

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI

(PRINCIPAL BENCH)

IA No 372 of 2024

IN

OA No 515 of 2023

IN THE MATTER OF:

Ganga Pollution Vs State of U.P & Ors


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Place New Delhi

Respondent NMCG

Date: 8.11.2024

Through 

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IN THE MATTER OF:

Ganga Pollution Vs State of U.P &Ors

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NATIONAL MISSION FOR CLEAN GANGA (NMCG), DEPARTMENT OF WATER RESOURCES, RIVER DEVELOPMENT AND GANGA REJUVENATION MINISTRY OF JAL SHAKTI, NEW DELHI

Most Respectfully, I Anup Kumar Srivastava aged 57 years, working as Executive Director (Technical) in the National Mission for Clean Ganga (NMCG), D/o WR, RD&GR, Ministry of Jal Shakti do hereby solemnly affirm, and declare as under:

1. That I, the deponent is working as Executive Director (Technical) in the NMCG and well conversant with the facts and circumstances of the present case on the basis of the information derived from the official records, and competent to submit this affidavit on behalf of the answering Respondent NMCG. That, NMCG is one of the authorities constituted under River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 issued under the provisions of the Environment (Protection) Act, 1986.

2. That, amongst other issues, the Hon'ble NGT is seized of the issue involved pertaining to the demarcating the Flood Plain Zone

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(FPZ) of River Ganga, especially in reference to the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 [River Ganga Authority Order, 2016]. The answering respondent has filed an affidavit before this Hon'ble Tribunal apprising the steps being taken that Ministry of Jal Shakti (MoJS) has constituted a Committee vide O.M dated 28.11.2022 and that the said Committee has proposed the division of flood plain into three zones for urban settlement and two zones for rural settlement. It was further submitted that the NMCG, from time to time, however has been advising all the states governments in Ganga basin for demarcation, delineation and notification of river flood plains and removal of encroachment from the riverbed/floodplain of the river Ganga and its tributaries in accordance to the provisions of the River Ganga (Rejuvenation, Protection and Management) Authorities Order. 2016.

3. That the I.A 372/2024 has been filed by the Respondent no. 26, i.e., Omaxe Pancham Realcon Pvt. Ltd before this Hon'ble Tribunal for appropriate order allowing the said respondent to continue the construction of the projects being developed in compliance of the approvals granted by competent authorities in the State of UP. In this regard, it is submitted that it is a matter of record that the Hon'ble High Court of Allahabad vide its order dated 19.08.2011 has restrained any construction activity within 500 meters from the



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high flood level (HFL) at the bank of rivers Ganga and Yamuna in the city of Allahabad/Prayagraj. In this context, it is submitted that as per the provisions contained in the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016, the following is submitted:

- i. *Para 3 (1)*- "flood plain" means 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 hundred years;
- ii. *Para 6 (3)*- the provisions inter-alia provides that 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, provided that in exceptional circumstances like natural calamities or religious events at traditional locations, temporary structures can be raised after prior permission of the National Mission for Clean Ganga acting through the State Ganga Committee and the District Ganga Committee. And it is further provided further that in case any such construction has been completed, before the commencement of this Order, in the River Bank of River Ganga or its tributaries or active flood plain area of River Ganga or its tributaries, the National Mission for Clean Ganga shall review such constructions so as to



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examine as to whether such constructions are causing interruption in the continuous flow of water or pollution in River Ganga or its tributaries, and if that be so, it shall cause for removing them.

iii .Sub para (4) of para 6 provides that no person shall do any act or carry on any project or process or activity which, notwithstanding whether such act has been mentioned in this Order or not, has the effect of causing pollution in the River Ganga.

iv. Further as regards provisions of Para 42 of the River Ganga Authorities Order, 2016, it contemplates seeking prior approval in certain matters mentioned hereunder:

a)engineered diversion and storage of water in River Ganga without affecting the flow of water downstream of the River Ganga;

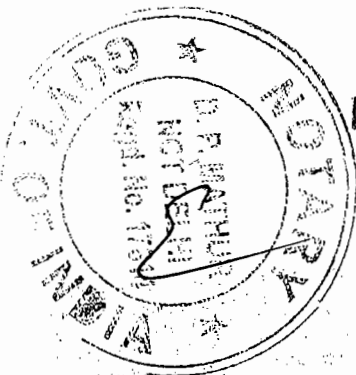
b)construction of bridges and associated roads and embankments over the River Ganga or at its River Bank or its flood plain area;

c)construction of Ghats or extension of any existing Ghat;

d)construction of jetties;

e)construction of permanent hydraulic structures for storage or diversion or control of waters or channelisation of River Ganga or its tributaries;

f) deforestation of hill slopes and notified forest and other eco-sensitive areas;



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g) any other activity which contravenes the principles laid out in paragraph 4 which the National Mission for Clean Ganga may specify.

Hence, the project proponent (M/s Omaxe Pancham Realcom Pvt. Ltd.) is mandated to seek prior approval from NMCG regarding the same.

4. That it is further submitted that the Hon'ble NGT (vide its order dated 13th July, 2017 in the matter of M.C. Mehta vs Union of India, OA 200/2014 Pt.142) in another matter of Manoj Misra has observed as under:

(i) Development and regulation of floodplain of Rivers falls within the purview of the State. Floodplain is an integral part of River system even though it is used only occasionally to pass down flood flows. When floodplain is not occupied by water it forms part of the land system providing possibilities of carrying on some restricted activity. It is not possible to provide uniformity in the extent of floodplains with respect to different Rivers as well as its various reaches.

(ii) Floodplain zoning has been accepted as an important non-structural 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



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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.

5. That it is further submitted that the Ministry of Jal Shakti (MoJS) has constituted a Committee for suggesting on the issue of flood plain demarcation in river Yamuna, vide Office Memorandum dated 05.09.2023, under the Chairmanship of Member (River Management), Central Water Commission (CWC) for identification & delineation of Flood Plain Zones in River Yamuna for the stretches (i) from Asgarpur to Etawah and (ii) from Shahpur to Prayagraj.. The Terms of Reference (ToR) of the said Committee are: -

- a. Identify the Flood plain zones of River Yamuna for the stretches (i) Asgarpur to Etawah and (ii) Shahpur to Prayagraj for return period 1 in 5 years, 1 in 25 years and 1 in 100 years respectively;
- b. Delineate the Flood Plain Zones for no development/ construction zone, regulatory zone and warning zone;
- c. The Committee may further form technical core committee for data collection, flood plain delineation as per return period analysis and any other technical work required for the study;
- d. The Committee may co-opt any other members, if required;



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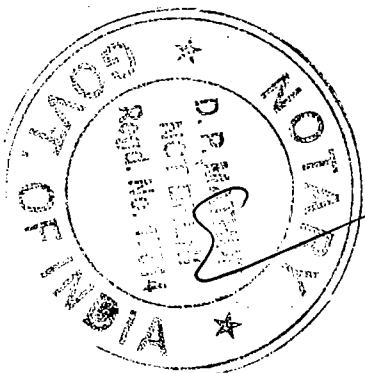
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- e. Field visits may be undertaken as per requirement;
- f. Demarcation of the Flood Plain Zone on ground will be done by the State Govt.

Hon'ble Tribunal vide its order dated 11th September, 2024 in the matter of Dr. Sharad Gupta vs State of Uttar Pradesh & ors in OA no. 316 of 2022 has noted that-

"30. Shri A.S Goel, Chairman of Committee is present in Tribunal physically. During course of arguments he made a statement that by 30.11.2024 report of Committee identifying and demarcating flood plain zone for two stretches noted above shall be submitted to State Government, and thereafter, it is the function of State of UP to notify the same in accordance with law."

6. Para 12 of Action Taken/Status Report submitted by Irrigation Deptt, Govt of Uttar Pradesh dated 13.09.2024 before the Hon'ble Tribunal in the matter of OA 515/20-24, states that- *'It is respectfully submitted that this action taken report/status report, combining flood frequency analysis, satellite data, and hydraulic modelling, will ensure accurate delineation and demarcation of the Flood Plain Zones for Unnao to Ballia of the River Ganga, in compliance with the Hon'ble Tribunal's directives. It is submitted that the entire process for the earmarking of the flood plain zone would be completed by the December 2024.'*



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(8)

7. That it is relevant to submit that this Hon'ble Tribunal vide its order dated 15th December, 2017 in the matter of M.C. Mehta vs Union of India [OA 200/2014 has observed that:

"Once the river enters the plain or even hilly areas where width of the river is more than 70 mtrs, in that event area of 100 mtrs from the edge of the river shall be treated as Prohibitory Zone while 100 mtrs to 300 mtrs would be treated as Regulatory Zone and till the time the State notifies the restricted activities, there shall be no construction activity even in the Regulatory Zone".

8. That it is humbly submitted for consideration of this Hon'ble Tribunal that if the project proponent, submits the application/proposal for seeking approval from the NMCG along with full details of the proposal and the clearances obtained from the other statutory authorities, the proposal shall be examined by the NMCG

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VERIFICATION:

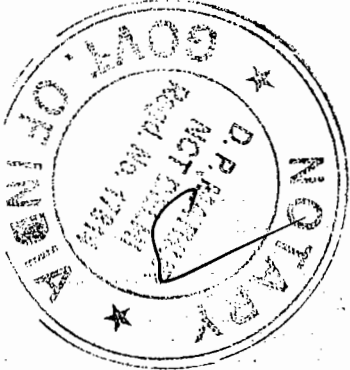
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Verified at New Delhi on ---November, 2024 that the contents of the above affidavit are true and correct to my knowledge based on official record and no part of it is false and nothing material has been concealed therein.

Identify By

DEPONENT

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ATTESTED

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