

Item No. 07

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**
(Through Video Conferencing)
Original Application No. 01/2024(CZ)

Col. Vijay Kumar Sehgal Applicant(s)

Vs.

State of Madhya Pradesh & Ors. Respondent(s)

Date of Hearing: 04.07.2024

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s):	Col. Vijay Kumar Sehgal, Adv. (In Person)
For Respondent(s):	Mr. Om Shankar Shrivastava, Adv. Mr. Prashant M. Harne, Adv. (with Mr. Mehul Bhardwaj, Adv.)

ORDER

1. This application has been filed with the following prayer :-

- i. Pass an Order to the Respondent No.4 to stop the further construction on the said Jungle land near the Water Body (Upper Lake).*
- ii. To clear the boundary walls raised by the Respondent No.4 on the said Jungle land and to order for the restitution of the land and the environment damaged by the Respondents to its original status at the costs and expenses of the Respondent No. 4;*
- iii. To kindly order for inspection of the area being constructed by the Respondent No 4;*

iv. To restore the damaged Sewage System for its smooth disposal from the Manholes of the Applicant to the Sewage Treatment Plant.

v. Any other relief as the Hon'ble Tribunal deems fit in the interest of environment and justice.

2. The grievance of the applicant and the main cause of action as disclosed in para 6 of the synopsis is that in continuation with its rampant construction activities, Bharat Bhawan (Respondent No. 4) has now threatened the applicant that the land being utilized by the applicant for tree plantation and kitchen garden will be razed shortly since this portion of land of the applicant's residence is part of vacant jungle land allotted to them for construction activity. Despite the applicant informing Bharat Bhawan (Respondent NO. 4) that the land for tree plantation and kitchen garden had been leased in 1982 to Late Shri Bikram Jeet Seth (B.J. Sethi) Fathre-in-law of applicant) by Nuzul Authority, capital project Bhopal, the respondent no. 4 is insisting on razing this land which has already affected the foliage and tree cover as also the existing Sewage System drainage from Residence of the applicant.

3. The contention of the applicant is that the applicant is the Husband and Legal Heir of late Smt Monica Sehgal who has unfortunately expired on 27.08.2021, as per Death Certificate. Late Monica Sehgal is the youngest daughter of Late Shri Bikram Jeet Sethi (B.J Sethi) and late Smt Bimla Sethi and had been bequeathed all the moveable /immovable properties (including the present Residence of the applicant) of late Parents through a joint Will dated 20.11.1997 and later a single Will dated 31.12.2004, which has been duly proved by the Hon'ble 4th Additional District Judge, Bhopal vide Order dated 15.09.2014 in response to a Civil Suit No. 42-A/2010.

4. The residence of the applicant has been constructed in 1977 by late Shri Bikram Jeet Sethi (B.J. Sethi) on a plot of land admeasuring 1080 square yards (9720 square feet) as per building permission no. 420B date 28.09.1977 given by Nagar Nigam, Bhopal (Respondent no. 2). The residence of the applicant is located on the main road approximately 100 meters from Bharat Bhawan (Respondent no. 4) while the near boundary faces the Upper Lake, sperated by an area previously covered by dense follage and trees (including heritage) as visible in the Google image taken of the surrounding areas and pictures adjacent to residence of applicant.
5. The applicant has thus been left with no option but to approach this Tribunal because of the non-action on the part of the respondent who, being Govt. Agencies, are clearly flouting the laid down rules and norms for protection of the environment.
6. Late Shri Bikram Jeet Sethi (B.J. Sethi), the Father-in-law of the applicant, had requested the Nuzul Authorites, Bhopal vide his letter dated 01.05.1982 to permit him use of some portion of the vacant jungle land (adjacent to his residence near boundary) for tree plantation and kitchen garden had. The proposed area requested for inclusion is as per map.
7. Cutting of the green trees and damage to the forest area is concerned of this Tribunal.
8. The matter was taken up by this Tribunal on 05.01.2024 and a committee consisting one representative of Collector, Bhopal and one representative of State PCB was constituted with direction to submit the factual and action taken report.
9. In compliance thereof the committee has filed the report with the following facts :-

“During inspection, the Joint Committee visited the site behind Bharat Bhawan, Bhopal. The detail observations during the inspection as under:-

1. Bharat Bhawan, Bhopal is situated at J. Swaminathan Marg, Shyamla Hills, near Upper Lake, Bhopal which is spread in 06 Acre land, various Art Galleries are there.

2. Bharat Bhawan is Multi Art Centre set up to create interactive proximity between the verbal, visual and performing arts. Bharat Bhawan, Bhopal established in 1982 and financed by Govt. of Madhya Pradesh and run by an Autonomous Trust.

3. Bharat Bhawan, Bhopal has proposed Kalagram behind its present location in 1.05 acre land out of 13.05 acre land at khasra number 1396. Land document provided by CAO, Bharat Bhawan, Bhopal during inspection is enclosed as Annexure-02.

4. The construction work of proposed Kalagram is initiated by Bhopal Municipal Corporation through its Contractor.

5. The kitchen, garden area of petitioner adjoining to his residence covered with boundary wall which was damaged by the BMC contractor to initiate work of Kalagram. The damaged boundary wall found rebuilt by the BMC contractor of Bharat Bhawan, Bhopal. No damage of trees inside kitchen garden noticed during inspection.

6. Under Kalagram project the existing old boundary wall in the back side of Bharat Bhawan, Bhopal which is within 50 meter from Upper Lake, Bhopal is strengthened and its height raised to on an average approx 06 feet.

7. The BMC contractor initiated construction activity of Kalagram, cleaned the allotted area by using JCB machine, in cleaning and leveling of the area which is mostly rocky, the manhole and sewer line of petitioner and his neighbour got damaged. At the time of inspection small quantity of sewage found seeping from damaged

manhole in the land behind petitioner's residence. No discharge of effluent found in Upper Lake, Bhopal.

8. CAO, Bharat Bhawan, Bhopal issued a request letter on dated 13/12/2023 to Commissioner, Municipal Corporation, Bhopal to direct concerned officials of BMC for providing estimate of sewage and drainage network of Bharat Bhawan work of sewage network. Copy of letter is enclosed as Annexure-03.

9. On comparing latest google map and last updated google map dated 09/05/2023, the area behind Bharat Bhawan, Bhopal allotted for Kalagram, showing no major difference in topography. Google map is enclosed as Annexure-04. No cutting or uprooting of trees found during inspection.

Action Taken by MPPCB

1. MPPCB, Bhopal has issued vide letter dated 02/02/2024 to Commissioner, Bhopal Municipal Corporation to direct concerned officer for providing connection of sewage line of petitioner and his neighbor with the underground sewage network of Bhopal Municipal Corporation in Bharat Bhawan area.

Recommendation:

1. Bharat Bhawan Management shall develop proposed Kalagram as per Bhoj Wetland Rule 2017 and obtain necessary permission from concern departments.”

10. Notices were also issued to the respondents and BMC has filed the reply with the facts that the answering Respondent BMC humbly puts forth that Kalagram Project of Bharat Bhawan is not within the purview of the BMC. It's is only tasked with the responsibility of erecting boundary wall for the Kalagram Project.
11. That, the answering Respondent BMC has immediately taken cognizance of the matter w.r.t. damage to the boundary wall and reconstructed

boundary wall which was damaged during initiation of work for Kalagram. No damage to trees inside kitchen garden of the Applicant was done, as confirmed in the findings of the Action Taken Report with inspection done dated 31/01/2024. The Report further disclose no major difference in topography of the area behind Bharat Bhawan.

12. It is further submitted that the respondents/municipal corporation is devoted to protect the environment and natural spaces must be within its jurisdiction as well as enhance the ecology and its benefit.
13. The detailed reply has been filed by the respondent no. 4 - Bharat Bhawan with the facts that –

- i. Government of Madhya Pradesh, Revenue Department, in its meeting dated 15.04.2021, adjudication on the application of the answering respondent for the construction of Kalagram and thereafter vide letter dated 31.05.2021, the Revenue Department, Government of Madhya Pradesh allotted 1.05 acres out of the total Revenue Land of 13.05 acres situated at Khasra No. 1396, Village Bhopal City, in favor of the answering respondent without any cost. It is pertinent to note here that the land allotted to the answering respondent is the property of the Revenue Department.*
- ii. Thereafter, the possession of the aforementioned land was transferred to the answering respondent vide Order dated 06.09.2021 of the Sub-Divisional Magistrate, Bhopal City in Revenue Case No. 02/3-20(1)/2020-21.*
- iii. That vide Order dated 25.07.2022 of Tehsildar, City Bhopal in Case No. 0005/3-12/2022-23 demarcation and partition of the allotted Khasra in favor of the answering respondent.*
- iv. Respondent vide letter dated 21.12.2023, wrote to the Madhya Pradesh State Tourism Department for*

appointment of an architect for the work of Kalagram at the aforementioned land allotted to the answering respondent.

- v. That the kitchen, garden area of petitioner adjoining to his residence covered with boundary wall which was damaged by the BMC contractor who initiated work of Kalagram. Furthermore, the Joint Committee constituted by this Tribunal in its report has observed that the damaged boundary wall was rebuilt by the BMC contractor of Bharat Bhawan, Bhopal and that no damage of trees inside kitchen garden noticed during inspection. That Under Kalagram project the existing old boundary wall in the back side of Bharat Bhawan, Bhopal which is within 50 meters from Upper Lake, Bhopal is strengthened and its height raised to on an average approx 06 feet.”*
14. Copy of the resolution of the meeting headed by Chief Secretary, M.P. dated 08.04.2021 has been filed as annexure R/4-1 the application in which in item no. 1, a policy decision has been taken by the Government to allot the Government land, Khasra no. 1396 in Bhopal city in favour of the Bharat Bhawan and possession has been handed over by the Sub-Divisional Magistrate, Bhopal. Demarcation was also done according to rules. Accordingly, the land belongs to the respondent no. 4.
15. Now contention of the applicant is that the land for tree plantation and kitchen garden has been leased in 1982 and allotted to Lt. Sh. Bikran Jeet Sethi, Father-in-law of the applicant from Nuzul Authority Capital Project, Bhopal.
16. The perusal of the contention and pleadings as raised in the application reveals that the applicant wants to retain the Nuzul land which has been allotted to the Bharat Bhawan by the State Govt. This is the policy decision and if applicant is aggrieved by the policy decision taken by the Govt. for allotment of the land to the respondent no. 4 bharat bhawan,

- the applicant may approach to the appropriate forum for cancellation or appropriate remedy. The forum of National Green Tribunal may not be made to challenge the policy decision of the Govt for allotment of the land.
17. Second, question which has been raised by the applicant is cutting of the trees. The report of the joint committee discloses that there is no cutting or uprooting of trees found during the inspection.
 18. Third issue which has been raised by the applicant is discharge of effluent in upper lake. In para 7 of the report of the joint committee it has been narrated that at the time of inspection small quantity of sewage found seeping from damage main whole in the land behind the petitioner's residence but there is no discharge of effluent found in upper lake, Bhopal. In view of the above facts both the contention has not been verified by the administration/joint committee report.
 19. Next question which has been raised by the applicant is that anything done for the development of Kalagram by the Bharat Bhawan management should be in accordance with the Wetland Rules, 2017. We are also of the view that the respondents must comply the Wetland Rules, 2017.
 20. On the basis of the argument advanced by the learned counsel for the parties and on the basis of the report it transpires that this is the dispute with regard to the occupation or possession or use of Nuzul land which is within the ownership of the State Govt. and the Govt. by its high level meeting headed by the Chief Secretary decided to allot land to Bharat Bhawan respondent no. 4. Thus, this is not the matter to be decided by this Tribunal and nor the matter of environment.
 21. Next contention of the applicant is damage of the sewage system for which this Original Application has been filed that the contractor/Nagar Nigam should be held responsible for the above facts and should be

directed to repair it. It is the matter between the residents and the Municipal Counsel/Nagar Nigam for which the process has been initiated to remove the defect.

22. Learned counsel for the State Sh. Prashant M. Harne has submitted that to demarcate and protect the land Kalagram/Bharat Bhawan has raised the boundary that there should not be encroachment in future. In view of the above facts the matter is beyond the scope of the NGT Act, 2010 and not maintainable. So far as the restoration/damage of sewage system is concerned the Government/Municipal Corporation have to take necessary action. Further this is not the matter to be decided by the Tribunal or to be adjudicated by the Tribunal. **Original Application No. 01/2024** as prayed is not maintainable thus **dismissed**.

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

04th July, 2024
O.A No. 01/2024(CZ)
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