

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

(By Video Conferencing)

Original Application No. 208/2022
(I.A. No. 163/2022 & I.A. No. 177/2022)

Prem Mohan Gaur

Applicant

Versus

National Highway Authority of India & Ors.

Respondent(s)

Date of hearing: 16.09.2022

**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**

For the Applicant: Ms. Suruchi Mittal, Advocate

For the Respondent(s): Mr. Pinaki Misra, Senior Advocate with Mr. Shreyansh
Rathi, Advocate for NHAI (R - 1)
Mr. Rahul Khurana, Advocate for the State of Haryana

ORDER

1. Grievance in this application is against alleged illegal and unauthorized excavation, demolition of a *bundh* (embankment) and construction over the submergence area of *Ghamroj Bundh* by the National Highways Authority of India (NHAI) to build rest area/parking bay for the trucks and buses and for Toll Plaza on NH-248A at Sohna Road, Gurgaon without mandatory approval from the Irrigation Department under the Canal and Drainage Act and in violation of environmental norms and the Ministry of Road Transport and Highway (MoRTH) guidelines. According to the applicant, the construction of road will result in demolition of Bundh, affecting a water body in violations of

law laid down in *Hinch Lal Tiwari v. Kamla Devi*, (2001) 6 SCC 496. This will further violate Sohna Master Plan, 2031 and also affect forest area in violation of Forest (Conservation) Act, 1980 as conditions in the Forest Department letter dated 09.08.2018 are not being followed. The applicant filed representation dated 20.10.2020 to the Divisional Forest Officer, Gurgaon, District Town Planner Gurgaon, Deputy Commissioner, Gurgaon and State PCB but no action was taken.

2. The applicant earlier approached this Tribunal by way of OA No.259/2020. Vide order dated 09.11.2020, the Tribunal directed the joint Committee of Deputy Commissioner Gurgaon, Haryana State PCB, Divisional Forest Officer, Gurgaon look into grievance and take appropriate decision in accordance with law within one month. In pursuance of the said order, a joint Committee was constituted which undertook inspection and submitted a report dated 10.12.2020 to the effect that *Ghamroj* bund had been repaired and restored.

3. Later, fresh inspection was done on 18.08.2021 by Technical Officer (Forestry), Grade-I from Integrated Regional Office, MoEF&CC, Chandigarh which showed that the bund was continually being damaged and still being constructed upon by Respondent no.1, user agency. Submergence area of the bund was being leveled by using heavy machineries/JCBs etc. The user Agency completed the work of laying of underground drainage pipeline from the proposed Rest Area. Passage to proposed rest area is being used by cutting about 7.5 meters wide area of *Ghamroj* Bundh. Thus, *Ghamroj* bund protected forest area is being utilized by the user agency for the purpose of construction of proposed Rest Area which violates the condition No. (vi) i.e. "The forest land will not be used for any other purpose than that mentioned in the proposal"

and condition No.(viii) i.e. "The forest land will not be used for any other purpose than that mentioned in the proposal" of the Government of India, Ministry of Environment, Forests and Climate Change's approval order No.9-HRBI44/2017-CHA dated 9th August, 2018 and No.9-HRB204/2018-CHA dated 22nd November, 2019. Accordingly, the MoEF&CC directed the State Government through DFO concerned to retrieve the diverted forest land remaining unutilized after upgradation and strengthening of NH-248-A and save and restore protected forest area of *Ghamroj Bundh*. According to the applicant, protected forest including *Ghamroj Bundh* needs protection, as it helps in natural recharge zones for underground water table.

4. Considering the above grievance, and particularly the report dated 02.09.2021 of Shri Ravinder Singh, Technical Officer (Forestry) to the Regional Officer, Chandigarh and the Under Secretary (ROHO), MoEF&CC, Indira Paryavaran Bhawan, Aliganj, Jor Bagh Road, New Delhi to the effect that unutilized forest land was required to be retrieved to restore protected forest area of *Ghamroj Bundh*, the Tribunal vide order dated 23.03.2022 sought response from NHAI, State of Haryana, MoEF&CC, Deputy Commissioner, Gurugram and PCCF (HoFF), Haryana. Operative part of the order is reproduced below:

"1to3.....xxx.....xxx.....xxx"

4. We have heard learned Counsel for the applicant. Our attention has been particularly drawn to the report of Shri Ravinder Singh, Technical Officer (Forestry), Grade – I dated 02.09.2021 submitted on 09.09.2021 through the Regional Officer, Chandigarh to the Under Secretary (ROHO), MoEF&CC, Indira Paryavaran Bhawan, Aliganj, Jor Bagh Road, New Delhi, after undertaking visit to the site, with following findings:

"18. It is evident from the site visit that:

- (i) User Agency as well as the State Government hid the facts while submitting both above referred project*

proposals for diversion of 51.126 hectares and supplementary proposal of 1.86 hectares of forest land in favour of Manager (Tech) NHAI, PIU Gurugram for upgradation and strengthening of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) under Forest Division and District Gurugram seeking prior approval under Section 2 of FCA, 1980 that the instant road project proposals also involves the construction of Rest Area over the protected area i.e. Ghamroj Band.

- (ii) As per records available in this office, neither any project proposal for diversion of forest land for construction Rest Area at Ghamroj Bund on Rajasthan border-Buh-Gurugram Section of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) under Forest Division and District Gurugram has been received in this office nor any approval under Section 2 of FCA, 1980 has been accorded for the same till date.*
- (iii) As per layout plan submitted by the user agency with above mentioned diversion proposals, two rest areas have been proposed on both side of the proposed road over the non-forest land. No requirement of any type of forest land for the construction of proposed Rest Areas was made by the user agency through State Government.*
- (iv) The project note on the above mentioned project proposals submitted by the user agency also does not mention about construction of proposed Rest Areas.*
- (v) Neither any NOC from the land owing agencies/Irrigation Department/etc. for use of land for construction of Rest Areas has been provided by the user agency inspite of involvement of Bund area in this case.*
- (vi) So far as the construction of the proposed Rest Area by NHAI over submergence area or pond area of Ghamroj Bund is concerned, only land owing agencies/authorities of the State Government viz. Irrigation Department/etc. can better reply on this subject. It is the prime responsibility of the Irrigation Department to save and preserve the natural/public water resources.*
- (vii) The Ministry of Environment, Forest and Climate Change diverted the protected forest areas of Ghamroj Bund for the widening of road under question but never permitted the user agency to demolish the Ghamroj Bund and construct the proposed Rest Area over it. It is the prime responsibility of the local government to protect and restore the Ghamroj Bund area in its original form.*

- (viii) *I agreed with the applicant(s) that Hon'ble Supreme Court vide its order dated 25th July, 2001 in Appeal (Civil) No. 4787 of 2001 in the matter of "Hinch Lal Tiwari v. Kamla Devi and Others" stated that no part of any water body like pond, tanks, canals and water pathways could have been allotted for any abadi sites and there is need to protect all water bodies, channels and drains. As the construction of Rest Area is being done over private land (not forest land), it is the prime responsibility of the concerned department of the State Government to comply the Hon'ble Supreme Court's above order in letter and spirit.*
- (ix) *The Sohna Master Plan, 2031 also advocated that the bundh has to be retained in its current state. An explanatory note issued in this regard by the town and country planning department on November 15, 2012, mentions, "Sohna Town is surrounded by Aravali Ranges on eastern and western side. In the rainy season, run-off from these ranges passes through proposed urbanization through barsati Nallahs namely Mahandwara Nadi. Three bundhs namely Sohna bundh, Mohmmadpur bundh and Ghamroj bundh exist on the western side of the town to check the run-off and for recharging the underground water level.*
- (iv) *Both the above mentioned project proposals have been approved for upgradation and strengthening of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) whereas on the ground, Ghamroj Bund protected forest area is being utilized by the user agency for the purpose of construction of proposed Rest Area which violates the condition No. (vi) i.e., "The forest land will not be used for any other purpose than that mentioned in the proposal" and condition No. (viii) i.e., "the forest land will not be used for any other purpose than that mentioned in the proposal", of the Government of India, Ministry of Environment, Forest and Climate Change's forest clearance under Section – 2 of the FCA, 1980 vide approval order No. 9-HRB144/2017-CHA dated 9th August, 2018 and No. 9-HRB204/2018-CHA dated 22nd November, 2019 respectively. **Hence, user agency violates the provisions of FCA, 1980 in this case.***
- (x) *The State Government through DFO concerned may kindly be directed **to retrieve the diverted forest land remaining unutilized after upgradation and strengthening of NH-248-A from Kms 2.740 (Design chainage 0.340) to Kms 24.400 (design chainage kms 22.000) and save and restore protected forest area of Ghamroj Band.***

5. *In view of above, the applicant filed representation on 03.12.2021 with the Deputy Commissioner, Gurgaon with a request to stay further construction at the site. The representation dated 06.12.2021 was also made to the Project Director, PIU Rewari, NHAI but no action has been taken as required. It is accordingly, submitted that intervention of this Tribunal under section 15 of the NGT Act is warranted.*

6. *Considering the above, we direct Respondents No. 1, 3, 4, 5 and 6 - NHAI, State of Haryana, MoEF&CC, Deputy Commissioner, Gurugram and PCCF (HoFF), Haryana to file their respective responses in the matter within one month by e-mail which may indicate status of follow up action in respect of the report dated 02.09.2021, submitted on 09.09.2021.”*

5. Accordingly, replies have been filed by the MoEF&CC, NHAI and Forest Department, Haryana.

6. Stand of the NHAI is that no damage has been caused to *Ghamroj Bundh*. Conditions for forest clearance for diversion of 1.866 ha of forest land have not been violated. The proposal of the NHAI and the drawings clearly provided for Toll Plaza and Rest Area in the forest land allowed to be diverted. The same are part of right of way as held in (2021) 6 SCC 693, NHAI v. Pandarinathan Govindarajulu & Ors. On 18.07.2017, Stage - I clearance for diversion of 51.1260 ha of protected forest land was granted and thereafter further clearance was granted on 14.05.2018 for diversion of 1.866 ha of the protected forest land, including the Bundhs. NPV for cutting of trees was deposited on 22.10.2019. NOC was sought from the Irrigation Department with a proposal for exit of flood water of inner side of Bundh and but no response has been received. In fact, no such permission is required from the Irrigation Department once permission has been granted for diversion of forest land.

7. The stand of the MoEF&CC is that approval for diversion of 51.126 ha of forest land was granted on 24.10.2017 and further permission for diversion of 1.866 ha of acres forest land was granted on 31.05.2019.

With regard to the stand of the IRO, Chandigarh in letter dated 08.09.2021 asking the State Government to retrieve the forest land remaining unutilized after upgradation NH-248-A and also to restore the area of *Ghamroj Bundh*, the response of the State is awaited. Relevant extracts from the affidavit of MoEF & CC are:

“7. It is humbly submitted that the IRO Chandigarh inspected the site on 18.08.2021 and submitted its report dated 02.09.2021, wherein violation of Forest (Conservation) Act, 1980 was reported.

8. That based on the said report, the IRO Chandigarh vide letter dated 08.09.2021 requested the State Government to retrieve the diverted forest land remaining unutilized after upgradation and strengthening of NH-248-A from Kms 2+740 (to Kms 24+400 and preserve and restore protected forest area of Ghamroj Bundh.

9. Thereafter, the IRO vide letter dated 17.03.2022 requested the State Government to submit the action taken report.”

8. The Forest Department, Haryana in its reply dated 13.09.2022 through the DFO, Gurugram has stated that notice was issued to the NHAI on 13.01.2022 and 29.03.2022 that construction in *Ghamroj Bundh* areas was not permissible and the said land was required to be restored to pre-existing condition. NHAI has contested the stand and submitted that the Rest Area is being done on private land acquired by NHAI and not on *Ghamroj Bundh*. This report was furnished to Shri Ravinder Singh, Technical Officer (Forestry) by DFO, Gurugram on 09.08.2022. However, the *Ghamroj Bundh* and protected forest land has not been restored. The said area is being partly utilized for construction of Rest Area and for Toll Plaza. On 01.07.2022, DFO again wrote to the NHAI to vacate the *Ghamroj Bundh* area but the same has not been done.

Relevant extract from the said reply is as follows:

“9. Notices was issued to NHAI by Range Forest Officer, Sohna vide letter no. 1738-S dated 13-01-2022 and letter no 1876-S dated 29-03-2022 (Annexure 5A & 58) that the toll plaza and rest areas are not permitted to be constructed in Ghamroj Bund area and therefore NHAI is required to return the diverted forest land (Ghamroj

Bund) to Forest Department restored in pre-existing condition. NHAI, vide letter no. PIU/EC/NH-248A/06/01/2022-23/30 dated 07-04-2022 (Annexure 5C) has contested that they are not in any violation of FCA, 1980 and has submitted that NHAI has not carried out any work of rest areas on Ghamroj Bund and the work of rest areas is being done on the private land acquired by NHAI.

10. The action taken on the report submitted by Sh. Ravinder Singh, Technical Officer (Forestry), Grade -I was duly informed by the DFO, Gurugram vide letter no. 598G dated 30.05.2022 and letter no 553-c dated 09-08-2022.

11. However, from the KML file and satellite imagery on Google Earth, it is very much clear that entire protected forest land of Ghamroj Bund had not been fully restored by NHAI. Forest Area of Bundh had been utilized partially for the construction of Rest Area and utilized fully for the construction of Toll plaza (Annexure-6A). In this regard, NHAI was again instructed by DFO office vide letter no. 3013 dated 01-07-2022 (Annexure- 6B) to vacate the Ghamroj Bund Area and return it to the Forest Department.

12. NHAI in their letter no. PIU/EC/NH-248A/06/01/2022/613 dated 18-07-2022 (Annexure 7) has again reiterated that for the purpose of construction of Rest Area, NHAI has acquired private land and is constructing the same on said private land. Further, NHAI has submitted that the issue is already pending adjudication at Hon'ble National Green Tribunal and therefore no coercive action may be taken by forest department with regard to sub-judice matter and status quo is to be maintained.

At Present, partial width of Ghamroj bund has been utilized for the Rest Area construction and the entire width of the Ghamroj bund had been utilized for the construction of Toll Plaza. Forest Department had issued notices to NHAI to vacate the forest land and return it to the forest land in the preexisting condition. The direction passed by this Hon'ble Tribunal shall be complied with by the Forest Department.”

9. We have heard learned counsel for the parties. Question for consideration is whether the embankment area can be utilized for construction of Toll Plaza and Rest Area merely on the ground that such activities are part of the project and forest clearance has been granted.

10. Stand of the applicant and the Forest Department, Haryana is that even if diversion of forest land is permitted for non-forest area and even if Toll Plaza and Rest Area are part of the right of way, the Bundh site cannot be used for construction. This will adversely affect the flow of the

river, drainage of water into the Bundh area, and recharge of ground water.

11. We have considered rival submissions. We find merit in the contention of learned counsel for the applicant that mere compliance of Forest Act and area being covered by EC as held in *Pandarinathan Govindarajulu*, supra cannot allow obstructing drainage of water into the Bundh area, flow of the river and recharge of ground water. In such situation, 'Public Trust' doctrine as laid down in *M.C. Mehta v. UOI & Ors.*¹ applies to the effect that natural characteristics of natural resources cannot be allowed to be damaged even by the State without express legislative provision to that effect. Protection of embankments, water channels and water bodies has to be ensured. Relevant extract from the said judgment is reproduced below:

“35.But in the absence of any legislation, **the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.**

36. Coming to the facts of the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the **Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of the riverbed.** Even the Board in its report has recommended de-leasing of the said area.”

¹ 1997 (1) SCC 388

12. Thus, approval for diversion of forest land for the project cannot include damage to embankments or to the water channel/water body, as shown by the report of the Forest Department and the MoEF, referred to above.

13. Accordingly, no further use of the said embankment will be allowed by the PP and the same must be protected and preserved to enable drainage of water into the Bundh area, flow of the river and recharge of ground water. The said embankment with necessary buffer area may be appropriately demarcated and left unused for the project.

14. To enforce the above direction, the Additional Chief Secretary/Principal Secretary, Irrigation Department, Haryana may hold online/offline meeting with the District Magistrate, SSP, DFO and Executive Engineer, Irrigation Department Gurugram within one month. Any other officer who may be found relevant for the purpose may also be associated. Further course of action for execution of this order may be worked out. NHAI will also be free to send its representative to attend the said meeting. DFO may ensure strict compliance of the conditions subject to which diversion of forest land has been allowed. The PP may ensure that there is no littering and violation of environmental norms due to operation of the Rest Area and Toll Plaza, which may be overseen by the State PCB.

The application is disposed of.

A copy of this order be forwarded to the Additional Chief Secretary/Principal Secretary, Irrigation Department, Haryana, District Magistrate, SSP, DFO, and Executive Engineer, Irrigation Department, Gurgaon and the State PCB by email for compliance.

I.A. Nos. 163/2022 & 177/2022 also stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

September 16, 2022
Original Application No.208/2022
(I.A. No. 163/2022 & I.A. No. 177/2022)
A