

Item No.7

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No.305/2022

(I.A. NO. 854/2023, I.A. NO.751/2023,I.A. NO. 215/2022,
And I.A. NO. 149/2022)

Vipin Nayyar

...Applicant

Versus

Union of India & Ors.

...Respondents

Date of hearing: 20.02.2024

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: Applicant in Person (through VC).

Respondents: Mr. Thakur Sumit, Advocate for Respondent no. 1
Mr. Rahul Verma, AAG for Respondents no. 2, 5, 6, 9
and 10.
Mr. Anoop Malik, PCCF, Uttarakhand (through VC).
Mr. Ruchir Mishra, Mr. Ramneek Mishra and Mr.
Tejendra Pratap Singh, Advocates for Respondent No.
3.
Mr. Rajesh Kumar, Ms. Mansi Aggarwal and Mr. N. P.
Singh, Advocates for Respondent No. 8-Moga Resort.
Mr. Balendu Shekhar (through VC) and Ms. Tanisha
Samantha, Advocates for Survey of India.

**Application under Section 18 read with Sections 14 and 15 of the
National Green Tribunal Act, 2010**

ORDER

1. The grievance in the present application is regarding construction of Moga Resort in violation of 1:25 years Flood Plain Zone of river Ganga, by encroaching upon the Forest Land, narrowing down of river bed of river Rambha, cutting down of trees on the forest land situated on the

confluence of river Ganga and Rambha, in eco-sensitive and prohibited zone of Archaeological Excavation Site of an Ancient Monument of National Importance.

2. Vide order dated 06.05.2022, notices were ordered to be issued to respondents and a Joint Committee was also constituted to verify the factual position and submit its Factual and Action Taken Report.

3. In compliance thereof, report of the Joint Committee was filed vide email dated 24.08.2022 and replies/reports were filed by the respondents. The matter was heard on various dates and was last heard on 10.01.2024.

4. Vide order dated 07.12.2023 NMCG was impleaded as respondent no. 11 and notice was ordered to be issued to NMCG requiring it to file response on or before 17.02.2024. None has appeared for NMCG and no response has been filed on its behalf.

5. Vide order dated 07.12.2023, UKPCB was directed to inspect Moga Resort and to file status report regarding compliance with environmental norms and obtaining of requisite NoCs from the concerned Departments by the Project Proponents and also regarding obtaining of CTO/CTE by the Project Proponent from the UKPCB **on or before 17.02.2024.**

6. In compliance thereof report has been filed by UKSPCB vide email dated 16.02.2024. The relevant part of the report reads as under:-

“X

X

X

2. In compliance of the above-mentioned directions, the following steps

have been taken: -

a) Inspection of the Moga Resort was carried out by the

Regional Office on dated 05.02.2024 and following observations were made: -

- i. Commercially operated 6 rooms 02 halls were found in the report. Besides 04 rooms are used by the Project Proponent for himself.*
- ii. For disposal of domestic effluent bio-digester is installed by the proponent.*
- iii. Discharge of domestic effluent was not found outside during the inspection.*
- iv. Solid waste and Kitchen waste are disposed through vehicle of Municipal Body.*
- v. Resort has applied for consent to operate which was returned back to the proponent.*
- b) Copy of the inspection report dated 05.02.2024 is enclosed at Annexure-I.*
- c) Subsequently Proponent has applied for Consent to Operate and the same was accorded to Proponent on dated 13.02.2024 which is valid up to 31.03.2024. Copy of such Consent to Operate is placed at Annexure-2...”*

7. UKSPCB has not filed copy of order/letter whereby the application for consent was returned and copy of order whereby consent to operate was granted to the project proponent and to show what were the deficiencies pointed out and when the deficiencies were rectified. UKSPCB is directed to file copies of the same at least two days before the date of hearing fixed herein after.

8. Rejoinder to the affidavit of respondent no. 5 has been filed by the applicant vide email dated 16.02.2024.

9. Vide order dated respondent no. 8-the Project Proponent was directed to file an affidavit within 15 days by email judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF, mentioning the coordinates of his property “Moga Resort” as admitted by him on the basis of the record/digital information available.

10. Respondent no. 8-the Project Proponent has not filed any affidavit as directed specifically mentioning the coordinates of his property “Moga

Resort” as admitted by him on the basis of the record/digital information available. Respondent no. 8-the Project Proponent has attached with his compliance affidavit filed vide email dated 19.02.2024 one sheet of paper on which coordinates have been written but he has not mentioned to which property the coordinates pertain to and the document is not signed by respondent no. 8-the Project Proponent.

11. Affidavit has been filed by Mr. Anup Malik, PCCF (HoFF), Government of Uttarakhand vide email dated 16.02.2024. In para 5 of his affidavit PCCF (HoFF), Uttarakhand has prayed for issuance of direction to Survey of India to carry out the survey on ground jointly with Forest Department and Revenue Department. The relevant part of the affidavit reads as under:-

“X X X

5. That since the calculated area of Chak Birpur Khurd is different as per different survey sheets and forest gazette notification of the said block, therefore, it is humbly prayed before the Hon'ble Tribunal that Survey of India may kindly be directed to carry out the survey on ground jointly with forest department and revenue department and verify the position of Moga resort vis a vis forest gazette notification and clearly the Chak is delineated, (which is 45 acres according to forest notification), it will be possible to clearly establish whether Moga Resort falls in Reserved Forest, Birbhadra Block, Compartment 2d or not. The deponent vide his letter dated 15.02.2024 had requested the Survey of India to conduct a joint survey of land in question including Revenue and Forest Department so that appropriate facts can be placed before this Hon'ble Tribunal (ANNEXURE-3).....”

12. Mr. Anup Malik, PCCF (HoFF), Government of Uttarakhand has appeared before this Tribunal through VC and we have interacted with him and he has reiterated his prayer.

13. Report has been filed by Survey of India vide email dated 08.01.2024. The relevant part of the report is reproduced below:-

“X

X

X

2. That in compliance of the order dated 24.05.2023, answering Survey of India though tried to explore . all possible available records, departmental survey works and projects survey however nowhere any details pertaining to Co-ordinates 30° 03' 58.2"N and 78° 16' 50.4"E and (ii) 30° 03' 59"N and 78° 16' 51"E were traced. Multiple correspondences were also given to forest department but no response was received giving any specific details pertaining to Co-ordinates. Copy of the various letter given to forest department are attached herewith as ANNEXURE- A (Colly).

3. That relying upon the Survey of India map used for forest department in the year 1922-23, as no other map and/or survey indicate otherwise, it can be observed that Co-ordinates 30° 03' 58.2"N and 78° 16' 50.4"E and (ii) 30° 03' 59"N and 78° 16' 51"E fall within the area of Virbhadra Reserve Forest.

4. It is most respectfully submitted that after 1922-23, if any change has been done in respect of the related forest boundary by the state government of UP / Uttarakhand by issuing gazette notification in which Virbhadra Reserve Forest area has been changed, then it can be verified by the Forest Department of Uttarakhand, as no such record exist as on date in the office of Director Map Archive & Dissemination Centre, Survey of India.

5. That keeping the adherence of order dated 24.05.2023 of this Hon'ble Tribunal, deponent's department of Survey of India vide letter no. 1329 /17-Y-Mis/V dated 24.07.2023 apprising the official stand of Director Map Archive & Dissemination Centre, Survey of India based upon the official records, was addressed to Hon'ble Tribunal through Consultant (Judicial) through e-mail dated 24.07.2023 and subsequent e-mail dated 25.07.2023 to the email address judicial-ngt@gov.in....

14. We have noticed that the emails dated 24.07.2023 and 25.07.2023 were sent to Consultant Judicial-NGT (P,B.) at email id judicial-ngt@gov.in. The Deputy Registrar, Principal Bench of this Tribunal is directed to look into the matter as to whether said emails were received and whether print out of the same were attached with the record of the case and in case the same were not so received or attached, to submit his report as to what remedial measures are required to be taken.

15. Compliance affidavit and Rejoinder affidavit have been filed by respondent no. 8-the Project Proponent vide emails dated 19.02.2024. The relevant part of the compliance affidavit reads as under: -

“X

X

X

2. That the instant Compliance Affidavit is being filed in compliance of the order dated 07.12.2023 passed by this Hon'ble Tribunal whereby the deponent herein was directed to file its affidavit mentioning the coordinates of Mogha Resort. That a map showing the area of the Mogha Resort and the relevant coordinates description is annexed herewith and marked as Annexure -1.

3. It is further submitted that on 13.02.2024, Mogha Resort received the Consolidated Consent to Operate and Authorization (hereinafter referred to as the CA) under Section-25 of the "Water (Prevention & Control of Pollution) Act, 1974" and under Section-21 of the "Air (Prevention & Control of Pollution) Act, 1981" and Authorization under "Rule-6(2) of the "Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016" notified under "Environment (Protection) Act, 1986" from the Uttarakhand Pollution Control Board. True copy of the letter no. UKPCB/ROD/Con/DDN-2089/2023-24/4801-1995 dated 13.02.2024 is annexed herewith and marked as Annexure-2.

4. It is also brought into the kind notice of this Hon'ble Tribunal that Mogha Resort has also received NOC from the Uttarakhand Fire Department and a certificate of registration as per Uttarakhand Tourism and Travel Trade Registration Rules, 2014 under the category of hotel/motel/road side facilities, resort, guest/tourist rest house. The said NOC & Certificate of registration has been annexed herewith as Annexure-3 & Annexure-4 respectively.

5. It is further pertinent to highlight that on in the reply dated 02.11.2023 to an RTI filed by the deponent, the Department of Irrigation, Govt. of Uttarakhand had specifically informed the status of Mogha Resort, Copy of the said reply is annexed herewith as Annexure-5”

16. The relevant part of the rejoinder affidavit reads as under: -

“X

X

X

2. That the instant Rejoinder is being filed in response to the Counter Affidavit dated 08.0-1.2024 filed by the Survey of India in compliance of order dated 24.05.2023 passed by this Hon'ble Tribunal.

3. That the contents of the Counter Affidavit filed by Survey of India are vague, wrong and baseless and hence vehemently disputed.

4. It is denied that the Co-ordinates 30° 03' 58.2"N and 78° 16' 50.4"E and 30° 03' 59"N and 78° 16' 51"E fall within the area of Virbhadra Reserve Forest. It is pertinent to mention that the submission made by the Survey of India is a mere statement and they have failed to put on record any substantial map/document in support of this submission. The stand of the Survey of India is thus without verifying the actual status of the land in question from the relevant government authorities.

5. That the Survey of India has failed to consider the map of Village Veerpur as maintained by the Revenue Department,

Uttarakhand which clearly shows that the land of the Mogha Resort is not a forest land but falls under the category of revenue land. True Copy of the map of Village Veerpur for the years 1904-1905, 1938 & 1992-1993 from the Revenue Department, Uttarakhand showing the land of the Mogha Resort at Point "X" is being annexed herewith as Annexure A1 (Colly).

6. That it is evident from the map of Village Veerpur over the years that the land of the Mogha Resort has never been included as a forest land and instead falls under the category of revenue/agricultural land. Thus, any submission made by the Survey of India in wrongfully declaring the said land in question as a forest land is contrary to the official records maintained by the Revenue Department of the Uttarakhand state and thus cannot be accepted by this Hon'ble Tribunal.

7. Further it is pertinent to mention that the khatoni records maintained

by the Uttarakhand Revenue Department, shows ownership of the lands in Khasra No. 94-95 of Village Veerpur Khurd, Dehradun, Uttarakhand by various people. The said ownership rights were granted to the people by the Government of Uttarakhand as the land is question not a forest land but revenue/agricultural land. If the said land area ever came under the forest area, the lands in question would have not been allotted to private persons. True Copy of the khatoni record from the Revenue Department, Uttarakhand showing ownerships of land in Khasra No. 94-95 of Village Veerpur Khurd, Dehradun, Uttarakhand is annexed herewith as Annexure-A2.

8. That in view of the facts and circumstances as explained above, it is evident that the records maintained by the Revenue Department hereby disproof the submissions made by Survey of India in their Counter Affidavit."

17. In view of the facts and circumstances of the case we consider presence of Survey of India through Surveyor General to be essential for just and proper adjudication of the questions involved in the case and the Survey of India through Surveyor General is impleaded as respondent no. 12.

18. The Registry is directed to amend memo of parties to the application and issue notice to respondent no. 12- Survey of India through Surveyor General requiring it to file its reply/response within one month at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

19. In view of the fact that River Rambha is an active Tributary of River Ganaga, we direct that notice be issued again to NMCG requiring it to file its reply/response within one month at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

20. List for further consideration on 12.04.2024.

21. In view of the facts and circumstances of the case, involvement of questions regarding the very nature of the land in question, provisions made in Section 20 of the National Green Tribunal Act, 2010 mandating this Tribunal to apply the precautionary principle and in exercise of powers under Section 19 (4) (j) of the National Green Tribunal Act, 2010 the Project Proponent is directed not to carry on commercial activities in the Moga Resort and CTO dated 13.02.2024 granted by UKSPCB shall remain in abeyance till further orders to the contrary.

22. The District Magistrate, Haridwar and the Senior Superintendent of Police, Haridwar shall ensure that no commercial activities are carried out in Moga Resort till further orders to the contrary.

23. A copy of this order be forwarded to the District Magistrate, Haridwar and the Senior Superintendent of Police, Haridwar by email for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

February 20th, 2024
AG