prepared only with respect to this khasra. Further the demolition drive is in progress according to the aforesaid Action Plan.</i>
5	1446	<i>Total area is 2.112 hectares. The land is a banjar land.</i>	<i>It has been submitted by the applicant that the said classification is contrary to the revenue records which state that the said Khasra is a pond.</i>	<i>it is respectfully submitted that the submission of the applicant is absolutely false and has been made with intention to mislead the court for the reason that the said khasra no. 1446 is registered as a Banjar land in the Revenue Records of village Public Property under the village no. 216952, village name : Arthala, Tehsil: Ghaziabad in part 1 of the aforementioned record. A true and correct copy of the revenue record is marked and annexed as <u>Annexure A-3.</u></i>

				<p><i>It is important to bring to the notice of this Hon'ble Tribunal that the prayer of the Applicant pertains only to removal of encroachment from khasras registered as lake and not anywhere else. Therefore, no action is required to be taken on behalf of Ghaziabad Nagar Nigam.</i></p>
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5. The applicant has filed an affidavit on 01.10.2019 giving the extent of encroachments. We are informed that Ghaziabad Nagar Nigam has filed an affidavit on 10.11.2020. However, the same is not available in the file. We are also informed by the learned counsel for the State that a joint inspection team was constituted which is headed by the ADM (City), Ghaziabad and drive for demolition was undertaken but there was law and order situation, as some families are already occupying the sites.

6. We are of the view that once order has been passed by this Tribunal which has attained finality, the same ought to be executed by the District Magistrate, Ghaziabad and pond should be restored. We have been dealing with the matter for three years. The issue is of individual encroachments which can be also dealt with by the Civil Court, having local jurisdiction in terms of section 25(2) of the NGT Act, 2010. This will be convenient for the parties also.

Accordingly, we direct that a copy of order of this Tribunal dated 20.09.2016 be forwarded to the District Judge, Ghaziabad for being entrusted to the concerned Civil Court so that the said Civil Court may proceed further with the execution proceedings in accordance with law.

The application is disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

January 05, 2021
E.A. No. 38/2017
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The fact remains that for the last more than three years there has not been much progress.