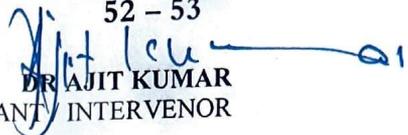


4.	ANNEXURE 19 A true copy of the relevant extract of the CAG Report	36 - 51
5.	Proof of service	52 - 53


DR AJIT KUMAR
APPLICANT/INTERVENOR

Through


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New Delhi

Dated: 30/12/2023

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

(M.A. No. /2023)

IN

ORIGINAL APPLICATION No. 275 of 2023

IN THE MATTER OF

MAHESH KUMAR

.... APPLICANT

VERSUS

STATE OF UTTAR PRADESH & OTHERS

... RESPONDENTS

AND IN THE MATTER OF

DR AJIT KUMAR

...APPLICANT / INTERVENOR

NEXT DATE - 16.01.2024

ADDITIONAL RESPONSE / REPLY OF DR AJIT KUMAR FOR DEMARCATION OF THE "ACTIVE FLOOD PLAIN AREA / 'NO DEVELOPMENT ZONE" OF RIVER YAMUNA / HINDON BY CONSTITUTING A JOINT COMMITTEE UNDER THE CONTROL OF NATIONAL MISSION FOR CLEAN GANGA (NMCg) IN NOIDA / GREATER NOIDA;

AND

FOR APPROPRIATE DIRECTIONS FOR THE AUTHORITIES TO CARRY OUT IMMEDIATE REMEDIAL MEASURES TOWARDS THE PRESERVATION OF THE ECOLOGY BY CONSTRUCTING / REPAIRING EMBANKMENT ON THE EDGE OF THE FLOWING RIVER YAMUNA OR 100 METERS THEREFROM PARALLEL TO THE RIVER.

RESPECTFULLY SHEWETH

1. That on the last date of hearing i.e. 02.11.2023, this Hon'ble Tribunal directed District Magistrate, Gautam Budh Nagar to carry out the demarcation of flood plain zone of river Yamuna in reference to the

notification dated 07.10.2016 on “River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016”.

2. That this Hon’ble tribunal also permitted the concerned parties to file their response in the meanwhile.
3. It is submitted that the present applicant / intervenor, (is one of the stake-holder, has already filed his response dated 17.10.2023 which is on record at page no. 239 to 364.
4. That the applicant / intervenor is filing the present additional response / reply, thereby bringing to the kind notice of this Hon’ble tribunal the following further facts / prepositions on the subject:
5. It is the respectful submission of the applicant / intervenor that there is a requirement of demarcation of “Active Flood Plain” of river Yamuna, in addition to the exercise of demarcation of “Flood Plain Area” (as is already directed by this Hon’ble tribunal.
6. That the relevant provision i.e. section 6 (3) of notification dated 07.10.2016 on “River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016” prohibits any construction in “Active Flood Plain”

Section 6 (3) – No person shall construct any structure, whether permanent or temporary for residential or commercial or industrial or any other purposes in the river Ganga, bank of river ganga or its tributaries or active flood plain area of river ganga or its tributaries.”

The term active flood plain area is already defined statutorily in the year 2010 itself, which is 2.33 years return flood, as is explained herein-below:

It is submitted that in exercise of the powers conferred by section 3 (1) and section 3 (3) of the Environment Protection Act, 1986, the Central Government has constituted National Ganga River Basin Authority (NGRBA) to prepare and implement a Ganga River Basin Environment Management Plan.

The relevant section 3 of Environment Protection Act, 1986 is reproduced herein below:

Environment (Protection) Act, 1986

3. Power of Central Government to take Measures to Protect and Improve Environment

(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely :

(i) co-ordination of actions by the State Governments, officers and other authorities -

(a) under this Act, or the rules made thereunder ; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever :

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes, or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

The Central Government delegated the responsibility of preparing the plan to a consortium of seven Indian Institute of Technology (IIT), by virtue of MOA dated 06/07/2010 with Ministry of Environment and Forest (MOEF). The said authority defined the term active flood plain in its interim report dated September 2013 as under:

(a) *“Active flood plain is the area on two side of the river that gets inundated by a flood having a mean recurrence interval of 2.33 years”*

A true copy of the relevant extract of IIT report containing preface and the definition of ‘active flood plain’ is enclosed herewith as **Annexure-17**.

Since the term ‘active flood plain’ is defined in the year 2013 itself, the same is not re-defined by notification dated 07.10.2016 on River Ganga (Rejuvenation Protection and Management) Authorities order 2016; and rather the said notification defines the term ‘*flood plain*’ in section 3(l) stating that

‘flood- plain’ mean such area of river ganga or its tributaries which comes under water on either side of it due to floods corresponding to its greatest flow or with a flood of frequency once in 100 years’.

With the aforesaid legal proposition, it is respectfully submitted that ‘flood plain’ area is different from the term ‘active flood plain’ area.

It is no denial of a fact that ‘flood plain’ area also requires protection, but what is prohibited and declared as ‘no construction zone’ is the ‘active flood plain area’.

Reliance is placed on the Judgement passed by this Hon'ble Tribunal dated 13.07.2017 in *OA No. 200/2014, M.C Mehta vs. Union of India & Ors*, reported in 2017 NGTR (3) PB 1, (already annexed as Annexure 9 colly), wherein in para 142, it is observed as under:

142. There are numerous dimensions involved while identifying the flood plains. It is required to categorize it into different zones, namely 'No development zone', 'Regulated zone', and a 'Free zone for development;

and till the said identification and demarcation of the flood plain is completed, 100 meters from the edge of the river was designated as no development / construction zone.

In pursuance of the above, MOEF&CC has issued office memorandum dated 14.02.2022 on "guidelines for sitting industries which are in closed proximity", wherein 100 meters from the edge of the river was treated as no development/ construction zone, and further prohibited the location of any industry within the river flood plain.

Reliance is further placed on the Judgement dated 15.12.2020, passed by this Hon'ble Tribunal in '*Dilip Kumar Samantaray vs State of Odisha Board & others*', *OA no. 22 / 2020*, (**Annexure 18**), wherein in para 8 thereof, it is observed that:

8. *There does not appear to be any central legislation to regulate the flood plains, except a notification dated 07.10.2016 issued by the Ministry of Water Resources, River Development, and Ganga Rejuvenation, with respect to Ganga river, under the Environment (Protection) Act, 1986, prohibiting any construction in the active flood plain area of river Ganga or its tributaries.*

In view of the above, it would be an incorrect legal proposition to say that all constructions on the self-owned private lands (which are temporary constructions / farmhouses situated at sector 135 Noida and nearby Areas) are illegal or unauthorized or impermissible.

That various representations were made to the authorities (already enclosed as Aneexure-10, Annexure-11, Annexure-13, Annexure-16) for the ear marking of 'Active Flood plain area' as well, which requires indulgence of this Hon'ble Tribunal.

Issue of Master Plan

As regards the issue of master plan, 2021, which is raised in the connected matter being OA No. 569/2023 Alok Kumar Vs. Union of India & Ors, it is the respectful submission of the applicant Intervenor herein, that the Master Plan 2021 and Master Plan 2031 for Noida are

both yet to be approved by National Capital region Planning Board, as mandatorily requires under NCRPB Act, 1985 enacted by Government of India (and thus both are still at a draft stage). Representations / objections were sent to the authorities against the said plans, which are still to be dealt with.

There exists also a CAG report showing that both the master plan of 2021 and 2031 are still at draft stage, and has many deficiencies, and are still unapproved by the competent authority. A copy of the relevant extract of the CAG Report is enclosed herewith and marked as **Annexure-19**.

It is worth reproducing the some of the relevant extract of CAG report and its conclusion highlighting the issue involved:

"...Context of development in National Capital Region

2.2 The development area of NOIDA falls within the ambit of the National Capital Region (NCR); therefore, it is bound to follow the provisions of the statutes enacted and applicable for the development of NCR.

The National Capital Region Planning Board (NCRPB) Act, 1985 was enacted by the Government of India (Gol) with the objective of

providing for the constitution of a Planning Board for the preparation of a plan for the development of NCR and for coordinating and monitoring the policies for the control of land uses and development of infrastructure in NCR so as to avoid any haphazard development of the region and for matters connected therewith or incidental thereto. As per Section 7 of the NCRPB Act, 1985, NCRPB was required to prepare the Regional plan (RP) and ensure preparation of Sub regional plans (SRP) by the participating states. The implementation of provisions of this Act was incumbent upon its Board which also consisted of Chief Ministers of constituent states....

".....Process of Finalisation of Master Plan

2.3 Existence of a Master Plan for development of the notified area is an essential pre-condition for initiating the process of land acquisition and development in NCR. A master plan is a development plan, which has to be prepared by Noida in conformity with the Regional Plan and got duly approved by Government of Uttar Pradesh (GoUP) and NCRPB.

2.4 Scope of Audit During the audit period 2005 - 2018, two master plans viz. MP 2021 and MP 2031 were prepared by Noida. Audit analysed both the master plans for their consistency with the regional plan 2021 along with status of their approval by GoUP and NCRPB..."

2.6 *Preparation and implementation of Master plans without approval Regional plan indicates the broad planning policies and proposals in relation to land use and the allocation of land for different uses in NCR. The master plan is subservient to the Regional plan and thereafter, in order of hierarchy, to the Sub Regional Plan of the state. These serve as a guidance for formulation of the master plan. Accordingly, the master plans prepared by Noida were required to be in accordance with the Regional plan 2021, notified by NCRPB on 03 October 2005.*

JUDICIAL PRONOUNCEMENTS

The Hon'ble Supreme court in its Judgement dated 31.03.1994, 1994 SCC (4) 42, "GDA vs Delhi Auto and General Finance Pvt Ltd" observed that the overriding effect of the Act by virtue of Section 27 and total prohibition of any activity of development in violation of the finality published Regional Plan provided in Section 29 of the Act is sufficient to indicate that any claim inconsistent with the finally published Regional plan in the area cannot be sustained on any ground

The Hon'ble Allahabad High court in its judgement Civil Misc. Petition no. 26737 of 1993 "GDA vs Delhi Auto and General Finance Pvt Ltd" of 01 October 1996 stated that one stipulation is inescapable that unless the NCRPB gives the green signal nothing can go ahead. The

necessary implication of this is also that at every stage in reference to the plans, aforesaid, each constituent state, a part of the NCR plan, has to keep a close consultation with the federal agency which is the Board (NCRPB)

The Hon'ble High court, Allahabad in its judgement 1998 dated 18.12.1998 in the Civil Misc. Petition no. 13899 of 1998 elaborated that '.. land uses cannot be changed except with the tacit permission and close scrutiny of the NCRPB. Whatever development is permissible must be strictly monitored under the National Capital Regional Plan Act, 1985 by the authorities named and constituted under it.

Both the above two judgements of Allahabad High court, were referred and relied upon by the three Judges Bench of Allahabad High court in Gajraj and others versus State of UP and others, decided on 21.10.2011 Writ C No. 37443 of 2011

2.6.1 NCRPB did not approve Noida's MP 2021 and raised objections on it.

2.6.2 Implementation of Master plan 2031 without considering objections of Chief Town and country planner / NCRPB

Conclusion The master plan for development of notified development area was to be prepared by Noida as per RP 2021 duly approved by NCRPB. The NCRPB till date has only prepared RP 2021 and GoUP

has also prepared Sub Regional Plan for the year 2021. Noida prepared MP 2021 to which NCRPB had raised various objections. Noida, instead of addressing the flaws / inconsistencies in MP 2021, prepared a new MP 2031. Despite provision of NCRPB Act and Hon'ble Supreme court Judgement for preparing MP within the overall framework of RP, Noida has initiated implementation of MP 2031 without the corresponding RP and SRP. In order to accommodate and regularize various changes, major amendments / dilution in provisions of Noida Preparation and Finalisation of Plan Regulations, 1991 were effected and MP 2031 was prepared incorporating such changes. The same was not only inconsistent with RP 2021 but has also not been approved by NCRPB as yet. Noida, despite the ruling of Hon'ble High court that land uses cannot be changed except after scrutiny and permission of NCRPB, proceeded with the implementation of unapproved master plan. The unilateral step taken by Noida for implementation of MP 2031 in absence of preparation of higher- level plan by NCRPB raises fundamental issues on the overall planned development of the NCR..."

Thus, any reliance on the draft master plans is inconsequential.

PRAYER

Under the circumstances it is respectfully prayed:

- i. That the present additional response / reply of the Applicant / intervenor be taken on record; and
- ii. Appropriate directions be passed for demarcation of the "Active flood plain area / 'No development zone" of river Yamuna / Hindon by constituting a Joint Committee under the control of National Mission for clean Ganga (NMCG) in Noida / Greater Noida; and
- iii. Appropriate directions be passed for the authorities to carry out immediate remedial measures towards the preservation of the ecology by constructing / repairing embankment on the edge of the flowing river Yamuna or 100 meters therefrom parallel to the river; and
- iv. Such other and further order which this Hon'ble tribunal deems fit and proper be also passed in the interest of justice.

Through


AJIT KUMAR
APPLICANT / INTERVENOR


M/S DEEKSHA LAW FIRM
RAJESH AGGARWAL
ADVOCATE ON RECORD,
SUPREME COURT OF INDIA
T1/ 1501, SUPREME TOWERS,
SECTOR 99, NOIDA 201303
(M) 9810179438

New Delhi

Dated: 30/12/2023

EMAIL: deekshalawfirm2017@gmail.com

BEFORE THE NATIONAL GREEN TRIBUNAL,
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IN
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AND IN THE MATTER OF

AJIT KUMAR ...APPLICANT / INTERVENOR

AFFIDAVIT

I, AJIT KUMAR S/o Late Sh. Braj Kishor Singh aged about 53 years R/o C-29, GF, Eldeco Residency Greens, Sector- PI -32, Greater Noida, Kasana, Gautam Buddha Nagar, UP - 201310 presently at Delhi, do hereby solemnly affirm as under:

1. That I am the Applicant / intervenor in the present application, and conversant with the facts of the case and thus competent to depose.
2. That the contents of accompanying additional response / reply are true and correct and read over to me.

[Signature]
DEPONENT

VERIFICATION

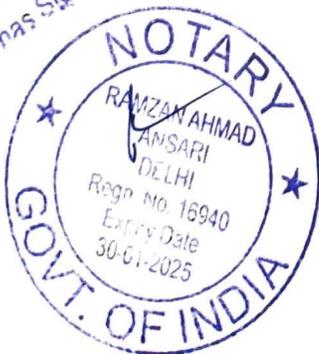
Verified at New Delhi on this ___ day of December, 2023 that the contents of the above affidavit are true & correct and nothing has been concealed there from.

[Signature]
DEPONENT

VERIFIED THAT THE DEPONENT has solemnly affirmed before me that the contents of the above have been read & explained to the deponent by me & true to his/her knowledge

NOTARY DELHI (INDIA)

3 0 DEC 2023



[Handwritten Signature]
Identif. the Deponee in/Executants who has Signed/put T.J. Before Me

Ganga River Basin Management Plan Interim Report

September 2013

by

Consortium of 7 “Indian Institute of Technology”s (IITs)



IIT
Bombay



IIT
Delhi



IIT
Guwahati



IIT
Kanpur



IIT
Kharagpur



IIT
Madras



IIT
Roorkee

In Collaboration with



IIT
BHU



NIH



CIFRI



NEERI



JNU



PU



NIT-K



DU



ISI
Kolkata



Allahabad
University



WWF
India

Preface

In exercise of the powers conferred by sub-sections (1) and (3) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government constituted the National Ganga River Basin Authority (NGRBA) as a planning, financing, monitoring and coordinating authority for strengthening the collective efforts of the Central and State Governments for effective abatement of pollution and conservation of the Ganga river. One of the important functions of the NGRBA is to prepare and implement a Ganga River Basin Management Plan (GRBMP). A Consortium of 7 “Indian Institute of Technology”s (IITs) was given the responsibility of preparing the GRBMP by the Ministry of Environment and Forests (MoEF), GOI, New Delhi. A Memorandum of Agreement (MoA) was signed between 7 IITs (Bombay, Delhi, Guwahati, Kanpur, Kharagpur, Madras and Roorkee) and MoEF for this purpose on July 6, 2010.

This is the Interim “Ganga River Basin Management Plan”. The thrust of this Plan is to relate the diverse environmental degradations occurring in the basin with their causal factors, and thereby frame a roadmap for redeeming National River Ganga Basin’s Environment. The task involved different thematic groups of experts from 7 IITs and other premier organizations identifying different causal factors and assessing their impacts on the basin to synthesize the findings and recommendations in fulfillment of the important missions identified in the Plan. This report covers the main issues of concern and recommends corrective measures. While major changes in the final Plan are not foreseen, our studies have not achieved closure on all aspects; hence there could be additional actionable recommendations in the final Plan.

The progress in preparing this Plan was affected by several factors. On the one hand, co-ordination between experts working in different institutions was not always speedy. On the other hand, the progress depended on obtaining relevant primary data from nodal government agencies, which was often tardy and circuitous. This also affected the timely co-ordination between related thematic groups. It is hoped that data availability in future will become simpler and faster.

Many people contributed directly or indirectly to the preparation of this Plan. A wide range of stakeholders were consulted through various workshops, seminars and informal discussions, and many people freely gave their suggestions and comments on many substantive issues. This document is therefore truly a collective effort that reflects the cooperation of many people, particularly members of the IIT Team and keenly interested members of the general population.

Dr Vinod Tare
Professor and Coordinator
Preparation of GRBMP
IIT Kanpur

Glossary of Technical Terms

The following technical terms have been used in this document. They may be defined as follows (in a simplified manner where possible for ease of understanding):

- (a) “**Active Flood Plain**” is the area on the two sides of a river that gets inundated by a flood having a mean recurrence interval of 2.33 years.
- (b) “**Afforestation**” is the planting of trees to restore or re-establish forest cover.
- (c) “**Aviral Dhara**” or “**Continuous Flow**” (in a river or stream) means continuity of flow in both time and space, including connectivity of flow throughout the river.
- (d) “**Basin**” means the entire catchment (*of a water body or water course*) including the soil, water, vegetation and other natural resources in the area.
- (e) “**Catchment**” (or “**Drainage Basin**”) is the entire land area whose runoff from rain, snow or ice drains into a water body or a water course (before the water course joins another river or discharges into a water body.)
- (f) “**Connectivity**” (of a river) means continuity of flow in the three directions, viz. longitudinal connectivity (along the length of the river), lateral connectivity (across the width of river), and vertical connectivity (below the water surface in vertical direction).
- (g) “**Deforestation**” means removal or reduction of forest cover, especially when caused by anthropogenic activities.
- (h) “**Degraded Forest**” means a forest having loss or reduction of native forest cover and/or vegetation density.
- (i) “**Direct Injection**” (of water) means injection or introduction (of water) directly into subsurface waters through natural or artificial crevices, faults, channels or conduits without the natural passage through porous soil strata.
- (j) “**Ecological Park**” is a protected area for conservation of native, endangered species.
- (k) “**Ecology**” is the totality of relations between organisms and their environment. It includes the composition, distribution, amount, number and changing states of organisms within and among ecosystems.
- (l) “**Ecosystem**” is a community of organisms and their physical environment, considered to function together as a unit, and characterized by a flow of energy that leads to trophic (or nutritional) structure and material cycling.
- (m) “**E-Flows**” means Environmental Flows (*defined later*);
- (n) “**Embankment**” is a raised wall of earth, stone or other material to hold back water within a water body or water course; it includes levees constructed on either side of a river as a flood protection measure.
- (o) “**Engineered Diversion**” means a structure or device constructed or installed to transfer (part of) the river water into a canal or other engineering structure.
- (p) “**Environmental Flows**” are the regime of flows required to maintain the ecological integrity of a river and the goods and services provided by it, computed by Building Block Method (or other standard holistic methods).

- (q) “**Flood**” means the overflowing of water from a water course or water body that inundates normally dry land.
- (r) “**Flood Plain**” is the land area susceptible to inundation by flood waters.
- (s) “**Flood Routing Channel**” is a channel designed to carry the excess water of a water course during high flows.
- (t) “**Geologic Entity**” is an entity formed by ancient earth processes over geologic ages (hence over long periods of time, usually millions of years).
- (u) “**Ground Water Recharge**” is replenishment (in part or wholly) of water depleted from ground water reservoirs.
- (v) “**Hydrologic Cycle**” is the natural cyclic movement of water on earth (from oceans to the atmosphere by evaporation, then onto land by rain and snow, and back to the oceans by flow through rivers).
- (w) “**Irrigation Return Flow**” means the returning of unused water from irrigation applications to the water source from which they were taken. The source is usually a natural water course, water body or groundwater.
- (x) “**National River Ganga**” is the entire length of six head-streams in the state of Uttarakhand namely, Rivers Alaknanda, Dhauli Ganga, Nandakini, Pinder, Mandakani and Bhagirathi (starting from their originating glaciers up to their respective confluences at Vishnu Prayag, NandPrayag, KarnPrayag, Rudrprayag and Dev Prayag) as also the main stem of the river thereafter up to Ganga Sagar.
- (y) “**Nirmal Dhara**” or “**Un-polluted Flow**” means flow in a river or stream that is not (significantly) polluted by anthropogenic activities.
- (z) “**Paleo-Channel**” is the remnant of an extinct river or stream that got filled with sediments deposited in later periods.
- (aa) “**Water Body**” (or “**Surface Water Body**”) is a depression on land or a lowland area that usually holds water or remains saturated through most of the year, such as a lake, tank, pond, marsh or swamp.
- (bb) “**Water Course**” (or “**Surface Water Course**”) is an overland channel (natural or manmade) through which water flows such as a river, stream, rivulet (“nala”) or canal.
- (cc) “**Watershed**” is same as Drainage Basin. [*Note*: The term “**watershed**” is also used to mean a “drainage divide” as per British usage, i.e. it is a ridge of high land dividing two areas that are drained by different rivers or water bodies]

Appendix II**Summaries of IIT_GRBMP Thematic Reports****001_GBP_IIT_GEN_DAT_01_Ver 1_Dec 2010****River Ganga at a Glance: Identification of Issues and Priority Actions for Restoration**

River Ganga's origin and subsequent course in the plains are described. The Ganga River System is reviewed in three distinct fluvial segments. The Upper Ganga Segment from Gaumukh to Haridwar is described and essential environmental actions needed are defined, especially with regard to the effect of hydropower projects and tourism on the river ecosystem. In the Middle Ganga Segment up to Varanasi, the chief environmental measures needed are found to be complete stoppage of discharge of industrial and domestic wastewaters (and hence their recycling), and the creation of a dolphin protection zone below Garmukhteswar. The Lower Ganga Segment up to Ganga Sagar needs similar pollution control measures as in Middle Ganga, besides detailed hydrological and geomorphological studies to deal with the high silt loads.

002_GBP_IIT_EQP_S&R_01_Ver 1_Dec 2010**Guidelines for the Preparation of Urban River Management Plan (URMP) for Class I Towns in Ganga River Basin**

Most Class I Towns of Ganga River Basin (GRB) are located near River Ganga or its tributaries, and their sewage, solid wastes, riverbank encroachments, etc. harm the rivers. Hence URMPs (Urban Renewal Management Plans) are needed for all Class I Towns of GRB over a 25-year planning horizon for wastewater management and riverbank protection. The URMPs, to be prepared immediately by individual towns, should include actionable items such as removal of encroachments and beautification of riverbanks, banning/ restriction of undesirable activities, sewage collection and diversion, pumping and treatment, and storage, transport and reuse of treated sewage and sludge. The URMPs should be implemented after approval by an expert committee of NGRBA, and funding for various work packages should be made available through NGRBA by different ministries. Unlike other city development plans the URMPs will be river-centric and not city-centric, thereby preventing adverse urban impacts on rivers.

003_GBP_IIT_EQP_S&R_02_Ver 1_Dec 2010**Sewage Treatment in Class I Towns: Recommendation and Guidelines**

Urban sewage is a major point source of pollution and also a source of recycled water. Adequate sewage treatment for reuse – either in centralized STPs (Sewage Treatment Plants) or small decentralized STPs – will minimize fresh water withdrawals. The costs, process quality, reliability, environmental factors, land requirements, etc. of different sewage treatment processes are compared. The treatment chain is considered in three stages – Preliminary Treatment, Primary and Secondary Treatment, and Tertiary Treatment.

Technological options for the second stage treatment are considered, and for eight different treatment processes the unit treatment costs and footprint area of treatment plant are derived. A decision matrix table of costs and different treatment parameters is presented. Technological options for sludge management, flow measurement, and bio-assay tests (of treated effluent) are explained. The importance of reusing the treated water, and thereby enabling zero liquid discharge from treatment plants into the environment, is emphasized.

004_GBP_IIT_EQP_S&R_03_Ver 1_Dec 2010

Guidelines for Implementation of Sewage Collection, Diversion, Pumping, Treatment, and Reuse (Sewage CDPTR) Infrastructure in Class I Towns

Currently, sewer networks and pumping facilities are absent or partial, treatment plants malfunctioning or inadequate, and sludge disposal improper. ULBs (Urban Local Bodies) responsible for operating these facilities have different concerns besides financial and other constraints. The Sewage CDPTR Infrastructure for all Class I Towns of Ganga River Basin (GRB) needed are: (i) complete stoppage of sewage discharge into rivers, (ii) sewage treatment up to tertiary level, and (iii) reuse of treated sewage water for non-contact/ non-potable purposes. Thus, all new Sewage Treatment Plants must treat up to tertiary level and existing plants upgraded to this level. All Sewage CDPTR Infrastructure should be funded by central and state governments and executed through private-public partnership adopting a DBFO (Design-Build-Finance-Operate) Model, wherein a ULB may contract a service provider for 5–15 years with annual payments against service rendered. Public monitoring of such facilities through independent NGOs, CSOs, etc. is required.

005_GBP_IIT_FGM_DAT_01_Ver 1_Dec 2010

Active Floodplain Mapping: Defining the River Space

The “valley” and “active floodplain” of a river defines the space that it occupies for performing its natural functions. “Floodplain” is an area that is inundated during flood. “Valley” is a wider topographic low occupied by the river and its floodplain over a longer time. Standard hydrological criteria of defining “active floodplain” is the 2.33 year return flood. Floodplain is ecologically most sensitive and supports a wide variety of vegetation and life forms; its complete preservation is one of the prime indicators of good river health.

Landsat 4-5 TM (30 m resolution), **IRS P6 AWIFS** (56 m), **SRTM** data were processed in Arc GIS to generate critical parameters for identifying floodplain and valley; and were validated by cross consultation of **MODIS** and **Google Earth** flood times images.

In a basin scale, active floodplain of Ganga River can be divided into four stretches:

- a. Hardiwar-Narora: As the river leaves its mountainous reaches it creates a wider (~ 28 km) floodplain that narrows (~10 km) downstream; reduces to ~5 km near the Narora barrage;
- b. Narora-Kanpur: Widens (~28 km) again after its confluence with Ramganga, reduces to ~15 km upstream of Kanpur and narrowest (~1 km) downstream of Kanpur.

Appendix III**THE NATIONAL RIVER GANGA BASIN MANAGEMENT BILL, 2013**

(An ACT to provide for Regulation, Conservation and Development of the National River Ganga Basin, and for the establishment of National River Ganga Basin Management Commission and National River Ganga Basin Tribunal for effective and expeditious disposal of matters affecting the River Basin with a view to restore and conserve the river basin and for matters connected therewith or incidental thereto)

WHEREAS, the river Ganga is declared as the National River of India on November 5, 2008 by the Government of India considering its unique position in Indian society and world's natural heritage.

AND WHEREAS, it shall be desirable to adopt an integrated river basin management approach that focuses on maintenance and restoration of wholesomeness of rivers of the Ganga Basin in public interest.

AND WHEREAS 'Wholesomeness' in this context shall mean sanctity of the river system as imbibed in the following points:

- a. Continuous Flow ("Aviral Dhara") in time and space including maintenance of connectivity of flow in the river systems.
- b. Un-polluted Flow ("Nirmal Dhara") meaning that quality of river waters is not significantly affected by human activities.
- c. Rivers as Geologic Entities that is, rivers as the earth's creations of ancient times (over geological ages), which may not be recoverable if damaged.
- d. Rivers as Ecological Entities that is, rivers as delicately structured ecological balance between various living species and the physical environment achieved over thousands of years and vulnerable to irreversible change.

AND WHEREAS 'Public Interest' in this context shall mean welfare or wellbeing of all beings including the future generations.

AND WHEREAS, to attain the wholesomeness, it is mandated to adopt preventive and corrective approach, the Act shall prohibit, restrict and promote activities that directly or indirectly affect the wholesomeness of all rivers in the National River Ganga Basin.

AND WHEREAS, the Act shall establish appropriate authorities to achieve the objectives of the Act and matters related thereto.

AND WHEREAS the Act shall be enacted to realize fundamental right guaranteed under Article 21 and to give effect to provisions of the Directive Principles of State Policy under

Articles 39(b), 48 A, 49 and the Fundamental Duties enshrine under Article 51A (f) and(g) of the Constitution of India.

AND WHEREAS, the Act shall be enacted by Parliament by invoking legislative power under Article 246 read with Entry 56 of the Union List of the Constitution of India.

CHAPTER I PRELIMINARY

1. Short Title, Extent and Commencement

- 1) The Act may be called The National River Ganga Basin Management Act, 2012.
- 2) It shall extend to the whole National River Ganga Basin.
- 3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

2. Definitions

In this Act, unless the context otherwise requires –

- 1) “Active Flood Plain” is the area on the two sides of a river that gets inundated by a flood having a mean recurrence interval of 2.33 years;
- 2) Afforestation means plantation of trees to restore or reestablish the forest cover;
- 3) Authority means any authority, board, corporation, council, department, institute, university or any other body corporate, established by or under any Central, State or Provincial Act in force in the territory of India and includes,
 - a. The Central Government,
 - b. The State Governments,
 - c. A Department of the Government,
 - d. Local authorities;
- 4) “Aviral Dhara” (in a river or stream) means continuity of flow in both time and space, including connectivity of flow throughout the river;
- 5) Basin includes land, water, vegetation and other natural resources on a catchment basis;
- 6) “Basin” means the entire catchment (of a water body or water course) including the soil, water, vegetation and other natural resources in the area;
- 7) “Catchment” (or “Catchment Area”, or “Watershed”, or “Drainage Basin”) is the entire land area whose runoff from rain, snow or ice drains into a water body or a water course (before the water course joins another river or discharges into a water body);
- 8) Class I town means a town whose population is greater than 100,000;

Item No. 05

Court No. 1

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

Original Application No. 22/2020(EZ)

Dilip Kumar Samantaray

Applicant

Versus

State of Odisha Board & Ors.

Respondent(s)

Date of hearing: 15.12.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant: Mr. Shankar Prasad Pani, Advocate

For Respondent: Mr. Janmejaya Katikia, Advocate for State of Odisha
Mr. Tusar Kumar Mishra, Advocate for R-8

ORDER

1. Vide order dated 16.03.2020, the Tribunal sought a report on factual aspects from a Committee comprising Secretary, Water Resource Department, Orissa and representative of the CPCB, with reference to the allegation of illegal construction activities and encroachment of Mahanadi river at Ratilo Mouza, Krishannagar Tehasil, Salepur Block, on-going construction of concrete structures such as Panchamukhi Hanuman Temple and Threshing Ground and proposed structures such as toilet, graveyard, market complex, Kalyani mandap and other activities that allegedly adversely affect the river ecology and disturb the river flow.

2. A joint inspection report was filed by the Committee after visit to the site on 24.07.2020 with following observations and recommendations:-

“Overall observation

- 1) *The temple constructed by the Panchamukhi Hanuman Temple Trust is situated within the Embankments of River Mahanadi (Annexure D). It is within nearly 35 meter from the embankment from the left Bank of River Mahanadi. It has no approval from Administration to construct the Temple at that site, as reported by the District Administration.*
- 2) *The Temple constructed is situated in ‘Active Flood Plain Area’ ‘No Development Zone’ of River Mahanadi. Flood plain area is ‘prohibited activity’ zone. The Flood Plain areas are the important component of ‘River Ecosystem’. They play multiple roles such as helping absorption of excess water during flood, act as filter improving water quality, habitat for Wild life and also as hollow channel of water course. Encroachment in these areas may lead to diversion in the flow of water leading to flood in adjacent villages in near future. The incidences of flood in Kerala, Jammu & Kashmir and in Pune last year are due to indiscriminate encroachment of the Flood Plain Area.*
- 3) *Other structure such as Market Complex, Toilets, Grave yards are not yet constructed.*

Recommendation

Considering the above observations and importance of Flood Plain Area, the Committee recommends that:

‘The construction of Temple in the Embankment of River Mahanadi by Panchamukhi Hanuman Temple Trust is illegal and may not be allowed by the Administration for construction.’”

3. The matter was considered on 20.08.2020 as follows:

*“3. From the above, it is clear that the Committee has found violations of law in raising construction in the active flood plain area or no development zone of the river. However, there is no action taken report. If the State authorities have found violations, it is for them to take remedial measures to enforce the law. **During the hearing, it has also transpired that such encroachments may be taking place at other locations on the flood plains of the river, including near the Cuttack Medical College or near the Bali Yatra Ground.***

4. Let these aspects be looked into by the Committee and a further factual and action taken report furnished within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”

4. Accordingly, a joint inspection report has been filed on 11.12.2020 as follows:

*“The documents relating to the work site are verified. It is seen that in connection with drawl of water by IOCL Refinery at Paradeep from the upstream of Mahanadi Barrage, a case was filed in Hon'ble High Court of Orissa vide WP(C) No.20283 of 2011 by Nationalist Lawyers Forum. Judgment was pronounced on 27.02.2012. 40MGD (73.20 Cusecs) of water was allowed for the refinery, however the Hon'ble Court ordered that 10 CL may provide the required funding for CSR activities like 1) Dismantling of old anicut at Mahanadi & Birupa, 2) Survey by IIT Madras, 3) Dredging & removal of shoal, 4) Water treatment plant for Cuttack City, 5) Development of Sishu Bhawan, 6) Development of traffic signals at Cuttack and 7) Providing 6 Nos of Hi-Tech ambulances. Copy of the judgment is enclosed as **Annexure-B**.*

*As per the orders of the Hon'ble High Court in the aforesaid W.P.(c) No.2028312011, Water Resources Department, Government of Odisha, have Undertaken the dredging work in the upstream of Mahanadi Barrage and Birupa Barrage to remove the shoals as per bathymetric survey conducted by the Department of Ocean Engineering, Indian Institute of Technology (IIT), Madras. **The sand dredged from the shoals are being deposited in the low lying areas near River Mahanadi and Birupa. Such dredging has helped smooth discharge of flood water in the Rivers.***

*As per the orders dated 20.08.2020 of the Hon'ble National Green Tribunal, the committee visited the areas **near SCB Medical College & Hospitals and Baliyatra ground. During the visit, it is found that some pockets of these areas are encroached by slum dwellers and also shop keepers since long. However, it is seen during the visit that no recent encroachment has taken place in the said areas.***

5. The applicant has filed a response to the report pointing out potential for damage to the ecology of the Mahanadi and Kathjodi rivers by proposed projects in the flood plan zones of the said rivers as follows:

*“I. That Odisha Chief Minister Naveen Patnaik on Thursday announced a package for the special development of Cuttack city including the expansion of ring road into six-lane and renovation of SCB Medical College and Hospital. Announcing the package during his visit to the city on the occasion of the Netaji Subhas Chandra Bose birth anniversary, the Chief Minister said that **the reclamation of land from river Mahanadi** has created a once in a lifetime opportunity to breath fresh life into the core of the ancient city, Cuttack.*

II. ***That, the Hon'ble Chief Minister said that every inch of the 424 acres reclaimed land will be utilised to add ecological, recreational, sporting, cultural and technological value in the lives of the people of Cuttack. Naveen announced the projects after visiting the reclaimed land site near Mata Math. The Chief Minister announced that the development work of the SCB Medical College to make it a world-class institution will start in March. The details of the Speech of Odisha Chief Minister published in the New Indian Express on 23/01/2020. Web copy of the news article in New Indian Express dated 23rd Jan 2020 is annexed here unto as Annexure-2.***

III. ***That 25 Acres of land reclaimed from the river Mahanadi will be used for construction of New Campus of SCB Medical College Library and Playground. The proposal includes setting up of musical fountain, light system, garden, footpath, coffee bar, lavatory, ticket counter and arrangement of special galleries. The report further suggests that the development will be in a phased manner in accordance with the blueprint made by the district authorities of the Government. The project spreads from Cantonment Police Station to Jobra Maritime Museum. A copy of the new report published in Orissa Post on dated 22nd and 23rd January 2020 is annexed here unto as Annexure-3.***

IV. ***It is further submitted that the official twitter handles of District Administration, Cuttack suggests that the district administration has initiated the beautification of the Mahanadi Riverfront in the name and style of Balijatra Riverfront Improvement Project or in short 'BARFI' Project where in the sand dredged from the River Mahanadi is being filled in River area close to embankment/Ring Road and the height of the Riverbed is being elevated so as to use those patch of land for developmental and recreational purposes. The height of the riverbed is already elevated by more than 6feet by dumping the sand excavated from the River. By this means the very nature, purpose and land use of the River is being changed. Copy of the twitter Images of the District Administration Cuttack dated 5th January and 10th June 2020 is annexed here unto as Annexure-4.***

V. ***That photograph of the site taken on 18th August 2020 shows the dredging of River Mahanadi and the sand is being pumped through pipes into the Riverbank side. The ground height of the riverbed has been raised by more than 6 feet since the height noticed in December 2019 where the Bali Jatra was held. Photographs dated 18th August 2020 is annexed here unto as Annexure-5.***

VI. ***It is needless to mention that the encroachment into the river Kathajodi and Mahanadi has been a continuous process and over the period more of the River and Flood Plane area is being converted into Parking Area, Parks, Temples and many other infrastructure projects like OTDC***

River Cruise Project by dumping debris and solid waste and thereby elevating the River bed from its original level. Even the Bali Yatra which is held over 37 acres, of which 23 acres are on the Mahanadi river bed and 14 acres are on Kila Maidan near the Barabati fort.”

6. We have heard learned counsel for the parties and considered the apprehensions of the applicant by way of objections to the report of the Committee.

7. **The response filed by the applicant shows that new campus of SCB medical college is proposed on 25 acres of land reclaimed from the river. The Mahanadi River Front project involves change of nature of the river land. Encroachment of Kathajodi and Mahanadi rivers and constructions in floodplain area may adversely affect the riverine ecology.** Precautionary measures are required.

8. There does not appear to be any central legislation to regulate the flood plains, except a notification dated 07.10.2016 issued by the Ministry of Water Resources, River Development, and Ganga Rejuvenation, with respect to Ganga river, under the Environment (Protection) Act, 1986, prohibiting any construction in the active floodplain area of river Ganga or its tributaries. The Union Water Resources Ministry circulated a model Bill on the subject in 1975 but the same did not fructify into law. There are some State Acts like Manipur Flood Zoning Act, 1978 and the Uttarakhand Flood Plain Zoning Act, 2012. In the State of Maharashtra, there are norms for demarcating regulatory and prohibitory zones in the floodplains of the rivers.¹

Various States have taken their own legislative/administrative measures

¹ Guidelines issued by the Irrigation Department of Maharashtra on 21.09.1989 as amended in the year 2018 and order of this Tribunal dated 11.07.2013 in OA 2/2013, Sarang Yadwadkar v. Commissioner, Pune Municipal Corporation, reported in 2013(1) All India NGT (Delhi) 299.

to regulate and prohibit activities in the floodplains. There are guidelines by some other States also.² There are also norms for no development zone, restricted zone in the floodplains of the rivers in Gujarat as referred to in order of this Tribunal dated 21.09.2020 in OA 50/2018(WZ), *Nav Yuva Sanghatan & Ors. vs. The Secretary, Narmada, Water Resources, Water Supply & Kalpsar Department & Ors.*

9. The Wetlands (Conservation and Management) Rules, 2017 prohibit any permanent constructions within 50 meters of the Wetlands, from the mean high flood level in the past 10 years from the commencement of the rules. There are also similar restrictions in certain Master Plans like the Revised Master Plan of Bangalore referred to in *Mantri Techzone Pvt. Ltd. vs. Forward Foundation & Ors.* (2019) SCC Online SC 322. restricting constructions in catchment area of the lakes. We are also not aware of the legislative and administrative measures in the State of Odisha on the subject of regulating and prohibiting activities in the floodplain zones of the rivers in the State, but such an exercise appears to be necessary to give effect to the precautionary principle of environmental law, required to be enforced by this Tribunal under section 20 of the NGT Act, 2010.

10. While considering the issue of rejuvenation of identified polluted river stretches, (including Mahanadi, which is one of such polluted river stretches) the Tribunal directed that each State must constitute a River Rejuvenation Committee (RRC) to prepare appropriate action plan and

² i. Also see order of the Allahabad High Court as reported in news article published on 04.01.2019 in The Times of India under the heading “No construction within 500 metre of high flood level: HC” authored by Shri Rajesh Kumar Pandey (https://m.timesofindia.com/city/allahabad/no-construction-within-500-metre-of-high-flood-level-hc/amp_articleshow/67379839.cms)
ii. News article published on 29.09.2016 in The Hindu under the heading “Building along the coast” authored by Shri G. Shyam Sundar (<https://www.thehindu.com/life-and-style/homes-and-gardens/Building-along-the-coast/article14644372.ece>).

execute the same. The action plan needs to include a plan for protection of floodplains.³

11. There are also articles in the media dealing with the subject. We may only refer to some as follows:

- i. Article titled “why floodplains need to be protected” dated 12.10.2018⁴ stating as follows:

“Damage to floodplains harms the riverine ecosystem, lessens groundwater recharge capacity and poses threats of flash floods. Enforcement of floodplain zoning regulation is a must to avert floods.

The Kerala flood of 2018...

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The lack of regulation and enforcement of land use in the floodplains added to the severity of the damage.

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Floodplains provide the space for rivers to spread their waters. When this space is missing due to encroachments, the river surges up and creates destruction.

“The lack of protection of river floodplains from damaging impacts like encroachment and diversion for ‘developmental projects’ is a tragedy that affects both the river as well as those who encroach it adversely. The river suffers as it is unable to occupy and transport flood waters downstream during high rainfall events (monsoon in particular). It is unable to recharge aquifers, wet the lands along its banks or provide life-sustaining conditions to plant and animal habitats along the river margins and banks.

Damage to floodplains harms the riverine ecosystem, lessens groundwater recharge capacity and poses threats of flash floods. “People too suffer an immense loss of life and property, including loss of public infrastructure like bridges, roads, schools etc., during high floods,”.

³ See order dated 21.09.2020 in OA No. 673/2018, In Re: News item published in “The Hindu” authored by Shir Jacob Koshy, titled “More river stretches are now critically polluted: CPCB”.

⁴ Author: Amita Bhaduri : <https://www.indiawaterportal.org/articles/sad-state-floodplains#:~:text=Damage%20to%20floodplains%20harms%20the,poses%20threats%20of%20flash%20floods.&text=The%20lack%20of%20regulation%20and,the%20severity%20of%20the%20damage.>

- ii. Article from Wikipedia under the heading "Floodplain"⁵, it is stated:

“xxx xxx xxx
Floodplains can support particularly rich ecosystems, both in quantity and diversity.

xxx xxx xxx

A floodplain can contain 100 or even 1,000 times as many species as a river. Wetting of the floodplain soil releases an immediate surge of nutrients: those left over from the last flood, and those that result from the rapid decomposition of organic matter that has accumulated since then. Microscopic organisms thrive and larger species enter a rapid breeding cycle. Opportunistic feeders (particularly birds) move in to take advantage. The production of nutrients peaks and falls away quickly; however, the surge of new growth endures for some time. This makes floodplains particularly valuable for agriculture.”

12. The Hon'ble Supreme Court, vide judgment dated 30.07.2009 in *D.D.A. vs. Rajendra Singh*, 2009 (8) SCC 582, referred to the definition of floodplain in the dictionary as follows:

“ xxx xxx xxx
24. Though there is no statutory definition for "riverbed" and "floodplain" from the statute, the dictionary meaning of the same is as under:

"Riverbed" has been defined as the area over which the river flows. In the Thames Conservators Case [1897] 2 QB 335 at 337 it was held that the word riverbed denotes that portion of the river which in the ordinary or regular course of nature is covered by the waters of the river.

The "bed of the river" was defined as the area covered by the river and is the space sub-adjacent to the river over which it flows between the banks. It is the space between the banks occupied by the river at its fullest flow.

The Black's Law Dictionary, 6th Edition (Pg 154) describes a river bed as the hollow channel of a water course; the depression between the banks worn by the regular and usual flow of water; The land which is covered by the water in its ordinary low stage; The area extending between the opposing banks measured from the foot of the bank from the top of the water at its

⁵ <https://en.wikipedia.org/wiki/Floodplain>

ordinary stage. P. Ramanatha Aiyer's Advanced Law Lexicon, Volume 4, 2005 Edition (Pg. 4157-4158) has described the bed of a river as the space contained between the banks; river bank in turn has been defined in the same law lexicon as the boundaries of a river throughout its width when the water flows to its maximum quantity.

"Floodplain" - Land adjacent to rivers, which, because of its level topography, floods when river overflows. [Black's Law dictionary, 6th Edn., p.641].

It is also been defined as 'a low, flat area in either side of a river that can accommodate large amounts of water during a flood, lessening flood damage further downstream' [Fredd Michaels, 'Dictionary of Environment Studies']

13. The Tribunal while considering restoration measures for Yamuna and Ganga rivers dealt with the issue of floodplains. Vide judgement dated 13.01.2015 in OA No. 6/2012 and OA No. 300/2013, *Manoj Misra vs. Union of India & Ors.* reported in 2015 ALL (I) NGT REPORTER (1) (DELHI) 139 in the context of river Yamuna, it was observed:

*"81. Floodplain zoning has been accepted as an important nonstructural strategy for flood management. The basic concept of floodplain zoning is to regulate land use of floodplains to restrict damage caused due to floods. The floodplain zoning, therefore, aims at determination of locations so that flood damages are reduced to minimum. A very restrictive activity can be allowed in that area. **It is not only to protect the areas from damage resulting from floods and failure of water protective measures, but is also useful in reducing the damage caused due to drainage congestion, particularly in urban areas.** The Commission claims to have prepared a model bill relating to floodplain zoning. This model bill provides for different categories based of priorities in floodplain.*

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83. The floodplain must be demarcated, kept free from any permanent developments and wherever it is possible, it should be restored to its original position.

84. Keeping in view the fact that various developments have taken on the floodplain of river Yamuna and to a larger extent they have adversely affected the river flow, its ecology and bio-diversity, we would direct that floodplain zoning should be taken with reference to the flood of once in 25 years, as against other suggested figure of more years. It is

important to demarcate the floodplain on this basis immediately, to protect it from any encroachments or development activities, which has already discussed and requested by the High Powered Committee, would adversely affect the ecology and environment.

85. **Thus, it is necessary to call upon the authorities to demarcate the floodplain for the flood of once in 25 years and to prohibit any kind of development activity in the area in question. Furthermore, the Committee should consider restoration of the area and wherever necessary, even demolish the properties, which are likely to be dangerously exposed to the flood and are even affecting the ecology and bio-diversity and flow of the river.**

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89. **Subject to any law coming into force, we have already stated that flood of once in 25 years would be considered for defining and demarcating the flood plain. No development/construction activity, except that is stated herein, would be permitted in the Flood Plain of River Yamuna. No authority or person before us has even taken up the plea that why development/construction activity cannot be carried on in other parts of NCR, Delhi. As of now, sufficient land is available, may it is expensive, but that cannot be a ground for destroying the ecology, environment and biodiversity of River Yamuna of Delhi. The result of indiscriminate, unregulated and uncontrolled development activity are widely visible and felt by each and every one in Delhi. It would not only be unwise, but may prove fatal, if such approach is continued any further.”**

14. Vide judgement dated 13.07.2017 in OA No. 200/2014, *M.C. Mehta vs. Union of India & Ors.* reported in 2017 NGTR (3) PB 1 in the context of river Ganga, it was observed:

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142. **Being an integral part of the river, floodplain of the river requires protection. Floodplains play significant role in maintaining the bio-diversity and aquatic life of the river. It's significance cannot be overlooked, in terms of environment and ecology. There are numerous dimensions involved while identifying the floodplains. It is required to categorize it into different zones, namely, No Development Zone, Regulated Zone and a Free Zone for development. The principle of Sustainable Development itself justifies the classification of floodplains into such zones for protecting the river. This Tribunal in the case of Manoj Misra (supra) had the occasion to deal with the concept of floodplain, its zoning and management.”**

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During the course of proceedings before the Tribunal, the stakeholders also deliberated in favour of demarcation of floodplain of river Ganga, for ensuring protection and maintenance of the health of the river. **The above stated precedent of the Tribunal also has its definite reference in the Notification dated 7th October, 2016 issued by the MoWR. In sub-clause (ix) of clause 4(v) of the Notification which relates to Principles to be followed for rejuvenation, protection and management of river Ganga, states that the bank of river Ganga and its floodplains shall be a construction free zone to reduce sources of pollution, pressure on floodplains and to maintain its natural groundwater recharging properties.** This clearly demonstrates that fixation of the floodplain and its demarcation is one of the principal projects for cleaning and rejuvenation of river Ganga, amongst all the stakeholders. As already stated, the project at priority is to clean river Ganga and not to diversify financial resources to the subsidiary function of cleaning innumerable drains in the city. There are innumerable factors consequential to pollution of floodplains of the river. Indiscriminate and unplanned constructions or developments, carrying on of unauthorized and impermissible activities, dumping of municipal solid waste, bio-medical waste and E-waste in and around the floodplains, are some of the main contributors of pollution in river Ganga.

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182. ... The constitutional duty upon the citizens is to protect and improve the nature, environment including forests, rivers, wildlife and to have compassion for living creatures. No industry much less the State or its instrumentality can be permitted to indulge in pollution of natural resources particularly the river for economic benefits. **It is a settled principle of law that the Polluter Pays Principle and Precautionary Principle have to be read into the Principle of Sustainable Development.** Normally, they are applied collectively. Restrictions imposed are inbuilt fact of sustainable developments and that itself serves the cause of Intergenerational Equity. **To protect and improve the environment has a direct nexus to the quality of human life, thus, all environmental principles must come to the aid of the Courts and Tribunals for furthering the cause of Sustainable Development. In the case of 'Vellore Citizens Welfare Forum vs. Union of India' 1996 5 SCC 647 held with approval:**

"The concept of development to say that the traditional concept that development and ecology are opposed to each other is no longer acceptable. Sustainable Development is the answer i.e., development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. It is intended to improve the quality of human life, while living within the carrying capacity of the supporting ecosystems. The 'Precautionary' Principle and 'Polluter Pays' Principles were, therefore, said to be the essential features of the Principle of Sustainable Development."

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7. Till the demarcation of the floodplains and identification of permissible and non-permissible activities by the State Government of this judgement, we direct that 100 meters from the edge of the river would be treated as no development/construction zone in Segment-B of Phase-I (Haridwar to Unnao, Kanpur)."

15. In view of averments made by the applicant that the river beds is proposed to be affected by setting up of the Medical College or other permanent constructions in the floodplain of the river, there is need to prevent irreversible damage to the riverine ecology by enforcing the applicable rules, if any. If there are no rules, appropriate norms need to be laid down considering such norms in other similar situations in consultation with the experts.

16. Accordingly, we constitute a joint Committee comprising representatives of Central Water Commission (CWC), nominees of MoEF&CC, CPCB, National Institute of Hydrology, Roorkee and the State PCB to consider the issue and laid down norms so as to ensure that the proposal of the State for construction of the medical college and river front development takes place in accordance with law, without damage to the flood plains of the Rivers. Flood plain zones need to be identified and demarcated in the light of such norms. The Committee may identify the extent of floodplain zone/active floodplain zone from the edge of the river. CPCB will be nodal agency for compliance. The Committee is free to associate any other individual or institution. The Committee may complete its exercise within four months. The members of the Committee are free to interact by video conferencing or otherwise. If any grievance with regard to violation of environmental norms survives, the applicant will be free to take any further remedies as per law.

The application is disposed of.

A copy of this order be forwarded to the CWC, MoEF&CC, CPCB, National Institute of Hydrology, Roorkee and the State PCB by e-mail for compliance.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

December 15, 2020
Original Application No. 22/2020(EZ)
DV

A true copy of the relevant extract of the CAG report

CHAPTER-II

Planning

CHAPTER-II

Planning

Introduction

2.1 In the context of land acquisition and allotment functions executed by NOIDA, planning plays a crucial role. The allocation of acquired land in the notified development area has to be planned and executed in sync with the approved land use and other related development guidelines. After the land is acquired, micro planning of the sector level development is an essential activity to carry out various development activities in pursuance of allotment. The Industrial Development Authority must have the macro plan of the broad development framework in its Master Plans (MPs) showing various land uses within the notified development area.

Context of development in National Capital Region

2.2 The development area of NOIDA falls within the ambit of the National Capital Region (NCR); therefore, it is bound to follow the provisions of the statutes enacted and applicable for the development of NCR.

The National Capital Region Planning Board (NCRPB) Act, 1985 was enacted by the Government of India (GoI) with the objective of providing for the constitution of a Planning Board¹ for the preparation of a plan for the development of NCR² and for co-ordinating and monitoring the policies for the control of land-uses and development of infrastructure in NCR so as to avoid any haphazard development of the region and for matters connected therewith or incidental thereto. As per Section 7 of the NCRPB Act, 1985, NCRPB was required to prepare the Regional Plan (RP) and ensure preparation of Sub-regional Plans (SRP) by the participating states. The implementation of provisions of this Act was incumbent upon its Board which also consisted of Chief Ministers of constituent states.

Section 10(2)(a) of the NCRPB Act provides that the RP shall indicate the policy in relation to land use and the allocation of land for different uses. Therefore, the RP translates broad planning policies and proposals into physical (spatial) form to illustrate the manner in which the land in NCR is to be used for various purposes. However, the detailed specific reservation of areas for various land uses of sub-regional and urban importance will be detailed out in SRP and MPs³ which are to be prepared by the respective

¹ NCRPB consists of Union Minister of State (Independent Charge), Housing And Urban Affairs as Chairman and Chief Minister of Haryana, Chief Minister of Rajasthan, Chief Minister of Uttar Pradesh, Lieutenant Governor, National Capital Territory of Delhi, Chief Minister of NCT-Delhi, Minister of Urban Development, Government of Rajasthan, Minister of Urban Development, Government of Uttar Pradesh, Chairman, Railway Board, Secretary, Ministry of Road Transport and Highways, Secretary, Ministry of Housing And Urban Affairs, Chief Secretary, Government of Haryana, Chief Secretary, Government of Rajasthan, Chief Secretary, Government of Uttar Pradesh, Chief Secretary, Government of NCT-Delhi, Principal Secretary, Town & Country Planning Department, Government of Haryana, Member Secretary, National Capital Region Planning Board, Secretary, Ministry of Environment, Forest and Climate Change and Chief Planner, Town and Country Planning Organisation, Government of India as members as of January 2021.

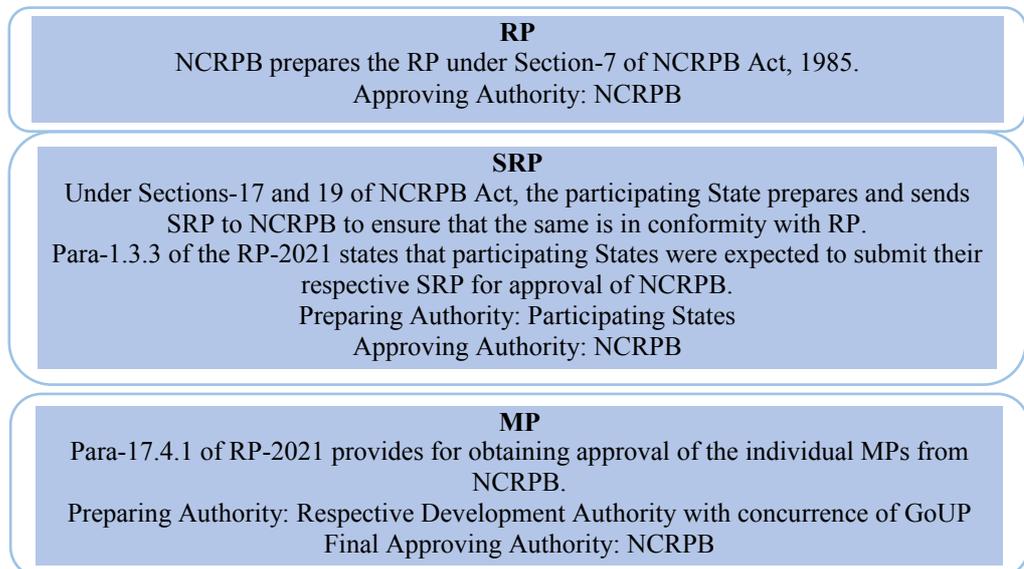
² NCR's constituent area includes Gautam Budh Nagar (NOIDA).

³ SRP encompasses the five districts of Uttar Pradesh while MP is specific for NOIDA.

participating States within the overall framework of the RP (para 17.1.1 of RP 2021).

The hierarchy of RP, SRP and MP is shown diagrammatically in **Chart 2.1**.

Chart 2.1: Chart showing hierarchy of RP, SRP and MP

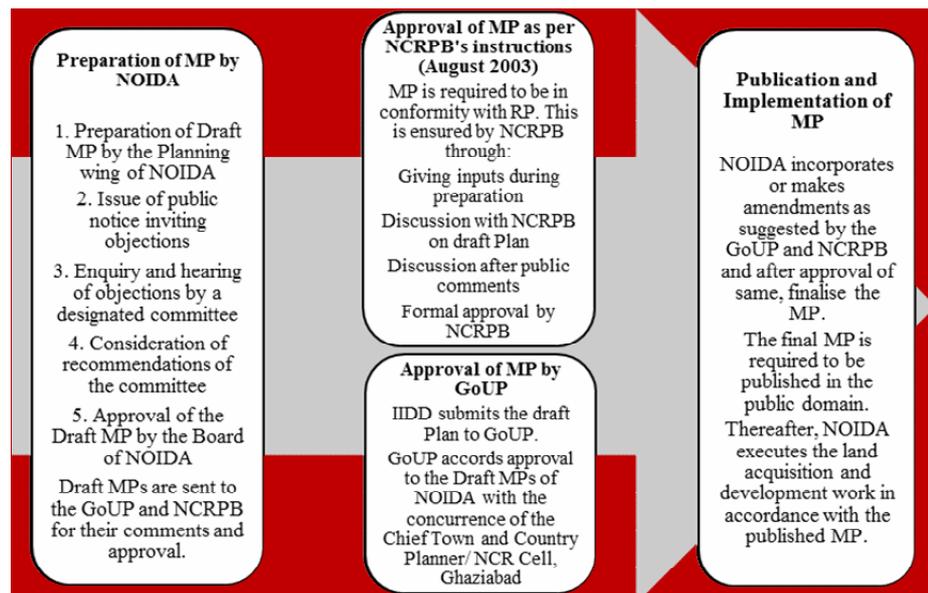


Process of Finalisation of Master Plan

2.3 Existence of an MP for development of the notified area is an essential pre-condition for initiating the process of land acquisition and development in NCR. An MP⁴ is a development plan, which has to be prepared by NOIDA in conformity with the RP and got duly approved by Government of Uttar Pradesh (GoUP) and NCRPB.

The process of finalisation of the MP has been diagrammatically depicted in **Chart 2.2**.

Chart 2.2: Process of finalisation of Master Plan



Source: MP of NOIDA and Information furnished by NOIDA.

⁴ Section 2(i) of the NOIDA (Preparation and finalization of Plan) Regulations, 2010 provide that 'Plan' means the Master Plan prepared by the Authority for development of Industrial Development Area under Section 6(2) of the Act, within the meaning of the Act.

From the stipulations laid down in the RP- 2021 and the instructions issued by NCRPB (August 2003), it was evident that NCRPB was to be consulted at all stages of preparation of the MP and the approval of the MP was to be accorded by NCRPB.

NOIDA (Preparation and Finalisation of Plan) Regulations

2.3.1 For the preparation of MP-2021, NOIDA was guided by NOIDA (Preparation and Finalisation of Plan) Regulations, 1991⁵ (Plan Regulations, 1991) which were approved by GoUP. The objective of these Regulations was proper planning and development of NOIDA.

Thus, macro planning in NOIDA involves its conceptualisation in conformity with the RP with the dominant objective of development of the industrial development area.

Scope of Audit

2.4 During the audit period 2005-2018, two MPs viz. MP-2021 and MP-2031 were prepared by NOIDA. Audit analysed both the MPs for their consistency with the RP- 2021 along with status of their approval by GoUP and NCRPB. In this context the amendments to Plan Regulations were also analysed. The micro planning aspects are discussed in the respective allotment chapters (Chapter V) and macro planning aspects are discussed in the succeeding **Paragraphs 2.6, 2.7 and 2.8.**

Audit Findings

2.5 The audit findings, as a result of analysis of the RP and MPs have been classified as under:

- Preparation and implementation of MPs without approval (discussed in Paragraphs 2.6 to 2.6.2).
- Greater discretion with changes in Plan Regulations; (discussed in Paragraphs 2.7 to 2.7.3).
- Substantial revision/changes in land use over time (discussed in Paragraphs 2.8 to 2.8.5).

Preparation and implementation of MPs without approval

2.6 RP indicates the broad planning policies and proposals in relation to land use and the allocation of land for different uses in NCR. The MP is subservient to the RP and thereafter, in order of hierarchy, to the SRP of the State. These serve as a guidance for formulation of the MP. Accordingly, the MPs prepared by NOIDA were required to be in accordance with the RP-2021, notified by NCRPB on 03 October 2005.

The preparation of MPs by NOIDA during the audit period 2005-2018 was evaluated in light of stipulations laid down by NCRPB in RP 2021, the provisions of the NCRPB Act in respect of RP and SRP and the position laid down by the Hon'ble Supreme Court and High Court through their judgements in the matter as detailed below:

⁵ Gazette Notification No. Bha. U./18-11-44-(N)-85, dated 12th April, 1991.

Master Plan

Paragraph 17.4.1 of RP-2021 provides that no development in the controlled/development/regulated zones can be undertaken except in accordance with the Master/Development Plans for the respective controlled areas approved by the Board and duly notified by the State Government under their respective Acts.

Judicial pronouncements

The Hon'ble Supreme Court in its judgment⁶ (31 March 1994) observed that *the overriding effect of the Act by virtue of Section 27 and total prohibition of any activity of development in violation of the finally published RP provided in Section 29 of the Act is sufficient to indicate that any claim inconsistent with the finally published RP in the area cannot be sustained on any ground.*

The Hon'ble Allahabad High Court in its judgement⁷ of 01 October 1996 stated that *one stipulation is inescapable that unless the NCRPB gives the green signal nothing can go ahead. The necessary implication of this is also that at every stage in reference to the plans, aforesaid, each constituent State, a part of the NCR Plan, has to keep a close consultation with the federal agency which is the Board (NCRPB).*

The Hon'ble High Court, Allahabad in its judgement 1998 elaborated that *'... land uses cannot be changed except with the tacit permission and close scrutiny of the NCRPB.*

*Whatever development is permissible must be strictly monitored under the National Capital Region Plan Act, 1985 by the authorities named and constituted under it*⁸.

Section-27 of NCRPB Act provides for the overriding effect of the provisions of this Act over the inconsistency in any law, instrument or any decree or order of any court, tribunal or other authority with regard to any development work being undertaken by any State Government in NCR. Section 29 of the Act clearly states that once the NCRPB publishes its RP for NCR, no development shall be made in the Region which is inconsistent with RP. It also empowers the NCRPB to direct the concerned participating State to stop such violation of RP by giving a notice in writing. Further, the Hon'ble Supreme Court in its judgment (31 March 1994) also reaffirmed the overriding effect of Sections- 27 and 29.

As per the provisions of Section-27 read with Section-29 of NCRPB Act and Para-17.4.1 of the RP-2021⁹, it was mandatory for NOIDA to prepare the MP(s) in conformity with RP-2021.

On analysis of the MP 2021 and 2031 prepared by NOIDA, Audit observed the following shortcomings in preparation of the same.

⁶ Judgement dated 31.03.1994, AIR 2263, 1994 SCC (4) 42.

⁷ Civil Misc. Petition No. 26737 of 1993 of GDA vs Delhi Auto and General Finance Pvt Ltd.

⁸ Judgement dated 18.12.1998 in the Civil Misc. Petition No.13899 of 1998.

⁹ No development in the controlled/development/regulated zones can be undertaken except in accordance with the Master/Development Plans for the respective controlled areas approved by the Board and duly notified by the State Governments under their respective Acts.

NCRPB did not approve NOIDA's MP 2021 and raised objections on it.

MP-2021 not approved by NCRPB

2.6.1 The MP of NOIDA for the period 2006-2021 (MP-2021) was prepared in accordance with NOIDA (Preparation and Finalisation of Plan) Regulations, 1991 and approved by the Board of NOIDA on 09 September 2005. MP 2021 envisaged a population of 12 lakh of NOIDA for which land development of 14,964 hectare was proposed. Considering the position of March 2005 of population of 5.50 lakh of NOIDA and already developed area of 7,191 hectares, development targets were fixed for three phases. In the first phase, development of 9,714 hectare for population of eight lakh up to 2011, in the second phase, development of 12,237 hectare for population of 10 lakh up to 2016 and in the third phase, development of 14,964 hectare for population of 12 lakh up to 2021 was targeted.

MP 2021 was approved by the State Government on 31 August 2006 with the condition that the approval of NCRPB should be ensured before the plan was made applicable.

Audit observed that the MP was sent (31 August 2006) to NCRPB which communicated (08 January 2007) 37 objections¹⁰ on which the responses of NOIDA were communicated (19 February 2007) to NCRPB along with a revised draft. NCRPB conveyed (08 January 2008) five observations on the revised draft to NOIDA. The major issues pointed out by NCRPB were preparation of Disaster Management Plan, undertaking planning according to higher population density, creation of a green buffer between NOIDA and GNIDA, increasing the allocation to commercial and recreational land uses and creating a green buffer between industrial and residential areas. In view of the above observations of NCRPB, NOIDA decided (in the 169th meeting of its Board held on 28 April 2010) to revise the plan for the Perspective Year 2031, despite provision of the NCRPB Act and RP for preparation of the MP within the overall framework of the RP.

In its reply, NOIDA stated (August 2020) that after making amendments, a revised MP 2021 was submitted to NCRPB on which five suggestions were made. One of the suggestions was to increase the population density from 80 persons per hectare to 150-200 persons per hectare for population of 25 lakh upto 2021 and preparing a MP for the same was a difficult task. Moreover, infrastructure facilities for such a population could not have been fully utilised as of 2021. Accordingly, it was considered suitable to revise the MP 2021 to the MP 2031.

From the reply of NOIDA, it is evident that the MP 2031 was initiated in absence of approval of MP 2021 by NCRPB. Hence the fact remains that MP 2021 was not approved and MP 2031 was initiated, whereas the overarching RP and SRP were prepared only upto 2021.

Implementation of Master Plan 2031 without considering objections of Chief Town and Country Planner/NCRPB

2.6.2 The Master Plan of NOIDA for the period upto 2031 (MP-2031) was prepared in accordance with NOIDA (Preparation and Finalisation of Plan)

¹⁰ On demography and settlement pattern (4), economic activities (1), transport (12), physical infrastructure (1), water supply (1), drainage & sewerage (1), solid waste disposal (1), sewage treatment (1), social infrastructure (4) and land use (11).

In absence of approval of MP 2021, NOIDA initiated MP 2031 without the corresponding RP or SRP. Approval of NCRPB has not been obtained for MP 2031.

Regulations, 2010 (Plan Regulations 2010)¹¹ and approved by the Board of NOIDA on 29 March 2011. MP-2031 envisaged a population of 25 lakh by 2031 for which land development of 15,280 hectare was proposed. It was envisaged to reduce the number of sub-zones¹² from 33 to 15 by removing the sub-zones which were not required. Accordingly zoning regulations considering different activities under prescribed land use were prepared. MP 2031 *inter alia* proposed land uses under Mixed Land Use, Recreational Land Use, Support Facilities under main activities and development of embankment areas.

MP-2031 was sent (18 May 2011) to NCRPB, which in turn, communicated (8 August 2011) 20 observations¹³ on MP-2031, of which only three observations¹⁴ were addressed in the revised draft and assurances/replies were furnished for the rest. The Chief Town and Country Planner (CTCP) under the Housing and Urban Planning Department (HUPD) of GoUP, on a reference made by the State Government (June 2011), also made (September 2011) four recommendations which were to be incorporated in MP-2031.

Audit observed that the State Government accorded (29 September 2011) its 'No Objection' to MP-2031 with the condition that the suggestions given by NCRPB and the CTCP will be acted upon and accordingly communicated to them. Even though RP (paragraph 17.4.1) stipulated prior approval of MP by NCRPB, conditional approval was accorded by the State Government.

Thus, it may be concluded that even though MP-2021 was replaced with MP 2031 to overcome various deficiencies but the latter also failed to address the issues raised by CTCP and NCRPB.

In its reply, NOIDA stated (August 2020) that amendments to MP-2031 were made as per NCRPB's observations and a revised draft was submitted (01 September 2011) to NCRPB, which has not communicated any further deficiencies. NOIDA further stated that a meeting was held (08 September 2011) wherein representatives of GoUP, NOIDA, CTCP and NCRPB were given a presentation of MP-2031 and important issues related to it were discussed. In the said meeting, no observations were raised by NCRPB from which their approval is assumed. Based on this, the no-objection was given by the Government. Further proceedings to execute the suggestions of NCRPB and CTCP are underway.

From the reply of NOIDA, it is evident that the requisite formal approval of the MP-2031 has not been received as yet from NCRPB as envisaged in paragraph 17.4.1 of the RP. Rather, in absence of further observations from NCRPB, approval has been assumed by NOIDA. Conditional No Objection has been received from GoUP pending compliance with NCRPB's and CTCP's observations and based on the same, implementation of MP-2031 has been initiated.

Thus, it may be concluded that NOIDA implemented MP-2031 without corresponding RP in spite of directions of Hon'ble Supreme Court and

¹¹ Notification No. 1422/77-4-10-44-(N)-85, dated 30 July, 2010, published in the U.P. Gazette, dated 31 July, 2010.

¹² Sub-zone denotes sub-category of activities under major land use zones.

¹³ Land Use related (6), Demography related (4), Water Supply (2), Transport (7), Disaster Management Plan (1).

¹⁴ On land use map, population density and population projection.

Hon'ble High Court, Allahabad that unless NCRPB gives the green signal nothing can go ahead. In this regard it is pertinent to mention that MP-2021 of GNIDA was expressly approved (August 2012) by NCRPB. The steps taken by NOIDA for implementation of MP-2031 in absence of a RP- 2031, could have unintended implications at a later date for the coordinated development of NCR.

Greater discretion with changes in Plan Regulations

2.7 Plan Regulations, 1991 served as the guiding principle for proper planning and development of the area in NOIDA. NOIDA had prepared MP-2021 in accordance with these Regulations. These Regulations were amended in February 2010 (First Amendment¹⁵). The only amendment made was of Section 5 whereby the time period for sending objections and suggestions to NOIDA on the draft plan was reduced from not earlier than 30 days to 15 days.

Thereafter, in July 2010 the Regulations were again revised¹⁶ and NOIDA (Preparation and Finalisation of Plan) (Second Amendment) Regulations, 2010 (Plan Regulations, 2010) were approved and notified¹⁷ by GoUP wherein major amendments were made in Sections 2, 4 and 11 of the Plan Regulations, 1991. The stated reason (in 169th Board meeting of NOIDA) for amendments was to carry out changes to MPs in view of changing circumstances and requirements. These amendments are discussed in the following paragraphs:

Exclusion of defined activities under different categories

2.7.1 The changes made in Section 2 relating to definitions of various categories viz. Agriculture use, Commercial use, Industrial use, Institutional use, Plan are detailed in **Table 2.1**.

Table 2.1: Changes made in Section 2 relating to definitions of various categories

Plan Regulations, 1991	Plan Regulations, 2010
<p>Section 2. Definitions:</p> <p>‘Agriculture use’ means the use of land or any part thereof for farming, horticulture, piggery, fishery, poultry farming, sericulture and all legitimate uses incidental thereto;</p> <p>‘Commercial use’ means the use of any land or building of part thereof for carrying on any trade, business or profession, sale of goods of any type, whatsoever and includes private hospitals, nursing homes, hostels, hotels, restaurants, boarding house not attached to any educational institution, consultant offices in any field, cottage and service industries.</p> <p>‘Industrial use’ means the use of any land or building or part thereof mainly for location of industries and other incidental use such as offices, eatable, establishment etc. carrying out any activities.</p>	<p>Definitions:</p> <p>‘Agriculture use’ means the use as defined in the Plan as may be approved in accordance with the Act¹⁸ and these Regulations;</p> <p>‘Commercial use’ means the use as defined in the Plan as may be approved in accordance with the Act and these Regulations.</p> <p>‘Industrial use’ means the use as defined in the Plan as may be approved in accordance with the Act and these Regulations;</p>

¹⁵ Notified vide GoUP notification no. 49/77-4-10-44 N/85 dated 18.02.2010.

¹⁶ Revisions to Sections 2, 3, 4, 5, 6, 8, 9, 10 and 11.

¹⁷ Notified vide GoUP notification no. 1422/77-4-10-44 N/85 dated 30.07.2010.

¹⁸ UP Industrial Area Development Act, 1976.

Specific definitions for respective land use categories as given in the Plan Regulations, 1991 were substituted with very general definitions/clauses in the Plan Regulations, 2010.

Plan Regulations, 1991	Plan Regulations, 2010
<p>‘Institutional use’ means the use of any land/building or part thereof for carrying on any activities like testing, research, demonstration etc. for the betterment of the society and it includes educational institutions.</p> <p>‘Plan’ means the plan prepared by the Authority for the development of Industrial Development Area under sub-Section (2) of Section 6 of the Act, and it includes Sector Plan.</p>	<p>‘Institutional use’ means the use as defined in the Plan as may be approved in accordance with the Act and these Regulations;</p> <p>‘Plan’ means the Master Plan prepared by the Authority for the development of Industrial Development Area under sub-Section (2) of Section 6 of the Act, within the meaning of the Act.</p>

Audit observed that specific definitions for respective land use categories as given in the Plan Regulations, 1991 were substituted with very general definitions/clauses in the Plan Regulations, 2010.

Weakening provisions for systematic regulations of land use area

2.7.2 Section 4 (1) of the Regulations deals with sector¹⁹ plans for carrying out development activities, land use by allocating different activities and systematic Regulations of each land use area. The comparative changes in Plan Regulations are detailed in **Table 2.2**.

Table 2.2: Comparative changes in Plan Regulation

Plan Regulations, 1991	Plan Regulations, 2010
Section 4(1) (a) - The Plan may include Sector Plans showing various sectors into which the Industrial Development Area or part thereof may be divided for the purpose of development.	The Plan may include various sectors into which the Industrial Development Area or part thereof may be divided for the purpose of development
Section 4(1) (b) - The Plan will show the various existing and proposed land uses indicating the most desirable utilisation of land for different uses allocating different activities.	The Plan will show the various existing and proposed land uses indicating the most desirable utilisation of land for different uses.
Section 4(1) (e) - The Plan may include Housing Plan consisting of estimates of housing requirement and proposals regarding standard type of new housing units.	Proposals regarding Housing.
Section 4(1) (h) - Systematic regulation of each land use area, allocation of heights, number of stories, size and number of buildings, size of yards and other open spaces and the use of land and building.	Omitted.

Audit observed that the above amendments allowed NOIDA to prepare MP-2031 without specifying the particular activities to be performed in a sector. The requirement for detailed specifications of various land uses was dispensed with through this amendment, whereby the requirements from the plan became less stringent.

¹⁹ Sector is an earmarked development area demarcated in terms of geographical location and area.

Omission of provision relating to extent of land use and standards of population density

Amendment to Plan Regulations in 2010 enabled NOIDA to make such changes which relate to extent of land use or standards of population density.

2.7.3 Section 11 of the Regulations deals with the amendments related to important alterations in the character of the Plan, extent of land use and standards of population density. The comparison of the changes in the Regulations are detailed in **Table 2.3**.

Table 2.3: Details of changes in Regulations

Plan Regulations 1991	Plan Regulations 2010
Section 11 (4) - NOIDA shall not make during the specified period in which the Plan is to remain effective, such amendment(s) in the Plan which affects the important alteration in the character of the Plan and which relates to the extent of the land use or standards of population density.	Omitted. Section 12²⁰ - Sector Layout Plan: The Chief Executive Officer shall be competent to approve the layout plan prepared for the sector or a part of the sector or scheme. Any amendment in the layout plan of a sector or a scheme shall duly be approved by the Chief Executive Officer (CEO). If such amendment involved the change in the area of a sector and/or inter-sector changes in the location of public parks and/or green belts, it shall be done in accordance of the procedure laid down in sub-Section (2) of Regulation 11.

Audit observed that the Plan Regulations, 1991 restricted NOIDA from making such amendments which affected important alterations in the character of the plan and which related to the extent of land use or standards of population density but it was substituted in the Plan Regulations, 2010 by authorising NOIDA to make such amendments as it thought fit and making changes to land use with the permission of the State Government.

Thus, the major provisions had been diluted during the period February 2010 to July 2010 by substituting or omitting the clauses with undefined activities under different uses, important alterations in the character of the plan etc. The amendments in the Plan Regulations were also approved by GoUP. These amendments empowered NOIDA to amend the character of the MP, conferred greater discretion and reduced the requirements for detailed disclosure in the MPs. Consequently, land use conversions were regularised by introducing various activities *viz.* sports city and mixed land use, schemes not interrelated with the core objective of NOIDA were launched and various non-permitted activities in agriculture use, institutional use, industrial use and commercial use were permitted causing loss to NOIDA (as discussed in detail in relevant chapters).

In its reply, NOIDA stated (August/September 2020) that development of urban areas is a complex and dynamic process which requires continuous modifications and which cannot be carried on a static framework. The Regulations of 1991 were accordingly amended in 2010 with the approval of the Government. NOIDA MP-2031 includes Zoning Regulation and Development Codes in Chapter 7 wherein categories and sub-categories of land use are defined. Specifying the core activity and support activity for major activities has improved transparency and strengthened the process. Further, in respect of amendment of Section 11, NOIDA stated that no additional powers had been provided to CEO for making amendments to MP.

²⁰ Inserted in Plan Regulations, 2010

The reply of NOIDA citing transformations as the reasons for amendments in regulations is not acceptable as the amendments made in the Regulations modified the basic premises on which planning is done. Additionally, the stated reasons, as discussed in the Board meeting, were absence of provisions for changes to MP, change of land use and population density (Section 11). The specific definitions for land uses were swapped with very general clauses (Section 2), the requirement for detailed specification for land uses were dispensed with (Section 4) and NOIDA was empowered to make such changes to the MP as it deemed fit (Section 11). These changes have effected dilution to the restrictive covenants which regulated the planning process. Further, the reply of NOIDA describes the features included in MP-2031 which was prepared in accordance with the revised Plan Regulations 2010. The regulations are at a higher pedestal as they guide the Authority in preparation of MP. Dilution of Plan Regulations and then specifying activities in MP reverses the order of things. These dilutions are to the overarching framework and not specific to any MP. While there may be some merit in the argument that the changes are necessitated with the developments over time, Audit findings as brought out in this Report corroborate that dilutions made in the regulations have resulted in NOIDA including commercial activities in industrial and recreational categories which resulted in allotments being made at reduced rates and consequential loss of revenue (as discussed in chapters on allotment of Industrial properties and Sports City).

In the exit conference (30 September 2020), Additional Chief Secretary, Infrastructure and Industrial Development Department (IIDD), acknowledging the need for a review in the matter, directed CEO, NOIDA to compare the approved regulations of NOIDA and GNIDA. He stated that wherever a case for strengthening the regulations in NOIDA was necessary that would be done after such a review.

Substantial revision/changes in land use over time

2.8 The Industrial Development Authorities have the mandate to develop industrial townships with ancillary objectives of developing residential, commercial and institutional areas. Thus, accordingly priority should have been accorded to allocation of land for industrial purposes. Consequent to amendments to the Regulations, NOIDA was empowered to make various changes in land use. NOIDA, instead of focusing on industrial areas, focused on developing residential and commercial areas in different land uses, which is discussed in the ensuing paragraphs.

Large scale land use conversions in NOIDA

2.8.1 In NOIDA, large scale land conversions were carried out during the period March 2008 to June 2010 after the approval of MP-2021 by GoUP in August 2006. The proposals for land use conversion were to be sent to the State Government as well as to NCRPB for its approval.

Audit observed that NOIDA sent the proposals for conversion of land use to the State Government only. No proposals were forwarded to NCRPB for its approval even though the U.P. Government order of 23 September 1997 provided for that. Instead, the land use conversions, which affected the zoning Regulations, were made applicable without approval of NCRPB. Large scale conversions were carried out in areas marked as green (573 hectare). Further, to legitimise these land use conversions, MP was revised for the perspective

year 2031 in which all these land conversions carried out since 31 August 2006 (the date on which MP-2021 was approved by GoUP) to the date of approval (29 September 2011) of MP-2031, were incorporated.

Thus, MP-2031, accommodated the earlier changes made in land use conversions which resulted in regularisation of unauthorised conversions.

In its reply, NOIDA stated (August 2020) that all land use conversions were duly approved by the Board and thereafter by GoUP.

The reply of NOIDA is not acceptable as the requirement for NCRPB's approval has been settled in judgements by the Hon'ble Supreme Court and High Court wherein it was held that there was a total prohibition of any activity of development in violation of RP and unless the NCRPB gives the green signal, nothing is to go ahead.

Diversion of industrial land to other uses

2.8.2 NOIDA earmarked 1,050 hectare of industrial land for establishment of Special Economic Zone (SEZ) in compliance of the revised SEZ Policy (04 August 2006) of GoUP which consisted of processing and non-processing areas. Subsequently, 50 *per cent* of the area *viz.* 525 hectare was retained as industrial and land use of remaining 525 hectare was changed to residential, institutional and commercial on the ground that as per SEZ Policy these activities were permitted in the non-processing area. This change was approved by GoUP on 04 April 2016 on the condition that there should be no violation of the directions of NCRPB with these changes and also that NOIDA will ensure that area for industrial use is not reduced from the 18.37 *per cent* proposed in MP-2031.

Audit observed that the basic premise on which the land use change was proposed was incorrect as formal approval of GOI was to be obtained for notifying the area as SEZ. As no formal approval for the SEZ was granted, the entire area remained under industrial use only and any conversion on the pretext of utilisation of non-processing area should not have been permitted. Further with this land use conversion, industrial area proposed in MP-2031 was also reduced to less than 15 *per cent* from the initially planned area of 18.37 *per cent* and was in contravention of GoUP directions.

In its reply, NOIDA stated (August 2020) that though land use of non-processing areas was changed, there was no reduction in area under SEZ.

The reply of NOIDA is not acceptable as in the absence of approval of SEZ, the area remained under industrial category and as such the conversion of 50 *per cent* area has effectively reduced the total allocation to industrial category.

Mixed land use

2.8.3 The concept of mixed land use on industrial plot was introduced in MP-2031 and the policy for the same was approved on 19 November 2013. Under the policy, the use of industrial plot for commercial use was partially allowed.

Audit observed that the concept of mixed land use was introduced in MP-2031 without obtaining prior approval of such use by NCRPB. The Policy was formulated considering the Urban Housing and Habitat Policy 2014 whereas NOIDA was regulated by "Infrastructure and Industrial Investment Policy

525 hectare Industrial land of proposed SEZ was changed to residential, commercial and institutional uses, even though the SEZ was not approved by the Government.

Auto showrooms, museums and art galleries were permitted on Industrial plots under Mixed Land Use Policy.

2012". Under the mixed land use policy NOIDA allowed 25 per cent of permissible industrial area for non-industrial purposes i.e. Auto show rooms, art galleries and museums. The basic objective of NOIDA was to promote industrialisation but allowing commercial activity in industrial areas not only led to debilitating its main objective but also the ancillary functions of employment generation, planned development of other categories in conjunction with its major objective etc.

Thus, the policy of mixed land use was without approval of NCRPB and the resultant reduction in industrial allocation was also contrary to NOIDA's objective of industrial development.

In its reply, NOIDA stated (August 2020) that its policy of mixed land use was necessitated by actual requirements and is approved by GoUP. NOIDA was fully authorised to implement such policy. This Policy was introduced in MP- 2021 wherein residential, commercial and institutional uses were planned on allotted properties on major roads. It was stated that the format of MP-2031 was sent to NCRPB for suggestions and the suggestions received from NCRPB did not include any remark on mixed land use which shows that NCRPB was in agreement with mixed land use policy.

The reply of NOIDA itself confirms that under mixed land use policy residential, commercial and institutional uses were planned on allotted properties on major roads in MP-2021. However, NOIDA has implemented this policy for regularising the commercial establishments on industrial plots, which was irregular. Further, the reply of NOIDA that NCRPB was in agreement with the mixed land use policy is also not acceptable as the policy was introduced in November 2013 whereas the MP- 2031 was submitted to NCRPB in May 2011.

Thus, the policy of mixed land use was in divergence of the stated objectives which will lead to shrinking of the industrial area.

Sports City

2.8.4. The RP-2021 provided for category of recreational land use under the urbanisable area. The MP- 2021 of NOIDA provided for sports complex use under recreational land use. Further, the sub-zone of 'Sports City' was included as a separate land use under recreational category in MP-2031 and relevant amendments in Building Regulations incorporating development norms for Sports City, were notified by GoUP on 27 May 2011.

Audit observed that at the time of launch of the scheme in October 2008, there was no land use category/sub-zone in MP-2021 in which Sports City could be launched. In MP-2031, NOIDA not only included a separate sub-zone of land use as 'Sports City' but also gave power to the Board to decide on the land use pattern of the 30 per cent area after utilising 70 per cent area for recreational land use. This allowed permission for 96.92 hectare of recreational land for other than recreational use i.e. residential and commercial use. Approval/clearance from NCRPB was not sought even though the scheme was against the recreational land use provided in RP- 2021. Table 7.4 (para 8.12) of MP-2031 provides for permissible support activities in used premises or plot which nowhere mentioned either for commercial land use or for group housing activities in Sports City.

Sports Cities were developed on Recreational Green areas with 30 per cent land being utilised for residential and commercial uses.

Thus, the concept of Sports City was not included in MP-2021 but after launch of the scheme for Sports City, the concept was included in the MP-2031 without approval of NCRPB. This was also enabled by the changes made in Regulations and in contravention of the Hon'ble High Court observation wherein it was explicitly mentioned that land uses cannot be changed except with the tacit permission and close scrutiny of NCRPB.

In its reply, NOIDA stated (August 2020) that detailed proposal for Sports City was included in MP-2021 which was not commented upon by NCRPB. As per MP-2031, Sports City is not a category but an activity. The activities permitted have been spelt out in chapter 7 of MP 2031. Further, proposal for land use determination for Sports City has been approved by GoUP.

The reply of NOIDA is not acceptable as the scheme was launched (October 2008) without approval from GoUP and approval was accorded subsequently in May 2011. The residential and commercial activities permitted in recreational green areas were also contrary to the provisions of RP- 2021 and hence irregular. The above issues are discussed in detail in **Paragraphs 5.2.13.2 and 5.2.13.1** in the Sports City Chapter.

Substantial revision/changes in land use over time

2.8.5 As per Section 6 of the Uttar Pradesh Industrial Area Development Act, 1976, the object of the Authority (NOIDA) shall be to secure the planned development of the industrial development area. Thus, accordingly priority should have been accorded to allocation of land for industrial purposes. The status of actual allocation/development of land *vis-à-vis* MP-2031 is given in **Table 2.4**.

Table 2.4: Detail of allocation/development of land as per MP-2031

(Area in hectare)

Land Use	MP-2021		MP- 2031		Development upto March 2020		Percentage of development to MP-2031	Percentage of development to MP-2021
	Area	Per cent	Area	Per cent	Area	Per cent		
Industrial	1951.00	20.05	1756.52	18.37	2460.63	22.71	87.68	81.99
SEZ	1050.00		1050.00					
Residential	5334.00	35.65	5722.14	37.45	5659.47	52.23	98.90	106.10
Commercial	564.00	3.77	581.33	3.80	333.10	3.07	57.30	59.06
Institutional	1219.00	8.14	1357.97	8.89	822.08	7.59	60.54	67.44
Recreational	1513.00	10.12	2432.82	15.92	1106.14	10.21	45.47	73.11
Transport	2211.00	14.78	1942.15	12.71	58.44	0.54	3.01	2.64
Agriculture	1017.50	6.80	332.47	2.18	291.57	2.69	87.70	28.66
Water bodies	104.50	0.69	104.50	0.68	104.5	0.96	100	100.00
Total	14964.00	100	15279.90	100	10835.93	100	70.92	72.41

Source: MP of NOIDA and Information furnished by NOIDA.

The table above brings out the lopsided focus of the NOIDA over the years. Consequently, when compared with the land use plan in MP-2021 with the development of land as of March 2020, there is significant variance. Excessive development of Residential category (106.10 *per cent*), made possible by conversion of land use of other category, was in evidence. Further, residential use has been kept at 35.65 *per cent* of total land area which will in fact be more than 40 *per cent* if residential use allowed in Sports City (in recreational green area) and in institutional plots is considered. On the other hand, the actual development in most other categories viz. Commercial, Institutional,

Transport and Agriculture was well below what was envisaged in MP-2021. Development of Industrial category, the primary objective of the NOIDA, also did not receive priority.

Conclusion

The Master Plan for development of notified development area was to be prepared by NOIDA as per RP- 2021 duly approved by NCRPB. The NCRPB till date has only prepared RP- 2021 and GoUP has also prepared Sub Regional Plan for the year 2021. NOIDA prepared MP-2021 to which NCRPB had raised various objections. NOIDA, instead of addressing the flaws/inconsistencies in MP- 2021, prepared a new MP-2031. Despite provision of NCRPB Act and Hon'ble Supreme Court judgement for preparing MP within the overall framework of RP, NOIDA has initiated implementation of MP 2031 without the corresponding RP and SRP. In order to accommodate and regularise various changes, major amendments/dilution in provisions of NOIDA (Preparation and Finalisation of Plan) Regulations, 1991 were effected and MP-2031 was prepared incorporating such changes. The same was not only inconsistent with RP-2021 but has also not been approved by NCRPB as yet. NOIDA, despite the ruling of Hon'ble High Court that land uses cannot be changed except after scrutiny and permission of NCRPB, proceeded with the implementation of unapproved MP. The unilateral step taken by NOIDA for implementation of MP-2031 in absence of preparation of higher level plan by NCRPB raises fundamental issues on the overall planned development of the NCR.

The IIDD was responsible for regulating and monitoring the functioning of Authorities including monitoring the MPs. IIDD, despite its overriding powers failed to ensure adherence to the regulatory framework and to check the dilution in provisions of the Plan Regulations. These dilutions and amendments to the regulations provided huge discretion at the hands of NOIDA which was blatantly misused.

Recommendations

Recommen- dation Number	Recommendation	Response of the Government
1	NOIDA should ensure that preparation of MP is in alignment and conformity with the corresponding RP and SRP approved by NCRPB.	Accepted
2	The Infrastructure and Industrial Development Department (IIDD) should ensure that the approvals granted by it to the MPs and the amendments thereto are in accordance with the policies of NCRPB so as to ensure coordinated development of NCR.	Accepted

Recommendation Number	Recommendation	Response of the Government
3	The Government should thoroughly review and revise the NOIDA (Preparation and Finalisation of Plan) Regulations, which over time have been progressively diluted and has led to discretion and misuse at the hands of the officials in NOIDA.	Accepted. The Government stated that NOIDA should undertake a thorough review of its Regulations and make appropriate amendment wherever required and after approval of the Board, submit it to the Government for approval

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
(M.A. No. /2023)**

**IN
ORIGINAL APPLICATION No. 275 of 2023**

IN THE MATTER OF

MAHESH KUMAR

.... APPLICANT

VERSUS

STATE OF UTTAR PRADESH & OTHERS

... RESPONDENTS

AND IN THE MATTER OF

AJIT KUMAR

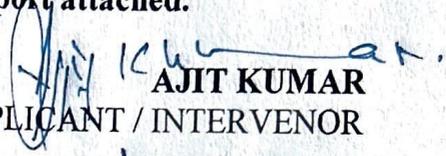
...APPLICANT / INTERVENOR

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AJIT KUMAR
APPLICANT / INTERVENOR

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