

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

**Original Application No. 133/2014**

**IN THE MATTER OF:**

**MukeshYadav  
Son of Shri Ram Lal,  
Resident of Village- Bishrakh  
District GautamBudh Nagar**

**.....Applicant**

**Versus**

- 1. State of Uttar Pradesh  
Through Principal Secretary  
Uttar Pradesh**
- 2. District Magistrate,  
Gautam Budh Nagar**
- 3. The Greater NOIDA Authority through  
Chief Executive Officer (CE.O)  
District GautamBudh Nagar**
- 4. Capital Athena Builders Visrakh  
Sector 1, District Gautam Budh Nagar  
Through its Proprietor Siddharth Sharma**
- 5. Capital Athena Builders Visrakh  
Sector 1, District Gautam Budh Nagar  
Through its Partner Shri Naveen Rana**
- 6. Central Ground Water Authority  
Impleaded vide order dated 24/4/2015**

**...Respondents**

**Counsel for Applicant:**

**Ms. Antima A. Bajaz, Adv**

**Counsel for Respondents:**

**Ms. Savitri Pandey and Ms. Azma Parveen, Advs for Respondent Nos. 1 & 2.**

**Mr. Ravindra Kumar, Adv for Respondent No. 3.**

**Mr. R.B. Singhal, Sr. Adv alongwith Mr. Atif Suhrawardy and Ms. Aishwarya Shandly, Advs for Respondent No. 4 & 5.**

**Mr. Ardhendumauli Kumar Prasad & Mr. Jidgal G. Chankapa and Ms. Priyanaka Swami, Advs for Respondent No. 6.**

**Mr. Rajkumar with Mr. Bhupender Kumar & Ms. Niti Chaudhary, Advocates for CPCB.**

**JUDGMENT**

**PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice M.S. Nambiar, (Judicial Member)**

**Hon'ble Prof.A.R. Yousuf, (Expert Member)**

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

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**Reserved on: 11<sup>th</sup> December, 2015**

**Pronounced on: 29<sup>th</sup> February, 2016**

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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?

**Mr. Bikram Singh Sajwan, EM**

This application has been filed by the applicant, who is a Member of *Krishan Sangharsh Samiti*, against Respondent Nos. 4 & 5 under Section 14 of the National Green Tribunal Act, 2010 (for short, "NGT Act") for illegally digging the land area up to 40 feet deep for the purpose of construction near village Bishrakh, Gautam Budh Nagar, Uttar Pradesh.

2. The applicant claims to be an aggrieved citizen and a resident of village Bishrakh and a member of *Krishan Sangharsh Samiti* and who

is running an educational institution, namely, Balaji Shiksha Institution and is also Chairman of the Balaji Samiti and a Member of the Gram Sudhar Samiti. Being aggrieved by the arbitrariness of Respondent Authorities in not taking action against the illegal activities of the Respondent Nos. 4 and 5 and restraining them from carrying on illegal extraction of the ground water, he has filed the present Application.

3. The Case of the Applicant is that the Respondent Nos. 4 and 5, which is a construction company, while building residential apartments on plot no GH – 12A – 2, Sector 1 Greater NOIDA West, adjacent to village Bishrakh in the District Gautam Budh Nagar, have started digging soil up to a depth of 40 ft which is causing water to ooze out from the construction site and the same is being pumped out and thrown away in the Hindon river. As a consequence thereof, handpumps and the lands in the neighbouring village and other adjacent areas have dried up and this is adversely affecting agriculture and is creating a famine like situation in the villages. The applicant has also drawn attention to the news item published in local newspaper, namely, Amar Ujala on 2<sup>nd</sup> May, 2014 and has also submitted a copy of the CD as a token of proof to substantiate his claim that the Respondent Nos. 4 and 5 are extracting ground water and throwing it into Hindon river. The applicant also alleges that in the newspaper report it is clearly brought out that the villages are facing lot of problems due to irrational digging in the area and draining of ground water during the night. It is also apprehended that if the withdrawal of ground water continues for some more time, the

village Bishrakh will have no water for drinking and irrigation purposes. The bore wells in the adjoining villages have to be dug deeper and deeper due to the continuous decline of the water table. Being aggrieved by the illegal activity of the builders, the applicant along with other villagers have made repeated representations to the Respondent State Authorities but there is a complete inaction on the part of the Respondent Authorities so much so that despite orders of the Hon'ble Supreme Court of India and the Tribunal for preservation of ground water, a common resource, illegality is continuing. Accordingly, the Applicant prays the Tribunal:

1. *To direct the Respondent Authorities for not permitting the Respondent nos. 4 & 5, the builders from carrying out any de-watering activities, thereby destroying the natural resources in the interest of justice.*
2. *To issue a direction in the nature of mandamus commanding the respondents to take necessary steps upon the matter in hand.*
3. *To issue direction to the respondent builders to compensate the villagers who were affected adversely by such indiscriminate boring and de-watering the area and cost of Hand Pumps and boring constructed by the villagers.*
4. *To issue direction to the Respondent Authorities to come up with a proper scheme for restoring the water level of the Village Bishrakh.*

4. The applicant would also contend that the order of the Tribunal dated 16<sup>th</sup> July, 2014 has been clearly misused by the Respondents and that they are extracting the underground water illegally, irrationally and continuously.

5. The Respondent Nos. 4 & 5 in their reply have submitted that they are engaged in construction of residential flats on plot no. 12 A-2 Sector-1, Greater NOIDA West, which is adjacent to the village

Bishrakh in Gautam Budh Nagar district of UP. They submitted that they have laid the foundation of the building up to the prescribed limit from the natural ground level as permitted by the Greater NOIDA Authority and that the permission for the same was issued in the month of December 2013.

6. They have already laid down the foundation of 3 buildings and their pillars have been constructed. As per the Respondents, the water is seeping naturally in to the foundation of the proposed building due to the rainy season and that the Respondents are only removing the said water into two harvesting pits and two artificial ponds constructed by the respondents for the purpose adjacent to the construction site. The Respondents have denied that they are extracting water illegally and throwing in to Hindon river. Respondents in their M.A No. 443/2014 filed for clarification / modification of the order passed by this Hon'ble Tribunal on 7<sup>th</sup> July, 2014 stated that the water that is proposed to be removed from the construction site will not be pumped into any drain. Instead, the Project Proponent undertakes to remove and discharge such water into the water harvesting pits so that this water shall again reach the sub soil thereby the subsoil water would stand recharged. The project is adjacent to Hindon river on account of which the water table of the area increases in the monsoon season and, therefore, it is necessary to remove the water which is seeping into the foundation of the building under construction.

7. The Respondents have also drawn attention to the order dated 14<sup>th</sup> June, 2013 passed by the Hon'ble Supreme Court of India in a

similar case i.e. Civil Appeal No. 4798/2013 titled “*New Okhla Development Authority Vs. Vikrant Kumar Tongad*” which reads:

“ *In the meantime the operative portion of the order passed by the NGT shall be read so as to infer that the petitioner although shall not permit the extraction of ground water in any manner it will not prevent the affected parties from removing the water which may be seeping into the basement or enclosing the foundation of the building under construction. Respondents 4 and 5 have prayed that they be placed on the similar footing as of the above mentioned case.*”

Advancing their argument further, the Respondents submitted that removal of water in the basement is necessary or else it would damage the whole structure of the building and may cause mishaps to the workers working on the construction site.

8. The Tribunal disposed of the M.A No. 443/2014 filed by the Respondent Nos. 4 and 5, vide order dated 16<sup>th</sup> July 2014, the operative part of which is reproduced below :

“*By this application, the Applicant prays for modification of our order dated 07.07.2014 passed in original application no. 133/2014.*”

*It may be noticed that the Hon’ble Supreme Court of India vide its order dated 14.06.2013, passed in Civil Appeal No. 4798/2013 has already varied similar order passed by this Tribunal. Consequently, we have no hesitation in directing that our interim order dated 07.07.2014 shall be read in light of the order of the Hon’ble Supreme Court of India dated 14.06.2013 in Civil Appeal No. 4798/2013.*

*However, we make it clear that the water so extracted shall be put in the harvesting pit and the Applicants shall file affidavit that its capacity is enough to take the water extracted from the basement.”*

9. Subsequently, the Tribunal vide its order dated 16<sup>th</sup> December, 2014 directed Respondent Nos. 4 & 5 to file reply along with proof by way of documents on the following issues:

1. All the payments made to the authority.
  2. Proof of payments made for the purpose of use of chemical in place of water for curing purposes.
  3. Consumption of water.
  4. Water discharged.
  5. Whether rain water harvesting system is complete and operative or not.
10. In compliance to the orders of the Tribunal, Respondent Nos. 4 & 5 submitted that for the purpose of construction, the Respondents had applied to the NOIDA Authority for permission to take water from the STP and deposited an amount of Rs. 25,000/- by way of Demand Draft bearing no. 935062 dated 21<sup>st</sup> November, 2013 for 5000 Kilo Litres @ Rs. 5 /- Per Kilo Litre and started taking water from there. The procedure followed by the Authority was that the Authority gives the prescribed quantity of water for which the payment is made and the purchaser has to get the same lifted from the STP, which is done through the tankers, for which transportation charges are required to be paid by the purchaser. Copies of the relevant receipts and payments for the sewage water purchased and used in the constructions were also annexed as a proof regarding the use of treated sewage water. The answering Respondent- Project Proponents further submitted that the total water consumption from the start of the construction on 2<sup>nd</sup> April, 2014 till February, 2015 is 31,45,266 ltrs against the quantity of 5000 KL, for which payment has already been made and that after whole water is used, the Respondent would again purchase the required quantity of water from the authority.

11. On point No. 3, with regard to the consumption of water so far for different purposes, the Respondents have submitted a chart listing the various activities and the quantity of water used which is reproduced as under:

<b>Details of Usage</b>	<b>Usage in Qty. (Ltrs.)</b>
Construction	2255266
Plantation	300000
Sprinkles	190000
Miscellaneous	300000
Storage	100000
Wastage and Less received	--
<b>Total Usage</b>	<b>3145266</b>

12. The said Respondents have also contended that in order to save water, they have also been using chemicals in place of water for curing of cement concrete work and that they have so far consumed 3384.87 kg of chemical for curing of cement and have placed on record the bills/cash memos for the purchase of the curing chemical since the beginning of the construction work.

13. In response to the query no. 4 & 5, the Respondent Nos. 4 and 5 have submitted that the harvesting pits have sufficient capacity to store up to 200 litres of water in one pit and that the size of the two ponds is almost of 1000 sq. yards per pond. In support thereof they have annexed the photographs of the two harvesting pits admeasuring

14.6 x 15.6 m where they are storing the water and claim that the two pits are fully functional. Regarding discharge of water, the Respondent builders have submitted that they are not doing any de-watering. As per the Respondents, the total amount of water which has seeped into their construction area and removed so far is about 2.5 lac litres which has been put in to harvesting pits, which are fully complete and functional. According to the Respondents, it is not discharge of water, rather it is a recharge of water.

14. The answering Respondents in pursuance to the order of the Tribunal dated 11<sup>th</sup> December, 2015 have also filed copies of the Environmental Clearance (for short "EC") dated 7<sup>th</sup> October, 2013 granted to the project, the copies of the Bank guarantee dated 22<sup>nd</sup> April, 2015 for an amount of Rs. 10 Lakhs and the Consent to Establish (NOC) dated 12<sup>th</sup> June, 2015.

15. Respondent No. 3, Greater NOIDA Authority, in their Reply Affidavit dated 21<sup>st</sup> November, 2014 have contended that they have issued directions to the Project Proponents (Respondent nos. 4 and 5) that ground water should not be extracted for construction purposes. The Respondent also drew reference to the order dated 14<sup>th</sup> June, 2013 of Hon'ble Supreme Court of India in Civil Appeal No. 4798 of 2013 in "*New Okhla Industrial Development Authority & Anr. V/s Vikrant Kumar Tongad & Ors*" relied on by the Respondent Nos. 4 and 5 and already extracted above.

16. The Respondent No. 3 pointed out that they are ensuring compliance of that order and that no ground water is being allowed to

be extracted by the Project Proponent. The Respondent further contended that the premises of Respondent Nos. 4 and 5 have been inspected by a team of officials of the Authority and that extraction of the ground water for the purpose of construction was neither noticed nor was any borewell found within the premises under construction. On the contrary, the water that was being removed from the foundation was not extracted water but water which had seeped into the foundation and that water was found being discharged in the water harvesting pit and was not disposed of either in the open or in the Hindon river. It is further submitted that the Respondent Nos. 4 and 5 have been using the treated sewage water purchased from STPs under the control of NOIDA. The Respondent have also controverted the Photographs as well as the news item published in the local newspapers regarding the drawal of ground water and its discharge into Hindon river and labelled them as unreliable. In their subsequent Affidavit filed on 6<sup>th</sup> April, 2015, the Respondent No. 3, have drawn reference to the inspection carried out by the team of the officers of Respondent No. 3 from the Planning and Engineering Wing and reiterated that the Committee found no ground water was being extracted by the said Respondent Nos. 4 and 5.

17. It has also been submitted that the Project Proponent (Respondent Nos. 4 and 5) has been leased Plot No. GH – 12A – 2, Sector 1, Greater NOIDA measuring 33941.79 Sq. Mtrs. The lay out plan submitted by the Respondent Nos. 4 and 5 was approved by the Planning Department of the Respondent Authority on 27<sup>th</sup> February, 2013. As per the approved lay out plan, the permissible construction

area is 93261.471 Sq. Mtrs. The constructed area would comprise of 11 nos. of towers and the sanctioned lay out plan would have a validity of 5 years from the date of approval, within which period, unless extension is sought and granted on payment of charges, the allottee has to commence and complete the construction. The construction of site commenced on 2<sup>nd</sup> April, 2014 and out of 11 towers, construction has commenced only in five (5) towers, namely, tower Nos 4, 6, 7, 8 and 9 and in the remaining towers, construction has yet not been commenced. Even in respect of tower Nos. 4, 6, 7, 8 and 9, so far only concrete work of RCC Frame structure, i.e, Foundation, Lower Basement, Upper Basement and Grounds Floor was going on. The statement of the Project Proponent to that effect was verified by the Committee during inspection on 30<sup>th</sup> and 31<sup>st</sup> March, 2015 during which, as per the averments of the Respondent No. 3, the Inspecting Team also carried out measurements of the concrete work so far done. Based on the actual concrete work on the site and on comparison with the approved lay out drawings, the Committee of officials made their own calculations with a view of assessing the water requirement for total concrete work measuring 10890 cubic meters undertaken till that date. While calculating the water requirement for the concrete work in question, the Committee have used the relevant IS standards for water that is required per cubic meter of concrete work and even provided for an additional 20 % over and above for wastage and curing. Taking the water consumption as per the IS standards, the total concrete work done at the site would require 22,86,900 lts of water. It is the averment of the

Respondent No. 3 that the Project Proponent has purchased water from the STP at NOIDA at the rate of Rs. 5 per Kilo Ltrs and for this purpose the Project Proponent has also paid a sum of Rs. 25,000 to the NOIDA Authority. The relevant receipts and challans have been placed on records. The Respondent No. 4 has so far taken 2,845 Kilo ltrs of STP water till February, 2015 which is more than the quantity of water that is required for construction work so far done by the Project Proponent.

18. The Respondent No. 1, (State of UP) and Respondent No. 2 (District Magistrate, Gautam Budh Nagar) in their joint Affidavit filed on 5<sup>th</sup> August, 2015 have submitted that a team constituted by the District Magistrate, Gautam Budh Nagar in their inspection carried out on 5<sup>th</sup> April, 2015 have observed that during the inspection, sewage and rain water was found in all the 5 towers under construction which was being pumped out into the pit constructed for collecting rain water. Further, there was a reservoir constructed for storage of STP water and the dewatering of ground water by fixing bore well was not found during inspection. The inspecting team has also reiterated the points raised in the affidavit of the Respondent No.3 in so far as the status of construction, the total details of the project and the fact that the Project Proponents have been using STP water purchased on payment of sewage water charges from the NOIDA.

19. The Respondents have also submitted that the housing project has obtained Environmental Clearance (for short, "EC") on 07.10.2013 from the State Environmental Impact Assessment

Authority (for short, "SEIAA"), Uttar Pradesh. Pursuant to the conditions of the EC, the Project Proponent submitted application for NOC from the Uttar Pradesh Pollution Control Board (UPPCB) vide letter dated 07.01.2014. However, in the absence of bank guarantee for Rs. 10 Lakh required to be furnished by the Respondents No.4 and 5, the NOC for commencing construction could not be issued till the date of inspection dated 5<sup>th</sup> April, 2015. The inspecting team in their Report especially pointed out that although treated water received from STP under NOIDA is shown to have been used in construction work, but recommended to ensure that only treated water from STP be used in the construction work and that the Greater NOIDA Authority be directed to ensure continuous supervision and for compliance of the orders of the Hon'ble Tribunal. On the question of safe guards from dust emissions, the inspecting team noticed that the dust screens etc., to prevent dust generated during the construction work was not found installed at the site during the inspection and that the Committee was informed that water was sprinkled regularly to prevent dust from causing air pollution. Further, it was observed that the Project Proponent had not constructed pucca road at the construction site for movement of trucks. The Committee in conclusion recorded that owing to a large number of constructions in the neighbourhood of the construction site of the Project Proponent, the impact of ground water needs to be studied and assessed and for this purpose the technical opinion of the Central Ground Water Authority (for short, "CGWA") would be necessary.

20. The CGWA which was impleaded as Respondent No. 6 on the request of the Applicant, in their Reply Affidavit filed on 10<sup>th</sup> August, 2015, disclosed that CGWA does not have any record related to M/s Capital Athena Builders (Project Proponent) having made an Application for permission of the CGWA and that the said builder is not authorised to draw ground water for using in construction activity. That means, the builder has neither applied nor has been granted any permission from CGWA for drawal of ground water, at the time of the construction of basement. The Respondents also produced the inspection report of the Geologist from the CGWA, where the status of ground water table in the area in question was highlighted. As per the inspection report, depth of the ground water table in the area varies from 7.15 to 10.72 mtrs below ground level and that there is declining trend (0.42 mtr per year) in the wells at Bishrakh over a period of 6 years which could be attributed to a large scale construction in the area. On the question of Rain Water Harvesting structures, the Report reveals that although such structures have been made by the Project Proponent, the maintenance of the structure was poor and that recharge pits were not covered and the pipe through which water goes into the aquifer is perforated, which may lead to the pollution of ground water and choking of filter media. By way of caution, the inspection Report suggested that the future constructions should be undertaken keeping in mind the ground water scenario in the area.

21. The Tribunal vide order dated 25<sup>th</sup> April, 2015 directed the CPCB to collect the samples of the water from the STPs at NOIDA and give a

report as to the suitability of treated STP water for construction purposes. The CPCB in its report filed on 22<sup>nd</sup> June, 2015 submitted that performance evaluation of 5 sewage treatment plants operated by NOIDA was conducted and came to the conclusion that parameters of the treated water out of 5 STPs, 4 STPs installed at Sector-123, Sector-54, Sector-50 and Greater NOIDA were well within the prescribed limits of general standards of discharge of environmental pollutants into inland surface, public sewers, land for irrigation and marine coastal areas under Schedule 6 of The Environment (Protection) Act, 1986 and that the STP installed at NOIDA, Sector-91, is not conforming to the prescribed standards. It further stated that the treated effluent of 4 STPs at Sector-123, Sector-54, Sector-50 and Greater NOIDA may be used for construction and other purposes as heavy metal parameter are within the range and organic load in respect of the BOD is also within the prescribed limits.

22. During the pendency of the matter before the Tribunal, the Applicant had also filed Miscellaneous Application bearing No. 576/2014 praying for direction to the Respondent Nos. 4 and 5 to place all relevant permissions and NOCs granted to them by the Competent Authorities, including the Environmental Clearance, if any, granted to them by SEIAA and permission by the CGWA. Accordingly, on the direction of the Tribunal, the Project Proponents have placed on record the copies of the Environment Impact Assessment (EIA) and EMP and the EC granted to them by the SEIAA. The Respondent Nos. 4 and 5 have vehemently denied that they have been drawing any ground water for construction or de-watering the

ground water. On the contrary, what they have been doing is clearing the water that has been oozing from the excavated area into the construction sites on account of the monsoon rains and that it was a perfectly legitimate activity. They have also referred to the order of the Hon'ble Supreme Court of India dated 14<sup>th</sup> June, 2013 passed in a similar case i.e. Civil Appeal No. 4798/2013 titled "*New Okhla Development Authority and Anr. Vs. Vikrant Kumar Tongad and Ors.*" whereunder the Hon'ble Supreme Court of India had permitted the builders to carry out de-watering from the construction site. It was thereafter that the Tribunal had passed the order dated 16<sup>th</sup> July, 2014 (Supra). Pursuant to the order dated 14<sup>th</sup> June, 2013, the Tribunal had vide order dated 14<sup>th</sup> July, 2014 permitted extraction of seepage water subject to this being put into harvesting pits. They have also denied that the removal of water that has been oozing from the adjoining area into the construction site will cause any depletion of the water table in the adjoining villages and areas.

23. During the hearing, the Learned Counsel for the Respondent Nos. 1, 2 and 3 have argued that the inspecting team did neither find any bore wells installed at the construction sites nor any de-watering being done by the Project Proponent. On the contrary, the Learned Counsel have argued that the Project Proponent has purchased water from the STPs of NOIDA/Greater NOIDA and that the construction work has been undertaken using the STP water. Further, all the water that has been oozing into the basement on account of monsoon rains has been evacuated into the water harvesting pit constructed by the Project Proponent. Therefore, the contention of the Applicant that

there is a deliberate de-watering being done by the Project Proponents is not borne out by the actual physical inspections.

24. In the light of the aforesaid facts and averments, the following issues arise for consideration:

1. Whether the claim of the Applicant that the Project Proponent (Respondent Nos. 4 and 5) has been using ground water for construction purposes is correct.
2. Whether the ground water pumped out from the construction site is covered by the necessary clearances / permissions from the Competent Authorities, particularly, the CGWA.

**Discussion on issue no. 1**

25. The learned Counsel appearing for the applicant have submitted that the Respondent Nos. 4 and 5 have been excavating earth almost up to 40 Ft deep (about 12 metre) and de-watering the ground water from the construction sites thereby depleting the water table. As a consequence thereof the tube wells and hand pumps in the adjoining villages have to be dug deeper and deeper due to constant decline in the water table. Their submissions are supported by observation in the inspection report and Affidavit filed by Respondent No. 6 (CGWA) wherein the CGWA has opined that the water table in the area in question is declining at the rate of 0.42 Mtrs per year due to large scale construction activity by various developers in the area in question and in fact the water table has declined by more than 2.50 metres i.e, from 8.16 metre in 2013 to 10.72 metres in 2015 after commencement of construction on 2<sup>nd</sup> April, 2014.

26. It is commonly conceded by the Respondents, which is also supported by the documents placed on record that all the water that has been used in the construction has been purchased from the STPs run by NOIDA/Greater NOIDA. The Respondent No. 3 (Greater NOIDA Authority) have also concurred with the inspection Report of the CPCB which gives the technical parameters of STP water and its suitability for the RCC work and have supported the contention of the Project Proponent that they have in fact purchased 2845 Kilo litres of STP water up to 28<sup>th</sup> February, 2015 which is much in excess of the requirements of construction and curing of construction work so far undertaken. To fortify their argument, the Respondent Nos. 4 and 5 have contended that not only have they been using only STP water for the purpose of construction and curing purposes, but have also been using chemicals which promote fast curing of RCC work thereby reducing the need of water for curing purposes and also produced the necessary vouchers and payment receipts obtained for procurement of curing chemical.

27. The Inspection Report filed by Respondent Nos. 1 and 2 also supported the contention of the Project Proponent in so far as the use of the treated water from STPs for construction work is concerned. They have disputed the contention of the Applicant that the Project Proponents are using ground water in the construction activity and in fact they could not locate any bore well at the construction site and found reservoir constructed for storing the STP water. Similar, is the finding of the inspections carried out by the Respondent No. 6, the CGWA as well as the Respondent No. 3, the Greater NOIDA Authority,

who through independent inspection teams have inspected the construction site and observed that the inspecting team could not find any bore wells at the construction site. They have also drawn attention to the advance payment made by the Project Proponent to the NOIDA Authority for purchase of STP water and have also relied on the documents furnished in support of the purchase of STP water from the NOIDA/Greater NOIDA and found that there was adequate storage arrangements for storing the sewage water at the site. The Report of the CPCB clearly brings out that the treated water of the STP conforms to standards, making it suitable for RCC construction and curing work. The quantity of sewage water purchased by the Project Proponent is in excess of the quantity of water required for the RCC work so far completed by the Project Proponent up to February, 2015. All the Inspection Reports of the inspections carried out by the CGWA (Respondent No.6), Greater NOIDA (Respondent No.3) and State of U.P (Respondent Nos.1 and 2) have concurred with and thereby strengthened the statement of Respondent Nos. 4 and 5, the Project Proponents, that there is no bore well at the construction site and that the Project Proponent has been using STP water in their construction activity. On the other hand, the Applicant except claiming that the Project Proponent has been carrying out de-watering and releasing that water into the Hindon river has not been able to place on record, any document to suggest, much less prove, that the Project Proponent has actually established any bore wells at the construction site or that extracted water is actually being used in the construction work. Even Photographs and CDs adduced by the

Applicant during the course of hearing only show that water is being pumped out and released into a channel. This in no way suggests that there is deliberate extraction of ground water by the Project Proponent and it being used for the purpose of construction.

28. The documents placed on records by the Project Proponent as well as the Greater NOIDA Authority in respect of purchase of the STP water have not been disputed by the learned Counsel appearing for the Applicant. In the light of the aforesaid facts, documents placed on record and arguments during the hearing, we do not find any merit in the contention of the Applicant that Respondent Nos. 4 and 5 are extracting ground water for the purpose of construction or using the same in construction activity.

#### **Discussion on issue no. 2**

29. The lay out plan for the construction work was submitted by the Project Proponents on 21<sup>st</sup> February, 2012 and the same was approved by the Planning Department of Greater NOIDA on 27<sup>th</sup> February, 2013. As per the approved lay out plan, the permissible construction area is 93261.471 sq. mtrs with a total project outlay of Rs 383crores. The Project Proponent have also placed on record the EIA and EMP Reports, the proceedings of SEAC recommending the grant of EC as well as the EC granted to the Project vide letter dated 7<sup>th</sup> October, 2013.

30. A perusal of some of the key conditions relating to ground water stipulated in the EC dated 7<sup>th</sup> October, 2013 of the Project relating to

use of water and exploitation of ground water would be necessary to answer the issue and are reproduced below:

**“ General Conditions**

.....  
12. Obtain necessary clearances from the Competent Authority on the abstraction and use of ground water during the construction and operation phases.

.....  
15. Suitable rainwater harvesting systems as per designs of groundwater department shall be installed. Complete proposals in this regard should be submitted.

.....  
17. Water sprinklers and other dust control measures should be undertaken to take care of dust generated during the construction and operation phases. Necessary plans in this regard shall be submitted.

.....  
**Specific Conditions**

.....  
1. Sprinkler to be used for curing and quenching during construction phase. No ground water to be used during construction and operation phase.

.....  
7. 100 % provision of Rain Water Harvesting is to be made. RWH shall be initially done only from the roof top. RWH from green and other open areas shall be done only after permission from CGWB.

.....  
8. RWH pits to be relocated towards wider open area from adjoining neighbours plot for effective recharge.

.....  
18. No Ground water should be extracted for the purpose of construction or otherwise. In case of default the Environmental Clearance will deem to be cancelled.

.....  
20. Three basements are proposed. The Construction should be carried out in consultation with CGWB to avoid infringement of water table.

.....”

31. The Condition No. 20 clearly stipulates the permission of the CGWA for any construction to avoid infringement of water table, let alone extraction of ground water. It is undisputed that any construction up to the level of 40 Ft (almost 12 Metre) deep for three

level basement parking will require excavation which may be below the water table in the area in question. From the documents placed on record and the Affidavit filed by CGWA, it is clear, that the water table in the Greater NOIDA varied between 7.15 metres to 10.72 metres. Consequently, the excavation required for the construction of towers by the Project Proponent would cause oozing of ground water from the construction sites as an inevitable consequence. Though the Project Proponents have tried to argue that the oozing of water was on account of the water accumulated during the monsoon, however, even in the inspection carried out by the team constituted by the District Magistrate (Respondent No. 2) in the month of April 2015, it was observed that water was oozing out of the construction site. Month of April certainly is not a monsoon month and, therefore, oozing out of water from the excavated construction site clearly suggested that the excavation has reached below the level of the water table in the surrounding area.

32. This is also borne out by the report of CGWA which points to the water table in the area ranging from 7.15 m to 10.72 m, well above the level up to which excavation for basement construction has been done.

33. In terms of the EIA notification 2006, the EIA study requires collection of baseline data of environmental attributes, such as Air, Water, Soil, Noise and socio economic environment of area based on primary and secondary data collected about the site. And for this purpose, the impact area is taken to be 10 K.M radius around the project site with a view to collecting baseline data, as well as, to

assess impact of the developmental activity on the environment and the ameliorative measures required for environmental management. This in itself is an indication that it is not only that the impact of developmental activity at the site in question, but also in the area within a radius of 10 K.M. It is undisputable that the ground water table in the Bishrakh village, which admittedly is within 500 meters of the Project site, as a result of the construction activity of Respondent No. 4 and 5 with basement depth up to 40 ft and evacuation of 2.50 lakh litres by the Project Proponent will be affected adversely. This is also exhibited by the Report of the CGWA that the water table in the Bishrakh block is decreasing by 0.42 mtrs per year and ranges from 7.15 mts to 10.72 mtrs at present. The impact of the project is also to be seen in the larger context of the environment as well as socio economic condition of the Applicant villagers which is admittedly situated within 500 mts of the Project site as per the EIA and EMP report placed on record.

34. India is the largest groundwater user in the world, with an estimated usage of around 230 cubic kilo meters per year, more than a quarter of the global total usage. With more than 60 percent of irrigated agriculture and 85 percent of drinking water supplies dependent on it, groundwater is a vital resource for rural areas in India. Reliance of urban and industrial water supplies on groundwater is also becoming increasingly significant in India. Through the construction of millions of private wells, there has been a phenomenal growth in the exploitation of groundwater in the last five decades. This era of seemingly endless reliance on ground water for both drinking

water and irrigation purposes is now approaching its limit as an increasing number of aquifers reach unsustainable levels of exploitation, and a 2004 nationwide assessment found 29 percent of groundwater blocks to be in the semi-critical, critical, or over-exploited categories, with the situation deteriorating rapidly. The potential social and economic consequences of continued weak or non-existent ground water management are serious, as aquifer depletion is concentrated in many of the most populated and economically productive areas. The implications are disturbing for attainment of the Millennium Development Goals, for sustaining economic growth and local livelihoods, and for environmental and fiscal sustainability. The consequences will be most severe for the poor. Furthermore, climate change will put additional stress on ground water resources; while at the same time will have an unpredictable impact on groundwater recharge and availability (*World Bank Report – Deep Wells and Prudence, 2010*).

35. The Hon'ble High Court of Kerala in the matter of Perumatty Grama Panchayat vs. State of Kerala and Ors. (2004(1) KLT 731), also known as the landmark "Coca Cola Case" decided on the issue of the excessive exploitation of ground water had held:

*“Ground water is a national wealth and it belongs to the entire society. It is nectar, sustaining life on earth. Without water the earth would be a desert... Our legal system – based on English common law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea, shore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These*

*resources meant for public use cannot be converted into private ownership (emphasis supplied)... In view of the above authoritative statement of the Hon'ble Supreme Court, it can be safely concluded that the underground water belongs to the public. The State and its instrumentalities should act as trustees of this great wealth. The State has got a duty to protect ground water against excessive exploitation and the inaction of the State in this regard will tantamount to infringement of the right to life of the people guaranteed under Art. 21 of the Constitution of India. The Apex Court has repeatedly held that the right to clean air and unpolluted water forms part of the right to life under Art. 21 of the Constitution... the Panchayat and the State are bound to protect ground water from excessive exploitation”.*

This judgement clearly laid down that the State has a right and obligation to restrain the use of groundwater if it causes harm to others.

36. Concerned with the rampant, indiscriminate and unscientific exploitation of ground water and a total absence of an effective regulatory mechanism to monitor and manage ground water resources, Hon'ble Supreme Court of India in *M. C. Mehta Vs. Union of India and Ors.* ((1997) 11 SCC 312) directed:

*“The Central Government in the Ministry of Environment and Forests shall constitute the Central Ground Water Board as an Authority under section 3(3) of the Act. The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of ground water management and development. The Central government shall confer on the Authority the power to give directions under section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section 2 of section (3) of the Act. The Board having been constituted an Authority under section 3(3) of the Act, it can resort to the penal provisions contained in sections 15 to 21 of the Act. The main object for the constitution of the Board as an Authority is the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country. The Authority so*

*constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. The Central Government in the Ministry of Environment & Forests shall issue the necessary Notification under section 3(3) of the Act as directed, before January 15, 1997.”*

37. In pursuance to the direction of the Hon'ble Supreme Court, the Central Government in the Ministry of Environment and Forests issued the notification constituting the Central Ground Water Board as an Authority for the purposes of regulation and control of Ground Water Management and Development. The Central Ground Water Authority was initially constituted for one year vide S.O.38 (E) dated 14<sup>th</sup> January, 1997. The term of Authority was extended for five years vide S.O. 40(E) dated 13<sup>th</sup> January, 1998. The Authority was made a permanent body vide S.O. 1024(E) dated 6<sup>th</sup> November, 2000. The Authority would have the following function:

*“The Authority has to exercise the following powers and perform the following functions namely: -*

- I. Exercise of powers under section 5 of the Environment (Protection) Act (EPA), 1986 for issuing directions and taking such measures in respect of all the matters referred to in sub-section (2) of section 3 of the said Act.*
- II. To resort to penal provisions contained in sections 15 to 21 of the said Act.*
- III. To regulate and control, management and development of ground water in the country and to issue necessary regulatory directions for the purpose.*

*IV. Exercise of powers under section 4 of the EPA, 1986 for the appointment of officers.”*

38. Although the decline in the ground water table is attributable to withdrawal of ground water for various uses like agriculture, drinking and other developmental activities, it cannot be disputed that there is an adverse impact on the water table due to the large scale construction activity particularly in and around the area in question. The facts establish that the Project Proponents have not taken effective measures for Rain Water Harvesting and recharge of ground water as required under the condition no. 15 of “General Conditions” and Condition No. 7 and 8 of the “Specific conditions” of the EC as per the Inspection Report filed by CGWA. The said report of CGWA clearly indicates that although the recharge pits were constructed, they were not properly maintained and that even the recharge pipes were not properly designed thereby causing pollution of ground water.

39. The reply of the CGWA clearly establishes that the Project Proponents have neither applied nor taken any permission of the CGWA in terms of Condition No. 20 imposed in the EC granted to the Project Proponent. The Project Proponents have not even disputed this aspect. It is thus clear that the Project Proponents have violated this condition of the EC. The Public Authorities, namely, the CGWA, UPPCB, Greater NOIDA Authority and the State have also failed to fulfil their statutory obligation to regulate activities which will impact ground water, either directly or indirectly. Even though construction at the site admittedly started on 2<sup>nd</sup> April, 2014, the NOC (Consent to

Establish) was granted by the UPPCB only on 15<sup>th</sup> June, 2015 – after 1 year and 2 month of construction having commenced. Indisputably, the Construction commenced before the grant of NOC by the UPPCB. Thus, there is absence of a complete and comprehensive compliance to the EC granted under the EIA Notification of 2006 issued under the Environment (Protection) Act 1986, by the Project Proponent – Respondent Nos. 4 and 5. The Project Proponents have failed to take effective steps for the recharge of ground water on account of the defective design and lack of maintenance of the Rain Water Harvesting pits. In view of these findings, we hold that the Project Proponents have not observed complete and comprehensive compliance to the conditions imposed in EC and have violated the Conditions of EC.

40. The Hon'ble Supreme court of India in *Indian Council for Environmental Action vrs. UOI and ors.* ((1996)3 SCC 212) observed:

*“:....The Polluter Pays Principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is a part of the process of sustainable development and as such polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology....”*

41. Respondent Nos. 4 and 5 have, by their actions, caused serious environmental degradation. Necessarily, they are liable to pay environmental compensation for restoration of environment. We, therefore, direct the Respondent Nos. 4 and 5 to pay Rs 50 lakhs as Environmental Compensation under the “Polluter Pays Principle”.

The amount shall be paid to UPPCB with in a period of two months to be deposited in a separate account maintained by UPPCB. We also issue the following directions:

- i. The State of UP shall constitute a Committee consisting of District Magistrate Gautam Budh Nagar, representative of the UPPCB, a representative of Water Resources Department of State of UP, Senior Officer of Greater NOIDA and the representative of CGWA to prepare a plan for environmental restoration in the affected villagers in question, including measures for improving ground water recharge, arresting surface run off, rain water harvesting and other water conservation measures in the area. While finalising the plan, consultation with the affected villagers should also be carried out to elicit their suggestions in the matter.
- ii. Greater NOIDA Authority shall in consultation with the CGWA issue guideline for ensuring that the future constructions permitted in the area take into account the status of ground water table and impose appropriate restrictions on digging below the ground water level for the purposes of construction of basements in the multi-story buildings/apartments and other related activities.
- iii. The Environmental Restoration Plan and the Guidelines for regulating constructions at (i) and (ii) *Supra* should be prepared within a period of 3 months and filed in the Registry of the Tribunal.

42. With the above directions the Original Application No. 133/2014 is disposed of with no order as to costs.

**Justice Swatanter Kumar  
Chairperson**

**Justice M.S. Nambiar  
Judicial Member**

**Professor A.R. Yousuf  
Expert Member**

**Bikram Singh Sajwan  
Expert Member**

New Delhi

Dated: 29<sup>th</sup> February, 2016

**NGT**