

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

.....

**ORIGINAL APPLICATION NO. 65 OF 2016
(M.A. NO. 419 OF 2016, M.A. NO. 561 OF 2016, M.A. NO. 977
OF 2016, M.A. NO. 55 OF 2017 & M.A. NO. 479 OF 2017)**

IN THE MATTER OF:

1. Manoj Misra
178-F, Pocket-4
Mayur Vihar, Phase-I
Delhi-110091

.....Applicant

Versus

1. Delhi Development Authority
Through its Vice Chairman
A-Block, 1st Floor, Vikas Sadan
New Delhi-110023
2. GNCT of Delhi
Through the Chief Secretary
Delhi Secretariat, IP Estate,
New Delhi-110002
3. Art of Living International Center
Through its In-charge
B-182 A, Sector-48, Opp. H.D.F.C. Bank
NOIDA, Uttar Pradesh-201303
4. Ministry of Environment and Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road,
New Delhi-110003
5. Ministry of Water Resources, River Development
and Ganga Rejuvenation
Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110001
6. Uttar Pradesh Irrigation Department
Cantt Road, Udaiganj,
Lucknow,
Uttar Pradesh 226001

7. Prajanya Chowdhary
S/o Sri Pradeep Chowdhry
R/o – 54 C, Sainik Farms,
New Delhi-110062

8. Anil Kapoor
S/o Sri M.L. Kapoor
R/o – House No. A-75, Sector-15
Near Metro Station, NOIDA
Gautam Buddha Nagar
Uttar Pradesh-201301

9. Anand Mathur
S/o Sri Rajendra Prasad Mathur
R/o, 1SE, Balaka, 64 Lake Road
Kolkata - 700029

.....Respondents

AND

**ORIGINAL APPLICATION NO. 76 OF 2016
(M.A. NO. 144 OF 2016)**

IN THE MATTER OF:

1. Pramod Kumar Tyagi
S/o Sh. Charan Singh Tyagi
R/o House No. 122, Gali No. 4,
Phase 9, Shiv Vihar
Delhi-110094

.....Applicant

Versus

1. Art of Living International Center
Ved Vigyan Maha Vidya Peeth
21st KM, Kanakpura, Udayapura
Bangalore,
Karnataka – 560082
2. Union of India
Through Secretary
Ministry of Environment and Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road,
New Delhi-110003
3. National Capital Territory of Delhi
Through the Chief Secretary
Delhi Secretariat, IP Estate,
New Delhi-110002

4. Delhi Development Authority
Union Ministry of Urban Development
Through its Chairman
Vikas Sadan
New Delhi-110023
5. Delhi Pollution Control Committee
Through its Member Secretary
4th Floor, ISBT Building
Kasmeeri Gate, Delhi-110006
6. Yamuna River Development Authority
Through its Chairman
Hon'ble Lt. Governor of Delhi
Raj Niwas, GNCT, New Delhi-110054
7. Municipal Corporation of Delhi
Through Deputy Commissioner
Shahdara South Zone
Near Karkardooma Court
Sahadara, Delhi-110032

.....Respondents

AND

**ORIGINAL APPLICATION NO. 81 OF 2016
(M.A. NO. 383 OF 2016)**

IN THE MATTER OF:

Anand Arya
353, Sector 15-A
Noida 201301
Uttar Pradesh

.....Applicant

Versus

1. Delhi Development Authority
Through its Vice Chairman
A-Block, 1st Floor, Vikas Sadan
New Delhi-110023
2. GNCT of Delhi
Through the Chief Secretary
Delhi Secretariat, IP Estate,
New Delhi-110002
3. Art of Living International Center
Through its In-charge
B-182 A, Sector-48, Opp. H.D.F.C. Bank
NOIDA, Uttar Pradesh-201303

Also at:
Ved Vigyan Maha Vidya Peeth
21st KM, Kanakpura, Udayapura
Bangalore,
Karnataka – 560082

4. Central Pollution Control Board
Through its Secretary
Parivesh Bhawan,
CBD-cum-office Complex
East Arjun Nagar
Delhi-110032

5. Delhi Pollution Control Committee
Through its Member Secretary
4th Floor, ISBT Building
Kasmeeri Gate, Delhi-110006

.....Respondents

COUNSEL FOR APPLICANTS:

Mr. Sanjay Parikh Sr. Advocate with Mr. Ritwick Dutta, Mr. Rahul Chaudhary and Ms. Meera Gopal, Advocates
Mr. Abhay Mani Tripathi, Advocate
Mr. Anand Arya (Applicant in person)

COUNSEL FOR RESPONDENTS:

Mr. Rajiv Bansal, Sr. Adv. with Mr. Kush Sharma, Advocate for Respondent No. 1
Mr. Tarunvir Singh Khehar, Advocate for Respondent No. 2
Ms. Akshama Nath and Mr. Kapil Gupta, Advocates for Respondent No. 3
Mr. S. N. Patil, Advocate
Mr. Rahul Pratap, Advocate for MoEF&CC
Mr. Mukesh Kumar Verma, Advocate for Respondent No. 4
Mr. Utkarsh Sharma, Advocate for State of UP
Dr. Sandeep Singh, Advocate for State of UP
Mr. B. V. Niren, Advocate for MoWR
Mr. A.D.N. Rao, Advocate for DMRC
Mr. BalenduSekhar, Advocate for EDMC
Mr. BirajaMahapatra, Adv. for DPCC
Mr. Rajkumar, Advocate for CPCB
Mr. Piyush Singh, Advocate
Dr. Varsha Bharti, Advocate for DCB
Ms. Puja Kalra, Advocate for SDMC
Mr. Nikhil Sakhardande, Advocate
Mr. Santosh Chaurihaa, Advocate
Mr. SapamBiswajit, Advocate
Mr. Varun Thakur, Advocate for N.M.C.G.
Ms. Sandhya Raghav, Advocate for MoEF& CC

JUDGMENT/ORDER

Present:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Dr. Justice Jawad Rahim (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 13th November, 2017

Pronounced on: 7th December, 2017

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR (CHAIRPERSON)

FACTUAL MATRIX OF THE CASE

The Applicant is a retired officer from Indian Forest Service and is the convener of the campaign “Yamuna Jiye Abhiyaan”. According to the applicant, he has been raising various environmental issues from time to time. He stated that the river Yamuna is an aquatic lifeline for millions of people and others are dependent on it for sustenance. On becoming aware that sacred river Yamuna is critically threatened by unrelenting encroachment on its flood plains and by increasing pollution load emanating as much as from domestic refuse as from agricultural and industrial effluents, the campaign “Yamuna Jiye Abhiyaan” was convened in the year 2007. The Delhi Development Authority (for short, “DDA”) is the authority for giving approval for use of land in Delhi. The Applicant had earlier filed an application before the Tribunal being O.A. No. 6 of 2012 titled as *Manoj Misra vs. Union of India & Ors.* which came to be decided by the judgment of the Tribunal dated 13th January, 2015; (2015 ALL (I) NGT REPORTER (1) DELHI 139 (for short, ‘Yamuna judgement’)) dealing

with the project for cleaning and rejuvenation of river Yamuna titled as 'Maily Se Nirmal Yamuna' Revitalization Project, 2017. *Vide* Yamuna judgement, the Tribunal approved the project submitted by the Delhi Jal Board (for short, "DJB"). The project report was examined in relation to all its aspects, technically, environmentally and otherwise by the High Powered Principal Committee (for short, 'High Powered Committee) constituted by the orders of the Tribunal in that application. The Tribunal issued various directions including construction of STPs, up-gradation of STPs, rehabilitation of sewer line system and laying down of fresh sewer line system. The entire area of river Yamuna falling in NCT Delhi was divided into two Phases, i.e., Phase-I and Phase-II respectively. Phase-I dealt with the pollution of river Yamuna in Nazafgarh Drain and Delhi Gate Drain consisting of nearly 63% of the pollution load on river Yamuna. Besides this, the directions were also issued with regard to prohibition on carrying on any construction activity in the demarcated flood plain of river Yamuna. The demarcation of flood plain with reference to 1 in 25 years was also directed. The flood plain had been demarcated and delineated.

2. According to the Applicant, dumping of debris and construction waste is a direct source of not only polluting river Yamuna but even the environment and ecology as a whole. Directions were also issued in Yamuna judgement to impose environmental compensation in case of violation of Tribunal's directions, particularly, in relation to flood plain. It is averred by the Applicant that the site which is the subject matter of the present application is same where "Times Global Village

Festival” was planned for a period of 10 years on an annual basis to be organized on the western bank of river Yamuna on the north of DND Flyway. A writ petition in the High Court of Delhi was filed bearing Writ Petition No. 2344 of 2007 titled as *Anand Arya and Anr. vs. Union Bank of India & Ors.* challenging the said action and holding of the event on the flood plain of river Yamuna. The High Court of Delhi had appointed a Committee. The recommendations of the Committee were accepted by the High Court of Delhi and the annual event was stopped. Flood plain of rivers form essential ecological continuum of healthy rivers. These provide essential space to the rivers to spread with ease their flood period flows and recharge the associated aquifers. These are also the lands that play an extremely important role in facilitating the self cleansing ability of the rivers; provide habitat to large number of riparian plants and animals and create wetlands including marshes that help biological cleaning of waste water before it could enter and pollute the river proper. Flood plains of river are not waste lands. These should not be treated as lands lying fallow and utilizable in the manner which is the matter of contest in this application.

3. The Applicant states that he first learnt from the local farmers as well as from the website (i.e. <http://www.artofliving.org/world-culture-festival#>) of the Art of Living Organization – Respondent No. 3 that they were planning to bring in some 3.5 million people from all over the world to their 2016 World Culture Festival Celebration planned on 11th – 13th March, 2016. Respondent No. 3 had started construction on Yamuna flood plain for organizing the said festival and for which

illegal and unauthorized dumping and construction in the active flood plains of river Yamuna in the NCT of Delhi was taking place over some 25 hectares upstream of DND Flyway. Approach roads were planned to be constructed from the ring road and the DND flyway which involved dumping of huge amount of debris and clearing of the flood plains. The flood plains which were excellent natural wetlands as recently as September 2015 have been cleared and levelled by the Respondent No. 3.

4. Huge construction activity carried on and proposed to be carried on by Respondent No. 3 gave rise to every other inter-linked element which can cumulatively impact adversely even the river system. According to the Applicant, with the foot falls of some 35 lacs humans congregating at this fragile site, there would be huge amount of additional solid and liquid pollution that the river would have to face during and immediately prior and after the event. In the year 2010-2011, Respondent No. 3 campaigned extensively for keeping Yamuna pollution free but, now causing pollution by holding such event on the flood plain. The Applicant feeling alarmed by the said project has written to the Lt. Governor of Delhi on 11th December, 2015 highlighting, inter-alia, what was the celebratory sense when 35 lakh human foot falls were to take place in an already beleaguered river bed. The Applicant also raised the question of environmental impacts of such event on the river bed vide letter dated 7th & 22nd January, 2016 and even wrote to the founder of Respondent No. 3. The authorities did not take any appropriate action or steps in furtherance to the said representation. On the contrary, they permitted the

damage being caused to the flood plains for an event. On the one hand, the authorities failed to take any effective action while on the other hand they fail to comply with the directions of the Tribunal as contained in the Yamuna judgment.

5. According to the Applicant, there was need to conduct an environmental impact of the activity including construction works. The DDA had wrongfully reportedly permitted the land in the river bed/flood plain to be used for the event by Respondent No. 3. It is a dangerous precedence as, if such similar events are permitted time and again it will cause serious environmental damage and degradation of river Yamuna and its flood plains. If such large number of people are permitted to occupy the space in the active flood plain of river Yamuna upstream of DND flyway and in the mouth of Barapulla drain system, it would lead to massive compaction of the reed beds and marshy area created by the Barapulla mouth, compromising the ability of the marshland and the river bed to clean the water flowing in the Barapulla drain system.

6. On the basis of these facts, inter-alia, and on the ground that event and preparation for the event would cause irreparable damage to the flood plains and the river; an environmental impact assessment ought to have been carried out before permitting such an event in light of the judgment of the High Court of Delhi in the case of *Times Global Village* (supra), the authorities concerned have failed to perform their functions and duties to protect the flood plain, environment and even non-compliance of the directions of the Tribunal, the Applicant prayed that the ongoing construction work should be stopped and no

activity should be permitted on the flood plains or river Yamuna in Delhi. The Applicant also prayed for imposition of exemplary fine on Respondents No. 1 and 3 and restoration of river flood plain and the channel of Barapulla drain to its pre-existing status.

STANDS OF THE RESPONDENTS:

7. Different respondents filed independent replies. Respondent No. 1-DDA took up the stand that a meeting of smaller group of the High Powered Committee was held on 18th September, 2015 at Shram Shakti Bhawan, New Delhi to discuss specific directions given by the Tribunal to DDA regarding river Yamuna in Yamuna judgement. It was decided to take site visit of eastern and western banks of river Yamuna and to see the key areas for preparing a plan for execution of the project. On 29th September, 2015, DDA had issued notice to the Members of the High Powered Committee. The representatives of the department visited the area from 2nd – 4th October, 2015. During the visit, Manoj Misra (present applicant) noticed assembling of batching plant for construction of Barahpullah flyover (Phase-III). In the earlier application (O.A. No. 479 of 2015), there was no allegation with regard to debris construction material lying on the flood plain of river Yamuna. During the visit, no debris or construction material was found in the flood plains under the control of the DDA. The inspection was video recorded by the DDA. It is stated that DDA has been diligent in performing its duties and also in relation to the project which is being monitored by the High Powered Committee. Status report dated 19th August, 2015 has been already been filed on record (in OA No. 06 of 2012) and as per the status report, no debris was

found in the flood plains falling in area of DDA. Respondent No. 3 had addressed a letter dated 14th December, 2015 to DDA stating that debris/construction material is spread over 12 to 30 acres at the world cultural festival venue and the DDA should remove the same for levelling of the ground. It was responded by the DDA that the debris may be removed by the Respondent No. 3 and regarding levelling they should consult directions of the Tribunal.

8. It is admitted that the letter dated 11th December, 2015 from the Applicant was received by DDA as well as other authorities with regard to holding of World Cultural Festival event. It is stated that part of flood plain of river Yamuna, is not within the control of DDA and there might be some debris lying in that area which is not under the control of DDA. DDA had filed a status report dated 11th June, 2015 in O.A. No. 6 of 2012 wherein it was stated that the DDA had awarded a contract to an agency for lifting of any building material which is found dumped on flood plain in odd hours by some unscrupulous elements. Recently, eight trucks of debris/construction wastes have been removed and sent to Burari Construction and Demolition Waste Processing Plant. After direction of the Tribunal, DDA had appointed a consultant for preparation of Detailed Project Report (DPR) for installation of CCTV cameras on the bank of river Yamuna and upon receipt thereof, the work had been awarded by inviting tenders.

9. The Respondent No. 3 had sought permission from the DDA. The said permission was granted *vide* letter dated 20th March, 2015. However, subsequently, the permission was withdrawn *vide* letter

dated 18th May, 2015. Respondent No. 3 had moved a request dated 11th June, 2015 to the Vice-Chairman, DDA seeking withdrawal of letter dated 18th May, 2015 and vide letter dated 30th June, 2015, the DDA had restored the permission which had been withdrawn vide letter dated 18th May, 2015 subject to the conditions stated therein. The conditions imposed by DDA in the said letter dated 30th June, 2015 reads as under:

- “.....1. That safe and sufficient distance will be maintained from the hedge of the river water and no activity shall be carried out in the immediate vicinity of the river.
2. Only eco-friendly material will be used and it will be removed immediately after the celebration is complete on the 13th March, 2016 as proposed. No material will be dumped at site. Also, concretization of any nature at the site in question will be totally prohibited.
3. That VVKI shall obtain all the requisite permissions, sanctions, approvals from the various authorities for holding its function at the site in question. VVKI shall indemnify and keep DDA indemnified against all losses, damages that may be caused to DDA to the failure of VVKI to obtain any such approval, sanction, permission.
4. Since there will be a huge congregation of people during the World Cultural Festival to be hosted by VVKI between 11th – 13th March, 2016, VVKI shall make adequate arrangements for toilets etc. the waste from such toilets shall not be discharged into the river.
5. Any other conditions which shall be notified on later day connected with the policy for the temporary allotment of the land shall be adhered by the VVKI.
6. In case, it is observed that any of the above conditions or any condition laid out by the other authorities as per para 3 above is violated, the permission shall be withdrawn.”

10. NCT Delhi through Public Works Department filed a short affidavit stating that the Department is responsible for lifting malba/debris from the right of way along the Yamuna basin that is

from Pusta Road, Vikas Marg, NH 24 and the Ring Road. The land on which the said ceremonies are being conducted belongs to the DDA and removal of the malba/debris, if any, thereupon is the sole responsibility of DDA. From the last one year, approximately 3835 metric tons of malba/debris has been removed from the PWD roads adjacent to the river Yamuna. It is stated that Respondent No. 3 had sought permission from PWD. No permission had been granted by PWD to Respondent No. 3 for holding any ceremony function in the concerned area.

11. *Vide* letter dated 29th December, 2015, addressed to PWD, Respondent No. 3 had sought permission for developing various temporary motorable access pathways of 7.5 meters width to have passage for the festival venue/parking as per the layout plan. Permission was also sought to remove the crash barriers, footpaths, central verge at desired locations and catch basins, if any. Respondent No. 3 further stated in the said letter that they undertake to reconstruct the same after completion of the festival. The office of the Executive Engineer, Civil Division-III, Irrigation and Flood Control Department *vide* letter dated 18th January, 2016, had granted permission for constructing pontoon bridge for organizing the event subject to the conditions stated therein. The District Disaster Management Authority, East Delhi, *vide* letter dated 29th January, 2016, had also granted consent to hold the event subject to Respondent 3 obtaining NOC from the Delhi Fire Services and other conditions stated in the said letter.

12. Ministry of Environment and Forest, had filed an independent reply stating that as per allocation of business rules by Government of India, conservation, development, management and abatement of pollution in river Yamuna and its tributaries is in the domain of Ministry of Water Resources, River Development and Ganga Rejuvenation (for short, 'MoWR'). River Yamuna being tributary of river Ganga comes under the domain of that Ministry. The event required small and temporary construction and therefore it did not require approval from the Ministry of Environment Forest & Climate Change (for short, 'MoEF&CC') or SEIAA under EIA Notification. The construction raised by Respondent No. 3 does not require prior Environmental Clearance. The protection of the flood plains is also a task allocated to MoWR. The construction of boundary wall in itself does not require any Environmental Clearance. Mining is a listed activity in Schedule of EIA Notification, 2006 which is recently amended and the mining activity of any extent of hectare and of any topology/technology and mineral require prior Environmental Clearance. But in the instant case, since the construction of facilities by Respondent No. 3 for hosting the event is not within the ambit of EIA Notification, the mining activity due to construction activities by Respondent No. 3 will not be a violation of EIA Notification.

13. Respondent No. 3 – Private Respondent has taken the stand that it had taken all necessary permissions from the concerned authorities for holding the event in question. The authorities had granted permission without any objections or reservations consequent to which only Respondent proceeded further to hold the event. The

directions issued by the Tribunal in Yamuna judgement (supra) are not binding on Respondent No. 3 as Respondent No. 3 was not a party to the said application particularly when it had taken all other permissions. In compliance of the directions in Yamuna judgment of the Tribunal, the authorities had not demarcated the flood plains at river Yamuna and Respondent No. 3 cannot be held liable for the damage to the flood plain. Holding of a cultural event does not come within the prohibited activity but it is a permissible activity in accordance with the Yamuna judgment (supra). Earlier orders passed in the present matter are of interim nature and would be inconsequential for deciding the main matter on merits.

14. Respondent No. 3 further stated that *vide* order dated 3rd June, 2016, the Tribunal had directed the High Powered Committee to give complete report if there has been any environmental damage and degradation to the flood plains for which environmental compensation amount is to be used. The Committee in its report dated 28th July, 2016 had submitted that it is difficult to estimate the restorative cost due to lack of information regarding cost of transportation of debris, deploying plantation material, cost of plantation etc. In its report dated 28th November, 2016, the High Powered Committee gave estimation for tentative cost of rehabilitation of the affected area. Section 15 of the National Green Tribunal Act, 2010 (for short, "Act of 2010") provides only for restitution and not for rehabilitation for computing compensation. The High Powered Committee had stated in its report that event site was admeasuring 170 hectares, whereas admittedly event site was only 24 hectare. There is no evidence to the

fact that Respondent No. 3 has used site in excess of 24 hectare and the report of the High Powered Committee should be rejected on that ground. There are inconsistencies in both the reports. In the report dated 28th July, 2016, Committee had described the state of flood plains at the event site before the event but on the other hand in the report dated 28th November, 2016, the Committee stated that it is not possible to assess the ecological status of the riparian eco-system at the event site before the event. Thus, the findings of the Committee are based on unsure material. In view of the inconsistency in the reports, it is imperative that at first the status of the event site prior to the event should be ascertained. The Committee relied on 'one satellite image' dated 5th September, 2015 for showing existence of wetlands at the event site, which was a peak monsoon season, hence it is not justified to rely on a single image that too of a heavy rainy season. No other data is there to support the report. There are no wetlands at all at the event site. As per the Wetland (Conservation and Management Rules) 2010, wetlands have to be demarcated/identified first. So Committee's assumption that there were wetlands at event site is erroneous as there were no identified wetlands at the event site. No wetland is shown at the event site as per the 'Wetland Map of Delhi' published in a document 'The Wetland Atlas' prepared by ISRO, Ahmadabad for MoEF&CC. The event site actually comprises of agriculture land. There was no protected vegetation at the event site which has been alleged to be damaged by Respondent No. 3 for holding the event. The Committee's observation that a road has been constructed is erroneous.

15. It is stated that 'Meri Dilli Meri Yamuna' was a citizen's action initiative by the Respondent No. 3. They initiated a movement for cleaning of river Yamuna and 20000 citizens participated in cleaning river Yamuna in 2010. Respondent No. 3 had initiated various other movements such as 'Mission Green Earth' which is an initiative in collaboration with the United Nations and under the said movement, the answering respondent had planted 55 million trees in 36 countries and 26 States of India. The said respondent was organizing the event in question which was expected to be attended by huge number of people across 155 countries. One of the agendas for holding the festival near river Yamuna was to create awareness amongst the people about the importance of the river and cleaning the same. The Respondent had taken due precaution and in conformity with the directions issued by the Tribunal or by the Hon'ble Supreme Court of India and the High Court of Delhi. It is stated that the Applicant has levelled false and whimsical allegations against answering respondent that alike the "Times Global Village Festival" it is also raising concrete structure on the flood plains of river Yamuna which in turn will affect the river, the flood plain, aquatic, forest life, etc. thereby violating the directions issued by Hon'ble Supreme Court, Hon'ble High Court of Delhi and Hon'ble Tribunal. It is wrongly alleged that the answering respondent was dumping debris/malba at the site which are actually pictures of removing the same lying already at the site before the event. The material used at the site comprising of bamboo and mud and eco-friendly material which will not cause any harm to the flood plains of river Yamuna. It is stated that despite the directions of the Tribunal, chemical fertilizers/pesticides based farming is still going

on, on the river banks of river Yamuna and is visible on the Google Earth Map. The volunteers were working for three months to clean and purify the river Yamuna. The respondent gave undertaking to remove any kind of material from the site after the event.

16. Additional Affidavit has also been filed by Respondent No. 3 on 3rd August, 2016 giving details of various environmental programmes executed by the said respondent in different States. It is also averred that a comparison of river morphology has been conducted on the basis of satellite images for the period from 22nd December, 2000 till 10th May, 2016. It does not show any destruction of natural flow of the river. Similarly, there is no destruction of reeds, grasses, natural vegetation on the river bed. There is no destruction or damage to the wetlands and aquatic life of the river. On close examination of satellite images, two of the permanent ramps having bituminous pavement connecting the DND flyway with earthen service road can be seen in existence in January 2008, i.e., prior to holding of event. The roads that were being used by Respondent No. 3 were in existence prior to the event.

17. Besides denying the allegations and the grounds taken, the said respondents had also taken a preliminary objection that the Applicant has wrongly impleaded Art of Living International Center as respondent instead of Vyakti Vikas Kendra-I, which is the representative body of Art of Living International and all the works are initiated through it only. Therefore, it prays that application be dismissed on the ground of misjoinder or non-joinder of necessary party.

18. During the course of hearing misc. applications were filed for impleadment, which were allowed without prejudice to rights and contentions of the parties and the said applicants were impleaded as respondents. These respondents supported Respondent No. 3 on merits and otherwise. It was stated by these respondents that the arguments as canvassed by the original applicant would efface cultural, religious rights and sociological relations which the citizens of India have with rivers. The law requires protection of the inter relation between environment and human beings. Section 2(c) of the NGT Act, 2010 which defines the word “environment” does not specifically refers to or identify cultural, traditional, religious practices as leading to pollution which harms environment. The provisions of the act primarily would apply to rapid expansion in industrial, infrastructure and transportation sectors and events like cultural festival are not covered under the provisions of the Act. In cases, where social consideration arises, protection of environment would include within its fold protection of the ecological and the social relationship and as well as any other relation which a mere property may have developed as part of environment itself. These respondents also relies on S.2 (m) of the act defining “substantial question relating to environment” and contended that various melas and festivals held on riverbed does not raise any substantial question relating to environment and mere statutory violation does not make a cause of action for this Tribunal to interfere. The gravity of damage to the environment or property is substantial or not has to be adjudicated with reference to nature of event, kind of event, the type of area in

which such events are held, the history of such kinds of event on such kind of area and the manner in which such events are held. The applicant virtually makes a prayer which would deny the citizens to carry on their traditional, cultural and religious rights as provided under the Constitution of India. The Tribunal has limited jurisdiction and such type of prayers of the applicant cannot be accepted.

RELEVANT ORDERS OF THE TRIBUNAL HAVING DIRECT BEARING ON THE ISSUES INVOLVED IN THE PRESENT CASE:

19. Having referred to the specifically pleaded case of the respective parties, it will be appropriate for the Tribunal to refer to certain orders, passed during the pendency of the present application, as they have direct impact on findings and determination of the issues raised in the present application.

Vide order dated 11th February, 2016 the Tribunal had issued notice on the application of the applicant, returnable on 17th February, 2016. In the order dated 17th February, 2016, it is recorded that the counsel for DDA submitted that the inspection team has prepared its report in terms of judgment dated 13th January, 2015 in O.A. No. 06 of 2012 titled as *Manoj Mishra v. Union of India & Ors.* It was also stated that Professor A.K. Gosain, IIT Delhi was also associated with the inspection team and he has expressed his views. The concerned authority and the experts were directed to examine the matter in relation to construction of bio-diversity park on the flood plains of river Yamuna. The matter was adjourned to 19th February, 2016.

20. On 19th February, 2016, after hearing the counsel appearing for the parties, the Tribunal had requested Professor Babu, Professor A.K. Gosain and Professor Brij Gopal, Expert Members of the High Powered Committee, constituted under the Yamuna judgement (supra), to visit the site along with the Chairman of the Principal Committee, i.e., Secretary of the Ministry of Water Resources and/or his nominee of a very senior rank. The representative of the Secretary from Irrigation Department, NCT of Delhi was also directed to be present. The expert team was directed to visit the site on 20th February, 2016 and the case was ordered to be listed on 22nd February, 2016. The MoEF&CC, MoWR were added as respondents.

21. The case was listed for hearing on different dates and detailed arguments were heard. *Vide* order dated 9th March, 2016, while declining the prayer of the applicant for issuance of prohibitory order preventing the holding of the event that was to held from 11th to 13th March, 2016, the Tribunal passed a detailed order dealing with various aspects of the case. We would prefer to reproduce the said order rather than referring to its contents, which are required to be referred in detail. The order dated 9th March, 2016 reads as under:

“The arguments in the case have just concluded. In the facts and circumstances of the case and keeping in view the urgency involved in the *lis*, it is required of the Tribunal to pass a short order giving its conclusions, reasons for which would be provided by a detailed judgment subsequently.

Having heard the parties at length, perusing the records produced, the three Reports submitted by the Principal Committee constituted by the Tribunal in the main Yamuna matter, Prof. A.K. Gosain and MoEF respectively as well as the pleadings of the parties, we pass the following order recording our conclusions:-

1. For the reason of delay and laches on the part of the applicant in approaching the Tribunal and for the reason of *fait accompli* capable of restoration and restitution, we are unable to grant the prayer of prohibitory order and a mandatory direction for removal of construction and restoration of the area in question to the applicant at this stage. The principles, as stated in the judgment of the Tribunal in the case of *S.P. Muthuraman v. Union of India and Ors.* (2015) ALL (I) NGT Reporter (2) (Delhi) 170, can be squarely applied to the facts and circumstances of the present case. We may notice that the interim stay against the said judgment of the Tribunal has been declined by the Hon'ble Supreme Court vide its order dated 23rd November, 2015 in that case. The applicant had written to the Lt. Governor of Delhi on 11th December, 2015 but filed the present application only on 8th February, 2016. In the meanwhile, the *Vyakti Vikas Kendra-India* (the 'Foundation') had substantially completed the construction work on the flood plains and allied areas which would squarely fall within the jurisdiction of this Tribunal.

2. It needs to be stated that the Applicant has not raised any challenge to the permission dated 30th June, 2015 granted by DDA and letters of other Authorities stating that no permission was required by the Foundation from them, although they had been placed on record and relied upon during the course of hearing. This factor would place the Applicant at some disadvantage though his application would not be liable to be dismissed on this ground alone.

3. This Tribunal is primarily dealing with the ecological, environmental and biodiversity damage done to the river and the flood plains by the activity of the Foundation and the environmental consequences of holding such an event. We are not strictly concerned with the cultural event that is proposed to be held from 11th to 13th March, 2016.

4. We are unable to accept the contention raised on behalf of the DPCC that it was not obligatory upon the DPCC to grant and/or refuse the consent to the Foundation for making such construction and the manner in which it would deal with the sewerage, Municipal Solid Waste generated and the

source of water supply for holding such a huge gathering at the event in question. In any case, it was expected of the Board to issue appropriate directions in exercise of its statutory powers. On the true construction of Section 25 read with Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, we have no hesitation in holding that DPCC has failed to discharge its statutory obligation despite the fact that the Foundation had submitted an application for obtaining its consent. The Board has failed to exercise due diligence and in fact it has exercised its authority improperly in taking a stand that no orders were called from the Board in the facts and circumstances of the case. Thus, we impose costs of Rs. 1 lakh on DPCC.

5. The Foundation has submitted its application to various authorities for obtaining permission for holding the event. It has not obtained any permission as yet from the Police Department, Fire Department and from the Ministry of Water Resources, River Development and Ganga Rejuvenation, which undisputedly, in terms of the Notification dated 31st July, 2014 is the Authority responsible for conservation, development, management and control of water pollution of River Yamuna. All these authorities have failed to exercise due diligence in fulfilment of their public duties.

We also state here that the information provided by the applicant was incomplete, vague and uncertain since it did not provide any specific data, supporting documents, comprehensive plan with regard to carrying on of such a huge construction, levelling activity and also construction of other approach roads, pontoon bridges, ramps, parking and a huge stage admeasuring 40 ft. high, 1000 ft. long and 200 ft. wide to any of the Authorities. This must lead to drawing of adverse inference against the Foundation. We would have expected the Foundation to disclose its entire project besides holding of the cultural activity to all the concerned authorities. Even on that count, the Foundation would be liable to pay compensation.

6. Certain material deficiencies/ discrepancies have been pointed out by the Police Department of Delhi in its letter dated

01st March, 2016 and letter of PWD dated 08th March, 2016. We direct the Foundation to comply with the safety, construction stability and other requirements of all the concerned authorities as well as obtain permission from the Police Department, Fire Department and also fulfill other requirements stated in the letter of the Police Department. We also do not accept the contention of the MoEF&CC that it was not required for the Foundation to seek Environmental Clearance for the project relating to all matters of construction etc. as afore-referred. The stand of MoEF&CC is contrary to the Notification, particularly with respect to development of an area of more than 50 ha. as contained in the EIA Notification, 2006.

7. It is the consistent view of the Experts and is sufficiently evident from the documents placed on record that the flood plains have been drastically tampered with while destroying the natural flow of the river, reeds, grasses, natural vegetation on the river bed. It has further disturbed the aquatic life of the river and destroyed water bodies and wet lands on the flood plains, which were in existence, as noticed in our judgment in the case of *Manoj Misra vs. Union of India and Ors.*, OA No.6 of 2012 decided on 13th January, 2015. Furthermore, they have constructed ramps, roads, compaction of earth, pontoon bridges and other semi-permanent or temporary structures etc. even without the permission of the concerned authorities including Ministry of Water Resources. The permission granted by Government of NCT of Delhi is of no consequence as it is not the competent authority for rights over the river and in any case, it was a permission for only flood situation as is evident from the bare reading of the permission. In fact, that is the stand of Government of NCT of Delhi itself before the Tribunal.

For the damage caused to the environment, ecology, biodiversity and aquatic life of the river, the Foundation should be held liable for its restoration in all respects. In that regard and in exercise of our powers under Sections 15 and 17 of the NGT Act, 2010 we impose an Environmental Compensation, initially of Rs. 5 crores. This amount would

be paid by the Foundation prior to the commencement of the event. This amount would be adjusted towards the final compensation determined to be paid by the Foundation for restoration work. We hereby direct the Principal Committee constituted under the judgment, to submit a report within four weeks from today, in relation to the steps required to be taken for restoration, restitution and rejuvenation of the flood plains to its original status. It will also state the approximate cost that would have to be incurred for such restoration and restitution. We further direct that the entire area in question shall be developed as a biodiversity park in terms of our judgment in the case of Manoj Mishra (supra). The cost thereof shall be paid by the Foundation and DDA in the proportion as would be directed by the Tribunal finally. The Foundation shall, by tomorrow, file an undertaking before the Tribunal that it would, within two weeks from date of demand by DDA, pay the balance amount for restoration, as directed by the Tribunal.

The Principal Committee would be entitled to engage such other experts as it needs to assess the cost factor.

We also constitute a Committee of the representatives of DPCC, MoEF&CC and Member Secretary, CPCB, who shall immediately inspect the site and issue directions by tomorrow in relation to the source of water, collection and disposal of the Municipal Solid Waste and sewerage generated during the event and also issue directions to ensure that there is no further environmental degradation or adverse impact on public health. They shall also issue directions with regard to the source of water and source of power and its utilization thereof. These would be treated as directions issued under Section 33A of the Water Act and Section 6 of the Environmental (Protection) Act, 1986 and would be binding upon the Foundation and all public authorities involved in the case.

8. The permission granted by the DDA dated 30th June, 2015 is a vague permission, which, in fact, is the very basis of the case of the Foundation. However, irrespective of that, we find that the said permission is not in consonance with the orders of the NGT

and in fact is in excess of the powers vested in DDA which runs contrary to the spirit of the judgment of the Tribunal. This cannot be termed as a recreational activity simpliciter. Cultural activity could be recreational but the entire construction of ramps, roads, accumulation of debris, alteration of the natural topography and removal of natural vegetation from the flood plains, cannot be said to be recreational. It is a complete project in itself and the DDA ought to have applied its mind. Strangely, it has neither conducted inspection of the site prior to the grant of permission nor during operation or subsequent thereto. Consequently, we impose a cost of Rs.5 lacs on DDA for its defaults and non-performance of its statutory functions.

9. We also direct that the DDA shall not, in future, issue such permission and any permission issued by the DDA or any State/Authority in relation to flood plain of River Yamuna, shall be subject to the orders of the Tribunal.

10. The learned counsel appearing for the Foundation has given an undertaking to the Tribunal that it will not release any kind of Enzymes into River Yamuna, its tributaries or any water bodies henceforth without obtaining due permission of CPCB and DPCC.

The amount stated above shall be deposited with DDA and shall be maintained in a separate account.

The above directions are issued, while leaving the parties to bear their own costs, for which the detailed reasons, as already stated, shall follow.”

22. In the order dated 11th March, 2016, this Tribunal noted that the Respondent No. 3 filed an application being M.A. No. 227 of 2016 to take on record an undertaking on behalf of the trust in terms of the order dated 9th March, 2016. An unequivocal undertaking was furnished by Respondent No. 3 for complying with all the directions of the Tribunal unconditionally. The said undertaking was accepted by the Tribunal and the said application stood disposed of *vide* order

dated 11th March, 2016. The undertaking filed by the Respondent No. 3 is reproduced as under:

“I, Tripti Dhawan, aged about 69 years, W/o. Late Narinder Dhawan resident of B-23, Geetanjali Enclave, New Delhi-110017 present at New Delhi, do hereby solemnly affirm and state as under:-

- a. That in compliance of the order dated March 9, 2016 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi has been authorized to give the present undertaking.
- b. Without prejudice to the rights and contentions of Vyakti Vikas Kendra, India (Art of Living International Center) as per law, I undertake on behalf of Vyakti Vikas Kendra, India (Art of Living International Center) to comply as under:

“For the damage caused to the environment, ecology, biodiversity and aquatic life of the river, the Foundation should be held liable for its restoration in all respects. In that regard and in exercise of our powers under Sections 15 and 17 of the NGT Act, 2010 we impose an Environmental Compensation, initially of Rs. 5 crores. This amount would be paid by the Foundation prior to the commencement of the event. This amount would be adjusted towards the final compensation determined to be paid by the Foundation for restoration work. We hereby direct the Principal Committee constituted under the judgment, to submit a report within four weeks from today, in relation to the steps required to be taken for restoration, restitution and rejuvenation of the flood plains to its original status. It will also state the approximate cost that would have to be incurred for such restoration and restitution. We further direct that the entire area in question shall be developed as a biodiversity park in terms of our judgment in the case of Manoj Mishra (supra). The cost thereof shall be paid by the Foundation and DDA in the proportion as would be directed by the Tribunal finally. The Foundation shall, by tomorrow, file an undertaking before the Tribunal that it would, within two

weeks from date of demand by DDA, pay the balance amount for restoration, as directed by the Tribunal.”

23. Respondent No. 3 had also filed an application being M.A. No. 228 of 2016, wherein it had prayed that four weeks time be granted to it to comply with the directions in terms of the order dated 9th March, 2016. It was also prayed that environmental compensation of ₹5 crores that has been ordered to be deposited by Respondent No. 3 with the DDA should not be treated as penalty or compensation but as restoration amount. After hearing the Ld. Counsel appearing for the parties and in view of the undertaking filed, the Tribunal *vide* its order dated 11th March, 2016 accepted the undertaking and granted other prayers as prayed by Respondent No. 3 by way of M.A. No. 228 of 2017. The relevant part of the order dated 11th March, 2016 reads as under:

“Learned Counsel appearing for the applicant has contended that certain statements have been made on behalf of Respondent No. 3 in the Print and Electronic Media which impinges upon the basic Rule of Law and are capable of shaking the public confidence in administration of justice. It has been stated that the NGT order would not be complied with.

The learned Counsel appearing for Respondent No. 3 took a very fair stand and submit that if at all, such statements are made, they were in a different context and as far as the stand of the trust before the Tribunal is concerned, it is explicitly taken in the undertaking filed before the Tribunal today as well as M.A. No. 228/2016 supported by the Affidavit of Ms. Tripta Dhawan, one of the Trustees of the Trust. Certainly, adherence of Rule of Law is the duty not only of the Government but of every citizen of the Country. The Rule of Law is the very foundation of the administration of justice system. If the Rule of Law is undermined, it raises a challenge not only for the justice delivery system, but even on the capability of the Government to enforce the Rule of Law. To maintain the dignity and

majesty of the institutions, Rule of Law is to be upheld.

This controversy loses its significance in the context of the present case, in view of the stand fairly taken by the Respondent No. 3 before the Tribunal and we do not wish to go into the merits of this controversy at this stage.

Having heard Learned counsel appearing for the parties, we issue the following directions which are purely interim till final disposal of these applications.

1. We accept the unconditional undertaking, as Ms. Tripta Dhawan who is present in court has confirmed that she has sworn the affidavit in support of the application.
2. The Learned Counsel appearing for the Central Pollution Control Board, Delhi Pollution Control Committee, and Ministry of Environment & Forest, & CC submit that after inspection, directions in compliance to the order of the Tribunal dated 9th March, 2016 have already been issued to the Respondent No. 3. Thus, we direct all the concerned authorities including DDA to ensure that all preventive steps are taken by Respondent No. 3 while holding the event in question. They should ensure that no pollution is caused on the River Yamuna or on its flood plains. There should be a proper mechanism for collection and disposal of Municipal Solid Waste, Sewage and other wastes.
3. We make it clear that we have imposed a sum of Rs. 5 crores initially as an Environmental compensation in exercise of our jurisdiction in term of Section 15 and 17 of the NGT Act and not a penalty in term of Section 26 of the NGT Act.
4. The Learned Counsel appearing for Respondent No. 3 submits that in order to show their bonafides and to ensure that the order is enforced, they would pay a sum of Rs. 25 lakhs today itself and the balance amount within 3 weeks from today. We allow the prayer. If the amount is not paid within the time now allowed, then the amount of Rs. 2.5 crore to be paid by the Ministry of Culture and Tourism and would stand attached in the hands of Ministry and/or in the Bank.

5. All the authorities concerned are at liberty to ensure implementation of these directions and are free to act, if there is any default in compliance of this order.

With above interim directions list all these applications on 4th April, 2016.”

24. The Learned Counsel appearing for Respondent No. 3 while relying upon the judgment of *Modi Entertainment Networks Anr. Vs. W.S.G. Cricket PTE Ltd.* (2003) 4 SCC 341 contested that the findings recorded at the stage of passing of an ad-interim order could not bind the Court/Tribunal or the parties to the proceeding at the subsequent stage of the same proceedings because it cannot operate as issue of estoppels. This proposition of law can hardly be disputed but its application would depend upon the facts and circumstances of a given case. The consequences in law would entirely be different where the interim order/directions passed by Court or the Tribunal are accepted and acted upon by the parties without challenging the said order. The undertaking filed by Respondent No. 3 was unconditional and unambiguous. That undertaking was accepted by the Tribunal. Thereafter, Respondent No. 3 filed applications for grant of extension of time to comply with the directions, after having accepted the directions which tantamount to determination of disputes at that stage itself. It was only upon compliance of the conditions that event was permitted to be held on 11th – 13th March, 2016. Respondent No. 3 or any other party was well within its right to challenge the order of the Tribunal dated 9th March, 2016 in accordance with law which none of the parties opted for. The ad-interim directions having been fully complied with would have their consequential affects on the final disposal of the matter.

25. Learned Counsel appearing for Respondent No. 3 has also relied upon the judgements of the Hon'ble Supreme Court of India in the case of *State of Himachal Pradesh & Ors. vs. Jai Lal and Ors.* (1999) 7 SCC 280 and *Dayal Singh and Ors. vs. State of Uttaranchal* (2012) 8 SCC 263 in support of his submission that Expert Report without any supporting technical verifiable data or other piece of verifiable evidence which supports such statements ought not to be accepted. The Expert Report is not binding upon the Court. The Court is expected to analyze the report, read it in conjunction with the other evidence on record and then form its final opinion.

26. The case of *State of H.P. vs. Jai Lal and Ors.* (supra) has no application to the present case on both facts as well as on expert evidence. In that case, in regard to assessment of productivity of apple orchard the District Horticulture officer was produced as an Expert witness, but had stated no scientific study or research in accessing the productivity of the apple crop. The credibility of such witness would depend on the reasons stated in the report. The report submitted by the Expert in that does not go with the Expert Committee Report automatically in this case. In the present case, neither such situation has arisen nor any person has been tendered as a witness. It was a High Powered Committee consisting admittedly of the experts from the relevant field and they had submitted a report in relation to facts on site as well as on scientific analysis, the consequences thereof including the damage to the flood plains.

27. Similarly, in the case of *Dayal Singh & Ors. vs. State of Uttaranchal* (supra) Hon'ble Supreme Court held that expert is to

assist the court and it is not binding upon the court. The court has to analyze the report. Since that was a case of medical evidence and the ocular evidence in consistency, we are not concerned with any criminal trial herein. The reports submitted by the High Powered Committee have been duly analyzed by the Tribunal and the stand of the other official respondents including the MoWR which is in consonance with the said report. The reports have not been accepted by the Tribunal itself on the face of it but only after due application of mind. So the judgment relied upon by the said respondent is of no consequence.

28. On 3rd June, 2016, High Powered Expert Committee appointed in this very case was directed to give comprehensive report clearly stating if there was any environmental damage and degradation as well as in relation to the environmental compensation payable in that behalf and compensation payable for restoration of the flood plains. The said Committee appointed by the Tribunal under this order amongst other departmental representatives consisted of the following:

1. Mr. Shashi Shekhar (IAS), Secretary, Ministry of Water Resources
2. Senior Scientist from the field to be nominated by the Director, NEERI.
3. Mr. Rajinder Mohan Liberhan, Former Central Defense Accountant
4. Professor A.K. Gosai, IIT Delhi
5. Professor Brij Gopal
6. Professor AA Kazmi
7. Professor CR Babu

29. The Committee filed its report on 28th July, 2016. However, the said report did not specify the cost for restoration or restitution but it is concluded in the report that there was damage to the environment, ecology and bio-diversity. The Committee was requested to submit tentative cost that is liable to be recovered for the damage caused. The Committee was authorized to engage any specialized agency if it so desired for determining the cost for restoration. *Vide* orders dated 10th August, 2016 and 7th October, 2016, 45 days time was given to the Committee to submit its report.

30. When the case was taken up for hearing on 9th May, 2017, the Ld. counsel appearing for the Ministry of Water Resources submitted that the event was held on the flood plain and it was permitted only on the statement of Respondent No. 3 that they would pay all the amount that would be required to be paid for rejuvenation and restoration of the site. The Ld. Counsel appearing for NCT Delhi and Delhi Pollution Control Committee submitted that they were not involved in grant of any permission and it was for DDA to look after the same. In order dated 18th July, 2017, it is noted that the Hon'ble Supreme Court of India *vide* order dated 13th January, 2017, had passed an order in SLP No. 1689 of 2013, titled as *Anand Arya v. Government of NCT, Delhi* to be heard by the Tribunal and consequently that matter was also being heard along with these cases.

Vide order dated 21st July, 2017, a team of Senior Officers of the DDA, Irrigation Department, NCT Delhi and Irrigation Department, State of UP were directed to submit an action plan before the Tribunal

with reference to the flood plains of river Yamuna, where the event was held in March, 2016. The Committee was directed to prepare an action plan keeping in view the report of the High Powered Expert Committee. The matter was heard on various dates, while on some occasions the matter was adjourned on the request of the counsel appearing for the parties, including the counsel appearing for Respondent No. 3. When the matter came up for hearing on 10th November, 2017, the Ld. counsel appearing for Respondent No. 3 mentioned that she has filed an application stating that the matter should be heard by a bench consisting of Hon'ble Mr. Justice Raghuvendra S. Rathore, Judicial Member, NGT because at some point of time he has also heard the matter. The Registry was directed to place the said application on record immediately. However, it was recorded that no such application had been filed by the Respondent No. 3 and the matter was mentioned without filing of an application. Then it was stated by the counsel that she has written a letter to the Ld. Registrar General, NGT. The Tribunal observed that such practice was not acceptable when the matter was sub-judice before the Tribunal and it was expected from the party to file such an application. The matter was heard on different dates by the bench without the said Judicial Member being not member of the bench as he had been posted to the Central Zonal Bench at Bhopal. Though the request *ex-facie* was unreasonable, the Tribunal still allowed the request and thereafter, the matter was heard by video conferencing. Even an unreasonable request was made that Hon'ble Dr. Justice Jawad Rahim, Judicial Member, NGT, who has been member of the bench may not hear the matter. None of the other counsel appearing

for the any of the parties including the other added private respondents had raised any objection at the time when the matter came up before the bench, where Hon'ble Dr. Justice Jawad Rahim, was a member and was part of at least ten hearings as per the record. Thus this request was declined and the matter was heard by the bench including Hon'ble Mr. Justice Raghuvendra S. Rathore and finally the arguments were concluded on 13th November, 2017 and the matter was reserved for judgement.

31. From the above proceedings before the Tribunal, it is evident that without filing of the undertaking and compliance to the conditions in the order dated 9th March, 2016, the event would not have been permitted. Of course, the undertaking was filed without prejudice to the rights and contentions of the Respondent No. 3. In the undertaking, it was clearly stated that a sum of ₹5 Crores imposed as environmental compensation for restoration and the same shall be paid prior to the commencement of the event. It was also stipulated in the order that the compliance amount shall be payable on demand to DDA. The Respondent No. 3 first filed an undertaking and then filed an application being M.A. No. 311 of 2016, in furtherance to its undertaking that it had paid a sum of ₹25 lakhs and for the balance amount of ₹4.75 Crores, Respondent No. 3 wanted to furnish a bank guarantee in variation to the orders dated 9th and 11th March, 2016, respectively. As already noticed, on 11th March, 2016, the applicant had filed M.A. No. 226 of 2016, praying that all the work at site should immediately be stopped, as Respondent No. 3 had not complied with the orders, while MA No. 227 of 2016 filed by

Respondent No. 3 for filing the undertaking on behalf of Respondent No. 3, giving clear and unequivocal undertaking. MA No. 228 of 2016 was also filed by Respondent No. 3 for extension of time to comply with the directions contained in the order, particularly, in relation to deposit the money in terms of the order dated 9th March, 2016. The M.A. No. 226 of 2016 of the applicant was dismissed. The undertaking along with MA No. 227 of 2016 was taken on record and an unconditional undertaking was accepted by the Tribunal. Respondent No. 3 and the Delhi Pollution Control Committee were directed to ensure that no pollution is caused by holding of the said event. As already noticed, after acceptance of ₹25 lakhs, three weeks time was given to pay the remaining amount, which was paid by Respondent No. 3, without protest. The said Respondent No. 3 thus filed an undertaking and thereafter sought variations of the orders and even prayed for extension of time to comply with the orders unconditionally. In the order dated 11th March, 2016, an unconditional undertaking of Ms. Tripta Dhawan, who was present before the Tribunal was recorded on behalf of the Respondent No. 3 and she had filed an affidavit along with the application giving an undertaking to the Tribunal. Since Respondent No. 3 had then taken a fair stand before the Tribunal by giving unconditional undertaking as well as making a statement that the statements released to the press on behalf of Respondent No. 3 were in different context and was not to undermine the judicial process before the Tribunal, the application of the applicant, i.e., M.A. No. 226 of 2016 was dismissed. In the order dated 31st May, 2016, the Tribunal had also observed that the conduct of the foundation had been unfair and lacks bonafide.

The other aspect that emerges from the proceedings is that the Tribunal had not passed any prohibitory orders, against Respondent No. 3 in view of the undertaking given by the said respondent for taking restorative measures and for such undertaking the event might not have been permitted by the Tribunal. It was not the holding of the cultural event that was a matter of concern before the Tribunal, but it was the damage done by holding of the event as even recorded in the orders. Examined from that angle, Respondent No. 3 in fact, cannot even be permitted to urge anything to the contrary or take a contradictory stand to what it had taken before the Tribunal, while the above orders were passed.

REPORTS SUBMITTED BY THE COMMITTEE UNDER THE ORDERS OF THE TRIBUNAL:

32. The Tribunal had directed the High Powered Committee, the Principal Committee and another Committee constituted for commenting upon the flood plains vide its different orders including the orders dated 19th February, 2016, 3rd June, 2016 and 21st July, 2017. It will be appropriate for the Tribunal to examine the content of these reports at this stage before deliberating on the merits of the case with reference to these reports. The inspection report based on the inspection of 16th February, 2016, the constituted team noticed that the work of rough levelling of land had been undertaken at the site, porta cabin offices have been erected, one pantoon bridge across the river was being laid and second one was under planning stage, no building material was found at the site, the ways leading to the venue were found to be kachha in nature, at the venue site about 1200 feet long, 250 ft. broad and 40 ft. high stage on iron scaffoldings was

under erection, at the back of the stage an iron structure was raised to be used for putting view cutters, 13 proposed entry gates from various roads, no parking lot was found having been developed and photographs were taken by this Committee.

33. Professor A.K. Gosain, Department of Civil Engineering, Indian Institute of Technology, Delhi, while referring to the visit, brought out complete details of the visit. The report placed on record showed a team existing of six officers including the Director of Respondent No. 3 but the report was signed only by three persons including Prof. A.K. Gosain, Mr. B.M. Thareja and Mr. J.P. Agarwal. It was stated in the said report that he had received a call just before lunch from the representative of DDA informing him that they are required to go to the site and he was not given adequate notice. As agreed with the Committee, Prof. Gosain was to send his comments to DDA on email. Prof. Gosain was not provide due assistance. However, he sent a mail to the Tribunal describing his comments upon visiting the site that reads as under:

“After visiting the site and also getting clarifications to some of my queries from Mr. Gautam, Director, Art of Living, I have the following observations to make (all these observations have supporting photographs captured that should be provided by DDA, however, I have attached a few photographs which I happen to take with my cell phone).

1. A massive activity of mauling a huge tract of the flood plain of Yamuna close to DND is under way. It is very difficult to capture even with the help of photographs and the impact can only be visualised after going to the site. All kinds of JCB machines are plying there. Lorries are moving in and out of the site and compacting the soil with every move. Portable cabins have been installed.

2. The site has been cleared of all the natural vegetation and consolidated with machinery. It appears that the site has been raised with the help of JCBs. This is visible from the attached Photo 2. It can be seen that the edge close to DBD is still having some part of the wetland that is still having water whereas the adjoining area is raised.
3. Ramps have also been made joining the DND with the flood plain (this is again visible in Photo 2). Around 3 such ramps have been made giving connection to the vehicles from the DND side to reach the rear of the stage (see photo 3).
4. A gigantic stage made of steel rods is under preparation that is proposed to house thousands of artists performing simultaneously (see photo 3).
5. Five Pantoon bridges (2 big ones on Yamuna and 3 small ones on Barapulla) are under construction.
6. A huge amount of debris and construction waste has been dumped into the Yamuna main channel close to the location of the Pantoon bridge.
7. All the vehicle parking sites are in the flood plain, majority of them being on the eastern side. Thousands of vehicles are expected.
8. In nutshell the activity cannot be termed as a benign activity and shall have a permanent footprint on the flood plain and if allowed shall be in complete violation of the NGT order of January 2015 and shall also set a bad precedent.”

The photographs annexed to the mail also showed roads being constructed and even by partially covering the wetlands and the water bodies on the flood plains. The road was constructed at a level of nearly 8 – 10 ft. high from the flood plain by using mud and material wastes which is visible from the photographs quite clearly.

34. The High Powered Committee through its Chairman, Secretary, Ministry of Water Resources, River Development and Ganga Rejuvenation on 22nd February, 2016 submitted the report to the

Tribunal of their visit to the premises on 19th February, 2016. The members of this High Powered Committee have already been described under the head of orders of the Tribunal. The Committee submitted its observations as follows:

“.....**Observations at the Site**

The Committee observed that :

(a) The entire area of the flood plain between the river and the DND flyover has been levelled flat. The small water bodies that existed earlier have been filled up and all the natural vegetation has been removed and the site has been compacted,

(b) Construction debris has been dumped especially on some of the roads that are constructed along the river margin

(c) Two ramps have been constructed joining the DND flyover with the flood plains close to the stage for the festival for providing access to the VIPs on the rear side of the stage by filling with debris and earth.

(d) One pontoon bridge has been completed on River Yamuna and another one is under construction and few more are proposed on the river Yamuna and Barapullah drain.

(e) Besides the natural floodplain vegetation, even most of the trees have been removed or lopped.

(f) Parking sites have been proposed on both sides of the floodplain (eastern and western) of the river; approach roads to the parking lots will be constructed and about 650 portable toilets will be placed at various locations of the venue to facilitate the public.

(g) Several large portable enclosures have been erected for different functions, office facilities and for performers. An enormous stage (about 1200 feet long, 200 feet wide and 40 feet high) is being erected with the help of scaffolding of steel pipes and will be covered with wooden planks and on the top with fibre glass domes. The stage is expected to support 10's of thousands of musicians, performers and dancers during the function.

(h) At the moment the entire site is littered with construction material. The flood plain on the eastern side of the river is proposed to be used for creating parking lots closer to the river for buses, cars and other vehicles and connecting

them with access roads constructed over the floodplain. A network of access roads to the parking lots will be constructed from Noida link road and NH-24. Some levelling work is already in progress in the site on the eastern floodplain of the river Yamuna.

(i) The Committee feels it is not possible to ascertain whether there was any malba which is claimed to have been removed by the organisers.

(j) The Committee observed that the total area that has been impacted on the western side of the river would not be less than 50 to 60 hectares. In this entire area, the flood plain has been completely destroyed; the natural vegetation consisting of reeds, and trees has been completely removed, and the large number of birds and other natural life that was supported by the floodplain has vanished due to this destruction.

VIOLATION OF the NGT ORDER

(1) This permission by the DDA to the Art of Living Foundation to organize a cultural festival on the ecologically sensitive Yamuna flood plain by destroying a very sizable area is in gross violation of the NGT order dated 13th Jan 2015. The court should appropriately deal with this violation. The court in its order 13.01.2015 had also elaborately mentioned the ecological restoration of Yamuna floodplain and thus imposed restriction on any diversion on the Yamuna floodplain.

(2) The Principal Committee supported by the Expert Committee had also submitted through an affidavit the detail restoration plan in October 2015 wherein this area was specifically mentioned with detailed recommendations. The Principal Committee had also recommended that DDA should take immediate action for ecological restoration of flood plains as suggested in its affidavit so that no future diversion can be thought of by the authorities and also prevent encroachment of any nature.

(3) Having said that, there is an urgent need to restore the area damaged by the organizers soon after the World Culture Festival is over. Since extensive and severe damage has already occurred, simple stoppage of the activity and removal of all that has been done at this juncture may not serve much purpose.

(4) The committee is of a very strong view that such incidents should not happen ever again and should not be tolerated the least. Floodplains play a very important role in fulfilling the

ecological functions for ensuring flood control, ground water recharge, water quality enhancement and biodiversity conservation. Therefore, the issue before the Committee is to suggest, how the floodplain damaged in the process for this event can be restored in line with the recommendations of the Principle Committee which is already before this Hon'ble NGT.

Specific Recommendations

(i) During interaction with the Committee, Shri Gautam Vig stated that the number of people expected to come to the function would not be more than 2-3 lakhs, though the preparation is for accommodating 3.5 million people at the site during the cultural festival. In view of the revised numbers and plan which is significantly lower than the number for which it was originally planned, the organisers must restrict the area for their function to the bare minimum and submit a revised plan through an affidavit to the court within a day or two along with a site map stating all the details. The activities on the eastern side of the river Yamuna should also be minimized.

(ii) The Committee is of a strong view, that the organizers i.e. the Art of Living Foundation should be responsible for funding the restoration plan as a penalty. The Committee in its rough estimation feels that the total cost of restoration of the floodplain on the western side of River alone, as proposed by the Principal Committee will now be of the order of Rs. 100-120 crores, given that huge quantity of debris is to be removed, the site is to be de-compacted, the natural topography and contours to be restored, removing the temporary roads and re-plantation of natural vegetation etc.

(iii) The Committee recommends that this amount should be ordered to be collected from the Art of Living Foundation before the event and kept in a separate account monitored by Hon'ble NGT. The entire ecological restoration activities should be completed within one year from the date of the completion of the festival i.e 13th of March 2016.

(iv) The Committee further recommends that the comprehensive ecological restoration as suggested in its October 2015 report should be monitored closely by the Chairman, Principal Committee along with the 3 Experts namely, Prof. A.K. Gosain of IIT Delhi, Prof. C.R. Babu of Delhi University and Prof. Brij Gopal who should submit monthly report to the NGT.

(v) Lastly, the Committee has a strong view that through a suitable order, a strong message be given to DDA and all the concerned authorities & organisations to prevent any attempt for further such violation in future.”

This report was submitted with detailed colour photographs of the levelled areas, the structures being raised at the site, the concrete bazri, iron and cement that was lying on the site. Photographs of wetland and green area on the flood plain were also filed. As many as 20 photographs have been annexed to the report of the High Powered Committee.

35. *Vide* letter dated 25th February, 2016, MoEF&CC submitted a report about critical analysis of the Yamuna River Front Development Plan of DDA and other matters as directed in the order of the Tribunal. In this report, it was stated that DDA ought to have taken notice of the directions passed by the Tribunal in Yamuna judgement (*supra*). It referred, various prohibitions which the DDA ought to have taken note of and suggested environmental safeguards that should be taken while holding the event. It clearly stated that the site forms the part of active zone of river Yamuna. The suggestions are as follows:

- i. “Adequate arrangements should be in place before start of the event for ensuring that there is no pollution to both river Yamuna and its flood plains from waste water and solid waste generated at site. Appropriate number of toilets, which are cleaned on a regular basis, and solid waste bins are put in place all over the event area.
- ii. The malba/debris which is being taken out from the site should not be dumped into the river, water bodies and should be disposed of in accordance with the directions of the local authorities.
- iii. For the event there will not be any extraction of water from the ground or the river.

Arrangements in this regard will need to be made in collaboration with Delhi Jal Board.

- iv. The noise generated in the event area shall not exceed the existing noise standards as prescribed under the Noise Regulations, 2000. The DG sets at the site shall also meet the noise standards as well as emission standards. The diesel to be used as fuel shall be properly stored to avoid incidences of leakages and spillages.
- v. In the event area, emission free vehicles shall be used. The service/event roads and adjoining areas shall be sprinkled with water to prevent suspension of dust in the atmosphere.
- vi. The existing swamps/marshes and drainages should not be disturbed and no waste should be dumped into them.
- vii. After the event is over the organizers shall remove all the structures and shall restore the degraded land.
- viii. The proposed site forms the part of active flood zone of river Yamuna. The stretch of river Yamuna traversing through National Capital Territory of Delhi is in distressed condition. It has been seen that such low lying river zones have become shelter grounds for squatting and unauthorized activities in the past. The event like this should not be organized in the future. The appropriate authority also should ensure that the levelled land on this site is not encroached upon for any human activity”

36. The Members of the High Powered Committee also informed that the site had not been vacated by Respondent No. 3 as late as 18th April, 2016 and they were not able to carry out effective inspection. In fact, this three members Committee noted that on 16th April, 2016 at 09:30 AM they had received a call from the field party that they had not be allowed to carry out the sampling work and have been forcibly stopped by the representative of Respondent No. 3, naming, Mr. Gautam.

37. The High Powered Committee held various meetings. It also constituted small teams for collecting the field data. In the meetings, it was felt that proper inspection could be conducted and requisite information can be collected only after the site is vacated and a request was made to the Tribunal in that behalf. Photographs of huge structures raised at the site were placed on record. Respondent No. 3 had also stated before the Tribunal that they wish to urge the plea of bias as one of the Member of the Committee had made certain comments. An argument is advanced that before the scientific assessment had commenced, the High Powered Committee (based on a mere visual inspection) *vide* the interim report concluded that ₹100–120 crores be awarded against Respondent No. 3 as damages for allegedly damaging the event site. The Chairman of the Committee had distanced himself from the said conclusion and placed on record that the assessment was not based on any scientific basis. One of the Committee Members who was actively involved in the assessment and preparation of the report gave an interview to Outlook Magazine expressing to the public that according to him Respondent No. 3 had damaged the event site and compensation to the tune of ₹120 crores could be imposed for the said damage. According to the Respondent No. 3, this was the final report and is result of pre determined mind and therefore, there is an element of bias as the Committee or one of its members had already disclosed their mind to a magazine. In support of his submission, the respondent had placed reliance on the cases of *Cantonment Executive Officer and Another vs. Vijay D. Wani and Ors* (2008) 12 SCC 230, *Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (co-educated High Secondary School and*

others (1993) 4SCC10 and *Kumooan Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and others* (2001)1 SCC 182.

This argument appears to be attractive at the first glance but when examined in depth and in accordance with law, it is found to be without substance. For the sake of arguments, we would proceed on the basis that facts averred are correct. The expenditure on restoration/restitution of the damaged/degraded flood plains with complete analysis was stated to be ₹42 crores. Thus, it is neither an expression of a pre-determined mind nor suffers from the element of personal bias.

38. The Tribunal, however, do not find any substance in the submission of Respondent No. 3, as the Tribunal *vide* its order dated 3rd June, 2016 added three independent experts; one from NEERI, other a former Bureaucrat and Prof. A.A. Kazmi, IIT Roorkee. Hence, the Committee was enlarged to bring on record a completely independent and uninfluenced report in the interest of justice. In furtherance to the order of the Tribunal dated 4th April, 2016, the newly constituted Committee paid visit to the site and physically examined the elements on the site and upon collection of proper data and on the strength of the scientific reasoning submitted their final report dated 28th July, 2016 for the steps required to be taken for restoration/restitution and rejuvenation of the flood plains in the aftermath of holding of the event. The High Powered Committee submitted a very detailed report. Since this is one of the main reports submitted by the High Powered Committee, it will be appropriate to reproduce the entire report of the Committee:

“Report on the Impacts of World Culture Festival organized by Art of Living (AoL) Foundation on the Floodplains of the River Yamuna at Barapullah — DND Flyover Stretch and on the Left Bank of the River and the Restoration of Impacted Area.

BACKGROUND

The Hon'ble NGT in their order dated 3 June 2016, in the matter of Manoj Mishra Vs. Delhi Development Authority & Ors. (Original Application No. 65 of 2016), constituted the present Committee, by expanding the earlier Committee. The Order (Annex 1) stated that,

"The Committee would give complete report, in terms of the Judgment, if there has been any environmental damage and degradation; in relation to the environmental compensation payable in that behalf and compensation payable for restoration of the flood plain etc."

As per the order of the NGT, the Committee comprises of:

1. Mr. Shashi Shekhar (IAS), Secretary. Water Resources.
2. Senior Scientist from the field to be nominated by the Director CSIR-NEERI (Dr Nitin K Labhasetwar was nominated scientist by the Director, CSIR-NEERI).
3. Mr. Raj inder Mohan Liberhan, former Central Defence Accountant.
4. Professor A.K. Gosain, I.I.T., Delhi.
5. Prof. Brij Gopal
6. Professor A.A. Kazmi
7. Professor C.R. Babu

We deal with these two aspects in the following Report. We consider two areas of the floodplain:

First, the area between Barapulla drain and the DND flyover on the right bank of the river Yamuna where the main event of the World Culture Festival was organised, and is hereafter referred to as the **Main Event site**, and

Second, the floodplain on the left bank between the river Yamuna and the Main Marginal Bund (Noida Link Road) — hereafter referred to as **Eastern Floodplain**.

As per directions of the Hon'ble NGT, some members of the extended Committee visited the site on 6th June 2016 and made visual assessments of the damage caused by the AOL event. The following Report is based on detailed analysis of the available evidences from several field visits of the committee members and satellite images from Google Earth.

The Report describes the (i) State of the Floodplain before the AOL event, (ii) Activities causing damage to the floodplain during preparation for the AOL event, (iii) the State of the Floodplain after the AOL event, (iv) Environmental Damage And Degradation, (v) Restoration of damaged flood plain of River Yamuna, the Need for Restoration, (vi) Activities and Steps Required for Restoration (vii) Environmental Compensation payable for restoration, (viii) Supervision for restoration, management and maintenance of the restored flood plains.

I. STATE OF THE FLOODPLAIN BEFORE THE EVENT

Some members of the Committee had been visiting the Floodplains of River Yamuna for the past couple of years for preparing their Reports to the NGT on ecological restoration of the Yamuna flood plain in the 22 km stretch of the river passing through Delhi, as ordered by the Hon'ble NGT. One such visit was made during 2-4 October 2015.

Accordingly, the floodplain of the Main Event site had huge tract of wetlands, natural vegetation comprising of trees and shrubs, tall reeds, cattails, sedges and other aquatic vegetation including water hyacinth (in the foreground). Several large water bodies and some patches of agriculture (Photos A 1 , A2) can be seen. The nature of aquatic vegetation also indicates the presence of shallow to deep water below them.

The status of the site is seen clearly from the satellite image of 5th Sept, 2015 (Image A3) which shows the then-existing scenario circled in different subheads on the map. The presence of natural vegetation and large expanse of water can be readily recognised. A side channel of the river running almost parallel to it and passing under the DND flyover is also noteworthy. Some agricultural activity can be seen in the area between the side channel and the river.

These wetlands as shown in the photographs performed many ecological functions which included flood control, ground water recharge, supporting large biodiversity (birds, fish, reptiles, amphibian, numerous invertebrates and microorganisms). The invertebrates such as nematodes, snails and insects served as food for other animals whereas the microorganisms contributed to decomposition, cycling of nutrients and supported food chain. Whereas some wetland vegetation was grazed upon, large

reeds, shrubs and trees contributed most significantly to carbon sequestration (storing carbon in biomass and soil), Further valuable function of wetland vegetation was to process nutrients and other pollutants thereby assimilating wastes entering the area and hence, maintaining water quality in the river and belowground.

The Eastern Floodplain (on the left of the river) has been largely under seasonal agriculture but there were some large wetlands. These can be clearly seen in the satellite image of the same date (05 September 2015) (Image A4) where the wetlands have been specifically marked.

II. ACTIVITIES CAUSING DAMAGE TO THE FLOODPLAIN DURING PREPARATION FOR THE AOL EVENT:

The Principal Committee had visited the site on 20 February 2016 as per the directions of the NGT on 19th February 2016. The Committee already reported to the NGT on the activities undertaken by the AOL. These are summarised again below and documented with photos in Annex B:

Clearing of vegetation: Practically all wetland vegetation on the Main Event site had been removed completely along with their belowground rhizomes and roots by excavation which was evident from some such excavated material still lying on the site (Photos B1, B2). Most of the trees and shrubs had also been removed. No plant cover was visible anywhere in the area.

Levelling and compaction of the ground and filling up of water bodies: There were no water bodies left. All depressions had been filled up with soil or debris, and the ground had been levelled totally flat. The compaction and consolidation of land was apparent from the use of numerous heavy vehicles (JCBs, trucks, dumpers and cars) and could be experienced during walking on the ground.

Construction of the stage and other temporary structures: The levelling and compaction of the ground was followed by the construction of a huge stage using steel pipe scaffolding and wooden planks (Photos B3, B4). Several large cabins/tents were constructed for various purposes (office, green rooms, stores, etc.) (Photo B5). Construction material was strewn all over (Photo B6).

Construction of ramps: Three large ramps had been constructed along the DND flyover by filling

with debris and soil for access to the site by the VIPS and security personnel (Photo B7).

Construction of pontoon bridges: A pontoon bridge had been under construction on the River Yamuna. The wetland vegetation along the bank had been buried under the debris to provide access to the pontoon bridge (Photos B8 to B16). A large amount of debris and stone grit were lying close to the pontoon bridge site for use in construction. Other pontoon bridges were under construction also over the Barapulla drain.

Construction of access roads: Two major access roads had been built from the Barapulla drain side along the DND flyover towards the Event site and along the river towards the pontoon bridge. Other paths had been made criss-crossing the entire floodplain of the Main Event site and vehicles moved there.

Blocking the side channel of River Yamuna:

During our visit on 20 February, the filling up of the wetlands in and along the side channel was in progress. A road was under construction with debris and garbage along the river to the area beyond the side channel (Photos B17 to B19).

The Committee also observed similar construction activity with the use of JCBs on the eastern floodplain across the river. The Committee also learned about the layout plan of the AOL event which clearly showed the areas to be impacted by the activities including making paths for the movement of vehicles and their parking, as well for area to be used by the visitors/audience.

The nature and extent of the activities undertaken during the preparation for the event can be assessed also from the photo of the site plan displayed by AOL itself at site. (Photo B20).

III. STATE OF THE FLOODPLAIN AFTER THE EVENT

The Satellite image of 15 March 2016 (immediately after the event, Annex C) clearly shows the extent of activities which included three large ramps, three pontoon bridges on Barapulla drain, two large and one unfinished pontoon bridges over River Yamuna, several crossings over the side channel by blocking it with debris, the large stage, huge area for seating of the audience, several cabins, approach roads, parking areas, etc.

The Principal Committee surveyed the site after the event on 15 April 2016 and planned to investigate the damage quantitatively on 16th April 2016. However, the Committee was

prevented for making any study and were forced to retreat by the AOL volunteers on the site. The present Committee also visited the sites (both sides of the river) on 6th June 2016 for a visual assessment. Our observations are further supported by the Satellite images on 15 March 2016 and 10 May 2016 (Images C Ito C3).

The Committee observes that:

1. The entire floodplain area used for the Main Event site, i.e. between the DND flyover and Barapulla drain (on the right bank of River Yamuna) has been completely destroyed, not simply damaged. The ground is now totally levelled, compacted and hardened, is totally devoid of water bodies or depressions, and almost completely devoid of any vegetation (except a few large cattails—the *Typha elephantina*—at the base of the DND flyover).
2. The area where the grand stage was erected (and the area immediately behind it) (appearing reddish in colour, marked in image C1) is heavily consolidated — most likely with a different kind of external material used to level the ground and compress it.
3. Huge amount of earth and debris have been dumped to construct the ramps for access from the DND flyover and from the two pontoon bridges across river and three bridges across the Barapulla drain.
4. Similarly enormous amounts of debris and soil have been used to construct roads (including widening of earlier narrow track along the flyover) which have consolidated and compacted the soils, possibly to significant depths required to bear weight of heavy vehicles (areas marked in Image C3).
5. Ground compaction has been especially heavy in the wetland areas along the river, areas of approach to pontoon bridges, on the side channel, and other marshy areas.
6. Ground over the entire area has been consolidated by movement of vehicles and people over several months.
7. The criss-cross lines across the area between the river and the stage location clearly indicate consolidation for making temporary paths and by movement of heavy vehicles.
8. The side channel has been blocked at several points for access to the parking area between the channel and the river (Images C1 and C3).
9. In the Eastern Floodplain, access was provided to the river bank for parking the vehicles and then movement to the Event site through

pontoon bridges. One road was widened and compacted with debris also from near the Mayur Vihar Metro station towards the river. Another two roads were constructed from the Noida-Link Road—DND junction towards the river by dumping debris and filling up a large area of wetland on the way (Image C2). Large parking lots were created near the river bank close to the two pontoon bridges, by levelling the crop fields.

IV. ENVIRONMENTAL DAMAGE AND DEGRADATION

The above observations on the state of the floodplains after the AOL event provide only a picture of their physical damage and destruction. There is far more environmental damage, degradation and damage to natural ecosystems than can be appreciated from these visual observations. Environmental damage to ecosystems includes loss or damage to biological components, physical structure and chemical characteristics that in turn have serious consequences for their functioning. Some of the more prominent aspects of damage and degradation are noted below.

Change in topography/ habitat diversity

The physical changes in the floodplain and its wetlands include a change in topography which has a direct bearing on the diversity of habitats. Construction of ramps and roads, filling up of water bodies and levelling of the ground together with compaction have almost completely eliminated the natural physical features and the diversity of habitats. Physical changes also occurred in the river channel due to the removal of riparian vegetation, construction of road and pontoon bridges, blocking of the side channel that would invariably disturb the flow and bottom sediments besides bringing in particulate material (sediments and organic matter) into it.

Loss of water bodies/wetlands

The simplification of habitat into a flat land has eliminated all water bodies in the impacted area—shallow or deep that form naturally in the floodplain. These water bodies control floods, help groundwater recharge, support vegetation, fish and other biodiversity. Overall the floodwater retention capacity of the area has been severely compromised.

Loss of floodplain vegetation and Biodiversity

The floodplain has lost almost all of its natural vegetation - trees, shrubs, reeds, tall grasses, aquatic vegetation including water hyacinth. The vegetation also includes numerous microscopic

forms of algae, mosses and some ferns which inhabit the soil and water bodies. All of them have been destroyed in the area completely. Their total loss cannot be readily visualised and documented.

The vegetation provides habitat, food and sites for breeding/nesting etc to a large number and kinds of animals including birds, fishes, frogs, turtles, insects and innumerable bottom and mud-dwelling organisms (molluscs, earthworms, insects, and various other micro- and macroscopic invertebrates). These organisms were rendered homeless, driven away by the intense activity, and many were consigned to their graves under the debris. This is an "invisible" loss of biodiversity which cannot be easily assessed, and most may never be able to return. Far more significant changes are expected in the microorganisms which are critical to the ecosystem functioning.

A change in community structure is bound to follow as some of the competitors are lost and may be replaced by undesirable or less desirable species of plants and animals. For the vast majority of floodplain organisms except for a few species of trees or reeds like *Typha elephantina* (giant cattail), the compaction and loss of water (filling and drying up of the habitat) means irreversible loss of habitat and death for ever in that impacted area.

Changes in substrata — nature of soil, compaction, toxic substances

Changes in the physical, chemical and biological characteristics of the soil have wide ranging ramifications for ecosystem functioning. As a direct influence of compaction alone, there is a decline in the ground water recharge as the soil loses its infiltration capacity. This further inhibits gas exchange, creates an oxygen deficient environment and eliminates soil organisms, as well affects any other plant or animal dependent on the soil. There is every possibility of leaching of toxic substances (both organic and inorganic) derived from the debris and other wastes brought from outside. These are expected to affect all forms of life, and the quality of water both belowground and in the river over a long period and long distance.

Degradation and Loss of Ecosystem Functions

Environmental damage and degradation of ecosystems occur not only to their structural components as narrated above. Far more important is the damage/degradation caused to

the ecological, biological, biogeochemical processes and ecosystem functions that in turn result in the loss of several ecosystem services (benefits) to humans. Vegetation in general and wetlands in particular contribute significantly to carbon sequestration (removal of CO₂ from the atmosphere), improvement in water quality by absorbing nutrients and checking erosion, and supporting biodiversity (fish and birds as most visible components). Microorganisms and invertebrate play a major role in floodplain/wetland ecosystem functions. Most of these functional changes/damages/loss of ecosystem services occur slowly with time and can be noticed only over the longer term after regular monitoring.

V. RESTORATION OF DAMAGED FLOODPLAIN OF RIVER YAMUNA

Restoration

Restoration of an ecosystem refers to bringing it back to the original state. It requires not only elimination of all the drivers of change which caused damage or degradation in the first instance, but also providing suitable conditions for recovery—returning on the path leading to earlier state and also preventing at the same time any other new condition or factors that may cause another kind of damage or interfere with the process of recovery. The trajectory of restoration never follows the same course as that of damage/degradation, and many of the changes in some physical or biological component of the ecosystem may have been irreversible, for example loss of soil layer or some species. In general, the extent of restoration that can be achieved depends upon the level of degradation at which the efforts for restoration are planned, the approaches followed for restoration and the rate of recovery of different components.

Thus, restoration to the original or optimally desirable state cannot be achieved if the ecosystem has been severely degraded or completely destroyed. In the present case of the Yamuna river floodplain at the Main Event site have been totally destroyed by *(a) complete clearing of all kinds of vegetation on the floodplain (and loss of all dependent biodiversity), (b) filling in of water bodies and all depressions, (c) dumping of debris and garbage followed by levelling and heavy compaction of the ground. Most of the ecosystem functions of natural wetlands have been completely lost.*

Why Restoration is important?

Alternatively, the Committee, however, strongly recommends that all the activities mentioned in para VI above may be got implemented and the cost of which should be borne by the AOL so as to ecologically restore the area damaged by AOL. Despite the above stated fact limitations, we must undertake restoration of the floodplain that has been destroyed or degraded. In case of River Yamuna, extensive areas of floodplain have been reclaimed and brought under human settlements and development. River Yamuna is today among the most degraded and threatened rivers in the country. In view of the multifarious problems faced by the river, the National Green Tribunal laid out a plan of action in their judgement of 13 January 2015. Notwithstanding this order of the Tribunal, we would like to emphasise upon the functions of floodplains for ensuring the ecological integrity of the rivers and their ecosystem services. The most important functions of floodplains include:

- Moderation of flood peaks through temporary retention of water and spread of water;
- Enhancement of groundwater recharge in larger area and improvement of ground water quality;
- Stabilization of banks by the vegetation and maintaining channel form;
- Maintenance of high biodiversity and high production of natural resources;
- Provision for fresh sediments with high fertility (suitable for high productivity of vegetation for grazing animals or for growing vegetables);
- Filtering sediments, chemicals and nutrients from upslope sources, and thereby improving water quality;
- Maintenance of good stream habitat for fish (and other wildlife also), thereby promoting high fisheries production.

An Australian river scientist, D. Mussared (1997; Living on Floodplains, CRC Freshwater Ecology, Australia) has stated:

"Floodplains are as important to rivers as bark is to trees. Most of the processes that drive life in rivers happen around their edges. Just as the sap flows through the outermost ring of a tree, not through its centre, the lifeblood of a river ebbs and flows on its floodplains. The vegetation growing there isn't mere decoration; it is a river's roots and leaves"

Hence, the floodplains must be protected and conserved for sustaining our rivers. It is therefore, absolutely essential that urgent action is taken to restore the floodplain destroyed or degraded by the AOL, to the extent possible.

VI. ACTIVITIES AND STEPS REQUIRED FOR RESTORATION

At the outset, we submit that the restoration of the floodplains of River Yamuna between Barapulla drain and the DND flyover (Main Event site) and the Eastern Floodplain cannot be differentiated by any means to distinguish between the activities required to undo the impacts of AOL's actions and the activities for further improvements. The Restoration effort in terms of human, material and financial resources and the time required will be several times more than that for the proposed restoration of other parts of floodplain of River Yamuna. We envisage the following activities:

- Loosening up of the soil in the entire area by dredging. The depth and extent of dredging required will vary in different parts of the floodplain on the basis of the debris or other external material found buried under the surface (especially along the roads/paths).
- The ramps have to be removed; the material used for blocking the side channel is to be removed to restore connectivity with the river. All external material/debris has to be removed and transported to dumping sites to be identified by DDA.
- Detoxification exercise will be required to remove the toxic substances (e.g., by bioremediation) in the soil that may have leached out of the debris dumped there.
- All the vegetation has to be restored by planting carefully selected native (as far as possible original riparian species) trees, shrubs, reeds, sedges etc. and the colonisation of desirable aquatic vegetation and fauna has to be facilitated. This will require long term monitoring and adaptive management.
- Restoration of the fauna such as fish and birds will have to be left to the natural migration and colonisation. It will take several years until the suitable tree and shrub canopy develops to support them.
- Far more effort will be required to restore the planktonic, benthic (mud-dwelling) and

microbial communities after careful investigation, culture and introduction.

- Construction of 'treatment wetlands' for treating the effluents in the Barapulla drain and other runoff by routing the wastewater through these wetlands' before passage into the river.

We must also caution that, as noted earlier, the trajectory of restoration may not necessarily follow the anticipated path. Natural factors, future human interventions, and invasion by undesirable species may cause drifts in the restoration pathway and will require continuous attention and intervention.

As the rainy season has set in, restoration efforts may be delayed and become complicated by the spread of undesirable consequences to adjoining and downstream areas, for example, the leaching of toxic substances and nutrients and establishment of undesirable species.

Committee takes this opportunity to further request the Hon'ble NGT, that the entire floodplain area has to be re-planned to restore topographic features, restore water bodies, and check erosion along river banks. This aspect has already been submitted in the Committee's report on restoration of flood plains in October 2015.

VII. ENVIRONMENTAL COMPENSATION PAYABLE FOR RESTORATION

It is extremely difficult to assess the costs of environmental damage and degradation accurately and its restoration in terms of compensation payable because:

- (a) It requires substantial time, human and other resources to collect detailed quantitative information on the nature, extent and magnitude of various activities listed earlier for the restoration. For example, the amount of debris to be dredged out and its nature requires time and where and how far has it to be transported for disposal has to be also decided accordingly.
- (b) Another major factor is the long time period required for restoration that may be a decade or more for the trees and many other species to establish.
- (c) Estimation of the costs of restoration requires the preparation of a Detailed Project Report that may take several months to a year besides financial resources.

We submit that it is necessary to get a DPR prepared by an independent agency which will also estimate the costs to meet the restoration plan as envisaged in the Expert Reports.

VIII. SUPERVISION FOR RESTORATION, MANAGEMENT AND MAINTENANCE OF THE RESTORED FLOOD PLAINS.

We wish to add further that the sites have to be under continuous supervision during restoration and thereafter for management and monitoring of the restored floodplains for several years (about 10 years) until the situation becomes normal for optimal functioning of the ecosystem. The Chairman of the Principal Committee and three expert members, viz., Prof. Gosain, Prof. C.R. Babu and Prof. Brij Gopal can undertake the responsibility.”

We may further notice that along with this report, large numbers of photographs have been annexed showing the status of the site post the event. Even Google images have been annexed as of 20th February, 2016 and May, 2016.

39. In the meeting dated 22nd August, 2016, the Committee felt that it could not give the costing for restoration immediately as it would require time for evaluation of many factors and adequate data. The time for submission of the report was extended by the Tribunal. The final report then was submitted by the High Powered Committee *vide* its letter dated 28th November, 2016. The Committee in this report referred to its various inspections and dealt with various aspects. It also took into consideration the reports of the smaller Committee. The ecological rehabilitation of impacted site was dealt with in great detail. Under the action plan, physical component and biological component both were dealt with. Determining the cost of ecological rehabilitation, it submitted number of recommendations along with images,

calculation statements and other details worked out by the Committee. The said report reads as under:

“Report on the Ecological Rehabilitation of the Adversely Impacted floodplains of the river Yamuna (between Barapullah — DND flyover and on the left bank of River) due to World Culture Festival organized by Art of Living (AoL)

BACKGROUND

Rejuvenation of Yamuna River and NGT's order of 13 January 2015

The ecological sensitivity/ fragileness of the Yamuna riparian ecosystems has been well documented. Realizing the permanent ecological value (ranging from flood control to making water available to the communities living all along the river basin and also in purification of water by these riparian ecosystems, particularly the floodplains and their diverse wetlands with mosaic of ecological niches), a number of decisions have been taken by the courts in response to litigations. The most recent judgement is that of 98-paged judgement delivered by Hon'ble NGT in the matter of Manoj Misra vs Union of India & others on 13 January 2015. The judgment, elaborately mentioned about the ecological restoration of Yamuna Floodplain, considering the recommendations made in the two Expert Committee Reports, and imposed restriction on any activity on the Yamuna Floodplain. Subsequently, the Principal Committee, based on three-member Expert Committee Report, also submitted a restoration plan of the floodplain of river Yamuna in October 2015 wherein the Barapullah — DND Flyover stretch was also covered. It was also recommended in this report that DDA should take immediate action for ecological restoration of floodplains so that no future diversion can be thought of by the authorities and also to prevent encroachment of any nature.

World Culture Festival of Art of Living (AoL), Litigation, NGT orders and Committees constituted

Inspite of restriction on any diversion of the Yamuna floodplain, DDA provided permission for holding a mammoth function of World Cultural Festival by Art of Living (AoL) on the floodplains of Yamuna river on the western side of Barapullah — DND Flyover area (**Figure 1**) with

a condition that they should get prior permission from NGT for holding the function and also not carry out any activity within 100 m distance from water channel. More than 3.5 million people were expected to attend the function.

The AoL initiated the activities on the floodplain on both western and eastern sides of the river Yamuna at Barapullah — DND Flyover stretch. Mr Manoj Misra, filed an application (O.A. No. 65 of 2016 [M.A. No. 144 of 2016]) at NGT against the AoL for undertaking activities to hold a massive function on the ecologically fragile floodplains of Yamuna river.

The NGT appointed one member Committee (Professor A. K. Gosain) initially to assess the ground reality, and he submitted a Report with photographs, which substantiated that the ongoing

activities adversely impacted the ecology of floodplains. Subsequently, the NGT in its order dated 19.02.2016 directed that Chairman of Principal Committee and three experts of the Principal Committee (Professor A.K. Gosain, Professor Brij Gopal and Professor C.R. Babu) should visit the site and submit its Report on the damages caused, if any.

Four Member Committee and NGT's Orders of 19.02.2016 and 09.03.2016

The Committee visited the site on 20 February 2016 at a time when the AoL's preparation were full swing across the entire area. The Committee submitted its Report, wherein it was recommended that AoL should be made responsible for funding the restoration plan as a penalty and suggested that a total cost of restoration of the floodplain on the western side of river alone will be in the order of Rupees 100-120 crores. The NGT imposed an initial environmental compensation upon AoL and other public authorities responsible directly or indirectly for the damages caused to floodplains and asked the 4 member group of the Principal Committee to submit the Report on the costs of rejuvenation and restoration of the site (vide, NGT order O.A. No. 65 of 2016 dated 19.02.2016 and 09.03.2016). As per the direction of Hon'ble NGT, the Committee worked out a detailed plan for assessment of the damages/impacts to the floodplains, and surveyed the site on 15 April 2016 and identified locations for conducting detailed sampling the following day. **But the AoL workers obstructed and forced the team when visited the site for sampling next day i.e. 16**

April 2016. This was reported to Hon'ble NGT and was duly recorded in its judgment of 31 May 2016.

NGT's Order of 03.06.2016 and 7 Member Committee

NGT in its subsequent order (O.A. No. 65 of 2016 dated 03.06.2016) expanded the 4-member Committee by the addition of 3 members and the present Committee now consists of the following members:

1. Mr. Shashi Shekhar (IAS), Secretary. Water Resources.
2. Dr Nitin Labhsetwar (Senior Scientist nominated by the Director NEERI).
3. Mr. Raj inder Mohan Liberhan, former Central Defence Accountant.
4. Professor A.K. Gosain, I.I.T., Delhi.
5. Prof. Brij Gopal
6. Professor A.A. Kazmi
7. Professor C.R. Babu

The Hon'ble NGT also mentioned in its order that: *"The Committee would give complete report, in terms of the Judgment, if there has been any environmental damage and degradation; in relation to the environmental compensation payable in that behalf and compensation payable for restoration of the flood plain etc."*

The Committee was directed to address the two major issues: (1) the environmental damage and degradation caused by holding the event in the area, and (2) the environmental compensation payable for restoration of the floodplain. The Committee submitted its Report. This Report took into account the field experience of three Committee members (CRB, AKG and BG) gained by visiting the site officially since 2013 for the preparation of earlier Report of 2014 on the conservation of River Yamuna and also for preparation of another Report in 2015 which was submitted to Hon'ble NGT for its consideration.

Reports of 7 member Committee, and NGT's Order of 10.08.2016

The Report also took cognizance of the substantial amount of qualitative information on the sites of the World Cultural Festival of AoL documented in photographs and described in mentioned Reports. The Report also included the analysis of qualitative changes brought out at the site before and after the event (**Figure 2**) using images of Google Earth of different dates. Thus, the Report discusses the environmental damage and degradation on the two sides of the river and provides conclusive evidences that AoL's activity

adversely impacted the ecology of the floodplains. The Report was submitted to Hon'ble NGT, which passed an order on 10 August 2016 wherein it the Committee was directed to furnish "atleast tentative costs that are liable to be recovered for the damage caused to environment, ecology and biodiversity as the Committee had concluded in its Report dated 28 July 2016 that there has been such damage."

The Committee, after detailed deliberations, submitted a brief Report to NGT stating the following:

"(i) Reiteration of the earlier statement that estimation of costs of damage is a complex task involving assessment and evaluation of many factors and require adequate data on the present state of the impacted site, and hence maintains its emphasis on the costs of restoration.

(ii) The restoration costs cannot be estimated without taking into account the extent of dumping and compacting, the amount of dumped material to be removed, the depth to which the dumped material to be excavated and identification of location where the excavated material can be transported and disposed off. These have to be assessed by DDA by sampling and profiling of different sites with the approval of the Principal Committee.

(iii) The DDA can be entrusted to carry out such task, as it has in-house capacity to carry out such task and this activity shall be taken up after November 2016 as the area become dry after monsoon water recedes.

(iv) After the site is brought back to pre-event stage, the cost of ecological and biodiversity restoration as envisaged by the Expert Committee in their Report dated 28.07.2016 can be worked out."

In its latest order of 7th October 2016, the Hon'ble NGT directs the Committee to submit its final Report on quantum positively by that time, i.e. 23rd and 24th November 2016."

The Committee met on 26th October 2016 and decided to work out approximately the costs of ecological rehabilitation of the site taking into account the recommendation made in the Reports on: (i) Rejuvenation and Restoration of Yamuna, and (ii) Restoration Plan for the Zone 'O' (River Zone in NCT of Delhi and adjoining Uttar Pradesh and the details of Restoration Processes), and (iii) the information provided in the earlier Report.

The Present Report deals with the ecological rehabilitation of adversely impacted AoL site and the costs that are involved in the ecological rehabilitation of the site to functional riparian ecosystems.

ECOLOGICAL REHABILITATION OF IMPACTED AoL SITE

For the formulation of an action plan for the ecological rehabilitation of impacted AoL site, it is important to take note of the activities and steps suggested by the 7 member Committee for ecological restoration of the site.

Report of 7 member Committee and Restoration of Impacted AoL site

In the Report of 7 member Committee submitted to Hon'ble NGT in response to order dated 03.06.2016, the Committee not only explained the damages caused to the ecology of floodplains of the river Yamuna but also the necessity for restoration of the site, the restoration process, and activities and steps required for restoration. The activities and steps required for restoration mentioned in the Report are reproduced below:

"At the outset, we submit that the restoration of the floodplains of River Yamuna between Barapulla drain and the DND flyover (Main Event site) and the Eastern Floodplain cannot be differentiated by any means to distinguish between the activities required to undo the impacts of AoL's actions and the activities for further improvements. The Restoration effort in terms of human, material and financial resources and the time required will be several times more than that for the proposed restoration of other parts of floodplain of River Yamuna. The Committee envisaged the following activities:

1. Loosening up of the soil in the entire area by dredging. The depth and extent of dredging required will vary in different parts of the floodplain on the basis of the debris or other external material found buried under the surface (especially along the roads/paths created during the AoL event).
- The ramps have to be removed; the material used for blocking the side channel is to be removed to restore connectivity with the river. All external material/debris has to be removed and transported to dumping sites to be identified by DDA.
- Detoxification exercise will be required to remove the toxic substances (e.g., by

bioremediation) in the soil that may have leached out of the debris dumped there.

- All the vegetation has to be restored by planting carefully selected native (as far as possible original riparian species) trees, shrubs, reeds, sedges etc. and the colonisation of desirable aquatic vegetation and fauna has to be facilitated. This will require long term monitoring and adaptive management.
- Restoration of the fauna such as fish and birds will have to be left to the natural migration and colonisation. It will take several years until the suitable tree and shrub canopy develops to support them.
- Far more effort will be required to restore the planktonic, benthic (mud-dwelling) and microbial communities after careful investigation, culture and introduction.
- Construction of 'treatment wetlands' for treating the effluents in the Barapulla drain and other runoff by routing the wastewater through these wetlands' before passage into the river. We must also caution that, as noted earlier, the trajectory of restoration may not necessarily follow the anticipated path. Natural factors, future human interventions, and invasion by undesirable species may cause drifts in the restoration pathway and will require continuous attention and intervention.

As the rainy season has set in, restoration efforts may be delayed and become complicated by the spread of undesirable consequences to adjoining and downstream areas, for example, the leaching of toxic substances and nutrients and establishment of undesirable species.

Committee takes this opportunity to further request the Hon'ble NGT, that the entire floodplain area has to be re-planned to restore topographic features, restore water bodies, and check erosion along river banks. This aspect has already been submitted in the Committee's report on restoration of flood plains in October 2015."

There are certain constraints/limitation to ecological restoration of AoL site. For example, it is not possible to: (i) assess the ecological status of the riparian ecosystems at the site before event and also to determine the state of ecosystem to which restoration has to be carried out, as the ecosystems exist in more than one state. Further, the

Committee in its earlier Report clearly pointed out that:

"It is extremely difficult to assess the costs of environmental damage and degradation accurately and its restoration in terms of compensation payable because:

It requires substantial time, human and other resources to collect detailed quantitative information on the nature, extent and magnitude of various activities listed earlier for the restoration. For example, the amount of debris to be dredged out and its nature and the time required, and where

and how far has it to be transported for disposal has to be decided accordingly.

(a) Another major factor is the long time period required for restoration that may be a decade or more for the trees and many other species to establish.

(b) Estimation of the costs of restoration requires the preparation of a Detailed Project Report that may take several months to a year besides financial resources."

In light of above mentioned limitations it was decided to rehabilitate the impacted site to the state that enable the rehabilitated ecosystems to perform their ecological functions — (i) regulation of floods, storage of flood water, recharge ground water, stabilization of banks, purification of water, habitat for biodiversity and other ecological functions.

Ecological Rehabilitation

The ecological rehabilitation is not similar to ecological restoration in the sense that the impacted site is restored to some states of riparian ecosystems that render ecological functions/services and may not be to restored to its original natural states.

Ecological rehabilitation of impacted AoL site and the surrounding degraded sites has to be carried out based on the recommendations of 3-member Committee (2014) which were accepted by NGT and recommendations made by 4-member Committee (2015). These recommendations are given below:

Recommendations made by 3-member Committee (2014) which are accepted by the NGT:

"(i) Controlled dredging is required to remove the huge accumulation of sediments and accumulation of sediments and sludge which has

reduced the flood carrying capacity of the main channels, silted up wetlands and floodplain waterbodies and aggraded the floodplain (partly due to solid waste dumps).

(ii) Existing wetlands and waterbodies both upstream and downstream of Wazirabad reservoir should be deepened and enlarged.

(iii) A mosaic of wetlands and floodplain vegetation having native biodiversity should be developed. A cascade of treatment wetlands along the western and eastern banks (100-150 m belt) must be created and the outfall from all the major drains (after treatment of STPs) should pass through them before discharging into the river channel. These wetlands will help improve the water quality by reducing the BoD and nutrient levels through the action of the plants and their microbes and animals therein. Wetlands should also be developed along the smaller drains before they discharge their contents into main drains. **The outfall from Barapullah drain should be channelized through the cascade of wetlands already existing in the area.**

(iv) A greenbelt/greenway should be developed on both sides of the embankment, for controlling erosion, reducing sediment load of the main channel, reduce pollution and beautification of Nature trails may be provided across riparian areas for recreation to the public without losing the ecological functions of the floodplains."

Recommendations made by 4-member Committee (2015) and submitted to NGT:

"(i) The original drainage of the Barapullah drain shall be restored by enlarging the opening in the embanked road of the DND expressway.

(ii) A treatment wetland system needs to be developed in the area available along the Barapullah drain between the Ring Road right upto the confluence of the river.

(iii) Filling already done in the riverside channel has to be completely removed and the areas restored immediately in the area close to construction of Barapullah Phase III elevated corridor.

(iv) The downstream of the DND expressway on the west bank should be developed as a Biodiversity Park.

(v) Two water bodies shall be developed on either side of the Mayur Vihar branch of the DND flyover. The wetlands on either side of the DND flyover must be restored and the area must be made free of all unauthorized activities.

(vi) It is also suggested that the inner portion of DND wetland which is cut off from the main channel because of the flyover can be made accessible to the public after proper restoration and development. The connectivity between the river and wetland should be improved by having additional-connectivity introduced at some appropriate locations."

BROAD OUTLINE FOR THE ECOLOGICAL REHABILITATION OF IMPACTED AoL SITE AREA

It has been estimated that approximately 120 hectares (about 300 acres) of floodplains of west (right bank) of the river Yamuna and about 50 hectares (120 acres) floodplains of the eastern side (left bank) of the river have been adversely impacted ecologically at different magnitudes. These 170 hectares do not include Parking lots near Barapullah drain.

The details on the kind of damage and degradation to the ecosystem of the site have been provided in the earlier Report by 7 member Committee submitted to NGT. AoL's activities that led to the damaged/ impacted floodplains include: (i) clearing of vegetation, (ii) levelling and compaction of the ground and filling up of water bodies, (iii) construction of the stage and other temporary structuring, (iv) construction of ramps, (v) construction of pontoon bridges, (vi) construction of access roads, and (vii) blocking the side channel of river Yamuna. These activities led to (i) change in topography/ habitat diversity, (ii) loss of waterbodies/ wetlands, (iii) loss of floodplain vegetation and biodiversity, (iv) changes in substrata — nature of soil, consolidation and compaction, toxic substances and, (v) degradation and loss of ecosystem functions.

ACTION PLAN

Any action plan for ecological rehabilitation of impacted floodplains of not only the AoL site but also of the degraded sites abutting to it should involve the following processes. Ecological rehabilitation has two components: (i) Physical and (ii) Biological.

A. Physical Component

Figure 3 illustrates the adversely impacted (degraded) landscape features that have to be physically rehabilitated.

(i) Network of treatment wetlands and their connecting channels: The area that needs to be desilted includes the cascade of wetlands which originally existed along the approach road of

DND flyover but are generally silted up and partially destroyed during the event (**Figure a, b, c**).

The length of these wetlands is about 2 km long and width varies from 50 —100 m with gradient of 1:300, making up this area to be approximately around 15 ha. There are two connecting channels (distributaries) near the Guide Bund between the water course and treatment wetlands along the approach road and were also silted and filled (Figure 4d).

The length of channels is 500 m long and 50 m wide and dredging has to be done upto a depth of 1.5 m; the dredged material should be used for embankments. The area would be about 5 ha.

(ii) Similarly, the treatment wetlands situated near the mouth of drain (**Figure 5a, b**), which were completely filled, should be dredged. The area affected is 500 x 500 m and the depth to which the material was filled vary from 3 to 5 m. The treatment wetlands were filled by PWD and also by AoL.

(iii) The distance between the mouth of the drain and the outfall point along the floodplains is about 3 km and width of the drain along with treatment wetlands is 150 m (average). This is silted and the wetland along it were filled at some portions (**Figure 6**). Desilting of the entire area have to be done to a depth of 50 cm. There are also two side channels each with width of 50 m and these were also silted and hence require dredging.

(iv) Catchment Wetlands: There are 5 catchment wetlands on the western side of the river which were impacted due to AoL activities and also silted (**Figure 7a, b**). The size of wetlands varies from 100 m to 400 m in diameter. These have to be desilted upto a depth of 1 to 1.5 m. There are smaller sized shallow wetlands (**Figure 7c**). These have to be desilted to a depth of less than a meter. All these wetlands are interconnected by the channels which were completely filled with solid material and these have to be dredged. The area of these wetlands would be about 25 ha.

(v) There are wetlands on the eastern bank of the river opposite to AoL site which were impacted by filling and also silted. The area is about 20 ha. Compacted and elevated tracks used as roads were scattered across wide area. These have to be desilted and the compacted area has to be decompact. It is very difficult to assess the

compacted area on the eastern side due to agriculture fields.

(vi) Floodplains on the western bank of the river: About 75 ha were impacted due to levelling and consolidation and compacting (**Figure 8a, b**). Decompacting has to be done upto a depth of 30-45 cm, as top 30-45 cm of soil has become almost hard pan.

(vii) The 3 ramps (**Figure 9**) measuring of about 100-150 long, 10-15 m wide and height ranging from 1 m to 5 m should be dismantled or culverts have to be constructed for the flow of sewage from one wetland to another wetland.

(viii) Survey area using total station system has to be carried out to assess and to create the natural topography of the floodplains.

(ix) Floodplains: The compacted floodplains should be de-compacted by deep ploughing, removal of stoney material and dumping the material along the approach road of DND flyover for development of greenways.

(x) Embankments along Roadside: Embankment along the roadside should have slope of 1:4 and should be landscaped for development of greenways.

(xi) Marshes: There are marshes along the water channel, the length and width of which vary. These were impacted by filling and these have to be dredged to a shallow depth less than 1 m.

B. Biological Component

The treatment wetlands have to be developed into functional wetland ecosystems that purify Barapullah waste water before it enters into the main water course of the river and also serve as habitat for aquatic fauna and flora. For this purpose, aquatic vegetation needs to be developed. This involves introduction of macrophytes, submerged and floating aquatic plants and their associated microbial and invertebrate communities. Some of the microalgae, microbes and soil invertebrates have to be identified and multiplied and then introduced. Once the aquatic vegetation is developed, aquatic fauna particularly fishes and benthic organisms have to be introduced. Once the floral and faunal communities are developed, the avian fauna and other animal communities will be established as a part of the ecological successional processes.

Similarly the catchments wetland ecosystems have to be developed through introduction of macrophytes, submerged and floating plant communities and benthic communities. Fish can

be introduced once these communities are developed, the avian fauna and other animal communities will be established as a part of ecological succession.

The marshy areas harbour specialised communities and these communities will be developed in the same way as the wetlands. The area of floodplains has to be de-compacted would be around 100 ha.

The scientific intervention is needed for promoting ecological process on the degraded ecosystem through introduction of biotic elements which were lost. These biotic elements will establish feedback loops leading to ecosystem redevelopment.

The de-compacted floodplain will be landscaped in a way that it will have topography that simulate natural topography of floodplains. The area will be developed into a mosaic of floodplain forests and grasslands. This also requires scientific inputs in selection of plant species and their associated microbes and their multiplications and introduction of soil.

The embankments of wetland will be stabilized by grasslands and flood tolerant shrubs and trees.

Greenways consisting of 3-tier vegetation will be developed along the embankments created along the approach road of DND flyover. Scientific inputs are essential for selection of plant species and their microbes and for their multiplication.

Nursery will be developed to multiply the green plants and also develop source ponds for benthic fauna and microalgae and other soil invertebrates.

Manpower Requirement for Biological Rehabilitation

As has been pointed out that the ecosystem redevelopment involves the creation of sustainable biological communities. This can be achieved through concerted efforts of a team of 4 scientists (one aquatic ecologist, one limnologist, one hydrologist and one plant biologist), 3 Technical Assistants and 25 daily wage workers. Besides their Salaries and Wages, Field equipment, Contingencies, Consumables and Travel Expenses for a period of 10 years are required for undertaking biological rehabilitation and the management of rehabilitated ecosystems.

C. Supervision during the ecological rehabilitation of floodplains and management and maintenance of redeveloped riparian ecosystems

The continuous supervision during ecological rehabilitation of floodplains and thereafter for the management and monitoring of redeveloped riparian ecosystems till they become optimally functional are required.

COSTS OF ECOLOGICAL REHABILITATION

Physical Component

All measurement given in the estimates are approximate. The estimates were prepared by an Engineer who has been familiar with earthworks and the measurements were also provided by him. These can be verified when detailed project report is prepared. It may be noted that the earthwork proposed does not include the cost of transportation of material outside the floodplain. The dredged material will be used for embankments and also for the development of greenway along the approach road.

The area impacted near the mouth of Barapullah was due to PWD activity and also to some extent by AoL activity.

The area between the mouth of the Barapullah drain and its outfall into the water course is heavily silted by natural process but the wetlands have been filled up as a result of manmade activities such as dumping of solid waste. This stretch of drain belongs to Irrigation and Flood Control Department. PWD and AoL (partially) also contributed to the filling of wetlands along the drain.

The details of earthwork involved in physical rehabilitation and total costs involved are given in **Annexure I** and **Annexure II**, respectively. The total budget will be 988 lakhs (Area- I) + 1300 lakhs (Area- II) + 585 Lakhs (Area- III) = 2873 lakhs.

Biological Component

The biological component is essentially carried out by human resources as it involves scientific inputs. The details of manpower and other items required for biological rehabilitation and the budget are given in **Annexure III**. A multidisciplinary team of 4 scientists is a must to undertake biological rehabilitation. Three Technical Assistants are required to assist scientists and to supervise the ground work.

25 daily wage workers are needed to carry out ground work and to sustain the ecological system developed.

An annual contingency and consumable grant of Rs. 10.0 lakhs shall be needed to develop and maintain nursery and ponds, for purchase of field implements, saplings/propagules, EYM/

compost, polythene bags for raising saplings in the nursery, chemicals for culture of microbes, chemicals for assessing chemical and biological characteristics of soils and waters and other scientific assessments, and glassware, etc.

An annual travel grant of Rs. 3.0 lakhs shall be needed for collection of saplings/propagules and local transport of manpower.

An equipment grant of Rs. 10.0 lakhs shall be needed in the first year. This will be used to purchase field equipment such as pH meter, Conductivity meter, Spectrophotometer, Computer, Camera, DO meter, Oven and other minor equipment. To maintenance the equipment an annual maintenance grant of Rs. 2.0 lakhs shall be required from 2nd year onward.

The budget proposed cover all the activities to be carried out under biological rehabilitation. The budget required for this is about Rs. 1329 lakhs over a period of 10 years.

The Physical and Biological components of ecological rehabilitation of the site would cost about Rs. 4202 lakhs + expenditure on the Monitoring by a team of experts for 10 years + cost of transportation of material outside the floodplain.

RECOMMENDATIONS

1. The suggested Action plan which has two components namely, the physical and biological, needs to be implemented at the earliest, so that the benefit of next rain is obtained in the area.
2. The physical component estimated to costing about Rs. 28.73 crore should be taken up immediately and completed in two years' time. The biological component estimated to cost about Rs. 13.29 crore, required to be accomplished over a period of 10 years, should be simultaneously initiated. These estimates are approximate and need to be strengthened through commissioning of a DPR.
3. The apportionment of ecological rehabilitation cost may be made between AoL and other agencies by the Hon'ble NGT.
4. Implementation of the Action plan requires extensive monitoring for which the Hon'ble NGT may consider creating an appropriate body/ team of experts.
5. The above recommendations will become effective for the Yamuna flood plain if the remaining stretch of Yamuna is also taken up simultaneously for ecological

rehabilitation as suggested by Principal Committee in its report of Oct, 2015.

6. Should the NGT desires the Principal Committee to play a role for providing a periodical oversight report, the frequency and the manner of the same may be specifically ordered.”

40. As already noticed, *vide* order dated 21st July, 2017, the Committee comprising of officials from the DDA, Irrigation Department, NCT of Delhi and Irrigation Department, State of UP and the Chief Engineers were directed to prepare the action plan keeping in view the reports of the High Powered Expert Committee appointed by the Tribunal in relation to the flood plain where the event was held. The said action plan submitted by the Committee on 28th July, 2017 and surprisingly, this Committee exceeded its jurisdiction and tried to avoid compliance to the directions of the Tribunal. However, it has observed that the land was covered with grass and some area was under water. Referring to Google images, it is stated that difference of green area is due to the fact that the photographs were taken on different dates and in the monsoon period. We do not propose to rely upon this report so far it is beyond the order by making reference to them. The primary function of the Committee was to suggest an action plan as it was their statutory responsibility while acting within the framework of the reports of the High Powered Committee. While this report was taken up in the Court, the DDA and other could not justify on any ground whatsoever such action of the Committee. In fact, this Committee had no jurisdiction or authority to deal with the merits or otherwise beyond the ambit of High Powered Expert Committee reports. We have no hesitation in observing that the report is vague,

uncertain and suffers from the element of inproperitory. Strangely, they did not comply with the directions of the Tribunal while placing on record the action plan. Photographs showing the green area were obviously the result during the monsoon.

41. In contradiction to this report, the DDA itself had prepared a detailed and comprehensive plan for protection and conservation of river Yamuna and its flood plains. It includes eco-system restoration, minimizing adverse impacts of anthropogenic activities on the flood plains, etc. This comprehensive plan was to deal with the flood plains of river Yamuna in four different phases and the work on the first phase has already been started. Thus, it also includes the work in relation to protection and conservation of wetlands as part of biodiversity parks.

From the above reports, it is clear that substantial damage and degradation of the flood plains has been caused particularly at pre event stage itself. The High Powered Committee consisted of eminent Professors from the respective fields, persons from administration and the highest authority from the Central Government of the concerned Ministry were part of it. They have taken the pains of physically inspecting the site pre and post event and have observed the reality of the site with their own eyes.

42. The learned Counsel appearing for the Ministries, DPCC, DDA and even the State of UP accepted the said report in its content and spirit. However, the learned Counsel appearing for Respondent No. 3 raised a challenge to the reports, inter-alia, on the ground that the

Google images filed by Respondent No. 3 for different periods did not support such reports as the passages existed earlier, the status of site is practically the same, the wetlands did not exist and the Committee has acted with bias. All these objections and arguments were found to be without any substance and merits. It is true that Google images are a relevant piece of evidence but they are not conclusive or determinative evidence by themselves. They cannot be given precedence over the view and finding of the report by the highly qualified professors in their respective fields and other members whose prime duty and responsibility is to deal with the rivers and the river flood plains and who have drawn their report after physical inspection during different periods both pre and post event.

43. The contentions relating to bias has no legs to stand as to avoid any such situation, the Tribunal expanded the Committee although it found no substance in the contention of Respondent No. 3. Seven Members of the Committee have personally visited the site and submitted reports. They have also relied not only on the Google images but also had actually taken the photographs of the site at the relevant point of time, i.e., immediately prior and post event. Their description and observations are based upon personal visit, photographs, Google images and other relevant data collected by the experts. We have thus, no reason to accept any objections to said report which we hereby accept.

44. Except the portion of the flood plains on which event was held, the DDA has prepared comprehensive plan for development of bio-diversity parks, conservation and protection of wetlands and all other

incidental protection for maintaining the bio-diversity of the river flood plains and its aquatic life. Thus, it will be more appropriate for DDA to carry out restoration and restitution activity along with Respondent No. 3 so that a concerted effort could be made for proper development of the flood plain. DDA has a dual responsibility in relation to restoration of the flood plain, one being the statutory responsibility of the DDA to protect and maintain the flood plains and the other is not to permit activities which would result in degradation of the flood plains. The degradation resulted as a consequence to the improper permission granted by the DDA. Furthermore, by the orders of the Tribunal it has already prepared a comprehensive plan for development and rejuvenation of the flood plains. DDA must, therefore, discharge its responsibility without any excuse and delay.

OVERALL VISION AND DISCUSSION OF MERITS

45. It needs to be noticed with some emphasis that the entire controversy in the present case revolves around the grant of permission by DDA. The flood plains and the entire land in question is the property of DDA and State of UP. The prime responsibility to upkeep the flood plain of river Yamuna falling in NCT Delhi primarily lies upon DDA. As already noticed, Respondent No. 3 had applied for obtaining permission from DDA on 26th February, 2015 for holding the cultural event on the DDA land situated next to DND. No permission was granted by DDA as *vide* its letter dated 20th March, 2015 DDA had instructed Respondent No. 3 to provide the requisite information required in the said letter including information with regard to area required, period etc. This information was furnished by

Respondent No. 3, *vide* their letters dated 24th/30th April, 2015, wherein certain documents were furnished. For reasons best known to the officers of DDA at that time, they treated letter dated 20th March, 2015 as permission and *vide* their letter 18th May, 2015 withdrew the said permission stating that no permission could be granted on the active flood plains of river Yamuna and mentioned the order of the Tribunal. The letter dated 18th May, 2015, read as under:

“.....Reference to this office letter of even No. 932 dated 20.03.2015 wherein permission was granted for holding of World Cultural Festival. It is to inform that the land permitted in the reference is in active at Yamuna River Flood Plains. NGT (National Green Tribunal) has banned all type of activities in Yamuna River Flood Plains, therefore, the permission granted is with-drawn.

In this context, you are requested, that you may propose any other site for solemnizing World Cultural Festival instead of the land in Yamuna River Flood Plains.”

The above letter was issued after due deliberation and noting made by the concerned officers to the higher authorities. *Vide* letter dated 11th June, 2015, Respondent No. 3 again made a request stating that letter dated 18th May, 2015 be withdrawn and they should be given permission to hold the event. It was assured that they would not carry out any activity which would do away with the directions of the Tribunal or cause pollution of any kind.

46. The DDA after taking a legal opinion *vide* their letter dated 30th June, 2015 withdrew the letter dated 18th May, 2015 and while treating the letter dated 20th March, 2015 as permission added certain conditions. The said letter dated 30th June, 2015, reads as under:

“.....This has reference to your letter dated 11th June, 2015 to Vice-Chairman/DDA. The Deptt. has sought legal opinion from the Sr. Standing Counsel of DDA on the above subject matter. In this context, the permission withdrawn by this office vide letter of even no. 1823 dated 18.5.15 is restored with the following conditions:-

1. That safe and sufficient distance will be maintained from the edge of the river water and no activity shall be carried out in the immediate vicinity of the river.
2. Only eco-friendly material will be used and it will be removed immediately after the celebration is complete on the 13th March, 2016 as proposed. No material will be dumped at site. Also, concretization of any nature at the site in question will be totally prohibited.
3. That VVKI shall obtain all the requisite permissions, sanctions, approvals from the various authorities for holding its function at the site in question. VVKI shall indemnify and keep DDA indemnified against all losses, damages that may be caused to DDA due to the failure of VVKI to obtain any such approval, sanction, permission.
4. Since there will be a huge congregation of people during the World Cultural Festival to be hosted by VVKI between 11th-13th March, 2016, VVKI shall make adequate arrangements for toilets etc. The waste from such toilets shall not be discharged into the river.
5. Any other conditions which shall be notified on later day connected with the policy for the temporary allotment of the land shall be adhered by the VVKI.
6. In case, it is observed that any of the above conditions or any condition laid out by the other authorities as per para 3 above is violated, the permission granted shall be with-drawn.”

47. As is evident from the above, the DDA, in fact, had never granted any permission and the question of restoring of the letter dated 20th March, 2015 does not take forward the plea of the DDA as well as Respondent No. 3 that any valid and proper permission had ever been

granted by DDA to Respondent No. 3. Thus, to that extent, the letter dated 30th June, 2015 is hardly of any consequences. The only letter issued upon proper application of mind and complete in all respect was the letter dated 18th May, 2015. The DDA had demanded the land allotment charges to which *vide* its letter dated 16th October, 2015 the Respondent No. 3 stated that being a charitable institution and non-commercial event the allotment charges should be waived. The DDA not only declined to waive the charges but *vide* its letter dated 30th November, 2015 stated that temporary allotment of land near DND in South East Delhi on the banks of river Yamuna as requested by Respondent No. 3 had been rejected and the same could not be made available to Respondent No. 3. Respondent No. 3 was requested by DDA to choose any other site.

48. Respondent No. 3 again requested DDA *vide* letter dated 4th December, 2015 and reiterated its request for the allotment of said land to go ahead with the event. At that stage for reasons which have neither been reflected on the file nor recorded *vide* its letter dated 11th December, 2015, the DDA granted the permission for holding the cultural event subject to the conditions stipulated therein. The said letter reads as under:

“This has reference to your letter dated 16th October, 2015 and 4th December, 2015 on the subject noted above. In this regard, it is intimated that competent authority i.e. Hon’ble L.G., Delhi has approved temporary allotment of land holding World Culture Festival on the following conditions:-

1. That safe and sufficient distance will be maintained from the edge of the river water and no activity shall be carried out in the immediate vicinity of the River Yamuna.

2. Only eco-friendly material will be used and it will be removed immediately after the celebration is completed on the 13th March, 2016 as proposed. No material will be dumped at site. After concretization of any nature at the site in question will be totally prohibited.
3. That VVKI shall obtain all the requisite permission, sanctions, approvals from the various authorities concerned including NGT. For holding function at the site in question. VVKI shall indemnify and keep DDA indemnified against all losses, damages, that may be caused to DDA due to failure of VVKI to obtain any such approval, sanction or permission.
4. Since there will be a huge congregation of people during the World Cultural Festival to be hosted by VVKI between 11th-13th March, 2016, VVKI shall make adequate arrangements for toilets etc. The waste from such toilets shall not be discharged into the river.
5. Any other conditions which shall be notified on later day connected with the policy for the temporary allotment of the land shall be adhered to by VVKI.
6. In case, it is observed that any of the above conditions or any condition prescribed by the other authorities as per para 3 above is violated, the permission granted shall be withdrawn.
7. The organization has to deposit a sum of Rs. 15.00 lacs as security deposit (refundable as per rules). No booking charges are leviable. However, the maintenance of complete sanitation at site during and after the festival will be the responsibility of the VVKI.”

49. In light of this permission another letter was issued on 15th December, 2015, the subsequent letter deleted condition no. 3 for taking approval by Respondent No. 3 from NGT. However taking of permission from various authorities was kept intact. The conditions of the letter dated 15th December, 2015, reads as under:

“In supersession of this office letter dated 16th Oct., 2015, 4th Dec., 2015 and 11th June, 2015 on the subject noted above. In this regard, it is intimated that the competent authority i.e. Hon’ble L.G., Delhi has approved temporary allotment of land for holding World Culture Festival on the following conditions:-

8. That safe and sufficient distance will be maintained from the edge of the river water and no activity shall be carried out in the immediate vicinity of the River Yamuna.
9. Only eco-friendly material will be used and it will be removed immediately after the celebration is completed on the 13th March, 2016 as proposed. No material will be dumped at site. Concretization of any nature at the site in question will be totally prohibited.
10. That VVKI shall obtain all the requisite permission, sanctions, approvals from the various authorities concerned for holding function at the site in question. VVKI shall indemnify and keep DDA indemnified against all losses, damages, that may be caused to DDA due to failure of VVKI to obtain any such approval, sanction or permission.
11. Since there will be a huge congregation of people during the World Cultural Festival to be hosted by VVKI between 11th-13th March, 2016, VVKI shall make adequate arrangements for civic facilities i.e. toilets etc. The waste from such toilets shall not be discharged into the river.
12. Any other conditions which shall be notified on later day connected with the policy for the temporary allotment of the land shall be adhered to by VVKI.
13. In case, it is observed that any of the above conditions or any condition prescribed by the other authorities as per para 3 above is violated, the permission granted shall be withdrawn.
14. The organization has to deposit a sum of Rs. 15.00 lacs as security deposit (refundable as per rules). No booking charges are leviable. However, the maintenance of complete sanitation at site during and after the festival will be the responsibility of the VVKI.”

50. There is no noting on the file, as to why the condition imposed upon Respondent No. 3 to take permission from the Tribunal was deleted and for what purpose. The letter dated 11th December, 2015 states that permission had been granted by L.G. Delhi, however, where was the occasion to issue the letter dated 15th December, 2015 again under the authority of the L.G. within three days that too without any request for variation from Respondent No. 3. This certainly causes suspicion to the manner in which DDA has exercised its authority. Be as that it may, the event was held in furtherance to this permission.

51. The DDA had also granted permission as already stated to Respondent No. 3 to remove the debris from the flood plain. This itself is in contradiction to the stand taken by DDA as well as the DMRC. The DDA in its affidavit filed before the Tribunal on 25th February, 2016 has stated, in response to the order of the Tribunal dated 23rd February, 2016, that meetings were held comprising of all the stakeholders, who upon visiting the site right from 2nd to 4th October, 2015 and till date of filing of the said affidavit stated that there was no debris on the flood plain of river Yamuna. It was also stated that status report affidavits were filed by DDA on 16th April, 2015, 11th June, 2015, 13th July, 2015 and 19th August, 2015 upon inspection and wherein it was recorded that debris were not there and the debris had been removed.

52. According to DDA, even the Applicant had not alleged that there was malba/debris on the flood plain on 11th December, 2015. The DDA and its officers consistently claimed before the Tribunal that they

were removing the malba/debris regularly from the flood plain and in fact there was no malba/debris on the flood plain of river Yamuna under DDA's jurisdiction. It was stated that from April 2015 to November 2015 the DDA had spent nearly ₹1,36,910/- for that purpose. In all, the DDA had spent nearly ₹3,280,1,800/- from April 2013 to November 2015 for cleaning of the same. PWD, Delhi also filed an affidavit on 24th February, 2016 that they had removed 3835 MT of malba/debris from the roads and area of river Yamuna. The Delhi Metro Rail Corporation was also found to be dumping waste on their sites and otherwise on the flood plains of river Yamuna. Upon directions issued in this matter as well as in the Yamuna judgment, the said Corporation had filed an affidavit and stated before the Tribunal that they had removed nearly 23280 MT of debris and 4700MT debris still remain around the locations which are occupied by jhuggies. However, they were also directed to remove the same on subsequent dates. The entire debris/malba was taken to C&D Waste Plant operated by NCT of Delhi at Burari. From this, it is evident that the averments of Respondent No. 3 that it did not bring any debris to the site but only removed the debris as reflected in some of the photographs cannot be sustained. The malba/debris would be needed to construct the pathways that had been constructed by Respondent No. 3.

53. The Applicant has also contended that Respondent No. 3 has even violated the conditions that had been imposed by DDA in its letter granting permission for holding the event. Firstly, there was no occasion for DDA to delete the condition with regard to taking

approval from the Tribunal particularly in view of its order dated 18th May, 2015. Secondly, the constructions made were not at a distance as contemplated in the permission. The constructions were not only made near to the river but even upon the river. Eco-friendly materials were not used and in fact heavy iron, other construction material like debris was also used for holding of the event. Sanctions particularly like from fire department had not been taken. Referring to the case of DDA and its record, it is also contended that proposal was made that clearance should be given only after seeking approval of the Principal Committee appointed by the Tribunal. Despite such a specific notification, no steps in that direction were taken. We do see some substance in the contentions of the Applicant and its various aspects, that we have already dealt with and it appears that Respondent No. 3 did not comply with the conditions of permission in *senso stricto*. However, it appears from the record that Respondent No. 3 had taken clearance from the fire department and had also taken permission for making the Pontoon bridges. However, surprisingly DPCC answered Respondent No. 3 that their consent was not required.

54. The reports submitted by the High Powered Committee examined in light of the orders of the Tribunal and the case pleaded by the official respondents leaves no scope for doubt that there has been damage to the flood plains. The undertaking furnished by Respondent No. 3 which was accepted by the Tribunal has to bear its consequences in law. It needs to be noticed that none of the orders passed by the Tribunal were taken up by any of the parties to the

proceedings before the Hon'ble Supreme Court. They not only accepted the same but even acted thereupon. All the respondents including MoEF&CC, DDA and MoWR clearly admitted that the event was being held on the flood plains. Respondent No. 3 can hardly be permitted to raise the contention that event site does not fall in flood plains. The so called permission granted by DDA itself refers to the area as falling under active flood plains. In fact, it was on that ground that the DDA at one point of time declined the permission to hold the event at the site in question.

55. According to MoEF&CC, it really has not much role to play primarily on the ground that it was the flood plain and therefore is under the jurisdiction of the MoWR. DDA is the competent authority and responsible for maintenance of the flood plains of river Yamuna in NCT of Delhi. Thus, the work of restoration/restitution and other necessary work have to be executed by DDA. Furthermore, the DDA has already prepared a comprehensive plan with regard to development of the flood plain of river Yamuna and construction of bio-diversity parks while conserving and protecting the natural flow of river Yamuna and wetlands, etc.

56. The Committee has specifically referred to the wetlands in their report and the steps that should be taken for conservation and protection of such wetlands. The contention that the wetlands have not been notified, would no way take the case of Respondent No. 3 any further. It is primarily for the reason that in large parts of the country the wetlands as of now have neither been identified nor notified in accordance with law. But that does not by itself establish the fact that

the wetlands are not in existence. A wetland could be in existence *dehorse* the fact that it has not been statutorily so notified. It is a part of natural process and is not a man made resource.

The applicant has raised the question of appropriateness of imagery of September 2015 being used to demonstrate by the Expert Committee that the place where the event was held had wetlands. In the light of fact that September being a late monsoon month, there would be water expected on the flood plains which will give an impression as if these were the water bodies. Respondent No. 3 has argued that September is not a representative month to confirm the presence of wetlands on the floodplains.

Wetlands are a water body that may be permanent and semi-permanent including lakes and channels generally quite shallow with wetland vegetation. In the Yamuna flood plains, the Expert Committee had reported presence of species of Typhaelephantine, other species of reeds, Catskill (Phragmites), grasses occurring in shallow marshes area on the flood plains. There was presence of a few species of trees also noticed which had been heavily pruned. While it may be true that September is a late monsoon period and would show higher presence of water bodies but that by itself cannot be a reason to suggest that there were no water bodies or wetlands as such. The reeds, catskill and Typhasppand other grasses present in the floodplain at the site in question are a marker vegetation of the wetlands. Such wetlands generally very shallow are in dynamic equilibrium with the river stream close to the floodplain and are known to maintain over long periods even beyond monsoons. Also

mere fact these are not formally notified wetlands under the wetland rules of 2010 cannot take away their ecological and hydrological status. The fact that they had wetland vegetation would imply that there were other species of flora, fauna and micro fauna which support the wetlands ecosystem. The mere fact that September being late monsoon month it was normal to find water bodies in the flood plains but the very presence of the vegetation which the Expert Committee has recorded would suggest that even beyond the month of September these wetland and small water bodies would have continued to persist. In fact the Expert Committee in its Report of 28th July, 2016 stated that the report is not merely based on the satellite images on 5th September, 2015 but the Committee on Page No. 4 (Internal) records that it visited both side of the river on 6th July 2016 having visual assessment and that the observations of the presence or otherwise of the wetlands, wet land vegetation and the assessment of damage to the flood plains. This is further substantiated in the report of 28th November 2016 that the damage was extensive.

57. The Committee has also referred to the status of flood plains even prior to the event as some of the Members of the Committee have been visiting over the 22 KM of river stretch and its flood plains in connection with the preparation of the Reports to the NGT in Yamuna Judgement matter and had actually visited these areas during 2nd to 4th October, 2015 and noticed wet lands natural vegetation comprising trees, shrubs, reeds, etc., and other vegetation including water hyacinth. The Committee also noticed several species of aquatic vegetation including presence of shallow to deep water below them.

The contention of Respondent No. 3 that the damage assessment of the flood plains and wetlands is only based on satellite imagery of Google of September 5, 2015 is misplaced as Google imagery has only supplemental value to the field inspection that was carried out by the Committee. Google images have only been used to support what the committee found during the field visits.

58. Respondent No. 3 has also contended that there is no way in which the flood plains, if damaged which they dispute, can be fully restituted or restored to their original presence. These can at best rehabilitated and, therefore, the argument advanced is that since rehabilitation is not envisaged under section 15 of the NGT Act, 2010 suggesting any such rehabilitation in terms of the Report of the Expert Committee will be not in accordance with the section 15 of the NGT Act, 2010. This contention is misplaced as the Expert Committee has discussed this aspect in detail and pointed out that since the flood plain is completely destroyed, levelled, compacted, water body flattened and depressions covered and in several places debris and soil dumped with crisscross paths through channels and water bodies, there is no way the original topography of the area including all the pre-existing water bodies streams channels and wetlands along with the vegetation can be restored to its original shape. In fact complete restoration and restitution of any pre-existing land mass or natural ecosystem is neither practicable nor possible. The choices of the word restitution and restoration have to be understood and given meaningful construction with a view to achieving the objective of protecting the environment and the flora and fauna of the area that

existed prior to the destruction. With such an interpretation as given to the word restitution and restoration the word rehabilitation has to be read as conveying identical meaning.

59. The Committee report of 22nd February, 2016 which was prior to holding of the event and at a time when the site preparation work was going on, had after field visit the Committee clearly mentioned that the entire flood plains between the river Yamuna and DND flyway is levelled flat, small water body that has been used have been filled up and all natural vegetation have been removed and the site has been compacted due to movement of heavy earth movement machines, trucks, vehicles. Beside this, ramps were constructed on the active flood plain close to the stage for providing access to the V.I.P's. This clearly shows that the entire morphological feature of the flood plains has been altered. Even if the point made by the Respondent No. 3 disputing the presence of wetland based on the satellite imagery of 5th September, 2015 is to be accepted, the damage to the floodplain in all reports of the Expert Committees is clear and in fact photographs have been produced to substantiate the same. The report of the Committee of which Prof. A.K. Gosain was a member which visited in February had attached photographs which showed the presence of water bodies/wetlands during the dry months of February. Not only the impact on account of the levelling, filling of water bodied creation of ramp using heavy machines resulting in compaction, use of heavy earth moving machines, trucks prior to and during the event including footfalls of several lacs of people, the compaction and subsequent damage to the flood plains cannot be ruled out. These

wetlands were affected after the massive activity had taken place at the site by levelling the earth for constructing roads and other structures. Large quantity of mud and Construction & Demolition waste was used for other purposes. This would clearly demonstrate that the contention raised on behalf of Respondent No. 3 are not worthy of acceptance. The recommendations made in the report have to be implemented and the flood plains has to be restored and restituted, if not, to a better status then certainly to the status as existed prior to the event.

60. DDA in furtherance to the Yamuna judgement of the Tribunal dated 13th January, 2015 has already demarcated the flood plain of river Yamuna on 1 in 25 year's basis. Even as per that demarcation, the area in question falls within the flood plain.

61. The Applicant has relied upon the judgement of the Hon'ble Supreme Court in the case of *Noorali Babul Thanewala vs. K.M.M. Shetty* (1990) 1 SCC 259 to contend that Respondent No. 3 has violated undertaking given to the Tribunal which was accepted and therefore they are guilty of contempt of court. The undertaking has been violated that also constitute similar offence. We are not impressed by this contention as the approach of the Tribunal in the present case has to be more restorative and in the interest of protection and environment and ecology rather than punitive. We find it unnecessary to go into this controversy in view of the peculiar facts and circumstances of this case. The Applicant has vehemently argued that DDA has failed to perform its statutory duty on the one hand while on the other it has violated the directions contained in the

Yamuna judgment of the Tribunal. According to the Applicant, serious damage has been caused to the flood plain of river Yamuna near the DND Flyway. It is contended that huge construction activity was going on prior to the event which included construction of roads, completely leveling the flood plain for making pathways, construction of pontoon bridges and raising iron structures of huge sizes, there was damage caused to the flood plains, wetlands and bio-diversity of the same resulting in having adverse impacts on the aquifers and the groundwater. This has also hampered the recharging of the river. Of course, these contentions are repudiated by Respondent No. 3. According to Respondent No. 3, they have carried all the preparatory steps for the event. The event itself had caused serious pollution on the flood plain of the river as nearly 35 lacs people were gathered on the site. They have caused damage to the river and the flood plains. It is undisputable that flood plains of the rivers form an essential ecological continuum of healthy rivers. These provide essential space to the rivers to spread with ease and during their flood period flow to recharge their associated aquifers. These are also the lands that play an extremely important role in facilitating the self clinging ability of the river. The flood plains are not and cannot be equated to waste lands. They should not be treated as lands lying fallow and utilized in the manner which is unacceptable and would have adverse impacts. It is the duty of the statutory authority, Government and the people at large to protect and preserve the flood plains or river Yamuna. The riverbed and the flood plains should be protected and put to such use within the ambit of regulated activities which would not have any adverse effects and would also be in consonance with the Principle of

Intergenerational Equity and Public Trust Doctrine. The utilization of the flood plain in a manner which would challenge the very basic characteristics of the flood plain would be impermissible. It is not an area that can be permitted for activities and particularly by making constructions of temporary or semi-permanent nature on the flood plain itself.

62. Unlike, the laws of other countries where the Courts or the Tribunals dealing with environmental issues are to determine first whether they could apply the principle of absolute liability or not and, if so, to what extent. In India, the Tribunal is mandated under Section 17(3) of the National Green Tribunal Act, 2010 to apply the principles of no fault. Thus, application of this principle is inescapable. This doctrine imposes an obligation upon the project proponent or body intending to carry on an activity to bear the consequences of its actions. The consequences would obviously include amongst others such as cost of restoration/restitution. The onus lies upon the actor to satisfy that they took all the precautions that were required to be taken actually prior at the time and subsequent to the event and in fact there was neither any damage/degradation to the river or the flood plain nor was there any pollution after the event. We may usefully refer to a recent judgment of the Tribunal in the case of O.A. No. 69 of 2017 *Society for Preservation of Kasauli and its Environs vs. Bird's View Resort and Ors.* Decided on 30th May, 2017, where the Tribunal discussed the elements, consequences and effects of Principle of absolute liability and held as under:

"The liability of the polluter is absolute for the harm done to the environment which extends not only to compensate the victims of pollution but is also aimed to meet the cost of restoring environment and also to remove the sludge and other pollutants. A large number of tourists and vehicles which are using the roads and are carrying on such other activities for their enjoyment, pleasure or commercial benefits must be made to pay on the strength of the 'Polluter Pays' principle. It will be entirely uncalled for and unjustified if the tax payers' money is spent on taking preventive and control measures to protect the environment. One who pollutes must pay. The Tribunal issued directions in consonance with the Constitutional mandate contained under Articles 21, 48-A and 51-A(g) which are the very essence of the Act of 1986."

63. Even the DPCC failed to exercise its due caution in responding to the request of Respondent No. 3 for grant of permission. DPCC ought to have considered the request for permission in accordance with environmental laws in force. It is the primary duty of the DPCC to ensure that there is no pollution caused on land, water, air and other natural resources. There should not be any environmental damage or degradation permitted. If such large number of persons were gathering for such event, it was obvious that huge quantity of waste, i.e., municipal waste, plastic wastes, sewage and human excreta generated. It ought to have prescribed due precautions for management of these in accordance with rules in force. Therefore, the DPCC has not acted in accordance with law.

64. In our considered view, Respondent No. 3 has not been able to discharge his onerous burden in all aspects. Of course, in some areas justification has been provided particularly in the field of taking permission but in other areas the reports of the High Powered

Committee on the contrary does not benefit Respondent No. 3 and in no uncertain terms places the fault on the said respondent. Principle of No Fault Liability is a tool for guiding the Tribunal in determining the liability of Respondent No. 3.

65. In view of the detailed discussion above, we have to hold that Respondent No. 3 is liable for restitution/restoration of the flood plains in accordance with the reports of the High Powered Committee. No use of repeating that the DDA itself is responsible for contributory negligence and its failure to act in accordance with law and directions contained in the Yamuna judgement (supra).

ORDER/DIRECTIONS

66. Keeping in view the reports of the High Powered Expert Committee dated 22nd February, 2016, 28th July, 2016 and 28th November, 2016 which have been accepted by the Tribunal, the undertaking furnished by the Respondent No. 3 to the Tribunal and the orders of the Tribunal dated 9th March, 2016, 11th March, 2016 and 31st May, 2016, we pass the following order and directions:

1. In this judgement, we have not decided whether Respondent No. 3 and for that matter any person has a right to hold such cultural event or not, as it does not squarely lie within the jurisdiction of this Tribunal. However, the pollution resulting therefrom is a question that would be considered by the Tribunal in accordance with law.

2. We hold and declare that Respondent No. 3 is responsible for causing damage and environmental degradation of the flood plain of river Yamuna limited to the area that was awarded to it by DDA and the State of UP, in terms of the report of the High Powered Committee. We do not find any merit in the objections raised by Respondent No. 3 in relation to the reports of the High Powered Committee.

3. We hold Respondent No. 3 responsible for restoration and restitution of the flood plain limited to portion that was allotted to Respondent No. 3 in the original condition in which it was allotted to it prior to the event. However, the restoration/restitution and other works connected thereto are to be carried out by DDA as follows:

a) The Delhi Development Authority shall assess the said quantum of damage caused to the flood plain and the costs of restoration thereof in line with the reports of the High Powered Expert Committee.

4. We further direct the Delhi Development Authority, under the guidance of the Expert Committee to carry out restoration/restitution/other necessary works and would also ensure construction/establishment of Bio-diversity park at the site which is part of Phase-II of the plan prepared by DDA for restitution/restoration and beautification of the flood plains of river Yamuna.

5. A sum of ₹5,00,00,000/- (Rupees Five Crores) deposited by Respondent No. 3 with DDA shall be utilised for restitution/restoration and other necessary works for the flood plains of river Yamuna in accordance with this judgement and under the supervision of the Expert Committee.

6. In the event, the expenditure for that purpose on the portion of the land forming part of Phase-II of the project of DDA is found to be in excess of ₹5,00,00,000/- (Rupees Five Crores), the DDA would be at liberty to recover the said amount and Respondent No. 3 shall be liable to pay the said amount on demand.

If finally the expenditure to be incurred on that amount is less than ₹5 Crores, the remaining amount would be refunded by DDA to Respondent No.3

7. We are of the considered view that the DDA has failed to exercise its statutory duty in consonance with the environmental laws in force. As evident, it is the duty of the DDA to maintain the natural features and ecology of the flood plain which they have failed to do, in the facts and circumstances of the present case. We would have imposed environmental compensation upon DDA as well but keeping in mind that it has already planned construction of bio-diversity park and improvement of flood plains from its funds, we do not impose any further environmental compensation upon DDA. However, we direct that in consonance with the directions of the Hon'ble Supreme Court and judgement of Delhi High Court that the flood plains of river

Yamuna in NCT Delhi should not be permitted to be used to hold any activity of the present kind.

8. We grant liberty to Respondent No. 3, to move to Expert Committee and the DDA if it proposes to make any suggestions for restitution/restoration and other necessary works of the flood plains limited to the area that was allotted by the DDA to Respondent No. 3.
9. The DDA and the Irrigation Department of NCT Delhi shall be responsible for carrying out the directions contained in this order.
10. In view of the fact that Respondent No. 3 had given an undertaking to restore the flood plains right at the initial stage of the proceedings and in view of the directions above we find it appropriate to discharge the contempt notice issued to Respondent No. 3 in M.A. No. 419 of 2016 and M.A. No. 479 of 2017. The said applications shall stand disposed off accordingly.

At this stage we do not propose to impose any penalty upon Respondent No. 3 in terms of Section 26 of the NGT Act, 2010 and provide an opportunity to Respondent No. 3 to comply with the directions contained in this judgement.

67. With the above directions, the Original Application No. 65 of 2016 including Miscellaneous Applications No. 561 of 2016, 977 of 2016 and 55 of 2017 stand disposed of, without any order as to costs.

68. In view of this judgement, O.A. No. 81 of 2016 along with M.A. No. 144 of 2016 and O.A. No. 76 of 2016 along with M.A. No. 383 of 2016 have been rendered as infructuous and are accordingly disposed of.

**Swatanter Kumar
Chairperson**

**Dr. Jawad Rahim
Judicial Member**

**Bikram Singh Sajwan
Expert Member**

New Delhi
7th December, 2017

NGT