

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1440 OF 2025

STATE OF UTTARAKHAND & ORS.

APPELLANT (S)

VERSUS

NIRANJAN BAGCHI & ORS.

RESPONDENT (S)

O R D E R

1. We have heard Mr. Tushar Mehta, learned Solicitor General and Mr. Atmaram N S Nadkarni, learned senior counsel for the appellant - State of Uttarakhand.

2. The State of Uttarakhand is principally aggrieved by Paragraph Nos. 21 and 23 of the impugned order which are set out hereinbelow:

"21. The Chief Secretary, Government of Uttarakhand is directed to place the matter before the Government of Uttarakhand for initiating appropriate legislative and executive measures within one month for removal of the encroachments from the river bed/Flood Plain Zone of river Rispana for requisite compliance with the provisions of the Environment Protection Act, 1986, Rules made and Notifications issued under the same and directions given by Hon'ble Supreme Court and this Tribunal qua prohibition of construction within Flood Plain Zone.

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23. We also consider personal appearance of the Principal Secretary, Urban Development, Principal Secretary, Irrigation, Commissioner of Municipal Corporation, Dehradun, District Magistrate, Dehradun and Vice Chairman, Mussoorie Dehradun Development Authority to be essential for assisting this Tribunal in just and proper adjudication of the questions involved and they are accordingly directed to remain present before the Tribunal on the next date of hearing hereby fixed."

3. The question before the National Green Tribunal (for short, the "Tribunal") was whether the 20 encroachments (which the State claims, came into being before 11.03.2016) are protected by the State Acts called Uttarakhand Reforms, Regularization, Rehabilitation and Resettlement and Prevention of Encroachment of the Slums located in the Urban Local Bodies of the State Act, 2016 and clause 5 thereof as well as the Uttarakhand Special Provisions for Urban Bodies and Authorities Act, 2018. The Tribunal has taken the view in the order that the notification dated 07.10.2016 of the Ministry of Water Resources, River Development and Ganga Rejuvenation issued under Sections 3, 4, 5, 9, 10, 11, 19, 20 and 23 of the Environment Protection Act, 1986 would prevail and in view of the Clause 6(3) thereof, the 20 admitted encroachments will also have no protection notwithstanding the acts of the State Legislature. In the light of the finding, necessary directions have been given to carry out legislative amendments and to issue executive directions thereof.

4. The contention of the State before us is that Clause 6(3) of the notification dated 07.10.2016 has a second proviso, which mandates that, for completed constructions, before removal, a review is to be done by National Mission for Clean Ganga. For the sake of convenience, Clause 6(3) is extracted in entirety hereinbelow:

"6. Prevention, control and abatement of environmental pollution in River Ganga and its tributaries.

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(3) No person shall construct any structure, whether permanent or temporary for residential or commercial or industrial or any other purposes in the River Ganga, Bank of River Ganga or its tributaries or active flood plain area of River Ganga or its tributaries:

Provided that in exceptional circumstances like natural calamities or religious events at traditional locations, temporary structures can be raised after prior permission of the National Mission for Clean Ganga acting through the State Ganga Committee and the District Ganga Committee:

Provided further that in case any such construction has been completed, before the commencement of this Order, in the River Bank of River Ganga or its tributaries or active flood plain area of River Ganga or its tributaries, the National Mission for Clean Ganga shall review such constructions so as to examine as to whether such constructions are causing interruption in the continuous flow of water or pollution in River Ganga or its tributaries, and if that be so, it shall cause for removing them."

5. According to the learned Solicitor General and Mr. Atmaram N S Nadkarni, the Tribunal has not directed its attention towards the second proviso to Clause 6(3).

6. In view of the stand taken by the State, we permit the State to go back to the Tribunal and move a necessary application before the Tribunal, bringing to its kind attention the second proviso to Clause 6(3) and for seeking appropriate directions thereof. Let the needful be done within two weeks from today.

7. In the event of any adverse orders are made, we grant liberty to the State to come back to this Court against the said order and the impugned order as well.

8. The senior counsel undertakes that the application will be filed within two weeks. The impugned order is kept in abeyance for a period of three weeks.

9. The matter is disposed of in the above terms.

10. Pending application(s), if any, shall stand disposed of.

.....J.
(K.V. VISWANATHAN)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
FEBRUARY 10, 2025.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s). 1440/2025

STATE OF UTTARAKHAND & ORS.

Appellant(s)

VERSUS

NIRANJAN BAGCHI & ORS.

Respondent(s)

(IA No. 31568/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 31569/2025 - STAY APPLICATION)

Date : 10-02-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) :

Mr. Tushar Mehta Sr. Adv., Solicitor General
Mr. Atmaram N S Nadkarni, Sr. Adv.
Dr. Abhishek Atrey, Adv.
Ms. Ambika Atrey, Adv.
Ms. Jyoti Verma, Adv.
Mr. Abhishek Atrey, AOR

For Respondent(s) :

UPON hearing the counsel the Court made the following

O R D E R

The matter is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS(PREETHI T.C.)
ASSISTANT REGISTRAR

(Signed order is placed on the file)