

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

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**ORIGINAL APPLICATION NO. 180 OF 2015**

**IN THE MATTER OF:**

Sushil Raghav  
266, Karkar Modal Post  
Sahibabad Industrial Estate, Site-4  
Ghaziabad-201010  
Uttar Pradesh

....Applicant

Versus

1. Union of India  
Through its Secretary  
Ministry of Environment, Forests and Climate Change  
Indira Paryavaran Bhawan, Jor Bagh,  
New Delhi-110003
2. State of Uttar Pradesh  
Through its Forest Department  
Office of PCCF UP  
17, Rana Pratap Marg, Lucknow 226001
3. State Level Environmental Impact Assessment Authority  
Uttar Pradesh  
Through its Member Secretary  
Directorate of Environment  
Dr. Bhim Rao Ambedkar Paryavaran Parisar  
Vineet Khand-1, Gomti Nagar, Lucknow-226010
4. District Magistrate  
Raj Nagar, Ghaziabad  
Uttar Pradesh-201001
5. Housing Board  
U.P. Awas Evam Vikas Parishad  
104, Mahatma Gandhi Road, Lucknow  
Uttar Pradesh-226001
6. Ghaziabad Development Authority  
Sector-6, Naya Ganj, Ghaziabad  
Uttar Pradesh-201001

7. Ghaziabad Municipal Corporation  
Pocket D, Sector 10, Vasundhara  
Ghaziabad, Uttar Pradesh-210012

8. M/s Mohan Meakins Ltd.  
GT Road, Mohan Nagar  
Ghaziabad, Uttar Pradesh-201007

....Respondents

**COUNSEL FOR APPLICANTS:**

Mr. Ritwick Dutta, Mr. Rahul Choudhary and Ms. Meera Gopal,  
Advocates.

**COUNSEL FOR RESPONDENTS:**

Ms. Tarun A. Prasad, Advocate for Respondent No. 1  
Mr. Raman Yadav & Mr. Dalsher Singh, Advocates for Respondent  
No. 2 and 6  
Mr. Abhishek Yadav, Advocate for Respondent No. 4  
Dr. Indra Pratap Singh, Advocate for Respondent No. 5  
Mr. Rohit Raj Sachan and Mr. Riyaj Ahmad, Advocates for  
Respondent No. 7 (Ghaziabad Nagar Nigam)  
Mr. Praveen K. Mittal, Advocate for Respondent No. 8

**JUDGMENT**

**PRESENT:**

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

**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**

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

**Hon'ble Mr. Ranjan Chatterjee (Expert Member)**

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**Reserved on: 8<sup>th</sup> September, 2016**  
**Pronounced on: 20<sup>th</sup> September, 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?

**JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

The following questions arise for consideration of the Tribunal  
in the present application:

- (1) Whether the project in question is required to obtain environmental clearance within the ambit and scope of Environmental Clearance Regulations, 2006 (for short 'Regulations of 2006')? If so, effect thereof.

(2) Whether the project or any part thereof is located in the Bird Sanctuary at Hindon? If so, the effect thereof.

2. The relevant facts as they emerge from the records, which have given rise to these questions, are that the Applicant claims to be an environmentalist concerned about the ecology, environment and social issues. He resides in Ghaziabad and has been actively pursuing environmental matters in that region. It is the case of the Applicant that Respondent no.1, Ministry of Environment, Forests and Climate Change (for short 'MoEF&CC') is responsible for coordination and overseeing the implementation of India's environmental and forestry policies and programmes. Respondent no. 2, State of Uttar Pradesh, is responsible for declaration of Hindon Bird Sanctuary under the Wildlife Protection Act, 1972 and the implementation of various environmental laws. Respondent no.3 is the State Environmental Impact Assessment Authority of Uttar Pradesh (SEIAA), responsible for assessment and grant of Environmental Clearance (EC) in the State of Uttar Pradesh under Notification of 2006. The Applicant has vaguely stated that construction and other allied works in the area declared as 'Bird Sanctuary' and also some part of the area recorded as 'pond' near Hindon Canal, Ghaziabad, is being carried on by the Respondents without any permission from the concerned authorities and in fact such construction is in violation of the orders of the Tribunal dated 3<sup>rd</sup> December, 2014 passed in OA No. 177 of 2013. The Hindon Bird Sanctuary is located near Hindon Canal and opposite to Sector 4, Vasundhara Colony, opposite to Arthala Lake covering an area of

nearly 44 acres. The District Magistrate, Ghaziabad, vide order dated 21<sup>st</sup> March, 1994 acquired the land which was under the Gram Sabha, exercising the powers vested in him under the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950. The Forest Department had asked the concerned authorities to hand over the possession of the land to the Department and make the entries in the Revenue records under the name of the Department. The Khatauni of Village Arthala shows that part of the land which forms the bird sanctuary as per order dated 21<sup>st</sup> March, 1994 also has a pond in some of the khasra. The khasra numbers of gata 948, 514, 1419, 1361, 1422, 1445, 1446 and 1456 are recorded as pond. In this construction work, including on the land falling in the bird sanctuary, the project proponent is felling the trees. Efforts were being made to change the land records of the bird sanctuary and transfer the land in the name of different persons from that of the Forest Department. A meeting of various authorities presided over by the District Magistrate (DM) was held on 13<sup>th</sup> September, 2007. The Additional District Magistrate clarified that the land in question was declared as 'Hindon Bird Sanctuary' by the former District Magistrate while the realtor company stated that the lands were allotted to them by the U.P. Housing and Development Board. It was decided in the meeting that the parties will maintain status quo on the spot until the dispute is resolved. It was also recorded that some of the khasra which formed part of the bird sanctuary is also recorded as pond in the revenue records. The Chief Secretary of the State of U.P. issued

a letter dated 15<sup>th</sup> May, 2013 to all Divisional Commissioners, District Magistrates and other authorities in the State directing that the encroachment from ponds, water bodies, grazing grounds and grave yards should be removed. The Tribunal also passed the order dated 3<sup>rd</sup> December, 2014 directing removal of all encroachments over the ponds and other water bodies. According to the Applicant, the bird sanctuary area has been barricaded and leveling of the land is going on. The construction activity has also been started on the land but the website of MoEF&CC does not reflect that any projects in that area has been sanctioned and EC has been granted thereto. Thus, the construction being raised, besides being illegal, is encroaching upon the bird sanctuary, ponds and the water bodies. Thus, the Applicant prays that all structures, illegal construction on the bird sanctuary land should be stopped and also constructed part should be removed. It prays for restoration of the bird sanctuary and also of the ponds to its original position.

To this case of the Applicant, different Respondents have filed their respective replies. Respondent no.6, Ghaziabad Development Authority (for short 'GDA'), is the project proponent. In their reply, the stand taken is that the GDA is constructing six lane elevated road and using only one plot that is Khasra No. 1453 for stocking the construction material on temporary basis and will be removed within eight to nine months. As far as the permission from SEIAA is concerned, according to the GDA, for construction of national highways and state ways the environmental clearance is not required and hence the same has not been obtained. As far as the

bird sanctuary at Hindon is concerned, according to this Respondent, it is only named as Bird Sanctuary but is neither notified nor there is any wildlife in this area. Khasra No. 1453 is named as 'barren land' and there is no pond. The District Magistrate had handed over the land in dispute to the Forest Department on 21<sup>st</sup> March, 1994, in exercise of the powers conferred under Section 176 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Khasra Nos. 1450 and 1453 were recorded as Non Z.A. land in the revenue records, therefore, the District Magistrate had wrongly transferred these lands to the Forest Department. The dispute had arisen regarding the ownership of the property and the matter was referred to the State Government where it is pending till date. The bird sanctuary is not notified. Khasra Nos. 948, 514, 1419, 1361, 1422, 1446, 1445 and 1456 are recorded as pond in the revenue records but these are vacant lands and there is no construction on these lands, even as per Google images, for the last ten years. For the use of Khasra No. 1453, GDA is paying rent to the Irrigation Department and there is no permanent construction upon the said area. The areas are lying vacant and there is no encroachment on the land in question. The letter issued by the Chief Secretary dated 15<sup>th</sup> May, 2013, thus, had no application to the site in question. Some part of the area has been barricaded by the U.P. Awas Evam Vikas Parishad as there was some dispute with regard to allotment of that particular area to some construction company but no leveling has been done and the plot which was allotted to the real estate company has been re-

allotted somewhere else on 17<sup>th</sup> March, 2015. There is no construction being raised by the GDA at Khasra No. 1453. As already stated, it is only being used for stocking of construction materials. An additional affidavit was filed on behalf of this by Respondent on 10<sup>th</sup> August, 2016. In that affidavit it has been stated that the road is carrying the Trans-Hindon part of Ghaziabad Delhi bound traffic through NH-24 and NH-24 has been sanctioned by the Government of India for upgrading from 4-lane to 14-lane widening. Thus, the expansion of the road was the only alternative to carry the traffic as no other new alignment is feasible due to non-availability of land. It was necessary due to present congestion and bottle neck situation at the existing 45 meter road. Thus, to make a parallel road to ease the congestion thereof and to ensure that free flow of traffic may be available to the citizens or the passers, the present project is being constructed. There is no area available on the right side of the existing road for construction of the elevated road because of existence of Indirapuram Housing scheme on the extreme right of the said road. Adjacent to this Housing complex is the present existing 45 meter wide road. Thereafter, a long patch of green belt is there, which falls on the left side of Indirapuram Housing Schemes, which runs parallel to the Hindon cut canal. On the left side of the cut Canal is a single road and it is on the left hand side of the Hindon cut canal that the construction of the elevated road project is going on. Besides this project area on the left side of the road is the protected forest area and alongside it there is a service road. On the left side of this service road is the

Vaishali/Vasundhara housing scheme. Therefore, the elevated road is constructed to the right hand side of the Indirapuram Housing Scheme and since the present project is merely an expansion of the existing road, therefore, no EC is required. Reliance is also placed on the interim order passed by the Tribunal dated 26<sup>th</sup> October, 2015 in OA No. 479 of 2015 where on the Principle of Sustainable Development, injunction order was vacated. On these pleas, the said Respondent prays for dismissal of the application.

3. The State of Uttar Pradesh, Respondent no.2 in its reply has taken the stand that the area in question has not been notified as a Bird Sanctuary in terms of the Wildlife Protection Act, 1972, The Respondent stated that no proposal had ever been received and sent to the State Government for creation of the bird sanctuary on the land in question. It is denied that there is any felling of trees. According to the State, the Forest Department has possession on papers but physical possession has not been taken by the Forest Department. The land, which is recorded as bird sanctuary in the revenue records, lies in possession of Irrigation Department on Khasra No. 1450 and 1453 and the remaining khasra nos. of U.P. Awas Evam Vikas Parishad. There is illegal possession by M/s. Gaur Sons on part of Khasra No. 1450 and 1453 on the land in question. The GDA has taken the possession and constructed a temporary office for casting yard for construction of 6-lane elevated road and the fixtures are temporary and shall be removed. The land was allotted to the Forest Department for bird sanctuary but it is actually only on record and no physical possession was taken, as



stated. On part of the Khasra number, there is a lake. The construction of 6-lane elevated road is being carried out by the GDA for which the permission has been granted by the Irrigation Department and U.P. Awas Evam Vikas Parishad. The dispute of ownership in relation to Khasra Nos. 948 and 1454 is pending in the High Court in Writ Petition No. 54096 of 2010 where a stay order was granted vide order dated 6<sup>th</sup> September, 2010. However, M/s. Gaur Sons have been allotted land in place of the disputed land and the disputed land was given back to the U.P. Awas Evam Vikas Parishad.

4. Respondent no.4, the District Magistrate, has also filed independent reply in which it is stated that the land was acquired vide notification dated 31<sup>st</sup> May, 1873. This land was reassumed for Bird Sanctuary vide order dated 21<sup>st</sup> March, 1994. But it has not been notified as bird sanctuary as per the provisions of Wildlife Protection Act, 1972. No proposal has also been submitted in that behalf to the Government. It is denied that 44 acres land has been allotted for bird sanctuary near Hindon River, rather, 77.2 bigha was reassumed by the District Magistrate for Forest Department. In the year 1992-93, money was sanctioned by the District Rural Development Authority for the purpose of construction of bird sanctuary. A meeting was convened by the District Magistrate, Ghaziabad with different authorities and it was directed to prepare the plan for establishment of bird sanctuary near Hindon River. In the Khasra numbers afore-noticed, it is submitted that the area in question is known as bird sanctuary but not notified bird

sanctuary. According to this Respondent, after demarcation, possession of the land in question was physically handed over to the officials of the Forest Department on 23<sup>rd</sup> September, 1995. After that the Forest Department has all the powers and jurisdiction to remove all illegal and unauthorized encroachments from the land in question. After passing of the order dated 15<sup>th</sup> May, 2013 by the Deputy Commissioner, it was the duty of the Collector to remove the encroachments but as the possession of the land had already been handed over to the Forest Department, it was for the Forest Department to remove the encroachments from the area in question.

5. Ghaziabad Nagar Nigam has filed a very formal reply. All it has stated in the reply is that they were part of the meeting held on 13<sup>th</sup> September, 2007 in which direction for maintaining the status quo was issued. Further, it is averred that there is no construction and felling of trees in the area in question. It is submitted on behalf of this Respondent, that there is some encroachment on the land bearing Khasra number 1445 and there is illegal *abadi* on khasra No. 1446, banjar land. This Respondent initiated the proceedings to remove the illegal encroachments on the said property. The SEIAA, U.P., Respondent no.3 again has filed a very formal reply. It has only referred to the contents of the notification of 14<sup>th</sup> September, 2006 and has stated that the EC shall be required for all new projects or activities and expansion and modernization of the existing projects or activities listed in the Schedule. SEIAA, U.P. deals with the proposals received in accordance with the terms

of the said notification, which are maintained by the MoEF&CC. MoEF&CC, Respondent no.1 has also filed similar reply and it is stated that the Hindon Bird Sanctuary is not a notified Bird Sanctuary under the provisions of the Wildlife Protection Act, 1972 and consequently the concept of eco-sensitive zone does not apply to it. This status is to be stated by the State Government. It is stated that in case the project in question or any other project which is covered under the provisions of EIA Notification, 2006, the EC of that project is to be considered by the SEIAA/SEAC, Uttar Pradesh.

6. The above is the factual matrix of the present case. One aspect that is quite evident from the above is that the case pleaded by the respective Respondents is not consistent but is at substantial variance to the material aspect of the present case. According to Respondent no.2 and Respondent no.6, the land in question is in the possession of the Irrigation Department, there are no encroachments on the land in question or any part thereof and there is no bird sanctuary existing on the side and it is only on paper that entries to that effect have been made. On the contrary, according to Respondent no.4 and other Respondents, the land is vested and is in possession of the Forest Department. There are illegal encroachments upon the land in question and part thereof. They should be removed by the Collector in normal course but since the land is in possession of the Forest Department, the Forest Department should take proceedings. It is also further stated that even the proceedings had been initiated for removal of unauthorized

encroachments on the land in question. Of course, with regard to the existence of the bird sanctuary, all the Respondents, including MoEF&CC are *ad idem* that the bird sanctuary had been recorded on paper, including the pond in the Revenue records, but, in fact, neither proposal was submitted by the State nor actual notification has been issued in the present case. The Chief Secretary of the State had issued a circular dated 15<sup>th</sup> May, 2013 and the Tribunal had passed an order dated 3<sup>rd</sup> December, 2014 in OA No. 177 of 2013 directing that the Respondents in that application shall take immediate action for the purposes of removal of all encroachments over the ponds and other water bodies, especially as mentioned in the letter of the Chief Secretary dated 15<sup>th</sup> May, 2013. Despite that effective steps have not been taken for removal of the encroachments from the ponds, water bodies, particularly in relation to the area in question. As stated in the above paragraphs, khasra nos. 948, 514, 1419, 1361, 1422, 1445, 1446 and 1456 are pond, as recorded in the revenue records, and therefore, all encroachments on these khasra numbers would be deemed to be illegal and therefore, steps should be taken to remove such encroachments. The stand of the GDA that there are no encroachments on these khasra numbers is factually incorrect as it is completely contradicted by the authorities in that behalf including the affidavit filed on behalf of the District Magistrate. The other affidavits filed on record by the other Respondents clearly demonstrate that there are encroachments on these khasra numbers and in fact, the proceedings have been initiated for

removal of such encroachments in furtherance to the orders as referred above. The lands in question and the pond require to be kept free of encroachments, free of pollution and the pond water-body should be restored to its original position as described in the revenue records. This is the obligation of the State Government irrespective of the fact as to in whose possession the land is. The Government and all its instrumentalities must act collectively to complete these actions without unnecessary delay. There is no justification placed on record before us as to why the authorities concerned have not been able to implement the order of the Chief Secretary dated 15<sup>th</sup> May, 2013 and the order of the Tribunal till date. It will be unjust and unfair if the orders are not executed expeditiously. Inaction on the part of the Government and the authorities concerned must now invite appropriate action in accordance with law.

The dispute with regard to the vesting of possession of the concerned department, in relation to the ownership and removal of encroachment in consonance with the order of the Chief Secretary and the Tribunal should be put to rest. Thus, the Chief Secretary of the State of Uttar Pradesh should pass appropriate orders in relation to these aspects without any further delay and ensure compliance of these orders.

7. Having dealt with the above ancillary issues, now we would revert to discuss the Question No. 1.

Regulations 2006 has been issued by the Central Government in exercise of its statutory powers conferred upon it under Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environmental (Protection) Act, 1986 read with clause (d) to Sub-rule 3 of Rule 5 of the Environmental (Protection) Rules, 1986. This Regulation of 14<sup>th</sup> September, 2006 had been issued in supersession of the previous Regulation on the subject. This is the principal regulatory regime in relation to grant of Environmental Clearance. The purpose is to control and prevent environmental pollution and degradation. In terms of this Regulation, a project or activity shall require a prior Environmental Clearance from concerned regulatory authority under Category 'A' and 'B' respectively. This would equally apply to all new projects or activities as well as expansion and modernisation of existing projects or activities. A project proponent is required to take the environmental clearance prior to the commencement of any construction activity or even preparation of the land by the project management except for securing the land. Clause 2 of the Regulation and the other relevant provisions has two main features. Firstly, the Regulation is applicable to the projects stated in the Schedule to the Regulation. Secondly, the expression 'Project' and 'activity' have to be given its expanded meaning on the Principle of Purposive Construction. These expressions have to be construed liberally while keeping in mind that such interpretation achieves the object of the Act. Project is a term of wider connotation than an activity. Normally, every activity would be a part of the project but

not always. These expressions are not interchangeable or synonyms. Once the project or activities specified fall in the items of the Schedule to the Regulation, then the obligation upon the project proponent immediately arises to take prior environmental clearance. Once, the project or activity has the threshold limits and falls in any of the items of the Schedule to the Regulation of 2006 then there is no escape upon the Project Proponent to strictly comply with the Regulation of 2006 and obtain Environmental Clearance.

8. At this stage, we may usefully refer to the judgment of the Tribunal in the case of "*Vikrant Kumar Tongad vs. Delhi Tourism and Transportation Corporation & Ors.*" O.A. No. 137 of 2014 decided on 12<sup>th</sup> February, 2015 where the Tribunal was concerned with question "whether construction of a 'bridge' across Yamuna was a 'project' or 'activity' that shall require prior environmental clearance with reference to Entry 8(a) and/or 8(b) of the Schedule to the Regulation of 2006. The Tribunal after detailed discussion noticed that the built-up area was in excess of 150000 sq. meters and this would amount to a Township Development project. Applying the test of dominant purpose or dominant nature, the project was termed as one covered under Entry 8(b) of the Schedule to Regulation 2006. In this judgment, the Tribunal held as under:

"17. Entry 8(a) relates to Building and Construction projects of  $\geq 20,000$  sq. mtrs. and  $< 1,50,000$  sq. mtrs. of built up area. Entry 8(b) relates to projects of Township and Area Development, covering an area which is  $\geq 50$  hectares and/or built up area which is  $\geq 1,50,000$  sq. mtrs. Such projects or activities under Entries 8(a) and 8(b) would be required to take

Environmental Clearance and all such projects of Township and Area Development under Entry 8(b) satisfying the threshold area would be treated and appraised as category 'B1' Projects. Entries 8(a) and 8(b) are under Entry 8 which carries a heading 'Building / Construction projects / Area Development projects and Townships'. The legislature has worded heading of Entry 8 in very wide and expressive terms. Use of expression with such wide magnitude clearly indicates the legislative intent that they should be construed liberally. These expressions in fact, and as above referred, are incapable of being construed strictly. Entry 8(b) talks both of Township and Area Development projects. These expressions relate to same or identical 'project' or 'activity'. Besides developing township, development of the areas is also contemplated as an activity for a bigger project. If these projects of Township and Area Development are covering an area  $\geq 50$  hectares and/or the built up area in excess of 1,50,000 sq. mtrs., the project/activity would require prior Environmental Clearance.

18. Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries. The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a social welfare legislation. For instance, in the case of *The Authorised Officer, Thanjavur and Anr. v. S. Naganatha Ayyar and Ors.*, (1979) 3 SCC 466, the Court held that:

"1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation."

In the case of *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*, (1985) 4 SCC 71, the Court held that:

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes."



In the case of Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765, the Court held that:

“41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it.”

19. The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law. While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be co-jointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind. Social welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries. The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., *salus populi est suprema lex*. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws. Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation.

23. Rivers are a very significant aspect of environment and ecology. The authorities concerned are not only expected to take steps for preventing pollution of water per se but, are also required to ensure that its biodiversity, ecology and floodplain is not unduly intruded or exploited to the disadvantage of the environment. That is the precise reason that the Act of 1986 not only refers to the pollution of air, water and land but even admits to protect its interrelationship with human beings and even other living creatures

including plants etc. The legislature has left nothing to the imagination and has worded the Entry 8(b) very widely so as to cover within its ambit every facet of environment as contemplated under Section 2(a) of the Act of 1986. The aim and object of the Act of 1986 is to protect the environment, which certainly includes rivers.

30. Thus, clearly, the mandate of the Regulations of 2006 is to ensure protection of environment and ecology in face of rapid developmental activities, which are even the need of the hour. Since the object of the Regulations of 2006 is to provide developmental activities while ensuring presence of a safer environment, it can be termed as welfare legislation. Thus, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied.

Article 48A in Part-IV (Directive Principles) of the Indian Constitution enjoins that “State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”. Article 47 further imposes a duty on the State to improve public health as its primary duty. Article 51A(g) imposes “a fundamental duty” on every citizen of India to protect and improve the natural “environment” which includes forests, lakes, rivers and wild life, and to have compassion for living creatures. The word “environment” is of broad spectrum which brings within its ambit “hygienic atmosphere and ecological balance”. It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. The State, in particular, has a duty in that behalf to shed its extravagant, unbridled sovereign power and to forge in its policy, to maintain ecological balance and hygienic environment. Article 21 protects ‘Right to Life’ as a fundamental right. Enjoyment of life and its attainment, including the right to live with human dignity, encompasses within its ambit, the protection and preservation of environment, ecological balance, free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, there is a constitutional imperative on the State authorities and bodies like the Pollution Control Board not only to ensure and safeguard proper environment, but also to take adequate measures to promote, protect and improve the environment, both, man-made and natural. Sections 3 and 5 of the Act of 1986, apart from other provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, empower the

Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'Environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Act of 1986. [Noyyal River Ayacutdars Protection Association rep. by its President, P.M. Govindaswamy Pappavalasu v. The Government of Tamil Nadu rep. by its Secretary, Public Works Department and Ors., 2007-1-LW 275, Indian Council for Enviro-Legal Action etc. v. Union of India, (1996) 3 SCC 212].

The flood plains and river bed of Yamuna are under increasing pressure of alternative land use for various purposes, which are driven primarily by growth of economy at the cost of the river's integrity as an ecosystem. [Manoj Mishra v. Union of India, Original Application No. 6 of 2012 and Original Application No. 300 of 2013, decided on 13th January, 2015]. The powers conferred on the Central Government by virtue of provisions contained in Section 3, 5 and 25 of the Act of 1986 and on the National Green Tribunal by virtue of Sections 14, 15 and 16 read with Section 18 of the National Green Tribunal Act, 2010, are wide enough to provide for protection, preservation and restitution of the environment and ecology of the river bed of River Yamuna.

32. The applicability of 'Principle of Liberal Construction' to sociowelfare legislation like the Act of 1986, thus, could be justified either with reference to the 'doctrine of reasonable construction' and/or even on 'constructive intuition'. In the case of Haat Supreme Wastech Pvt. Ltd. v. State of Haryana and Ors, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal, while dealing with interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of the suitability of the location of the bio-medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the project proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (Ref: Wharton's Law Lexicon, 15th Edn., 2012, Black's Law Dictionary 9th Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage."

9. There are other judgments of the Tribunal which have taken the view that Clause 2 of the Regulation of 2006 and the Schedule attached thereto clearly demonstrates that expression of a very wide magnitude has been deliberately used by the framers. They are

intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. The Tribunal cannot give it a narrower or a restricted meaning. It is based upon the Principle of Sustainable Development and would result in violation of the Precautionary Principle as unchecked and indiscriminate development would certainly have adverse impact upon the environment and ecology of the area.

10. From the above stated principles, it is evident that Entry 8(a) and 8(b) would operate in different fields. There is a very fine line of distinction between these two entries. Most material part of these entries is that the threshold criteria of specified area of project and/or construction have to be satisfied. Similarly, Entry 7 (f) of the Schedule deals with Highways. These Highways have further been bifurcated into new National Highways; and expansion of National Highways greater than 30 kms. involving additional right of way greater than 20m involving land acquisition and passing through more than one State. Such projects would fall under Category A projects while all the State Highway projects and the State Highway expansion projects in hilly terrain (above 1000 meters) and/or ecological sensitive areas would fall under Category B project.

11. According to the Respondents, particularly, GDA, it is a project of construction of six lane elevated road. This road is to provide a link to NH-24 and is intended to ease the traffic congestion in Ghaziabad and onward traffic to other districts in the State of Uttar Pradesh. It is also averred by the Applicant that the

Project Proponent is constructing pillars for the elevated road and an underpass on the Khasra Nos. 1450 and 1453. According to the Applicant, the project would fall under Entry 8(a) of the Schedule. We have already stated that Entry 8(a) and 8(b) operate in different fields and the project in question would fall under Entry 8(b) as it would be a development work even if it is not part of a State Highway. For reasons best known to the respective Respondents, complete details of the project and whether or not it is part of State Highways joining the National Highways has not been placed on record. Be that as it may, the project certainly covers the areas much more than the threshold areas stated in the Regulation. It would be part of a State High way. Even if it be not so, it would certainly fall under Clause 8(b) of the Regulation as it is project of township and area development and covers the built up area much in excess of covered area 150000 sq. meters. On the basis of the reasoning given in the case of *Vikrant Kumar Tongad (supra)*, there is no reason for us to hold that this project would not be squarely covered under the Schedule to the Regulation of 2006 and it will not be obligatory upon the Project Proponent, GDA to seek Environmental Clearance. Therefore, we answer this issue by holding that it was obligatory upon the Project Proponent to take prior Environmental Clearance in accordance with the terms and Regulation of 2006.

12. Now, we would deal with the second question that comes up for consideration of the Tribunal. According to the Applicant, part of the land and particularly Khasra Nos. 948, 514, 1419, 1361, 1422,

1446, 1445 and 1456 are recorded as Pond and Bird Sanctuary. This land was reassumed by the District Magistrate and in fact declared as 'Bird Sanctuary'. According to the Applicant, the different species of the bird, some of them rare, do come to this 'Bird Sanctuary' and it requires to be maintained as such. No construction of any kind should be permitted to come up upon this area and the Respondents should maintain the same as Hindon Bird Sanctuary. According to the GDA, there is in fact, no 'Bird Sanctuary'. It was never declared and notified as such. In fact, on the site in question, no 'Bird Sanctuary' exists and the construction activity should not be stopped on this land. According to them, Khasra Number 1453 is being used by them for storage of construction material and machinery for the project in question which will be vacated within 8 to 9 months. According to MoEF&CC, no notification declaring the site in question as 'Bird Sanctuary' has yet been issued and in fact, the State has not made any such proposal. Similar is the stand of the State Government. However, the District Magistrate in its affidavit has taken a stand at some variance to the stand of the other Respondents. The District Magistrate has handed over the land in dispute to the Forest Department on 21<sup>st</sup> March, 1994. This land was transferred to the Forest Department upon being reassumed by the District Magistrate in exercise of the statutory powers vested in him. This was resumed vide order dated 21<sup>st</sup> March, 1994. In the year 1992-93, money was sanctioned by the District Rural Development Authority for the purpose of construction of 'Bird Sanctuary'. The

meeting was convened by the District Magistrate, Ghaziabad with all the concerned authorities and it was directed to prepare a plan for establishment of 'Bird Sanctuary' near Hindon River and parties were also directed to maintain status quo. As already noticed, there is some dispute that the entry in the name of the Forest Department was wrongly carried out and there exists no 'Bird Sanctuary' at the area in question.

13. As is evident from the pleading before the Tribunal, all the Respondents have stated *ad idem* that no proposal as of now has been moved by the State Government to declare and notify the areas under Pond and surrounding it as 'Bird Sanctuary' and in fact, no notification has been issued by the competent authority in terms of the provisions of the Wildlife (Protection) Act, 1972. It is only when appropriate notification is issued that the site in question would attain the status of a 'Bird Sanctuary', it cannot be inferred from the attendant circumstances. Therefore, the 'Hindon Bird Sanctuary' cannot be said to have been declared or notified as a 'Bird Sanctuary' and thus would not be entitled to the protections as contemplated under the Wildlife (Protection) Act, 1972. While holding so, we cannot ignore the fact that as per the revenue records, the areas vest in the Forest Department and there was a definite view in the Government Department that it is a 'Bird Sanctuary' and there is need for developing the same accordingly. In fact, some funds were also sanctioned. This being the status in fact, it will be unfair to raise indiscriminate construction and permit encroachments on this area atleast till the time the question is



decided by the competent authority and the controversy is put to rest. Undisputedly, there is a pond and the surrounding areas fall in Khasra Numbers 948, 514, 1419, 1361, 1422, 1445, 1446, 1453 and 1456, etc. This pond and water body require to be protected.

14. The Applicant has averred that there are certain species of birds for whom the area is a habitat, besides the presence of other wildlife in the area. It is closer to Hindon River and there exists a pond and swampy area making it a suitable habitat for birds. These facts are partially supported by the revenue records and averments made by some of the Respondents in their replies. Thus, the competent authority of the State Government is required to apply its mind to determine the status of this area as a sanctuary and whether or not the State Government wishes to submit a proposal in that regard. Till then there should not be permitted any construction and/or encroachments on this area except raising of pillars for construction of the elevated corridor.

15. In light of the above discussion, we dispose of this application with the following order and directions:

1. We do not propose to prescribe or stop the ongoing construction of the project in the area in question i.e. ongoing project of six lane elevated road linking to NH-24 in District Ghaziabad.
2. We hold that the project in question is covered under Entry 8(b) of the Schedule to Regulation 2006 and it is obligatory

upon GDA and the State to obtain Environmental Clearance from SEIAA/MoEF&CC. The Project Proponent should apply for obtaining Environmental Clearance within 3 months from the date of pronouncement of this judgment. Upon receipt of this application, the concerned Regulatory Authority shall consider the application for grant of Environmental Clearance in accordance with the prescribed procedure in terms of Regulation of 2006 and dispose of the same as expeditiously as possible, in any case not later than 6 months from the date of filing of the application.

3. The Project Proponent shall comply with all the directions and/or rectify all such existing deficiencies or defects or requirements as directed in the Environmental Clearance without delay and default.
4. At this stage, we would not direct any demolition or prohibit the carrying on of the project but we make it clear that in the event of default of compliance on the part of the project proponent, the Tribunal would pass such coercive orders for environmental compensation as be necessitated by the facts and circumstances of the case.
5. The Regulatory Authority shall put all such terms and conditions as may be necessary to ensure that there are no adverse impacts on environment, ecology, bio-diversity and

particularly the stated Bird Sanctuary and water bodies stated to be in existence at or near the site in question.

6. The Regulatory Authority may put such conditions as may be necessary even directing remedial measures which the Project Proponent shall take without default and delay.
7. The State Government and the concerned authorities including the District Magistrate shall take steps to remove the encroachments from the area in question including in terms of the orders of the Chief Secretary dated 15<sup>th</sup> May, 2013 and the order of the Tribunal dated 3<sup>rd</sup> December, 2014. In the event of default of compliance to this direction all the concerned authorities would be liable to be proceeded against in accordance with law.
8. The Chief Secretary of the State of Uttar Pradesh shall pass appropriate orders in relation to the authorities in whose name the land stands, for removal of encroachments and for protection of the water bodies, pond. The Chief Secretary shall also take a final view and pass appropriate orders as to whether or not the State proposes to declare and notify 'Hindon Bird Sanctuary' as a 'Bird Sanctuary' under the provisions of Wildlife Protection Act, 1972.
9. In the event, the Chief Secretary takes a view that the State does not wish to have the area in question declared as Bird Sanctuary in that even the order would not be given effect

to for a period of 30 days from the date of passing of that order providing opportunities to the parties to challenge the said order in accordance with law.

16. The Application is accordingly disposed of with no order as to costs.



**Swatanter Kumar**  
**Chairperson**

**Raghuvendra S. Rathore**  
**Judicial Member**

**Bikram Singh Sajwan**  
**Expert Member**

**Ranjan Chatterjee**  
**Expert Member**

New Delhi  
20<sup>th</sup> September, 2016

**NGT**