

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

Original Application No. 24/2016 (CZ)

CORAM:

**Hon'ble Mr. Justice Sonam Phintso Wangdi
(Judicial Member)**

**Hon'ble DR. Satyawan Singh Garbyal
(Expert Member)**

BETWEEN:

1. Kishore Deepak Kodwani
Kailash Chandra Bhagirath Prasad Patel,
Vikas Mitra Drishti 2050,
301, Pushdeep Apartment,
14 Sarvodaya Nagar,
Indore -452001

.....Applicant

Versus

1. The Chief Secretary,
Govt. of MP, Vallabh Bhawan,
Bhopal
2. The Director
Secretariat, Town and Country Planning,
Vallabh Bhawan, Bhopal
3. The District Collector
Administrative Cluster Indore
4. The Administrative Director
Indore Development Authority,
Red Cross Road,
Indore
5. The Director
Nagar Palika Nigam,
Indore
6. The Secretary
Pollution Control Board,
Scheme No. 78, Vijay Nagar,
Indore

.....Respondents

Applicant : **In person**

Counsel for Respondent: **Shri Siddharth R. Gupta, Adv. &**
/High Court of MP **Shri Ravi kant Patidar, Advocate**

Counsel for State / IDA : **Shri Sachin K.Verma, Advocate**

Counsel for IMC/: **Shri H. Y. Mehta, Advocate**
Respondent No. 5 :

Intervener : **Shri Amitabh Upadhyay, Advocate**
Shri Dherendra Saxena

J U D G E M E N T

Dated : March 18th, 2016

- 1) Whether the judgement is allowed to be published on the internet
----- yes
- 2) Whether the Judgement is to be published in the All India NGT
Report ----- yes

Wangdi, J.

1. Shorn of unnecessary details, the case of the Applicant in brief is that construction of District Court Complex, Indore, is shortly going to commence on Lake Pipliyahana falling within Khasra No 526 on the strength of an impermissible allotment made by the Indore Development Authority under Plan 140 of its Master Plan 2021 which envisages development of 165 Sq. Km of river-water body and land measuring 340 Sq Km. As per the Applicant, Plan 140 contemplates development of an area of 7.2 Sq Km which includes the area covered by Pipliyahana lake. He assails this action on the plea that as per the Plan, 14.15 % of the 7.2. Sq

Km comprising only of wetland, was required to be left as Green Belt but, to the contrary, 6.377 hectares of green belt has been combined with 6.139 Hectares of the wetland to constitute the prescribed 14.15 %.

2. In the grounds set out in the application, it is inter alia stated that the land allotted for the construction of District and Sessions Court and for residential purposes by the Municipality vide letter no. 350/N.A./2000 dated 22nd February, 2000, is contrary to letter of the Housing and Environment Ministry bearing no. F/3/134/32/10 dated 31st January, 2011 by which it had conveyed that the area being a water body and a green belt, it could not be used by the Court and should look for some other area.
3. The Applicant under the head “Affirmative Action” as translated in English, apart from suggesting that the present location of the Court campus be maintained, has also proposed changes in the location of the various sub-ordinate Courts to bring those in close proximity of the High Court in the interest of easy access to justice.
4. It is primarily on the above that the Applicant prays *inter alia* that the Pipliyahana Lake be made free of encroachments and be restored to the position as it existed in the land records of the year 1925.
5. On 17.02.2015, when the matter came up before this Tribunal for the first time, it was noted that the issue being sought to be raised by the Applicant was that as the land bearing plot nos. 561/1/1 and 526/1/2 together measuring about 11.161 hectares

allotted for construction of the District Court Complex was a part of Pipliyahana lake at Indore, its allotment and raising constructions thereon amounted to encroachment on the water body. As no revenue records had been filed by the Applicant to substantiate this plea, we had to look elsewhere to satisfy ourselves on its truth or falsity. In Annexure-G which is a copy of Khasra of the year 1996, filed on behalf of the Registrar General, High Court of Madhya Pradesh in M.A. 86 of 2016, seeking leave to intervene in the matter, it was actually plot 525 that was recorded as *Talab* with the Executive Engineer, Irrigation Department, Indore as the *Kabjedar*. Plot Nos. 526/1/1 and 561/1/2, were recorded as *Nazrul* with no entry in the column for *Kadjedar* although in the later entry made on 22.02.2000 in the relevant column for change, it has been mentioned as having been allotted to the Registrar General, High Court of Madhya Pradesh. The District Collector, Indore, Respondent No.3, was thus directed to place before us the revenue records pertaining to Khasra Nos. 526/1/1 and 526/1/2 since the year 1959 who, in due compliance filed copies of the records of the two Khasra Nos. commencing from the year 1925. As per the entries in those records, land bearing the two Khasra Nos. was found recorded in the name of the State Government and were neither classified as a tank nor a water body.

6. It would also be pertinent to note that on being mentioned, the Registrar General, High Court of MP, was also added as a Respondent by order dated 17.02.2016.

7. On 01/03/2016 when the matter came for hearing, Shri Siddharth R. Gupta, Learned Counsel, appearing on behalf of the Registrar General, insisted upon pressing M.A. 90 of 2016 for dismissal of the Application at the threshold as being not maintainable on grounds of it being barred by limitation and for the lack of jurisdiction of this Tribunal to adjudicate upon the questions raised in the Application. However, considering the fact that questions that attracted the Water Act and the National Water Policy had been raised in the Application and that the issue as regards the point of limitation was a disputed question, we deemed it appropriate in the interest of justice to satisfy ourselves on the factual aspects in view of the conflicting claims.

8. We are conscious of the confines of our jurisdiction but equally, we are conscious of the fact that we are not dealing with a traditional adversarial litigation but one involving serious public interest and, in our considered opinion, while dealing with such matters, we ought to be circumspect in being pedantic and in throwing out a case solely on grounds of hyper-technicality. Thus, we issued the following directions :

“1. *A committee headed by the District Collector, Indore be constituted which shall consist of the following members :*

- (1) *Municipal Commissioner, Indore*
- (2) *Tehsildar Nazul, Indore*
- (3) *Superintendent Land Records*
- (4) *Registrar General, MP High Court*
- (5) *Applicant in this application*
- (6) *Joint Director, Town & Country Planning*
- (7) *RO, MPPCB, Indore*

2. *The Committee shall inspect the concerned area and ascertain as to:*

- (a) *Whether the Talab indeed exists on the land bearing Khasra No. 526/1/1, 526/1/2 as alleged by the Applicant.*
- (b) *Whether the proposed construction falls within Khasra No. 526/1/1 and 526/1/2.*
- (c) *Whether the required protection of wet land as prescribed by the MoEF in its various notification has been ensured, if found to be necessary.*
- (d) *Whether the proposed construction will have any adverse impact on the quality of water of the tank/talab.”*

9. On 11.03.2016, the District Collector, Indore, submitted the report of the Committee on each of the terms of reference in Hindi which when translated in English would read as under :

“In regard to the terms of reference given in para 2 of order dated 01.03.2016 of Honorable Green Tribunal, following situation was found to be identified on the spot:-

- A. *The actual land of Pipalyahana reservoir is situated at Khasra No 525 whose area is 3.674 hectares (9.08 acres.). The said reservoir has remained located on the said land of the aquatic structure reservoir since Holkar period map year 1905-06 and Misal Bandobast Khasra 1925-26 to 2007-08 and in the topographical map of 1965 also the Pipalyahana reservoir has been marked as dry tank wherein there is water only in the rainy season and thereafter the water dries up. After year 2007, due to illegal mining / removal of soil from the reservoir and in the Government land adjoining to it bearing*

Khasra No 526/1/1, 526/1/2 admeasuring 11.161 hectares (which has never been the land of reservoir) also due to excessive illegal mining / removal of soil, in about half portion of the said Government land also reservoir like structure has been developed which is dry at present and little amount of water is filled in three to four patches. That is, the reservoir is actually located in Survey No. 525 but due to the excessive illegal mining / removal of soil from 526/1/1 and 526/1/2 in about half of the portion of land a reservoir like structure has developed as aforementioned. The objections presented by the petitioner have been enclosed separately along with the documents.

B. With regard to para No 2 of terms of reference, it is mentioned that vide order No 350-351 / Na Aa/ 2000 dated 22.02.2000 of the Office of Collector (Nazul) District Indore of Government of M.P., the Government Nazul land of village Pipalyahana bearing Survery No 526/1/1 and 526/1/2 admeasuring 11.161 hectares has been allotted to the Honorable Registrar General, High Court of M.P. Map has been approved vide letter No 1076 dated 11.02.2016 of Nagar tatha Gram Nivesh Vibhag Indore for the construction of new District Court Building on this land. Hence, the building of new District Court has been proposed to be constructed under Khasra No 526/1/1, 526/1/2.

C. The Wetland (Conservation and Management) Rules, 2010 have been notified by the Ministry of Environment and Forest of Government of India. In Rule 3 of this notification, provision

has been made to regulate 6 types of wetlands under the rules. Pipalyahana reservoir does not come under any of the 6 categories notified in the said Rule 3. Hence, Wetland (Conservation and Management) Rules, 2010 shall not apply in regard to the Pipalyahana reservoir, The wetlands coming under Ramsar Convention which have been mentioned in the schedule published in the said Rules, 2010. In this schedule from M.P. only the Bhoj wetland situated at Bhopal has been included and apart from it no other wetland has been included.

D. For the new building of District Court Indore, Government land bearing Khasra No 526/1/1, 526/1/2 admeasuring 11.161 hectares has been allotted. The map of the proposed building has been approved along with various conditions vide letter No 1076 dated 11.02.2016 of Nagar tatha Gram Nivesh Vibhag. In para 6 of the said letter, this condition has been laid down that if built up area of the building is more than 20000 square meters then before commencing the construction work environmental clearance shall have to be obtained from State Environment Impact Assessment Authority (SEIAA) under the E.I.A. notification 2006 issued by the Ministry of Environment and Forest of the Government of India. It is notable that the super built up area of the said building is 144492 square meters. Hence, prior to construction of building, environmental clearance it is mandatory for the concerned project proponent to prepare a detailed plan of water pollution, air pollution,

urban solid waste disposal etc resulting from the project. Only then, the environmental clearance of the project by State Environment Impact Assessment Authority (SEIAA) and consent by the M.P. Pollution Control Board may be issued. Therefore, on enforcing anti pollution measures as aforementioned for environmental conservation, there would be no possibility of water quality of Pipalyahana reservoir being affected.

In regard to the term of reference of Honorable National Green Tribunal, the objections and record/ documents presented by the Registrar General, High Court of M.P. and the documents presented by the Tehsildar, Nazul Indore, Indore Development Authority, Indore and Municipal Corporation, Indore have also been enclosed along with”.

10. The report of the Committee thus clearly reveals that (i) Khasra No. of Pipliyahana Talab is actually 525 and not 526/1/1 and 526/1/2 ; (ii) the proposed construction is confined within Khasra nos. 526/1/1 and 526/1/2 admeasuring 11.161 Hectares registered in the name of Registrar General, High Court of Madhya Pradesh and (iii) since the proposed built up area was 1,44,492 Sq. Meters, necessary clearance of the State Environment Impact Assessment Authority (SEIAA) would be necessary during the process of which concerns regarding quality of water would be taken care of.
11. Arguing for himself, the Applicant referred to the various documents filed by him and urged that khasra nos. 526/1/1 and 526/1/2 are actually part of the lake as during the rainy season, both these plots get flooded to merge with the whole.

0He passionately urged that any attempt at bifurcating it would result in causing immense damage to the water body, its eco-system and may in fact result in the lake itself disappearing. He would submit that the Application was not barred by limitation as it was part of a writ petition filed in the year 1999 before the Hon'ble High Court of Madhya Pradesh and, on its transfer before this Tribunal, this Application was registered separately as directed by it. By referring to the photographs taken by him, maps and drawings, he stressed that the allotted land fell within the Full Tank Level (FTL) of the Pipliyahana lake and, therefore, it was incorrect to state that the land was not part of it. He also highlighted on the adverse effect that the project would have on the ground water which is said to be one of the sources of drinking water for the region.

12. Shri Amitabh Upadhyaya, Advocate, also sought leave of this Court to intervene in the matter in support of the Applicant and, upon being allowed, he placed before us a compilation of documents consisting mostly of those which were already on record.
13. Shri Siddharth Gupta, on the other hand submitted that the submergence of the two plots was on account of the depression created by the illegal mining, a fact that was established by the report of the Committee constituted by our order dated 08.03.2016 which, as per him, also confirmed the report dated 14.03.2011 of an earlier Committee. Relying upon an earlier decision rendered by a co-ordinate bench of

this Tribunal in Appeal No. 01/2013 (CZ) (P.B. 27/2013 THC), in the matter of *Raza Ahmad Vs. State of Chhattisgarh & 9 Ors.*, he would stress that the Application was hopelessly barred by limitation under Sub-Section 3 of Section 14 of the National Green Tribunal Act, 2010 as the date on which the cause of action for such dispute arose was 22.02.2000 when the two plots falling under the two Khasras were concededly allotted in favour of the Registrar General, High Court of Madhya Pradesh of which the Applicant was aware. Mr. Gupta went on to submit that, even otherwise, questions on diversion in the use of the land made vide order dated 12.07.2012 under Section 23(ka)(2) of the Madhya Pradesh Town and Country Planning Act, 1973, would not fall within the jurisdiction this Tribunal which, in any case, has not been challenged by the Applicant. It is contended that before allotment of the land in question, all aspects had been considered and the requisite legal requirements complied with and all administrative formalities fulfilled. That Environment Clearance has also since been obtained.

14. Mr. Sachin K. Verma, Learned Government Advocate, while supporting the contentions raised on behalf of the Registrar General, submitted that questions relating to City Master Plan which was the foundation of the Applicant's case could not be raised before this forum being beyond its jurisdiction to adjudicate upon.
15. Upon hearing the Applicant and the Learned Counsel for the parties we are of the considered opinion that, although the

Application appears to have been filed bonafide, the very basis of the Applicant's case appears to be in conflict with the revenue records maintained by the government. This, apart from the fact that it is barred by limitation, disentitles the Applicant of the reliefs sought for by him.

16. From the very averments contained in paragraph 2.1 of the Application, it appears that the Applicant was aware that on 22nd February, 2000 the land had been allotted for the construction of District and Sessions Court Complex. The writ petition which was later transferred before this Tribunal was admittedly filed only in the year 2009 in the Madhya Pradesh High Court. The Applicant could also have approached this forum when notification dtd. 12.07.2012 was issued under Section 23 (ka) (2) of the Madhya Pradesh Town and Country Planning Act, 1973 permitting conversion of the land in question. Although the notification was in the public domain, the Applicant failed to take any step to assail the action. No reason has been stated to explain the delay in filing this case since 22nd February, 2000 or even 12.07.2012.
17. In any case, even if there were good explanations, the delay could not have been condoned beyond three months in terms of proviso to Section 14 of the National Green Tribunals Act, 2010. Section 14 contemplates that an application would be maintainable only if it is filed within three months from the date on which the cause of action arose. No doubts, in the proviso to this section, power has been vested in the Tribunal to condone delay but, the power can be exercised to allow an

application to be filed only within further period of three months. The language of the provision is peremptory leaving no room for further relaxation. Obviously, in the present case the delay is inordinate considering that the cause of action had firstly arisen way back on 22nd February, 2000 and later on 12.07.2012 leading us to firmly conclude that the Application is barred by limitation.

18. Once we hold that the Application is barred by limitation there would not have been any necessity to go further into the merits of the case. But considering the nature of the case, we deemed it appropriate to deal with some basic aspects to demonstrate that the Application is founded on wrong premises. Apart from the report of the Committee reproduced above which *inter alia* states that the lake is located in Khasra no 525, there are government documents filed on behalf of the Applicant which confirms this fact. The khasra records of the year 1925-26 unmistakably shows that the lake is within khasra 525 and not 526 and the lake admeasures about 5.8 acres and this entry is found consistently maintained in all revenue records of the subsequent years. This fact also appears to have been confirmed in full measure by a report termed as 'A REPORT ON PIPLIYAHANA LAKE THE GATEWAY TO GROUND WATER RESERVOIR' dated June 15, 2015 prepared by one Tapas Saraswati, a hydrologist. Under the head 'Estimation of water losses' it has been mentioned under sl. No. 1 that 'The area of Pipliyahana Lake is 26,606 sq. m (5.09 acres).' These documents clearly

displace the case of the Applicant that the lake lies also on the allotted land bearing khasra no. 526/1/1 and 526/1/2 and that the area of the lake is 7.2 sq. km. Of course the Applicant would argue that the two khasra nos constitute the spread over area of the lake during the monsoon season but, that is quite different from saying that the lake is also located within the two plots. On this aspect, even the notification dated 12.07.2012 referred to earlier describes the land in question in hindi as “Amod-Pramod Jalashyai” i.e., land connected with ‘water recreation’ and not as lake (*Talab*). Therefore, we find that the revenue records and other cognate documents do not support the case of the Applicant.

19. We, however, find that the anxiety expressed by the Applicant, for preservation of the lake appears to have been fully addressed by the State Level Environment Impact Assessment Authority which, while granting the Environment Clearance for the project in its meeting held on 05.03.2016, has stipulated the following conditions : -

*“It is decided to accept the recommendations of 269th –A SEAC meeting dtd 20.20.2016 **with 20 special conditions and accord Prior Environmental Clearance** for proposed District Court Building at Khasara No. 526/1/1, 526/1/2, Village –Pipliahana, Tehsil & District – Indore (MP), Total Land Area – 11.161 ha, total Built-up Area – 144492 sq m. by Shri Anand Rane, Divisional Project Engineer, Office of Divisional Project Engineer, PIU-PED, Old Palasia, Indore (MP), the case being under litigation, the grant of prior EC subject to the final*

orders of Hon'ble NGT, Bhopal subject to following specific conditions imposed by SEIAA:-

- (i) The entire demand of water should be met through Municipal Corporation; Indore and there should be no extraction of ground water.*
- (ii) Waste Water Management :-*
 - a. Linkage with municipal sewer line for disposal of waste water.*
 - b. Water quality monitoring should be carried out regularly.*
- (iii) Water Body Conservation:-*
 - a. PP should ensure to leave at least 30 m area from the FTL of the water body as per T&CP and create buffer zone as green belt in this area.*
 - b. Water body falling adjacent to the premises shall be kept in natural conditions without disturbing the ecological habitat.*
 - c. Regular monitoring of drain shall be carried out to maintain the water quality & the ecological habitat of the lake.*
 - d. Fencing and development of bund area on western side.*
 - e. Aeration system should be installed into the water bodies to maintain and oxygenate the water quality of the water body for water quality improvement.*
 - f. PP will ensure restoration and conservation of the water body on a holistic basis and adequate budgetary provision should be made for the implementation of the same.*
 - g. PP should ensure the rain water harvesting. In addition, PP should provide recharging trenches. The base of the trenches should be Kachha with pebbles.*
 - h. The individuals sewage disposal connection in the existing residential colony on the southern side has not been done resulting in flow of raw sewage in the Nalla which joins the existing water body. Municipal Corporation, Indore should ensure proper disposal of sewage into the main trunk line by providing individual domestic connections.*
 - i. As the proposed building construction falls within the catchment area of water body, PP should leave rain water run off channels within their property to ease flow*

of rain water from the eastern side. They Should also make appropriate provision that the flow is uninterrupted and pass through a grit chamber or any other arrangement to arrest the debris etc. entering the water body.

j. PP should ensure to proper management of storm water as proposed.

(iv) Municipal Solid Waste:-

(a) Provide compactors for MSW.

(b) Ensure three bin systems for segregated collection of waste.

(c) Ensure linkage with Municipal Corporation for final disposal of MSW.

(v) PP should ensure road width. Front MOS and side / rear MOS and open spaces as proposed.

(vi) For firefighting:-

(a) PP should ensure connectivity to the fire station from the project site.

(b) As per MPBVR, 2012 rule 42 (3) PP should submit necessity drawings and details to the Authority (Nagar Nigam, Indore) incorporating all the fire fighting measures recommended in National Building Code Part – IV point no. 3.4.6.1. The occupancy permit shall be issued by Nagar Nigam only after ensuring that all fire fighting measures are physically in place.

(vii) Presently on eastern side from the IDA scheme, the internal sewer line are leaking and the sewage is collected in small pits. IDA is hereby directed to maintain the sewer lines properly and connect it to the main sewer trunk.

(viii) Regarding the extent of the water body the directives of Hon'ble NGT shall be binding on the PP.

(ix) PP should ensure installation of photovoltaic cells (solar energy) for lighting in common areas, LED light fixtures, and other energy efficient equipments.

(x) *PP should ensure to provide car parking (3124 ECS) as proposed.*

(xi) *PP should ensure green area of 40 % as per the proposed landscape plain.*

(a) *Plantation should be done in two rows all along the periphery of the project are including Avenue plantation along the roads, trees of indigenous local varieties like Neem, Peepal, Kadam, Karanj, Kachnaar etc. along with ornamental varieties.*

(b) *Every effort should be made to protect the existing trees on the plot.*

(xii) *Since the matter of the extent of water body is subjudice, the construction of the retaining wall in terms of depth and length shall be subject to the directives of Hon'ble NGT and shall be binding on the PP.*

(xiii) *Project Proponent to ensure the compliance of other direction in the OA No. 24/2016 of Hon'ble National Green Tribunal and any other directions / order issued by the other Courts from time to time."*

20. As a conscious citizen, it would be within the rights of the Applicant to ensure that the works of the District Complex are executed in full compliance of the terms and conditions of the Environment Clearance. In the event of breach of any of the conditions it would be open for him to approach this Tribunal.

21. It may be observed that a number of case laws were cited at the bar in support of the respective contentions but, as this case can be decided on its very facts, it would merely be an academic exercise to delve into those.

22. For all the reasons aforesaid, we do not find any reason to interfere with the allotment of the land in question for construction of the District Court Complex.
23. In the result the Application is dismissed with no order as to costs.
24. However, before parting we would call upon those concerned to consider as to whether the set back of 30 m area stipulated under clause iii (a) of the specific conditions of the EC, can be increased to at least 50 meter considering the undeniable fact that during the rainy season water from the lake spreads over the allotted land. This would also be in the interest of stability of the proposed Court Complex.

(Mr. JUSTICE SONAM PHINTSO WANGDI)
Judicial Member

(DR. SATYAWAN SINGH GARBYAL)
Expert Member

Bhopal
March 18th, 2016

NGT