

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

Original Application No. 219/2024
(IA No 644/2024, IA No 402/2024)

Syed Ashhar Tauseef

Applicant

Versus

Kamal Faruqui

Respondent

Date of completion of hearing and reserving of order: 12.12.2024

Date of Pronouncement of order: 17.02.2025

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Syed Ashhar Tauseef, Applicant in Person

Respondents: Ms. Sthavi Asthana, Advocate for UPPCB
Mr. Abhinav Ramkrishna, Advocate for Respondents No. 1, 3 to 5

ORDER

1. In this Original Application, registered on the basis of letter petition, the grievance raised by the Applicant is that the Respondent No. 1 exercising his influence on the land on Gata No. 403 and 404 has set up four educational institutions i.e. Rashida Begum Muslim Vidyalaya, Mesco Public School, Mesco Institute of Pharmacy and Mesco Institute of Nursing and Para-medical Science.

2. Further allegation is that Gata No. 403 and 404 (earlier Gata No. 311 prior to Chakbandi) is a *Talab* (pond) and is registered as a *Talab* in the revenue record 1359 fasli year. It is further alleged that on the basis of the fabricated document of the Municipal Council Amroha the recognition was obtained by above institutions in the year 2018.

3. The Tribunal on the basis of the above letter petition had registered the present Original Application, as substantial issue relating to preservation, protection and conservation of the water body was involved. Such a power exists with the Tribunal in view of the judgment of the Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Ors.* reported in *2021 SCC Online SC 897*.

4. The concerned Respondents were impleaded in the OA and notices were served upon them and responses have been received.

5. We have heard learned counsel for the parties at length and perused the record.

6. Before entering into merits of the case, it would be appropriate to take note of the legal framework and law settled by the judicial pronouncements for protection of waterbodies/wetlands from encroachments.

7. The Wetlands (Conservation and Management) Rules, 2017 (hereinafter referred to as Wetland Rules, 2017) have been framed by the Central Government exercising the powers confirmed by Section 25 read with sub-section 1 and clause (iv) of sub-section 2 and sub-section of Section 3 and Section 23 of Environment (Protection) Act, 1986 and Section 2(g) of Wetland Rules, 2017 defines wetlands as under:-

Section 2(g)- "wetland" means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include river channels, paddy fields, human-made water bodies/ tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreating and irrigation purposes.

8. The waterbody (pond) under consideration in the present case is clearly covered within the meaning of wetland as given above. Rule 4 of the Wetland Rule, 2017 specify the prohibited activities within the wetland and it does not permit conversion of wetland for non-wetland use including encroachment of any kind. Under Rule 5, the State Wetland Authorities have been constituted. Sub-rule 4 of Rule 5 enumerates the powers and functions of the Wetland Authority which include defining the strategies for conservation and wise use of wetland within their jurisdiction. Prior to coming into force the Wetland Rules, 2017, the Wetland (Conservation and Management) Rules, 2010 were enforced. For the effective implementation of the Wetlands Rules, 2017, the Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India has issued the guidelines, which mention the importance of wetland and management planning for the wetland as under:-

“67. Wetlands are one of the most embedded and interlinked ecosystems with human livelihoods and well-being. A balanced management approach, addressing biodiversity conservation values while providing for sustainable utilisation in a way compatible with the maintenance of natural properties of the ecosystem, needs to be adopted for these ecosystems. It is, therefore, recommended that management of each notified wetland (is guided by an “Integrated Management Plan”. The plan refers to a document which describes strategies and actions for achieving ‘wise use’ of the wetland and includes objectives of site management; management actions required to achieve the objectives; factors that affect, or may affect, various site features; monitoring requirements for detecting changes in ecological character and for measuring the effectiveness of management; and resources for management implementation. Besides identifying resources, a management plan serves several important functions including generating baseline information, communication with stakeholders and ensuring compliance with regulatory frameworks and policy commitments.

68. While it is recognized that each wetland has its own distinctive ecological and hydrological features and thereby distinctive management needs, the following broad planning principles need to be kept in mind while formulating integrated management plans:

- Integrated planning: Aquatic and terrestrial ecosystems are intimately linked by the process of the water flowing through them. Every land use decision has a consequence on water availability. Delineating a basin or a coastal zone enables demarcation of a distinct hydrological unit which is the natural*

integration of all hydrological processes within its boundary and therefore an ideal and rational unit for soil, water and bio-resources conservation and management. Thus, management planning for wetlands should not be restricted to a defined administrative boundary, but rather take into account wider planning and management context of the basin or coastal zone within which the site is located.

The process of development and implementation of management plans for wetlands often needs to be accompanied by governance improvements at basin and coastal zone level. Such an approach underpins Integrated Lake Basin Management framework that calls for achieving ‘sustainable management of wetlands through gradual, continuous and holistic improvement of basin governance, including sustained efforts for integration of institutional responsibilities, policy directions, stakeholder participation, scientific and traditional knowledge, technological possibilities, and funding prospects and constraints.

Achieving close relationship between planning and governance is critical, considering multiple stakeholder and sectoral interests which underlie and, to a large extent, structure wetland biodiversity and ecosystem service values, and the need to secure people’s involvement and participation in basin-scale management for considerably long periods of time.

Reflection upon the following six pillars of basin-scale governance may thus be useful:

Institutions: Development of effective organisations and governance frameworks

- Policies: Setting broad directions and specific rules*
 - Participation: Expanding the circle of involvement*
 - Technology: Possibilities and limitations*
 - Information: Pursuing sources of knowledge and wisdom, and*
 - Finance: Seeking sustainable sources at the appropriate level*
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- **Use of diagnostic approaches for defining management approach and actions:** Given the uniqueness associated with each wetland, it is important that ‘one size fit all’ approach is replaced with a diagnostic approach, wherein the ecological, hydrological, socioeconomic and institutional features are comprehensively assessed and trends therein determined to be able to spell out management objectives and actions clearly.*
 - **Adaptable management:** Wetlands are influenced by a range of drivers and pressures that act at multiple spatial, temporal and political scales. Their management plan, therefore, needs to be accommodative of uncertainties and challenges. This can be achieved by using an adaptable management approach that allows for suitable modification of management based on continuous site monitoring and assessment of new information.*

- **Stakeholder participation:** *The condition of any wetland is an outcome of actions by a range of stakeholders, which are linked to the ecosystem in a number of ways. Management planning, therefore, needs to recognise these linkages, and build a mechanism for participation of stakeholders in design, review and implementation processes.*
- **Governance:** *Being located at the interface of land and water, wetlands are influenced by a range of developmental activities that take place within their direct and indirect basins and coastal zones. Institutional arrangements for managing wetlands need to be such that they are capable of integrating activities across multiple sectors (such as agriculture, water resources, forests, rural development, urban development, forests and wildlife and others), and balancing the needs of a group of diverse stakeholders while ensuring that ecological integrity of these fragile ecosystems is not adversely affected. In the above context, association of entities or individuals as ‘Wetland Mitras’ can encourage stakeholder participation and overall governance.”*

9. The Hon’ble Supreme Court in the matter of Hinch Lal Tiwari v. Kamla Devi reported in (2001) 6 SCC 496 recognizing the importance of preservation of Wetland and need to prevent encroachment on the wetland has held as under:-

“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

10. Madras High Court also in the matter of L. Krishnan Vs. State of Tamil Nadu and Ors. in W. P. No. 20186/2000 reported in Manu/TN/0660/2005 in this regard has held:-

“5. Since time immemorial ponds, tanks and lakes have been used by the people of our Country, particularly in rural areas, for collecting rain water for use for various purposes. Such ponds, tanks and lakes have thus been an essential part of the people's natural resources. However in recent years these have been illegally encroached upon in many places by unscrupulous persons who have made their constructions

thereon, or diverted them to other use. This has had an adverse effect on the lives of the people.”

11. Hon'ble Supreme Court in the matter of *Jagpal Singh & Ors. v. State of Punjab & Ors.* reported in 2011(11)SCC396 has underscored the importance of waterbodies and the threat they are facing by observing as under:-

“13. We find no merit in this appeal. The Appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the Appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

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19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

20. Over the last few decades, however, most of these ponds in our country have been filled with earth built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

21. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue

records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent Abhinav Ramkrishna practices.

22. For the reasons given above there is no merit in this appeal and it is dismissed.

23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

12. The Respondents No. 1, 3 to 5 have raised a preliminary objection questioning the Bonafide of the Applicant on the ground that he has animosity with the Respondents No. 1, 3 to 5. The plea of the Respondents is that as the Applicant's father during his lifetime was an office bearer of Respondent No. 3 and 5 and was holding the post of Treasurer/Director and thereafter, the Applicant's mother was replaced as office bearer of Respondent No. 3 and the Applicant himself was the employee of Respondent No. 3 working on the post of Lecturer and was suspended and the Applicant's younger brother is also working as Assistant Professor with the Respondent No. 5 was suspended and terminated. On examination of the preliminary objection, we find that present application highlighting serious environmental issue relating to encroachment on the pond and illegal construction thereon cannot be rejected on the ground of locus or bonafides without examining the issue on merit. Even if the Applicant have some animosity with the Respondent No. 1, 3 to 5 that may not furnish a

ground to ignore the fact that the water body has been encroached upon and to continue such illegality without taking any steps for protecting the water body. If technical objection of the private Respondents is accepted then it will lead to perpetuating the environmental harm which cannot be the object of environmental Court. At the most, we can ignore the pleadings which have been subsequently placed on record by the Applicant and decide the matter on the basis of the response, reports and replies by the official Respondents which will ensure the fairness in adjudication. Hence, the preliminary objection of the Applicant is rejected.

13. The main issue involved in the OA is whether land of the Gata No. 403 and 404 is a water body and if it has been encroached upon by the Respondent no. 1, 4, 5, 6 and 7 by raising unauthorized construction for running the educational institutions.

14. The Respondent No. 3-District Magistrate Amroha has filed the reply dated 13.05.2024 disclosing that the District Magistrate on 23.04.2024 had formed a Joint Committee which had submitted the report as under:-

“संयुक्त जांच समिति द्वारा अभिलेखीय व स्थलीय जांच की गई और विद्यालयों की मान्यता संबंधी अभिलेखों का परीक्षण किया गया तथा आवश्यक पैमाइश व निशानदेही की गई। उपरोक्त 4 विद्यालयों में से 03 विद्यालय (1) राशिदा बेगम मुस्लिम विद्यालय निजामपुर गर्वी धनौरा रोड, अमरोहा (2) मेस्को पब्लिक स्कूल निजामपुर गर्वी अमरोहा (3) मेस्को इन्स्टीट्यूट ऑफ फार्मसी निजामपुर गर्वी अमरोहा संचालित अवस्था में है जबकि (4) मेस्को इन्स्टीट्यूट ऑफ नर्सिंग एंड पैरामेडिकल साइसेंज निजामपुर गर्वी अमरोहा का धरातल पर कोई अस्तित्व अथवा संचालन नहीं है। उपरोक्त विद्यालय जिन गाटा संख्याओं पर बने हैं उनका अभिलेखीय परीक्षण एवं स्थलीय निरीक्षण करने पर ज्ञात हुआ कि राजस्व अभिलेख खतौनी 1428-1433 फ० के खाता संख्या 254 गाटा संख्या 402 रकबा 0.162 है0 व खाता संख्या 252 गाटा संख्या 403 रकबा 0.295 है0 जिस पर खातेदार का नाम राशिदा बेगम मुस्लिम महाविद्यालय अमरोहा द्वारा प्रबन्धक नासिर हसन पुत्र शम्सुल हसन नि० मौहल्ला सददो अमरोहा अंकित है तथा खाता सं० 253 गाटा संख्या 404 रकबा 0.717 है0 जिस पर खातेदार 1- श्री कमाल अहमद फारूखी पुत्र नफीस अहमद फारूखी नि० त्रिपोलियान अमरोहा 2 - राशिदा बेगम मुस्लिम महाविद्यालय अमरोहा द्वारा प्रबन्धक नासिर हसन पुत्र शम्सुल हसन नि० मौहल्ला सददो अमरोहा व खाता संख्या 60 गाटा संख्या 405 रकबा 0.263 है0 जिस पर खातेदार श्री कमाल अहमद फारूखी पुत्र नफीस अहमद फारूखी नि० त्रिपोलियान अमरोहा का नाम संक्रमणीय भूमिधर श्रेणी 1 (क) की भूमि के रूप में दर्ज कागजात है। ग्राम निजामपुर गर्वी में सन 1993-94 में चकबन्दी प्रक्रिया पूर्ण हुई चकबन्दी आकार पत्र 45 में खाता सं० 258 गाटा सं० 404 रकबा 1.77 एकड पर मौहम्मद रफी पुत्र अब्दुल रहमान उर्फ भौंदा व मौहम्मद नूर पुत्र चांद नि० मौ०सटटी श्रेणी 1 क संक्रमणीय भूमिधर दर्ज है व खाता सं० 244 गाटा सं० 403 रकबा 0.73 एकड पर मौहम्मद नूर

पुत्र चांद नि०मौ० जाफरी श्रेणी 1 क संक्रमणीय भूमिधर दर्ज है ध्यातव्य है कि चकबन्दी आकार पत्र 41 में गाटा सं० 404 रकबा 1.77 एकड के विशेष विवरण में तालाब रकबा 1.77 एकड अंकित है।

चकबन्दी आकार पत्र 41 का अवलोकन करने पर यह भी ज्ञात हुआ कि वर्तमान गाटा सं० 403 व 404 पुरानी गाटा सं० 311 से बने है। आधार वर्ष 1359 फसली के खसरे में पुरानी गाटा सं० 311 पर तालाब अंकित है तथा आधार वर्ष 1359 फसली की खतौनी के खाता सं० 157 गाटा सं० 311 रकबा 0.44 एकड खाता सं० 113 गाटा सं० 311/3 रकबा 0.08 एकड खाता सं० 217 गाटा सं० 311 (अ) रकबा 1.54 एकड खाता सं० 129 गाटा सं० 311 रकबा 0.7 एकड खाता सं० 149 गाटा 311अ/2 रकबा 0.41 एकड पर फैज बख्श, ईदा, अली अहमद पिसरान हुसैन बख्श व मिन्टा उर्फ छिददा वल्द अली बख्श कौम भटियारा साकिन अमरोहा का नाम (आराजी जिस पर आसामियान बाहैसियत दखिलकार काबिज हो) 1- असामियान दखीलकार बामुजिव एक्ट नम्बर 2 सन 1901 ई० एक्ट हाय साबिक दखीलकार कराये दे दिये गये हों) दखीलकार काशतकार के रूप में दर्ज है।

मौके पर दिनांक 07.05.2024 को राजस्व टीम व विनियमित क्षेत्र के अवर अभियन्ता द्वारा राजस्व अभिलेख शजरे के अनुसार प्रश्रगत विद्यालय / महाविद्यालय परिसर की पैमाइश कर निशानदेही की गई। पैमाइश उपरान्त ज्ञात हुआ कि

(1) राशिदा बेगम मुस्लिम विद्यालय निजामपुर गर्वी धनौरा रोड, अमरोहा, जिसे नजरी नक्शा में (R) से प्रदर्शित किया गया है, का शैक्षणिक भवन गाटा सं० 403 रकबा 0.295 है० के 812.60 वर्गमीटर भू भाग पर बना है।

(2) मेस्को पब्लिक स्कूल निजामपुर गर्वी अमरोहा, जिसे नजरी नक्शे में (M-1) से प्रदर्शित किया गया है, का शैक्षणिक भवन गाटा सं० 404 रकबा 0.717 है० के 222 वर्गमीटर भू भाग पर बना है।

(3) मेस्को इन्स्टीट्यूट ऑफ फार्मसी निजामपुर गर्वी अमरोहा, जिसे नजरी नक्शे में (M-2) से प्रदर्शित किया गया है, का शैक्षणिक भवन गाटा सं० 404 रकबा 0.717 है० के 709.40 वर्गमीटर भू भाग पर बना है।

(4) गाटा सं० 403 क्षेत्रफल 0.295 है० का अवशेष 2137.40 वर्गमीटर व गाटा सं० 404 क्षेत्रफल 0.717 है० का अवशेष 6238.60 वर्ग मीटर भूमि स्कूल/महाविद्यालय द्वारा क्रीड़ा स्थल के रूप में प्रयुक्त की जा रही है। (नजरी नक्शा संलग्न है)

नियत प्राधिकारी / उपजिलाधिकारी विनियमित क्षेत्र अमरोहा की मानचित्र सम्बन्धी बिन्दुवार जाँच आख्या के अनुसार

1. **मानचित्र संख्या 608/2011 (आवेदक-मेस्को पब्लिक स्कूल अमरोहा)** दिनांक 22.11.2011 को प्रस्तुत की गयी जिस पर स्वामित्व संबंधी तत्कालीन क्षेत्रीय लेखपाल की आख्या दिनांक 05.06.2012 के अनुसार आवेदक का गाटा सं० 398, 399, 403, 404 व 405 पर स्वामित्व है एवं स्थल को विवाद रहित बताया है। तत्पश्चात अन्य औपचारिकतायें पूर्ण कराते हुये दिनांक 13.07.2012 को मानचित्र स्वीकृत किया गया है।

2. **मानचित्र संख्या 96/2020 (आवेदक-मेस्को पब्लिक स्कूल अमरोहा)** दिनांक 13.03.2020 को प्रस्तुत की गयी जिस पर स्वामित्व संबंधी तत्कालीन क्षेत्रीय लेखपाल की आख्या दिनांक 05.06.2012 को आधार मानते हुये तत्कालीन अवर अभियन्ता विनियमित क्षेत्र अमरोहा द्वारा दिनांक 26.12.2020 को मानचित्र स्वीकृत की संस्तुति की गयी। जिस पर नियत प्राधिकारी द्वारा दिनांक 31.12.2020 को मानचित्र स्वीकृत किया गया है।

3. मानचित्र संख्या 222/2023 (आवेदक-मेस्को इन्स्टीट्यूट ऑफ फार्मसी निकट राशिदा बेगम मुस्लिम महाविद्यालय अमरोहा) डा० सैय्यद अशहर तौसीफ द्वारा लिखित शिकायत करने पर तहसीलदार अमरोहा से दिनांक 22.09.2023 को आख्या प्राप्त की गई। तहसीलदार अमरोहा की

जांच आख्या दिनांक 22.09.2023 के अनुसार प्रस्तावित मैस्को इंस्टिट्यूट ऑफ फार्मसी ग्राम निजामपुर गर्वी, धनौरा रोड अमरोहा गाटा सं० 398, 402, 403, 404 में से गाटा सं० 404, 403 पर चकबंदी पूर्व गाटा सं० 311 से बना है। परन्तु 1359 फ० वर्ष के अनुसार खसरें में गाटा सं० 311 'तालाब' दर्ज है और तालाब की भूमि का स्वरूप परिवर्तित नहीं किया जा सकता है, के आधार पर मानचित्र सं० 222/2023 दिनांक 18.12.2023 को निरस्त कर दिया गया है।

4. सै० अशहर तौसीफ द्वारा आई०जी०आर०एस० पोर्टल पर शिकायत सं० 40013723020365 के आधार पर जाँच में उक्त संस्थाये गाटा सं० 404 तथा 403 स्थित ग्राम निजामपुर गर्वी में निर्मित/अवस्थित है। गाटा संख्या 403 व 404 चकबंदी पूर्व गाटा सं० 311 से बने है। 1359 फ० खसरें में गाटा सं० 311 'तालाब' के रूप में दर्ज है और इसी कारण तालाब की भूमि का स्वरूप परिवर्तित नहीं किया जा सकता है, के आधार पर कार्यालय द्वारा दिनांक 07.03.2024 को पूर्व में स्वीकृत मानचित्र सं० 608/2011 (आवेदक-मेस्को पब्लिक स्कूल अमरोहा) व 96/2020 (आवेदक-मेस्को पब्लिक स्कूल अमरोहा) निरस्त किये गये है।
5. वर्तमान में उक्त स्वीकृत मानचित्रों की निरस्तीकरण के विरुद्ध में न्यायालय नियन्त्रक प्राधिकारी / जिलाधिकारी महोदय, अमरोहा के समक्ष अपील/वाद सं० डी202413380000500 प्रबन्ध समिति राशिदा बेगम मुस्लिम महाविद्यालय ग्राम निजामपुर गर्वी बनाम उ०प्र० सरकार व वाद सं० डी20241338000049 प्रबन्ध समिति राशिदा बेगम मुस्लिम महाविद्यालय ग्राम निजामपुर गर्वी बनाम सरकार विचाराधीन हैं।

अधिशाली अधिकारी, नगर पालिका परिषद, अमरोहा की आख्या- अधिशाली अधिकारी नगर पालिका परिषद अमरोहा द्वारा निर्गत भू स्वामित्व प्रमाण पत्र की सत्यता के संबंध में तत्कालीन प्रभारी अधिशाली अधिकारी, नगर पालिका परिषद, अमरोहा श्री सुखवीर सिंह, पी०सी०एस० प्रधान प्रबन्धक किसान सहकारी चीनी मिल्स लि० नजीबाबाद जनपद बिजनौर द्वारा कार्यालय पत्रांक 3835 दिनांक 16.02.2024 द्वारा अवगत कराया गया कि सन्दर्भित प्रमाण पत्र दिनांक 24.01.2018 पर उनके हस्ताक्षर नहीं है तथा प्रश्नगत भू स्वामित्व प्रमाण पत्र नगर पालिका परिषद कार्यालय अमरोहा द्वारा जारी नहीं किया गया है।

जिला विद्यालय निरीक्षक, अमरोहा द्वारा अपनी जाँच आख्या में अवगत कराया है कि मान्यता के सम्बन्ध में अधिकृत क्षेत्रीय सचिव, केन्द्रीय माध्यमिक शिक्षा बोर्ड क्षेत्रीय कार्यालय देहरादून को कार्यालय से पत्र संख्या सीबीएसई / 12652-58/2023- 24 दिनांक 21.03.2024 के द्वारा पत्र प्रेषित किया गया था। उक्त पत्र के प्रत्युत्तर / कार्यवाही केन्द्रीय माध्यमिक शिक्षा बोर्ड देहरादून (उत्तराखण्ड) सम्बद्धता शाखा में प्रदत्त मान्यता विषयक प्रकरण विचाराधीन है। जिला विद्यालय निरीक्षक अमरोहा द्वारा अपनी आख्या में यह भी अवगत कराया है कि नर्सरी से कक्षा 8 तक की मान्यता के सम्बन्ध में जिला बेसिक शिक्षाधिकारी अमरोहा / मण्डलीय सहायक शिक्षा निदेशक, मुरादाबाद मंडल, मुरादाबाद को प्रेषित पत्र सं० 12659-64 दिनांक 21.03.2024 के सम्बन्ध में प्रत्युत्तर / कार्यवाही विचाराधीन है।”

15. The above report of the District Magistrate (joint Committee) clearly reveals that earlier Gata no. 311 was renumbered as Gata No. 403-404 and this Gata in Fasli Khasra year 1359 is registered as a Pond. The Report further reveals that the building of Respondent No. 4-Rashida Begum Muslim Vidyalaya is constructed in an area of 812.60 sq.m. Gata No. 403. The building of Respondent No. 5-Mesco Public School is constructed in

an area of 222 sq.m. in Gata No. 404 and the building of Respondent No.- 6 Mesco Institute of Pharmacy is constructed on an area of 709.40 sq. m. Gata No. 404. The Report further reveals that remaining land of Gata 403 and 404 is used by these Respondents - educational institutions as a playground. The report clearly states that the nature of the pond cannot be changed and on this ground the map sanctioned for the Mesco Public School has been cancelled on 07.03.2024. The report further states that the land ownership certificate dated 24.01.2018 was not found to be issued from the Office of the Municipal Council Amroha and that the matter relating to affiliation with the Central Middle Education Board, Dehradun is pending.

16. The UP PCB has also filed the reply dated 10.05.2024 disclosing that an inspection was done by the Regional Office, UP PCB, Bijnor and enclosing therewith a copy of the inspection note which reveals that on inspection Respondent No. 7- Mesco Institute of Nursing and Para-Medical Science was not found to be established. In respect of the Respondent No. 5-Mesco Public School it was found that it has 680 students with no hostel facility. Respondent No. 4-Rashida Begum Muslim Vidyalaya has 100 students with no hostel facility and Respondent No. 6-Mesco Institute of Pharmacy with 203 students with no hostel facility. The inspection report clearly states that there was no water body visible on the spot. This shows that entire waterbody has been destroyed.

17. The Municipal Corporation Amroha has also filed a response dated 28.06.2024 in lined with the disclosure made in the reply of District Magistrate Amroha.

18. The Respondent No. 1, 3 to 5 have filed the reply raising the plea that the Applicant did not disclose the date of purchase of land by the

Respondents that there was a pond existing. This may not be relevant because transfer of the title will not change the character of the land as waterbody.

19. Though, I.A. no. 644/2024 was filed by the Respondent Nos. 1, 3 to 5 but at the commencement of argument itself it was submitted by their Counsel that it be treated as submission on their behalf instead of IA. The prayer was accepted. Accordingly, the disclosure made in IA have been treated as submission of the Respondent No. 1, 3 to 5. In this submission, the plea of the said Respondents is as under:-

“6. That in the humble submission of the respondents, in good faith and in order to assure the commitment of the respondents towards the environment and ecology, the respondents in term of the government order no. 963 dated 30.06.2004 & 03.06.2016 had given the proposal for the shifting of pond to the adjacent land, which belongs to the respondents and therefore the committee taking into consideration of the adverse impact of an order of demolition if any to be passed upon the students and the teachers and non-teaching staff is attached to the institutions had accepted the proposal of the respondents to shift the pond in question on the adjacent land belonging to the petitioner within undertaking that the nature of such land shall not be changed at any point of time. A True Copy of the Report of the Committee is annexed and marked as ANNEXURE A-1.”

20. Along with the submission of Respondent No. 1, 3 to 5 have also enclosed the Report of the Committee which was constituted by the Commissioner Muradabad but such a Committee was constituted on the application of Respondent No. 6 and entire exercise was done at his instance therefore much credence cannot be given to the recommendations made in the said report. However, even in the said report it has been found recorded:-

- गाटा सं0 403 व 404, ग्राम निजामपुर गर्वी, तहसील अमरोहा पर राशिदा बेगम मुस्लिम विद्यालय निजामपुर गर्वी, धनौरा रोड, अमरोहा (2) मेस्को पब्लिक स्कूल निजामपुर गर्दी, अमरोहा, (3) मेस्को इंस्टीट्यूट ऑफ फार्मसी निजामपुर गर्वी अमरोहा तो संचालित अवस्था में है, परन्तु मेस्को इंस्टीट्यूट आफ नर्सिंग एण्ड पैरामेडिकल साईंसेज निजामपुर गर्वी, अमरोहा का धरातल पर कोई अस्तित्व अथवा संचालित होना नहीं पाया गया।

- चकबंदी आकार पत्र 41 के अनुसार वर्तमान गाटा सं0 403 व 404 पुराने गाटा सं0 311 से बने हैं, जो आधार वर्ष 1359 फ० के खसरे में तालाब भूमि अंकित है, जिस पर उक्त संस्था के कालेज भवन बने हैं। आधार वर्ष 1359 फ० की खतौनी के खाता सं० 157 गाटा सं0 311 (अ) रकबा 0.44 एकड़, खाता सं० 113 गाटा सं0 311/3, रकबा 0.08 एकड़, खाता सं0 217 गाटा सं0 311 (अ) रकबा 1.54 एकड़, खाता सं० 129 गाटा सं0 311 रकबा 0.7 एकड़ खाता सं० 149 गाटा सं0 311 अ/2 रकबा 0.41 एकड़ पर फैज बख्श, ईदा, अली अहमद, पिसरान हुसैन बख्श व मिन्टा उर्फ छिद्दा बल्द अली बख्श कौम भटियारा साकिन अमरोहा का नाम (आराजी जिस पर आसमियान बाहैसियत दखीलकार काबिज हो) 1- असामियान दखीलकार बामुजिब एक्ट नम्बर 2 सन् 1901 ई० एक्ट हाय साबिक दखीलकार कराये दे दिये गये हों,) दखीलकार काश्तकार के रूप में दर्ज है।

21. During the course of argument, it has not been disputed by the Counsel for the private Respondents that Gata No. 403 and 404 is a water body. But a submission has been made that since the construction has been raised thereon and students are undergoing studies in the Respondents' institutes therefore, the Respondents be permitted to shift the water body/create a waterbody on the adjacent land which belongs to them. The reply of the District Magistrate, the report of the four Member joint Committee constituted by the District Magistrate the response of the UP PCB along with the report of the RO, UP PCB, Bijnor consistently make it clear that Gata no. 403-404 (old gata No. 311) are registered in revenue record as Pond (water body) and buildings of Respondent No. 4, 5 and 6 have been constructed on the water body and rest of the area of the water body is used as a playground by these educational institutes meaning thereby the entire water body has been filled up and buildings constructed thereon are being used as educational institutes. Such an action is impermissible in law. The record reflects that when this fact came to the notice of the Competent Authority the building map has been cancelled.

22. A reliance has been placed by Counsel for the private Respondents on para 23 of the judgment of Hon'ble Supreme Court in the matter of Jagpal Singh (supra) wherein parting observations have been made by the

Hon'ble Supreme Court but in that paragraph also the Hon'ble Supreme Court has clearly observed that long duration of such illegal occupation or huge expenditure in making construction thereon must not be treated as justification for condoning the illegal act or for regularizing the illegal possession. The present case does not fall even under the exception mentioned in para 23 of the judgement because it is not an exceptional case and the private Respondents have the option to shift their buildings in the adjacent land which is already available with them instead of being a party to continued destruction of existing water body.

23. Thus, we find that the Respondents No. 1, 3 to 5 have raised construction by encroaching upon the water body resulting in destruction of the water body (pond). Such an action cannot be given the seal of approval by the Court. Having regard to the importance of water body in the larger context of the environment and also considering the local geographical contextual issues, we are of the view that the water body which was existing earlier on Gata No. 403 and 404 is required to be restored to its original position. The plea of Respondents No. 1, 3 to 5 that they will create another water body in the adjoining land available to them cannot be accepted because a natural water body created on account of existing topography and distinctive ecological and hydrological features cannot be replaced by an artificially created water body at a different location which may not have such recharge channels and sustainability. Such artificially created water body has been expressly excluded from the definition of 'Wetland' given under Section 2(g) of the Wetland Rules, 2017.

24. Thus, we dispose of the OA directing the State Wetland Authority of State of UP and the Respondent No. 3, District Magistrate, Amroha to ensure that the water body at Gata No. 403 and 404 is restored to its original position. To ensure that in this process, the interest of the

students, if any, studying in the educational institution set up by Respondents No. 1, 3 to 5 on the land of the water body may not be made to suffer, we grant one year time to Respondents No. 1, 3 to 5 to relocate the infrastructure constructed on the water body to an appropriate location.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

February 17, 2025
Original Application No. 219/2024
(IA No 644/2024, IA No 402/2024)
A+dv