

ITEM NO.6

COURT NO.13

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.3367/2020

ASHOK KUMAR SINHA

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

IA No. 54518/2024 - CLARIFICATION/DIRECTION, IA No. 247125/2023 - EXEMPTION FROM FILING O.T., IA No. 184904/2023 - EXEMPTION FROM FILING O.T., IA No. 73609/2023 - EXEMPTION FROM FILING O.T., IA No. 28766/2024 - EXEMPTION FROM FILING O.T., IA No. 100859/2020 - STAY APPLICATION

Date : 02-04-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s) : Mr. Neeraj Kumar Sharma, AOR
Mr. Akash Vashishitha, Adv.
Ms. Nidhi Agarwal, Adv.

For Respondent(s) : Mrs. Aishwarya Bhati, A.S.G.(NP)
Ms. Manisha Chava
Swarupama Chaturvedi, Adv.
Ruchi Kohli, Adv.
Navanjay Mahapatra, Adv.
Santosh Kumar, Adv.
Annirudh Sharma-(ii), Adv.
Dr. N. Visakamurthy, AOR

Ms. Aishwarya Bhati, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Swarupama Chaturvedi, Adv.
Ms. Ruchi Kohli, Adv.
Mr. Navanjay Mahapatra, Adv.
Mr. Santosh Kumar, Adv.

Mr. Annirudh Sharma-ii, Adv.

Mr. Azmat Hayat Amanullah, AOR
Ms. Rebecca Mishra, Adv.
Mr. Sagar Chauhan, Adv.

Mr. Manish Kumar, AOR
Mr. Suyash Vyas, Adv.

Mr. Chandrika Prasad Mishra, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. We heard Mr. Akash Vashishitha, the learned counsel appearing for the appellant, Mr. Azmat Hayat Amanullah, the learned counsel appearing for the State of Bihar and Ms. Manisha Chava, the learned counsel appearing for the Union of India.

2. We take notice of the order passed by a Coordinate Bench of this Court on 16.12.2022, the same reads thus:-

“Ms. Aishwarya Bhati, learned Additional Solicitor General apprises this Court that steps have been taken by the concerned Ministry for identifying unauthorised constructions, if any, on the flood of the river plain Ganga in and around the location over which complaints have been made by the appellant by using Geo Mapping technology and it will take sometime to complete this process. List the matter after six weeks alongwith the report from the concerned Ministry.”

3. We also take notice of the order dated 17th February, 2023, the same reads thus:-

"Ms. Aishwarya Bhati, learned additional solicitor general appearing for the Union of India, Ministry of Jal Shakti, submits that a survey map has already been made available to the State of Bihar.

Let an assessment on the survey map giving the ground level situation as regards particulars of existing constructions on the floodplains of the river Ganga in Patna. A report shall be filed disclosing therein how the floodplains have been described in the revenue records and if there is any construction within the zone of floodplains of the Ganga. List after four weeks."

4. In pursuance of the two orders passed by this Court, referred to above, an affidavit has been filed on behalf of respondent no.4 duly affirmed by one Sh. Ved Prakash Mishra, Joint Secretary in the Ministry of Environment, Forest and Climate Change (MoEF&CC), New Delhi.

5. We have looked into the affidavit, referred to above, the same appears to be one relating to dumping of plastic.

6. The affidavit reads thus:-

"ADDITIONAL AFFIDAVIT ON BEHALF OF THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, RESPONDENT NO. 4.

I, Ved Prakash Mishra, S/o Shri Ram Sidh Mishra, aged about 50 years currently working as Joint Secretary in the Ministry of Environment, Forest and Climate Change (MoEF&CC) having office at Aliganj, Jor Bagh, New Delhi-110003, do hereby solemnly affirm and state as under:

1. That I, in the capacity of Joint Secretary at Ministry of Environment, Forest and Climate Change, am fully conversant with the facts of the case and competent to swear this affidavit on behalf of Respondent No 4.

2. That the contents of the petition under reply, unless

specifically admitted, are denied to the extent that they are inconsistent with the submissions made hereinafter. The annexure accompanying this affidavit is true copy of its original.

3. That, without prejudice to the above and as an alternative submission, the deponent craves liberty to raise further required contentions during the course of the proceedings.

4. That vide order dated 02.08.2024, Hon'ble Court directed Respondent no. 4 -MoEF&CC file an affidavit with respect to the para 8: In course of deliberation in this matter, it came to light that there is wide spread use of plastic in the areas which are to be kept free from such pollution potential products. The dumping of plastic is causing serious environment degradation and also impacting aquatic life in the river banks and the water bodies in the country. Unless concerted effort is made by the responsible authorities with people's cooperation, irrespective of the efforts to target illegal/unauthorized constructions, the desired improvement of the quality of the water in river Ganga/all other rivers and water bodies in the country will remain illusory. A copy order dated 02.08.2024 is marked and annexed as Annexure- I.

5. The Ministry vide G.S.R. 320 (E) dated 18th March 2016 had notified the Plastic Waste Management (PWM) Rules, 2016 that provides satisfactory framework for management of plastic waste in the country. A copy of the Plastic Waste Management Rules, 2016 is marked and annexed as Annexure-II.

6. The Ministry had notified the Plastic Waste Management (Amendment) Rules, 2021 vide G.S.R. 571 (E) dated 12th August, 2021 thereby prohibiting the manufacture, import, stocking, distribution and sale and use of identified single use plastic items, which have low utility and high littering potential, with effect from 1st July, 2022, in order to reduce pollution of environment caused by littered single use plastic items leading to protecting and improving the quality of the environment. A copy of the Plastic Waste Management (Amendment) Rules, 2021 is marked and annexed as Annexure-III.

7. That considering the unmanaged and littered plastic waste has adverse impacts on terrestrial and aquatic ecosystems, inter alia the following identified single use plastic items, which have low utility and high littering potential, have already been prohibited, with effect from 1st July, 2022,

(i) ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene [Thermocol] for decoration;

(ii) plates, cups, glasses, cutlery such as forks, spoons, knives, straw, trays, wrapping or packing films around sweet boxes, invitation, cards, and cigarette packets, plastic or PVC banners less than 100 micron, stirrers.

8. That Ministry of Environment, Forest and Climate Change has also notified the Guidelines on Extended Producer Responsibility (EPR) for plastic packaging vide Plastic Waste Management (Amendment) Rules, 2022, on 16th February 2022. The guidelines mandate targets for recycling of plastic packaging waste, reuse of rigid plastic packaging and use of recycled plastic content. The ban on identified single use plastic items, which have littering potential and low utility, coupled with implementation of extended producer responsibility on plastic packaging is expected to reduce pollution caused by littered and unmanaged plastic waste. A copy of Guidelines on Extended Producer Responsibility is marked and annexed as Annexure- IV.

9. That Guidelines for Extended Producer Responsibility (EPR) on plastic packaging notified in February 2022, has provided clear framework for market based EPR mechanism made operational through a centralized online portal. As on date, under this framework for EPR implementation on plastic packaging, around 41446 PIBOs are registered on the online EPR portal as opposed to 300 in 2021. The EPR liability of PIBOs for 2022-23 is around 3 million tonnes, which is significant proportion of plastic waste generated in the country. Around 2503 plastic waste processors have also registered on the centralized online portal.

10. It is submitted that as on date, EPR certificates of around 75 lakh tonnes equivalent of plastic waste processed have been generated by registered plastic waste processors, of which, around 57 lakh tonnes EPR certificates have been procured by producers, importers and brand owners to fulfil their EPR obligations. The progress achieved can be seen on the Dashboard of the EPR portal.

11. Further, a National Task Force has been constituted which reviews measures on implementation of ban on identified single use plastic items and effective plastic waste management in the country. All States and UTs have constituted a Special Task Force under Chief Secretary inter alia for effective plastic waste management. The States/UTs have been asked to take measures for stopping of ingress of plastic waste into water bodies including rivers.

12. That in view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to pass such other order and further order(s) as this Hon'ble Court may deem fit and necessary in the interest of justice.

13. That no new facts and no documents have been taken in the Counter Affidavit, which was not, parts of the Court below."

7. However, we are concerned as on date with the issue of encroachment over the banks of river Ganga.

8. The learned counsel appearing for the appellant(s) submitted that there are large scale encroachments all over the banks which requires immediate attention. He pointed out that some parts of this river banks are very rich in fresh water Dolphins.

9. As pointed out by the learned counsel appearing for the State

of Bihar we looked into the second supplementary counter affidavit filed on behalf of the State duly affirmed by one Shri Pramod Kumar Rajak in his capacity as Project Officer cum Deputy Director, Urban Development & Housing Department, Government of Bihar.

10. The affidavit reads thus:-

"2nd SUPPLEMENTARY COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NOS. 5 TO 9.

I, Pramod Kumar Rajak, aged about 30 years, son of Shri Bhim Rajak, resident of Vill. + P.O. Belawon, Police Station Kaler, District Arwal, Bihar do hereby solemnly affirm and state as follows:-

1. I am presently posted as the Project Officer cum Deputy Director, Urban Development and Housing Department, Government of Bihar. I have been authorized to file the present 2nd supplementary counter affidavit on behalf of the State of Bihar (Respondent No. 5) as well as Respondent Nos. 6 to 9. I am aware of the facts of the present case on the basis of official records maintained by the State of Bihar that I believe to be true. As such, I am competent to depose the present counter affidavit.

2. The present civil appeal has been preferred by the Appellant assailing the impugned Order dated 30.06.2020 passed by a Bench of the National Green Tribunal (NGT) in OA No. 42/2020/EZ vide which the Appellant's original application before the Ld. NGT was summarily dismissed for being 'bereft of particulars of the violations and of the violators'. It is pertinent to note that the Appellant's application before the Ld. NGT (and the present civil appeal) pertain to the alleged encroachments on the floodplains of the Ganga River in Patna.

3. The present 2nd supplementary counter affidavit is being filed on behalf of the Respondent Nos. 5 to 9 in terms of the directions contained in Order dated 17.02.2023 passed by this Hon'ble Court to prepare and file a report regarding encroachments on the floodplains of the river Ganga in Patna. It may be noted that the answering Respondents had earlier filed a brief counter affidavit in response to the subject civil appeal and, thereafter, a supplementary counter

affidavit was also filed by the answering Respondents. The contents of the same may kindly be read in conjunction with the present 2nd supplementary counter affidavit.

4. As mentioned in the supplementary counter affidavit already filed, in terms of the mandate of this Hon'ble Court vide Order dated 17.02.2023, the Urban Development and Housing Department, Government of Bihar vide departmental letters bearing letter no. 1996 dated 04.05.2023, letter no. 2118 dated 16.05.2023, letter no. 2572 dated 15.06.2023, letter no. 3598 dated 01.08.2023 requested the District Magistrate, Patna to make available a detailed report on the encroachments made on the floodplains of the river Ganga in Patna after proper verification on the ground and on the basis of revenue records.

5. Thereafter, the District Magistrate, Patna vide letter no. 5609 dated 25.08.2023 made available a detailed survey report that was prepared and submitted by a measurement team constituted by the District Magistrate, Patna for carrying out a survey and measurement, on the ground level, from Digha Ghat to Nauzar Ghat situated on the banks of river Ganga in Patna.

6. It is notable that till that time (25.08.2023), survey had been completed along the banks of the Ganga river from Digha Ghat to Mahatma Gandhi Setu that is approximately an 8 km stretch that is divided into Survey Map (1908-1909), Khas Mahal Digha-Diara map and Municipal Survey Map (1932-1933).

7. It may be of note, for context, that in each survey map, private or raiyati land is marked by plots or *khesra* numbers and the areas along the banks of river Ganga were left unsurveyed, presumably because they were subject to seasonal floods. Any private construction on these parts which is unauthorized has been identified as an encroachment.

8. In pursuance of the directions of the District Magistrate, the measurement team conducted measurement work on the basis of Survey Map (1908-1909), Khas Mahal Digha-Diara map and Municipal Survey Map (1932-1933) and the said measurement team submitted a detailed 1st survey report (from Digha Ghat to Mahatma Gandhi Setu) to the Circle Officer, Patna Sadar enclosing therewith (i) report, (ii) visual map, (iii) joint map of Siwan Patna District, and (iv) list of

encroachers that were forwarded vide letter no. 7558 dated 24.08.2023 to the District Magistrate, Patna.

9. As per the measurement report qua the survey completed till August 2023 from Digha Ghat to Mahatma Gandhi Setu, the status of illegal constructions/encroachments, Mauza/village-wise was as follows:

- (i) Mauza Digha Diara Khas Mahal ½: Total number of illegal constructions, permanent/temporary encroachments are 35.
- (ii) Mauza-Digha Diara, Thana no. 141:- Total number of illegal constructions, permanent/temporary encroachments are 21.
- (iii) Mauza-Mainpura, Thana No. 140: Total number of illegal constructions, permanent/temporary encroachments are 06.
- (iv) Mauza-Mainpura Diara, Thana No. 140: Total number of displaced families that were rehabilitated to these areas, decades ago by the Government in Bindī Toli are 205.
- (v) Mauza-Dujra Diara, Thana No. 13: Total number of displaced families that were rehabilitated to these areas, decades ago by the Government are 08.

10. As per the report (qua the survey completed till August 2023 from Digha Ghat to Mahatma Gandhi Setu), at present the river Ganga is flowing only through certain parts of Diara area that is marked in the map and there is no specific map of the river Ganga in the survey maps. Temporary farming is done by local villagers due to increase and decrease in the water level during the rainy season. A true translated and typed copy of the report of the measurement team has already been placed on record by the answering Respondents with their supplementary counter affidavit where the same is marked as Annexure R-5/10.

11. This report of the measurement team (qua the survey completed till August 2023 from Digha Ghat to Mahatma Gandhi Setu) was shared by the Circle Officer, Patna City with the Office of the District Magistrate, Patna vide letter dated

24.08.2023 that clarified, inter alia, that in order to vacate the permanent/temporary encroachments that had been identified, and in terms of the Bihar Public Land Encroachment Act, 1956, action has duly been initiated vide Encroachment Case No. 14/2023-24, Encroachment Case No. 15/2023 and Encroachment Case No. 16/2023-24. A true translated and typed copy of letter dated 24.08.2023 has already been placed on record along with the supplementary counter affidavit filed by the answering Respondents where it has been marked as Annexure R-5/11.

12. The 1st supplementary counter affidavit filed by the answering Respondents also specified that as regards the Displaced Persons in these un-surveyed areas, a scheme for rehabilitation would need to be prepared in case a decision was taken to relocate these persons.

13. This 1st report (qua the survey completed till August 2023 from Digha Ghat to Mahatma Gandhi Setu) also clarified that the process for measurement and identification of the encroachers was still underway for the remaining area i.e., from Mahatma Gandhi Setu to Nauzer Ghat.

14. It is notable that this balance survey exercise has also now been concluded and vide letter dated 27.09.2023, the Measurement Survey Report for the remaining area (hereinafter referred to as "the balance Measurement Survey Report") was supplied by the District Magistrate, Patna to the Department enclosing therewith a copy of the report, list of encroachers and other documents. A true translated and typed copy of the letter dated 27.09.2023 is enclosed herewith and is marked as Annexure R-5/13.

15. As was the case in the earlier part of this exercise, in each survey map, private or raiyati land is marked by plots or *khesra* numbers and the areas along the banks of river Ganga were left un-surveyed, presumably because they were subject to seasonal floods. Any private construction on these parts which is unauthorized has been identified as an encroachment.

16. The salient observations of this the balance Measurement Survey Report is as follows:

i. The measurement work and identification of encroached

areas was done by the team (constituted under the orders of the District Magistrate) based on a comparative examination of the Survey Map (1908-09) and the Municipal Survey Map (1932-33).

- ii. A total number of 151 illegal constructions comprising of temporary and permanent structures were identified and listed for the balance from between Mahatma Gandhi Setu to Nauzer Ghat, comprising of un-surveyed areas of Sambalpur Diara, Police Station Nos. 169 and 170.
- iii. In order to vacate the permanent/temporary encroachments that have been identified, and in terms of the Bihar Public Land Encroachment Act, 1956, action has duly been initiated vide Encroachment Case Nos. 24/2023-24, 25/2023-24, 26/2023-24, 27/2023-24, 28/2023-24, 29/2023-24, 30/2023-24, 31/2023-24, 32/2023-24, 33/2023-24, 34/2023-24, 35/2023-24, 36/2023-24, 37/2023-24, and 38/2023-24.
- iv. Apart from the list of encroachments/illegal construction appended with the report, the report also specified that there is a concrete road from Mahavir Ghat to Nauzer Ghat which is presently being used for general traffic and is also functioning as an embankment.
- v. The balance Measurement Survey Report also reiterated that at present the river Ganga is flowing only through certain parts of Diara. Temporary farming is done by local villagers due to increase and decrease in the water level during the rainy season.

A true translated and typed copy of the Measurement Survey Report for the remaining area dated 18.09.2023 along with the list of encroachments enclosed therewith is enclosed herewith and is marked as Annexure R-5/14.

17. The facts stated in the present affidavit are true to my knowledge as derived from the official records. No part of the same is false and nothing material has been concealed therefrom. The annexures filed with the present affidavit are true translated copies of their respective originals."

11. We would like to have more than a fair idea as regards the current status of the matter.

12. We would like to know what steps have been taken by the authorities to remove all such encroachments over the banks of river Ganga.

13. We would also like to know how many such encroachments are still there as on date on the banks of the river and in what manner authorities propose to remove all such encroachments & within what period of time.

14. Before we proceed to issue final directions in this matter, we would like to have a report in this regard by the next date of hearing.

15. We direct both the State of Bihar as well as the Union of India to file an appropriate report so that we can proceed further in the matter.

16. It shall be open for the appellant also to furnish us with the necessary information as regard the position as on date.

17. Post it after four weeks.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)