
(2009) 07 SC CK 0178

In the Supreme Court Of India

Case No : Civil Appeal No's. 4866-67 of 2009 (Arising out of S.L.P. (C) No's. 29055-29056 of 2008) and Civil Appeal No's. 4868, 4869, 4870-71, 4872-73, 4874, 4875-76 of 2009 (Arising out of S.L.P. (C) No's. 30075, 30112, 31123-31124 of 2008, 4408-4409, 6256, 60

D.D.A.

APPELLANT

Vs

Rajendra Singh and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 32
Delhi Development Act, 1957 — Section 11A(2), 11A(3), 12(1), 44

Citation : AIR 2010 SC 2516 : (2009) 161 DLT 330 : (2009) 10 JT 137 : (2009) 6 MLJ 375 : (2009) 10 SCALE 273 : (2009) 8 SCC 582 : (2009) 12 SCR 163

Hon'ble Judges : P. Sathasivam, J;K. G. Balakrishnan, J;B. S. Chauhan, J

Bench : Full Bench

Advocate : G.E. Vahanvati, Attorney Genl., Gopal Subramaniam, Sol. Genl., Parag P. Tripathi, ASG, T. Andhyarujina, Sameer Parekha, Devdutt Kamat, Arjun Garg, Yashodara Anant, Smita Bhargava, for Parekh and Co., Aman Ahluwalia, Binu Tamta, Sushma Suri, Sanjay Sharawat, Abhishek Tewari, S.N. Terdal, Neeraj Sharma, Roopali Singh, Archana Lakhatia, for Dua Associates, Kunal Bahri, Sanjay Parikh, Jitin Sahni, Ritwick Dutta, A. N. Singh, Mamta Saxena, Anitha Shenoy, Tarun Johri, N. Waziri, Rajiv Nanda, M.L. Lahoty, Sanjay Sharawat, Vishnu B. Saharya, Viresh B. Saharya, for Saharya and Co., Arijit Prasad and D.S. Mahra, for the Appellant;

Final Decision : Disposed Of

Judgement

P. Sathasivam, J.—All these special leave petitions are directed against the common judgment and order dated 03.11.2008 of the High Court of Delhi in W.P. (C) Nos. 6729 & 7506 of 2007 which, inter alia, issued certain directions for setting up of a Committee to enquire as to whether the Commonwealth Games Village (CGV) site complex is situated on the Yamuna "riverbed" or "floodplain" and further observed that any construction made or third party rights created are at the peril and risk of the Organisers/Government. Aggrieved by the said

judgment, Delhi Development Authority (in short "DDA") has filed S.L.P.(C) Nos. 29055- 29056 of 2008, Ministry of Urban Development & Poverty Alleviation has filed S.L.P.(C) No. 30075 of 2008 and Ministry of Youth Affairs and Sports has filed S.L.P.(C) Nos. 4408-4409 of 2009 as well as S.L.P.(C) Nos. 6029- 6030 of 2009 and Organizing Committee, Commonwealth Games has filed S.L.P.(C) Nos. 31123-31124 of 2008. Vinod Kumar Jain, petitioner in W.P.(C) No. 6729 of 2007 before the High Court of Delhi, has filed S.L.P.(C) No. 30112 of 2008 and Rajendra Singh and Ors. petitioners in W.P.(C) No. 7506 of 2007 before the High Court have filed S.L.P.(C) No. 6256 of 2009 praying for stopping all construction activities on the riverbed of Yamuna other than CGV site and Delhi Metro Rail Corporation. Since all the special leave petitions arise from the common judgment, all are being disposed of by the following judgment.

2. Leave granted in all the special leave petitions.

3. Brief Facts:

Vinod Kumar Jain and Rajendra Singh and Others claiming as environmentalists approached the High Court of Delhi by filing W.P.(C) Nos. 6729 and 7506 of 2007 for the following reliefs:

(a) Directing the respondents to remove any construction, fill up, digging etc. made so far and restore the ecology of Yamuna river bed.

(b) Declaring the Yamuna riverbed in Delhi as an ecologically sensitive area and hence to be protected and preserved.

(c) Directing that any construction in the Yamuna river bed will permanently destroy the ecology of river Yamuna, its ground water recharge ability and will be violative of public trust doctrine, precautionary principle which are part of Article 21 of the Constitution.

(d) Directing that the respondents should locate an alternative site for the project(s) as pointed out in the EAC recommendations dated 03.11.2006.

(e) Setting aside of EC dated 14.12.2006 as being violative of Article 21 of the Constitution.

(f) Setting aside of EC dated 22.01.07; 29.03.07; and 02.04.07 as being arbitrary, whimsical, mala fide and violative of Articles 14 and 21 of the Constitution.

(g) Directing the respondents to restore the ecology of river Yamuna in accordance with the "Polluters pay Principle".

(h) Pass any such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

4. On 13.09.2003, Commonwealth Games Federation selected Delhi as the venue for Commonwealth Games scheduled to be held from 3rd to 14th October, 2010. After due deliberations, XIX Commonwealth Games 2010 are being hosted in

Delhi pursuant to a commitment made by the Indian Olympic Association in the form of an agreement in which it agreed to host the games in India with the approved standards and requirements of the Commonwealth Games Federation. Complaining that the Governmental agencies and the DDA are effecting various steps including massive construction on the periphery of Yamuna river, apprehending that the action being taken would not only destroy the river Yamuna but also pose severe threat to the Delhi city as well and in order to stop the entire proceedings, the said petitioners moved the High Court of Delhi. The main claim of the petitioners before the High Court was to the effect that the ongoing construction would affect the ecological integrity of the "riverbed" besides causing irreversible damage to the "floodplain".

5. Refuting the apprehensions and the allegations of the public interest litigants, the Respondents therein i.e. the Central Government authorities - Ministry of Environment & Forests, Ministry of Youth Affairs and Sports, Ministry of Urban Development and Poverty Alleviation, Government of Delhi and DDA filed separate counter affidavits extensively dealing with all the subjects including the apprehension about the alleged damage to the ecology of the Yamuna riverbed, floodplain and other environmental hazards. Apart from highlighting these aspects, they also placed various reports from specialized agencies like Ministry of Environment & Forests (MoEF), Delhi Metro Rail Corporation (DMRC), National Environmental Engineering Research Institute (NEERI) and Central Water Power Research Station (CWPRS).

6. The Government Departments in addition to clearing the apprehension about damage to Yamuna 'riverbed' and 'floodplain', also highlighted that the writ petitions are to be dismissed on the ground of delay/laches. They also pointed out that when the change of "category" was published by way of public notice, though certain general objections were raised, no specific objection was raised by anyone much less by the petitioners about the Yamuna riverbed or floodplain. With handful of materials, both the writ petitioners and the official respondents highlighted their case before the High Court. The Division Bench, by the impugned order dated 03.11.2008, though refused to interfere with the project in question, however, directed that the Committee under the Chairmanship of Dr. R.K. Pachauri, which is to be constituted by the Government, is to examine and monitor the construction carried out by the DMRC. Apart from the said direction, on the same day, one of the Judges i.e. Rekha Sharma, J. while agreeing with the judgment prepared by A.K. Sikri, J. issued further directions castigating the Government and made serious insinuation against their officers. After those directions propounded by Rekha Sharma, J., the other learned Judge, A.K. Sikri, J. approved the same by treating those directions and observations as "post script" and held that the directions issued by Rekha Sharma, J. would be deemed as directions of the Bench. Aggrieved by the conclusion and ultimate directions, D.D.A., Ministry of Urban Development and Poverty Alleviation, Ministry of Youth Affairs and Sports and Organizing Committee, Commonwealth Games filed the above appeals by way of special leave petitions. Dissatisfied with the conclusion

of the Division Bench for not directing stay of the execution of any proposal or any fresh construction except Commonwealth Games Village and Metro Station contemplated on the river floodplain till the appropriate authority is constituted for regulating the floodplain, the writ petitioners have filed appeals by way of special leave petitions.

7. Heard Mr. G.E. Vahanvati, learned Attorney General for India, Mr. Gopal Subramaniam, learned Solicitor General of India, Mr. Parag P. Tripathi, learned Additional Solicitor General of India and Mr. T. Andhyarujina, learned senior counsel for Ministry of Youth Affairs & Sports, M/s. Sanjay Parikh and M.L. Lahoty, learned Counsel for the contesting respondents in the appeals filed by the Government and for the appellants in Civil Appeals @ S.L.P.(C) Nos. 30112/08 and 6256/09.

CONTENTIONS BY BOTH SIDES:

8. The main contentions raised by Mr. G.E. Vahanvati, learned Attorney General for India and Mr. Gopal Subramaniam, learned Solicitor General of India are as follows:

(i) Commonwealth Games Village (CGV) site was not situated either on a "riverbed" or on the "floodplain" of the Yamuna River.

(ii) Before proceeding with the formation of Commonwealth Games Village, NEERI reports of 1999 and 2005 were duly considered. NEERI, which is an expert and autonomous body, in its report of January 2008, categorically observed that site in question was not a "floodplain" or "riverbed".

(iii) Remedial measures suggested by Central Water Power Research Station (CWPRS) had been accepted by the Government and being carried out.

(iv) Commonwealth Games Village is located in Pocket III which is beyond the embankment. This Court, even in 2005, approved the construction of Akshardham Temple which is 1.7 Km. away from the river Yamuna in Pocket III area which is abutting the present site of construction.

(v) Based on the report of NEERI, change of land measuring 42.5 hectares in Pocket III was notified on 21.09.1999 and the petitioners have filed the Writ Petitions only in 2007. Hence, the same are liable to be dismissed on the ground of delay/laches.

9. In addition to the above submissions, Mr. Parag P. Tripathi, learned Additional Solicitor General of India and Mr. T. Andhyarujina, learned senior counsel for the Sports Authority highlighted that at each level Ministry of Environment and Forest (MoEF) discussed with the environmental authorities and there is no deviation or violation of the Masterplan or any other rules relating to ecology and environment, more particularly, in relation to river Yamuna.

10. M/s. Sanjay Parikh and M.L. Lahoty, learned Counsel appearing for the contesting respondents herein/petitioners before the High Court submitted that

NEERI reports in 1999 and 2005 does not permit the Government to proceed with any construction in the Commonwealth Games Village site and the subsequent report in 2008 was not acceptable in view of its earlier decision. They also submitted that inasmuch as the city of Delhi is wholly depending on Yamuna River, its "riverbed" and "floodplains" have to be protected. They further highlighted that the site selected for Commonwealth Games Village falls within the river zone wherein the construction activities cannot be carried out without looking into the matter and evaluation by experts like Dr. R.K. Pachauri, as directed by the High Court. They finally submitted that though they are not opposing the Commonwealth Games, they are more concerned about the ecology and environment of the people of Delhi. With regard to the Akshardham Temple and the order of this Court in 2005, it is stated that no elaborate study was conducted by any of the specialized agencies, hence, the said decision is not a binding precedent.

11. We considered the relevant materials, NEERI reports of 1999, 2005 and 2008, remedial measures suggested by CWPRS, MoEF and other specialized bodies as well as the rival contentions raised by either side.

12. Development Plan in Yamuna River Stretch:

a) From the materials placed by various specialized bodies we gather that the river Yamuna is an important natural feature of NCT, Delhi and a source of major water supply to the city. It draws its water from the upper reach of Yamunotri glacier and traverses a distance of about 400 Km before joining river Ganga at Allahabad. The river Yamuna in NCT, Delhi cuts through the city from the North to the South for a length of nearly 50 Km of which about 22 Km is within the urban stretch and the balance of about 28 km in the rural stretch. Over the last few decades the water quality in the river has deteriorated due to increased wastewater discharges from 18 major storm water drains and growing encroachments in the river bed area. Also, the ecosystems supporting migratory avifauna and ground water recharge are being continuously degraded and require immediate attention for conservation. Further, the aesthetic, recreational, and navigational potential of the river has not been harnessed in planning for development during the last three decades.

b) A number of development and other government agencies have proposed plans for integration of river Yamuna in the planning for development in NCT-Delhi.

c) Although these urban planning proposals have emphasized the integration of the river in the life of NCT- Delhi, the ecological role of the flood plains and its conservation imperatives, the land-water interface phenomena, and aesthetic, recreational and navigational potential have not been adequately emphasized in any of the development proposal.

d) River channelization, as proposed through various plans for the purposes of flood control, drainage improvement, maintenance of navigation, reduction of

bank erosion etc. involve direct modification of the river channel. Conventional methods for channelization involve enlargement of the channel by widening and/or deepening to increase the channel capacity to carry the water that would have otherwise spread onto the floodplain. The principal consequences of channelization are physical and include disturbances to existing equilibrium in channel hydrology. The environmental impacts include reduction in the complexity of habitat by elimination of pools, riffles and non-uniformities in channel geometry; and downstream flooding and sedimentation. It is therefore necessary that the landscapes are comprehensively surveyed before planning for restoration/ renaturalization/ channelization of the river Yamuna.

e) The Delhi Development Authority, therefore, decided that an "Environmental Management Plan" for the stretch of the River Yamuna in NCT, Delhi be formulated with an overall objective of rejuvenation of the river. It retained NEERI in August 1998 to undertake this study. This document delineates the summary of the study providing recommendations after Initial Environmental Examination of the proposed activities in Phase I of DDA's River Front Development Plan. The IEE report delineates guidelines for development in the floodplains of 3 Km stretch between new railway bridge and proposed ILFS - NOIDA bridge through the study of existing situation in the flood plains and contiguous areas. The proposed DDA plan is examined for its conformance with the development guidelines. The areas of non-conformance are altered and the actions to be taken for easing the stress on Yamuna river from the activities in the contiguous areas delineated.

f) Due to guide bunds at ITO barrage, Bhairon Marg and Pantoon bridge besides the proposed New Rail Bridge for Mass Rapid Transit System between Nizamuddin bridge and New Rail Bridge the waterway in this stretch from New Rail Bridge in the north upto proposed ILFS-NOIDA Link Bridge in the south is almost channelized and confined to a width of 550m.

g) The total flood plain area in this stretch between left and right banks is 490 ha. The dominant land use in these areas is agriculture and other land uses viz., vegetation, grasslands, settlements, a monument, horticulture, flyash deposition are also found.

h) The ambient air quality in the contiguous areas of river stretch is characterized by the concentrations of primary gaseous pollutants in the range: Suspended Particulate matter (SPM) 189-722 (Mg/m³), Sulphur dioxide (SO₂) 9.2-271 (Mg/m³) and Nitrogen Oxides (NO_x) 18-34 (Mg/m³) exceeding the CPCB standards for residential areas.

i) The existing water quality in this stretch of the river has very high values of BOD (19 mg/l) and COD (135 mg/l). The biological communities that have developed in the flood plains have characteristics of pollution tolerance and cleaning up. The vegetation on the flood plain area is characterized by grass lands, bushy and shrub vegetation, plantations and cultivation. The aquatic

vegetation is very poor in this stretch due to degraded water quality of the river water. The species diversity has severely degraded resulting in existence of five species of Phytoplanktons and one species of Zooplankton only. The fish fauna in the river, available in monsoon and non monsoon seasons is the result of migrated fingerlings from the upstream, feeding on decayed vegetation from swampy areas on the bank.

j) Flood discharges and levels at different gauging stations in river Yamuna during 1978, 1988 and 1995 indicate that the discharge and levels decrease by about 6 and 5.7% respectively along the stretch in NCT-Delhi.

13. Delhi Administration even as early as on 29.03.1989, by virtue of powers conferred by Sub-section (1) of Section 12 of the Delhi Development Act, 1957 read with the notification of the Government of India in the Ministry of Health Family Planning and Urban Development dated 14.02.1969, the Administrator of Union Territory of Delhi declared Yamuna River Front, as described in the Schedule as "Development Area" for the purpose of the said Act. Thereafter, several uses of reclaimed lands in Phase I of "River Yamuna" was considered and discussed in several meetings. As a result of various studies, two proposals/alternatives were submitted for consideration by CWPRS, Pune. Three Pockets which were identified are as under:

Pocket-1

Due to the site constraints and presently non-availability of site, it is proposed to be used mainly for public and S.P. recreational & parking purposes. The parking proposed will take care of the spill over of parking required for Pragati Maidan during the peak days, mainly for heavy vehicles.

Pocket-2

It is proposed to be used for recreational and public & semi-public district (convention centre) and office complex (GNTCD Offices), and race course etc.

Pocket-3

It is proposed to be used for recreational and public and semi public uses.

This subject was considered in the Technical Committee Meeting held on 26.09.1995, wherein the following recommendations were made:

The proposal on the land to be reclaimed under phase-I along river Yamuna was discussed in detail and the Technical Committee suggested in view of Authority resolution on the subject, the broad land use pattern as worked out be placed before the next Authority meeting as an agenda item. Land use pattern once agreed by the Authority would be detailed out in house in consultation with Chief Engineer, Irrigation & Flood Deptt. Total land utilization plan could be worked out by holding National Competition taking into consideration the inputs from the on going studies.

Ultimately, a Resolution was passed with the following observations:

- (i) Presentation of the scheme be also made before the Ministry of Environment & Forests for possible funding by the Government of India under Yamuna Action Plan, specially with reference to the river bund and boulevard.
- (ii) Planning activity for spiritual park, hotels & Convention Centre be immediately taken up after consultation with the Ministry along with action in parallel for completion of procedural formalities relating to change in land-use etc.
- (iii) International competition be invited after receipt of necessary clearances from the Ministry.

14. As a follow-up action with regard to land use change for Pocket III, Phase I, Government of India, Ministry of Urban Affairs & Employment, Department of Urban Development (Delhi Division) addressed a letter dated 08.05.1997 to the Commissioner (Planning), Delhi Development Authority, Vikas Minar, New Delhi. In the said communication, the Ministry requested Delhi Development Authority to issue public notice inviting suggestions/objections in respect of approval of the Yamuna Committee for change of land use of Pocket III, Phase I. Pursuant to the same, Delhi Development Authority on 23.06.1997 issued public notice. It is relevant to mention the contents of the said notice:

DELHI DEVELOPMENT AUTHORITY

No.F.20(11)94-MP Dated 23.06.1997 PUBLIC NOTICE

The following modifications which the Central Government proposes to make in the Master Plan/Zonal Plan for Delhi are hereby published for public information. Any person having any objections/suggestions with respect to the in writing to the Commissioner-cum-Secretary, Delhi Development Authority, Vikas Sadan, 'B' Block, INA, New Delhi with a period of 30 days from the date of issue of this notice. The person making the objections/suggestions should also give his name and address.

MODIFICATIONS

The land use of an area, measuring about 2.0 hec. falling in Zone 'C' (Civil Line Area), bounded by Sewerage Treatment Plant in the North and West, transmission site in the East and 'Recreational Area' in the South, is proposed to be changed from 'recreational' to 'Public and Semi Public facilities'.

The land use of an area, measuring about 35 hec. falling in zone 'O' (River Yamuna) bounded by Railway line/proposed 'Recreational' (Green Belt) in the North, NH-2 proposed Recreational Green Belt, in the South, Noida Link Marginal Bund Road and proposed 'Recreational' (Green Belt) in the East and the River Yamuna in the West, is proposed to be changed from 'Agricultural and Water body' (A-4) to 'Public and Semi Public facilities'.

The plans indicating the proposed modification will be available for inspection at

the office of the Joint Director, Master Plan Section, 6th Floor, Vikas Minar, I.P. Estate, New Delhi on all working days within the period referred above.

(V.M. BANSAL) COMMISSIONER-CUM-SECRETARY DELHI DEVELOPMENT AUTHORITY

It is pointed out that certain comments have been received and all were duly considered. The Central Water Commission also conveyed the approval of the Yamuna Committee only for Pocket III out of Pockets I, II and III which were submitted by the Delhi Development Authority for consideration. 15) After considering all the materials, a Notification was issued on 21.09.1999 which reads as under:

GOVERNMENT OF INDIA MINISTRY OF URBAN AFFAIRS & EMPLOYMENT
DEPARTMENT OF URBAN DEVELOPMENT (DELHI DIVISION)

Nirman Bhawan, New Delhi Dated 21.09.1999

NOTIFICATION

WHEREAS certain modification which the Central Government proposes to make in the master plan for Delhi regarding the areas mentioned hereunder were published with notice No. F.20(11)94- MP dated 23.06.1997 in accordance with the provisions of Section 44 of the Delhi Development Act, 1956 (61 of 1957) inviting objections/suggestions as required by Sub-section (3) of Section 11A of the said Act, within thirty days from the date of the said notice.

2. WHEREAS 3 objections/suggestions were received with regard to the said modification.

3. AND WHEREAS the Initial Environmental Examination Study (Phase-I) Report has been submitted by National Environmental Engineering Research Institute (NEERI), Nagpur and based on which the Central government have decided to modify the Master Plan. 4. NOW, THEREFORE, in exercise of the powers conferred by Sub-section (2) of Section 11A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of publication of this Notification in the Gazette of publication of this Notification in the Gazette of India;

MODIFICATION

Land use of an area measuring 42.5 hact. (105.0 acres) bounded by green buffer/ Railway line in the North, green buffer/marginal bund in the East, green buffer/ NH-24 in the South and proposed parking/camping site in the West falling in Zone 'O' (River Yamuna) Phase I, Pocket III is changed from 'agricultural and water body' (A-4) to public and semi public facilities.

(R.S. GUSAIN) Under Secretary to the Government of India

Pursuant to the same, Master Plan for Delhi 2001 was also modified and the following Notification was issued:

THE GAZETTE OF INDIA: EXTRAORDINARY [Part II-Sec 3(ii)] MINISTRY OF
URBAN DEVELOPMENT (DELHI DIVISION)

NOTIFICATION

NEW DELHI, THE 18TH AUGUST, 2006

S.O. 1321 (E). - Whereas certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2001 regarding the area mentioned hereunder were published in the Gazette of India, Extraordinary, as Public Notice vide No. S.O. 273 (E) dated 2nd March, 2006 by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1956 (61 of 1957) inviting objections/suggestions as required by Sub-section (3) of Section 11A of the said Act, within thirty days from the date of the said notice.

2. Whereas a number of objections/suggestions were received in response to the above stated public notice dated 2nd March, 2006 with regard to the proposed modifications and whereas the Central Government have, after carefully considering all aspects of the matter, decided to modify the Master Plan-2001.

3. Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 11A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2001 with effect from the date of Publication of this Notification in the Gazette of India.

Modification:

(i) The land use of an area of 16.5 hec in Pocket-III, Phase-I in Zone 'O' is changed as per following description:

Area in Land use Location hec. Land Use Changed Boundaries (MPD- 2001)
Pocket-III (i) 11.0 Agricultural Residential East- hec. and Water Parking/Akshar Body Dham Temple Phase-1 (ii) 5.5 Agricultural Commercial/ West-45m wide South - hec. and Water Hotel embankment Green/National Body road. Highway 24 North-proposed In Zone-'O' 30m road. [No. K-13011/25/2005-DD1B] S. MUKHERJEE, Under Secy

16. It is also brought to our notice that the Cabinet Secretariat, Government of India issued an Office Memorandum dated 24.08.2007 constituting a High Powered Committee for Yamuna River Development Authority. The said Office Memorandum reads as under:

No. 731/2/1/207-Cab-III Government of India Cabinet Secretariat Rashtrapati Bhawan New Delhi dated the 24th August, 2007

OFFICE MEMORANDUM

Sub: Constitution of Yamuna River Development Authority

As approved by the Prime Minister, it has been decided to constitute a High

Powered Committee for Yamuna River Development Chaired by the Lt. Governor, Govt. of NCT Delhi with the Chief Minister of Delhi as Vice-Chair. The composition of the High Powered Committee would be as follows:

- 1) Lt. Governor, Delhi Chairperson
- 2) Chief Minister, Delhi Vice Chairperson
- 3) Secretary, M/o Urban Development Member
- 4) Secretary, M/o Environment & Forests Member
- 5) Secretary, Ministry of Water Resources Member
- 6) Chief Secretary, GNCT of Delhi Member
- 7) Pr. Secy, Urban Development, GNCT of Delhi Member
- 8) CEO, Delhi Jal Board Member
- 9) Vice Chairman, DDA Member

2. The terms of reference of the High Powered Committee shall be as follows:

- a) Commission studies on different aspects of the development of the river, viz., hydrology, ecology, environmental pollution, sustainable use of the river front, etc., to feed into the policy frame work.
- b) Develop a policy framework and prepare an integrated plan addressing issues of both quantity in terms of river flow and quality in the Yamuna River.
- c) Develop an operational plan for implementation of the river action Programme.
- d) Effect intersectoral coordination for planning and implementation until such time a statutory arrangement is in place.
- e) Suggest the design for statutory framework.

3. The committee would be free to co-opt expert members as felt by the Committee.

4. The committee would submit a three monthly report on action to the Prime Minister's Office through the Cabinet Secretary.

(Rajive Kumar) Joint Secretary to the Government of India

17. It is also brought to our notice that at the request of the Chief Engineer (SEZ), Delhi Development Authority, New Delhi, regarding environmental issues of Commonwealth Games Village, Dr. R. K. Pachauri has consented to head the panel to monitor the on-going construction at Commonwealth Games Village site. The acceptance letter finds place at Page 364, Volume-II of the paperbook.

18. The above materials as projected and demonstrated by learned Attorney General and Solicitor General clearly show that, at every stage, ecological

integrity of the river, the concept of "riverbed", "floodplain" and "river zone" were duly considered. It also reveals that the expert bodies like NEERI and CWPRS were duly consulted and based on their expert opinion the land under Pocket III alone was reclassified and Master Plan Delhi 2001 was also suitably amended.

19. Now, let us consider the objections and contentions raised by Mr. Sanjay Parikh with regard to NEERI report and subsequent changes such as classification of Pocket III and modification in Master Plan Delhi 2001. It is his grievance that though in the reports submitted in 1999 and 2005, NEERI has not specifically permitted the Government or the DDA to use the land in question for any other activities, but in January, 2008 it has changed its view in order to suit the convenience of the organizers of the CGV. In the light of the persistent claim made by Mr. Sanjay Parikh, we have carefully verified the reports submitted by NEERI in 1999, 2005 as well as in 2008. In order to understand the reports of NEERI and other expert bodies, it is to be noted that the site selected for CGV falls in Khasra Nos. 48, 49, 51, 52, 57, 58, 59, 60, 61, 63 and 64 of Mauza Chiraga Zanubi. It is located in Pocket-III and 1.2 kms away from Yamuna river. It is not in dispute that the site located is adjacent to Akshardham Temple which had been approved by this Court in the order dated 12.01.2005 in Writ Petition No. 353 of 2004 which we will discuss in the later part of the judgment. In 1999 report, NEERI has suggested that the area beyond the bund is to be reclaimed for development and construction. It was brought to the notice of the High Court and highlighted before us that water recharge pond as suggested in the report had not been disturbed or damaged.

20. Learned Solicitor General of India has clarified that NEERI report of 1999 as well as 2005 are silent about Akshardham construction bund constructed in 2002 and the area marked in 2003 for CGV. In those circumstances, it was pointed out that the general guidelines provided by NEERI in 2005 are subject to what has been specifically approved. It speaks about the general guidelines for development of riverbed. Though in the NEERI report 2005, it was observed that no residential or industrial facilities requiring permanent structure should be provided on the riverbed, the learned Solicitor General of India pointed out that the NEERI report of 2008 clearly takes note of the fact that the final report submitted by it in October, 2005 did not assess the embankment within Akshardham bund which had come into existence later as it was not part of the original study carried out by NEERI in the year 1999. It is relevant to mention that after taking note of the embankment, it clearly observed that the area does not form part of the "floodplain". The same reads as under:

Given the definition of the project area, as considered by MoEF in its clearance letter dated 29th March, 2007, the boundaries of Yamuna River, which were considered in the earlier NEERI report, were demarcated by East and west bank bunds, whereas now the river, post 2002, has new boundaries in the project region, i.e. 45 m wide and about 1 Km long (Stretching between New Railway Bridge and Nizamuddin road bridge) newly constructed bund in East and original

bund in West. The reclaimed area, Pocket III is deemed to be no more a part of the flood plain zone by the Akshardham bund and MoEF has in principle approved the bund.

(Emphasis supplied)

21. In January, 2008, NEERI submitted a report after considering the earlier reports and various relevant materials supplied by MoEF and analyzing Environmental Impact Assessment Study of CGV site and with the assistance of Central Water Commission, Ministry of Urban Development, Environmental Management Plan for Rejuvenation of River Yamuna. The said report was based on relevant materials and by way of scientific study. It is useful to refer the relevant part of the report.

Commonwealth Games Village Complex by Delhi Development Authority in Pocket III of Sub-Zone 6 of Yamuna River

Introduction

India will be hosting the prestigious Commonwealth Games 2010 in the City of Delhi. For the accommodation of the sports persons and the officials of various countries, DDA has proposed to create a Commonwealth Games Village (CGV) complex in Pocket III of Sub Zone 6 of Yamuna River. The village complex is designed to provide accommodation for a maximum 10,000 persons (during and post commonwealth games 2010). It will also provide other facilities like parking, swimming pools, athletic tracts, police station, water and wastewater treatment plants, electrical substation and metro rail station. To provide the safety of Pocket III, against any flood of the highest magnitude, DDA has constructed an embankment having top width of 20m and a bottom width of 45m connecting the new railway bridge and NH-24 Bridge.

Problem Statement

DDA requested NEERI's opinion through letter No. CE(SEZ)7(213)07/113 dated 14/01/08 on three aspects given below:

- a. It is correct that the land where Commonwealth Games Village is being constructed is not a part of the Yamuna Flood Plain, more so after the construction of embankment (Akshardham Bund).
- b. Whether after compliance of the conditions imposed by the MoEF, while according environmental clearance of the Commonwealth Games Village, is there any threat of environmental degradation/loss of ground water recharge.
- c. Whether any further additional abatement/mitigation measures are required to be taken.

Background

NEERI submitted a report titled "Initial Environmental Examination of Development Plan in Yamuna River Stretch between Railway Bridge and Proposed

ILFS Bridge" during January 1999. Figure 1 presents the proposed landuse for riverbed development in Pocket III as recommended in the report. Block 10 (15 hec.) and 11 (27.5 hec.) was recommended for public/semi public use. Block 12 was recommended as parking area. Block 13 (16.5 hec.) was recommended for campsite, which was expected to be open to the river front and Block 14 was recommended for groundwater recharge pond, to be filled up by Yamuna River water. Block 15 was recommended as wooden community to enhance terrestrial biodiversity. NEERI further submitted a complete rejuvenation plan for River Yamuna in NCT in April 2000. Various central and state government ministries and departments reviewed this report. Based on the comments and observations NEERI submitted the final report in October, 2005. However, NEERI report did not assess any embankment (Akshardham bund), which came into existence by that time, as it was not part of the original study.

NEERI's Assessment

DDA has proposed the development of CGV in Pocket III Block of Subzone 6 of the Yamuna River. From the historical development of Pocket III, we have the following details:

1. The Ministry of Water Resources, which is the supreme authority for giving permission to any activity in India pertaining to water bodies, etc., has given clearance for reclamation of Pocket III for the development (vide Noting No 16/1/YC/97/EM-1/376-88, dated 28th May, 1997, Item 56.2.1 of Flood Management-I Dte, Central Water Commission, Government of India).

2. The Gazette Notification dated August 18, 2006 by Government of India, Ministry of Urban Development, has notified the modified Master Plan for Delhi indicating landuse for 16.5 ha in Pocket III, Phase I in Zone "O" as follows.

- Pocket III (area 11 ha) changed landuse-Residential
- Phase I in Zone "O" (area 5.5 ha), changed landuse- Commercial/hotel.

In this notification, the boundaries indicated for this pocket are Parking/ Akshardham Temple in East, Green/National Highway 24 in South, 45 m wide embankment road in West and Proposed 30 m road in North.

3. For the proposed CGV in this pocket, environmental clearance has been obtained by DDA from MoEF by submitting necessary documents. The documents included a report titled "Environmental Impact Assessment study of Commonwealth Games Village" prepared by M/s. EQMS India Pvt. Ltd. Delhi on behalf of DDA. MoEF granted environmental clearance to the project vide its letter dated Dec 14, 2006 subject to specific conditions under development/ construction phase, operation phase and general conditions. The Ministry also sought clarification on upstream flooding and further directed DDA to conduct a study (vide its letter dated Jan 22, 2007). DDA engaged Central Water and Power Research Station (CWPRS), Pune for the study on "Hydraulic Model Studies for Assessing the Effect of Akshardham Bund on the Flow Conditions in

the River Yamuna at Delhi" and submitted that report to MoEF in March 2007. The CWPRS study indicated that the bund would cause insignificant flood problem in the upstream as well as in the region of the bund. The study indicated that a free board of 2.2 m would be available as the top elevation of this embankment is 208.3 m above MSL, whereas the highest water level for severest flood, with magnitude of 12,750 cum/s, is estimated as 206.1 m above MSL. These ensure the complete safety of Pocket III against any flood. On submission of this report, MoEF emended its environmental clearance letter of 14/12/2006 and issued an amended letter on March 29, 2007. This letter mentions the total project domain and directed DDA to undertake mitigation/abatement measures, as identified by CWPRS. MoEF further directed DDA to comply with the following conditions.

- To raise and strengthen the embankments along the river in the UT of Delhi, to cater safely for a discharge of 9,910 cum/s and also to check that the embankment is not over topped, in case the discharge increases to 12,750 cum/s.
- Strengthen the existing embankments and guide bund, up to a minimum free board of 1.8 m. The guide bund should also be strengthened to check flood discharge of 12,750 cum/s.
- In order to protect the Akshardham Bund, the left upstream guide bund of Nizamuddin road bridge, the left downstream of Nizamuddin Railway Bridge and the right bank between Nizamuddin Railway Bridge, Nizamuddin road bridge, provide a layer of stone crates of 1.0m x 1.0m x 0.85m on the sloping portion as well as an apron over geofabric filter shall be laid. On the rear side of the bunds, turfing shall protect the slope.

NEERI reviewed the above-mentioned reports and necessary documents supplied by DDA. NEERI did not do any further study. NEERI has the following observations:

- a. Given the definition of the project area, as considered by MoEF in its clearance letter dt 29 March, 2007, the boundaries of Yamuna River, which were considered in the earlier NEERI report, were demarcated by East and West bank bunds, whereas now the river, post 2002, has new boundaries in the project region, i.e. 45m wide and about 1 km long (stretching between New Railway Bridge and Nizamuddin road bridge) newly constructed bund in East and original bund in West. The reclaimed area, Pocket III, is deemed to be no more a part of the flood plain zone by the Akshardham Bund and MoEF has in principle approved the bund.
- b. The mitigation measures prescribed by MoEF in its clearance letter dated 14 December, 2006, if implemented, should be adequate for environmental safeguards. The concern about groundwater recharge in this region can be addressed by creating an appropriate water body in the project area. Therefore, a detailed action plan including artificial recharge for the same should be

formulated to avoid any depletion in the groundwater level.

c. A monitoring committee should be constituted to review periodically the post project environmental quality. The committee should guide DDA on mitigation measures.

22. We have already referred to the notification of the Delhi Administration dated 29.03.1989 declaring Yamuna River Front as "Development Area" for the purpose of Delhi Development Act, 1957. After due deliberations and various studies, three pockets were identified and submitted to CWPRS, Pune. Based on its report, the matter was discussed with NEERI and finally the DDA after hearing public objections/suggestions in respect of change of land use of Pocket-III Phase-I issued a notification in the Gazette of the Government of India on 21.09.1999. The said notification makes it clear that land use of an area measuring 42.5 hectares (105.0 acres) bounded by green buffer/railway line in the north, green buffer/marginal bund in the east, green buffer/NH-24 in the south and proposed parking/camping site in the west is changed from "agricultural and water body" to "public and semi-public facilities". In addition to the same, Government of India, Ministry of Urban Development also issued a notification modifying the land use from "agricultural and water body" to "public and semi-public facilities". Based on the above materials, a High-Powered Committee for Yamuna River Development Authority was constituted with the approval of the Prime Minister by the Cabinet Secretariat on 24.08.2007 consisting of the Lt. Governor, Government of NCT as Chairperson, Chief Minister, Delhi as Vice-chairperson and Secretaries of Urban Development, Environment and Forests, Ministry of Water Resources, Chief Secretary, GNCT of Delhi, Principal Secretary, Urban Development, GNCT of Delhi, Chief Executive Officer, Delhi Jal Board, Vice Chairman, DDA as Members to go into the aspects of development of the river, ecology, environmental pollution, sustainable use of river front and quality of water in the Yamuna river. We were told that the said Committee in association with Dr. R.K. Pachauri is monitoring the ongoing construction of CGV. In such circumstances, we are unable to accept the contention of Mr. Sanjay Parikh. We are equally of the view that the High Court is not justified in making comments on the NEERI report presented in January, 2008.

23. It is brought to our notice that during the course of hearing in view of certain doubts raised by counsel for the petitioner before the High Court, NEERI filed an affidavit dated 29.01.2008 wherein it clarified the entire aspects and asserted that the site in question is not even "floodplain" much less a "riverbed". It is also pointed out in its report that 85% of the land at the present site is being used for recreational purposes and 15% for development purposes (including residential and commercial). We have already pointed out that the present site falls within Pocket-III, the NEERI and Yamuna Standing Committee gave clearance only for development of Pocket-III.

24. Though there is no statutory definition for "riverbed" and "floodplain" from

the statute, the dictionary meaning of the same is as under:

"Riverbed" has been defined as the area over which the river flows. In the Thames Conservators Case [1897] 2 QB 335 at 337 it was held that the word riverbed denotes that portion of the river which in the ordinary or regular course of nature is covered by the waters of the river.

The "bed of the river" was defined as the area covered by the river and is the space sub-adjacent to the river over which it flows between the banks. It is the space between the banks occupied by the river at its fullest flow.

The Black's Law Dictionary, 6th Edition (Pg 154) describes a river bed as the hollow channel of a water course; the depression between the banks worn by the regular and usual flow of water; The land which is covered by the water in its ordinary low stage; The area extending between the opposing banks measured from the foot of the bank from the top of the water at its ordinary stage.

P. Ramanatha Aiyer's Advanced Law Lexicon, Volume 4, 2005 Edition (Pg. 4157-4158) has described the bed of a river as the space contained between the banks; river bank in turn has been defined in the same law lexicon as the boundaries of a river throughout its width when the water flows to its maximum quantity.

"Floodplain" - Land adjacent to rivers, which, because of its level topography, floods when river overflows. [Black's Law dictionary, 6th Edn., p.641]

It is also been defined as 'a low, flat area in either side of a river that can accommodate large amounts of water during a flood, lessening flood damage further downstream' [Fredd Michaels, 'Dictionary of Environment Studies']

In view of the literal meaning and in the light of the clarification by NEERI in their affidavit dated 29.01.2008, the site in question is neither a "floodplain" nor a "riverbed", hence contrary arguments of the writ petitioners before the High Court and in this Court and the ultimate conclusion of the Division Bench for appointment of a fresh Committee cannot be sustained.

25. AKSHARDHAM TEMPLE:

We have already pointed out and in fact not in dispute that the present CGV site is situated adjoining to Akshardham temple. When land was allotted for construction of Akshardham Temple, U.P. State Employees Confederation and Anr. filed Writ Petition No. 353 of 2004 before this Court under Article 32 of the Constitution of India. At the relevant time, the land was in the hands of the State of U.P. The petitioners therein also challenged the allotment of the said land by the DDA to the third respondent (Akshardham) on the ground that the same would adversely affect recharging of underground water and the allotment is contrary to the land user as declared in the development plan. It was also objected by the State of U.P. that the land allotted to the third respondent on the condition that there shall be no construction in the land in question and the first

respondent (UP Government) has not put up any construction but is developing the same as a green belt and there is no violation of the terms of allotment. On behalf of the DDA, it was stated that the construction that was being put up by the third respondent is in accordance with the sanctioned plan and the same is nearly 1700 metres away from the Yamuna River bank. It was also placed before this Court that the construction there on was permitted after obtaining the opinion of the Central Water Commission and NEERI which is an autonomous body. Accepting the above statements, supported by the report of NEERI and in terms of sanctioned plan approved by the DDA, this Court declined to entertain the writ petition and dismissed the same. After hearing all the parties, the said order was passed on 12.01.2005. The reading of the order of this Court makes it clear that the present CGV site and the site allotted for Akshardham temple form part of the same area and both are adjacent to each other. It is also clear that on perusal of the sanctioned plan by the DDA and opinion of the Central Water Commission as well as NEERI, this Court rejected the contention of the petitioner therein by dismissing their writ petition. In the light of the reasoned order by this Court, it is unfortunate that the High Court has commented that the said decision is not a binding decision and not applicable to the case on hand.

26. Delay/Laches:

Now, let us consider whether the writ petitions filed in the High Court in the year 2007 is justifiable and ought to have been dismissed on the ground of delay/laches. Though an objection was raised by all the official respondents before the High Court about the inordinate delay in filing the writ petitions by the petitioners, the said aspect was not either adverted to or considered by the Division Bench. We have already referred to the fact that the site in question was changed to "public and semi-public" way back on 21.9.1999. Before re-classifying the site, the DDA and the concerned authorities issued public notice calling for objections/suggestions. The particulars furnished by the official bodies clearly show that after getting the suggestions from the public change of land use for the site falling in zone 'O' was changed on 21.9.1999 from "agricultural and water body" to "public and semi-public" purpose. Apart from this, the decision of hosting the Commonwealth Games at Commonwealth Games Village site was taken in 2003. The Department also issued a Global Tender process for Public Private Partnership ("PPP") participation in the residential portion of the Commonwealth Games project which was floated in December 2006 and was completed in June 2007. Apart from these materials, it was also highlighted before the High Court as well as before this Court to the effect that Environmental Clearance was granted on 14.12.2006 permitting permanent structures on the site after taking into consideration that the MoEF had stated "since environmental significance and public open space amenity of the river flood plain should be recognized, it was urged that the concerned authorities (DDA) that an extension of similar development in the area between Yamuna and its flood protection bunds must not be proposed without due environmental planning and prior environmental clearance." It was highlighted that in the light

of the suggestions of Ministry of Environment and Forests, studies were carried out and after completion of such studies permanent structures were permitted to be constructed on the site in April 2007. Unfortunately, the High Court has lost sight with regard to these material aspects. In *Narmada Bachao Andolan Vs. Union of India and Others*, , this Court has held that the PIL should be thrown out at the threshold if it is challenged after the commencement of execution of the project. It was also held that no relief should be given to persons who approach the Court without reasonable explanation under Articles 226 and 32 after inordinate delay. We reiterate that the delay rules apply to PILs also and if there is no proper explanation for the delay, PILs are liable to be summarily dismissed on account of delay. In the case on hand, it is not in dispute that both the petitioners though claiming that they are very much conversant with environment and ecology, approached the High Court only in the middle of 2007, hence on the ground of delay and laches, the writ petitions were liable to be dismissed.

27. In view of our discussion, the conclusion of the High Court that whether present construction is on the "riverbed" or "floodplain" requires further consideration of an Expert Committee cannot be sustained. In view of the abundant materials, which we discussed above, there is no ground for consideration by another Expert Committee, when admittedly the High Powered Committee with the assistance of Dr. Pachauri is monitoring the entire work. As pointed out earlier, the observation of the High Court about the decision of this Court in respect of Akshardham temple stating that the same is not a binding precedent is also not acceptable. We have already pointed out that before rejecting the writ petition filed by the U.P. State Employees Confederation and Ors., this Court, based on the sanctioned plan and noting the distance between Yamuna river and the site in question (Akshardham Temple) is nearly 1700 metres and taking note of the fact that the construction thereon was permitted after obtaining opinion of the Central Water Commission and NEERI which is an autonomous body, dismissed the said writ petition. Inasmuch as the present CGV site is adjacent to Akshardham Temple, the earlier decision of this Court with reference to Akshardham Temple cannot be ignored, on the other hand, the same is applicable to CGV site also.

28. In the light of the above discussion, the following conclusions would emerge:

(a) In view of notification in the Gazette of the Government of India dated 21.09.1999 relating to change of land use and to the fact that the site in question for the construction of CGV had been chosen and widely published way back in the year 2003 itself, the writ petitions which were filed before the High Court of Delhi only in the year 2007, in the absence of proper explanation, the High Court ought not to have probed the matter at this juncture.

(b) On a conjoint reading of NEERI reports 1999, 2005 and January, 2008 coupled with its assertion in the form of an affidavit dated 29.01.2008 clearly show that the CGV site is not either on a "riverbed" or on the "floodplain" of the

Yamuna river.

(c) The decision of expert and autonomous body - NEERI supported by materials placed by other bodies such as CWPRS and MoEF, the same cannot be lightly interfered with by the Court without adequate contra materials.

(d) After due deliberations by the DDA with other departments including the Yamuna Committee and pursuant to the elaborate discussion on 10.11.1997 itself, 35 hectares of land were recommended for change of land use and the same was approved (Pocket-III) on 21.09.1999 for "public and semi-public purpose".

(e) Before change of the land use, the authority concerned issued public notice, heard objections/suggestions and in consultation with expert bodies such as NEERI, CWPRS and MoEF, approved the said proposal and permitted the DDA to use the area covered under Pocket- III for "public and semi-public purpose".

(f) The observation and conclusion of the High Court that the site in question is on a "riverbed" cannot be sustained. The High Court disregarded and ignored material scientific literature and the opinion of experts and scientific bodies which have categorically held that the CGV site is neither located on a "riverbed" nor on the "floodplain". Further, in view of the change of the land use which was approved way back in 1997 by the Yamuna Committee and by NEERI permitting the DDA to use Pocket-III for "public and semi-public purpose", the contrary conclusion arrived at by the High Court is liable to be set aside.

(g) Inasmuch as Akshardham Temple site is adjacent to CGV site, the decision of this Court dated 12.01.2005 in Writ Petition (C) No. 353 of 2004 has bearing on the issue and it is a binding precedent for all purposes.

(h) The direction of the Division Bench for formation of a fresh Committee by the Government to examine and monitor the construction carried out by the DMRC is also liable to be set aside. However, as assured by the Attorney General for India, the Committee approved by the Prime Minister of India consisting of Lt. Governor of Delhi as Chairperson, Chief Minister of Delhi as Vice- chairperson and other members who are all representing various departments should monitor the entire activities in association with Dr. R.K. Pachauri.

(i) In view of our conclusion, the DDA and other authorities are free to proceed with the work at CGV site.

29. With the above directions and observations, we set aside the common judgment and order of the Delhi High Court dated 03.11.2008 in W.P. (C) Nos. 6729 and 7506 of 2007. Consequently, Civil Appeal Nos. 4866-4867, 4868, 4872-73, 4875-4876 & 4870-4871 of 2009 arising out of SLP (C) Nos. 29055-29056 of 2008, 30075 of 2008, 4408-4409 of 2009, 6029-6030 of 2009 and 31123-24 of 2008 are allowed on the above terms and Civil Appeal Nos. 4869 & 4874 of 2009 arising out of SLP (C) Nos. 30112 of 2008 and 6256 of 2009 are dismissed. No order as to costs.