

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

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**ORIGINAL APPLICATION NO. 174/2014**

**SUNDER SINGH  
VERSUS  
STATE OF NCT OF DELHI & ORS.**

**IN THE MATTER OF:**

Sunder Singh,  
President Residents Welfare Association  
H. No. 275, V&P.O. Issarpur  
New Delhi-110073

**...Applicant**

Versus

1. State of NCT of Delhi  
Through Lieutenant Governor  
Government of NCT of Delhi  
Block 6 Raj Niwas Marg,  
Civil Lines, New Delhi-110054
2. Principal Secretary  
Government of NCT of Delhi,  
Room No. A 907, A Wing,  
9<sup>th</sup> Level, Delhi Secretariat,  
I.P. Estate, New Delhi-110002
3. Director Panchayat,  
Civil Supply Building,  
Tees Hazari Court, New Delhi-110054
4. Chief Executive Officer (DPGS)/  
Nodal Officer Water Bodies  
Delhi Park & Garden Society,  
Department of Environment & Forests,  
Government of NCT of Delhi.

5. Divisional Commissioner,  
5, Sham Nath Marg,  
New Delhi-110054
6. DC/DM (S W) Chairman DTP  
Kapashera New Delhi 110037
7. Sub-Divisional Magistrate  
Tahsil Building, Tuda Mandi  
Najafgarh, New Delhi-110043
8. Block Development Officer  
Najafgarh, New Delhi-110043
9. Delhi Jal Board  
Room No. 306, Varunalaya, Phase-II,  
Jhandewalan, Karol Bagh  
New Delhi-110005

**...Respondents**

**APPLICANT**

Mr. S. M. Hashmi and Ms. Antima Bazaz, Advs.

**COUNSEL FOR RESPONDENTS**

Mr. Vivek Kr. Tandon, Adv. for Respondent No. 1 to 3 and 5 to 7  
Mr. Purnima Maheshri and Mr. D. K. Singh Adv. for  
Respondent No. 4  
Mr. Suresh Tripathy, Adv. for Respondent No. 8  
Ms. Sakshi Popli with Ms. Juhi, Adv. for Delhi Jal Board for  
Respondent No. 9

**JUDGMENT**

**PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**  
**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**  
**Hon'ble Mr. B. S. Sajwan (Expert Member)**  
**Hon'ble Mr. Ranjan Chatterjee (Expert Member)**

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**Reserved on: 7<sup>th</sup> September 2016**  
**Pronounced on: 9<sup>th</sup> December 2016**

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- 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?**

**Hon'ble Mr. Ranjan Chatterjee (Expert Member)**

1. The present case has been filed under Section 18 (1) read with Section 14 (1) of the National Green Tribunal, Act 2010 (for short the Act of 2010) by the Applicant, Sunder Singh who is also the President of the Residents Welfare Association (RWA) of Issarpur, NCT, New Delhi. The Applicant being aggrieved by the inaction of the Respondent authorities in removal of the illegal encroachments, even after the judgment of the Hon'ble Delhi High Court in *Vikram Kumar Jain vs. Government of NCT Delhi* in W.P. (C) No. 3502/2000 has come before this Tribunal on 23.09.2014 with regard to the removal of the existing illegal encroachments made in the water body 'Johad' bearing Khasra No. 148 admeasuring 6 Bighas and 13 Biswas of the Gram Sabha of Issarpur. The layout given by the SDM Najafgarh (Respondent No. 7) also shows that Khasra No. 148 is a pond.

2. The Applicant has prayed for directing the Respondent authorities not to allow illegal encroachments on the water body and land on Khasra no. 148 admeasuring 6 Bighas and 13 Biswas. He has further prayed for evicting the encroachments from the said land and issuance of a direction to the Respondents to come up with a proper scheme for restoring the said water body.

3. The Applicant has contended that there has been illegal encroachment on the said area and no action has been taken by the Respondents in furtherance of the encroachment of water bodies in and around NCT Delhi. The said inaction by the authorities has resulted in encroachment as well as alteration of the status of water bodies of Issarpur, either by construction of private residences or the catchment areas having been obstructed and some area of the water body being used as footpaths by the encroachers. This indiscriminate use has resulted in contamination of the ground water and hence it has become unfit for human consumption.

4. The Applicant has complained on many occasions and on 22.05.2014 has filed a written complaint to the Local Commissioner (Water Bodies) against the revenue staff/ 'SDM'/DDO/Tehsildar Dist. South West for not protecting the water bodies/ water reservoir and land situated at village Issarpur, Delhi. They also requested for demarcating the water body land and removal of encroachment to safeguard the environment.

The Applicant states that pursuant to his representation, demarcation was done by INTECH Engineers on 01.07.2014 along with other documents.

5. On 16.03.2014 the Applicant association held a meeting and tried to resolve the matter within themselves. The Applicant association made various representations to the concerned

authorities for demarcation of Khasra No. 148 and pleaded for construction of a boundary around the area and to convert the encroached water body into a reservoir.

6. The Applicant contended that the illegal encroachments and the indiscriminate use of the water body have led to violation of various rules framed under the Environmental Protection Act 1986. The Applicant has placed reliance on various judgments of the Hon'ble Apex Court and the High Court of Delhi.

The Hon'ble Supreme Court in the case of *Jagpal Singh and Others vs. State of Punjab and Ors.* (2011) 11 SCC 396 dealing with the issue of illegal encroachment upon a village pond which was used for the common purpose of villagers, while discussing the legal position of encroachments in village areas has opined that:

*“13. We find no merit in this appeal. The Appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village.*

*14. In M. I. Builders (P) Ltd. Radhey Shyam Sahu, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores, 2004 (8) SCC 733, this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village*

common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.”

“16. The present is a case of land recorded as a village pond. This court in *Hinch Lal Tiwari vs. Kamala Devi*, AIR 2001 SC 3215 (followed by the Madras High Court in *L. Krishnan vs. State of Tamil Nadu*, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.”

“17. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal or for regularizing the illegal possession. Regularizing should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled castes/Scheduled Tribes, or where there is already a school dispensary or other public utility on the land.”

7. The Applicant has also referred to the judgment of the Hon'ble Delhi High Court in *Residents Welfare Association Ekta Enclave vs. State of NCT of Delhi & Ors.* WP. No. 4437/2013 & CM No.

10260/2013 where the Hon'ble Court, while discussing the importance of maintaining water bodies allotted during consolidation proceedings, in its order dated 31.10.2013 held in Para 6, as reiterated below:

*“Para 6; Consequently, all Deputy Commissioners are directed to ensure that none of the water bodies/johads /water tanks/lakes/water ponds are encroached or allotted in future to make good the deficiency of land during consolidation proceedings. If any water bodies/water tanks/johads/lakes have been allotted in the past to a villager during consolidation proceedings and no permanent structure has been constructed thereon, the Deputy Commissioners are also directed to ensure that water bodies/johad/water tanks/lakes/water ponds are maintained developed as well as kept clean and if necessary, the same be revived.”*

The above discussion sums up the facts put forward and the law relied upon by the applicant, wherein he has alleged that there has been illegal encroachment of the 'Johad' in Issarpur, which has altered the status of the water body and caused the water in it to become unfit for human consumption. The concern Authorities have taken no action in this regard despite several representations made by the applicant.

8. Now, we will be dealing with the replies filed by different Respondents. It is to be noted that only three Respondents have filed their replies in this regard namely Respondent No. 4, 7 and 9.

The Chief Executive Officer Delhi Parks and Gardens Society (in short 'DPGS') Respondent No. 4, in his reply has submitted that a writ petition bearing no. 21143-44/2005 titled as *Shri Khajan Singh versus Union of India and Others* was filed

before the Hon'ble High Court of Delhi pertaining to this particular Khasra number in question. This writ petition along with other batch of writ petitions, including the said petition was disposed of vide a common order dated 09.05.2007 with leading case being writ petition no. 3502 of 2000 titled *Vinod Kumar Jain versus Govt. of NCT of Delhi*.

9. That during the pendency of the said writ petition, the Hon'ble High Court appointed Court Commissioners to carry out the survey of water bodies periodically and submit reports to District Authorities and suggest action points for revival of the water bodies.

In terms of the said order, the Court Commissioners visited all sites / water bodies, periodically. A meeting was also held with the related officials on 28.10.2014 pertaining to the complaints related to revival and development of the said water body at Issarpur.

10. Respondent No. 7, Sub Divisional Magistrate (for short 'SDM') in his reply stated that during the pendency of the said writ petition before the Hon'ble Delhi High Court (No. 3502 of 2000), the Hon'ble Court appointed Shri Sanjeev Khanna, Shri Vivek Kumar Tandon and Shri Arvind Sah, Advocates as Court Commissioners, who also submitted their reports to the District authorities suggesting action points for revival of the water bodies. Among others, Khasra No. 148 which is in question, was also inspected by the Court Commissioner on 6.6.2014 and



during this visit, a direction for demarcation of the pond was given.

Upon the directions of the Court Commissioner, the demarcation of Khasra No. 148 was carried out on 02.07.2014 on the basis of 3 reference points. There were many objections raised on the said demarcation report. In order to go through the veracity of the objections received, it was thought proper to get a fresh demarcation done, after taking reference points from different angles as well. Thus, a fresh demarcation was carried out on 10.10.2014 (by tape) and on 01.11.2014 (by TSM) in presence of all the villagers wherein 5 reference points were also taken. The new demarcation report dated 10.12.2014 has now been obtained from M/s Intech Engineers and put on record.

Total area of Khasra No. 148 as per records is 6 Bigha 13 Biswas of which 4 Bighas 0 Biswas is enclosed by a boundary wall. During field inspection of the pond, it was found that the remaining area of 2 Bigha 13 Biswas was covered with concrete, approximately 8 feet higher in level than the deepest level of the pond, which is already enclosed by a boundary wall. The said concrete cover also consists of a common road which is used by residents/vehicles of the village. Villagers are using this open area for community services and for holding various functions/ceremonies/gatherings etc.

Respondent No. 7, the SDO, Najafgarh submitted that the Department would take further action, as required by law, after

deciding the objections in terms of the fresh demarcation, if received.

11. Respondent No. 9, Delhi Jal Board (hereinafter, referred to as 'DJB') which was impleaded at a later stage, has stated in its reply, that the waterline, parallel to the existing waterline is at a distance of about 2 to 4 feet from the drain to avoid any possible mixing of waste water of drain with the potable water pipeline. The new line was laid with all the requisite permissions from SDM, Najafgarh. DJB stated that there is no alternative route available to lay the new line and the laying of the new line was completed on 16.2.2015. Further, the DJB has stated that the new line could not have been laid at the existing site of the old line as waste water drain is flowing over it and potable water line could not be laid below the drain, since there are chances of contamination of potable water supply.

However, the applicant has filed a rejoinder to the counter affidavit filed by the DJB, alleging that the DJB has changed the alignment in the direction of the 'Johad' and that the DJB and SDM had worked hand in glove to lay the new pipeline at a distance of 5 meters from the existing pipeline. The applicant has alleged that the permission granted by SDM to lay the new pipeline has led to further encroachment on the Gram Sabha land.

12. The Court Commissioners inspected the site of Issarpur, Khasra No. 148 on 07.03.2016 and observed as follows:

- (i) Out of total water body of 6 Bighas 13 Biswas recorded, as on date, the water body area has been reduced to 4 Bighas only. Even this area is lying undeveloped. No effort is being made to clear the water body. It was noted that the dirty water from the village is also flowing into the water body.
- (ii) This whole issue of the water body has two rival groups who are engaged in a personal fight. Dispute amongst the villagers is regarding the encroachment/construction on the remaining area of the water body.
- (iii) A road connecting the village runs to the open area. Allegedly people living on the periphery of the water body have extended their houses and encroached upon the boundary area of the water body. The said area is being used by the villagers for community purposes. Even DTC buses stop there and villagers board the said buses. The said group of villagers want the encroached area removed and a boundary wall constructed along it. This does not seem feasible as the public road, which is within it would be closed. This would also result in stoppage of free flow of air into the village. Since the wall would have to be constructed along the water body, houses around it would not only have to be demolished but the ingress and egress would also be stopped. It would be better if marking is done by Revenue

Authorities, whereby it is ensured that no further encroachment takes place.

- (iv) In the North side there exists a temple along the boundary of the water body. The approach road to the Temple (Phirni Road) is also alleged to be a part of the water body. The rival section disputes this, claiming it to be a private road. The width of the Phirni road is also disputed. In the field book, it is shown to be 4 Gatthas whereas in the Massavi it is shown as 3 Gatthas.
- (v) Houses exist along the Phirni road as well, and if the Phirni road is blocked, then access to these houses as well the temple would get blocked. However, the rival group claims that access to these houses as well as the temple is from the other side and if the boundary wall is constructed along the full length of the water body, the said water body would be fully protected from encroachments etc.

13. The Court Commissioners held meetings in Issarpur on 7.12.2015 and 15.01.2016. On 7.12.2015 there was a meeting between the villagers and the Court Commissioner with regard to Khasra No. 148 village Issarpur. In the meeting the following points were discussed.

- i. It was sometime in the year 1968-69 that MCD with the general consent of the villagers created bricks 'Khandaz' by filling soil in the area, which fact can be corroborated from records of MCD, Najafgarh. The area of 'Johad' is 6 Bigha

and 13 Biswa and three wells which are existing were got repaired by MID (Minor Irrigation Department) in the year 1986-87 and all the three wells and hand pumps placed thereon are being maintained by MCD (Municipal Corporation Department).

- ii. It is also mentioned therein that in the year 2000, the brick 'Khandaz' was broken and the same was constructed in concrete by MCD and the said land is used by the villagers as 'aam raasta' since then, although this land is 'Johad' land.
- iii. In the year 2005-06 in pursuance to the orders of the Hon'ble High Court, the Flood Control Department after demarcation, constructed brick walls after demolishing the old one on 4 Bigha land, out of the aforesaid land.
- iv. DTC buses also ply on this ground and various functions are organized by the Panchayat. Marriage ceremonies are conducted and elderly people walk on this land of 'Johad', which are all important community activities.
- v. The villagers stated that a boundary wall has been constructed around 4 Bighas of the 'Johad' on Khasra No. 148. Further, they prayed that 2 Bigha 13 Biswa land should remain open so that villagers can use the said land for all public purposes.
- vi. It was stated that, on the 'Johad' land which is a common open space, an old water pipeline was installed in the year 1977-78 by DJB and the same got damaged in November

2014 and the work of installing a new pipeline was started by DJB and that the entire village gets water from this pipeline.

- vii. It was further stated that only one family of the village compelled the DJB officials to stop the work, on the ground that a case was pending in the Tribunal and against which a complaint was made to Block Development Officer (for short 'BDO') and SDM, Najafgarh and DC Kapeshera by DJB. The Deputy Commissioner immediately gave permission for laying of the pipelines. It is further suggested that the boundary wall of the bus terminal and open ground be not made since the villagers would throw garbage if the wall comes up and that there would be a possibility of the garbage spilling over into the village. If the boundary wall comes up, notorious elements may perform anti-social activities and as such there could be a threat to the life of villagers. The villagers do not want to create this boundary wall around 2 Bighas 13 Biswa of land for fear of antisocial activities and further desire to continue with various functions which are currently being organized by the Panchayat and other community functions.

In the meeting held on 15.01.2016 between the Court Commissioners and the villagers of Issarpur, the view expressed was that the common area is being used for 'Holi Pujan', entertainment, marriages and also as a bus stop etc. The

villagers indicated that the land measuring 2 Bighas 13 Biswas should be maintained as open area.

14. It is also pertinent to note that on 28.01.2014 the Tribunal in *Sushil Raghav vs. State of UP* passed the following orders:

1. *The UP Government shall file the list of the water bodies and the places where encroachments have been made in District Ghaziabad by the next date of hearing.*
2. *In the meantime, the Respondent No. 1 shall take all necessary steps for the purpose of removal of encroachments in all water bodies in the State of UP and such steps shall be initiated effectively in accordance with law within a period of four (4) weeks from today and report the steps taken by the Government by the next date of hearing.*
3. *The State Government shall issue individual orders in cases where the encroachers are putting up construction in the water bodies to stop such construction forthwith and such orders of stopping construction shall be scrupulously implemented by the authorities concerned. The report of steps taken in this regard shall also be informed to this Tribunal by way of affidavit from the responsible officer of the Government by the next date of hearing.*

15. It is thus clear that there has been a long pending dispute in Issarpur village on the 'Johad' issue. While originally the area of water body measured 6 Bighas 13 Biswas, over a period of time, it has been reduced to 4 Bighas only and the municipal authorities have also constructed a boundary wall around the 4 Bighas. The area is lying underdeveloped and no effort has been made to clear the water body. There is also report of filthy water flowing from the village into the said water body. Further, it is also true that there is hardly any water in the Johad as on date and the same is languishing with filth and waste. So at best

there is a case for restoration of the Johad and making it a reservoir and improving the water quality therein.

The balance 2 Bighas and 15 Biswas is now an open space at a much greater height compared to the Johad, which is used as a bus stand and community centre, where people organise various functions. There is no question of its being ever amalgamated with the main Johad of 4 Bighas. However, to prevent further encroachment, there is need for boundary pillars on all sides, without the same being a hindrance to the free movement of buses and people. If a wall were to be constructed alongside the open space and the water body, houses around the water body would have problems of ingress and egress. Therefore, it would be better if some marking pillars are erected by the Revenue Authorities to ensure that there is no encroachment and the remaining area of the water body remains an open land.

16. In light of the arguments advanced, documents on record and the pronouncements by the Hon'ble Supreme Court, the High Court of Delhi and this Tribunal, referred to above, we dispose of the Original Application 174/2014 with the following directions:

1. We direct the Sub-Divisional Magistrate, Najafgarh Respondent No. 7, to remove encroachments, if any, and keep the existing pond 'Johad', measuring 4 Bighas; improve its cleanliness within a period of 3 months and



eventually develop the water body into a reservoir. The MCD North and the 'BDO' will render all necessary assistance to the SDM, Najafgarh.

2. The balance land measuring 2 Bighas and 13 Biswas may be retained as a community centre and a bus stop to be used by the public at large. However, to prevent further encroachment thereon, there should be proper boundary pillars so that the same acts as a deterrent against any further illegal encroachments.
3. We constitute a team consisting of the following to monitor the progress of revival of the 'Johad' in Issarpur.
  - (i) The Chief Executive Officer of Parks and Gardens, in-charge of water bodies in the NCT of Delhi (or his representative)
  - (ii) An Officer who is of the level of Chief Engineer of Delhi Jal Board,
  - (iii) A Senior Officer of the Central Ground Water Authority.

This Committee would also ensure that both the 'Johad' and the community land, totally measuring 6 Bigha and 13 Biswas, be excluded from any residential/commercial infrastructure creation that may be planned in future so as to maintain the characteristics of the wetland, both in terms of their water holding capacity and their environmental role.

4. The Chief Engineer of DJB will preside over all meetings and give a report to the Tribunal every six months, of the progress made in this matter. The affidavit shall be filed by the Chief Engineer of the DJB. Funds from the existing environmental programmes of the Government for restoration of lakes and National Rural Employment Guarantee schemes can be made use of, for development of the water body at Issarpur.
5. No domestic sewage should be permitted to flow into the water bodies and any domestic sewage flowing into the tank should be diverted into the sewerage network or trapped by constructing individual septic tanks by the households. This shall be enforced in consultation with DJB.
17. With this, the Original Application No. 174/2014 stands disposed of with no order as to costs.

**Justice Swatanter Kumar**  
**Chairperson**

**Justice Raghuvendra S. Rathore**  
**Judicial Member**

**Bikram Singh Sajwan**  
**Expert Member**

**Ranjan Chatterjee**  
**Expert Member**

**New Delhi**  
**9<sup>th</sup> December 2016**



**NGT**