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HSPCB/NUH/2023/SPL-007

Date: 11/07/2023

To

The Registrar,
National Green Tribunal,
Faridkot House, Copernicus Road,
New Delhi.
Email ID:- judicial-ngt@gov.in

Sub. - “Report in the matter of Original Application No 892/2022 titled as Prem Mohan Gaur Vs National Highway Authority of India & Ors.” in compliance of National Green Tribunal order dated 11.01.2023.

R/Sir,

In the reference to above mentioned matter. The Hon’ble Tribunal vide order dated 11.01.2023 in the matter of Original Application No 892/2022 titled as Prem Mohan Gaur Vs National Highway Authority of India & Ors has directed as under:-

This original application under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as ‘NGT Act, 2010’) has been filed by sole applicant - Prem Mohan Gaur with prayer that respondents be directed to remove construction of road raised on pond in Village Kiranj and restore the pond to its original shape.

“In our view, a substantial question relating to environment for implementation of the scheduled enactments under NGT Act, 2010 has arisen but before taking any further action in the matter, we find it appropriate to obtain a factual report from concerned authorities, for which purpose, we constitute a joint Committee comprising State PCB, PCCF, Gurugram and District Magistrate, Gurugram who shall visit the site, collect relevant information and submit a detailed factual report beside action taken, if any, within two months by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”

Detailed Factual report of joint committee through District Magistrate (Nodal Agency) Gurugram in the above subjected case is enclosed herewith. It is requested to produce the above report before the Hon’ble bench in the above case. The case has been listed on 12/07/2023.

Regional Officer
Palwal & Nuh Region
For Haryana State Pollution Control Board

BEFORE THE NATIONAL GREEN TRIBUNAL,**PRINCIPAL BENCH, NEW DELHI****ORIGINAL APPLICATION NO 892/2022****In the matter of**

Prem Mohan Gaur

Applicant

Versus

National Highway Authority of India & Ors

Respondent(s)

Background :-

This original application under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') has been filed by sole applicant - Prem Mohan Gaur with prayer that respondents be directed to remove construction of road raised on pond in Village Kiranj and restore the pond to its original shape. It is also alleged that in Hajipur woodlot forest land, lots of trees have been illegally cut damaging environment and no action has been taken by concerned authority, therefore, appropriate action be taken against responsible respondents and environmental compensation be assessed and recovered from them. The applicant has said that construction of road is being carried out by National Highway Authority of India (hereinafter referred to as 'NHAI') and while constructing road in an elevated new National Highway-148NA (DND-Faridabad Ballabgarh bypass to KMP interchange stretch of Delhi-Vadodara-Mumbai Expressway) which is connected to Gurugram canal, the officials of NHAI have covered a pond, notified under Haryana Pond Waste Water Management Authority Act, 2018, and have also caused illegal cutting of trees in the forest area in violation of Forest (Conservation) Act, 1980 in village Hazipur, Gurugram which falls under Social Forestry scheme of Forest Department, Haryana.

Hon'ble NGT vide order dated 11.01.2023 has directed as follows:-

"In our view, a substantial question relating to environment for implementation of the scheduled enactments under NGT Act, 2010 has arisen but before taking any further action in the matter, we find it appropriate to obtain a factual report from concerned authorities, for which purpose, we constitute a joint Committee comprising State PCB, PCCF, Gurugram and District Magistrate, Gurugram who shall visit the site, collect relevant

information and submit a detailed factual report beside action taken, if any, within two months by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. District Magistrate, Gurugram will be nodal agency for coordination and compliance.”

DETAILED FACTUAL REPORT BY THE DISTRICT MAGISTRATE GURUGRAM

1. As per the Hon'ble National Green Tribunal, Principal Bench, New Delhi order dated 11 January 2023, site was visited by officers /officials of HSPCB, Revenue Department, District Administration, Forest Department and Panchayat members of Kiranj village on 31.03.2023. The site was again visited by the Additional Deputy Commissioner- Gurugram, Officers/Officials of District Palwal, Nuh and Gurugram from the Revenue Department, District Administration, Forest Department alongwith HSPCB, NHAI and Applicant on 31.05.2023. Thereafter two meetings were conducted at Gurugram under the chairmanship of Nodal officer. Photographs taken during the site visit are attached as **Annexure - A**. Detailed report of the committee on the claims of the applicant is as under:-

2(1). **Applicant's Claim.** Hajipur Village forest (woodlot) / charagah was diverted from its use as a forest to construction of NH 148NA without any permission from forest / MoEF&CC or Panchayat department. Hence, violating section 2 of FCA 1980. It is imperative to note here that in 1983 the forest department did plantation on the area for one year developing the land into a forest. Since then it has been a habitat of animals like neelgai, rabbits, peacocks, etc. Also, no permission from Hajipur Panchayat was taken in Contravention to Supreme Court Judgement (Civil Appeal No. 436 of 2011).

NHAI Stand. The land for Construction of said project has been acquired by Competent Authority of Land Acquisition (DRO of concerned District) following due procedure as per National Highways Act - 1956 duly notifying the Land Parcels u/s 3(A), upon sustaining all objections u/s 3(C). The award for Hajipur village was declared by DRO – Gurugram vide

Award No. 1/2019-20 dated 03.02.2020 and compensations as decided by CALA has already been deposited by NHAI and stands disbursed to rightful landowners.

For land pertaining to Forest Department is concerned, as per joint site inspection with forest department during the DPR stage, forest proposal for land identified by Forest Department for diversion was processed and approval accorded from Competent Authority of Forest Department.

DFO Response. DFO Gurugram states that as per the available records of Village Hazipur (Panchayat Land), the land is not categorized under Aravali Plantation Area / PLPA-1900 Sec 4 & 5 and Protected / Reserved Forest. It is mentioned that a proposal for permission for the use of non-forest purpose was received from NHAI regarding the construction of DND Expressway under FCA, 1980. The permission was granted by the MoEF&CC vide letter number 9-HRC38/2019-CHA dated 18.09.2019 for the use of forest land for non forest purpose.

Facts from site visit & information provided by concerned department It is a 15 acre (119K 16M) land at Khasra No. 3//10, 3//11, 3//20, 4//6, 4//15, 4//16, 4//17 owned by the Hajipur Village Panchayat. The Hajipur Village Panchayat Procedure Book Record of 1983 reveals that this land was given to Forest Department Sohna Range for one year to do plantation under a scheme and after one year the land was to be returned back to the Panchayat. The land is not categorized under Aravali Plantation Area / PLPA-1900 Sec 4 (Special) & 5 and Protected / Reserved Forest.

The land is identified as Charagah in the Jamabandi of 2013-14. The NHAI has completed the construction of NH-148NA (which has been made operational in February 2023) through this land, after acquiring 2.2 acres (17K 11M) vide Award No. 1/2019-20 dated 03.02.2020 under the provisions of National Highway Act, 1956. Also, the compensation for the same has been disbursed to the village Panchayat.

2(2). **Applicant's Claim.** Principle of Sustainable development has been violated as our natural resources have been destroyed for the construction of the new elevated NH-148NA which is of no use to local public as it doesn't even have a single point of access in local area.

NHAI Stand. The Project has been developed as Access Controlled Highway to Delhi as Spur of Delhi – Vadodara Expressway. The purpose of the project is to provide hassle free, congestion free, smooth and time saving connectivity between destination points. However, various structures already constructed at existing roads for cross movement of local people. Further, as per Concession Agreement there are provision for Entry / Exit for access to NH-148NA. Moreover, there is provision of service roads of three lane on both sides of the highway in bypass section. So, the local people use this facility.

Facts from site visit. There is no service road constructed or undergoing construction on any side of the new highway at the disputed site. If a service road is developed it will be beneficial for them.

2(3). **Applicant's Claim.** More than 441 trees were cut from the Hajipur village forest and no compensation has been given to the village Panchayat regarding the trees.

NHAI's Stand. The land for Construction of said project has been acquired by Competent Authority of Land Acquisition (DRO of concerned District) following due procedure as per National Highways Act – 1956 & REFCTLARR-2013 duly notifying the Land Parcels u/s 3(A), upon sustaining all objections u/s 3(C). The compensations for land & structure, tube well, trees etc. as notified by CALA has already been deposited by NHAI and stands disbursed to rightful landowners.

DFO Response. DFO Gurugram states that as Hazipur (Panchayat Land) Area falls under Section 4 (General) of PLPA, 1900, tree cutting is prohibited without the permission of Forest Department. After receiving a complaint, physical verification of Hazipur Panchayat Land was done and 263 trees of different species were found cut, out of them 22 trees belonged to exempt category. Permission ought to be taken to cut 241 trees from Divisional Forest Officer, Gurugram, but it was not taken by the user agency. Due to violation of Section 4 (General) of PLPA, 1900, Damage Report No. 035/0502 dated 18.01.2022 was issued against the culprits. The damage report was compounded in accordance with section 68 of IFA, 1927 and compensation of Rs. 58940.00 was received from the culprits.

Facts from site visit & information provided by concerned department. 263 trees were cut from the Hajipur Panchayat Land Area as per the record of Forest Department without any permission, out of which 22 were found under exempted category. An amount of Rs 58,940.00 was paid by concessioner M/s DRA Infra Pvt Ltd. Ahmedabad – 380015 (Gujarat) due to violation of Section 4 (General) of PLPA, 1900, for cutting of 241 trees.

2(4). **Applicant's Claim.** Approximately, 5 Acre forest out of the total 15 Acre, Hajipur forest has been rendered inaccessible due to the poorly planned constructed highway, dividing the forest into two halves.

NHAI Stand. Land pertaining to Forest Department is as per joint site inspection with forest department during the DPR stage, forest proposal for land identified by Forest Department for diversion was processed and approval accorded from Competent Authority of Forest Department.

Facts from site visit & information provided by concerned department. The new NH-148 NA has been constructed through the Hajipur Village Panchayat Land (charagah),

which has divided it into two halves. One of the halves with area of 3.34 acres (27K 144) has been rendered completely inaccessible in the absence of any service road or any other right of way.

2(5). **Applicant Claim.** 19800 trees from Kiranj and 4400 trees from Hajipur, planted by Forest Department in 2016-17 are missing from the site.

DFO Response. The DFO Gurugram states that as per record there was no plantation work has been done by Forest Range Sohna (Territorial) in Village Hazipur Panchayat Land in the year 2016-17.

NHAI Stand – This issue does not pertain to it

Facts from site visit & information provided by concerned department. The applicant relies on the plantation information of 19800 plants in Kiranj and 4400 plants in Hajipur, available at the Forest Department Haryana website accessible via the link: <https://haryanaforest.gov.in/cfp-plantation/>

No record about survival of these plants could be provided by Gram Panchayat.

2(6). **Applicant's Claim.** Two Rastas of Village Hajipur Panchayat i.e. with Khasra No. 51 & 52 are water logging sites with disoriented over-bridges over them. Thus, a breathing ground for diseases.

NHAI Stand. There is no water logging in the section. Further, there is a state highway (Palwal-Sohna) crossing at Hajipur. So, flyover at Km. 53+099 has been constructed so that the commuters may cross the road safely.

Naib Tehsildar Sohna Response. Naib Tehsildar Sohna reports that Khasra No. 51 & 52 are revenue rastas of 2 Karam width (11 feet) which extends from Hajipur Village in the

direction of forest and both cross beneath the DND Highway and are being used in public interest smoothly.

Facts from site visit & information provided by concerned department. There was no water logging at site during the site inspection. However, the over-bridge made over the Panchayat Rasta with 11 feet width having Khasra No. 51 has been made skew and thus, disoriented the revenue Rasta. There is no drainage beside the new Highway for evacuating water in rainy season.

2(7). **Applicant's Claim.** The culvert at the junction of Sohna-Palwal highway and the new highway NH-148NA has been blocked which was strategically developed in 1977 to evacuate flood water during heavy rainfall. Also, at the same site a Panchayat Rasta of Village Kiranj has been encroached upon creating a closed area of depression at the site. Hence, a threat of flood.

NHAI Stand. A Vehicular Underpass (30X2m) of 60m has been provided at Sohna-Palwal Highway for cross movement of traffic and cross section of Sohna-Palwal highway not disturbed. Cross structure for movement of villagers already constructed on existing Rasta

Naib Tehsildar, Indri Response. Naib Tehsildar, Indri reports that Khasra No. 424 (1K 14M) of Kiranj village revenue estate is a revenue rasta, which has been encroached to the extent of 19 Marla by NHAI while constructing the DND Highway.

Facts from site visit & information provided by concerned department. The peripheral structure of the culvert passing through the Palwal - Sohna Highway has been demolished and covered with Soil while constructing the new Highway (NH-148NA). This culvert served the purpose of evacuation flood water during heavy rainfall.

2(8). **Applicant's Claim.** The permission to cut few trees at the junction was taken at false pretext of providing connectivity to remote areas, however no connectivity has been given as highlighted in report prepared by PWD, Nuh.

NHAI Stand. Permission for cutting of trees as applicable had been accorded by the forest department to connect the Faridabad Bypass section with Delhi—Vadodara Expressway at Sohna near KMP Junction. Connection with Delhi-Agra of NH-19 (Old NH-2) provided through entry & exit.

Facts from site visit & information provided by concerned department. While seeking permission to divert the protected forest land of (Plantation strip abutting Sohna-Palwal Highway) in Kiranj village revenue estate, the NHAI submitted 'Justification for locating the Project in Protected Forest Area' note which states that "This project aim to improve connectivity particularly on economic corridors, border areas and to remote areas with an aim of rapid and safe movement of cargo to boost exports". However, there is no connectivity at this remote location of junction of new Highway NH-148NA and Sohna-Palwal Highway, thus, depriving local residents from utilizing the NH-148NA. In the lack of service road, the public has to travel via a much longer route to reach the entry & exit ramp constructed by NHAI at Old-NH2. Executive Engineer, Provincial Division, PWD B&R Nuh vide their Memo No 3253 dated 03 Mar 2022 addressed to the Deputy Commissioner Nuh, strongly recommended to provide access / interchange or a cut near to toll plaza at Village Kiranj for using of new National Highway, NH-148NA (DND Expressway).

2(9). **Applicant's Claim.** Two Nalas of Village Kiranj i.e. Khasra No. 91 & 92 have been encroached upon by NHAI which were connected to Gurugram canal. Thus, blocking the only way to evacuate water during flood situation. It is humbly prayed to alternatively

provide the Irrigation Nala extending from Gurugram Canal at RD 90000 outfall and connecting to nearest pond of Hajipur village. The Nala with Khasra number 91 be reconstructed and be extended by approximately 1 km to connect it with the nearest pond of Hajipur, thus, solving it's low ground water level issue.

NHAI Stand. Structure on highway as per site requirement as assessed by the DPR Consultant and reviewed by Independent Engineer has already been constructed at site as per GAD approved by concerned department. Compensation as determined by CALA for land acquired stands deposited by NHAI.

Naib Tehsildar, Indri Response. Naib Tehsildar, Indri reports that Khasra No. 91 & 92 are 'Nala' as per the latest Jamabandi with an area of 16K 10M. They have not been acquired by NHAI vide Report No. 246 and 247 dated 11.02.2020 but at site, DND Highway has been constructed over 12K 4M of Khasra no. 91 and approximately 1K 5M of Khasra No. 92.

Facts from site visit & information provided by concerned department. The area corresponding to the two irrigation channels i.e. 12K 4M of Khasra No. 91 and approximately 1K 5M of Khasra No. 92 have been encroached by NHAI while constructing the new Highway NH-148NA. As per Naib Tehsildar Indri report, this area was not acquired by NHAI.

Irrigation Department issued a notice vide letter No.-186-90/2-A dated 19.04.2022, to the General Manager & Project Director, CMU Mathura (at Faridabad), NHAI about illegally encroaching upon the Nala. Relevant translated portion of the notice is reproduced as "You have closed the Barsati-Nala in village Kiranj extending from the area of Gurugram Canal at R.D. 90000, on which illegal construction work is executing. This Barsati-Nala was

made to evacuate the rain water of village Kiranj, Hajipur and Khedli which has been closed by you. Due to which in the forthcoming rainy times, the danger of water-logging and flood exists.”

Another notice was also issued by BDPO Indri dated 26.07.2022 vide letter No. 1625 regarding encroachment of Barsaati-Nala highlighting that there is no other way of evacuating water from the village. The notice also highlighted that in the absence of the service road the farmers face difficulty in accessing their field on daily basis.

2(10). **Applicant's Claim.** 0.58 acre area of the only Panchayat Pond, notified under HPWWMA has been filled and constructed over by NHAI despite notice from Panchayat department and in the absence of necessary permissions violating HPWMMMA.

NHAI Stand. The Land for development of highway acquired by Competent Authority of Land Acquisition (DRO of concerned District) following due procedure as per National Highways Act – 1956 & RFCTLARR-2013 duly notifying the Land Parcels u/s 3(A), upon sustaining all objections u/s 3(C). Land vested in the Central / State Government under NH Act is muted in the name of Central Government / MoRT&H. Further, so as to maintain the ecology and environment a minor bridge has been constructed without disturbing the pond.

Naib Tehsildar, Indri Response. Naib Tehsildar, Indri reports that in Village Kiranj, the Khasra Number 30//3 (8K 0M) and Khasra No. 30//8 (7K 16 M) are registered as Pond. Vide Report No. 246 dated 11.02.2020, the 4K and 1M area has been acquired by NHAI for constructing DND Highway. The remaining area of the pond is 11K 15M. After measuring the pond at site, it was found that there is no encroachment on the pond.

Facts from site visit & information provided by concerned department. The Pond is

notified under the provisions of HPWWMA Act, 2018 and a Unique ID:01HRNUHINR0187KIRA001 was assigned to the pond.

NHAI has acquired the 0.58 acre of land by following due procedure as per National Highways Act – 1956 & RFCTLARR-2013, however, no permission was taken from HPWWMA (structure, water flow, etc) in any way. The BDPO Indri issued letter No. 1625 dated 26.07.2022, to the General Manager & Project Director, CMU-Mathura (Faridabad), NHAI stating that the pond's natural state has been illegally changed by filling it with soil violating the Haryana Pond and Waste Water Management Authority Act, 2018 and various order of National Green Tribunal.

The acquired pond was filled and the elevated new NH-148NA (DND) road has been made on it whose construction was completed in January 2023.

2(11). **Applicant's Claim.** Approximately 100 trees were cut from the banks of the Nalas and Kiranj pond but no compensation to the village panchayat was given for the same.

NHAI Stand. CAMPA fund amounting to Rs 12,76,657.00 stands deposited for Nuh District and Rs 9, 37, 238.00 for Gurugram District for Forest Land Diversion which includes Tree felling charges.

Facts from site visit & information provided by concerned department. The CAMPA amount submitted corresponds to the trees which were felled from the land belong to Forest Department. However, no compensation has been

given for the entire stretch for the trees which stood on private farmer's land, Panchayat land or any other owner apart from Forest. From the Google Earth image, it is clear that trees existed on the stretch where the new road has been developed. However, it is not feasible to count the number of trees from the same.

As per Compensation Award No. 01/2019-20 dated 03.02.2020 declared by DRO-cum-CALA states that "The land owners will cut their crops and trees if any sown as no compensation of crops and trees has been awarded."

2(13). **Applicant Claim.** Also, please note that Handbook of using FCA 1980 provides that when a forest land has been diverted without the necessary permission for non-forest purpose will remain a forest.

NHAI Stand. Land pertaining to Forest Department as per joint site inspection with forest department during the DPR stage has been diverted as per approval by Competent Authority of Forest Department.

Facts from site visit. It is a matter of record.

Station: Gurugram

Dated: July 2023


District Magistrate
Gurugram





