

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONAL BENCH, BHOPAL**

**Original Application No. 26/2015 (CZ)**

**CORAM:**

**Hon'ble Mr. Justice Dalip Singh  
(Judicial Member)**

**Hon'ble Dr. Satyawan Singh Garbyal  
(Expert Member)**

**BETWEEN:**

1. Sheikh Altaf  
S/o Sheikh Nazir,  
Aged 68 years,
2. Smt. Raziya Bee  
W/o Sheikh Altaf,  
Aged about 51 years,

Applicant No. 1 & 2 both  
R/o Daulatpura, Near Kali Masjid,  
Burhanpur

Presently residing at : 1, Karanj Bazar,  
Opp. New Vision School,  
Kila Road, Burhanpur

3. Sheikh Hafiz  
S/o Sheikh Rafeek,  
Aged about 28 years
4. Smt. Nujahat  
W/o Sheikh Hafiz,  
Aged about 24 years
5. Sheikh Saddam  
S/o Sheikh Rafeek,  
Aged about 26 years

6. Sheikh Rafeek  
S/o Sheikh Rasool,  
Aged about 58 years

Applicants No. 3, 4, 5 & 6  
R/o Daulatpura, Near Kali Masjid,  
Burhanpur

Presently residing at : C/o Abdul Rashid Ka Makan,  
Kela Chips Wale, Near Bade Afzal Masjid,  
Kalabag, Burhanpur

7. Aarif Khan  
S/o Siraz Khan,  
Aged about 24 years,

8. Rukhsar Bee  
D/o Siraz Khan,  
Aged about 17 years

9. Siraj Khan  
S/o Turab Khan,  
Aged about 54 years,

Applicants No. 7, 8 & 9  
R/o Daulatpura, Near Kali Masjid,  
Burhanpur  
Presently residing at : Sulabh Complex Yard  
Daulatpura, Near Kali Masjid, Burhanpur

10. Sheikh Muzaffar  
S/o Sheikh Nazir,  
Aged about 60 years,  
R/o Daulatpura, Near Kali Masjid,  
Burhanpur

11. Smt. Gulnaas  
W/o Mohd. Aamin,  
Aged about 65 years,  
R/o Daulatpura, Near Kali Masjid,  
Burhanpur  
Presently residing at : Sulabh Complex Yard  
Daulatpura, Near Kali Masjid, Burhanpur

12. Mohammad Ayyub  
S/o Mohd. Ismile,  
Aged about 58 years,  
R/o Daulatpura, Near Kali Masjid,  
Burhanpur  
Presently residing at : Kali Masjid Parisar  
Burhanpur

**.....Applicants**

**Versus**

1. State of Madhya Pradesh,  
Through Secretary,  
Department of Home, Mantralaya,  
Vallabh Bhawan  
Bhopal
2. Madhya Pradesh Pollution Control Board  
Through its Managing Director,  
III Floor, Soochna Bhawan,  
Bhopal
3. Superintendent of Police,  
District Burhanpur
4. Collector, Burhanpur  
District Burhanpur
5. Municipal Corporation Burhanpur  
Through its Commissioner, Burhanpur  
District Burhanpur
6. Station House Officer,  
Police Station Shikarpura, Burhanpur  
District Burhanpur
7. Gurudwara Prabandhan Committee  
(G.P.C.) Trust, Through its President,  
Chhoti Sangat, Daulatpura,  
Burhanpur  
District Burhanpur

**.....Respondents**

**Counsel for Applicants :** Shri Manoj Kumar Agarwal, Adv.  
Mrs. Anita Manoj Agarwal, Adv.  
**Counsel for State :** Shri Sachin K.Verma, Adv.  
**Counsel for Respondent No. 5:** Shri V.K.Saxena, Adv  
**Counsel for MPPCB :** Ms. Parul Bhadoria, Adv. for  
Shri Purushaindra Kaurav, Adv.

**J U D G E M E N T**

---

**Dated : July 18<sup>th</sup>, 2016**

---

- 1) Whether the judgement is allowed to be published on the internet  
----- yes
- 2) Whether the Judgement is to be published in the All India NGT  
Report ----- yes

**DELIVERED BY HON'BLE MR. JUSTICE DALIP SINGH, JM**

1. This Original Application has been filed by the Applicants seeking relief under Section 15 primarily of compensations:-

(a) On account of the death of 7 persons namely:-

- 1) Ku. Zenab Bano D/o Sheikh Alfaf, age 16 years (female)
- 2) Mohsim Mehatab S/o Sheikh Altaf, age 14 years (Male)
- 3) Usman S/o Sheikh Altaf, age 11 years, (male)
- 4) Aasma D/o Sheikh Hafiz, age 2 years (female)
- 5) Tanzila D/o Sheikh Hafiz, age 2 months (female)
- 6) Mantasha Bano D/o Sheikh Saddam, age 6 months (female)
- 7) Aafrin D/o Aarif Khan, age 1 year (female).

(b) On account of injuries resulting in disability to the following persons :

- 1) Sheikh Altaf S/o Sheikh Nazir, age 71 (male)
- 2) Smt. Nujhat @ Noorjahan W/o Sheikh Hafiz, age 24 yrs. (female)
- 3) Ku. Rukhsar Bee D/o Siraj Khan, age 16 yrs. (female)

2. In addition to the above compensation has also been claimed on account of damage to properties that is the loss of the dwelling houses of the following persons :

- 1) Sheikh Altaf S/o Sheikh Nazir & Smt. Raziya Bee W/o Sheikh Altaf

- 2) Sheikh Rafeek S/o Sheikh Rasool
- 3) Siraj Khan S/o Turab Khan
- 4) Sheikh Muzaffar S/o Sheikh Nazir
- 5) Smt. Gulnaz W/o Mohd. Amin.
- 6) Mohammad Ayyub S/o Mohd. Ismail

3. It is alleged that in the city of Burhanpur in M.P. the Applicants resided in Daultpura locality and as a result of the accident that occurred on the intervening night of 13<sup>th</sup> and 14<sup>th</sup> July there was a wall collapse which resulted in the collapse of the houses of the Applicants in which 7 persons died 3 received serious injuries resulting in disabilities and damage to the properties of 6 of the Applicants.
4. It is alleged in the Application in Para No. 12 (iii) that the collapse of the wall on the 6 residential houses of the Applicants was as a result of the collapse of a boundary wall over which unauthorized construction had been carried out and against which unauthorised “garbage dumping and unauthorised dumping of Municipal Solid Waste” was being perpetrated by the Respondent No. 7 and not being dealt with in accordance with law by the Respondent No. 5 local authority that is the Municipal Council of Burhanpur. It is alleged in para No. 12 (vi) that the Municipal Corporation Respondent No. 5 had full knowledge with regard to the dumping of the MSW behind the wall and also was aware of the likelihood of the collapse of wall which was in a dilapidated condition being an old historic fortification. It has further alleged in para 12 (vii) that the illegal construction of the wall by the Respondent No. 7 over the old wall was causing environmental hazard due to dumping and storage of garbage as land fill and this was in the full knowledge of the Respondent No. 5 Municipal Authorities which took no action and ultimately resulted in the collapse of the wall which in turn

demolished the houses resulting in the death and injuries to the persons mentioned above.

5. In a nutshell it is, therefore, the case of the Applicant that loss of lives and injuries to persons and the damage to the property are attributable to the direct acts of commission and omission on the part of the Respondent No. 7 and the Respondent No. 5 allowing the illegal dumping of MSW against the old fortification walls and the illegal construction of the wall over the dilapidated fortification wall which collapsed under pressure because of an illegal MSW dumping on the side opposite.
6. It is further, stated that the Government authorities granted an amount of Rs. 50,000 as ex-gratia payment of compensation and the Respondent No. 7 also paid an amount of Rs. 50,000 towards compensation on account of death of each of the persons and 25,000 towards those who sustained grievous injury. Some amount of compensation was also paid as has been mentioned in the Annexures that have been filed along with the Application towards loss of the dwelling units.
7. Not satisfied with the award of compensation the Applicants have approached this Tribunal under Section 15 of the NGT Act.
8. Vide our order dated 17.04.2015 Notices were ordered to be issued, replies were filed by the District Administration of the State, Respondent No. 1 to 4, the Respondent No. 5 Municipal Council and the Respondent No. 7 the Gurudwara Prabandhan Committee separately.
9. The Respondent No. 1 to 4 raised preliminary objections:

- 1) that the Application has not been filed in accordance with and in the format as prescribed under the NGT Act and Rules.
  - 2) that the court fee of 1% of the compensation claimed has not been paid.
  - 3) that under Section 15 an Application is only maintainable by victims of pollution and other environmental damage arising under the enactments specified under the schedule 1. Accordingly, it was submitted that the incident complained of is not covered by any of the enactments specified under schedule (1) of the NGT Act and therefore, the Tribunal has no jurisdiction and the Application deserves to be dismissed.
  - 4) that the Applicants have already received compensation from the State Government as well as from the Respondent No. 7 and therefore, having accepted the ex-gratia compensation “ on account of accidental death and injury sustained was due to collapse of clay brick wall constructed by Respondent No. 7” this application is not maintainable.
10. We may add that while dealing with the issue of preliminary objections similar objections have also been raised by the Respondent No. 5 Municipal Council as well as the Respondent No. 7 to the maintainability of the Application.
11. On the merits of the matter the Respondents 1 to 4 do not dispute the fact regarding the death of the 7 persons mentioned above or with regard to the injury sustained by the 3 persons as also the fact that they were examined for the purposes of determining their disability by a Medical Board which has been found to be 32 per cent in the case of Sheikh Altaf and 16 per cent in the case of Shrimati Nujahat and Kumari Ruksar Bee, who suffered injuries over her left foot,

right side of the forehead and suffered fracture on the fifth metatarsal of the left foot. All the three medical examination reports have been placed on record after they were examined by the Medical Board on 08.09.2015 and despite one year having been elapsed from the date of the accident i.e. 14.07.2014 they were still found to be suffering from temporary disability.

12. The State has, therefore, stated that the act of the collapse of the wall as per their averments in para 7 of the reply was as a result of “illegal construction of boundary wall carried out by the Respondent No. 7” and as such the liability to pay compensation if any lies upon the Respondent No. 7.

13. The Respondent No. 5 Municipal Council in their reply after having raised the similar preliminary objections to the maintainability of the Application in para No. 5 of their reply stated as follows :

*“During the course of inquiry it was revealed that the Respondent No. 7 unauthorisedly constructed a clay bricks wall over the ancient wall by laying its foundation through beam over the ancient wall. This act of the Respondent No. 7 has caused damage to the ancient wall. It is amply demonstrated by photographs Annexure I-1 to I-5. The Respondent No.7 leveled its ground adjacent to ancient wall and for this purpose it has dumped waste material and garbage by the side of the wall. In this process the slope factor was also effected and flow of rain water had been diverted resulting in accumulation of water by the side of ancient wall land thereby causing damage to the wall. It is thus apparent that due to above factors the damage to the ancient wall resulted in collapse of wall constructed by Respondent No. 7 over the ancient wall which has led to this unfortunate incident.”*(emphasis supplied).

14. Similar averments have also been made in para No. 8 and 9. It has further been stated in the reply to para No. 12 (ii) by the Respondent No. 5 that “as per



knowledge of Respondent No. 5 the unfortunate incident did take place due to collapse of unauthorised wall constructed by Respondent No. 7 and then storing / dumping filling of garbage and other materials as well, while Respondent No. 7 was leveling the ground by adjacent side of the wall. It is also not disputed that the site along with the wall in question was used as a garbage dumping site whether by the Respondent No. 5 or the Respondent No. 7, as it is stated in the reply” that on 02.07.15 the Corporation staff tried to remove the remaining garbage and the clearing of the site which was objected to. On the basis of the above the Respondent No. 5 municipality has tried to avoid its liability to the payment of compensation to the Applicants.

15. The Respondent No. 7 in their reply having raised the preliminary objections similar to the one taken by the State and the Municipal Council, have denied any liability on their part and have denied that as a result of the accumulation and dumping of the solid waste there has been any environmental damage or that wall has collapsed as a result thereof. They also stated that on account of the fact that the compensation of Rs. 50,000 to deceased and 25,000 to the injured having already been paid the Applicants are not entitled to claim any further compensation of 7,50,000 for the deceased and 5,00,000 for the injured persons.
16. During the pendency of the Application the Applicant brought to our notice that the Respondents have issued Notices to the Applicants for eviction. This fact was not denied by the Learned Counsel appearing for the Municipal Board. It was also brought to our notice that there was at that time a scheme pending for allotment of houses / residential *pattas*. Taking notice of the same the Tribunal vide its order dated 03.11.2015 directed that the case of the Applicants

may be considered for allotment and for this purpose on 03.11.2015 and directions as under were issued;

*“we would direct that in case any of the affected person (12+6) and/or such persons to whom notices had been issued by the SDO, Burhanpur approach the Municipal Authority, Burhanpur, for allotment of dwelling unit in lieu of vacation from the present site, within 15 days from today with the amount of Rs. 15,000/- initial deposit they shall not be evicted in pursuance of the said notice. The District Administration as well as the Municipal Authority, Burhanpur shall in view of the fact that the affected person who are the Applicants are willing to shift from the present location by handing over possession of their land to the District Administration/Municipal Authority over which they have been in occupation since long and in some cases also been issued Patta by the administrative authorities will consider relaxation of the terms & conditions for such allotments. These would require that determination of the market value of the land under their possession be carried out by the Municipal Authority and District Authority and a set off against the said value be made against the price for the property be allotted to them for rehabilitation. Along with the applications which have been submitted by the Applicant deposit of initial amount has not been made, the Applicant would be required to deposit the said amount of Rs. 15,000/-. Similarly after calculation of the market value of the land in possession of each one of the persons and the set off against the market value to be charged from them, proportionate reduction in the balance instalments shall be carried out for the balance amount and instalments fixed. By our order the terms and conditions of the scheme so far as there affected applicants are concerned stand modified. The Municipal body and the District Administration on taking over possession of the land from the affected persons shall ensure that no new construction takes place at the instance of any private party. A plan for restoration of the fortification and other heritage sites shall be prepared in consultation with the Archeological authorities. The same be submitted before us on the next date”.”*

17. However, today during the course of hearing Learned Counsel appearing for the Respondent No. 5 brought to our notice that the Municipal Corporation Burhanpur had filed W.P. No. 11360/2016 titled *Municipal Corporation, Burhanpur Vs. Sheikh Altaf & 7 Ors.* and that vide order dated 08.07.2016 Hon'ble High Court of M.P. at Jabalpur after issuing Notices had stayed order dated 03.11.2015 passed by this Tribunal.
18. During the course of hearing Learned Counsel for the Respondent No. 5 submitted that in view of the above the hearing in the case may be adjourned since the matter was pending before the Hon'ble High Court.
19. We have perused order passed by the Hon'ble High Court dated 08.07.2016. The said order is as follows-
- “Issue notice to the Respondents on payment of process fee within one week, notice be made returnable within four weeks.*
- Till the next date of implementation of the order dtd. 03.11.2015 passed by the Learned National Green Tribunal, Central Zonal Bench, Bhopal shall remain stayed.”*
20. We are of the view that so far as the Hon'ble High Court's order is concerned the said order is in respect of the order dated 03.11.2015 relating to allotment of residential houses / plots and is in no way related to the main issue regarding compensation to be paid to the Applicants which is the primary relief which has been sought in the Application by the Applicant and we are of the opinion that proceedings have not been stayed. Only operation of an order dated 03.11. 2015 has been stayed.
21. We would now proceed to take up the issue of the preliminary objections raised by the Respondent 1 to 4, 5 and 7 regarding the maintainability of this Application. The first objection relates to the

Application not having been filed in the prescribed format and payment of court fee. As far as the aforesaid objection is concerned Rule 12 on which reliance has been placed requires that an application where compensation has been claimed shall be accompanied by a fee equivalent to 1 per cent of the amount of compensation claimed. The proviso further provided that where the application for compensation is filed by more than 1 per cent the fee payable shall be equivalent to 1 per cent of the total amount of compensation claimed. The second proviso on which the Applicants rely reads as follows:

*“Provided further that there shall be no fee for filing of Application or Appeal for claiming compensation by any person who is below the poverty line determined in accordance with the guidelines or instructions issued by the Central Government or the State Government from time to time. In this regard or all indigent person determined in accordance with the provisions of the Code of Civil Procedure V 1908.”(emphasis supplied)*

22. In the Application in Para No. 20 it is stated that “Particulars in respect of Application fee, no fee is payable in as all the 12 Applicants are members of society belonging to the category, Below Poverty Line “BPL Card-holder”. Copies of BPL card of all the 12 Applicants are annexed as Annexures A/16. A perusal of the reply on merit submitted by the State of M.P. Respondents 1 to 4 reveals that it has not disputed the above averments made in para No. 20 of the Application. More particularly, there is no reply even to the said averments nor are the documents certificate / BPL cards disputed by any of the Respondents. In the light of the above since Rule 12 second proviso exempts persons living below the poverty line from payment of court fee on Applications filed for claiming compensation and the Applicants have specifically averred in their Application in para 20 that they are entitled to

exemption from payment of court fee being BPL category and the aforesaid averment is not controverted or denied nor the genuineness of the BPL cards disputed by the respondents we hold that preliminary objection with regard to the maintainability of the Application under Section 15 on the ground of non-payment of court fee by the Applicants deserves to be rejected. The said objection has no merit and is accordingly dismissed.

23. As regards the preliminary objection with regard to the act complaint of not falling within any of the provisions of the schedule acts under the NGT Act so as to bring the matter within the jurisdiction of the Tribunal for grant of compensation under Section 15 it would be appropriate to peruse the provisions of the Act. Section 15 sub-section (1) provides as follows:

*“The Tribunal may by an order provide (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule (1) including accident occurring while handling any hazardous substance.(b) for restitution of property damaged(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.*

24. A perusal of Schedule (1) reveals that at item No. 5 the Environment “Protection” Act 1986 has been enlisted under the Environment Protection Act 1986, in excise of the power is conferred by section 3, 6 and 25 of the EP Act 1986. The Central Government has framed the Municipal Solid Waste (Management & Handling) Rules 2000, herein after referred to as MSW Rules.

25. Rule (4, 5 & 6) of the MSW Rules provide as follows

<b>S.N.</b>	<b>Parameters</b>	<b>Compliance criteria</b>
4.	Transportation of Municipal solid waste	Vehicles used for transportation of wastes shall be covered waste should not be visible to public, nor exposed to open environment preventing their scattering. The Following

		<p>criteria shall be met, namely :-</p> <ol style="list-style-type: none"> <li>i. The storage facilities set up by municipal authorities shall be daily attended for clearing of wastes. The bins or containers wherever placed shall be cleared before they start overflowing ;</li> <li>ii. Transportation vehicles shall be so designed that multiple handling of wastes, prior to final disposal, is avoided.</li> </ol>
5.	Processing of Municipal solid waste	<p>Municipal authorities shall adopt suitable technology or combination of such technologies to make use of wastes so as to minimize burden or landfill. Following criteria shall be adopted, namely :-</p> <ol style="list-style-type: none"> <li>i. The biodegradable wastes shall be processed by composting, vermicomposting, anaerobic digestion or any other appropriate biological processing for stabilization of waste. It shall be ensured that compost or any other end product shall comply with standards as specified in Schedule IV;</li> <li>ii. Mixed waste containing recoverable resources shall follow the route of recycling. Incineration with or without energy recovery including pelletisation can also be used for processing wastes in specific cases. Municipal authority or the operator of a facility wishing to use other state-of-the-art technologies shall approach the Central Pollution Control Board to get the standards laid down before applying for grant of authorisation.</li> </ol>
6.	Disposal of municipal solid waste	<p>Land filling shall be restricted to non-biodegradable, inter waste and other waste that are not suitable either for recycling or for biological processing. Land filling shall also be carried out for residues of waste processing facilities as well as pre-processing rejects from waste processing facilities as well as pre-processing rejects from waste processing facilities. Land filling of mixed waste shall be avoided unless the same is found unsuitable</p>

		for waste processing. Under unavoidable circumstances or till installation or alternate facilities, <u>land filling shall be done following proper norms. Landfill sites shall meet the specifications as given in Schedule III.</u>
--	--	--

(emphasis supplied)

26. Schedule (2) of the Rules deals with the Management of Municipal Solid Waste. Item No. 3. Provides for Storage of MSW and Item No. 6 Disposal of MSW.
- (a) Item No. 3 enjoins upon the municipal body to establish storage facility so as not to create unhygienic and insanitary conditions. Waste therefore, was required to be stored at a designated site which as per Schedule (iii) are required to be away from residential areas and prepared accordingly and compacted. Whereas in the present case unauthorisedly land fill by dumping waste was created in high density population area in the town itself either by Respondent No. 5 or by Respondent No. 7 without being checked by Respondent No. 5 for a considerable period of time.
27. In view of the above it is the sole responsibility of the Municipal Body under MSW Rules Rules (2000) framed under EP Act 1986, which is a Scheduled Act of the NGT Act 2010, and in the instant case it is not disputed that solid waste which is termed as garbage in the replies filed by the Respondent 1 to 4, 5 and 7 was being dumped along the old fortification wall and the unauthorized *Kattcha* brick wall which collapsed as a result of unauthorizedly dumping irrespective of the fact whether the same was done by the Municipal Body Respondent No. 5 or unauthorized by Respondent the Respondent No. 7. It is a breach of the provisions of the EP Act 1986, in general and the MSW Rules 2000, in particular which caused the ex-gratia resulting in the death, injury and the damage to the property complaint of. We are therefore, of the view that this case falls within the ambit of Section 15

sub-section (1) of the NGT Act 2010, and the Application claiming relief as a result of the accident which in turn was caused by the unlawful dumping of the MSW which resulted in the collapse of the wall is maintainable. The aforesaid objection raised by all the three Respondents is accordingly rejected and dismissed.

28. We may also add that Section 15 of the NGT Act 2010 confers jurisdiction upon the Tribunal to order for the grant of relief and compensation to victim of pollution and other environmental damage. In this case it is established from the record and pleadings and order for ex gratia payment of compensation paid by the Respondents that injuries were caused, death occurred and damage to property caused as a result of the collapse of the old fort walls due to the causing of pollution on the land adjoining the wall by illegally dumping of solid waste (garbage) contrary to and in violation of the MSW Rules 2000 and the provision of the E.P. Act 1986. Thus the cause of action for filing of this Application is directly attributable to the causing of pollution over the land and thus polluting the environment. As per the provision of the E.P. Act 1986, and the definition contained in Section 2 (a), (b) and (c) "Environment" includes land and "Environmental Pollution" means the presence in the environment of any environmental pollutant. In this case the presence of the MSW as result of its illegal dumping on the land along the old wall which collapsed as a result of such dumping leads to but one conclusion that there was environmental pollution caused due to the acts of omission and commission of the Respondents which led to the collapse of the wall and consequential damage and loss of life. We, therefore, hold that this Application under Section 15 for compensation is maintainable.



29. The third objection is in respect of the fact that the Government as well as the Respondent No. 7 have paid ex-gratia payment of compensation to the Applicants and therefore, this Application is not maintainable. So far as the aforesaid objection is concerned the provisions of Section 15 of the NGT Act require the Applicant to intimate the Tribunal about any Application for relief having been filed or any compensation or relief received from any other court or authority. The aforesaid provision of Section 15 sub-section (5) makes it clear that receipt of compensation for filing of any Application for claim of compensation before any other court or authority needs to be disclosed and the receipt of such compensation for filing of any such Application does not per se debar the filing of the Application before the NGT for the grant of compensation. So far as the above is concerned the Applicants has stated as follows: *“the Applicants declare that the official Respondent No. 4 (Collector Burhanpur) vide impugned order dated 27.09.2014 sanctioned / transferred in the bank accounts of the Applicants on 18.11.2014 only a lesser amount of Rs. 50,000 in place of Rs. 7.50 lakhs (Seven lakh fifty thousand) for which death to their family of the victim and accordingly other lesser amount under other heads in complete contravention of the law laid down by the Hon’ble Supreme Court. Thus substantial compliances with the provisions containing in Section 15 sub-section 5 has been made similarly in para 12(ii) this fact of payment of ex-gratia amount of 50,000 / 20,000 in the case of death / injury has also been disclosed and the document has been in support thereafter has been filed as Annexure A/1 which is the order issued from the office of the Collector Burhanpur.*

30. We are, therefore, of the view that none of the preliminary objections merit any considerations and

deserve to be rejected. The Application is accordingly maintainable and the filing of such objections at the behest of State and the Municipality Respondent No. 4 and 5 are not appreciated in the light of the clear provisions of law.

31. In so far as the, merits of the matter are concerned the compensations has been claimed for death of 7 persons. (1) Ku. Zenab Bano D/o Sheikh Alfaf, age 16 years (female) the Applicant No. 1, (2) Mohsim Mehatab S/o Sheikh Altaf, age 14 years (Male) the Applicant No. 1 (3) Usman S/o Sheikh Altaf, age 11 years, (male) the Applicant No. 1. Applicant No. 2 is W/o Sheikh Altaf Smt. Raziya Bee. Both the Applicants No.1 and 2 have lost three children mentioned above. .The Applicant No. 3 and 4 Shiekh Hafiz, and Smt. Nujhat, W/o Sheikh Hafiz have claimed compensation for the death of their two children (1) Aasma D/o Sheikh Hafiz, age 2 years (female) and (2) Tanzila D/o Sheikh Hafiz, age 2 months (female). The Applicant No. 5 Sheikh Saddam has claimed compensation for the death of his Daughter, Mantasha Bano, age 6 months (female). The Applicant No. 7 Aarif Khan S/o Siraj Khan has claimed compensation for the death of his daughter Aafrin, age 1 year (female). All of the above are minor. Learned Counsel for the Applicant relied upon the judgement of the Hon'ble Supreme Court in the case of *Municipal Corporation of Delhi Vs. Association of Victim of Uphaar Tragedy and Kishan Gopal & Anr. Vs. Lala and Ors.* Civil Appeal No. 7137/2013 decided on 26.08.2013. In both these cases, so far as minor children who are not earning having died as a result of an accident, their parents were held entitled to the grant of compensation on a lump sum basis.
32. The Applicants have filed the Application for compensation on account of the failure on the part of

the Respondents 1 to 4 , 5 and 7 as was stated during the course of hearing by the Learned Counsel for the Applicant of complete disregard for the provisions and compliance of the MSW Rules and so far as the maintainability and jurisdiction of this Tribunal is concerned and maintainability of the objection and the jurisdiction of this Tribunal is concerned. As the non-observance of the provision of the MSW Rules 2000 framed under the EP Act 1986 which is one of the scheduled acts resulted in the illegal dumping of solid waste at the site adjoining the locality and residential houses of the Applicants at the same time, it was further aggravated by the unauthorized construction of the *Kattcha* brick wall by the Respondent No. 7 as has been admitted by the Respondent No. 1 to 4 and 5 and the dumping for filling up the cavity with MSW unauthorisedly. A perusal of the MSW Rules 2000, enjoins upon the Municipality to ensure collection and disposal of the MSW in accordance with the provisions of the Rules at designated sites. The said Rules requires the Municipality to ensure that MSW is collected, transported and disposed of at the land-fill site to be prepared in accordance with the rules. Admittedly, the site of the Respondent No. 7 was not a designated approved site for the said purpose. Whether the solid waste / garbage was collected and brought by the Respondent No. 7 for the purposes of the land fill and leveling of the area or the same was dumped by the Municipal employees at the said place need not detain us for the purposes of disposal of this Application. The admitted position is that MSW / garbage was being dumped on the said site adjoining the wall which collapsed which clearly proves that the Respondent No. 5 failed to carry out its duty in accordance with law as provided under the Scheduled Act and the Rules there under which resulted in the collapse of the wall causing the said wall to fall upon the houses of the Applicants resulting in the death and injuries and loss to property. This act as held above is

an act of environmental pollution and the claimants victims of pollution. The injury suffered, death and damage to property is therefore, directly related to the failure on the part of the Respondents to observe the provisions of law and carry out the statutory duties as prescribed therein. No person unauthorisedly is entitled to create a dumping site whether on his personal property or otherwise in violation of the provision of the Act. The same would be treated as an offence under the environmental laws as it would be severely counter-mining the health and sanitation of the Respondent of the area and also polluting the environment as a result of such unauthorized acts. At the same time, it was the responsibility of the Municipal Authorities to ensure that such unauthorized acts are not allowed to be done by any person including the Respondent No. 7. Thus the accident that occurred can directly be attributed to the non-observance and the acts of commission and omission on the part of the Respondents as making all the Respondents liable for the environmental pollution and for compensation as such their liability stands proved the victim of pollution.

33. So far as the quantum is concerned in the Uphaar tragedy case reported in AIR 2012 SC page 100, the Hon'ble Supreme Court reduced the amount of compensations for non-earning members from 15 lakhs of Rs to 7.5 lakhs with interest at the rate of 9 per cent.
34. The Hon'ble Supreme Court in its decisions though under the Motor Vehicle Act has held that the parents of minor children even though they may not be having any income of their own would be entitled to lump sum compensation on account of their death and compensation need not to be determined under various heads.

35. We would therefore, in accordance with the decision of the Hon'ble Supreme Court in the case of *Krishna Gopal and Anr. Vs. Lala & Anr.* Supra taking recourse to the principal of notional income for compensation of minors who had no personal income prior to the accident awarded compensation for an amount of Rs. 5 lakhs in total to the parents who are the claimants. Accordingly, the Applicant No. 1 and 2 who have lost three children would be entitled to an amount of Rs. 5 lakh each as compensation for the death of each of their child. (1) Ku. Zenab Bano D/o Sheikh Alfaf, age 16 years (female), (2) Mohsim Mehatab S/o Sheikh Alfaf, age 14 years (Male) (3) Usman S/o Sheikh Alfaf, age 11 years, (male) i.e. an amount of Rs. 15 lakh. In addition they would also be entitled to interest at the rate of 6 per cent per annum from the date of filing of this Application that is 15.04.2015 up to the date of realization. The said amount shall be deposited directly into the bank account of the Applicant No. 1 and / or 2 in apportionment of 50 per cent each. This amount shall be kept in Fixed Deposit for a period of 36 months with interest to be paid every month to the claimants. After 36 months amount shall be released.
36. We may add that the amount of Rs. 50,000 + 50,000 paid under the orders of the Collector by the Government and in case also paid by the Respondent No. 7 as ex-gratia shall be liable to be deducted in each of the case.
37. In so far as the Applicants No. 3 and 4 Sheikh Hafiz and his wife Smt. Nujahat are concerned for the death of their two minor daughters Asma and Tanzila on the parity of the reasoning as decided above would be entitled to compensation of Rs. 5 lakh each for the death of Asma and Tanzila with interest at the rate of 6 per cent per annum the amount that may have been paid ex-gratia shall be deducted and remaining

amount be deposited directly in the account of Applicants in equal portion of 50 per cent each. The amount shall be kept in Fixed Deposit for 36 months and monthly interest liable to be paid. After 36 months the amount shall be released.

38. The Applicant No. 5 shall be entitled to receive compensation for the loss for the death of his daughter Mantasha Bano of Rs. 5 lakhs with 6 per cent interest per annum less the amount already paid. The said amount shall be paid / deposited in the bank account of the Applicant and kept in Fixed Deposit with monthly payment of interest. Amount shall be released after 36 months only.
39. Applicant No. 7 Arif will be entitled to receive compensation for the death of his daughter Afreen for an amount of Rs. 5 lakhs with interest at the rate of 6 per cent per annum less amount already paid. The amount shall be kept in Fixed Deposit for 36 months and monthly interest liable to be paid. After 36 months the amount shall be released.
40. As far as the, injured persons are concerned Sheik Alataf has received 32 per cent disability on account of the fracture in his head. He has received injuries over right knee, forehead, right parital region and right hand. There were fracture of the right knee tibia and the right upper hand. The Medical Board which observed the injury on 08.09.2015 that is after one year of the incident as given total temporary disability as 32 per cent and was still advised treatment at that stage. The disability was though categorized as temporary disability. In the light of the above we are inclined to grant compensation for the grievous injury received and the disability incurred by the Applicant Sheik Altaf at Rs. 50,000 with interest at the rate of 6 per cent per annum over and above what has already

been paid by way of compensation and the said amount already paid shall not be liable to be deducted.

41. So far as Smt. Nujahat W/o Shiek Hafij is concerned had injuries over her left leg thigh and pelvic region as well as over the skull had fractured of left tibia / fibula in the leg and fracture superior and inferior ramus left side & superior ramus side. As per the Medical Board shall had total temporary disability of 16 per cent as a result of aforesaid injuries. We would accordingly direct compensation amount of Rs. 50,000 to be paid to the Applicant Nujahat W/o Sheikh Hafiz with interest at the rate of 6 per cent per annum over and above the amount that is already been paid ex-gratia and the said amount already paid shall not be liable to be deducted.
42. As far as, Kumari Rukhsar Bee D/o Siraj Khan is concerned, the Board after observing record as follows: she had fracture 5<sup>th</sup> metatarsal left foot & was conservatively manage. We have awarded compensation of Rs. 25,000 over and above what has already been paid to the Ruksar D/o Siraj Khan shall not be deducted. The reason for not deducting the amounts already paid is only on account of the fact that the said amount must have already been utilized in the prolonged treatment and medication of the injured persons.
43. So far as the loss to the properties is concerned Applicant No. 1 and 2, 6, 9, 10, 11 and 12 have suffered loss to the properties that is their dwelling houses. This fact is not in dispute. The Applicants have claimed an amount of Rs. 5 lakhs towards the damage to the property or in the alternative allotment of houses under Shahri Awaas Yojana in lieu of monetary compensation. We have been informed that the above Applicants have already been evicted from the disputed sites. In the light of the prayer made and

looking to the facts that was brought before us on record we are of the view that the Respondents shall be liable to be paid compensation for the damage to the property of each of above Applicants No. 1+2 jointly, 6, 9, 10, 11 & 12 of Rs. 5 lakhs with interest at the rate of 6 per cent per annum. Alternatively, they may be provided houses under the existing schemes

that may be available for persons below poverty level (B.P.L) to which each of the Applicants belong against payment not exceeding Rs. 5 lakhs.

44. The Original Application No. 26/2015 accordingly **stands disposed** of with the aforesaid direction the **compliance** be made and reported to this Tribunal on **24<sup>th</sup> October, 2016**. All the M.As and interim orders also accordingly stand nullified and vacated. The Respondent shall be jointly and severally liable for payment of compensation to the Applicants. Original Application No. 26/2015 stands allowed with cost of Rs. 2000/- to each Applicant liable to be paid by (a) Respondent No. 1 to 4 (b) Respondent No. 5 and (c) by Respondent No. 7.

**(Mr. Justice Dalip Singh)**  
**Judicial Member**

**(Dr. S.S. Garbyal)**  
**Expert Member**

Bhopal:  
**July 18<sup>th</sup>, 2016**