

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

Original Application No. 135/2014 (CZ)

CORAM:

**Hon'ble Mr. Justice Dalip Singh
(Judicial Member)**

**Hon'ble Mr. P.S.Rao
(Expert Member)**

BETWEEN:

1. Dr. Subhash C.Pandey,
G.SEED, HIG-1/8, Shivani Complex,
6 No. Stop, Shivaji Nagar,
Bhopal – 462016 (MP).
2. Shri Abhay Kumar Sharma
3. Shri Jay VardhanApplicants

Versus

1. State of Madhya Pradesh
2. Madhya Pradesh State Disaster Management Authority, Bhopal
3. Water Resource Department, Madhya Pradesh
4. Town & Country Planning, Bhopal, M.P.
5. M.P. State Environment Impact Assessment Authority, Bhopal
6. Municipal Council, Kolar, Bhopal
7. M.P. State Pollution Control Board, BhopalRespondents

**Applicant :
Shri Shivendu Joshi, Advocate**

**Counsel for Respondent no. 1,3 & 4:
Shri Sachin K.Verma, Advocate with Shri Shubhashish Banerjee, Dy. Director,
T&CP Deptt.**

**Counsel for Respondent no. 2:
Sudheer Dwivedi, OIC/Dy. Director, SDMA**

**Counsel for Respondent no. 5 & 7:
Ms. Parul Bhadoria, Adv. for Shri Purushaindra Kaurav, Adv. with
Shri Brajesh Sharma, OIC, SPCB.**

Counsel for Respondent No. 6 :

Shri Ayush Dev Bajpai, Adv. with Shri Updesh Sharma, OIC.

Dated : August 20th , 2014

Delivered in the open Court by

Hon'ble Mr. Justice Dalip Singh, Judicial Member

1. This application filed under Section 14 of the NGT Act, 2010 by the Applicant, has raised the grievance with regard to inaction on the part of the Respondents by failing to implement the mandate of 33 mtrs. No Construction Zone as well as maintaining 33 mtrs green belt area from the boundary of the river course and in the instant case, the river Kaliasote at Bhopal and consequently causing harm to the environment and also giving rise to the pollution in the river as a result of non-implementation of the sewage and municipal solid waste disposal laws. It is submitted that in the recent past several parties who have carried out developmental works in the form of construction and real estate development by developing residential complexes and townships have paid scant regard for maintaining 33 mtrs. distance from the edge of the river course as also developing of the green belt along the said 33 mtrs. distance from the river course.
2. Vide order dated 15.05.2014, after considering the above averments, notices were ordered to be issued and at the same time, interim order was also issued directing the Respondent No.4 Department of Town & Country Planning, Bhopal for carrying out the inspection of the premises of the builders/developers enumerated from 1 to 20 at Annexure 6 and submit whether the 33 mtrs. distance from the river front for maintaining the No Construction Zone as well as developing the same as a green belt has been carried out or not.
3. We need not go into the issue in detail after what has been submitted on behalf of the Respondent Nos. 1 and 4 by way of their M. A. No. 347/2014 under the head

“Submissions in pursuance of the order dated 27.05.2014” along with affidavit of Mr. Subhashish Banerjee, Dy. Director, Town and Country Planning, Paryavaran Parisar, E-5, Arera Colony, Bhopal.

4. Before we advert further, we may also note that it is also not in dispute that in the Bhopal Development Plan, it is specifically mentioned at Para 4.47 that

(ब) कलियासोत नदी के किनारे से दोनो ओर 33 मीटर का क्षेत्र खुला रखा जाएगा एव इसमें वृक्षारोपण किया जावेगा।

5. The aforesaid requirement is not at all disputed as such the entire premises of this petition is being decided on the basis of the above particularly in view of the issue raised of protecting the environment both of the river course in which as per submission of the Applicant persons/parties in the name of development have carried out extensive and indiscriminate encroachments into the river Kaliasote and paid scant regard for the aforesaid provision for protection of the environment by not maintaining the 33 mtrs. distance of No Construction Zone from the river front as also having failed to develop the green belt along with to the extent as mentioned in the aforesaid provision Para under 4.47 above and not carried out the mandate for untreated sewage being discharged in the river Kaliasot and causing pollution as a result thereof.
6. It was also submitted by the Applicant that in many cases, the constructions have been raised very close to the river course and in order to protect such construction retaining walls well as check dams have been built by the developers within the course of the river itself which have not been stopped during the period of construction either by the Municipality, Town and Country Planning Department, Water Resource Department or the Bhopal Development Authority.
7. With a view to corroborate the aforesaid submission, the Applicant has submitted various photographs in which such constructions purported to be within the river bed of the river Kaliasote, are expressly visible.

8. It was also submitted during one of the hearings that despite interim order, construction has been going on unchecked and the authorities concerned are not taking any measures to stop the same and instances of two developers were mentioned during the hearing. This Tribunal therefore, on 18.07.2014 directed the officials of the MP State Pollution Control Board (MPPCB) to carry out a spot inspection on the same day and submit their report before this Tribunal. The aforesaid report of the inspection carried out on 18th July, 2014 was filed by the MPPCB on 22.07.2014 along with affidavit of Mr. Brajesh Sharma, Assistant Engineer, MPPCB. The said report has been taken on record with copies to the parties and the Applicant. The Tribunal on 22.07.2014, on the basis of the above report, noted that two developers namely M/s Sagar Premium Plaza and Indus Builders and Developers had been carrying out the construction despite the interim orders of the Tribunal and also that such construction was being made within the No Construction Zone.
9. The Applicant therefore, submitted M.A. No. 355/2014 to take cognizance of the above and pass necessary orders against those found flouting the orders of the Tribunal.
10. However, before we proceed with regard to the above, we may also note that it was recorded in our order dated 22.07.2014 that the Applicant shall furnish amended copy of the petition which may be served upon the above two parties against whom allegations have come up with regard to the alleged breach of our order. However, the Applicant failed to submit the necessary amended application to be served upon the parties and as such notices to the aforesaid parties, named above, were not issued by the Registry.
11. Be that as it may, the issue at hand which is of considerable importance is regarding encroachment into the water body i.e. river Kaliasote as well as not maintaining the green belt for protection of environment as also allowing construction to be carried

out within the No Construction Zone and even on the river bed, as has been submitted in the application and of causing pollution and disturbing the environment.

12. So far as environment is concerned, under Part IV of the Constitution of India in Article 48 (A), it is provided as follows:

“Protection and improvement of environment and safeguarding of forests and wild life – The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

13. At the same time Article 51-A.(g) dealing with Fundamental Duties provides as under :

“to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;”

14. The duties of the State pertains to protection and improvement of the environment and to safeguard the forest and wild life of the country thereby implying protection of the existing and further to make improvement over and above the existing and prevailing situation and the duty of the citizen also is for protection and improvement of the natural environment which includes forest, lakes, rivers and wild life and more particularly to have compassion for all living creatures. The protection and improvement of rivers forms a part of the aforesaid article and therefore, any attempt which may be made at suggesting that in the present case, the issue with regard to violation of the Building By-laws contained in the Bhopal Development Plan, 2005 would not fall within the jurisdiction of this Tribunal, is liable to be rejected as environment would take within its compass the duties of every citizen under Article 51 A(g) to protect and improve the natural environment including the condition of the river which in the instant case is river Kaliasote, for which the issue has been raised that indiscriminate construction activities in the No Construction Zone already notified which must be maintained as a green belt for protection of the

river in our opinion clearly falls within the jurisdiction of this Tribunal under the NGT Act, 2010.

15. The issue which has been raised pertains to environment and therefore, falls within the scope and jurisdiction of this Tribunal under Section 14 of the National Green Tribunal Act, 2010. However, we would appreciate and take on record the stand of the State by way of its submission in M.A. No. 347/2014 submitted before this Tribunal on 16.07.2014. It is a very positive approach which the State has shown in this matter. We would therefore, like to reproduce the entire submission for benefit of all concerned:

“Submission in pursuance of the order dated 27.05.2014

The Respondents No. 1 and 4 most humbly submits as follows:

1. *That the Hon’ble Tribunal vide its order dated 27.05.2014 passed the following directions:*
 - i. *To explain whether any construction has been carried out in 30/33 meters distance of green belt area required to be maintained.*
 - ii. *To submit copy of the survey-sheet showing the source of the Kaliasot River alongwith the flood plain zone and the 33 meters green-belt are required to be maintained as No Construction Zone.*
 - iii. *On a map the construction activity going on by the developers enumerated at serial No. 1 to 20 should be indicated.*
 - iv. *In case any construction is reported to be going on either in the river bed or the flood plain area or 33 meters green-belt area, the same shal be immediately stopped by the respondents.*
 - v. *A spot inspection should be carried out within three days and necessary action should be ensured.*
 - vi. *The survey sheets indicating the course of river, flood zone and the green-belt as also the encroachments and building constructions and the same*

should be submitted before this Court before the next date of hearing failing which the Director Town and Country Planning shall remain personally present in Court to explain the position.

2. *That on the subsequent hearing on 11.07.2014 the Hon'ble Tribunal while considering the application registered as M.A.No. 334/2014 filed by the Applicant for seeking action against the concerned officials of the Respondents for non-compliance of the directions, the Hon'ble Tribunal issued bailable warrant to three respondent officials including Respondents No. 4, Director Town and Country Planning, Bhopal.*

3. *The Officer-in-Charge was appointed on 06.06.2014 by the Department of Housing and Environment to represent the Respondents No. 1 and 4 in the instant matter and due to miscommunication from the lower office staff, the order of the Hon'ble Tribunal could not be communicated to the OIC, therefore the bonafide mistake occurred and the Respondents could not comply with the directions of this Hon'ble Tribunal.*

4. *That on 11.07.2014, the Respondents were informed regarding the directions of the Hon'ble Tribunal the Respondents on the same day constituted a Joint Inspection Team of the officials of Town and Country Planning District Bhopal, Municipal Council Kolar and Revenue Officers to verify the actual ground position pertaining to the violation of development permission and construction activities within the prohibited area on the bed of river Kaliasot and now at present the Joint Inspection Team is going to start the inspection work from 16.07.2014 and are going to submit their report on 17.07.2014. The copy of order dated 11.07.2014 is marked and filed Annexure RR/1.*

5. *Those developers enumerated as 1-20 in the petition, amongst them one entity is village settlement and another area is an agricultural land, remaining 18 alleged developers/person are given show-cause notice on 11.07.2014 through ordinary post*

as well as speed post and their reply are still awaited. The copy of show-cause notice are cumulatively marked and filed as Annexure RR/2.

6. That the Respondents No. 4 to assess the construction carried out within the 33 meters area abetting the river course the Respondent No. 4 has super-imposed the Khasra map upon the satellite imagery (year 2011). On this super-imposed map of 33 meters green belt of both the sides of the river course has also been marked. The copies of 8 sheets of super-imposed map are cumulatively marked and filed as Annexure-RR/3.

7. That the Respondents in compliance of the directions of this Hon'ble Tribunal has submitted the abovementioned information and the report of Joint Inspection Team and the response of the 18 developers/person to whom the show-cause notices were issued by the Respondent No. 4 will be placed on record on the next date of hearing.

8. An affidavit in support is attached herewith.

Prayer : It is therefore, most humbly prayed that this Hon'ble Tribunal may graciously be pleased to take the submissions and documents on record and further may be pleased to pass any suitable order in favour of the respondents, in the interest of justice”.

16. We would find from the above that the State has accepted the fact that the 33 mtrs. area from the flood plain of the river has to be a No Construction Zone and developed as a green belt area. The State has committed itself that the same shall be implemented immediately and any construction in the same would be stopped.

17. We have also noted from the above that the State has categorically taken a stand that a joint inspection was carried out from 16th July, 2014 at the instance of various officials including those of the Town & Country Planning Department, the Municipal Council, Kolar and the Revenue officials to verify “the actual ground position pertaining to the violation of the development permission and construction activities”. After carrying out the aforesaid inspection the persons who *prima facie*

admitted to be in violation of the above norms were issued notices copies of which have been filed before us by way of Annexure-RR/2 as a specimen. We have noted the fact that the period given in the notice has elapsed and we would, therefore, now expect from the Respondent/State and the authorities who have issued notices, to complete the task of considering the replies, if any, and hearing the parties concerned and pass necessary orders in accordance with law within four weeks from today. For the aforesaid purposes if necessary the dates of hearing may be preponed by issuing fresh notices to the concerned parties so as to complete this task within a period of four weeks. Wherever the 33 Mtrs. No Construction Zone has been found to have been violated steps for removing such constructions shall be ordered to be taken by the party violating the norms which shall also ensure removal of all debris and also in case the said party fails to take these aforesaid steps, the State shall be at liberty to remove such constructions and recover costs from the violators.

- 18.** It is further directed that apart from the removal of such constructions raised within the 33 Mtrs. No Construction Area as has been indicated in the superimposed satellite images which have been filed at Annexure RR-3 along with the said M.A. No. 347/2014 wherein by blue line indicates the course of river and green line along with the same to be within the 33 mtrs. limit for developing green belt. As prima facie found by the State officials the said 33 mtrs. area shall be developed by carrying out extensive plantation work as a green belt along with the course of the river Kaliasot. Apart from this, the State shall put permanent boundary pillars for indicating the 33 mtrs. zone to the extent they have given in these satellite images which have been filed and further along the course of the river beyond the point which has not been included in the satellite images which have been filed before us which shall be maintained as No Construction Zone and developed as a green belt. We may clarify here that the task of identifying the area and the No Construction Zone will not be restricted only in the case of persons to whom notices have been

issued post the inspection carried out by the Respondent agencies and departments or the ones enumerated by the Applicant but shall be a continuous process and shall be carried out throughout the course of the river on both sides.

- 19.** The aforesaid task shall be carried out independently and shall be completed within a period of three months from the date of this order by the Respondents. We may only add that the State has submitted before us that in many cases such permissions along the course of the river have been granted by the Village Panchayats where the Bhopal Development Plan framed by the Town & Country Planning is not applicable.
- 20.** Be that as it may. The State and more particularly the Panchayati Raj Department shall through the Chief Secretary/Respondent No.1 issue necessary orders to the local authorities along such river bodies and river course to ensure that at all times 33 Mtrs. area is maintained and the green belts along the river course are raised by all the local bodies including the Village Panchayats which shall ensure planting, protection and survival of the trees and if necessary assistance of the Forest Department, Govt. of Madhya Pradesh shall be provided.
- 21.** We may also note that the development of the green belt along with river Kaliasot on both sides to the extent of 33 mtrs. area shall be carried out within this season of monsoon 2014 and shall be completed and report submitted before this Tribunal within three months.
- 22.** There is another issue which we would like to dwell upon while deciding this Application. We find that from the satellite images which have been submitted that townships along the course of the river have been developed but we do not find view of any sewage treatment plants having been constructed by either by the individual developers or by the local authorities concerned.
- 23.** On the contrary, a perusal of Annexure 16, the photographs, which are reportedly that of the J.K. Hospital and L.N. Medical College near Kaliasot river goes to show

that sewage is being discharged from their premises towards the river by the aforesaid Institutions. Even at Annexure 17, the photographs, said to be of D.K.-4, Danish Kunj and similar other places reveal the fact that the question and issue with regard to the sewage treatment has not at all been taken note of while granting permissions by the Town & Country Planning Department or by the local authorities/the Kolar Municipality, Kolar and the Village Panchayats which are alleged to have granted permission to the developers.

24. The issue with regard to the common effluent treatment plants is contained in the EIA Notification, 2006. We are also conscious of the fact that the same is applicable to the extent of the areas as mentioned in the said Notification.
25. Be that as it may. The cumulative impact of such townships which have been developed or under development has to be taken note of by the Municipal and the Local Authorities. The State Pollution Control Board shall submit a report before this Tribunal within four weeks after carrying out site inspection with regard to the installation and the measures undertaken for the treatment of the sewage and effluents being discharged into the river Kaliyashot. If local municipalities and the local authorities, Village Panchayats etc. have not cared to put such conditions while granting permissions, they shall immediately within four weeks insist upon the developers either by way of common effluent plant or individual ones for carrying out such works which are essential for protection of the river as well as for treatment of the sewage before its discharge into the river course. We also understand that municipalities while granting the permissions, it was submitted before us, have included the aforesaid condition with regard to the sewage treatment and disposal of municipal solid waste and for the aforesaid purposes 25 percent of the area being developed by the developers is mortgaged with the local authorities and only after inspection is carried out and completion certificate is issued permission is granted to the developers for sale/disposal of structures built on such 25 percent mortgaged

area. The Town & Country Planning Department and Municipality shall carry out a survey of all the premises which have been developed and to whom permissions have been granted in the last 10 years wherein such requirements have been incorporated in the permissions granted and also submit by way of an affidavit where such measures have been put in place, are in operation and also where completion certificates have been issued to such developers and the date on which the said completion certificates were issued for such premises and whether possession is being handed over before the completion certificate is granted.

- 26.** It was also submitted before us that in many cases the common areas which are shown in the plans and left open are often utilized at later point of time by the developers for construction. We direct the State to issue the necessary guidelines for the aforesaid purpose that such permissions should not be issued automatically as these initial development plans give rise to legitimate expectations of persons who are investing or purchasing such properties in the hope knowing very well that certain areas would be left open for common amenities and common use and later if such permissions are altered, it would affect the life of such occupants and their right to clean pollution free environment guaranteed under Article 21 of the Constitution. The need today as has been mentioned in Article 48(A) and 51(A)(g) is for 'Protection' and 'Improvement' of the environment. With the density of population increasing the need is for more open spaces rather than to curtail the same. These are such measures which must be kept in mind while granting such permissions to developers. The problem with regard to the treatment of sewage and also disposal to the municipal solid waste rain water harvesting and use of grey water needs to be taken care of in a more professional manner and developers cannot shirk their responsibility by handing over the premises to the society/individuals who may be short of funds for taking care of such issues. In the permissions granted to ten

developers incorporation of conditions for ensuring their accountability towards such measures must be ensured.

27. With the aforesaid directions, we dispose of this Application. The compliance report of the action taken by the various authorities shall be submitted before this Tribunal before 20th November, 2014.

28. This Original Application and the pending miscellaneous applications 347/2014 and 355/2014 stand disposed of.

List this matter on 24th November, 2014 for compliance.

(Mr. Justice Dalip Singh)
Judicial Member

(Mr. P.S. Rao)
Expert Member

Bhopal,
August 20th, 2014

NGT