

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

Original Application No. 1235/2024
(IA No 384/2025)

News Item Titled "NHAI Has Made Highway at Protected Pond Site in Delhi Activists" Appearing in the Times of India Dated 30.09.2024

Versus

Delhi Pollution Control Committee & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 12.02.2026

Date of pronouncement of order: 06.04.2026

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Respondents: Dr. Pinky Anand, Senior Advocate with Mr. Samrat Pasriccha, Ms. Madhu Sweta, Mr. Yash Kapoor, Mr. Ayush Kumar, Ms. Adeti Salooja, Ms. Chanya Jaily, Ms. Nayoleeka Purty and Ms. Saudamini Sharma, Advocates for R - 3, NHAI
Ms. Prabhsahay Kaur, Mr. Bir Inder Singh Gurm and Ms. Antara Mishra, Advocates for DDA
Mr. Saurabh Balwani, Advocate for CPCB
Mr. Sumit Arora, Advocate for MoEF & CC (Through VC)
Ms. Jyoti Mendiratta and Ms. Ananya Basudha, Advocates for R - 4 and 6

ORDER

1. This original application was registered *suo motu* based on the news item titled "NHAI has made highway at protected pond site in Delhi Activists" appearing in the Times of India dated 30.09.2024.

2. The news item discloses that the NHAI has built the Urban Extension Road-II over the pond in Goyla Khurd Village. It further discloses that the pond is a natural wetland and is in the list of over 1,000 ponds to be protected. It is also alleged that the alleviated road passing through the village in South West District Delhi also passes through the village pond that has shrunk in area since the beginning of the construction. It is

further alleged that the road is being constructed illegally over the water body. The news item further discloses the area of the pond to be 1.45 hectares (approx. 3.5 acres) in Khasra number 9/29 (10-9) as per the revenue record. It was alleged that 80% of the pond had vanished and that the Delhi Wetland Authority had failed to stop the illegal construction.

3. The Tribunal by the order dated 16.10.2024, while registering the OA in *suo motu* exercise of powers as recognised by the Hon'ble Supreme Court in the matter of "*Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Ors.*" reported in 2021 SCC Online SC 897, had impleaded the concerned respondents and noticed them. The concerned respondents have also filed the reply.

4. We have heard the learned Counsel for the parties at length.

5. The core issues which arise for consideration in this OA are whether the wetland in question is a protected wetland and whether the Respondent No. 3 – NHAI has constructed the bridge on this wetland by reducing its area in violation of the environmental norms.

Details of Ownership:

6. The record indicates that the land bearing Khasra number 9/29 (10 bigha and 9 biswa) situated in revenue estate of Village Goyla Khurd was acquired by the Delhi Development Authority (DDA) and the disclosure made by the GNCTD about the acquisition proceedings is as follows:

"2. In compliance with the aforesaid direction, it is respectfully submitted that the land bearing Kh. No. 9//29 (10 bigha and 9 biswa) situated in the revenue estate of Village Goyla Khurd was acquired by the Delhi Development Authority (DDA) as per the following:

Notification under Section 4 of the Land Acquisition Act was issued on 07/04/2006annexed hereto as Annexure-I.

Notification under Section 6 of the Land Acquisition Act was issued on 04/04/2007 in favor of DDA, vide Award No. 6/2008-09/SW, for the construction of a 100-meter-wide road under the Planned Development of Delhi at Goyla Khurd annexed hereto as Annexure-II.

That at the time of possession, the classification of the aforesaid land as "Johar" (pond) was clearly mentioned in the Possession Report.

3. That DDA took possession of the land bearing Kh. No. 9//29, measuring 10 bigha and 8 biswa 10 biswansi, situated in the revenue estate of Village Goyla Khurd, on 27/07/2010 annexed hereto as Annexure-III.

4. That as per the information, the said land was subsequently handed over to the National Highways Authority of India (NHAI) by DDA on 21/08/2012 for the construction of UER-II (Urban Extension Road-II).

5. That after taking possession of the land NHAI constructed a highway (flyover) over the pond ("Johar") located in Village Goyla Khurd."

7. The above reply reveals that the pond in question was acquired by the DDA initially and it was known to the DDA that there was a pond existing thereon.

8. The Respondent No. 7 – DDA in its reply dated 22.07.2025 has given the details of acquisition of subject land of Village Goyla Khurd by the DDA and transfer of possession of the land to the NHAI for the construction of 100 meters road on 21.04.2023. The DDA in this reply has clearly stated that at the time of handing over, the Respondent No. 3 - NHAI knew about the presence of the pond/water body/johar on the subject land. The stand of the DDA in this regard is as under:

*“xxxxxx.....xxx
11. It is, however, submitted that the presence of the pond/ water body/ Johad on the subject land was clearly known to Respondent No. 3/ NHAI at the time of handover. This is evident from the Environmental Impact Assessment (EIA) Report attached by NHAI as Annexure R-3/7 in its response dated 16.05.2025 to the above-captioned matter.”*

9. Thus, it is clear that the DDA who was the land-owning agency was aware of existence of the subject pond on the land in question and while transferring the possession of the said land to the Respondent No. 3 – NHAI the existence of the pond was made known.

Subject Pond – a Listed Water Body:

10. The Wetland (Conservation and Management) Rules, 2010 were framed earlier for conservation and management of the wetlands. These rules were framed in exercise of powers conferred by Section 25 read with Section 3 of the Environment (Protection) Act, 1986. Rule 2(g) of the Wetland Rules, 2010 defined the wetland as follows:

“2. Definitions. (1) In these rules, unless the context otherwise requires,-

(g) "wetland" means an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. No. 114(E), dated the 19th February, 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) of dated the 20th February, 1991;

11. The Rule-4 of the Wetland Rules, 2010 specified the prohibited activities within the wetlands as follows:

“4. Restrictions on activities within wetlands. (1) The following activities within the wetlands shall be prohibited, namely:-

- (i) reclamation of wetlands;*
- (ii) setting up of new industries and expansion of existing industries;*
- (iii) manufacture or handling or storage or disposal of hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified vide S.O. No. 966(E), dated the 27th November, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/ Genetically engineered organisms or cells notified vide GSR No. 1037(E), dated the 5th December, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 notified vide S.O. No. 2265(E), dated the 24th September, 2008;*
- (iv) solid waste dumping: provided that the existing practices, if any, existed before the commencement of these rules shall be phased out within a period not exceeding six months from the date of commencement of these rules;*
- (v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements: provided that the practices, if any, existed before the commencement of these rules shall be phased out within a*

period not exceeding one year from the date of commencement of these rules;

- (vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules;*
- (vii) any other activity likely to have an adverse impact on the ecosystem of the wetland to be specified in writing by the Authority constituted in accordance with these rules.*

(2) The following activities shall not be undertaken without the prior approval of the State Government within the wetlands, namely:-

- (i) withdrawal of water or the impoundment, diversion or interruption of water sources within the local catchment area of the wetland ecosystem;*
- (ii) harvesting of living and non-living resources;*
- (iii) grazing to the level that the basic nature and character of the biotic community is not adversely affected;*
- (iv) treated effluent discharges from industries, cities or towns, human settlements and agricultural fields falling within the limits laid down by the Central Pollution Control Board or the State Pollution Control Committee, as the case may be;*
- (v) plying of motorized boat, if it is not detrimental to the nature and character of the biotic community;*
- (vi) dredging, only if the wetland is impacted by siltation;*
- (vii) construction of boat jetties;*
- (viii) activities within the zone of influence, as per the definition of wetlands, that may directly affect the ecological character of the wetland;*
- (ix) facilities required for temporary use, such as pontoon bridges, that do not affect the ecological character of the wetland;*
- (x) aquaculture, agriculture and horticulture activities within the wetland;*
- (xi) repair of existing buildings or infrastructure including reconstruction activities;*
- (xii) any other activity to be identified by the Authority.*

(3) Notwithstanding anything in sub-rule (1) or sub-rule (2), the Central Government may permit any of the prohibited activities or non-wetland use in the protected wetland on the recommendation of the Authority.

(4) The State Government shall ensure that a detailed Environment Impact Assessment is carried out in accordance with the procedures specified in the notification of the Government of India in the Minister of Environment and Forests S.O. No. 1533(E), dated the September 14th, 2006 as amended from time-to-time.

(5) No wetland shall be converted to non-wetland use unless the Central Government is satisfied on the recommendation of the Authority that it is expedient in the public interest and reasons justifying the decision are recorded.”

12. Subsequently, the MoEF&CC has notified the Wetlands (Conservation and Management) Rules, 2017 on 26.09.2017 and Rule 4(1)

and (2) thereof provides for the protection of wetlands and the restricted activities as follows:

“4. Restrictions of activities in wetlands. (1) The wetlands shall be conserved and managed in accordance with the principle of 'wise use as determined by the Wetlands Authority.

(2) The following activities shall be prohibited within the wetlands, namely,-

- (i) conversion for non-wetland uses including encroachment of any kind;*
- (ii) setting up of any industry and expansion of existing industries;*
- (iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;*
- (iv) solid waste dumping;*
- (v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;*
- (vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and.*
- (vii) poaching.*

Provided that the Central Government may consider proposals from the State Government or Union Territory Administration for omitting any of the activities on the recommendation of the Authority.”

13. Hon'ble Supreme Court in the order dated 04.10.2017 in Writ Petition (Civil) No. 230/2001 in the matter of *M.K. Balakrishnan & Ors. vs. Union of India & Ors.*, while considering the objection to the subsequent rules, i.e., Wetland (Conservation and Management) Rules, 2017 has held that the wetlands mapped by the Union of India are protected on the same principles as provided in Rule-4 of the Wetland Rules, 2010. The direction of the Hon'ble Supreme Court in this regard is as under:

*“xxxxxx.....xxx
We make it clear and reiterate that in terms of our order dated 8th February, 2017, 2,01,503 wetlands that have been mapped by the Union of India should continue to remain protected on the same principles as were formulated in Rule 4 of the Wetlands (Conservation and Management) Rules, 2010.”*

14. The Respondent No. 4 – Wetland Authority of Delhi in its reply affidavit dated 11.02.2026 has clarified that the water body of Village Goyla Khurd is a listed wetland and is required to be protected. The clear averment of the Respondent No. 4 – Wetland Authority of Delhi in its affidavit is as under:

“xxxxxx.....xxx
7. *That, as per records, Khasra No. 9//29(10-9), Village Goyla Khurd is a listed water body under the Wetland Authority of Delhi. Being an ecologically significant asset, the water body must be safeguarded from encroachment, pollution, and any form of degradation. The land-owning agency is responsible for taking immediate measures for its protection, restoration, and planned development, including prevention of sewage inflow, demarcation of boundaries, and ecological improvement, so as to ensure long-term conservation and sustainable management of the water body.*”

15. Hence, the individuals, authorities or agencies are not expected and cannot be permitted to violate the above rules which have the statutory force and the order of Hon’ble Supreme Court.

Status of encroachment in the present case:

16. A joint inspection of the site was carried out on 13.01.2025 by the officials of the Revenue Department, Delhi Wetland Authority and the DPCC. During that joint inspection, it was found that the NHAI had built highway/flyover over the pond in Village Goyla Khurd. The relevant extract of the joint inspection report is as under:

“2. *It is found that NHAI had built highway over the pond in Goyla Khurd Village.*
3. *As per the inputs received from Delhi Wetland Authority, village Goyla Khurd, Khasra No. 9/29(10-9) is a listed water body under Wetland Authority of Delhi. As per the direction of Hon'ble Delhi High Court in WP(C) No. 9617/2022, Revenue Department has carried out ground truthing of water bodies and as per the report of District South West, Goyla Khurd, Khasra No. 9/29(10-9) is an existing water body.*”

17. The Respondent – DDA in its reply affidavit dated 22.07.2025 has disclosed that the joint inspection of the subject land was conducted by

the officials of the DDA and NHAI on 03.07.2025. In the joint inspection it was found that the NHAI had constructed 8 pillars inside the water body covering an area of 20.36 sqm. The joint inspection report states as under:

“Following observation have been made during inspection-

- 1- *Khasra No. 9/29 having size 10 bigha 9 Biswa was acquired vide Award no. 6/08-09/SW (which was coming in alignment of UER-II) was handed over by DDA to NHAI on 27.08.2021 and 21.04.2023 for construction of UER-II. Above said portion of land is water body and in possession of NHAI. It is being maintained and cleaned on regular basis by NHAI.*
- 2- *NHAI has also requested to DM (SW) to direct concerned officer of Gram Sabha to take over this water body and also ready to pay onetime payment for regular maintenance/cleaning of water body.*
- 3- ***It is observed that a grade separator/flyover has been constructed over water body and 8 pillars of this grade separator/flyover is inside water body and total area of all 8 pillars are 20.36 sqm.”***

18. The stand of the DDA in respect of the encroachment found on the water body in the form of construction of pillars by the NHAI is as follows:

*“xxxxxx.....xxx
12. That with respect to the status of the said pond, it is submitted that a joint inspection was conducted at the subject land by the officials of the Answering Respondent and NHAI on 03.07.2025. During the inspection it was gathered that 8 pillars of grade separators/flyover are placed inside the water body during the construction by NHAI with total pillar area of 20.36 sq. mtrs. The variation between the pillar area and water body area (10 Bigha 9 Biswa) equivalent to 8803.08 sq mtrs. has been calculated and comes out to be 0.23% on negative side. A copy of Joint Inspection Report dated 03.07.2025 along with a calculation of the reduction of subject waterbody area are attached and annexed herewith as Annexure R-8/Colly. As per current google images & site photographs(enclosed), a water body exists at the same site with geo-coordinates (28°35'14.7"N 77°00'29.3"E and 28.587655°, 77.008588°. A copy of the current google images are attached and annexed hereto as Annexure R-9.”*

19. The above status of construction of pillar inside the waterbody by NHAI is not in dispute. Thus, it is clear that the NHAI by constructing 8 pillars has encroached upon an area of 2.36 sqm. of the pond which comes to around 0.23% area of the pond.

Construction without requisite clearance and permissions:

20. The road construction project undertaken by the NHAI being “A” category project covered by the EIA Notification, 2006, the project proponent had applied for Environmental Clearance (EC) to the MoEF&CC. Nothing has been produced to show that in the TOR it was disclosed that the water body will be encroached upon and pillars will be constructed inside the water body, but only the disclosure was that the proposed alignment will be crossing various water bodies including the pond in question. The Environmental Clearance (EC) dated 30.12.2021 was issued by the MoEF&CC clearly mentioning that the alleviated structure was proposed on the pond without any mention about erection of pillars on the pond. Clause-4 of the EC states as under:

*“xxxxxx.....xxx
4. The proposed project alignment NH-344P is passing through District North of NCT Delhi & Sonipat in Haryana and NH-344M is passing through District West, South-West of NCT Delhi & Jhajjar District in Haryana. The proposed alignment is passing through 1 pond, 9 irrigation canals and 6 drains. Elevated structures have been proposed on the pond and the bridges are proposed to cross the canals and drains. Two RoBs, 8 interchanges, 27 Flyovers, 1 major bridges, 23 minor bridges, 11 underpass box, 12 VUP, 12 LVUP, 2 VOP, 17 Subways, 32 Culvert are proposed along the project stretch for free passage to villagers and domesticated animals and to avoid any impact on local hydrology.”*

21. Special Condition No. (iii) was specifically incorporated in the environmental clearance to the following effect:

“(iii) All the major, minor bridges and culverts should not affect the drainage systems. Flood plains of the rivers/ drainage systems are not to be disturbed.”

22. The Standard Condition No. (iii) of the environmental clearance required the project proponent to obtain necessary permission from the owning agency of the water body before execution of the work. The condition stipulates as follows:

“iii. The project proponent shall obtain necessary permission from the owning agencies of water bodies/temple/tanks etc., as applicable, before execution of works.”

23. Thus, it appears that while obtaining the environmental clearance, the Respondent No. 3 had not disclosed that it would be constructing the pillars inside the pond in question and no environment impact assessment in this regard was done by the MoEF&CC. Rule-4 of the Wetlands Rules does not permit any kind of encroachment on the wetland. It also does not permit construction of permanent nature in the wetland. Thus, the Respondent No. 3 – NHAI has violated the above rules.

The need to protect wetland:

24. The Hon'ble Supreme Court while considering the issue of protection of wetland in the matter of *Hinch Lal Tiwari Vs. Kamla Devi (2001) 6 SCC 496* has held:

“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

25. Further Hon'ble Supreme Court in the matter of *Jagpal Singh & Ors. v. State of Punjab & Ors.* reported in 2011(11)SCC396 has held:

“19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

20. Over the last few decades, however, most of these ponds in our country have been filled with earth built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

21. *In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent Abhinav Ramkrishna practices.*

22. *For the reasons given above there is no merit in this appeal and it is dismissed.*

23. *Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”*

26. This Tribunal also in OA No. 219/2024, while considering the similar issue relying upon the order of the Hon’ble Supreme Court in the matters of *Hinch Lal Tiwari Vs. Kamla Devi and Jagpal Singh & Ors. v. State of Punjab & Ors.* in a case where illegal construction of building on the pond was made without requisite permission had directed demolition of it by the order dated 17.02.205 as under:

“23. Thus, we find that the Respondents No. 1, 3 to 5 have raised construction by encroaching upon the water body resulting in destruction of the water body (pond). Such an action cannot be given the seal of approval by the Court. Having regard to the importance of water body in the larger context of the environment and also considering the local geographical contextual issues, we are of the view that the water body which was existing earlier on Gata No. 403 and 404 is required to be restored to its original position. The plea of Respondents No. 1, 3 to 5 that they will create another water body in the adjoining land available to them cannot be accepted because a natural water body created on account of existing topography and

distinctive ecological and hydrological features cannot be replaced by an artificially created water body at a different location which may not have such recharge channels and sustainability. Such artificially created water body has been expressly excluded from the definition of 'Wetland' given under Section 2(g) of the Wetland Rules, 2017.

24. Thus, we dispose of the OA directing the State Wetland Authority of State of UP and the Respondent No. 3, District Magistrate, Amroha to ensure that the water body at Gata No. 403 and 404 is restored to its original position. To ensure that in this process, the interest of the students, if any, studying in the educational institution set up by Respondents No. 1, 3 to 5 on the land of the water body may not be made to suffer, we grant one year time to Respondents No. 1, 3 to 5 to relocate the infrastructure constructed on the water body to an appropriate location."

27. The aforesaid order has been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 4361/2025 by the order dated 04.04.2025 as under:

- "1. Heard Mr. Rana Mukherjee, learned senior counsel appearing for the appellants.*
- 2. We find no reason to entertain this civil appeal challenging the judgment and order dated 17th February, 2025 of the National Green Tribunal, Principal Bench, New Delhi directing restoration of a waterbody (pond) on which constructions have been unauthorisedly raised by the appellants.*
- 3. We have, however, noted that the impugned order granted a year's time to the appellants to relocate for restoration of the waterbody to its original position. Considering the fervent appeal of Mr. Mukherjee, prayer for extension of time to comply with the impugned order is extended by two years from this date.*
- 4. The civil appeal is, accordingly, disposed of.*
- 5. Pending application(s), if any, shall stand closed."*

Principle of Sustainable Development:

28. A plea has been taken by the Respondent No. 3 that the construction of the road was necessary for development of infrastructure, public interest and convenience. A reliance has been placed by the Respondent No. 3 upon the judgment of the Hon'ble Supreme Court in the matter of *Auroville Foundation v. Navroz Kersasp Mody and Ors. 2025 SCC OnLine SC 557*, wherein it has been held that:

- "16. In Essar Oil Ltd. v. Halar Utkarsh Samiti, this Court after referring to the principles enunciated in the Stockholm Declaration, made very apt observations in Para 26 and 27, which may be quoted hereunder:-*

"27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in *Indian Council for Enviro-Legal Action v. Union of India*, [(1996) 5 SCC 281], where it was said: (SCC p. 296, para 31)

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

"17. Though it is true that the "Precautionary Principle" and the "Polluter Pays Principle" are part of the environmental law of the country, it is equally true that while the right to clean environment is a guaranteed fundamental right under Articles 14 and 21 of the Constitution of India, the right to development through industrialisation equally claims priority under fundamental rights particularly under Articles 14, 19 and 21 of the Constitution of India. There is therefore a need for "Sustainable Development" harmonising and striking a golden balance between the right to development and the right to clean environment. In *N.D. Jayal v. Union of India*⁶, it is observed as under:-

"25. Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. Weighty concepts like intergenerational equity (*State of H.P. v. Ganesh Wood Products*, [(1995) 6 SCC 363]), public trust doctrine (*M.C. Mehta v. Kamal Nath*, [(1997) 1 SCC 388]) and precautionary principle (*Vellore Citizens*, [(1996) 5 SCC 647]), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development."

29. The principle of sustainable development is one of the principles which has been specifically mentioned in Section 20 of the National Green Tribunal Act, 2010. There is no dispute to the proposition that a balance is required to be struck between the environmental protection and development, but even for attracting the said principle an agency involved in the developmental project is required to follow the law and take necessary applicable environmental clearances by disclosing full facts to the Environment Impact Assessment Authority. In all fairness in this case also, the Respondent No. 3 ought to have disclosed to the MoEF&CC that it would be constructing 8 pillars in the water body reducing the area of the water body by 20.36 sqm. Even though the encroachment/reduction in the area is small, but the law should have been followed and the requisite permission from the Environment Impact Assessment Authority in terms of the EIA Notification, 2006 ought to have been taken.

30. Learned Senior Counsel appearing for the Respondent No. 3 has very fairly stated that the Respondent No. 3 is ready to undertake all the restorative measures.

31. It is mainly the MoEF&CC which had issued the environmental clearance to the Respondent No. 3. Hence, MoEF&CC is required to look into the above aspect and take appropriate action keeping in view all the relevant circumstances and the observations made above. Hence, we dispose off the OA directing as under:

(i). The MoEF&CC is directed to consider the aspect of violation of the environmental clearance condition noted above and take appropriate decision in accordance with law after following the principles of natural justice within six months.

(ii). The Respondent No. 3 is directed to make full disclosure in future about the natural water resources, ponds, lakes,

streams, etc. likely to be affected in the construction activity while applying for environmental clearances.

(iii). In addition to the issue of construction of pillars on the water body without requisite clearance, there is also an issue of throwing of muck and the damage caused to the water body. Hence, we direct a joint inspection by a team of representatives of DPCC and NHAI. The said team will ascertain the other damage caused to the water body in the course of construction and will ensure remedial action by the Respondent No. 3 within six months. The said team will also ascertain the other protective and rejuvenation steps that can be taken with regard to the water body in question and it would be the responsibility of the Respondent No. 3 to ensure those remedial measures are taken within six months.

(iv). The DPCC will also ascertain the environmental damage compensation by giving an opportunity of hearing to the Respondent No. 3 and will take steps to recover the same within six months.

32. The OA is accordingly disposed of. All the pending I.A's, if any, will also stand disposed of.

Prakash Shrivastava, CP

Dr. A. Senthil Vel, EM

April 06, 2026
Original Application No. 1235/2024
(IA No 384/2025)
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