

Sushil Raghav vs State Of Uttar Pradesh on 31 August, 2023

Item No. 1

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 535/2023
(I.A. No. 684/2023)

Sushil Raghav

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 31.08.2023

CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

Applicant: Mr. Rahul Khurana, Advocate

ORDER

1. The grievance raised in this Original Application is in respect of Sahibabad Storm Water drain and the allegation is that the respondent, National Capital Region Transport Corporation (NCRTC) is illegally constructing track of Delhi-Meerut Regional Rapid Transit System (RRTS) and station beneath the drain and it has completely diverted the course of the drain on Vaishali and Vasundhara side. The petitioner has alleged that NCRTC has started fixing pillars on the drain as well as its buffer zone illegally and constructing track on the drain diverting the drain.

2. On the issue of encroaching upon Sahibabad drain by raising a construction in the bed and within the buffer zone (12 mtrs. from the edge of the drain) by certain private individuals, earlier the Original Applications were filed and the directions were issued. In O.A. No. 16/2014, Shri Hazi Ariff vs. State of U.P. & Ors., the Tribunal had concluded that construction on the drain and its buffer zone, either with or without the permission of the Nagar Nigam, are illegal. Buffer zone has to be fixed either by authority or may be determined by Tribunal. The directions were summed up in the order dated 13.05.2022 as under:-

"30. To sum-up, our directions are:

(i) All constructions/encroachments in the bed and 12 meter buffer zone from the edge of Sahibabad Drain No. 1 in Ghaziabad and all its coverings are per se illegal and are liable to be demolished, irrespective of any permission by the Nagar Nigam.

The drain is liable to be restored and allowed to flow without obstruction and pollution which will be the responsibility of the Nagar Nigam with oversight of higher authorities and regulators.

(ii) Demolition of above illegal constructions may be carried out unless viable and acceptable alternative to restore environment and Drain by a suitable sewer line enabling free flow and unpolluted storm water open drain is worked out upto 01.10.2022.

(iii) In case of representation in terms of direction (ii), a Joint Committee headed by the Member Secretary, NCR Planning Board, Ministry of Urban Development, GoI, with nominee of Secretary, MoJS, GoI, Additional Chief Secretary, Urban Development, UP, Commissioner, Ghaziabad Nagar Nigam, District Magistrate, Ghaziabad, and UP PCB as members may consider the matter and give its report to the Tribunal by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF on or before 15.09.2022 about a viable alternative for sewer line being laid and simultaneously storm water drain being allowed to flow unpolluted and uninterrupted. This may be with full or partial financial contribution of affected/benefited parties, to be executed within the outer limit of one year from today.

(iv) If any such report is filed, the same may be simultaneously placed on the website of the UP PCB for being accessed by any of the affected parties.

(v) The report, if filed, be placed before the Tribunal on 28.09.2022 for consideration."

3. Against the order dated 13.05.2022 passed by the Tribunal, M/s Tata Steel Limited had filed Civil Appeal No. 6811/2022, M/s Tata Steel Limited vs. Hazi Arif & Ors. which was dismissed as withdrawn with liberty to file Review Application before the Tribunal vide order dated 28.09.2022. Apparently, no Review Application has been filed in pursuance to this order. The Tribunal vide order dated 10.02.2023, passed in M.A.63/2022 (OA No. 16/2014) had reiterated its earlier directions.

4. The present petitioner raising the similar issue had come up to the Tribunal by filing O.A. No. 624/2022 (I.A. No. 209/2022), Sushil Raghav vs. State of Uttar Pradesh & Ors. with the prayer to stop construction of pillars and the station on the Sahibabad Storm Water Drain No. 1 and its buffer zone of 12 mtrs. by the NCRTC in Ghaziabad for Delhi-Meerut RRTS corridor. The Tribunal, taking note of the fact that the joint Committee headed by the Member Secretary, NCR Planning Board is required to consider the grievance, at the first instance, had passed the following order on 26.09.2022 in O.A. No. 624/2023 as follows:-

"3. Since the issue of protection of drain and ensuring free flow therein is being overseen by a joint Committee headed by the Member Secretary, NCR Planning Board, grievance, if any, can be first considered by the said Committee, instead of

multiplying proceedings on the issue. Further, having regard to the nature of the project which is to help the commuters and to reduce pollution, we do not find it necessary to stop the same but such construction should be with all possible mitigation measures to ensure that there is no change of natural course of the drain and no pollution load is added."

5. The submission of the Counsel for the petitioner is that NCRTC is raising construction on the Sahibabad Storm Water Drain No. 1 and its buffer zone and that though, the petitioner has submitted representation to the joint Committee in compliance of the order of this Court but till now, the same has not been considered. We find that in the earlier order dated 26.09.2022, no time limit was fixed for consideration of the grievance. The petitioner has also not disclosed that any reminder was submitted to the Secretary, Joint Committee after submitting the representation dated 15.10.2022. That apart the allegation of the petitioner, at the first instance, can more appropriately be considered by the joint Committee headed by the Member Secretary, NCR Planning Board, especially when from the material enclosed with the petition, it is difficult to draw any concrete conclusion.

6. Hence, we direct the Member Secretary of the NCR Planning Board to decide the petitioner's grievance raised in the representation dated 15.10.2022 within a period of two months from the date of receipt of copy of this order.

7. Meanwhile, we make it clear that the construction will continue, having due regard to the order earlier passed by the Tribunal in O.A. No. 624/2023.

8. The Original Application is accordingly disposed of.

9. I.A. No. 684/2023 also stand disposed of accordingly.

Prakash Shrivastava, CP Sudhir Agarwal, JM Dr. A. Senthil Vel, EM August 31, 2023 Original Application No. 535/2023 (I.A. No. 684/2023) SN