

Item No. 11

Court No. 1

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

IA No. 537/2023
In
Original Application No. 6/2012

Nizamuddin West Association

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 23.02.2024

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

Applicant: Ms. Akansha Singh, Advs. for Applicant in I.A 537/2023

Respondent: Ms. Puja Kalra & Mr. Virendra Singh, Advs. for MCD with Mr. S.K.
Meena, EE & Mr. N. Ahuja, AE
Ms. Richa Kapoor & Ms. Eesha Sharma, Advs. for DJB
Mr. Narender Pal Singh, Adv. for DPCC
Ms. Jyoti Mendiratta, Adv. for Govt. of NCT of Delhi

ORDER

1. In this I.A. No. 537/2023 the grievance is that a part of the storm water drain has been left open on the backside of some of the houses i.e. B -159 to B-187 of G.K. – I, New Delhi and that toxic and foul smell is emitting from the open stretch causing health hazard. The matter is being repeatedly taken up by the Tribunal but no solution was coming forward, therefore, the Tribunal vide order dated 09.01.2024 had directed the high officials of MCD and DJB to hold a joint meeting and find out a solution and file a joint report containing the solution.

2. The Joint Report by the MCD and DJB dated 19.02.2024 has been filed wherein the long term solution has been shown to be tapping of all

the drains which are connected with the storm water drain in question and in respect of short term solution the report states as under:

“Short Term Solution:-

8. In order to mitigate suffering of the petitioner RWA and to safeguard the residents from the foul gases emitting out from this the open portion, RWA may be permitted to temporary covering by placing Arch shaped transparent Acrylic fiber sheet or removable pre-cast RCC slabs, for which the RW A also agreed during informal meeting and has desired to do the same out of their own funds.

9. In this regard it is pertinent to mention that Hon'ble NGT has allowed part covering of 2 drains in the jurisdiction of MCD in past. The details are as under:-

A. The covering of the part portion of Subhash Nagar drain in West Delhi was allowed by the Principal Committee constituted by the Hon'ble NGT in order dated 13.01.2015 in O.A. No. 06/2012. The Chairman Principal Committee recommend that "the uncovered area of the drain having 55m (Keshopur Mandi Culvert) and 60 m length (Chaukandi Culvert) may be covered with the condition that the addition of such coverage will not be considered for the NGT clause of more than 85% completion work" (Enclosed as Annexure "E").

B. Maharani Bagh Co-Operative House Building & Welfare Society Ltd. has filed this application before the Hon'ble Bench of NGT with a prayer that the concerned agencies including Delhi Jal Board and South Delhi Municipal Corporation be directed to reinstate and cover the portion of Maharani Bagh drain running through the Maharani Bagh Colony. The Hon'ble Court of NGT vide order dated 26.07.2016 (Enclosed as Annexure "F") observed in para 5 as under:-

"We would have normally not permitted even the covering of the remaining part of the drain but for the reason that the status existed since 1965. The applicants are not praying for carrying out any fresh alterations or a project which will be entirely laid down or cover the drain. All the drains in Delhi are expected to carry water free from obstruction, free of metals, acidic substance and smell. Once the drain trapping and STPs work, in terms of the judgment dated 13th January, 2015 is completed, Delhi will be a much healthier and better place to live. So far as the drainage system is concerned, the applicants have prayed that the status as it existed since 1965 should be restored particularly when a very small part of the drain remains to be covered and the major part of the drain is already covered.

Only with a view to restore the status as it existed, we would permit covering of the Maharani Bagh drain in Maharani Bagh temporarily by use of pre-cast RCC slabs which will not be cemented, leaving vents in between which will not be covered by laying down mud, or grass or in any other form whatsoever. The major portion of the drain would be kept open once the requisite number of STPs/CETPs, in terms of the judgment dated 13th January 2015, at Maharani Bagh are established/constructed and made operational".

The Hon'ble Court of NGT allowed the covering of the Maharani Bagh drain with pre-cast RCC slab subject to the to the following:-

"The residents of applicant's association also contribute to the pollution of the drains, besides they want this work to be done on certain assumptions and for their benefit. In view of that they must be liable to pay as contributory to the 'Precautionary Principles' and Polluter Pay Principles'. The total estimated cost is stated to be Rs. 4.

68 Crores. Major part thereof should be incurred by the authorities. However, 15% of the total cost should be borne by the Society and its residents. Restoration of the drain to its status prior 1965 shall be subject to final orders which the Tribunal may pass in the main case. We further direct that till further orders, the drain would be kept in the same status as of prior to 1965, without covering the slabs by soil, grass or any other material and would be kept in a removal condition"."

3. It has been pointed out that in another matter the Tribunal vide order dated 10.02.2023 in O.A. No. 16/2024 had directed opening of Sahibabad drain against which Civil Appeal No. 3639/2023 and two more Civil Appeals have been preferred before the Hon'ble Supreme Court and the Civil Appeals are coming up for hearing on 29.02.2024. In view of this prayer for adjournment has been made, which is allowed.

4. Learned Counsel for the applicant is permitted to file the CD in support of objections dated 20.02.2024 in the Registry which will be placed on record by the Registry.

5. List this matter on 1st April, 2024.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 23, 2024.
IA No. 537/2023
In O.A. No. 6/2012
HB