

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Original Application No. 16/2014
(M.A. No. 102/2014)**

Shri Hazi Arif & Ors. V/s. State of UP & Ors.

**CORAM: HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE DR. G.K. PANDEY, EXPERT MEMBER
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER**

Present:

Applicant / Appellant	: Mr. R. Venkataraman & Mr. Adesh Kumar, Adv.
Respondent No. 1,6&7	: Ms. Savitri Pandey, Adv.
Respondent No. 2	: Mr. Avijit Bhushan, Adv.
Respondent No. 3	: Mr. Sudhir Kulshreshtha & Ms. Sushma Singh, Adv.
Respondent No. 4	: Mr. Daleep Kr. Dhayani, Adv. for Mr. Pradeep Misra, Adv.
Respondent No. 5	: Mr. Devesh Kumar, Adv.

Date and Remarks	Orders of the Tribunal
Item No. 4 May 30, 2014	<p>Heard. Perused.</p> <p>Learned Counsel appearing on behalf of the intervenors submit that they are seeking intervention in these proceedings as the orders passed by the NGT are likely to affect them. They seek liberty to move applications for intervention. Liberty is granted. The applications be moved in the usual course. Registry to number the applications and issue Notices in the intervention applications. Service of notices is waived. Notices are accepted. Replies be tendered by the next date of hearing.</p> <p><u>Original Application No. 16/2014</u></p> <p>Heard. Perused.</p> <p>Learned Counsel appearing on behalf of Respondent No. 5 seeks liberty to tender status report as well as additional affidavit to clarify the facts further. Liberty is granted. Copies of the status report as well as additional affidavit be furnished to the applicant.</p> <p>Learned Counsel appearing on behalf of Respondent No. 3 (Ghaziabad Municipal Corporation) files affidavit in response to</p>

the suggestions made in the inspection report dated 23.04.2014. Affidavit is taken on record. A copy of the affidavit be furnished to the applicant.

The Applicant tenders additional affidavit dated 29.05.2014 along with the coloured copy of the Ghaziabad Master Plan 2021 which is taken on record.

The inspection report dated 23.04.2014 of Ms. Parul Gupta Committee reveals that there has been covering of the Sahibabad drain which is a natural storm water drain with and without permission of the Ghaziabad Municipal Corporation. It further reveals that there have been encroachments on the river portion of the drain and natural flow of the drain, is also hindered particularly at Plot No. 60/1. It further reveals that the drain is further blocked by the dumping of garbage and industrial waste.

Keeping aside the question whether it is a natural drain or otherwise, it can very well be seen that it is meant for draining the storm water and not for any other purposes.

Learned Counsel appearing for Respondent No. 3 (Ghaziabad Municipal Corporation) invited our attention to the section 114 and section 228 of the UP Municipal Corporation Act, 1959 and submits that it is an obligatory duty of the Corporation to make reasonable and adequate provisions for the construction, maintenance and cleansing of drains and drainage works and similar conveniences as per the section 114(v) of the said Act, and it is obligatory on the Municipal Commissioner under section 228 of the Act to carry out maintenance and keep in repair all Corporations drains. These provisions of law cast obligation on the Municipal Corporation to keep all those drains clean and properly maintained and nothing more. They have no liberty to tinker with the drain and flow of the storm water through the

drain. It does not give any freedom to the Municipal Corporation to grant permissions to allow constructions within the drains.

It is true that section 231 of the said Act permits the Commissioner to make alterations etc. and also to discontinue the use of drains in the following words:

“Section 231. Alteration, etc., and Discontinuance of drains. – The (Municipal Commissioner) may enlarge, alter the course of, deepen, lessen, arch over or otherwise improve any Corporation drain, and may discontinue, close up or destroy any such drain which has, in his opinion, become useless or unnecessary, or prohibit the use of any such drain either entirely or for the purpose of foul water drainage or for the purpose of surface drainage:

Provided that, if by reason of anything done under this section any person is deprived of the lawful use of any drain the Municipal Commissioner shall, as soon as may be, provide, at the cost of the Corporation for his use some other drain as effectual as the one which has been discontinued, closed up or destroyed or the use of which has been prohibited.

However, it can be seen that its object is to improve the drains and/or to discontinue, close up or destroy the drains which have become useless or unnecessary. It is nobody's case that this drain is either useless or unnecessary.

In our considered view, therefore, impeding the natural flow of the drainage is not the duty of the Municipal Commissioner or Ghaziabad Municipal Corporation. There could not have been therefore any construction within the drain. We, therefore, order the Ghaziabad Municipal Corporation to take all such measures which are necessary to forthwith stop any

construction within the drain and to take such measures as are necessary for removal of all such construction which impedes free flow of the storm water through the entire Sahibabad drain, particularly Sahibabad drain no. 1 at Plot No. 60/1 (Site - IV) and further to clean the drains.

Status report shall be filed by the UP Pollution Control Board on the next date of hearing.

List the matter on 11th July, 2014.

....., JM
(U.D. Salvi)

....., EM
(Dr. G. K. Pandey)

....., EM
(Ranjan Chatterjee)

