

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 449/2022
(I.A. No. 148/2022)

Manoj Bansal

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 06.07.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Akash Vashishtha, Advocate

ORDER

1. Grievance in this application is against concretization of storm water drain from 01 Navyug Market to 33 Navyug Market, Ghaziabad and for direction to maintain buffer zone of 12 meters from the edge of the drain on either side free from construction/encroachment.

2. According to the applicant, the drain in question is meant to carry runoff during rainfall but at present sewage and industrial effluents are discharged in the said drain in violation of the Water (Prevention and Control of Pollution) Act, 1974. The said drain has now been completely covered and concretized by the Nagar Nigam. Concretization is against recommendations of an expert Committee appointed by this Tribunal dated 13.10.2014 in respect of control of pollution and restoration of Yamuna River based on which this Tribunal vide judgement dated

13.01.2015 in O.A No. 06/2012, *Manoj Misra v. Union of India & Ors.*
directed:-

“There shall be no construction and/or coverage of any of the drains in Delhi by any Authority or Municipal Corporation. All the drains shall be kept obstruction free by the concerned Corporation.”

3. As per NCR Planning Board decision in meeting held on 28.04.2016, covering of drain is not permissible and buffer zone of 12 meter from the boundary of the drain is ‘no-construction zone’. Reference has also been made to order of this Tribunal dated 13.05.2022 directing:-

“...covering of a drain obstructs flow of the river and is not environmentally permissible with or without permission of a Nagar Nigam. Not only drain, but reasonable buffer area from its edge has to be left free as held in Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors., (2019) 18 SCC 494 (Para 21). Preferably such buffer zone should be covered by dense forest. Section 24(1)(b) of the Water Act prohibits any obstruction of the flow of water of a stream which may add to pollution.

24. Mere fact that the permission has been granted by the GNN cannot be of any consequence to remedy such illegality. It is well settled that protecting and maintaining drains is covered by the doctrine of public trust under which certain environmental assets vest in the people. The State has to act as a trustee. Storm water drain has important ecological functions in augmenting water supply. Discharge of untreated sewage in such drains is prohibited under the Water Act. So is obstructing its flow. The Nagar Nigam is thus not only under an obligation to prevent discharge of any pollutant into the drains (whether natural or manmade) but also prevent impeding its flow. In view of section 24 of the Water Act, it is not possible to accept that the Nagar Nigam can, in exercise of its contract making power or authority responsible for maintaining the drain, allow either impeding of flow or polluting of the drain. The Nagar Nigam is to act as a trustee in respect of the drain. The powers of the Nagar Nigam are not unlimited so as to either by itself or through anyone else violate the mandate of the Water Act.”

...

27. Even though the Hon’ble Supreme Court in Mantri Techzone, supra, has approved larger buffer zones ranging from 25 meters to 50 meters from the edge of the drain (depending upon size of the drain), the buffer zone laid down by the NCR Planning Board which is lesser area, must be followed in the NCR, which includes Ghaziabad. Thus, all constructions within the buffer zone of 12 meters from the edge of any drain have to be held illegal and liable to be removed.....”

4. In view of above, we consider it appropriate to require a joint Committee of CPCB, NCR Planning Board, State PCB, District Magistrate and Municipal Corporation, Ghaziabad to furnish a factual and action taken report in the matter within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The State PCB will be the nodal agency for coordination and compliance. The joint Committee may also verify whether any work is still going on in violation of law and if it is found that any such work is still going on, the same may be stopped.

List for further consideration on 28.09.2022.

A copy of this order be forwarded to CPCB, NCR Planning Board, State PCB, District Magistrate and Municipal Corporation, Ghaziabad by email for compliance.

The Applicant may serve a set of papers on CPCB, NCR Planning Board State PCB, District Magistrate and Municipal Corporation, Ghaziabad and file affidavit of service within one week.

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In view of above, no further order is called for in the I.A for interim order which will stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

July 6, 2022
Original Application No. 449/2022
(I.A. No. 148/2022)
AB