

Item No. 04

Court No. 1

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

(BY HYBRID MODE)

I.A. No. 555/2023

IN

Original Application No. 06/2012

Nizamuddin West Association

Applicant

Versus

Union of India & Ors.

Respondent(s)

.....

DDA:

Applicant in I.A. No. 555/2023

Date of hearing: 19.05.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Ms. Prabhsahay Kaur & Ms. Deeksha L. Kakar, Advocates with
Mr. Mohd. Uzair, Additional Director, Landscape for Applicant (DDA)
in IA 555/2023

Respondent: Mr. Narender Pal Singh, Advocate for DPCC

ORDER

Prayer in the application

1. This application has been filed by DDA for permission for installation of a lighthouse in the greenway, adjacent to the Yamuna flood plains, for additional surveillance and security of the flood plains.

2. We have heard learned Counsel for the applicant in the said IA. It has been submitted that the application became necessary in view of prohibition of any construction in flood plain zone unless such activity is of exceptional nature for protection of flood plain or otherwise as

mentioned in order of this Tribunal dated 13.01.2015 in OA 6/2012.

Relevant extract from the said order is as follows:-

“94.

*v) (b) **We direct and prohibit carrying on of any construction activity in the demarcated flood plain henceforth.** We further direct the Principal Committee to identify or cause to be identified, all existing structures as of today which fall on the so identified and demarcated flood plain. Upon identification, the Principal Committee shall make its recommendations as to which of the structures ought or ought not to be demolished, in the interest of environment and ecology, particularly, if such structures have been raised in an unauthorised and illegal manner.*

*xxviii. **We grant liberty to all the parties, the applicants or even the public, to approach the Tribunal for any clarification or modification or for removal of any of the difficulties felt by them in implementation of the directions contained in this judgment and/or of the project reports.***”

3. Permissible activities listed in the said order in para 80 are as follows:

“xxx.....xxx.....xxx

*80. Floodplain zoning has been accepted as an important nonstructural strategy for flood management. The basic concept of floodplain zoning is to regulate land use of floodplains to restrict damage caused due to floods. The floodplain zoning, therefore, aims at determination of locations so that flood damages are reduced to minimum. **A very restrictive activity can be allowed in that area. It is not only to protect the areas from damage resulting from floods and failure of water protective measures, but is also useful in reducing the damage caused due to drainage congestion, particularly in urban areas. The Commission claims to have prepared a model bill relating to floodplain zoning. This model bill provides for different categories based of priorities in floodplain.***

Following are the recommended priorities:

- 1. Defense installations, industries, public utilities like hospitals, electricity, installations, water supply, telephone exchanges, aerodromes, railway stations, commercial centres, etc. buildings should be located in such a fashion that they are above the levels corresponding to a 100 years frequency or the maximum observed flood levels. Similarly, they should also be above the levels corresponding to a 50 years rainfall and the likely submersion due to drainage congestion.*
- 2. Public institutions, government offices, universities, public libraries and residential areas. Buildings should be above a level corresponding to a 25 year flood or a 10 year rainfall with*

stipulation that all buildings in vulnerable zones should be constructed on columns or stills as indicated above.

3. *Parks and playgrounds. Infrastructure such as playgrounds and parks can be located in areas vulnerable to frequent floods. Since every city needs some open areas and gardens, by restricting building activity in vulnerable areas, it will be possible to develop parks and play grounds, which would provide a proper environment for the growth of the city.”*

4. Our attention has also been drawn to the development after the said order that the MoEF&CC vide Notification dated 07.10.2016 under the Environment (Protection) Act, 1986 issued River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016, issued by. Para 6(3) of the said order prohibits construction in river or its active flood plains area of Ganga or its tributaries except for situations mentioned with permission of NMCG. Para 42 of the said order is as follows:-

“42xxx.....xxx.....xxx

(a) engineered diversion and storage of water in River Ganga without affecting the flow of water downstream of the River Ganga;

(b) construction of bridges and associated roads and embankments over the River Ganga or at its River Bank or its flood plain area;

(c) construction of Ghats or extension of any existing Ghat;

(d) construction of jetties;

(e) construction of permanent hydraulic structures for storage or diversion or control of waters or channelisation of River Ganga or its tributaries;

(f) deforestation of hill slopes and notified forest and other eco-sensitive areas;

(g) any other activity which contravenes the principles laid out in paragraph 4 which the National Mission for Clean Ganga may specify.”

Background

5. Before dealing with the prayer in the application, we may note the background of the matter. The issue of remedial action against pollution of Yamuna was subject matter of consideration in O.A. No. 6/2012. The

Tribunal passed order dated 13.01.2015 (2015 SCC Online NGT 840) followed by 08.05.2015 (2015 SCC Online NGT 841) and dated 07.12.2017 in OA 65 of 2016¹ and OA 76 of 2016² for remedial measures. Before the said order, the matter was dealt with by the Hon'ble Supreme Court in W.P. No. 725/1994³ and proceedings wherein were later transferred to this Tribunal. One of the issues for rejuvenation of Yamuna is freeing floodplains from encroachments and protecting them for purposes connected with their protection. To regulate this aspect, directions were issued vide order dated 13.01.2015. Compliance was to be supervised by a Principal Committee. Constitution of the said Committee was later modified on 24.07.2017 to the effect that the Committee was to be headed by the Secretary, Ministry of Jal Shakti.

6. Since non compliance continued beyond laid down timelines, vide order dated 26.07.2018, the Tribunal constituted Yamuna Monitoring Committee (YMC) to monitor compliance of the directions for rejuvenation of river Yamuna. Further orders were passed on 29.01.2019, 11.09.2019 and 05.03.2020 on consideration of reports of the YMC, followed by order dated 27.01.2021 disposing of the matter, on consideration of 5th report of YMC. The said report contained recommendations under 13 different headings - E-Flow, setting up an SPV or any other body to oversee the River Related issues, Quality of River water, sewage Treatment Plants NGT's order dated 6.7.20, Interceptor Sewerage Project (ISP), Repair and Maintenance of Drains, Industrial Pollution and CETPs, Septage management and Levy of EC, Online Monitoring System (OLMS), Use of Treated waste water, Industry Interface, the YMC had flagged the following issues to the State of Haryana for compliance of Orders of Hon'ble NGT

¹ Manoj Misra v. Delhi Development Authority & Ors.

² Pramod Kumar Tyagi Vs. Art of Living International Center & Ors.

³ News Item "Hindustan Times" AQFM Yamuna v. Central Pollution Control Board & Anr.

dated 06.07.2020 and State of Uttar Pradesh and Pollution of the Yamuna.

Operative part of the order is reproduced below:-

“1to18...xxx.....xxx.....xxx

19. From the report of the Committee, it is clear that major problem of preventing pollution by discharge of sewage, industrial effluents and other pollutants remains unaddressed. This was so observed in para 18 the last order also, as quoted above in the paragraph 14. There is hardly any improvement in evolving meaningful and effective institutional mechanism for monitoring. Though IDMC is reported to have started functioning, tangible results are yet to be shown, as noted in the report of the YMC. The Committee has particularly found that 147 drains in the catchment of Najafgarh and Shahadra drains have not been tapped, as earlier directed. Against heading 6, dealing with repair and maintenance of drains, the Committee has noted huge gap in generation and treatment of sewage. The Committee has rightly recommended that all the drains in which untreated sewage is being discharged need to be intercepted and diverted so that the untreated sewage is not conveyed to the river. Such gaps need to be bridged in UP and Haryana also. The IDMC and DJB have to ensure this for Delhi. The monitoring by Additional Chief Secretary and Chief Secretary Delhi in terms of order of the Hon'ble Supreme Court dated 24.07.2017 has yet to take place. Necessary devices for sewage and effluent treatment have still not been installed to the required extent. In spite of availability of huge funds, DJB is not working in a professional manner, as observed by the YMC. Water quality remains highly deteriorated as pollutants are still being discharged into the drains. Flood plains are not being made encroachment free, affecting the riverine ecology. Awareness programmes are inadequate. Biodiversity parks and other measures have also been found to be inadequate. Frothing frequently found is in absence of regulating composition of detergents, which find place in the river through sewage, for which action needs to be taken by DPCC/CPCB/Ministry of Consumer Affairs. E-flow needs to be managed by resolving inter-state issues administratively. Accountability needs to be enforced against failure of timelines which are being changed at leisure with no adverse consequences against non-performers. Compensation regime needs to be strictly followed on 'polluter pays' principle which was not happening depicting failure of the regulators. The observations in respect of authorities in Delhi equally apply to the States of Haryana and UP.

20. There is, thus, need for continuous and effective working of the IDMC to plan and oversee prevention of untreated sewage being discharged in the drains or the river. Apart from discharge of sewage, there is need to stop industries from discharging effluents by concerned statutory authorities, including the DPCC. The issue of protection of flood plains by the DDA remains to be satisfactorily addressed even though steps are said to have been taken for constitution of a SPV for the purpose. Encroachment is huge and steps taken are miniscule. Meaningful working of SPV by DDA will depend on success to remove encroachment and keeping continuous vigilance. Thus, on the part of concerned Authorities in the State of Delhi, Haryana and UP further actions in terms of the earlier orders of this

Tribunal as well as the current recommendations of the Committee need to be taken, which may be overseen by the Chief Secretaries of concerned States on regular basis by constituting a cell of experts on the subject directly reporting to the Chief Secretary for meaningful monitoring in coordination with authorities like DDA, IDMC, DPCC, DJB etc.(in the context of Delhi). Non-adherence to timelines must result in adequate and stringent action against accountable persons. Timely completion of projects must be ensured, otherwise for generations the problem will remain untackled, as vested interests will like the projects to remain pending and delayed to the detriment of the public interest. Interim measures like phytoremediation need to be employed where permanent solution is delayed. Earlier directions of the Tribunal, which by and large remain un-complied so far, need to be strictly followed with meaningful coercive measures against the erring officers and the violators.”

7. Vide order dated 21.10.2022 in Civil Appeal No. 3465/2022, Nizamuddin West Association vs. Union of India & Ors., the Hon’ble Supreme Court has directed further monitoring of compliance of the said directions by this Tribunal for which order dated 27.01.2021 to the extent it directed disposal of the application has been set aside and OA No. 06/2012 has been restored.

8. In compliance of above, the matter was again taken up on 09.01.2023 in OA 21/2023 and a high level Committee (HLC) headed by Lieutenant Governor, Delhi was directed to be constituted as follows:-

“1to17....xxx.....xxx.....xxx

In the light of above discussion, we constitute High Level Committee (HLC) of concerned authorities in Delhi where pollution of Yamuna is higher (about 75%), compared to other river basin States. We request the Lieutenant Governor, Delhi, who is Chairman DDA and Administrator of Delhi under Article 239 of the Constitution, to head the Committee. Other members of the Committee will be Chief Secretary, Delhi, who will act as Convener, Secretaries, Irrigation, Forest and Environment, Agriculture, and Finance, Govt. of Delhi, CEO, DJB, Vice Chairman, DDA, Secretary or his nominee (not below the rank of Additional Secretary), Ministry of Agriculture, GoI, D.G. Forest or his nominee (not below the rank of DDG), MoEF&CC, GoI, Secretary, MoJS or his nominee not below the rank of Additional Secretary, Secretary, MoEF&CC or his nominee not below the rank of Additional Secretary, DG NMCG and Chairman CPCB.

19. *The Committee will deal with all issues as set out in order dated 27.1.2021 and other ancillary matters mentioned above. It may also coordinate with all other departments, to the extent necessary. It may meet physically within one week and take stock of the situation with regard to the directions of the Tribunal, extent of compliance, extent of non-compliance, proposed remedial action for compliance of law, updated plan for compliance of directions, sources of funding, accountability for past failures, methodology for execution of the projects, timelines consistent with the spirit of orders of the Hon'ble Supreme Court and this Tribunal. After its first meeting, the Committee may continue to meet atleast once in every week for next six months so as to achieve tangible results within the said period. The Committee may consider opening separate dedicated account, hire dedicated subject matter experts, coordinate with and take on board existing departments, agencies and stake holders, civil society, including voluntary organisations. It may also set up its website and place its proceedings on the said website for information of all concerned and also to enable public participation.*

20. *The Committee will also be free to interact with corporates interested in their duty to the society and not merely in commercial interest. The timelines prepared be adhered to with laid down penal consequences against violations. Officers of rank of Chief Engineers, given responsibility, be named for fixing responsibility. The Committee may compile data of pollution as on 1.1.1994, 1.1.2012, 1.1.2017, 1.1.2019, 1.1.2021 and 1.1.2023. Thereafter, pollution graph may be prepared on quarterly basis with goal of substantial reduction by 1.7.2023. As already observed, planning may include all action points as per last report of YMC, incorporated in order of this Tribunal dated 27.1.2021, including plan for using treated water for agriculture, horticulture or industrial purposes, preventing discharge/dumping of any waste, protection of flood plain zones, maintaining e-flow, plantations, de-silting and dredging of drains and the river. MoJS and MoEF&CC may be consulted for norms for dredging and utilising dredged material for developing river front works. The Committee may explore provision for separate channels for carriage of sewage instead of mixing the same with storm water. Treated water may be used for non-potable purposes and not mixed with potable river water. The Committee may ensure that de-silt/de-sludged/dredged material is disposed of as per norms at the earliest, preventing re-entry in the river and damage to the flood plains.*

21. *Success of the Committee will be viewed by outcome in terms of reduction of pollution load and thus targets of the Committee should be measurable and identifiable. If experiment is successful at Delhi, it may help the country as a whole facing huge problem of water pollution. The Committee will be free to conduct proceedings online/hybrid as found necessary. It will also be free to undertake field visits.*

22. *The Committee may give its first report by 31.01.2023 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.”*

9. Further progress was reviewed on 16.02.2023. The Tribunal noted the report of the Delhi Government dated 31.01.2023 which mentions the minutes of the meeting of the HLC headed by Lieutenant Governor whereby targets were fixed on different action plans, responsibilities were assigned and monitoring mechanism was evolved. It was further directed that the Committee may continue to deal with the issues and file progress report in the matter on 30.04.2023. Further review is to be undertaken by this Tribunal.

Consideration today

10. In the present application it is stated that the HLC has been planning and overseeing rejuvenation work and in course thereof it was conceived that to prevent encroachment and for beautification of the flood plain of river Yamuna, ancillary activities are required such as bio-diversity parks to attract and educate citizens and nature enthusiasts without causing any damage to flood plain within the purview of orders of this Tribunal, including order dated 06.07.2020. The DDA is working on three pronged strategies as follows:-

“

- i.** Firstly, by protection of floodplains - by demarcation of the Yamuna floodplains and repossession of the floodplains under encroachment;
- ii.** Secondly, by restoration of the wetlands - by deepening and enlarging the existing depressions and creation of wetlands;
- iii.** Thirdly, **by attempting to build a connect for the general public with the Yamuna River - by means of providing public spaces connected with kaccha pathways, cycle tracks and seating areas in the Greenways, for recreation of public at large.”**

11. As part of the above, projects of the DDA are:-

“

- i.** Asita East - Old Railway Bridge to ITO Barrage (Eastern Bank)

- ii.** Kalindi Aviral - Nizamuddin Bridge to DND Flyway (Western Bank)
- iii.** Kalindi Biodiversity Park- DND to Kalindi By-pass (Western Bank)
- iv.** Asita West- Old Railway Bridge to ITO Barrage (Western Bank)
- v.** Amrut Biodiversity Park — New Railway Line to Nizamuddin Bridge (Eastern & Western Banks)
- vi.** Ghat Area — Wazirabad Barrage to Old Railway Bridge (Western Bank)
- vii.** Yamuna Vanasthali — Wazirabad Barrage to ISBT Bridge (Eastern Bank)
- viii.** Mayur Nature Park — Nizamuddin Bridge to DND Flyway (Eastern Bank)
- ix.** Eco-tourism area — Geeta colony Bridge to ITO Barrage (Western Bank)
- x.** Hindon Sarovar - Nizamuddin Bridge to DND Flyway (Eastern Bank)”

12. Connected to the above projects, following activities are proposed:-

“

- Green buffer areas: Upto 300 mts wide along the river planted with species of riverine ecology;
- Greenways: which are a belt of about 100-150 mts along the peripheral roads/embankments for development of public amenities with continuous trail of kaccha pathways and cycle tracks throughout its extent;
- Variety of open spaces for passive activities along these trails;
- Restoration and deepening of the existing depressions/wetlands and creation of new wetlands wherever feasible for the catchment of floodwaters;
- Floodplain forests and grasslands of native origin conducive to floodplain ecology, around these wetlands and trails;
- Constructed wetland systems for treatment of waste water out falling into Yamuna at feasible locations;
- Creation of biodiversity parks at various locations in the floodplains beneficial for native flora and fauna by creating a variety of habitats.”

13. In above series, the DDA has proposed installation of a lighthouse on Asita west for which purpose area under encroachments has been repossessed and following activities have been undertaken:-

“

- (a) Revival of floodplain forests and grasslands;
- (b) Restoration of floodplain water bodies;
- (c) Creation of catchment zones wherever feasible;
- (d) Provision of 75-100 mts wide belt along the existing embankments developed as Greenways with walking and

cycling trails along with public amenities to encourage public involvement.”

14. It is stated that the said area has been planted with trees of native varieties, endemic to the Yamuna floodplains, strategically chosen and planted in a multi-tier plantation system as- upper storey, middle storey and lower storey, with a view to promote the ecological succession which is helping in nurturing of the floodplain bio-diversity. In its meeting dated 27.01.2023, HLC resolved that the DJB, DPCC, I&F Control and DDA shall initiate an IEC campaign for awareness as well as involvement of the public at large in this initiative to restore the old glory of the River Yamuna. Grasslands have been developed with riverine species that help as binding material for the soil and improve the organic content of the degraded floodplains for the growth of other plant media. Approximately 5,700 trees of native varieties and about 52 lakh riverine grasses have been planted till date in the 200 Ha area. The area has a restored wetland of about 7.4 hectares at the existing depression area. It has a water body and marshy area, which is rich in biodiversity. It is further currently augmenting more than 190 million litres of water during peak monsoons. Lighthouse serves as a major attraction for the public as a watch tower (for controlled use) by the visitors of this area thereby also adding to the revenue generation and carrying forward the resolve of involvement of the public at large in this development. Vision is to ensure that the Yamuna Floodplains will be accessible and attractive to the residents of Delhi NCR. A Light house will further enhance the experience by providing an overview to the restored Floodplains and River Yamuna. In view of the current dearth of existing urban spaces in Delhi, for the recreation of the public at large, facilities as envisioned under the rejuvenation plan, will result in creation of one-of-its-kind urban space in Delhi. Efforts in this direction will assist in the public and citizenry to take ownership of the flood plains and further act

as a deterrent for encroachers. The proposed site for installation of the lighthouse falls in the Greenways that has been recommended by the Experts of the Principal Committee, to be designed as a public interactive zone. The installation is likely to occupy an area of 75-100 sq.m with the height ranging between 20-25 metres.

Direction

15. On consideration of the above, we are of the view that on principle there can be no objection to the proposal if its approved by the HLC and is meant for protection of flood plain zone and is within the purview of permissible activity in terms of para 80 of the order of this Tribunal dated 13.1.2015 and River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016. This will require examination of the details of the project with its location in context of notified flood plain zone, structural designs, maintenance infrastructure like Power backup, basic amenities support and construction period with integrated environmental management requirements. Since after order of this Tribunal dated 13.1.2015, NMCG has been named statutory regulator in terms of para 42 of the Ganga order quoted above, in our view further appraisal of activity being permissible should be by NMCG and if permission is given considering all relevant parameters, suitable safeguards found necessary for protection of the flood plain zone of Yamuna be adopted. NMCG may take decision preferably within one month of receiving of proposal. Statutory regulators may oversee compliance as per law.

I.A. No. 555/2023 stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 19, 2023
I.A. No. 555/2023 in OA No. 06/2012
A