

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

**Original Application No. 472 of 2016
(M.A. No. 889 of 2016)**

IN THE MATTER OF :

Himanshu Mittal & Ors. Vs. Union of India & Ors.

**CORAM : HON'BLE MR. JUSTICE U.D.SALVI, ACTING CHAIRPERSON
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present: **Applicant:** **Mr. Rahul Choudhary, Ms. Meera Gopal
and Mr. Utkarsh Jain, Advs.**

Respondents: **Mr. Krishna Kumar Singh, Adv. for MoEF
Respondent nos.3 Mr. Pradeep Misra and Mr. Daleep Dhyani,
 Advs.**

**Ms. Priyanka Swami, Adv. with Mr. Aakash
Singh, Adv. For Nagar Nigam Ghaziabad
Mr. Deep Shikha Bharathi, Adv. for State of
Uttar Pradesh
Mr. Ravindra Kumar and Mr. Raman Yadav,
Advs.**

Date and Remarks	Orders of the Tribunal
Item No. 12 February 06, 2018	<p>The Applicants – Residents of Ghaziabad Welfare Association – environmentalist have moved the present Application for demolition of Hajj House constructed by Respondent No. 8 – Uttar Pradesh Hajj House Committee on pieces and parcel of land admeasuring 0.498 acres and 3.547 acres at Khasra Number 1402, 1403 and 1399 at village Arthala, Pargana, Loni, Tehsil and District Ghaziabad respectively.</p> <p>With reference to the revenue record and Khatauni for the year 1992 of village Arthala, which describes the said pieces and parcels of land as Khasra Number 1402 – Hindon River, Khasra Number 1403 – Hindon River and Khasra Number 1399 – Banjar and Barren land, vide Annexure A- 5 to the Application and the Sizra map Annexure A-6 to the Application, Learned Counsel appearing for the Applicant submits that the said lands fall in flood plain zone of river Hindon and, therefore, the demolition of the said structure constructed at the cost of the peculiar environment of the flood plain needs to be</p>

	<p>Item No. 12</p> <p>February 06, 2018</p>	<p>removed for restituting the environment. He invited our attention to the direction dated 16th March, 2010 passed by the Chief Secretary to State of Uttar Pradesh vide page 7 and 8 of the Application and reproduced hereunder:-</p> <p><i>“1 Clear depiction of flood plain zones along rivers as flood affected areas in the Master Plans and to prevent any constructions in these areas, these areas should be reserved as Green. It should be ensured to ban all kinds of constructions in flood plain zones under Zoning Regulations of the concerned cities.</i></p> <p><i>2. No NOC will be granted, under RBO Act, UP Urban Planning and Development Act 1973 and Industrial Development Act 1973 to any kind of construction inside the flood plain zone and nor will be the lay – out plans of such constructions be approved. To stop such kind of illegal constructions, effective action would be taken under the provisions of the above acts.</i></p> <p><i>3. Action to be taken by Irrigation Department to remove illegal constructions and notify the areas along canals under Section 55 of the Northern India Canal & Drainage Act 1873.</i></p> <p><i>4. Effective use of U.P. Flood Emergency Powers Act by all District Magistrates.</i></p> <p><i>5. Concerned officials of Irrigation Department must caution all those carrying out illegal construction in flood plain areas of rivers to removed them off immediately and also make it clear to them that no compensation would be done by the government for any loss arising out of damages due to floods and flood safety/relief measures will not be undertaken and the cost of damage will be recovered by those carrying out/ having illegal constructions.</i></p> <p><i>6. People should remove off illegal construction at their own will. Effective action would be taken against illegal constructors by the concerned authorities/ industrial development authorities and Nagar Palika Parishads under applicable provisions of the acts.</i></p> <p><i>7. Effective actions would be ensured by SSP/SPs of all districts through the Police Station Officers to check illegal constructions inside the flood plain areas.</i></p> <p><i>8. Strict compliance should be made for removing illegal constructions as soon they are done in flood plain areas that belong to Irrigation Department.</i></p> <p><i>9. Strict, punitive action should be taken against officers/ staff workers of concerned departments, after fixing their accountability, if they fail to take the expected action in the case</i></p>
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	<p>Item No. 12</p> <p>February 06, 2018</p>	<p><i>of illegal constructions.</i></p> <p><i>10. People who have raised illegal constructions / encroachers should not be provided ration cards, electricity and water connections, etc. as well as other state given facilities.</i></p> <p><i>It should be ensured that the above are strictly followed”.</i></p> <p>He even referred to the order passed by us namely order dated 20th May, 2013 in Original Application No. 89 of 2013 - Akash Vashishtha & Anr. Vs. Union of India & Ors. and order dated 07th October, 2017 - Society for protection of Environment & Biodiversity & Anr. Vs. Union of India & Ors in Application No. 146 of 2015 in order to make submission that no action has been so far taken by the State Government to remove the said structure which lies in the flood plain zone of river Hindon. Going further he invoked the provisions of Section 24 of Water (Prevention and Control) Act, 1974 to submit that construction of Hajj house is contravention of the said provision of law as it amounts to substantial aggravation of the pollution in river.</p> <p>Learned Counsel appearing for the Applicants further questioned the legality of the lease of the said pieces and parcels of land in favour of Uttar Pradesh Hajj House Committee in light of the provision under Section 134 of Uttar Pradesh Bhumi Zamindari Abolition and Land Reform Act, 1950. Learned Counsel appearing for the State of Uttar Pradesh submitted that this Act has been repealed with coming in force of Uttar Pradesh Land Reform Code, 2006.</p> <p>Learned Counsel appearing for the Applicant in rejoinder pointed out that Section 77 of Uttar Pradesh Revenue Code, 2006 reads as under:-</p> <p><i>“Section 77 (c) of the U.P. Revenue Code, 2006.</i></p>
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	<p>Item No. 12</p> <p>February 06, 2018</p>	<p><i>77. Bhumidhari Rights Not to Accrue in certain Lands</i> <i>Notwithstanding anything contained in the code or any other law for the time being in force, no person shall acquire the rights of a bhumidhar in the following lands;...</i> <i>(c) land situate in the bed of a river and used for casual or occasional cultivation”.</i></p> <p>We have only to consider the environmental aspect of the matter and not to adjudicate Civil rights interse parties. The only question which therefore remains for us to be answered is whether the area in question is in a ‘Flood plain zone’ as contended.</p> <p>Evidently, Khasra Number 1399 is shown in the revenue record as ‘Barren land’ and not part of river Hindon.</p> <p>Learned Counsel appearing for the Respondent No. 6 submitted that the structure in question falls in Khasra Number 1399 and not in Khasra Numbers 1402 and 1403 which are shown in the revenue record as river Hindon. However, The Reply of Respondent No. 2 – State of Uttar Pradesh and Respondent No. 7 – District Magistrate Ghaziabad dated 08th December, 2016 makes certain pertinent revelation. It is revealed that the Hajj House is partly situated in Khasra Number 1399 and partly in 1402 and 1403 as per the report of the Deputy Collector (P-9/2016 Annexure R-2) and was constructed after the said pieces and parcel of land were leased out by the Irrigation Department of Uttar Pradesh by G.O. No. 5064/2004-24-C-3-26L/92 dated 11th January, 2005 as the land in reference was shown as ‘community facility land’ under Ghaziabad Mahayojna, 2021. The State and District Magistrate both refute the claim that the said land comes under flood plain of river Hindon. The Status report filed</p>
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	<p>Item No. 12</p> <p>February 06, 2018</p>	<p>by the State of Uttar Pradesh – Respondent No. 2, Irrigation Department – Respondent No. 4, District Magistrate Ghaziabad – Respondent No. 7 dated 17th May, 2017 sheds further light on this aspect in following terms:-</p> <p style="text-align: center;"><i>“ That the Khasra Number 1399, 1402 and 1403 are the land of Irrigation Department vide government gazette dated 19th May, 1873. It is pertinent to mention here that Khasra Number 1399 is Registered as Banjar land in revenue records but it is vested in Irrigation Department. It is further submitted that the total area of Khasra Numbers 1399 is 16.25 acres, out of which only 3.547 acre land, which is outside the floodplain has been leased out and the remaining part of 12.703 acre is still in river flood/river bed area, which is not leased out by the Irrigation Department. <u>It is pertinent to mention here that the Irrigation Department has separated the river bed and flood plain area in year 1970 by constructing embankment”.</u></i></p> <p>To counter this revelation there is a response of the applicant dated 23rd August, 2017. Except the denial there is nothing in particular to counter a pertinent revelation that the embankment segregating the said pieces and parcel of land from river Hindon was constructed in the year 1970. No particulars of flood plain in terms of its physical, characteristics, and bio-logical components which would signify the character of the said pieces of land in question as a flood plain, have been placed before us. The fact that the land has been segregated from the river Hindon with construction of embankment in 1970s makes it very difficult now to accept the contention that it falls in the flood plain zone of river Hindon.</p> <p>Moreover, it has been pointed from Reply dated 20th October, 2016 of the Respondent No. 5- Ghaziabad Development Authority that there has been a previous</p>
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	<p>Item No. 12</p> <p>February 06, 2018</p>	<p>litigation regarding the construction of Hajj House on the land bearing Khasra Number 1399 area admeasuring 4.53 acres at village Arthla Pargana Loni, (Doob Kshetra) of river Hindon namely W.P. (c) Number 44327 of 2005 – Mahanagar Ghaziabad Chetna Munch and other Vs. State of Uttar Pradesh & Ors. and Suit Number 472 of 2005 (Mahesh Kumar Ahuja and Anr. Vs. Collector, Ghaziabad and Ors.), and the litigation ended with the dismissal of both the Civil W.P. and suit; and the party litigating against the Haj House could not succeed even up to the Hon'ble Supreme Court of India in getting the verdict of dismissal reversed in both the cases rendering it final.</p> <p>Learned Counsel appearing for the Respondent No. 6 – Ghaziabad Development Authority invited our attention to the judgment passed by the learned Civil Judge – IIIrd Court, Ghaziabad in Civil Suit Number 472 of 2005 Annexure – A – 2 to the Reply. He submitted that one of the Petitioner in the Writ Petition of Mr. Mahesh Kumar Ahuja was one of the plaintiff in the said Suit; and furthermore the Civil Court had particularly framed issues as to whether the said piece and parcel of land Khasra Number 1399 admeasuring 16.25 acres in village Arthlan Pargana Loni, Tehsil and District Ghaziabad was falling within (doob Kshetra i.e. flood plain) as indicated by the Irrigation Department and, if yes, what is the influence and effect thereon and both the issues were answered negatively. This fact is evident from the copy of the judgment tendered before us at Annexure A – 2 to the Reply of Ghaziabad Development Authority. Reply dated 16th January, 2017 of Respondent No. 3 – Uttar Pradesh Pollution Control Board discloses that that Board had</p>
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	<p>Item No. 12</p> <p>February 06, 2018</p>	<p>carried out inspection of the site on 04th April, 2005 and granted No Objection Certificate for construction of Hajj House meant to house 550 persons with the facilities like ATM, Bank, Cafeteria, etc. It further reveals that for expansion of similar site, inspection was done and No Objection Certificate was granted on 01st August, 2016. Nothing in particular as regards aggravation of pollution as contended by the applicants has been revealed both by the applicants and the SPCB. However, the Learned Counsel appearing on behalf of the applicant invited our attention to the inspection report of the Regional Officer of U.P. Pollution Control Board dated 31st May, 2016 annexed as Annexure A-12 to the application. He pointed out that on the date of inspection the Board had noticed that about 115 KLD domestic effluent could be generated and proposed Sewage Treatment Plant of 136 KLD for the said Hajj House. According to him, there had been no inspection conducted thereafter to ensure the compliance of the condition of installing Sewage Treatment Plant of 136 KLD by the Respondent No. 8 U.P. Hajj House Committee. Reply of the Respondent No. 8 dated 08th December, 2016 reveals no specific answer in relation to this fact.</p> <p>In such circumstances, particularly after having observed that this does not fall in the flood plain zone, we are of the considered opinion that demolition of the Hajj House is not called for, however, in the interest of environment we pass the following order:-</p> <ol style="list-style-type: none">1. The application for demolition of the Hajj House is dismissed.2. Respondent No. 8 U.P. Hajj House Committee is
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	<p>Item No. 12</p> <p>February 06, 2018</p>	<p>directed to ensure that there is STP to treat the domestic effluent of 136 KLD installed and commissioned at the said site as per the requirement of the U.P. Pollution Control Board.</p> <p>3. U.P. Pollution Control Board shall inspect the said premises within one week and in event of there being no STP of the specific capacity been found installed at the said Haj House the Haj House shall be sealed.</p> <p>Liberty is granted to Respondent No. 8 U.P. Haj House Committee to approach the Tribunal for de-sealing the said premises in the event of their being full compliance of the directions of U.P. Pollution Control Board.</p> <p>With the above directions Original Application No. 472 of 2016 stands disposed of.</p> <p><u>M.A. No. 889 of 2016</u></p> <p>This application does not survive for consideration as the main application itself stands disposed of.</p> <p>The M.A. No. 889 of 2016 stands disposed of accordingly.</p> <p>.....,ACP (U.D. Salvi)</p> <p>.....,EM (Dr. Nagin Nanda)</p>
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