

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

.....

Original Application No. 129/2016

(MA No. 276/2016 & MA No. 263/2017)

IN THE MATTER OF:

Ashutosh Kumar Sharma

S/o Shri Anand Prakash Sharma
R/o H. No. 89/147, Village Sobhapur,
Rohta Road, Meerut, U.P.

...Applicant

VERSUS

1. State of UP

Through Secretary,
Department of Urban Development,
Secretariat, Lucknow, UP.

2. UP Pollution Control Board

Building No, TC-12V,
Vibhuti Khand,
Gomti Nagar,
Lucknow, U.P -226010

3. District Magistrate,

Civil Lines,
Meerut-UP-250001

4. Senior Superintendent of Police,

Police Station,
Meerut City,
Meerut, U.P. - 250002

5. The Officer in Charge,

P.S. Kankar Kheda, Meerut,
U.P. - 250001

6. Municipal Corporation, Meerut

Through the Commissioner,
Town Hall,
Kaisar Ganj Road,
Ghanta Ghar,
Meerut, U.P.

7. Executive Officer,

Municipal Corporation, Meerut,
Town Hall,
Kaisar Ganj Road,
Ghanta Ghar,
Meerut, U.P.

8. Public Works Department,

Through its Executive Engineer,
Saket (S.O.),
Meerut, U.P. – 25003

9. Meerut Development Authority,

Vikas Bhawan, Civil Lines,
Meerut, U.P.

10. U.P. Jal Nigam,

Head Office
15, MIG, Gujaini,
Kanpur, U.P. – 208027

11. Mr. Lalit Parashar,

Secretary, Shobhapur Gram

...Respondents

Counsel for Applicant:

Dr. Abhishek Atrey, Adv.

Counsel for Respondents:

Mr. Pradeep Mishra, Mr. Daleep Dhyani, Advs. for Respondent No. 2
Mr. Shuvodeep Roy, Adv. for Respondent No. 2
Mr. Rohit Raj Sachan, Mr. Mohd. Umar Iqbal Khan, Advs. fir
Respondent No. 6 & 7
Mr. Rachit Mittal, Adv., for Respondent No. 9
Mr. Charu Ambwani, Adv., for Respondent No. 11
Ms. Nida Khan for State of U.P.

JUDGMENT**PRESENT:****Hon'ble Dr. Justice Jawad Rahim (Judicial Member)****Hon'ble Mr.Ranjan Chatterjee (Expert Member)**

Reserved on: 30th March 2017
Pronounced on: 26th May 2017

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

Mr. Ranjan Chatterjee, (Expert Member)

1. The present O.A. has been filed by Shri Ashutosh Kumar Sharma, the applicant against respondents. No. 6 & 7, i.e., the Municipal Corporation, Meerut and the Executive Officer, Nagar Nigam (Municipal Corporation) Meerut in the matter of laying storm water/sewer pipeline in Ward No. 6 for village Shobhapur, Rohata Road, Police Station Kankar Kheda, Meerut, U.P.
2. It is the case of the applicant that the said drain is just above the drinking water pipeline of the applicant which possibly will result in contamination of the drinking water supply in the entire village consisting of about 20,000 residents and will thereby prove to be hazardous to himself and his family members. The applicant further alleges that this sewage line/open nala is being laid by the respondents without adhering to the provisions for discharge or treatment of sewage in violation of Sections 24, 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974.

3. The main prayer of the applicant is to stop the work of digging and construction for laying the nala, which would incidentally flow above his drinking water pipeline and further that this construction work is being carried out by the Nagar Nigam without permission from the UPPCB.
4. Initially, there were ten respondents in the present O.A., out of which two respondents, viz., the U.P. Pollution Control Board (R/2) and the Meerut Development Authority (R/9), did not file any reply. Thereafter, only respondents No. 6 Nagar Nigam, Meerut, and the newly added respondent No. 11, i.e. Mr. Lalit Parashar, Secretary, Shobhapur Gram Panchayat Uthan Samiti, filed their replies. Other respondents did not reply.
5. The respondents No. 6 stated that this is a typical case of the applicants using the Tribunal for personal cause by levelling baseless allegations, concealing certain facts and resorting to forum shopping and also falling foul of the Limitation Clause 14(3) of the NGT Act, 2010, while stoppage of further laying of the nala of village Shobhapur would put the residents to the risk of diseases caused by water logging.
6. The Learned Civil Judge, Senior Division, vide his order dated 20th March, 2015, in the Civil Suit No. 246/2015 "*Naresh Kumar Vs. Anand Sharma and Ors*", injuncted the construction of nala on the ground of "decorative loss and loss in value of applicant's house" due to construction of open nala.

7. The Nagar Nigam had taken up construction of open nala with RCC lining, 900 mtrs. long for clearance of 'Pani Ki Nikasi' which was being done in public interest which the applicant alleges, is in the alignment of his water pipeline.
8. The respondents have stated that out of the 900 mtrs. long nala, 411 mtrs. have been already constructed upto the applicant's house and Anand hospital. Further construction has been stopped by the injunction of the Ld. Civil Judge dated 20.03.3015.
9. The applicant has an 'illegal' submersible pump to draw ground water for personal consumption only and is placed right outside the plot of the applicant in the 14.8 meters wide government land. Further construction of the nala has been stopped outside the residence of the applicant because it might impact the submersible pump. The respondent No.6 and 7, Meerut Nagar Nigam stated that they have suggested to the applicant to remove the illegal submersible pump. However, the applicant has neither so far complied with the instructions of the Municipal Authorities, nor has denied that the submersible pump is illegal. In the process the public project of nala is not being allowed to be completed.
10. It is important to note that the alignment of the nala is likely to cross the water pipeline. The said construction of the nala has not reached the point of the applicant's water pipeline and further work has been stopped. While the applicant's water pipeline runs deep in the ground, the open

drain is only 75 cm from the surface. The applicant is apprehensive that if this open nala crosses his water pipeline, he would be put in jeopardy. The respondents undertake to construct a sustainable infrastructure through “best engineering works” from beneath and above in this 14.8 meters wide government land, adjacent to Anand hospital, wherein beneath there is submersible pump to ensure that there is no cause for any impending harm as there is enough space in height between the nala and the underneath submersible pump from the tube well. Only after re-adjusting the water pipeline, further construction of the nala would be resumed. In this process, the respondents would assure that there will not be any possibility of contamination from future construction of the nala. The respondents are being unable to complete the said drain in view of the stay granted in the Civil Suit No. 246, *Ashutosh Kumar Sharma Vs. State of U.P. & Ors.* dated 20.03.2015.

11. The respondents No. 6 undertake as a matter of abundant caution and in complete spirit of precautionary principles that they would start the balance work only after re-adjusting with “excellent technology” and engineering know-how whereby the water pipeline coming from the tube well which runs beneath, is protected. Only then the construction of nala would be undertaken. In this way, the respondents averred that there will not be any possibility of any contamination due to construction of the nala.

12. Subsequently, the newly added respondent No. 11-Shri Lalit Parashar, Secretary, Sobhapur Gram Panchayat Uthan Samiti joined as intervener. The respondent No. 11 suggested that the proposed nala is for drainage and not a sewer line. Secondly, there was no drinking water pipeline in the alignment of said drainage and thirdly, the applicant Shri Ashutosh Kumar Sharma has filed the present O.A. with personal motive only, to prevent construction of the drain adjacent to his house.
13. It is learnt that respondent No. 11 has already filed Writ Petition (PIL) 42953 of 2015 before the Hon'ble High Court of Allahabad. It, therefore, remains to be seen whether the said nala is for sewer or a storm water drain.
14. The stand of respondent No.6-Municipal Corporation, is that it is not a sewer line and is only an open nala. The Municipal Commissioner in compliance of the Tribunal's order dated 23.01.2017 filed an affidavit that no sewerage line is being laid but only storm water line is being constructed and water pipeline and sewerage line are not alike.
15. The applicant, on the other hand, has alleged that this affidavit is false and that those signing such documents should be punished.
16. However, we do not find, prima facie, anything wrong in the affidavit filed by the Addl. Municipal Commissioner. Nor has the applicant given any evidence to establish that the said affidavit is false.

17. The applicant has nowhere denied that his submersible water pump is illegal and that it is not outside his house. Normally, such pump must receive the sanction of the authority and should not be located outside the premises of his house.
18. The applicant Shri Ashutosh Kumar Sharma had filed a writ petition no. 1243 of 2016 regarding-

“.....the laying of a sewerline/nala in Ward No. 6 of village Shobhapur which is being done by the Public Works Department of the UP State before the Hon’ble Allahabad High Court. It is seen therein that one Lalit Parashar filed a Public Interest Litigation (PIL) on the same subject which was disposed of on 3.8.2015. It is alleged that out of the total 900 metres which is to be laid, 400 metres sewerline/nala has already been constructed. It was found that there was a waterline in the alignment of the sewerline/nala and therefore it was considered appropriate to construct the remaining sewerline/nala on the other side of the road on Government plot No. 770/5. However, original suit no. 246 of 2015 was instituted by the respondent No. 4 claiming himself to be the owner of plot Nos. 770/4, 770/7 and 770/12 with the allegation that the sewerline could not be laid through his plots. An injunction order was passed on 20 March 2015 which is stated to be operative till date.

19. Nothing further on the writ petition no. 1243/2016 has been put on record, nor have the parties brought anything further to our notice in this regard.
20. One Lalit Parashar filed a PIL which was disposed of 3.8.2015 and the order is reproduced below:

“The grievance that the completion of work for laying a sewage line is being obstructed by an unauthorised encroachment, can appropriately be addressed to the Executive Engineer of the Nagar Nigam. We, accordingly, leave it open to the

petitioner to move the fourth respondent. The fourth respondent may take further action in accordance with law after duly verifying the grievance.

The petition is, accordingly, disposed of. There shall be no order as to costs.”

21. Lalit Parashar, thereafter, preferred contempt application bearing No. 7221 of 2015 which was disposed of on 1st December 2015 and the order is reproduced below:

“Heard learned counsel for the applicant.

The present contempt application has been filed for punishing the Opposite Party for wilful disobedience of the judgment and order dated 3.8.2015 passed by this court in Public Interest Litigation (PIL) No. 42953 of 2015 wherein this Court has observed as under:

“The grievance that the completion of work for laying a sewage line is being obstructed by an unauthorised encroachment, can appropriately be addressed to the Executive Engineer of the Nagar Nigam. We, accordingly, leave it open to the petitioner to move the fourth respondent. The fourth respondent may take further action in accordance with law after duly verifying the grievance.”

It is stated that in spite of service upon the opposite party, no order has yet been passed.

Prima facie, in case has been made out for punishing the opposite for wilful disobedience of the judgment and order dated 3.8.2015 passed in the aforesaid writ petition.

However, no notice is issued to the opposite party at this stage. The opposite party is granted three months further time to comply with the judgment and order dated 3.8.2015 passed by this court in Public Interest Litigation (PIL) No. 42953 of 2015 from the date of receipt of certified copy of this order.

In case, the opposite party does not comply with the order, it would be open to the applicant to approach this court again.

With the aforesaid observations, this application is finally disposed of at this stage.

It is stated that because of the order passed by the Court, the Nagar Nigam is now proceeding to construct the remaining portion of the sewerline on the same side of the road. This would result in severe contamination if the waterline is in alignment with the sewerline.

There is nothing on record to indicate that the Executive Engineer of the Nagar Nigam has taken a conscious decision pursuant to the order passed by the Division Bench of this Court on 3 August 2015 in Public Interest Litigation No. 42953 of 2015 because what is alleged is that because of the directions issued in the contempt application, the proceeding to construct the sewerline have been kept in abeyance.

22. On perusal of the applicant's pleadings and respondents' contentions, we come to the following inference:

The applicant has certainly not come to the Tribunal with clean hands. It is his personal interest with which he is concerned, rather than the larger public interest and welfare of the villagers. In his last written submission dated 10th April 2017, the Applicant has himself conceded that this litigation is in his personal interest. Further, there is nothing to establish that he has obtained any permission from the concerned authorities for his submersible pump which, therefore, he has constructed illegally and without obtaining permission/NOC. He has all this while been extracting ground water illegally through this pipeline, located outside his house. Normally, for installation of such

pump, sanction of concerned authorities is required and further it should not be located outside his house in a public place.

23. In the case of ***Khalil Mondal Vs. The West Bengal State Electricity Distribution Company Ltd. and Ors. in W.P. No.7182(W) of 2011*** the Hon'ble Calcutta High Court opined :

“..... The private Respondent is not entitled to operate any submersible pump for extraction or use of groundwater”. Further, “he is liable to be prosecuted under provisions of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005”.

Needless to say that if anybody is committing an offence under the 2005 Act, then the competent authority is free to prosecute on the facts and the applicant is not entitled to any relief from the Writ Court.

24. Similar observations were made by the Hon'ble Calcutta High Court in the case of ***“Ranjit Singha Vs. The West Bengal State Electricity Distribution Company Ltd. and Ors. in W.P. No. 9228(W) of 2007”*** wherein it held that :

“..... In absence of compliance of formalities for extracting of water mentioned in the Act of 2005, no Court could pass direction upon licensee to give connection of electricity for purpose of extraction of underground water.”

25. Interestingly, the applicant did not object to the construction of the pipeline, until it reached his house. It is the case of the respondents that the applicant ought to have objected when the layout plan was made and not thereafter. From the environmental point of view, digging of the borewell for personal use, outside his house depletes the groundwater level, without obtaining permission of the authorities.

26. Finally, after examining the contentions of both sides as well as the intervenor-respondent No.11, we would like to pass the following directions:

- 1) The Corporation has to construct a good quality Nala/drain, in such a way so that there is no possibility of leakage. This should be done under the guidance of qualified Engineers. As a matter of abundant caution, the Municipal authorities shall do proper concreting below and put lining near the area of submersible pipeline so that under no circumstances, there is any possibility of leakage or contamination of the groundwater. Care has to be taken to ensure that in future sewage pipeline or nala/drain should not be constructed in the alignment of drinking water.
- 2) The respondents shall adhere to the provisions of Water (Prevention and Control of Pollution) Act 1974 in the matter of discharge and treatment of sewage.
- 3) They shall submit quarterly reports to the UPPCB to ensure compliances of adequate measures for preventing environmental degradation, water pollution, flooding, and blockages. They shall ensure timely maintenance of the Nala/drain.
- 4) Meerut Nagar Nigam will obtain permission for completing the construction of Nala/drain from the UPPCB, if required.
- 5) Applicant will stop exploitation of groundwater for personal use till he obtains necessary permissions

from the Central Groundwater Authority/State Groundwater Authority.

27. With these directions, we dispose of the application with no order as to costs and allow the Nagar Nigam to complete the project in accordance with law and directions mentioned above.

28. As original application is disposed of, Miscellaneous Application nos. 276/2016 & 263/2017 do not survive for considerations.

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Justice Jawad Rahim, JM

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Ranjan Chatterjee, EM

New Delhi
26th May, 2017

NGT