

Item No. 03

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL  
(Through Video Conferencing)**

**Original Application No.53/2021(CZ)**

Shireen Kumar Kachhawaha

Applicant(s)

Versus

State of M.P & Ors.

Respondent(s)

Date of hearing: **06.01.2022**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : None

For Respondent(s) : Mr. Sachin K.Verma, Adv.  
Mr. Qasim Ali, Adv.  
Ms. Parul Bhadoria, Adv.

**ORDER**

1. Heard the learned counsel for the parties and perused the record.
2. The issue of encroachment on the land which is recorded as a pond located in Lalipur of district Mandla in Madhya Pradesh having Khasra No. 162, and 86 and converting it for commercial use and the parking zone, have been raised.
3. The matter was taken up on 31.07.2021 and a committee was constituted with a direction to submit the factual and action taken report.
4. In response thereof, the joint committee submitted the report which is as follows :

**"FIELD OBSERVATIONS**

- *It is a true that the Khasra No. 162 & 86 is recorded as a pond in the year 1917-28 as per revenue records. As per revenue records the Khasra No. 162 total area (2.32 Acre) was registered on the name of farmer Shri Meer Fardar Ali as a pond for utilization like washing, cattle etc. The property was declared as a evacuee*

properties. In the year 1954/55 the point 0.3 decimal land allocated to farmers, then in the year 1990-91, 1.62 acre of land was allocated under rehabilitation system. The some part of the land was also sold to respondent no. 05 by the allocated person. Presently, there was a small pond of area 0. 108 hect. out of 2.23 acre in which some part of Khasra No. 162 along with Khasra No. 86. The Khasra No. 86 is private land as per revenue records.

- Respondent No, 5 has obtained ownership of said land and make it tractor showroom for commercial activities. During the inspection the site map is prepared by Revenue Department Mandla.
- During the inspection the list of ownership on Khasra No. 162 is received by Revenue Department.
- The Evacuee properties of Khasra No. 162, some part of the land was found encroached. List of Encroachments received from Revenue Department.
- As per site visit it is observed that the area of the pond is sinked due to human activities & siltation of the pond. The part of the pond/ bank of pond was allocated by the Government of M.P. to other owner which is also sold to the other persons time to time.
- As per information given during the inspection, the notices have been issued for encroachments for said property.
- The pond Area approximate 0.108 hect. (0.3Acre) is remaining as a pond rest of the land is already used as a residential/ commercial activities. The pond is surrounding by residential/commercial activates, there is no proper entry was found during the inspection.”

5. Water quality is reported as follows :

Sr. No	Parameters	Unit	Result I	Result II	Result III	Result IV
<b>A - PHYSICAL PARAMETERS</b>						
1	Temperature	<sup>o</sup> C	-			
2	Turbidity	N.T.U.	12.0			
3	Colour	-	Greenish			
4	Odour	-	Odourless			
5	Specific Conductivity	μmho/cm	515.0			
<b>B - CHEMICAL PARAMETERS</b>						
6	pH	-	7.84			
7	Total Alkalinity	mg/1	46.0			
8	Total Hardness (as CaCO <sub>3</sub> )	mg/1	112.0			
9	Calcium Hardness (as CaCO <sub>3</sub> )	mg/1	76.0			
10	Magnesium Hardness (as CaCO <sub>3</sub> )	mg/1	36.0			
11	Chloride	mg/1	57.47			
12	Total Solids	mg/1	428.0			
13	Dissolved Solids	mg/1	342.0			
14	Suspended Solids	mg/1	86.0			
15	Ammonical Nitrogen (as N)	mg/1	0.90			

16	Nitrite Nitrogen (as NO <sub>2</sub> )	mg/l	0.30			
17	Nitrate Nitrogen (NH <sub>3</sub> )	mg/l	2.0			
18	Total Kjeldahl Nitrogen	mg/l	-			
	(as N)					
19	Fluoride	mg/l	-			
20	Dissolved Oxygen	mg/l	5.2			
21	B.O.D. (3 days, 27 °C)	mg/l	8.6			
22	C.O.D.	mg/l	54.0			
23	Oil & Grease	mg/l	-			
24	Phosphate (as P)	mg/l	0.14			
25	Sulphate (as SO <sub>4</sub> )	mg/l	20.0			
26	Chromium (CR <sup>6</sup> )	mg/l	-			
27	Copper (Cu)	mg/l	-			
28	Zinc (Zn)	mg/l	-			
29	Iron (Fe)	mg/l	-			
30	Boron (B)	mg/l	-			
31	Sodium	ppm	20.0			
32	Potassium	ppm	5.0			
<b>C - BIOLOGICAL PARAMETERS</b>						
33	Total Coliform	MPN/100 ml	>1600			
34	Feacal Coliform	MPN/100 ml	-			
<b>D- ANY OTHER TEST</b>						
35	Calcium (as Ca)					
36	Megneshium (as Mg)					
37						
<b>INDICATION : PARAMETER DOES NOT CONFIRM TO : -</b> Standard prescribed by M.P.P.C.B. in M.P. Gazette notification, dated 25.03.1988 IS : 10500-1991 (Specification for Drinking Water) Standard prescribed in Bio-Medical Waste (Management & Handling) Rules, 1988						
GENERAL MARKS :- BDL = below detectable limit.						
Note:- No statutory liability accepted for samples not collected by MPPCB						

6. Report with regard to the encroachments has been made by the Tehsildar Mandla to the Collector, Mandla which has been forwarded to this Tribunal, is as follows:

### प्रतिवेदन

“विषयांतर्गत संदर्भित पत्र के परिपालन में लेख है कि आवेदकगण रेणु कछवाहा एवं अन्य निवासी ग्राम-लालीपुर, मण्डला द्वारा प्रस्तुत आवेदन पत्र के संबंध में दिनांक 27.08.2021 के क्षेत्रीय अधिकारी म.प्र. प्रदूषण नियंत्रण बोर्ड, राजस्व दल, नगर पालिका दल, एवं उपस्थित पंचगणों के साथ संयुक्त मौका निरीक्षण किया गया। स्थल जांच अनुसार आवेदिक भूमि स्थित ग्राम-लालीपुर, खसरा नं-162 एवं 86 राजस्व अभिलेख में मूल खसरा नं.-162 वर्ष 1927 अनुसार मीर फरदर 2.02 एकड़/0.816 हेक्टेयर एवाक्यू प्रापर्टी (तालाब) वाजिब उल अर्ज के रूप में दर्ज है जबकि खसरा नं.-86 निजी भूमि स्वामि हक में दर्ज है एवं म.प्र. शासन पुनर्वास विभाग के पत्र क्र.22/82/28 भोपाल दिनांक 06.02.1998 के अनुसार भूमि का व्यवस्थापन किया गया है जिसके अनुसार खसरा नं.-162/1/क रकबा 0.108 हेक्टेयर, एवाक्यू प्रोपर्टी अभिलेख अनुसार दर्ज है।

वर्तमान मौका स्थिति अनुसार खसरा नं.-162/1/क रकबा 0.108 हेक्टेयर एवाक्यू प्रोपर्टी 162/6/क/1 रकबा 0.403 हेक्टेयर, रईस, अतीक, इकबाल पिता जलील अहमद, खसरा नं.-86/1 भूमि स्वामि हक में दर्ज है उक्त तीनों खसराओं के सम्मिलित रूप से 0.20 हेक्टेयर (लगभग) में तालाब दर्ज है एवं उक्त तालाब की ही 0.108 हेक्टेयर/0.27 एकड़ में से 0.080 हेक्टेयर/0.20 एकड़ (लगभग) भूमि पर कुल 27 लोगों द्वारा अतिक्रमण किया गया है। अतिक्रमणकर्ताओं की सूची प्रतिवेदन के साथ सुलभ संदर्भ हेतु संलग्न है। पूर्व में शिकायकर्ता द्वारा की गई अन्य शिकायती आवेदन पर की गई राजस्व विभाग द्वारा संयुक्त जांच की गई है व अतिक्रमणकर्ताओं को नोटिस जारी किये जा चुके हैं।”

7. The matter was taken up on 24<sup>th</sup> September, 2021 and this Tribunal after hearing the learned counsel for the parties observed as follows:

*“According to the report submitted by the Collector, there are encroachments and there are discharge of untreated water into the water bodies, notices have been issued to the persons, who have encroached the land. Accordingly, the Collector is directed to submit further action taken report with regard to the improvement of the situation and removal of encroachments within four weeks. State Pollution Control Board is directed to take necessary action with regard to the environmental compensation and submit further action taken report within four weeks.”*

8. In compliance thereof, Madhya Pradesh Pollution Control Board has submitted the report as follows:

*“1. That, the instant case has been filed by the applicant regarding the alleged encroachment on the land which is recorded as a pond located in Lalipur of district Mandla in Madhya Pradesh having Khasra No. 162, and 86 and converting it for commercial use and the parking zone and non-compliance of MSW Rules, 2016 by Nagar Palika Parishad, Mandla.*

*2. That, as per the directions issued by Hon'ble Tribunal on 30.07.2021, inspection was conducted on 27.08.2021 by the committee and submitted its report on 16.09.2021, same has been on record. Further, the Hon'ble Tribunal vide its order dated 24.09.2021 directed the answering respondent to take necessary action with regard to the imposition of environment compensation.*

*3. That, the compensation regime for non-compliance of MSW Rules has already been laid down by the Hon'ble Tribunal, Principal Bench, in O.A No. 606/2018(PB), "Compliance of Solid Waste Management Rules, 2016. The same has been adopted by MPPCB and Environmental Compensation liable to be levied upon the defaulting ULBs has been computed accordingly and it includes Nagar Palika Parishad, Mandla. Notice has been issued to Nagar Palika Parishad, Mandla with respect to Environment compensation of 96*

*lakh (96,00,000) for the period of violation from July 2020- December 2020.*

*4. The computation and levying of EC is being done on six-monthly basis after the verification of compliance, if any, therefore, an inspection was conducted on 31.07.2021 by the Regional Officer, Jabalpur and since no further compliance has been done, environmental compensation of Rs 126 lakh (1,26,00,000) has been proposed to be imposed on Nagar Palika Parishad, Mandla (by Regional Officer) for non- compliance of MSW Rules 2016 from the month of January 2021-June 2021. The State Pollution Control Board is in process of issuing notice for imposing the Environmental Compensation for next six months i.e. January 2021- June, 2021”*

9. The Pollution Control Board has attached the details of the compliance of the MSW Rules, 2016 and have stated that there is no identification of suitable site for setting up common regional sanitary landfill, no procurement of suitable sites for setting up solid waste processing facility and sanitary landfill facilities, no setting up solid waste processing facilities, no setting up common or stand alone sanitary landfills by or for all local bodies, no setting up common or regional sanitary landfills by all local bodies and census towns under 0.5 million population for the disposal of permitted waste under the rules, the bio-remediation has not been started till date, capping of old and abandoned dump sites have not been started till date, there are 12 number of drains meeting water bodies , STP has not been installed, there is no STP under construction and total number of STP required to be set up in the ULB is reported as two. In accordance with the above facts, the environmental compensation has been assessed.

10. Respondent No.5 and 6 has submitted the reply as follows:

*3. That it is submitted that the issue pertains to the land bearing Khasra no. 162 & 86 which as per the Action Taken Report was recorded as Pond in the revenue records of 1927-28. It is further submitted that Khasra no. 162 whose total area was 2.32 acres was initially registered in the name of Shri Meer Safdar Ali (wrongly mentioned as Shri Meer Fardar Ali) as a pond for the purposes of using it in its daily chores and was lately declared as an Evacuee Property. It is submitted that out of the said Khasra bearing no. 162/1, a land admeasuring 1.62 acres was allotted to Smt. Naheed Jahan (mother of respondent no. 6) by the Central Government, which was*

renumbered as Khasra no. 162/6. It is Further submitted that the said land was thereafter being collectively filed.

4. It is further submitted that as per the letter dated 09.05.2012 issued by Asst. Director, Town & Country Planning, District Mandla an information with regard to land use of Khasra no. 162 in view of Mandla Vikas Yojna 2021 was given to the Respondent no. 6, which clearly reflect the land use as Residential + Commercial + Water body + Road.

5. That it is submitted that with regard to Khasra no. 86, it is not in dispute that out of the said Khasra. The mother of the respondent no. 6 is the owner & possession holder of the land renumbered as Khasra no. 86/l admeasuring 0.99 acre and the remaining part of the said Khasra was allotted by the State Government for residential use.

6. That it is further submitted that a report dated. 10.10.2012 was submitted by Deputy Collector, Mandla in the matter of Case no.4A/09 'Naheed Jahan v. State of M.P. & Ors., with regard to Khasra no. 162. It is relevant to mention here that the said matter was filed by the mother of the respondent no. 6 against encroachment on her property. It is submitted that the said report clearly reflect that the ownership of the said Khasra is not disputed and as such no part of any water body is being encroached upon by the respondent no. 6.

7. That it is significant to mention here that a complaint was filed by one Sunil Sirsam through C.M. Helpline with regard to encroachment on Khasra no. 162/l admeasuring 0.16 hectare and illegal allotment of land by the State Government. On account of the report submitted by the Patwari and after the detail examination of revenue record, the learned Tehsildar vide order dated 17.09.2018, had directed the removal of name of Smt. Asharani and her husband from Khasra no. 162/8 & 162/9 being an illegal allottees. It is most significant to mention here that the said order further provide the ownership of the land and the present status of the land, which clearly mentions that Khasra no. 162/6Ka/1 & 162/6lKa/2 belongs to respondent no. 6, whereas Khasra no. 162/6/Ka/5 & 162/7 belongs to respondent no. 5 and the same was purchased by respondent no. 5 from the mother of respondent no. 6. Moreover the land bearing Khasra no. 162/4 was also purchased by respondent no. 5 from Shri Manjeet Singh.

8. It is significant to mention here that the ownership of the abovementioned Khasras belonging to respondent 5&6 are not in dispute and the same is duly been supported by the Committee members in the Action Taken Report filed before this Hon'ble Court.

9. It is also submitted that the answering respondents have not encroached upon any land. Infact the sewage and foul water is being discharged on the

*land belonging to Respondent no.6 which is alleged to have been shown as Pond and the same is evident from the report and documents submitted by the answering respondents, and as such all the allegations against the Respondent no.6 are denied in totality being false. It is further submitted that the said area is neither a waste body but merely an area where the discharge and effluent is being dump.*

*10. It is further submitted that the said land is surrounded by various residential houses and as such, if there seems any encroachment, whatsoever in any matter, the same has no nexus with the answering Respondent no.5 and 6. It is further submitted that the construction if any carried out by the answering respondents are restricted to their own land.*

*11. It is further submitted that as per the Action Taken Report submitted before this Hon'ble Court, it is evident that as on this date, only 0.3 acres or 13,068 sq. ft area is surrounded by foul water & sewage. It is further relevant to mention here that the discharge of sewage & effluent is caused by outlet of various sewer by private residents and most importantly by big covered sewer constructed by Municipal Council, Mandla which carries the effluents & discharge of foul water from Subhash Ward & Bhagat Singh Ward as well. It is further submitted that a construction of Big Sewer Pipe for the discharge of effluent on the said foul water body is also proposed by the Municipal Council, Mandla.*

*12. It is submitted that as per the Action Taken Report filed on account of the site inspection conducted on 27.08.2021, it is relevant to mention here that as per the said report, the foul water is collected on 162/1/Ka admeasuring 0.108 hectare (which is also a part of Khasra no. 162/1), in which there is an encroachment by the office of the Excise Department, State of Madhya Pradesh.”*

11. We have also examined the record submitted by the Respondents. A letter dated 07.01.1991 Annexure R-5 & 6/1, reveals certain certificates issued by the Tehsildar, Mandla, and the notification by the Government of India issued under Section 12 of the Compensation and Rehabilitation Act, 1954 in favour of Nahid Jahan, schedule which has been issued by the Tehsildar in favour of Nahid Jahan, Khasra and order dated 09.05.2012 issued by the Sahayak Sanchalak Nagar tatha Gram Nivesh Karyalaya Jila Mandla , Madhya Pradesh for converting the area as residential, commercial and pathway including water body, report submitted to Additional District Judge, Mandla in case no. 4A of 09, report submitted by the committee of two persons officers Deputy Collector, Mandla, and Collector, Mandla and an order passed by Tehsildar, Mandla vide order dated

17.09.2018 in a case pending before Tehsildar, Mandla.

12. The matter which has been explained by Respondent no. 5 & 6 are all of civil in nature and either is pending before the competent Civil Court or a revenue court or a subject matter of notification issued by the Central Government. The matter of ownership or possession of the property under question may be raised before the competent court or competent forum for proper disposal of the case and deciding the matter of ownership. This Tribunal is concerned only with the facts of encroachment on water bodies and discharge of untreated sewage into the water bodies and non compliance of MSW Rules, 2016.
13. In case of non-compliance of MSW Rules, 2016 and discharge of untreated sewage the State Pollution Control Board has submitted the report and taken action for realization of environmental compensation. We are of the view that the land which are under dispute or under adjudication to any court or forum either civil or revenue shall be determined in accordance with the decision taken by the competent forum. So far as the violations of environmental norms are concerned, State Pollution Control Board has a statutory duty to proceed in accordance with law and State Pollution Control Board has taken action and issued show cause notice.
14. We are of the view that being statutory authority the SPCB shall act in accordance with law and in case of violation of rule the necessary environmental compensation must be imposed on the violators of law.
15. Learned counsel for the State has submitted that there is change of nature of land which cannot be permitted for which the Collector may be directed to do the necessary action according to law.
16. In view of the above, we direct the Collector to remove the encroachment if any, on the water bodies and if there is any change of nature of land without any approval of the competent authority, necessary legal action be initiated against the person concerned. `
17. The report reveals that there are discharges of untreated water/sewage water into the water bodies or non compliance of the MSW Rules, 2016 for

which we direct the State Pollution Control Board to periodically monitor and to take necessary legal action in addition to imposition of environmental compensations and their realization. Assessment and imposition of environment compensation without its realization do not server unintended purpose. The water bodies (as recorded) must be protected by way of demarcation and fencing as deemed suitable by the authorities and Collector is directed to take necessary action according to law.

**Original Application No. 53 Of 2021 is finally disposed of accordingly.**

**Sheo Kumar Singh, JM**

**Arun Kumar Verma, EM**

06<sup>th</sup> January, 2022  
OA No. 53/2021(CZ)  
PU