

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

Original Application No. 145/2015
(M.A. No. 1259/2016, 1166/2017, 1170/2017 &
586/2018)

Umashankar Patwa & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 04.09.2019

CORAM:

**HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s)

Mr. Rahul Choudhary with Ms.
Kanika Sood, Advocates

For Respondent(s)

Ms. Deep Shikha Bharati,
Advocate
Mr. A.D.N. Rao with Mr.
Amber Sachdeva, Advocate
Mr. Tarunvir Singh Khehar,
Advocate
Mr. Daleep Dhayani, Advocate for
Mr. Pradeep Misra, Advocate
Mr. Shashank Bajpai with Mr.
Amit Dubey, Advocates
Ms. Kanika Agnihotri, Advocate
Mr. Rajkumar Maurya, Advocate
For Mr. Balendu Shekhar,
Advocate
Mr. Rajkumar, Advocate
Mr. Sanjay Upadhyay with Mr.
Vibhav Misra, Advocates

ORDER

Heard the Learned Counsels for the parties.

In this original application the applicant has raised the issue with regard to flood plain zone and river bed of river Yamuna in Agra. Further, the relief sought by the applicant is to restore the flood plain zone and river bed to

its original state. It has also been prayed by the applicant that direction be issued to the authority concerned to conduct demolition of encroachment which has come up by way of construction in river flood plain zone and river bed.

After having considered the matter from time to time, the Tribunal had called for report with regard to status at the site. Ultimately, the Tribunal had on 11.03.2019 passed the following order:

“In this matter the primary issue raised is with regard to demarcation of floodplain of river Yamuna in Agra city. Certain reports had been obtained earlier, such as from Irrigation Department etc. which are not only inconsistent but serious objections has been raised against them on behalf of the applicants also. In order to finally set at rest, the position with regard to river floodplain at the site, we think it proper to issue following directions.

- 1. The Director, Namami Gange shall have a joint inspection, along with nominees of National Institute of Hydrology be conducted and submit a report within four weeks from today.*
- 2. The Director, Namami Gange, as well as, the Director General, National Institute of Hydrology, Roorkee shall nominate officials, concerning with the subject, who after visiting*

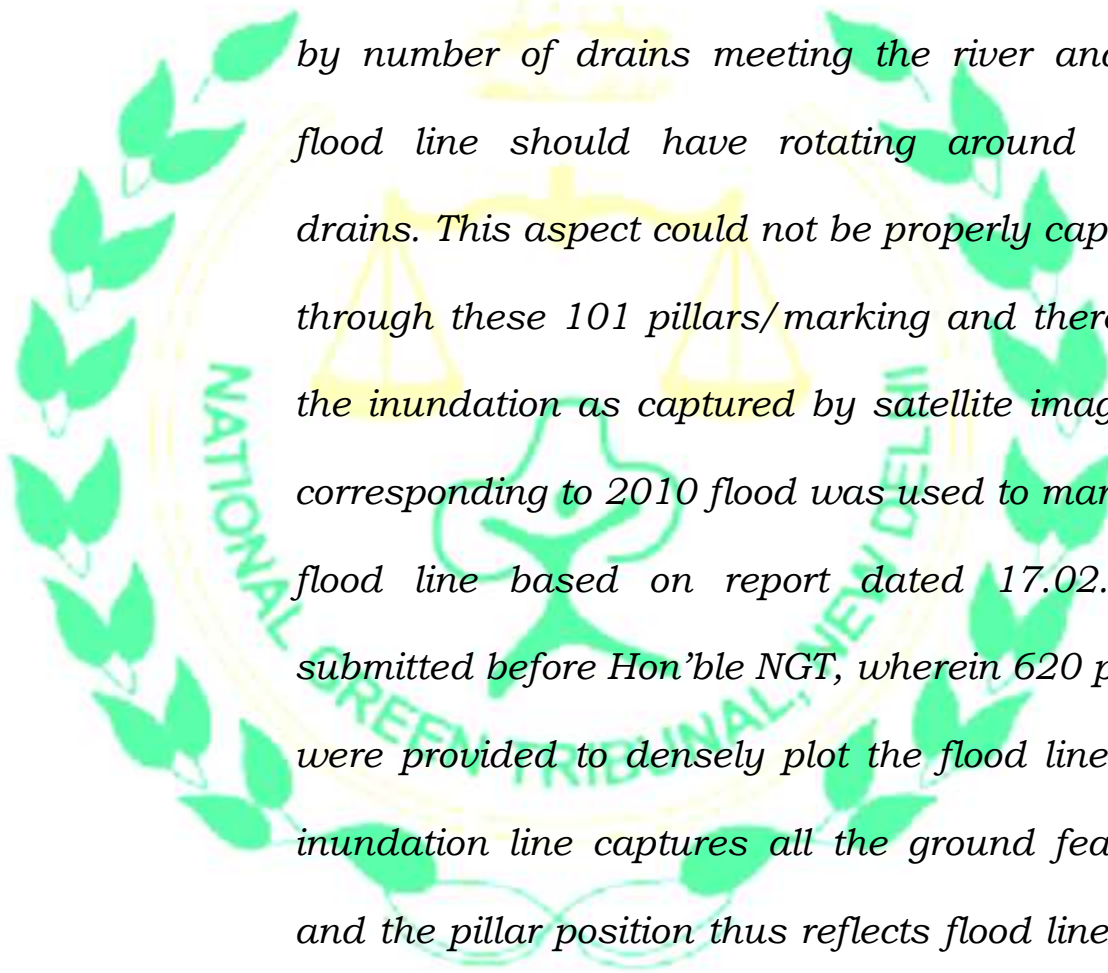
the site they should file a report with regard to floodplain within the timeline, mentioned above. The report should clearly reflect the demarcation of river floodplain in Agra and the construction in it.”

In pursuance of the said order a Joint Inspection Team was constituted by NMCG on 25.03.2019. The said team consisted of representatives from National Mission for Clean Ganga (NMCG), National Institute of Hydrology-Roorkee (NIH), Central Water Commission (CWC), Irrigation & Water Resource Department-UP and Agra Development Authority.

After having inspected the site as well as on perusal of the relevant records, the Team had submitted its report to the Tribunal on 09.05.2019. The Joint Inspection Team had made several observations but as the primary concern in the case is with regard to the demarcation of flood plain of river Yamuna in the City of Agra, we consider appropriate to refer only the findings in respect of marking of flood line, which as under:

“Two distinct approaches were utilized while marking the flood line corresponding to flood of 2010. First, the flood of 2010 having discharge 6063 cumecs (WL= 152.52 m at Poiya Ghat) was used to locate the water levels upstream and downstream of Poiya Ghat by adopting a slope of

water surface. As per information provided by Irrigation Department of Uttar Pradesh a total of 101 pillars (47 upstream of Poiya Ghat and 54 downstream of Poiya Ghat) including marking at some places has been established on right bank of river Yamuna (**Annexure-3**). The same information has already been submitted to Hon'ble NGT vide Registrar General's report dated 15.10.2016. However, the river on its right bank is also flanked by number of drains meeting the river and the flood line should have rotating around these drains. This aspect could not be properly captured through these 101 pillars/marking and therefore, the inundation as captured by satellite imageries corresponding to 2010 flood was used to mark the flood line based on report dated 17.02.2017 submitted before Hon'ble NGT, wherein 620 points were provided to densely plot the flood line. The inundation line captures all the ground features and the pillar position thus reflects flood line with reasonable accuracy along the right the right bank of river Yamuna. Irrigation Department has submitted that 620 pillars have been established on ground based on the above said report dated 17.02.2017. The list of these 620 pillars has been provided in **Annexure-3**.



During field visit it was seen that area along flood plain has changed considerably due to construction activity and some of the drains have been filled up due to human activity. The flood plain area at many of places has been significantly filled up. The location of any point on earth can be identified by specifying its x and y coordinates (Northing and Easting or latitude and longitude). While the elevation of this point, z, can be specified by measuring its elevation above any reference level. This elevation is dynamic and continuous to change due to large number of reasons including human intervention, natural processes like erosion and deposition. However, the location as specified by latitude and longitude remains fixed for all times to come and can be always traced by appropriate survey methods.

Accordingly, the pillars have been identified using the inundation as occurred during 2010 flood and their location has been well documented and submitted to Hon'ble NGT, vide report dated 17.02.2017. These pillars have accordingly been retraced and marked on the map for marking the flood line irrespective of the fact that actual ground conditions have changed significantly at many places. This flood line corresponding at these pillars

was therefore adopted as flood line for demarcation of extent of floodplain.”

In view of the report received from the Joint Inspection Team which was constituted of the aforesaid various authorities including the Agra Development Authority, we are of the considered opinion that as the question of demarcation of flood plain has been done, the question which now remains is with regard to implementation/execution of the aforesaid report given by experts. Thus, the exercise of clearing the flood plain of river Yamuna at Agra be done by the Agra Development Authority, after giving opportunity of hearing to all concern, by ensuring that all encroachments are cleared. The said exercise should be done by Agra Development Authority, in accordance to law by 31.03.2020. Thereafter a report be sent to the Tribunal.

It is made clear that Agra Development Authority shall immediately take up the matter and commence the exercise for implementation of the report given by the NMCG and other authorities without any further delay, in no case later than 15.09.2019.

A copy of this order be sent to the Principal Secretary to the Hon'ble Chief Minister, UP, Special Secretary, Housing and Urban Development and Vice-Chairman of Agra Development Authority, through email, forthwith.

Accordingly, Original Application No. 145 of 2015 is disposed of, with no order as to cost.

M.A. Nos. 1259/2016, 1166/2017, 1170/2017 & 586/2018

These miscellaneous applications do not survive for consideration as the main application itself stands disposed of.

Accordingly, M.A. Nos. 1259/2016, 1166/2017, 1170/2017 & 586/2018 stand disposed of.

Justice Raghuvendra S. Rathore, JM

Dr. Satyawan Singh Garbyal, EM

September 04, 2019
JG

