

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION 392 OF 2022

IN THE MATTER OF:

PRASOON PANT & ANR.

... APPLICANTS

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

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THROUGH



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PLACE: NEW DELHI

DATE:- 12.07.2023

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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**RESPONSE TO THE COMPLIANCE REPORT FILED BY THE JOINT
COMMITTEE DATED 15.05.2023 AND SUPPLEMENTARY COMPLIANCE
REPORT DATED 30.06.2023 ON BEHALF OF THE APPLICANTS**

MOST RESPECTFULLY SHOWETH:

1. That the above titled application was filed raising the grievance of illegal extraction of ground water by the builders operating in Noida, particularly forty named in the array of parties as respondent Nos. 09 to 48 which have total 63 projects. The Applicant submitted that the statutory authorities have failed to prevent illegal extraction of ground water for commercial purposes resulting in depletion of ground water level in the area identified as 'overexploited' as per assessment of the CGWA. That vide order dated 05.07.2022, the Tribunal constituted a joint Committee of CPCB, State PCB and District Magistrate, NOIDA to verify facts and furnish an action taken report in the matter. It was directed that if any adverse material is found by the Committee, the affected parties may be put to notice of these proceedings and a copy of report be furnished to the said parties for their response, if any, before the next date.
2. That accordingly, the Joint Committee had filed its report dated 07.10.2022 after field verification. Field verification was undertaken for 33 group housing projects out of 63 projects wherein only 25 projects were found drawing water illegally. It had recommended dismantling of bore wells set up without permission, levy of compensation for illegal withdrawal of ground water in accordance with

Notification dated 24.09.2020 of Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, Central Ground Water Authority, Government of India. The Joint Committee had further recommended for the Project Proponent to maintain proper log book regarding the source and quantity of water consumption. Further, it was recommended that the under construction projects should use only STP treated water.

3. That thereafter, the matter was heard on 15.11.2022 wherein this Hon'ble Tribunal directed for the sealing of all illegal operating bore wells and recovery of interim/floor level compensation of 0.5% of the project cost from the Project Proponents for the illegal extraction of ground water in the past considering the cost of such water with deterrent element and the cost of replenishing ground water level. The Joint Committee was further directed to consider the data and view point of the Project Proponents', if any filed. Further, the Report of status of compliance was also directed to be filed by the UP State PCB.
4. That accordingly, the UPPCB filed its compliance report on 15.05.2023 on behalf of the Joint Committee, as required by the order of this Hon'ble Tribunal dated 15.11.2022 wherein it had observed that out of remaining 30 projects (from the total 63 projects), 16 were illegally drawing groundwater summing up to total 41 projects illegally extracting groundwater. The Joint Committee issued notices to all the defaulting units and imposed interim compensation totaling to about Rs. 76 crores on 38 builders out of 41 **(Pg No. 291-292 of Report dt. 15.05.2023)**. In this, Lucky Palm Valley project, Novel Valley and Sindhuja Greens Village were not included for interim compensation nor included for final compensation due to lack of records.
5. That thereafter, a supplementary compliance report dated 30.06.2023 was filed wherein the final compensation for the 41 defaulting projects was calculated by the Joint Committee. The final compensation levied were only for 38 out of 41 defaulting projects which totaled to about Rs. 230 cr.

Objections To The Compliance Report Dated 15.05.2023 And

Supplementary Compliance Report Dated 30.06.2023:

6. That the Applicants would like to raise the following objections to the compliance report dated 15.05.2023 and supplementary compliance report dated 30.06.2023:
7. That the supplementary compliance report dated 30.06.2023 had mentioned calculation of final compensation by the Joint Committee for the 41 defaulting projects as required by the order dated 15.11.2022 passed by this Hon'ble Tribunal. However, the Joint Committee did not calculate the total compensation on the projects **(Pg. 313 of Paperbook)** given in the table below with reasons mentioned by them. The Applicants submit their objections to the reasoning provided in the Reports:

S.No	Name and Address of Project	Interim compensation levied or not (As per pg. 291-292 of paperbook)	Reason for not levying compensation (as mentioned in the Report)	Objections of the Applicants
1	Ajnara Homes (APV Realty Ltd.) Plot No. GH-03, Sector-16B, Greater West, Uttar Pradesh	Yes- Rs. 1.84 cr.	No records available regarding water consumption and borewell installation	It is not a valid ground from exemption of the calculation of the environmental compensation for the extraction of groundwater
2	Ajnara Le Garden (Ajnara Realtech Limited), GH-02, Sector-16B, Greater Noida West (Phase-1, Tower D,E,F,G)	Yes- Rs. 1.01cr.	No records available regarding water consumption and borewell installation	It is not a valid ground from exemption of the calculation of the environmental compensation for the

				extraction of groundwater
3	Gaur City Mall, Plot No.C-1B/ GH-01, sector-4, Gr. Noida	Yes- Rs. 3.26 cr.	It was informed by PP that the project has obtained permission from UPGWD for abstraction of ground water through 01 bore well, copy of same is attached	1. No copy of the NOC granted to the project has been attached. Further, the NOC granted to the project is violating Section 12 of the Uttar Pradesh Ground Water (Management and Regulation) Act, 2019 which prohibits any new well for commercial, industrial, infrastructural and bulk use within the notified areas.
4	Gaur City-1, GH-01, Sector-4, Gr. Noida	Yes- Rs. 4 cr.	1. As per information provided by PP, 07 operational Tubewells/ Borewells are established by GNIDA and no ground water abstraction is being done by PP itself. 2. During joint visit it was found that out of total 18 bore wells, 11 bore wells (not energized) were found without pump and electricity supply. It was informed by PP that all	The report had failed to mention whether GNIDA had indeed installed bore wells in the premises of the said projects of the Project Proponents or not. However, in fact, if the GNIDA had indeed installed bore wells at Gaur Builder projects, then whether these were exclusively meant for

			these bore wells were used for Geotechnical Investigation i.e. to obtain information on the physical properties of soil earthworks and foundations at initial ground stage of project	consumption by Gaur Builder projects have not been explained in the report along with water consumption data for all such operational bore wells.
5	Gaur City-2, GH-01, sector-16C, Gr. Noida	Yes- Rs. 6.6 cr.	<p>1. As per information provided by PP, 06 operational Tubewells/ Borewells are established by GNIDA and no ground water abstraction is being done by PP itself.</p> <p>2. During joint visit it was found that out of total 25 bore wells, 19 bore wells (not energized) were found without pump and electricity supply. It was informed by PP that all these bore wells were used for Geotechnical Investigation i.e. to obtain information on the physical properties of soil earthworks and foundations at initial ground stage of project</p>	<p>The report had failed to mention whether GNIDA had indeed installed bore wells in the premises of the said projects of the Project Proponents or not.</p> <p>However, in fact, if the GNIDA had indeed installed bore wells at Gaur Builder projects, then whether these were exclusively meant for consumption by Gaur Builder projects have not been explained in the report along with water consumption data for all such operational bore wells.</p>

6	Gaur Saundaryam, Plot No- GH-05C, Techzone-IV, Gr. Noida	Yes- Rs. 2.9 cr.	1. It was informed by PP that project has obtained permission from UPGWD for abstraction of ground water through 01 bore well, copy of same is attached. 2. During joint visit it was found that out of total 09 bore wells, 08 bore wells (not energized) were found without pump and electricity supply. It was informed by PP that all these bore wells were used for Geotechnical Investigation i.e. to obtain information on the physical properties of soil earthworks and foundations at initial ground stage of project	1. No copy of the NOC from the UPGWD has been annexed in the report.
7	Gulshan Bellina (GULSHAN HOMZ PRIVATE LIMITED), Plot No GH-02/A, Sector 16, Greater Noida	Yes- Rs. 2.32 cr.	It was informed by PP that project has obtained permission from UPGWD for abstraction of ground water through 01 bore well, copy of same is attached	No copy of the NOC from the UPGWD has been annexed in the report.
8	La Residentia (Promoter- M/s La Residentia Developer Pvt. Ltd), GH 06A,sector-	Yes- Rs. 2.71 cr.	No information provided	It is not a valid ground from exemption of the calculation of the environmental compensation for the

	Techzone-4, Gr. Noida			extraction of groundwater
9	Lucky Palm Valley, Khasra No. 784, Vill-Bisrakh, near Stellar jeevan, Sector-1, Gr. Noida west.	No- reason not mentioned	Not Available in office record	It is not a valid ground from exemption of the calculation of the environmental compensation for the extraction of groundwater
10	Novel Valley (AKG Infra Pvt. Ltd.), Khasra No. 288, 290, 299, 302, Village Shahberi, Near Sector-16B, Greater Noida	No- reason not mentioned	Not Available in office record	It is not a valid ground from exemption of the calculation of the environmental compensation for the extraction of groundwater
11	Sindhuja Greens Village- Vaidpura, Near Sector-10, Greater Noida, Uttar Pradesh	No- reason not mentioned	Not Available in office record	It is not a valid ground from exemption of the calculation of the environmental compensation for the extraction of groundwater

I. No exemption could have been granted to the Project Proponents

based on lack of available records:

8. That 6 out of 41 defaulting projects mentioned under Sr. No. 1, 2, 8-11 (**Item no.s 6, 7, 28, 29, 35 & 39 of the Supplementary Compliance Report dt. 30.06.2023**) from the above-mentioned table, namely Anjana Homes, Anjana Le Garden, La Residentia, Lucky Palm Valley, Novel Valley and Sindhurja Greens,

respectively, were exempted from the total calculation of the final compensation due to lack of records available regarding water consumption and bore well installation, etc. It was stated at the end of the table of the Supplementary Compliance Report **(Pg No. 315 of Paperbook)** that *"06 projects, out of total 41 projects, no information regarding water consumption and bore well installation etc. is available in the records, which are mentioned at serial numbers 6, 7, 28, 29, 35, 39."* Therefore, no environmental compensation were calculated for these projects.

9. That the Applicants submit that it is not a valid ground from exempting the said projects from imposing environmental compensation to the said 6 defaulting projects violating the law.

II. Joint Committee has not conducted independent verification that the bore wells installed at the site of projects by Gaur Builders were by GNIDA:

10. That the projects in Sr. No. 4, 5 and 6 of the above-mentioned table, namely Gaur City-1, Gaur City-2 and Gaur Saundayam, respectively, whose project proponent is Gaur Builders (Respondent No. 9), were exempted from the calculation of environmental compensation on the ground that the number of bore wells found in their projects were installed by the Greater Noida Industrial Development Authority (GNIDA) itself and not by the project proponents.
11. That the Applicants humbly submit that while exempting Gaur Builder projects from calculation of environmental compensation which has numerous bore wells in their premises, the Joint Committee had failed to conduct independent verification that whether GNIDA had indeed installed bore wells in the premises of the said projects of the Project Proponents or not. Rather, the Committee has relied upon the representations sent by the Respondent No. 9 in the meeting held by the Joint Committee dated 16.01.2023 for the disposal of representations received from the Project Proponents, in compliance of order by this Hon'ble Tribunal dated 15.11.2022 **(pg. 241-243 of the Paperbook)**.

12. That if in fact, if the GNIDA had indeed installed bore wells at Gaur Builder projects, then whether these were exclusively meant for consumption by Gaur Builder projects have not been explained in the report.

III. NOC to Gaur City Mall granted contravenes Section 12 of UP Ground Water Act, 2019:

13. That in Sr. 3, 6 and 7 of the previously mentioned table, taken from the supplementary compliance report dated 30.06.2023, projects Gaur City Mall, Gaur Saundaryam and Gulshan Belina, respectively, have claimed to be shown that they have obtained the relevant NOC from the UP Groundwater Department. However, the Report has failed to annex the said NOC to corroborate that the projects have obtained the NOC.
14. That the NOC granted to Gaur City Mall is in violation of Section 12 of the Uttar Pradesh Ground Water (Management and Regulation) Act, 2019 which prohibits any new well for commercial, industrial, infrastructural and bulk use within the notified areas. The relevant portion of Section 12 is reiterated below:

12. (1) No person or group of persons or institution or agency or establishment shall construct/sink any new well for Commercial, Industrial, Infrastructural and Bulk use including construction of borings/tube-wells under Government Schemes within the Notified areas, except Government schemes for drinking water supplies and tree plantations. If anyone contravenes the provisions of this sub-section, he or she will be liable for punishment under Chapter-VIII. Such ban shall continue till the area is denotified by the State Government on advice of Uttar Pradesh State Ground Water Management and Regulatory Authority on the basis of new Ground Water Resource Estimation Report or significant improvement in declining trend of urban ground water levels after seeking approval from the State Government. (2) Extraction, sale and supply of raw/unprocessed/untreated ground water in Notified Areas by a person or class of persons or institution or agencies or any other establishment for the purpose of commercial/bulk uses will not be allowed and such an act will be punishable under Chapter-VIH. For ensuring and achieving sustainability of ground water resources in the Notified areas, Ground Water Security Plans shall be prepared for systematic implementation in such manner as may be prescribed.

15. It is submitted that the said project is located in Bisrakh block of Greater Noida which is considered to be an 'Over-Exploited' block as categorized by the Central Ground Water Board (CGWB) in its Assessment of Blocks 2020. Further, it is also a 'Notified' block as per classification of the UP State. Therefore, the said NOC

granted to the Gaur City mall contravenes Section 12 of the UP Ground Water Act, 2019 which the Joint Committee has failed to note in its reports.

IV. Violation of GNIDA to provide water supply to the projects:

15. That the Report dated 15.05.2023 of the Joint Committee had annexed two letters dated 09.01.2023 and 24.03.2023 (**Page No.s 235-238 of Paperbook**) which had mentioned that the bore wells of total 14 projects could not be sealed with the reasons stated that no water supply was being provided by the GNIDA which is violative of Section 6(1)(e) of the UP Industrial Area Development Act, 1976.
16. That the Section 6 of the UP Industrial Area Development Act, 1976 states the functions of the Authorities under which Section 6(1)(e) mentions providing amenities as one of the functions of the Authority. Here, the term 'amenities' have been defined under Section 2(a) of the said Act, which includes 'water supply' as one of the amenities. The relevant portion of Section 2(a) and Section 6(1)(e) is reproduced below:

Section 2(a):

*"Amenities' include roads, **water supply**, street lighting and power supply, sewerage, drainage, collection treatment and disposal of industrial waste and town refuse and such other community facilities, services or conveniences as the State Government may, by notification, specify to be an amenity for the purposes of this Act:*

Section 6(1)(e):

6. (1) The object of the Authority shall be to secure the planned development of the industrial development area.

...

(e) to provide amenities;"

17. That it is clear from the above, that the onus of providing water supply from construction, completion and habitation is upon the GNIDA through its own resources. From the aforesaid, the GNIDA is duty-bound to provide water supply to the residents and to housing projects at the time of sanctioning such projects. Therefore, considering the sensitivity of the issue, the response from the GNIDA is crucial for the proper adjudication of the matter.

V. All the illegally operating bore wells must be sealed effective immediately:

18. That according to the order dated 15.11.2022, this Hon'ble Tribunal had directed for all the illegally operating bore wells to be sealed. The relevant portion from the said order is reproduced below:

"11. Following the above order, we issue directions for sealing of all illegally operating borewells and recovery of compensation for illegal extraction of ground water in the past considering the cost of such water with deterrent element and the cost of replenishing ground water level. ..."

19. That according to the Compliance Report dated 15.05.2023, it is stated that the Committee has sealed 12 projects out of 41 illegally operating projects. Further, 10 projects have dismantled their bore wells, 03 projects have obtained NOC for ground water abstraction and rest 16 projects have submitted their representation to District Magistrate, Gautam Buddh Nagar, regarding insufficient water supply/no water supply by Authority (**Page No. 229 of Paperbook**). The relevant portion of the Report is reiterated below:

*"2. Out of 63 projects, in 41 projects illegal bore wells have been identified during inspections, in which Committee formed under Chairmanship of ADM(E), Gautam buddh Nagar vide letter dated 30-11-2022 (a copy of which is annexed as Annexure -1) in continuation to the previously formed committee vide letter dated 18.07.2022, **has sealed bore wells in 12 projects and 10 projects have dismantled their bore wells**, 03 projects have obtained NOC for ground water abstraction and rest 16 projects have submitted their representation to District Magistrate, Gautam buddh Nagar, regarding insufficient water supply/no water supply by Authority (a copy of which is annexed as Annexure-2)."*

20. That therefore, the Applicants humbly submit that apart from levying EC on all violating projects, illegal bore wells not sealed so far should be sealed immediately

in compliance of order of this Hon'ble Tribunal dated 15.11.2022 and in the interest of protecting further depletion of groundwater in the area.

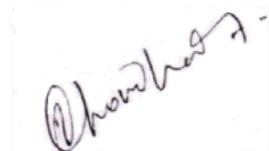
VI. Compensation imposed on the defaulting projects:

15. That the Applicants humbly submit that there is no valid ground for exempting the 11 afore-mentioned projects from environmental compensation if the interim compensation has already been levied on such projects. Further, it has not been made clear in the Supplementary Report whether the projects have paid the interim environmental compensation or not.
16. That apart from the above submissions, the Applicants submit that the current action taken on orders of the Hon'ble Tribunal be extended to all private developers in Gr Noida/Noida who are illegally extracting groundwater at construction & post-completion stage.
17. That therefore, the Hon'ble Tribunal, in the interest of justice may consider the above submissions and objections on behalf of the Applicants for further adjudication of the matter.

THROUGH



RITWICK DUTTA



**RAHUL CHOUDHARY
ADVOCATES**

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Place:- New Delhi

Dated:- 12.07.2023

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

VAKALATNAMA

Original Application No. 392 of 2022

In re:

Prasoon Pant & Anr. _____ Applicant

V E R S U S

Union of India & Ors. _____ Respondents

KNOW ALL to whom these present shall come that I/We

_____ the above named _____ do hereby appoint (herein after called the advocate/s) to be my/our Advocate in the above noted case authorized him :-

Ritwick Dutta **Rahul Choudhary, Advocate**
N-73, Lower Ground Floor, Greater Kailash-1, New Delhi-110048
Tel:- 011+49537774

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/ us. To sign, file verify and present pleadings, appeals cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case. To take execution proceedings. The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case. To appoint and instruct any other Legal Practitioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

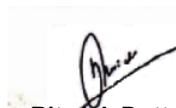
And I/We undertake that I / we or my /our duly authorized agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

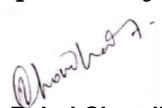
And I /we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate, which he shall receive and retain himself.

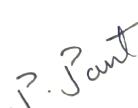
And I /we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid. I /we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years or part thereof.

IN WITNESS WHEREOF I/We do hereunto set my /our hand to these presents the contents of which have been understood by me/us on this 12 day of 07 2023.

Accepted subject to the terms of fees.


Ritwick Dutta, Advocate


Rahul Choudhary, Advocate


Prasoon Pant, Client


Pradeep Kumar, Client

