BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Original Application No.145 of 2015 (M.A. No. 430 of 2015, M.A. No. 1124 of 2015, M.A. No. 1140 of 2015, M.A. No. 53 of 2016, 459 of 2016 & 556 of 2016)

IN THE MATTER OF:

D.K. Joshi Vs. Union of India & Ors.

CORAM: HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER

HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER

HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER

Present: Mr. Rahul Choudhary and Ms. Meera Gopal, **Applicant:**

Advs.

Mr. Balendu Shekhar with Mr.Akshay Abrol, Respondent No. 1:

Advs. for MoEF

Respondent No. 2, 4, 5, 6, 8, 11, 13, 14: Abhishek Yadav, Adv.

Respondent No. 3: Mr. Pradeep Misra and Mr. Daleep Kumar

Dhayani, Advs.

Ms. Rachana Joshi Issar, with Ms. Vanadan Respondent No. 7 & 10:

Mishra, Advs.

Mr. I.K. Kapila, Adv. for U.P. Jal Nigam

Dr. Rajeev Sharma, Adv. for Noticee No. 16 (Taj

View Apartment)

Ms. Meenakshi Arora, Sr. Adv. with Mr. Aditya Parolia, Mr. Piyush Singh, Mr. Prakhar Bhatnagar and Mr. Anshul Gupta, Advs. for Kalyani Heights, Ganpati Builders and Aparna

Builders

Mr. Balendu Shekhar and Mr. Akshay Abrol,

Advs. for MoEF

Mr. Rajendra Prasad Saxena, Adv. for Noticee

No. 10.

Mr. Arjun Pant, Adv. for Mr. Vaibhav Vatika, Rahul Green and Tulip Paradise - Noticees

Mr. Jitendra Mohan Sharma, Sr. Adv. with Mr. Sameer Singh, Adv. for Pushpanjali Heights & Pushpanjali Seasons & Asthan City Centre.

Mr. Rajkumar, Adv. and Mr. Bhupendra Kumar,

Date <mark>and</mark> Remarks	Orders of the Tribunal
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August 09,	This case is being heard on day to day basis on
2016 A	persistent request of the Project Proponents that they are
	suffering losses because of the interim orders passed by
	the Tribunal.
	In furtherance to the orders of the Tribunal a chart
	has been filed on behalf of the State of Uttar Pradesh in
	consultation with the Agra Development Authority and
	irrigation Department. This chart is to show the distance

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of the pillar from the edge of the river, distance of the boundary wall of the project from the pillar and distance of the constructed project from the boundary wall of the This chart has substantial variations with the Affidavits and the Joint Inspection Report already filed by the various agencies of the State. For instance in the case of Manglam Estate the distance shown of the constructed project from the pillar is 105 meters while as per the earlier Affidavit and joint inspection report the distance of the project from the river was 24 meters. Similarly there are serious variations in the distances. Under the orders of the Tribunal the flood plain of Yamuna at Agra was directed to be demarcated. The line of flood plain is stated to have been demarcated by fixation of pillars, according to the State and its Agencies. However, according to the Applicant even the pillars are not there and the flood plain level has been changed with raising the height of flood plain by dumping of mud and sand. Both these cases cannot be decided completely and effectively unless the exact measurement are brought before the Tribunal. We express our dis-satisfaction to the manner in which these charts have been prepared and even the joint inspection report has been submitted before the Tribunal. Authorities are expected to act fairly and judicially while complying with the directions of the Tribunal.

Unfortunately, these discrepancies and contradictions between various documents leaves the Tribunal with no option but to have the clarification of the facts, existing at the ground, by appointment of a Local Commissioner. It is necessary for the Court to have correct position of flood plains and the distances of the

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various projects, which according to the Applicant have been built right in the flood plain and even in the river itself. We do not propose to comment on the merits or otherwise of these submissions but would direct a Local Commissioner to be appointed for bringing the correct facts and alteration noticed on the site in question, as of today, before the Tribunal. It is an exceptional case where the Project Proponents have high stakes and the agencies of the Government have not acted fairly. Consequently, we direct that the Learned Registrar General – Mr. Mukesh Kumar Gupta to be appointed as Local Commissioner. The learned Local Commissioner would carry out the inspection and submit a complete and comprehensive report to the Tribunal, more particularly on the following.

- 1. Whether the pillars fixed for demarcation of flood plain are in existence or not?
- 2. Whether the pillars so fixed show apparent sign of being fixed on an artificially raised flood plain level by earth filling than the one existing on the flood plain with reference to 2010?
- 3. What is the distance of the various points of the projects from the flood plain boundary as demarcated by the fixed pillars, to its boundary wall and the constructed project or any part thereof. It shall also measure as to what is the distance between the edge of the river, to the point where the pillar has been fixed. This shall be done in case of Manglam Estate, Manglam Estate Extension, Pushpanjali Heights, P.G. College (Jagadamba), Tanishq Rajshree Estate and Pushpanjali Seasons?

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4. The Commissioner would also comment upon the wall construction raised by Manglam Estate Extension into the river as shown at Page Nos. 133-134 of the record.

The learned Local Commissioner shall be provided with due security and in this respect the SP of concerned area at Agra is directed to ensure complete safety and security of the learned Local Commissioner.

The Senior most Field Officers from the Revenue Department of the State at Agra with their measurement equipments, Irrigation Department and Agra Development Authority shall remain present with the learned Local Commissioner. The commission shall take place at 11.00 AM on 12th August, 2016.

The Divisional Commissioner of Agra shall ensure complete and effective execution of the commission in terms of the order of this Tribunal.

The fee of the learned Local Commissioner is fixed at Rs. 25,000/- which shall be paid by Agra Development Authority at the first instance subject to further orders of the Tribunal.

At the time of the execution of the commission liberty is granted to the Applicant, Project Proponent and the Departments to be present at the site through their Counsel only, if they so desire.

It has also been brought to our notice that in case of Manglam Estate the Hon'ble High Court of Allahabad had given a decision that the Appeal which Project Proponent had preferred was pending before the Commissioner. The Appeal was filed in the year 2010 and is still pending. We

are unable to appreciate this pendency, the advantage of which the builder has taken. We are informed that the Appeal now has been fixed for hearing on 12th August, 2016 and would be decided immediately. We do hope that the needful would be done. In the meanwhile the counsel appearing for the Agra Development Authority would Item No. 40 furnish details of the persons who were holding the post of August 09, Commissioner in Agra Development Authority since 2010 2016 and before whom the Appeal remained pending. It will be also stated as to where the file of the Appeal was lying for the past 6 years and in whose custody. The original records shall be produced before the Tribunal on the next date of hearing. Copy of this order may be sent to all the aforesaid concerned Authorities for compliance, by the Registry. List this matter for directions and hearing on 19th August, 2016. (Swatanter Kumar) (Raghuvendra S. Rathore) (Prof. A.R. Yousuf) (Bikram Singh Sajwan)