

**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
APPEAL NO. 24 of 2022**

IN THE MATTER OF:

Raza Muzaffar

... Appellant

Versus

SEIAA, Jammu & Kashmir & ors.

... Respondents

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HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

APPEAL NO. 24 of 2022

IN THE MATTER OF:

Raza Muzaffar

...Appellant

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**REJOINDER TO REPLY OF RESPONDENT NO. 1 DATED
26.06.2022 AND REPLY OF RESPONDENT NO. 4 DATED
29.07.2022**

MOST RESPECTFULLY SHOWETH:

1. That the above titled Appeal is filed challenging three Environmental Clearances dated 19.04.2022 granted by the State level Environment Impact Assessment Authority- Jammu & Kashmir (hereinafter referred to '**Respondent No. 1**') to NKC Projects Pvt. Ltd. (hereinafter referred to as '**Respondent No. 4**') for extraction of river bed minor mineral from three blocks located in proximity of each other of the Shaliganga Nallah Village, Dreigam Tehsil, Khansahib District- Budgam, Jammu & Kashmir.
2. That Respondent No. 1 and Respondent No. 4 have filed their counter affidavit to the Appeal filed by the Appellant. That the contents of the affidavit of Respondent No. 1 and Respondent No. 4 are denied in entirety, unless specifically admitted or are of matter of record.

**REJOINDER TO REPLY BY RESPONDENT NO. 1 DATED
26.06.2022**

3. That the Respondent No. 1 has raised the following grounds in their Counter- Affidavit:

- i. That Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 has been amended by SRO 267 dated 03.07.2017 wherein the prohibition on mining of any minor mineral has been reduced from 25 metres to 10 metres from any embankment.
- ii. That no off-take points of irrigation kuhls are present within 200 metres distance from the mining block, which is also certified by the Irrigation Department. Additionally, the 81st meeting of JKEAC, which had earlier rejected the proposal had placed reliance on Google Images which is not a conclusive proof of the ground reality. Therefore, the 'Fit for Mining Certificate' issued by the Geology and Mining Department, J&K only after certifying the mining potential on ground should be relied upon.
- iii. That the Hokersar Wetland Reserve is at a linear distance of more than 20 kilometres and radial distance of more than 14 kilometres from the mining area.
- iv. That the project proposal was considered in light of the District Survey Report and the same was required to be updated to include replenishment studies. Therefore, JKIEAA reduced the total targeted mineral production of Block 4 from 811440 MTs to 34800 MT and also limited the depth of extraction to 1 meter in aggregate against 3 meters per annum.
- v. Any violation of an Environmental Clearance condition should have been brought into the notice of Respondent No. 1 so that appropriate action under law could have been taken.

Amendment to Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 reduces the prohibition on mining to 10 metres from embankments

4. That Respondent No. 1 has contended that Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 has been amended by SRO 267 dated 03.07.2017 wherein the prohibition on mining of any minor mineral has been reduced from 25 metres to 10 metres from any embankment. The answering Respondent submits that due to this amendment, the Environmental Clearance has been granted for an area where mining is not prohibited as per the Rules.
5. That even though the Rules have been amended, it is submitted that the Environmental Clearance has been granted to the project proponent to undertake mining even within 10 meters distance from the embankments, which also comes under prohibited area for mining as per the amended Rules.
6. That the project is still in violation of the amended Rules because the area for which Environmental Clearance has been granted also falls within a distance of 10 metres from the embankment of Shaliganga Nallah. This is clear from the Google Earth snapshot that shows the mining area as well as the distance of 10 metres from the embankments.

Snapshots of Google Earth images showing violation of Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 are annexed herewith as **ANNEXURE A-1**.

No irrigation off-take points are present within 200 metres distance from the mining block, as per the No-Objection Certificate issued by the Irrigation Department

7. That Respondent No. 1 has contended that no off-take points of irrigation kuhls are present within 200 metres distance from the mining block, which is certified by the Irrigation Department. Additionally, it states that the 81st meeting of JKEAC, which had earlier rejected the proposal had placed reliance on Google Images which is not a conclusive proof of the ground reality. Respondent No. 1 has also stated that the Geology & Mining Department has issued the 'Fit for Mining Certificate' after ascertaining the mining potential of the area.
8. That the irrigation canal is located within a distance of 200 metres from the mining site, within about 10 metres distance. For example, in Panzan Shah Mohalla, the irrigation canal is running along the mining site well within a distance of 200 metres. The irrigation canal being located in such close proximity of Shaliganga will lead to breach of irrigation canal. Similar instances have taken place in Karnal District where villagers have alleged that illegal mining is leading to breach of Western Yamuna Canal.

Screenshots taken from the video uploaded by the Appellant on social media along with screenshot of Google Earth image showing the irrigation canals with a distance of 200 metres from the mining site are annexed herewith as **ANNEXURE A-2 (colly)**.

9. That the 'Fit for Mining Certificate' only mentions that the "*there is enough potential for extraction of minor minerals and that the blocks under reference could be feasibly exploited for mining.*" It makes no reference to the presence or absence of irrigation canals within 200 metres of the mining area. The Geology & Mining Department has

only restricted their inspection to assessing the potential of mining in that area and the presence of minor minerals. Therefore, the 'Fit for Mining Certificate' is not a conclusive document to show that no irrigation canals are present within 200 metres of the mining area.

The Hokersar Wetland Reserve is at a linear distance of more than 20 kilometers and radial distance of more than 14 kilometers from the mining area

10. That Respondent No. 1 has contended that the Hokersar Wetland Reserve is at a linear distance of more than 20 kilometers and radial distance of more than 14 kilometers from the mining area.
11. That even though the Hokersar wetland is located around 20 kilometers away, the mining in Shaliganga will pollute the Hokersar Wetland by way of increased silt accumulation in the waters of Hokersar wetland. Shaliganga is a tributary of Doodh Ganga which enters Hokersar Wetland located in Srinagar / Budgam districts. Since the mining has already started in Shaliganga, the constant silt accumulation along with solid and liquid waste is causing eutrophication in the Hokersar wetland. The Hokersar Wetland is a habitat for migratory birds from Europe and Russia and excessive siltation in the waters of Hokersar Wetland is also destructing the habitat of the migratory birds.
12. That even though the mining area is located at a distance of more than 20 kilometers of linear distance and more than 14 kilometers of radial distance from the mining area, the water flow is having a direct impact on the ecology of the wetland, which is directly also impacting the habitat of migratory birds.
13. That letter dated 22.07.2022 written from the Wildlife Warden, Wetlands Division, Kashmir to the District Mineral Officer, Geology & Mining Department also acknowledges that:

“Dood Ganga Nalla is the main feeding channel to "Hokersar Wetlands Conservation Reserve" spread over an area of 1354 Hectares' which is a RAMSAR site of international importance and every year during winters, millions of Migratory birds from different parts of the world visit this precious wetland which is also known as Queen of Wetlands. Further, excessive extraction of mining will badly affect not only the flow and quality but also other characteristics of the said Wetland Conservation Reserve.”

Shaliganga Nallah is a tributary of Doodh Ganga and any mining activity in Shaliganga will also impact the water flow and quality to the Hokersar Wetland.

Copy of letter written from the Wildlife Warden, Wetlands Division, Kashmir to the District Mineral Officer, Geology & Mining Department dated 22.07.2022 is annexed herewith as **ANNEXURE A-3**.

14. That the No-Objection Certificate from the Wildlife Protection Department granted to the projects clearly mention that Shaliganga Nallah is a feeding channel to Hokersar Wetland Reserve. It was noted in the 81st meeting of JKEAC that the Shaliganga Nallah are:

“feeding channels to Hokersar Wetland Reserve and mining activity in the block should not affect the flow and quality of the water”

It was also noted that,

“the mining activity may be detrimental to natural flow and quality of the water flowing into Hokersar Wetland Reserve which is an internationally declared RAMSAR site and home to migratory avifauna.”

15. That on this basis, the 81st JKEAC decided to reject the proposal. However, the Environmental Clearance has been granted despite this observation made by JKEAC. It is pertinent to mention that mining in Shaliganga will have a direct impact on the Hokersar Wetland as it acts as a feeding channel for the wetland.

The project proposal was considered in light of the District Survey Report and the same was required to be updated to include replenishment studies

16. That the Respondent No. 1 has admitted that the District Survey Report is required to be updated to include replenishment studies as per the procedure laid out in the Enforcement and Monitoring Guidelines for Sand Mining- 2020. As per Respondent No. 1, since no replenishment studies for the District Survey Report were conducted, reduction in the targeted mineral production and limiting the depth of extraction of the mining block was directed.
17. That the action taken by the Respondent No. 1 in reducing the targeted mineral production and limiting the depth of extraction of the mining block is not adequate and in violation of the Enforcement & Monitoring Guidelines for Sand Mining issued by the MoEF&CC in January, 2020. As per the Guidelines, 2020, replenishment studies have to be conducted and be made a part of District Survey Report. The Guidelines, 2020 emphasises on the need to conduct replenishment studies, without which mining cannot be allowed. It states:

“Sustainable Sand Mining Guidelines, 2016” issued by MoEF&CC requires preparation of District Survey Report (DSR), which is an important initial step before grant of mining lease/LoI. The guidelines emphasize detailed procedure to be followed for the purpose of

identification of areas of aggradation/ deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited.

Calculation of annual rate of replenishment, allowing time for replenishment after mining, identification of ways of scientific and systematic mining; identifying measures for protection of environment and ecology and determining measures for protection of bank erosion, benchmark (BM) with respect to mean Sea Level (MSL) should be made essential in mining channel reaches (MCR) below which no mining shall be allowed."

18. That the Guidelines, 2020 also mention that, "*replenishment study should be conducted on regular basis*" and makes them a pre-requisite for starting any mining operation. Therefore, the mining in Shaliganga cannot start until replenishment studies are done and made part of the District Survey Report.
19. That the Guidelines also mention that the replenishment study as required under the SSMG2016 and EMGSM-2020 needs to be undertaken prior to the mining lease auction or grant of Environmental Clearance in terms of para 5.1 of the EMGSM, 2020 which is reproduced below:

"5.0 REPLENISHMENT STUDY

The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessing sand extraction.

Mining within or near riverbed has a direct impact on the

*stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on instream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, **to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period.***

5.1 Generic Structure of Replenishment Study

Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the

*state government to establish the replenishment rate of the river. **Based on the replenishment rate future auction may be planned.***

(Emphasis supplied)

20. That the Principal Bench of this Hon'ble Tribunal has vide Order dated 06.05.2022 in **Raj Kumar v. State of Uttar Pradesh & Ors. (Original Application No. 140/2021)** had directed that no mining lease auctions will be granted without a prior replenishment study and also directed that with regard to the leases already granted, no mining will be allowed until the replenishment study is completed. The relevant part is reproduced below:

*"11. Accordingly, the ACS, Mining, UP has fairly stated that **replenishment study will be conducted prior to auctions in future and with regard to the current leases, ongoing replenishment study will be expedited. In the light thereof, the leases will be renewed, if necessary.** Such studies for all Districts in UP will be completed by December 31, 2022 and for Banda by June 30, 2022. She has further stated that the allegation of instream mining will be verified and if found true, the same will be discontinued.*

*12. In view of above, **let the Replenishment studies be completed by credible institutions, following due procedure, in accordance with para 5 of EMSG, 2020. Further, no mining be permitted till replenishment studies are completed beyond the schedule laid down above.** The State may ensure that the Regulatory authorities are adequately equipped and capable to assess quantities of mined material. With regard to instream mining, it may be ensured that the*

machineries permitted or used otherwise comply with "Semi mechanised" mining operations in true sense. In all mining potential districts, environmental damage assessment be carried out and annual assessment reports placed in public domain on the websites of the Mining Department as well as the PCB. Compliance of SSMG, 2016 and EMGSM, 2020 and earlier directions of this Tribunal may be ensured by an effective monitoring mechanism."

(Emphasis supplied)

21. That this Hon'ble Tribunal in **Anjani Kumar v. State of Uttar Pradesh** vide Order dated 08.12.2017 had also emphasized on the importance of including replenishment studies in the District Survey Report, which is the first step before grant of mining leases. It was held:

*"It states that the **main object of preparation of District Survey Report** is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and **calculation of annual rate of replenishment and allowing time for replenishment after mining area**. Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof.*

...

The data collection and declared for preparation of DSR shall take precedence over other data

and would form the foundation for providing mining lease in terms of Appendix- x to the Notification dated 15th January 2016 must be prepared by the statutory authority stated therein i.e. DEIAA prior to awarding of permits for carrying on mining activity in any part of the State of UP."

(Emphasis supplied)

22. That in light of the Guidelines, 2020 and the Orders of this Hon'ble Tribunal prohibiting mining without adequate replenishment studies, mining in Shaliganga Nallah cannot be allowed to continue until replenishment studies are conducted.

Any violation of an Environmental Clearance condition should have been brought to the notice of Respondent No. 1 so that appropriate action under law could have been taken

23. That the Appellant has put the information on mining activities being undertaken in violation of the Environmental Clearance conditions in Shaliganga in public domain by putting the same on social media as well as in the form of news articles in various English dailies. The Appellant had published about the same in an article in English daily, 'Greater Kashmir' titled 'Illegal River Mining: It's Catastrophic' reiterating the illegality of the mining taking place in Shaliganga.

Copy of the article in English daily, 'Greater Kashmir' titled 'Illegal River Mining: It's Catastrophic' is annexed herewith as **ANNEXURE A-4.**

24. It is submitted that no action was taken by the State Government or the answering Respondent to ensure compliance with the conditions of the Environmental Clearance.

25. That the violation of Environmental Clearance conditions is still continuing at the mining site even after service of this Appeal was made to Respondent No. 1. The project proponent has violated Specific Condition No. 3 by exceeding the permissible depth of mining i.e. maximum 1 metre. Specific Condition No. 3 states:

"...Mining depth be restricted to max. 1m in aggregate and bulk density of 2.0 be adopted for calculating mineral production subject to maximum production of 34800MT."

The Appellant had uploaded videos on social media showing people drowning into the water of Shaliganga where mining is taking place, thereby showing that the depth is more than 1 meter.

26. That the project proponent has also violated Specific Condition No. 38 by undertaking mining at night and beyond 7 PM. Specific Condition No. 38 of the Environmental Clearance clearly states that:

"Restricted working hours. Mining operation has to be carried out between 6 am to 7 pm. During day light. Mining operations shall not be allowed at night."

27. The project proponent has also violated Specific Condition No. 53 by the usage of heavy machinery such as JCBs:

"Mining shall be done manually minimally supported by semi-mechanized methods. Heavy machinery like JCBs, Excavators/ L&T hydraulic excavators etc should not be allowed."

28. The project proponent has also violated Specific Condition No. 56 and Specific Condition No. 65 by carrying out mining activity in flowing water and active channel area. Specific Condition No. 56 clearly states that mining activity will not be allowed in flowing water channel area. It states:

"No mining activity shall be carried out in flowing water channel area within the mining block and adequate measures shall be taken to safeguard water quality and aquatic life including fisheries if available in the same."

Specific Condition No. 65 states:

"The EC is subject to condition that the project proponent shall not change the water course of the river and no mining activity shall be carried out in active channel area, if any in the mining block."

29. That the project proponent is also carrying out riverbed mining during the rainy season in violation of Sustainable Sand Mining Guidelines, 2016 which states, *"No River bed mining should be permitted during rainy season"*.
30. That Respondent No. 1 was aware of the illegal mining and violation of Environmental Clearance conditions at least from the time the service of this Appeal was done to them and yet they have failed to take any action with regard to it. The violations are continuing even when Respondent No. 1 was made aware of such violations.

REJOINDER TO REPLY OF RESPONDENT NO. 4 DATED 29.07.2022

31. That the Respondent No. 4 has erred in stating that the Appeal has been filed challenging only Environmental Clearance granted for Block 4 (Panzam Bridge to Trumbi Bagh). The above titled Appeal has been filed challenging three Environmental Clearances granted to Respondent No. 4 for extraction of riverbed minor mineral from three blocks (Block 1- Dreigam Bridge, Block 2- Banderpora Upstream and Block 4- Panzam Bridge to Trumbi Bagh) of Shaliganga Nallah.

32. That the Respondent No. 4 has raised the following grounds in their Counter- Affidavit:

- i. That Respondent No. 4 has left 25 metres distance between the mining site and the embankment, as is clear in the Evacuation Route Map of the Study Area.
- ii. That the grounds on which the first proposal for grant of Environmental Clearance to the project was rejected were duly complied with in the second proposal on the basis of which the Environmental Clearance was granted.
- iii. That since the Environmental Clearance was granted for mining upto 1 meter depth only, the requirement of replenishment data which has to be made part of the District Survey Report has been taken care of by the JKEAC itself.
- iv. That heavy machinery such as JCBs and loaders were only being used for the purpose of approach making since big sized boulders lying in the approach could not be removed manually.
- v. That mining operations have only been undertaken during day light from 8 AM to 6 PM.
- vi. That Respondent No. 4 is not involved in illegal mining.

Respondent No. 4 has left 25 metres distance between the mining site and the embankment, as is clear in the Evacuation Route Map of the Study Area

33. That Respondent No. 4 has claimed that 25 metres distance has been left between the mining site and the embankment as per SRO 105 of Government of Jammu & Kashmir dated 31.03.2016 (Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016), which is also

clear from the Evacuation Route Map of the Study Area annexed by Respondent No. 4 as Annexure A-1.

34. That the Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 has been amended by SRO 267 dated 03.07.2017 wherein the prohibition on mining of any minor mineral has been reduced from 25 metres to 10 metres from any embankment. It is submitted that even 10 metres of space is also not left by Respondent No. 4 between the embankments and the mining area.
35. That the Google Earth snapshots already annexed as **Annexure A-1** of this Rejoinder clearly show that the mining is being undertaken within 10 metres distance from the embankments as well.
36. That the Evacuation Map annexed by Respondent No. 4 does not make it clear how much distance between the mining site and the embankments has been left and how the provisions of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 are being complied with.
37. That mining is being undertaken within 10 metres distance from the embankments in complete violation of the Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016.

That the grounds on which the first proposal was rejected were duly complied with in the second proposal on the basis of which the Environmental Clearance was granted

38. That Respondent No. 4 has stated that the grounds on which the first proposal was rejected in the 81st meeting of JKEAC have been complied with by Respondent No. 4. As per Respondent No.4, this was duly considered by JKEAC in its 87th meeting, on the basis of

which the Environmental Clearances were granted. Respondent No. 4 has stated that the following were the issues that have been complied with by them and therefore the contention that earlier grounds of rejection were not considered by JKEAC is faulty:

- i. Submission of 'No Objection Certificate' by the Irrigation Department stating that no irrigation off-take points fall within 200 metres from the mining site;
- ii. Undertaking by Respondent No. 4 to the Wildlife Protection Department.

39. That it is denied that the first proposal was rejected in the 81st meeting of JKEAC only the abovementioned two grounds. JKEAC had considered other factors as well in deciding to reject the proposal. These grounds were:

- i. The Title verification issued by the Tehsildar Chadoora vide letter dated 05/08/2021 indicates that the land under the block falls under Shamlaat category. The consent of the rightful owners is not on record.
- ii. Heavy Illegal mining activity was observed in and around the mining block as per features on latest Google image of October, 2021 which needs appropriate action by the competent authority.
- iii. The Committee examined the mining block on the latest Google Image and observed materials having been already depleted to a large extent due to heavy illegal mining and hardly any material is available for exploitation without endangering the environmental setting of the nalla.
- iv. The EAC had observed that the District Survey Report was prepared without including replenishment studies.

40. That therefore, all the grounds on which the proposal was rejected by the 81st meeting of JKEAC have not been complied with.

41. That with regard to categorization of land under Shamlaat category, the Hon'ble Supreme Court in **State of Haryana v. Jai Singh & ors. (Civil Appeal No. 1680 of 2022)** had held that land categorized as '*Shamlaat land*' will be for common purposes and would fall under the purview of the municipality:

*"104. Thus, if the whole or part of Gram Panchayat area is included in the municipal limits, **the land reserved for common purposes as part of agrarian reforms would stand vested with the municipality.** Such vesting is not a part of agrarian reforms but shall be on account of extension of municipal limits. When the municipal limits are extended, the residents of the Panchayat also became residents of the municipality. The common purposes of the village community prior to extension of the municipal limits would be deemed to be common purposes for which land can be utilized by the municipality. Therefore, such vesting of land reserved for common purposes is not an acquisition for the first time but transition of the land reserved for common purposes in the changed scenario when the land vest with the municipality.*

*107. Therefore, in case of a dispute about the right, title or interest in any land for or on behalf of any person, the remedy under the 1961 Act alone can be exercised. This will include right, title or interest in all the three categories of land i.e., shamilat deh owned by panchayat, **shamilat land vested in terms of 1948 Act falling in second category and the land, the management and control whereof is***

vested with the panchayat, land being within the permissible limits of the proprietor, the management and control of which vest with the panchayat."

(Emphasis supplied)

42. That the irrigation canal is located within a distance of 200 metres from the mining site, within about 10 metres distance. For example, in Panzan Shah Mohalla, the irrigation canal is running along the mining site well within a distance of 200 metres. The irrigation canal being located in such close proximity of Shaliganga will lead to breach of irrigation canal. Similar instances have taken place in Karnal District where villagers have alleged that illegal mining is leading to breach of Western Yamuna Canal. This is clear from the photographs already annexed as **ANNEXURE A-2** of this Rejoinder.
43. That Respondent No. 4 has given an undertaking that the cost of rehabilitation of any damage done to the existing water course leading upto the Hokersar wetland in terms of its ecological and hydrological factors will be borne by Respondent No. 4. However, this does not solve the issue of silt accumulation and eutrophication of water in the Hokersar Wetland. Continuous mining operations are leading to constant damage to the ecology of the Hokersar Wetland. Same has also been acknowledged by the Wildlife Warden, Wetlands Divisions, Kashmir already annexed as **ANNEXURE A-3** of this Rejoinder.
44. That therefore, the conditions that Respondent No.4 has complied with do not serve the purpose of preservation of the ecology of the area.

That since the Environmental Clearance was granted for mining upto 1 meter depth only, the requirement of

replenishment data which has to be made part of the District Survey Report has been taken care of by the JKEAC itself

45. That inclusion of replenishment data in the District Survey Report is a mandatory requirement as per the Sustainable Sand Mining Guidelines, 2016, Enforcement & Monitoring Guidelines for Sand Mining issued by the MoEF&CC in January, 2020 and the Order of this Hon'ble Tribunal in **Raj Kumar v. State of Uttar Pradesh & Ors. (Original Application No. 140/2021)**.
46. That permission of mining depth only upto 1 metre does not change the requirement of including replenishment studies in the District Survey Report, without which no mining operations can start. Neither the Guidelines issues by MoEF&CC in 2016 or 2020 nor the Order of this Hon'ble Tribunal provide for such an exemption to be applied if the mining depth is upto 1 metre. Therefore, the mining operations being conducted by Respondent No. 4 are illegal and violative of the Guidelines and the Order of this Hon'ble Tribunal.

Heavy machinery such as JCBs and loaders were being used for the purpose of approach making since big sized boulders lying in the approach could not be removed manually

47. That Respondent No. 4 has partly admitted to heavy machinery such as JCBs and loaders being used in the mining operations.
48. That Respondent No. 4 is not only using heavy machinery for removing big boulders from the approach but is also using them for conducting mining operations in the stream. It is clear from the photographs taken by the Appellant that clearly show that smaller *bajri* and sand is also being taken out from the middle of the Shaliganga with the help of JCBs and being transferred into transporting trucks.

Photographs showing *bajri* and sand being taken out from the middle of the Shaliganga with the help of JCBs are annexed herewith as **ANNEXURE A-5.**

49. That even so, the Environmental Clearances do not provide for the usage of JCBs for taking out big boulders and emphasized on mining being done manually. Therefore, it is a clear violation of Specific Condition No. 53 of the Environmental Clearances.

That mining operations have only been undertaken during day light from 8 AM to 6 PM

50. That the Appellant has photographs to show that mining operations are continuing into the night, beyond the permissible timings given in the Environmental Clearances.

Photographs showing mining operations taking place beyond the permissible time are annexed herewith as **ANNEXURE A-6.**

That Respondent No. 4 is not involved in illegal mining

51. That the EAC in the 81st meeting had noted that heavy illegal mining activity was observed in and around the mining block as per features on Google image of October, 2021. The EAC had also observed that the mining block on the latest Google Image has already depleted to a large extent due to heavy illegal mining and hardly any material is available for exploitation without endangering the environmental setting of the nalla.
52. That on the basis of these, the first proposal was rejected. Therefore, the EAC had not only noted that illegal mining is continuing but also that the area is already depleted to a large extent and hardly any material is available for exploitation without endangering the environmental setting of the nalla. Respondent No. 4 has failed to acknowledge the same and no steps have been taken by either Respondent No. 1 or Respondent No. 4 regarding the already depleted mining area.

53) Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.



APPELLANT

THROUGH

RITWICK DUTTA



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VERIFICATION

Verified by Raja Muzaffar Bhat, aged about 44 years, S/o Bashir Ahmed Bhat, R/o 64, Alamdar Colony, Gopalpura, District Budgam, Jammu and Kashmir-191193 do hereby verify that the contents of Paragraphs 1 to 53 are true to my personal knowledge and nothing material has been concealed therefrom.



APPELLANT

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
APPEAL NO. 24 OF 2022**

IN THE MATTER OF:

RAJA MUZAFFAR BHAT

...APPELLANT

VERSUS

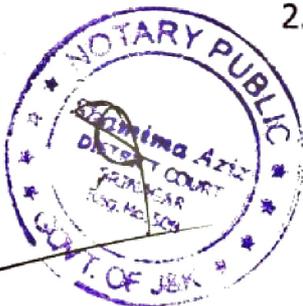
STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, JAMMU &
KASHMIR AND ORS.

...RESPONDENTS

AFFIDAVIT

I, Raja Muzaffar Bhat, aged about 44 years, S/o Bashir Ahmed Bhat, R/o 64,
Alamdard Colony, Gopalpura, District Budgam, Jammu and Kashmir- 191193
do hereby solemnly affirm and declare as under:

1. That I am the Appellant in the above titled Appeal and I am conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.



DEPONENT

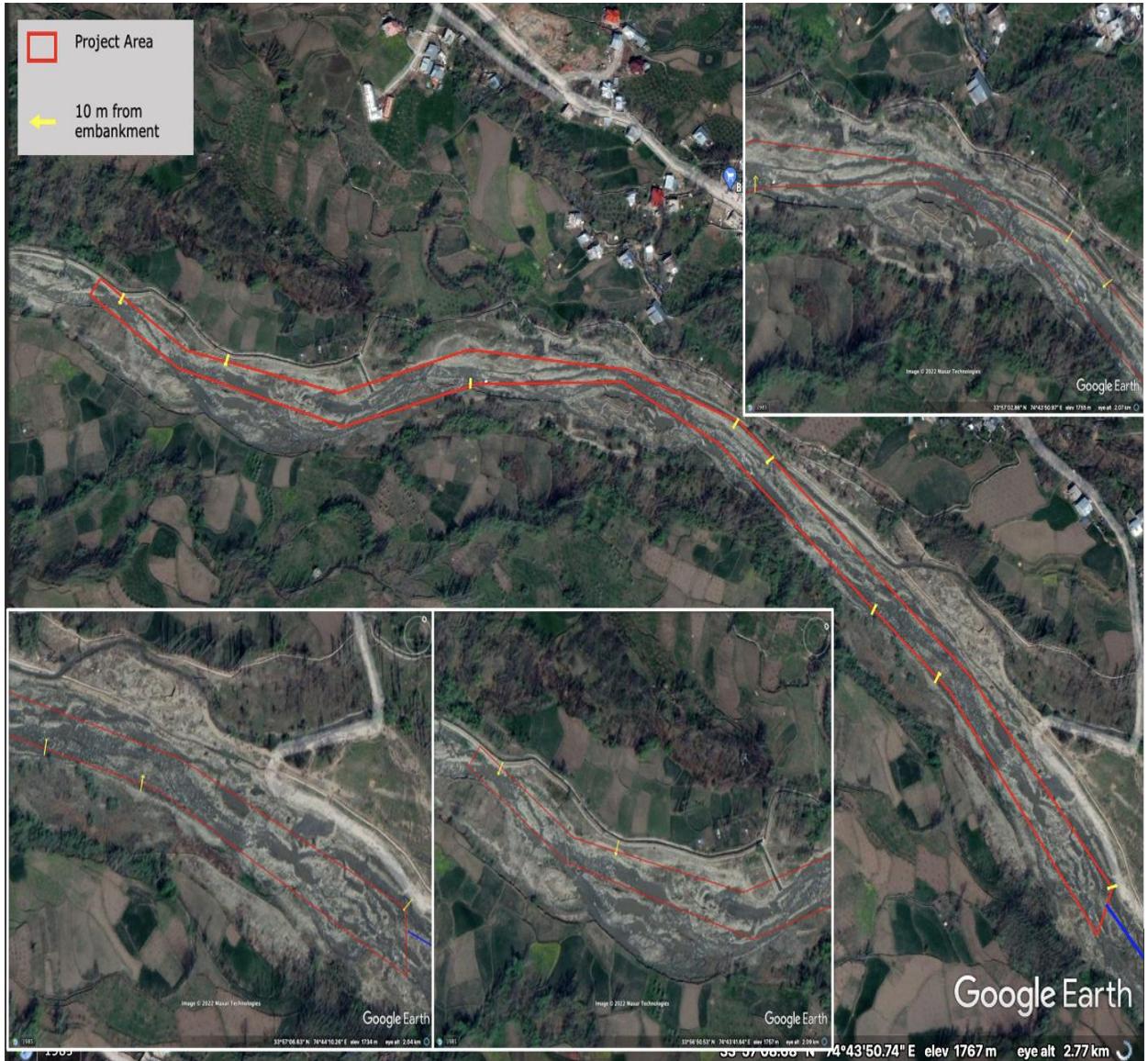
VERIFICATION

Certified that the statement declared
by me before me at Srinagar on this
29th day of July 2022 that the contents of the present
Affidavit are true and correct to my knowledge and belief and nothing
material is concealed therefrom.

SHAMIMA AZIZ
Notary Public

DEPONENT

ANNEXURE A-1







t.c.

Handwritten signature

ANNEXURE A-2

Screenshots taken from the video uploaded by the Appellant on social media along with screenshot of Google Earth image showing the irrigation canals with a distance of 200 metres from the mining site



t.c.

@handwritten signature



Office of the
Wildlife Warden, Wetlands Division, Kashmir
Srinagar

Annexure A-3

e-mail: hokersarwetland@gmail.com

The District Mineral Officer,
Geology & Mining Department
District Srinagar/ Budgam

No:- WLW (WL)/Estt/2022-23/694-96

Dated:- 22 -07-2022

Subject:- Illegal Mining in Dood Ganag Nalla.

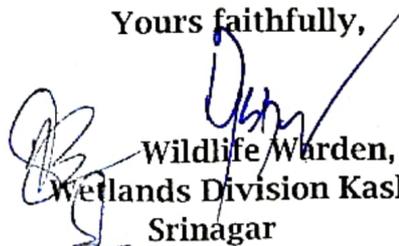
Sir,

Apropos the subject matter captioned above, it is to bring your kind notice that from reliable sources, this office came to know that deep (Approximately 10 Meters) illegal Mining is going on with the help of JCB's, tippers and tractors in Dood Ganga Nalla during day and night that too without following environmental guidelines in vogue. It worthwhile to mention here that Dood Ganag Nalla is the main feeding channel to "Hokersar Wetlands Conservation Reserve" spread over an area of 1354 Hectares' which is a RAMSAR site of international importance and every year during winters, millions of Migratory birds from different parts of the world visit this precious wetland which is also known as Queen of Wetlands. Further, excessive extraction of mining will badly affect not only the flow and quality but also other characteristics of the said Wetland Conservation Reserve.

In context of the above and in compliance to the directions of National Green Tribunal it is as such requested that mining activities in the Doodganga Nalla may kindly be regulated as per guidelines of Wildlife Protection Act 1972, Forest Conservation Act, Environment Protection Act & Wetland Conservation Rules .

Hope, an early action in this regard is solicited, please.

Yours faithfully,


Wildlife Warden,
Wetlands Division Kashmir
Srinagar

Copy submitted for information to:

1. The Regional Wildlife Warden, Kashmir Region Srinagar for information please.
2. Copy to Range Officer, Lakes Range-Hokersar for information. He is directed to monitor the mining activities carried out in Dood Ganga Nalla.

t.c.

Handwritten initials



OP-Ed

Illegal River Mining: It's Catastrophic

EIA clearance given, but PPs violate standard and specific environmental requirements



"The Department of Geology and Mining has moved from the practice of open-auctioning to e-auctioning and so far more than 173 mineral blocks across various districts of J&K, have been notified for e-auctioning." [Representational Image] File/GK

Dr Raja Muzaffar

^hed on : 23 Apr, 2022, 1:undefined0 am . 8 min read



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The e-auction notifications have so far been issued in respect of Districts of Poonch , Rajouri, Jammu, Samba, Kathua, Udhampur, Reasi, Srinagar, Bandipora, Baramulla, Budgam, Ganderbal , Kupwara and Pulwama. In fact the e-auctioning of mineral blocks was challenged before the J&K High Court in 2020 but the court upheld the e-auction mode for auctions of minor minerals.



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The J&K High Court ruled that e-auctions are the most transparent and it enables maximisation of the public interest and national priorities. A division bench of the then Chief Justice Gita Mittal and Justice Sanjay Dhar in October 2020 while dismissing several appeals by mining contractors against government's decision to switch over to e-auctioning of minor minerals said:



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Is mere e-auctioning the mining contracts sufficient to streamline the River Bed Mining (RBM) in J&K? Is this going to protect and preserve the environment, ecology and biodiversity of our rivers, streams and nallahs?

The allotment of River Bed Mining (RBM) is not an easy task as the contractors also known as Project Proponents - PPs have to go through a rigorous environmental clearance. Most of the proposals are rejected by J&K Environment Impact Assessment Authority- JKEIAA which works under the Ministry of Environment Forests and Climate Change Govt of India .

Those who manage to get the clearance have to fulfil several standard and specific conditions. Through this piece I have tried to analyse the mining contracts given during the last 1 year in Budgam district which is on the threshold of environmental disaster.

Our paddy land has been destroyed by brick kilns , almond orchards in Karewas destroyed due to clay mining and now our rivers and streams are the next target which will perish in the next two to three years if we don't wake up.

The mining contracts given across J&K are all illegal and I have tried my best to substantiate and justify my claim with evidence and validation by examining and scrutinising the mining contracts allotted in Doodh Ganga and Shali Ganga rivers.

Environmental Impact Assessment

Without environmental impact assessment the River Bed Mining (RBM) cannot be undertaken by any project proponent. Many contractors and companies who had applied for the environmental clearance (EC) for undertaking river bed mining in different rivers, nallahs and streams in J&K could not get requisite clearance as they didn't fulfil the required criteria.

The official documents accessed by this author reveal that M/S NKC Projects Pvt Ltd which has been allotted the construction of Srinagar Ring Road project applied for

The same company was granted EC for another similar work to be taken up around Dreygam bridge downstream under EC identification No: EC22B001JK161595. The environmental clearance (EC) was granted subject to fulfilment / compliance of around 45 standard and 75 specific conditions respectively.

Unfortunately many of these standard conditions are not at all fulfilled. This is not the case with only this particular company, but almost all the contractors (Project Proponents-PPs) don't comply with these requirements.

As for the 75 specific conditions are considered, Project Proponents-PPs are not fulfilling the majority of these requirements as well. It is impossible to analyse all the 75 conditions but i have tried to throw some light on around more than half a dozen such requirements.

RBM to be Sold at 50 % Discount



The specific condition number 5 says that river bed material (boulders, gravel, muck, sand) shall be sold to local population within the radial distance of 2 kms from the mine site for residential construction purposes at 50 % concessional rates.

The project proponents (PPs) who have been allotted mining contracts in J&K are selling the river bed material (RBM) to stone crushing units at very high rates, some of which are located as far as 20 to 30 kms.

The NKC Projects Pvt Ltd has its own stone crushing unit and all the material is transported to that site at Gudsathoo Budgam and the material is used for a road project and not sold to local residents. This is an open violation of the condition number 5 of environmental clearance.

The sand, gravel or a boulder truck load was sold at an average rate of Rs 4000 to 5000 few years back and as per the EC norm same should have been available @ Rs 2000 to 4000 in the areas (50 % discount) where river bed mining is done such as Doodh Ganga or Shali Ganga areas of Chadoora.

JCBs, Excavators not Allowed

The specific condition number 53 stresses on manual mining. The said guideline reads

“Mining shall be done manually minimally supported by semi-mechanised methods. Heavy machinery like JCBs, Excavators, L&T hydraulic excavators etc., should not be allowed. Emphasis should be given to locally available labour force to address socio economic condition of locals”

When we see on the ground not only JCBs are used but huge L&T & Poclain hydraulic cranes are being pressed into service. I reported this several times and went live on Facebook as well, with huge machines working in Doodh Ganga and Shali Ganga, but authorities at helm like officers of Geology and Mining and District Administration Budgam are not at all bothered to even enforce these guidelines of J&K Environmental Impact Assessment Authority -JKEIAA.

I brought the matter into the notice of the District Minerals Officer Budgam and Sub Divisional Magistrate Chadoora several times but they seem to be helpless. These guidelines have actually been proposed by the Ministry of Environment, Forests & Climate Change (MoEFCC) Govt of India. The Supreme Court of India & National Green Tribunal (NGT) as well have given several orders in this regard.

The guideline number 71 says that mineral blocks cannot be sublet to third parties without written approval from JKEIAA, but in case of Doodh Ganga and Shali Ganga the work has already been sublet to 3rd parties. Is JKEIAA aware of this development?

No Mining after Sunset

The guideline number 38 stresses upon the project proponents not to carry out any mining activity after 6 pm and before 9 am, but this guideline is also violated.

The Geology and Mining has even failed to install CCTV cameras around mining sites to monitor the activity. This is a deliberate attempt as the officials of this

Guideline number 30 calls upon the Geology and Mining Department to use technology like Bar Coding , Information and Communication Technology and web-based services , SMS applications to account for weight of minerals being taken out of the mining block and number of trucks moving out with the mineral.

These guidelines are also violated openly. No rate list for minerals is maintained at sites.

The guideline number 41 says that no extraction of stones and boulders shall be done in landslide prone areas, but in case of Doodh Ganga and Shali Ganga the project proponents are mining in the landslide prone areas which have already been devastated during 2014 floods.

The guideline number 19 says that aesthetic view of the area be taken care of but when we see the condition of rivers where mining is being done, they look like a bombarded area.

Pre-feasibility Report

According to the pre-feasibility report submitted by one of the project proponents NKC Projects Pvt Ltd on 8.2.2022 before JK EIAA has given in writing that mining will be confined to extraction of material from the dry river bed & the operation will be open cast semi mechanised & partially manual mining method in which the material will be collected in its existing form.

Mining will be carried out only during the day time. Extraction of the minor mineral will be completely stopped during the monsoon season. The company has further given an undertaking that the mining will be restricted down to 1 m below river bed. These written undertakings are also violated.

Rule 4 of Mining Rules 2016 Violated

The Rule 4 under Sub heading Other restrictions reads as under:

Ganga, Shali Ganga, Tailbal Nallah near Harwan Srinagar, Pohru nallah in Kupwara and many other streams which are not more than 50 meters wide? These allotments are all illegal that should be cancelled forthwith. In case of Shali Ganga, Doodh Ganga and other rivers / streams heavy duty JCBs , L& T hydraulic cranes are being used which go as deep as 5 to 10 meters into these rivers / streams.

Conclusion

As per my research all the project proponents who have been allotted mining contracts in river beds across J&K fail to fulfil most of the EIA requirements and J&K Environmental Impact Assessment Authority- JKEIAA seems to be mute spectator to it.

The authority members hardly visit the mining sites and only relies on reports from Govt Departments like Geology & Mining ,Irrigation & Flood Control, PHE , Fisheries , Forest , Social Forestry , Pollution Control Board etc.

This has to be viewed very seriously and I would be brining it into the notice of National Green Tribunal -NGT who have already ordered Rs 3 crore penalty against erring Govt officers for allowing solid and liquid waste dumping in Doodh Ganga and illegal mining.

The Govt departments in most of the cases give their NoC to project proponents - PPs which can be easily challenged before any judicial or quasi -judicial forum or tribunal. Unfortunately we have very few people or NGOs in J&K who fight these cases legally.

I would appeal public spirited citizens and NGOs to come forward and work towards climate justice which is an essential component of UN's sustainable development goals.

Illegal river bed mining is catastrophic which will not only impact our water ecosystem but is a great threat to our agriculture as well.

t.c.

@pawansh7

ANNEXURE A-5

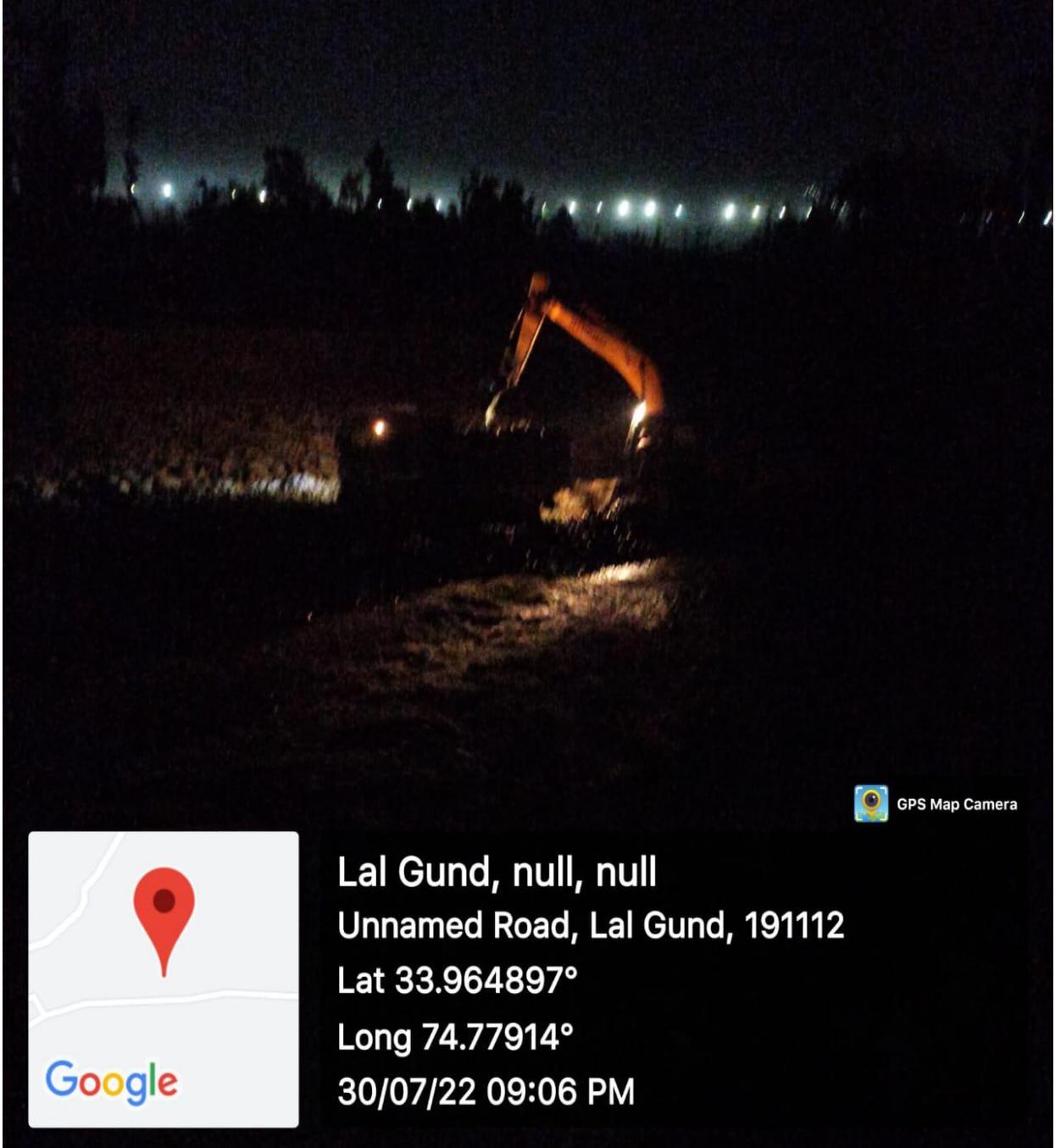
Photographs showing *bajri* and sand being taken out from the middle of the Shaliganga with the help of JCBs





t.c.

@handhas7-



t.c.

Chandrasekar