

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 630 OF 2023**

IN THE MATTER OF:

ANAND ARYA

...APPLICANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

**NOTE OF FINAL ARGUMENTS PREPARED BY MR. SANJAY
PARIKH, SENIOR ADVOCATE, ON BEHALF OF THE APPLICANT**

A. Dhanauri Wetlands protected by Judicial Orders:

- i. The Hon'ble National Green Tribunal, Principal Bench, New Delhi by Order dt.03.03.2013 had directed the UP Government to take a decision in identifying wetlands in the entire state of UP within a period of 3 months. It was specifically directed with regards to two wetlands i.e., Dhanauri and Parsaul, as follows:

“Till such recommendations are forwarded to MoEF and MoEF takes a decision in notifying in accordance with Rules 2010, the status quo as on date shall be maintained in respect of two wetlands in question.”(Pg 97-99)

- ii. The Hon'ble Supreme Court in M.K.Balakrishnan & Others Vs. Union of India & Ors., vide its order 03.03.2017, noted that 2,01,503 wetlands have been identified. The Dhanauri Wetlands is at inventory no 17173 and 17174. It was further directed that the Principles of Rule 4 of Wetlands (Conservation and Management) Rules 2010 shall apply to these identified wetlands. (Pg100-109)
- iii. By subsequent order dated 04.10.2017 in the same case, the Hon'ble Supreme Court directed as follows:

“We make it clear and reiterate that in terms of our order dated 08.02.2017, 2,01,503 wetlands that have mapped by the Union of

India should continue to remain protected on the same principles as were formulated in Rule 4 of the Wetlands (Conservation & Management) Rules 2010.” (Pg 110-114).

In this view of the above, Dhanauri Wetlands is protected till date.

B. Re: Declaring Dhanauri Wetlands as a Ramsar Site and also as a Bird Sanctuary

- i.) By letter dated 28-29/05/ 2019, The Joint Secretary, MoEF had written to the Principal Secretary, Dept. of Forest, UP Government to take the necessary action for submission of a proposal as per procedure of Ramsar Convention for declaring Dhanauri Wetlands as a Ramsar Site and also as a Bird Sanctuary. The letter further stated that the proposal be submitted to the MoEF online through the relevant portal of Ramsar Convention. The letter further directed the UP Government to designate a nodal officer for online submission of this proposal. **(Pg 151)**
- ii.) In response, the Additional Principal Chief Conservator, UP Government wrote to the Conservator of Forest, Division Meerut, Meerut by letter 24.12.2019 to comply with the requirements of Letter dated 28-29/05/2019 for declaring the Dhanauri Wetlands as a Ramsar Site. **(Pg 160-161)**
- iii.) In the letter dated 24.12.2019 by Additional Principal Chief Conservator, UP Government, it has been noted that one Mr. Pramod Kumar has been appointed as Nodal Officer. **(Pg 162)**
- iv.) Though the Nodal Officer was appointed but no further action was taken, so therefore, a reminder was sent by MoEF on 20.04.2020. **(Pg 152).**
Another reminder was sent by MOEF on 21.02.2022 **(Pg 154-155)**
- v.) On 04.08.2022, the DFO/Nodal officer prepared a proposal and submitted it to Conservator of Forest, Division Meerut, Meerut with request to submit the same to the Principal Chief Conservator, Dept of Forest, Lucknow for his approval. It is also stated that after the said approval is given the matter will be logged in on Ramsar

Site. This means that the only step required to be taken is approval by Principal Chief Conservator, Lucknow. (Pg 41-Letter; Pg 44-46, 47-87-Proposal)

- vi.) On 30.08.2022, the MoEF again wrote to the Forest Dept, UP Government that the MoEF has still not received any proposal from State of UP for designating the Dhanauri Wetlands as a Ramsar site. (Pg 164)

C. Environmental Clearance to Jewar International Airport:

- i. The Jewar International Airport was granted Environmental Clearance on 09.03.2020 which contained the following specific condition:

“A. SPECIFIC CONDITIONS:

.....

.....

(v). *Conservation plan for Birds and Fauna in consultation with Wildlife Institute of India (WII) shall be submitted within six month from grant of this clearance and shall be implemented in letter and spirit.” (Pg 137)*

- ii. According to this condition, a conservation plan was submitted by Wildlife Institute of India.(Pg 115-131)
- iii. The said conservation plan contained various recommendations, in particular, recommendations No. 6 and 12 which are important and are as follows:

“ 6.Adjoining wetland of the GJIA landscape such as "Dhanauri wetland" is used by Sarus as roosting sites and provide habitats for different diverse bird and arthropod species. We suggest preparing the "Conservation Plan" for this wetland. This wetland should be declared as “Wildlife Sanctuary” or "Conservation Reserve” as soon as possible. Encourage to develop as recreational areas for bird watchers.

...

12. We suggest long-term studies such as hydrological, land-use changes, socio- economic, Sarus-habitat requirements, population

demography, and limnological changes of wetlands for effective conservation planning of Sarus wetlands in the GJIA landscape.”

- iv. The said conservation plan also contains various management strategies, in particular, strategy no. 5 is imperative for the present matter’s consideration, which is produced herein below:

“5. Initiate the process of declaring as soon as possible "Dhanauri wetland" as a "Community Reserve" or Wildlife Sanctuary and "Ramsar Site” (Pg 129-130)

(Also Read Pages 120, 126 -130)

Therefore, in terms of the said specific condition of Environmental Clearance, the said conservation plan has to be implemented in its true letter and spirit.

ISSUES:

In view of the above, the following three issues arise:

1. As far as declaring the Dhanauri Wetlands as a Ramsar site, the Principal Chief Conservator of Forest, UP Govt. has to approve the proposal prepared by the Nodal Officer and to forward it to MoEF so that it can be submitted for consideration of declaration of the Dhanauri Wetlands as Ramsar Site under the Ramsar Convention.

There is no opposition by any of the parties as a matter of fact YEIDA (Yamuna Expressway Industrial Development Authority) has clearly said that it has no objection at notifying Dhanauri Wetlands as Ramsar Site. **(Paras 10-16 of the Affidavit dated 13.02.2024)** This argument was further affirmed by YEIDA’s additional affidavit dated 15.03.2024.

2. Regarding the protection of Dhanauri Wetlands, YEIDA in para 17-19 has submitted that the Dhanauri Wetlands enjoy all the protective measures extended to any other officially notified Wetlands. Therefore, at par with notified wetlands, Dhanauri Wetlands are entitled to all the protections.

3. According to the specific conditions for Environmental Clearance, the area of Dhanauri Wetlands has to be declared as a Wildlife Sanctuary. In the affidavit though YEIDA agreed to declare the Dhanauri Wetlands as a Ramsar Site but has raised objections in **Para 35-36** against declaring it as a wildlife sanctuary, owing to the conflicting demands of aviation infrastructure and urban development.

However, the consideration by State of UP of declaring the Dhanauri Wetlands as a Bird Sanctuary cannot be denied. The specific condition under EIA Notification, 2006 is binding and has protection under Article 21. Section 18 of the Wildlife Protection Act, provides for declaration as a sanctuary which is produced herein:

“18. Declaration of sanctuary. -

(1)The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.

(2)The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation. - For the purposes of this section it shall be sufficient to describe the area by roads, rivers, ridges or other well-known or readily intelligible boundaries.”

The MoEF in its letter dated 28.05.2019 (**Pg 151**) has asked for declaring the Dhanauri Wetlands not only as a Ramsar Site but also as a Bird Sanctuary. The said letter of MoEF has to be read with the Environmental Clearance with specific conditions granted by MoEF. Therefore, it is necessary that the Dhanauri Wetlands be considered for declaration as a bird sanctuary in accordance with Law.

CASES RELIED UPON:

1. M.C. Mehta Vs Kamal Nath 1997(1) SCC 388 at 412/413

2. MC Mehta Badkal lake. 1997 3 SCC 715
3. Hanuman Laxman 2019(15) SCC 401 at 466 para 156-157
4. Ankita Sinha 2022(13) SCC 401 at 444/445
5. Intellectual Forum. 2006(3) SCC 549 at 578
6. Hinch Lal Tiwari 2001(6) SCC 496 Para 13,14
7. N.D. Jayal. 2004(9) SCC 362 at 381 and 395, para 61, 63, 403 para 82



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