

Vipin Nayyar vs Union Of India on 29 September, 2023

Item No.5

(Court No. 2)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(Through Physical Hearing with Hybrid VC Option)

Original Application No.305/2022
(I.A NO. 751/2023)

Vipin Nayyar

...Applicant

Versus

Union of India & Ors.

...Respondents

Date of hearing: 29.09.2023

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.

Applicant: Mr. Vipin Nayyar, applicant in person (through VC)

Respondents: Mr. Thakur Sumit and Mr. Narender Yadav, Advocates for
Respondent No. 1, MoEF&CC.
Mr. Rahul Verma, AAG for Respondent no. 5.
Mr. Mukesh Verma, Advocate for respondent no.7-
UEPPCB (through VC).
Mr. Rajesh Kumar, Advocate for Respondent No. 8.

Application under Section 18 read with Sections 14 and 15 of the
National Green Tribunal Act, 2010

ORDER

1. The grievance in the present application is regarding construction of Moga Resort in violation of 1:25 years Flood Plain Zone of river Ganga, by encroaching upon the Forest Land, narrowing down of river bed of river Rambha, cutting down of trees on the forest land situated on the confluence of river Ganga and Rambha, in eco-sensitive and prohibited zone of Archaeological Excavation Site of an Ancient Monument of National Importance.

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2. Vide order dated 06.05.2022, notices were ordered to be issued to respondents and a Joint Committee was also constituted to verify the factual position and submit its Factual and Action Taken Report.

3. In compliance thereof, report of the Joint Committee was filed vide email dated 24.08.2022.

4. The case involves substantial questions relating to environment arising out of the implementation of the National Green Tribunal Act, 2010 but the deficiencies/inconsistencies in the report of the Joint Committee and the replies/reports filed by the respondents justify an inference of the official respondents are deliberately trying to mislead this Tribunal and withhold the relevant information for some extraneous considerations.

5. In the present case, in the report of the Joint Committee forwarded by UKEPPCB coordinates of "Moga Resort" were mentioned as 30003'59"N and 78016'51"E but in reply to the application dated 14.08.2022 filed by the applicant under the Right to Information Act, 2005 the Executive Engineer, Irrigation Department mentioned coordinates of "Moga Resort"

as 30003'58.2"N and 78016'50.4"E. Vide order dated 22.11.2022 respondent no. 8 was directed to file an affidavit mentioning the coordinates of Moga Resort but the same has not been filed so far.

6. Comparative reading of the report of the Joint Committee and reply filed by respondent no. 1 that the report of the joint committee is self-contradictory as in the report "Moga Resort" is mentioned to be situated outside the reserved forest but it has also been mentioned that the Forest Department has shown the "Moga Resort" to be situated in Virbhadra Kaksh Sankhya 1 and 2 which fall in prohibited area. In the report of the Joint Committee "Moga Resort" is mentioned to be situated within 1:25 Flood Plain Zone of river Ganga. It has also been pointed out that even though in his report dated 26.08.2022, O. A. No. 305/2022 Vipin Nayyar Vs. Union of India & Ors. Divisional Forest Officer, Dehradun Forest Division, Dehradun has mentioned "Moga Resort" to be situated outside the limits of reserved forest but in his report he has acknowledged the possibility of error in demarcation.

7. Vide order dated 24.11.2022, I.A No. 295/2022 filed by the applicant was allowed and (1) the National Remote Sensing Centre (NRCA), Hyderabad is directed to submit status report over the Prescribed Time-Line for Year 2014, Year 2016, Year 2017 and Year 2021 with High Resolution Satellite Imagery of the construction site of the "Moga Resort" to ascertain the factual situation with respect to the Forest Canopy/Vegetative Cover at (i) the Co- ordinates 30003'58.2"N and 78016'50.4"E and (ii) 30003'59"N and 78016'51"E; and (2) the Director Map Archive & Dissemination Centre, Survey of India, Dehradun is directed to confirm whether the (i) Co-ordinates 30003'58.2"N and 78016'50.4"E and (ii) 30003'59"N and 78016'51"E pertain to Reserve Forest in District Rishikesh Uttarakhand.

8. In compliance thereof, report has been filed by NRCA, Hyderabad vide email dated 13.01.2023. The relevant part of the report reads as under:-

"This report is prepared in compliance with the directions of the Hon'ble National Green Tribunal in OA Nos 35/2022 (I.A 295/2022) dated 22 Nov 2022.

The order directed NRSC to submit a status report over the Prescribed Time-Line for Year 2014, Year 2016, Year 2017 and Year 2021 with High Resolution Satellite Imagery of the construction site of the "Moga Resort" to ascertain the factual situation with respect to the Forest Canopy/Vegetative Cover at (1) the Co-ordinates 30°03'58.2"N and 78°16'50.4"E and (2) 30°03'59"N and 78°16'51"E. The order also directed that the expenses incurred for the submission of the reports by the NRSC shall be borne by UKEPPCB.

NRSC sent a pro forma invoice for the costs of the satellite data to the Chairman, Uttarakhand Pollution Control Board, Gaura Devi Bhawan, 46 B IT Park Sahastradhara, Dehradun, Uttarakhand at his email id msukpcb@yahoo.com (as published on the the official website of the Uttarakhand Pollution Control Board <https://ueppcb.uk.gov.in/>) on December 7, 2022. No acknowledgement or funds have been received from the UKEPPCB.

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The following high-resolution satellite data was used in this report. The data used was the highest resolution, green season cloud free satellite coverage available over the points of interest.

No.of Year Available date, best resolution during the given Year scenes RS2/FMX_97-50/A, 09 Oct 2014 2.5m colour product RS2/FMX_97-50/A, 01 Feb 2016 2.5m colour product RS2/FMX_96-50/B, 14 Feb 2017 2.5m colour product 0.65 cm colour product The imagery is presented in Appendix I For years 2014, 2016, 2017 and 2022 false color imagery is presented. In this combination vegetation is visualized in red tones in the imagery. For 2022 the natural color composite image is also presented.

Some structure is visible at location 1 in the imagery from 2014 and can be seen clearly in the 2022 imagery. Vegetation is also present at both locations. From the imagery no observation can be made on the presence of forest canopy at the two locations. This is explained below The Forest Survey of India defines forest cover as lands more than one hectare in area with tree canopy density of more than 10 percent. The cover based definition does not "make any distinction between the origin of tree crops or tree species and encompasses all types of lands irrespective of their ownership, land use and legal status" (India State of Forest Report, 2021) Therefore, in order to ascertain whether the construction site of the "Moga Resort" falls in forest cover, accurately surveyed boundaries of the "Moga Resort" as well as base map and forest boundary compatible with cadastral scale are required. The required base maps and boundary information is not available with NRSC."

9. However, despite expiry of more than 10 months, no report has been filed by the Director Map Archive & Dissemination Centre, Survey of India, Dehradun so far and no explanation what so ever has been furnished for non-compliance with the order passed by this Tribunal.

10. I.A. No. 68/2023 was filed by the applicant seeking direction to respondent no. 2, the Principal Chief Conservator of Forest to explain the factual situation of River Rambha that is clearly marked and shown in O. A. No. 305/2022 Vipin Nayyar Vs. Union of India & Ors. the beat map of Veerbhadra Reserve Forest Sr. No. 1 and Sr. No. 2 and to confirm if River Rambha flows along the right side of the complete length of 'Moga Resort' and the same falls under reserve forest.

11. The applicant had submitted that the applicant filed an RTI application dated 29.07.2022 with The Range Officer, Rishikesh to confirm if Rambha River comes under the ownership of Forest Department, and in its reply letter no. 174 dated 22.08.2022, the Range Officer deliberately avoided giving a straight answer. The applicant filed another RTI application with the office of SDM Rishikesh asking information about the ownership of River Rambha present in Kaksh no. 1 and Kaksh no. 2 and in the reply dated 07.09.2022 it has been mentioned that there is no account with the name of Kaksh no. 1 and Kaksh no. 2 and Rambha River in the revenue records. The applicant being aggrieved by the reply of the Range Officer Forest Department Rishikesh filed a first appeal dated 10.09.2022 before the SDO (Sub- Divisional Officer) Dehradun and in its decision dated 19.10.2022 the SDO ordered the surveyor to conduct an inspection to ascertain the area of River Rambha that falls under the ownership of the Forest Department. The applicant painstakingly made various personal visits to the Range Officer, Rishikesh to clarify the ownership of River Rambha passing through the reserve forest along the complete length of Moga Resort but his pleas have fallen on deaf ears. Even after the lapse of over 4 months the officials of the forest department do not want to answer the question involving the ownership of River Rambha flowing through the reserve forest which is present on the right side of the complete length of Moga resort and is shown in the beat map of the forest department.

12. Vide order dated 24.05.2023, I.A no. 68/2023 filed by the applicant was allowed and respondent no. 2-PCCF was directed to file affidavit O. A. No. 305/2022 Vipin Nayyar Vs. Union of India & Ors. explaining the factual situation of River Rambha as shown in the beat map of Veerbhadra Reserve Forest Sr. No. 1 and Sr. No. 2 and to confirm if River Rambha flows along the right side of the complete length of 'Moga Resort' and the same falls in reserve forest.

13. In compliance thereof affidavit has been filed by Mr. Anup Malik, PCCF (HoFF), Government of Uttarakhand vide email dated 28.09.2023. The relevant part of the affidavit reads as under:-

"3. That in compliance to the above directions, the deponent directed the Divisional Forest Officer (DFO), Dehradun Forest Division, having jurisdiction over the land/river in question, to furnish his report as to the above said queries, asked by this Hon'ble Tribunal.

4. That the DFO, Dehradun Forest Division, vide his letter 1482/29-5 dated 27.09.2023, had furnished his report with joint inspection report, conducted by the Sub-Divisional Forest Officer, Forest Range Officer and Surveyor in compliance to the above directions, passed by this Hon'ble Tribunal. Copy of the report furnished by the DFO, Dehradun Forest Division with joint inspection report are being annexed collectively and marked as ANNEXURE-1.

5. That as per the report, furnished by the DFO, Dehradun Forest Division, Rambha river while flows on the right side of the Moga Resort, The area comes under revenue department (village Virpur Khurd) and the same does not fall in Reserve Forest."

14. The affidavit filed by the PCCF (HoFF), Government of Uttarakhand is materially deficient and does not take into consideration the questions raised and adopts a short cut of placing reliance on report of the subordinate officers which is grossly incomplete, inadequate and unscientific.

15. The PCCF (HoFF), Government of Uttarakhand is directed to look into the matter personally, make the relevant inquiry on the basis of the record of the Forest Department and the Revenue Department, look into the averments made in the original application and the documents O. A. No. 305/2022 Vipin Nayyar Vs. Union of India & Ors. attached with the same and the replies filed by the respondents and file his affidavit explaining the factual position as involved in the present case within one month by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

16. The Director Map Archive & Dissemination Centre, Survey of India, Dehradun is also directed to file his report as directed vide order dated 22.11.2022 within one month by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

17. In case of failure to submit the reports as directed, the Director Map Archive & Dissemination Centre, Survey of India, Dehradun and PCCF (HoFF) Government of Uttarakhand before the date fixed by this order, the same will be construed as willful non-compliance with the order passed by this Tribunal and accordingly appropriate legal action will be initiated against them.

18. The District Magistrate, Dehradun is directed to produce complete revenue record pertaining to the land on which Moga Resort has been constructed and also the record pertaining to river Rambha and Ganga alongwith copies of the relevant Jamabandies/Khatonies/Mutations, field book/survey maps pertaining to the same and copies of orders passed by the Revenue Courts in favour of respondent no. 8 on the next date of hearing to be fixed hereinafter.

19. The applicant has filed I.A No. 751/2023 vide email dated 26.09.2023 seeking relief of declaring the provisional notification no. 1875/ 11(2)-2020-06(18)/2020 dated 07.10.2020 issued by the State of Uttarakhand under the Uttarakhand Flood Plain Zoning Act 2012 as the O. A. No. 305/2022 Vipin Nayyar Vs. Union of India & Ors. final notification regarding identification and demarcation of the flood plain zones of river ganga in Tehsil Rishikesh District Dehradun.

20. In view of the facts and circumstances of the case, we consider it appropriate to seek response from State of Uttarakhand through Chief Secretary, Government of Uttarakhand and the Chief Engineer, Department of Irrigation, Government of Uttarakhand and their presence is essential for just and fair adjudication of the questions involved in the case. Accordingly State of Uttarakhand through Chief Secretary, Government of Uttarakhand and the Chief Engineer, Department of Irrigation, Government of Uttarakhand are impleaded as respondents no. 9 and 10. The Registry is

directed to amend the memo of parties and issue notice to respondents no. 9 and 10 requiring them to file their reply/response within one month by way of email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

21. List for further consideration 07.12.2023.

22. In view of the facts and circumstance of the case, we also consider personal appearance of the PCCF (HoFF), Government of Uttarakhand, Chief Engineer, Department of Irrigation, Government of Uttarakhand and District Magistrate, Dehradun, physically on the next date of hearing to be essential for producing the relevant record and assisting this Tribunal in just and proper adjudication of the questions involved in the case. Accordingly they are directed to remain present before this Tribunal on that date with the relevant record.

23. A copy of this order, along with a copy of the application and documents attached with the same report of Joint Committee and replies filed by the respondents, be forwarded to the Chief Secretary, Government of Uttarakhand, PCCF (HoFF), Government of Uttarakhand, O. A. No. 305/2022 Vipin Nayyar Vs. Union of India & Ors. Chief Engineer, Department of Irrigation, Government of Uttarakhand and District Magistrate, Dehradun by e-mail for compliance.

Arun Kumar Tyagi, JM Dr. Afroz Ahmad, EM September 29th, 2023 N