

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

EXECUTION APPLICATION 36 OF 2023
 IN
 ORIGINAL APPLICATION No. 329 OF 2021

IN THE MATTER:

DEVANSHU BOSE

... APPLICANT

VERSUS

AGRA DEVELOPMENT AUTHORITY & ORS

..RESPONDENT

WRITTEN
SUBMISSIONS
BY
APPLICANT

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29 December 2024

AGRA

Drawn & Filed by:

Devanshu Bose

(APPLICANT IN PERSON)

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To,
The Hon'ble Chairperson
And His Companion Members
Principle Bench - National Green Tribunal

The humble written submissions
Of the abovenamed applicant

MOST RESPECTFULLY SHOWETH:

1. Applicant preferred present litigation before this Hon'ble Tribunal on 26th day of November 2021 in Original Application 329 of 2021 with regards to septic tank of a colony being pumped into open land containing untreated sewage of extraordinary quantity of about 1,45,000 (One Lakh Forty Five Thousand) liters generated daily in rough estimation from about 300 (Three Hundred) households- which was dumped behind the area behind the residence of the applicant from an area covering 70,000 (Seventy Thousand) square meter.

2. Sewage being a severe biohazardous pollutant containing high fecal coliform and toxic heavy metals- with known cancerous and neurological damage to human life there are practical remedies available to immediately remedy the situation - with urgency.

3. During the present litigation, undisputed facts emerged that Respondent no. 1 - Agra Development Authority hereinafter referred as ADA had approved this present township of Nalanda Town at village Barauli Ahir beyond the area of Municipal Limits in exchange of various development charges amounting to about Rs. 83,00,000 (Eighty Three Lakhs) in the year 2004 without any sewage drainage or treatment plan.

4. When the developer entity failed to complete the project, ADA further recovered additional sum of about Rs 53,00,000 (Fifty Three Lakhs) from the developer entity for completion of the pending works including installation of Sewage Treatment Plant during the period of 2016-2019 and subsumed the additional responsibility as developer entity wearing two hats first as a regulator, second as a developer.

5. Thereafter, the applicant preferred this present application 329 of 2021 wherein ADA first claimed their inability to manage sewage relying upon election code of conduct and proposed setting up of sewage treatment plant in the colony.

6. After this Hon'ble Tribunal imposed penalty on erring officials of ADA of value 25,00,000 (Twenty Five Lakhs) through its interim order dated 24 March 2022- the erring officials of ADA acted in haste & made arrangements for lifting untreated sewage for a period of twenty days in month of April and May 2022. Further, ADA published a tender for setting up of a sewage treatment plant at Nalanda Town at Shamshabad Road - simultaneously.

7. The tender documents never had material specifications that would enable any serious bidder to participate in the tender process.

8. As a result of vaguely set requirements, ADA could not get more than one bidder and decided not to go ahead with installation of a Sewage Treatment Plant at the disputed colony.

9. Thereafter ADA has done a risk assessment in the present litigation and came to conclusion that they could dodge and circumvent their liability both as a regulator and developer entity of the disputed township in following manner-

- a. ADA will use external development fund acquired from inhabitants through the developers for payment of penalty imposed upon it's erring officials.
- b. ADA will somehow show presence of a Sewage Treatment Plant and shift the liability of operation of STP to some other entity as an scapegoat.

10. Thereafter, ADA has persuaded the previous developer entity to somehow install a sewage treatment plant which was supposed to become operational in the Month of August of 2022.

11. While making abovesaid arrangement, ADA unfairly exempted the statutory burden cast upon any party in accordance to Water(Prevention and Control of Pollution) Act of 1974- specifically section 24 and 25 which mandates consent to establish and operate STP.

12. Neither burden of compliance in accordance to CPHEEO (Central Public Health And Environmental Engineering Organisation) manual were complied with.

13. ADA kept making fraudulent claims of Sewage Treatment Plant being operational in absence of statutory requirements, no technical operator has been hired for operations of STP and no funds were used for operating expenses of STP.

14. Uttar Pradesh Pollution Control Board has surveyed the disputed township twice in past one year under the directions of Hon'ble Supreme Court in Civil Appeal 3546 of 2023 and did not found STP to be operational and found raw sewage dumped and flowing into the streets as well with one small sample showing lakhs of counts of coliform bacteria.

15. The Hon'ble Supreme Court in final dismissal order in Civil Appeal 3546 of 2023 in order dated 3 December 2024, specifically para 9 and 10 which is reproduced below:

9. The ADA will deposit the amount of compensation/cost(s) as directed by the National Green Tribunal. The amount deposited would be utilized for the sewage treatment plant/drainage etc.

In addition, the ADA must ensure that sewage is lifted and transported from the colony so that there is no collection of sewage or effluent in the colony itself. This exercise must be undertaken every week and an affidavit in this regard will be filed by the Vice-Chairman of the ADA before the NGT. In case there is any default and failure to lift and transport the sewage and the sewage treatment plant is not working as per the required parameters, the NGT will be entitled to pass appropriate orders, including imposing costs/compensation as may be required and justified in law.

10. The Vice-Chairman of the ADA will nominate a senior officer of the said authority, who shall be responsible for ensuring compliance with this order as well as the directions given by the NGT. The details, including name and designation of the said officer, will be furnished by the ADA to the NGT within a period of three weeks from today.

16. ADA has not complied with abovesaid directions, the raw sewage from septic tank is still being pumped using a 6 kilowatt machine from the park no. 3 of Nalanda Town - the alleged location of STP via and under ground pipeline to the place outside the colony gate.

17. The Sewage Treatment Plant has been non operational since inception and modified by ADA to be used as a sewage pumping instrument to drain the sewage into the open land.

18. About 1,130 (One thousand and One Hundred and Thirty) days have lapsed during this present litigation wherein 16,38,50,000 (Sixteen Crore Thirty Eight Lakh Fifty Thousand) Liters of biohazardous sewage has been pumped by ADA into the open land and left to be seeped into the ground water - irreparably damaging the environment, properties around it and inhabitants living in the direct proximity- with only exception of twenty days when ADA appointed a private contractor for lifting of sewage during the month of April- May 2022.

19. The risks of damage to life arising due to environmental violations of such mega scale deviances is so high that our legislature created special provisions in law for faster dispute resolution considering the gravity of situation.

20. When all material is considered, the only inference can be drawn is that mere directions given to ADA have proved to be inconsequential.

21. Very recently, ADA has retracted from its position of operating sewage treatment plant to construction of culvert drainage to carry the sewage to some other location - details of which is not known yet.

22. After the expiry of more than thousand days of this litigation, ADA has decided that instead of operating standalone STP and reuse of treated water- which is highly beneficial to the prevent abuse of ground water - to arbitrarily construct long network of sewage drainage system- which will possibly take another year or more.

23. The applicant hereby craves liberty of this Tribunal to draw attention to following specific issues:

A. URGENCY FOR LIFTING RAW SEWAGE FROM SITE

ADA has refused to make a temporary arrangement for removing raw sewage from the site. Such deviances promote lawlessness.

B. NO DETERRENCE AGAINST ERRING OFFICIALS OF ADA

Lack of deterrence and accountability has favoured erring officials not to comply with directions of this Tribunal. A major portion of development area under the ADA- outside municipal limits will be pushed into mass genocide arising from mega size sewage lakes coming up in every part of the district from rapid increase in population growth in more than hundred villages of ADA and implementation of law of this country will become impossible.

C. Circumvention of financial penalties imposed upon erring officials of ADA

Twenty five lakhs as interim and subsequently Two Crore rupee penalty have been imposed upon erring officials for the violations. If the Vice Chairman uses the funds of External Development Fund or any other fund which is in possession of Vice Chairman ADA as a trustee of fund - the objective of financial penalties is frustrated. The financial penalties become sham because no new fund is added into public welfare and it is merely transfer/ recycle of funds from possession of one account to another- both with same objective.

Further, the section 20(2) of Uttar Pradesh Urban Planning And Development Act 1973 stipulates the following:

“(2) The fund shall be applied towards meeting the expenses incurred by Authority in the administration of this Act and for no other purpose;”

Therefore, if the Vice Chairman ADA uses funds of Agra Development Authority for paying the penalties imposed upon its erring officials, such act becomes ultra vires and serves no reasonable purpose.

D. MULTIPLICITY OF REPRESENTATIONS BY ADA

First ADA has claimed its inability to manage sewage due to election code of conduct and proposed setting up of sewage treatment plant. Thereafter ADA has agreed to lift the raw sewage and suddenly taken a contrary stand - refusing to regulate and manage sewage.

The law of estoppel binds the ADA not to continuously change its position especially when larger public interest is involved.

E. NON PREFERENCE TO RE-USE OF WATER

ADA has recently strayed from its position of re-use of treated water in site and preferred the idea of creating long- complex sewage drainage infrastructure which arbitrarily discourage water- re-use.

No reasoning has been provided by ADA as to why re- use of treated water is an impossibility.

At the pace at which population is growing in the district- much of the area of ground water table comes within the over exploited zones with high heavy metal and fluoride content.

F. INTEREST INCOME EARNED BY ADA

ADA before Hon'ble Supreme Court admitted to have collected about rupees twenty three crore fifty lakh (23,50,00,000) from sixty two (62) colonies in villages of Barauli Ahir and Rajrai with no expenses on sewage treatment and drainage infrastructure. The abovesaid amount does not take into consideration interest income earned by ADA.

G. ALTERNATIVE REMEDY IF VC ADA DELIBERATELY REFUSES TO LIFT RAW SEWAGE FROM DISPUTED SITE

The conduct of VC ADA in present circumstance does not inspire any trust and before another fact finding exercise is undertaken, there is necessity to seek assistance from Divisional Commissioner of Agra district who is also the Chairman of Agra Development Authority to supervise the directions of this Hon'ble Tribunal with all means necessary with ultimate objective of ensuring no raw sewage is dumped in open land.

29 December 2024

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Devanshu Bose

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