

Item No.6

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No.39 of 2020 (SZ)

(Through Video Conference)

IN THE MATTER OF

Dr. Lubna Sarwath

...Applicant(s)

Versus

State of Telangana and Ors.

...Respondent(s)

Date of hearing: 17.03.2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s): Dr. Lubna Sarwath (Party in Person).

For Respondent(s): Mrs. Renuka represented
Mrs. H. Yasmeen Ali for R1 to R6 & R8.
Mr. T. Sai Krishnan for R7.
Mr. AR. L. Sundaresan, Sr. Adv. along with
Mr. Kishore Kumar for R9.

ORDER

1. When the matter came up for hearing today through Video Conference, Dr. Lubna Sarwath, applicant appeared in person. Mrs. Renuka represented Mrs. H. Yasmeen Ali, the learned counsel appearing for respondents 1 to 6 & 8, Mr. T. Sai Krishnan represented 7th respondent and Mr. AR. L. Sundaresan, Senior Advocate along with Mr. Kishore Kumar represented 9th respondent. So, service is complete.
2. The respondents 5 & 9 alone filed their counter statement. Other respondents wanted some more time to file their counter.
3. The matter is pending for more than one year now. The parties are expected to complete the pleadings within 2 (Two) Months as per the provisions of the National Green Tribunal Act, 2010 including the extended time permissible and the matter itself will have to be disposed of within a period of 6 (Six) Months.
4. However, some times the matter cannot be disposed of within six months for other reasons where the report of the committee etc. could not have been obtained in time.
5. The Joint Committee has filed their report. It is mentioned in the report that Mamasani Kunta is located in Sy. No.288 of Puppalguda village and not in Sy. No.286 of Puppalguda village and the 9th respondent i.e. M/s. Phoenix

Spaces Pvt. Ltd. is making construction in Sy. No.286/P which is adjacent to Sy. No.288.

6. It is also mentioned in the report that Sy. No.288 which is shown as Kunta in the village map and master plan is presently vacant and there is no water in it and the 9th respondent property is abutting to this survey number and 9th respondent is not making any construction in Sy. No.288 which is shown as a water body in the village map and HMDA Master Plan. There is a culvert adjacent to the property being developed by the 9th respondent in Sy. No.286 of Puppalguda village and as per the directions given by the TSIIC, the 9th respondent has carried out works for restoration of culvert and laid down the pipelines and constructed (10) precast catch basin chamber for free flow of water from culvert to nearby Nala known as Bulkapur Nala.
7. The applicant has filed objection to the Joint Committee report stating that they cannot rely on the survey numbers alone. The prayer in the application is to restore the water body and according to applicant, the 9th respondent has encroached into the water body and made the construction.
8. The learned Senior Advocate appearing for the 9th respondent submitted that the applicant filling this objection is trying to enhance the scope of the prayer in the application and the same cannot be allowed.
9. It may be mentioned here that a reading of the allegations in the application will go to show that the 9th respondent is alleged to have encroached into the

water body which was shown in Sy. No.288 of that village and constructed a culvert and putting up his construction over the water body.

10. Merely because the survey numbers are different whether there is actual encroachment or not cannot be identified without conducting proper survey of the property. Only if the Joint Committee conducts survey of the land which is shown as water body and the private property with the assistance of the surveyors from the revenue department and ascertain as to whether any portion of the proposed construction of the 9th respondent is encroaching into the water body or not, it is not possible to come to the conclusion as to whether there is any encroachment or not. Such an exercise has not been conducted by the Joint Committee, while filing the report as they have only relied on the survey numbers of the property and not actual measurement of the property as per ground verification.

11. So under such circumstances, we feel that it is necessary to direct the Joint Committee to conduct a physical survey of the properties of the 9th respondent and the water body with the help of the revenue map and the HMDA master plan and ascertain as to whether any portion of the construction proposed to be undertaken by the 9th respondent is extended to the property which is covered by the water body.

12. They are also directed to ascertain as to whether while renovating the culvert as permitted any encroachment has been made and whether there is any possibility of obstruction of flow of water that is likely to be caused during the

monsoon if the water body is filled with water. These aspects will have to be made clear in the further report to be filed by them. If there is any encroachment, then they must also suggest the proposed action to be taken to remove the encroachment.

13. The Joint Committee is also directed to consider the objection filed by the applicant to the Joint Committee report and give opinion regarding the same as well in the further report to be filed.

14. The applicant is directed to give the copy of the objection filed by her before this Tribunal to the members of the committee within a week so that the committee members can consider the same while submitting further report.

15. The Joint Committee is also directed to give notice to the applicant as well as party respondent namely, 9th respondent regarding the inspection. The applicant is permitted to present at the time of inspection but she should not interfere with the survey that is being conducted or the manner in which the survey is being conducted so as to obstruct the work of the committee being continued. If she has got any objection to the manner in which the measurement etc. was made and if she has got any objection to the further report to be filed, she is at liberty to file her objection to the same which this Tribunal can consider. Both applicant and 9th respondent are directed to cooperate with the committee to carry out the survey and inspection.

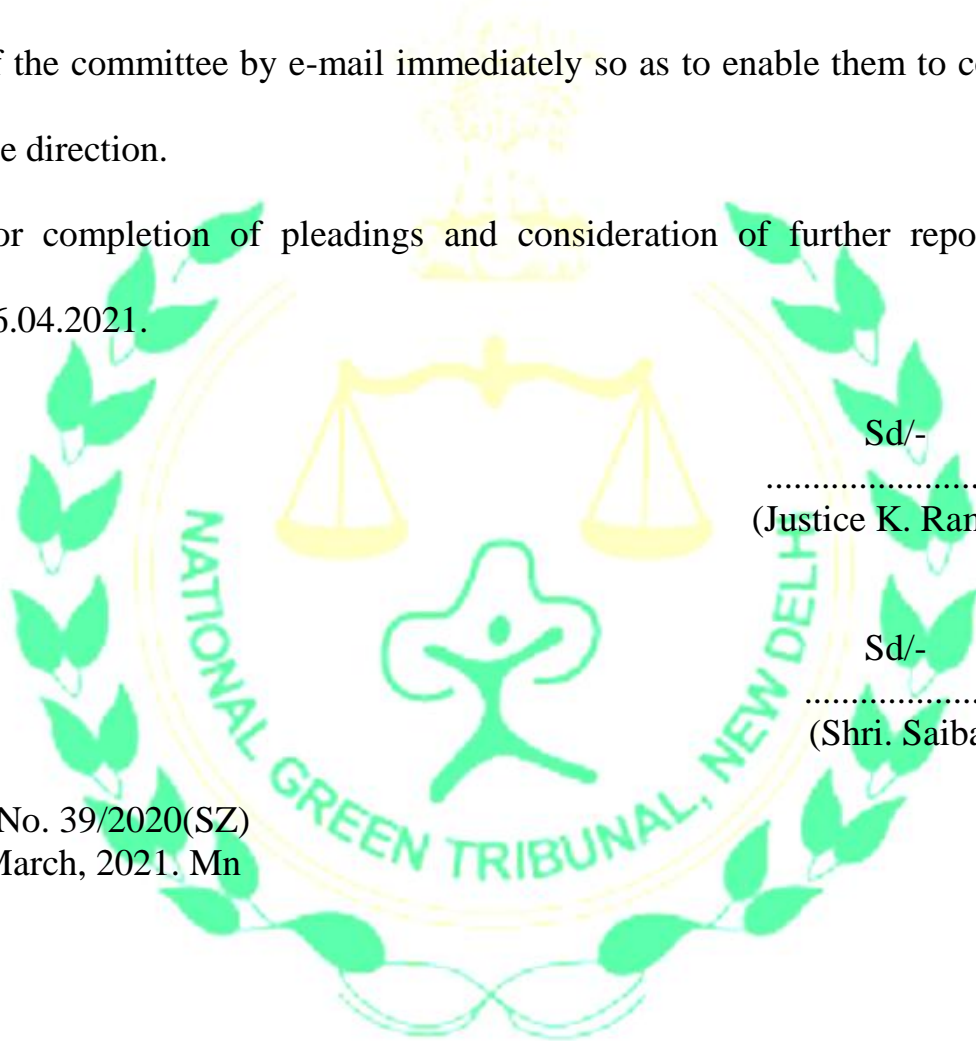
16. The committee is directed to submit a further report and other respondents are directed to file their reply statement to this Tribunal on or before 26.04.2021

by e-filing in the form of Searchable PDF/OCR Supportable PDF and not in the form of Image PDF along with necessary hardcopies to be produced as per Rules.

17.The Registry is directed to communicate this order along with copy of the objection filed by the applicant to the Joint Committee report to the members of the committee by e-mail immediately so as to enable them to comply with the direction.

18.For completion of pleadings and consideration of further report, post on 26.04.2021.

O. A. No. 39/2020(SZ)
17th March, 2021. Mn



Sd/-
.....J.M.
(Justice K. Ramakrishnan)

Sd/-
.....E.M.
(Shri. SaibalDasgupta)