

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**(EXTRA ORDINARY WRIT JURISDICTION )**

PUBLIC INTEREST LITIGATION UNDER ARTICLE 226 OF THE CONSTITUTION

**W. P (C) No .....of 2007**

**IN THE MATTER OF :**

1. SHRI RAJENDRA SINGH
2. SHRI MANOJ KUMAR MISRA
3. INDIAN NATIONAL TRUST  
FOR ART AND CULTURAL HERITAGE
4. SHRI SANJAY KAUL

**VERSUS**

1. GOVERNMENT OF DELHI  
THROUGH THE CHIEF SECRETARY  
STATE SECRETARIAT, NEW DELHI
2. UNION OF INDIA  
THROUGH THE SECRETARY  
MINISTRY OF ENVIRONMENT AND FOREST
3. SECRETARY,  
MINISTRY OF YOUTH AFFAIRS AND SPORTS  
GOVERNMENT OF INDIA  
SHASTRI BHAWAN,  
NEW DELHI
4. SECRETARY,  
MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION,  
NIRMAN BHAWAN,  
NEW DELHI

5. DELHI DEVELOPMENT AUTHORITY  
THROUGH ITS VICE CHAIRMAN  
VIKAS SADAN, INA  
NEW DELHI
  
6. DELHI METRO RAIL CORPORATION LTD.  
THROUGH ITS MANAGING DIRECTOR  
NDCC PLACE  
PRAGATI VIHAR  
BHISHMA PITAMAH MARG  
NEW DELHI-110003

IN THE MATTER OF

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS TO THE RESPONDENTS TO SAVE RIVER YAMUNA BY STOPPING DESTRUCTIVE ACTIVITIES ON THE YAMUNA RIVER BED.

AND

IN THE MATTER OF

ARTICLE 14, 21, 48 A, 51 A (g) OF THE CONSTITUTION OF INDIA

AND

IN THE MATTER OF

DESTRUCTIVE ACTIVITIES ON THE YAMUNA RIVER BED RESULTING IN ECOLOGICAL DAMAGE AND VIOLATION OF THIS HON'BLE COURT'S ORDER

AND

IN THE MATTER OF

VIOLATION OF THE PROVISIONS OF THE ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION DATED 14-9-2006 ISSUED BY THE MINISTRY OF ENVIRONMENT AND FORESTS UNDER THE PROVISIONS OF THE ENVIRONMENT (PROTECTION) ACT, 1986

TO

HON'BLE CHIEF JUSTICE

AND HIS LORDSHIP'S COMPANION PUSINE JUSTICES OF THE

HON'BLE HIGH COURT OF DELHI

AT NEW DELHI

THE HUMBLE PETITION OF THE PETITIONERS ABOVE NAMED:

**MOST RESPECTFULLY SHOWETH:**

**1. BRIEF INTRODUCTION AND ARRAY OF PARTIES**

1.1 The river Yamuna and its flood plain along with the Ridge are the most critical natural areas in the City. The River flood plain while playing a key role in the management of floods in the City also ensures ground water recharge on an annual basis. Unfortunately, the river flood plain in the city has seen a gradual land use change through encroachments on it either by illegal encroachers or most unfortunately by State created structures. The Petitioners main concern is the fact that the rapid pace at which destructive activities are being undertaken and approved by the Authorities concerned in the flood plains of the Yamuna puts a question mark on the survival of the river itself and which threatens the lives and livelihood of the people of Delhi unless urgent action is taken to stop what is happening and thereby reverse the trend. The importance of the issue also arises from the fact that the main source of water for Delhi is the river Yamuna.

It is in this view of crucial importance that the instant petition is being preferred by the petitioners aggrieved by the large scale destructive activities on the Yamuna River bed specifically the Delhi Metro Depot called as Yamuna Depot, the Metro Mall under construction by Parsvnath Builders and the Games Village for the proposed Commonwealth Games in Delhi in 2010. If such constructions are allowed it will not only permanently impair the ability of the river bed to recharge ground water but will expose the people to increased threats of damage in the event of floods in the river. This will be a constant threat to the lives and livelihoods of the people of Delhi.

It is also to be noted that while on one hand a committee constituted by this Hon'ble court titled 'the Yamuna – Removal of Encroachment Monitoring Committee' under the Chairmanship of Justice (Retd) Usha Mehra is busy removing jhuggi jhopri and other offending structures from the river bed under your directions, the state authorities on the other hand are busy replacing those by construction of permanent residential and commercial structures in the river bed against all expert advice.

- 1.2 That the Petitioner No 1 is a social worker of repute who was associated with Jayaprakash Narayan Sampurna Kranti Movement in his student days and has mobilized the people to stand up and speak for themselves and to conserve the natural resources in a useful and sustainable manner. He has been instrumental through his efforts in revival of a lost river in Rajasthan and has been active in water conservation activities all over the country for a long time as a result of which he has been conferred with the Magsaysay Award in 2001 and the Joseph C. John Award in 2000. Popularly known as 'Water man' he has over the last 25 years led number of movements for water security in different parts of the country. He is the Convenor of Jal Biradari an organisation based in Jaipur, Rajasthan.
- 1.3 That the petitioner No 2 is a former member of Indian Forest Service having retired from the service as a Chief Conservator of Forests (CCF) and is currently the convenor of Yamuna Jiye Abhiyaan (Yamuna Forever Campaign) which is a campaign consisting of several NGO's and Individuals formed in to a citizen's initiative for the revival of river Yamuna which is concerned with the rapid decline in the environmental quality of the Yamuna River due to rampant destructive activities and encroachments on the river bed and pollution which continues despite legal provisions as well as orders of this Hon'ble Court.
- 1.4 That the petitioner No. 3 is Indian National Trust for Art and Cultural Heritage (INTACH) filing the present Writ Petition through its Member Secretary who is duly authorised to file the same as per the Memorandum of association and Rules and Regulations of the Organisation. The Petitioner No.3 is a nation wide non profit membership organization. It was set up in 1984 with Sri Rajiv Gandhi being its first Chairman, to protect and conserve India's vast natural and cultural heritage. The Petitioner No. 3 has studied the river Yamuna in Delhi for many years.
- 1.5 That the petitioner No. 4 is a leading advocate for citizen's rights and concerns in the city of Delhi. He is the President of Peoples Action which is involved in raising critical Citizens' issues in public domain. He is a part of the active citizens groups raising the issue of threats facing the River Yamuna in Delhi.
- 1.6 That the Respondent No 1 is the Government of Delhi and has administrative control over the Yamuna River Bed. It is responsible for overall Planning and administration of the area.
- 1.7 The Respondent No 2 is the Secretary, Ministry of Environment and Forests, Government of India and is responsible for grant of environmental clearance (EC) under the provisions of the Environment Impact Assessment Notification, 2006 and ensuring that the respective states implement the same.
- 1.8 That the Respondent No 3 is the Secretary, Ministry of Urban affairs and is the nodal ministry for approval of Plans and programmes related to the National Capital Territory of Delhi.

- 1.9 That the Respondent No. 4 is the Secretary, Ministry of Youth Affairs and Sports, Government of India and is the nodal Ministry for organizing the Commonwealth Games and other sporting events in the country.
- 1.10 That the Respondent No. 5 is the Delhi Development Authority (DDA) which is responsible for developmental planning in Delhi and is charged with the raising of the Commonwealth Games Village as well as the other associated structures of the Common Wealth Games, 2010.
- 1.11 That the Respondent No. 6 is the Delhi Metro Rail Corporation (DMRC) which is responsible for construction of the Yamuna Metro Depot, Metro mall as well as many other structures related to the Metro on the Yamuna Flood Plain.
- 1.12 That the Yamuna River bed is jointly owned by different agencies such as Delhi Development Authority, Government of Delhi and several others.

## **2. FACTS IN BRIEF**

- 2.1 That the subject matter of the present petition are the destructive activities which are currently being undertaken on the Yamuna river bed in the form of constructions as well as other commercial and polluting facilities and obstructions like guide bunds and raised roads which threatens the ecological integrity of the River besides causing irreversible damage to the flood plain and its capacity to recharge ground water and at the same time seriously expose the city to catastrophic impacts of floods made worse due to Channelisation of the river bed. The Petitioners submits that a brief description of the River Yamuna and its importance for the citizens of Delhi is imperative in order to appreciate the urgent need to protect and preserve the river in Delhi along with its flood plain for posterity.

## **3 YAMUNA AND ITS IMPORTANCE**

- 3.1 The river Yamuna, passing as a lifeline through the nation's capital, has immense importance for several reasons: the city was created on its banks and grew over centuries. That the Yamuna draws its water from the upper reaches of the Yamunotri glacier and traverses a distance of about 1400 Km before joining the river Ganga at Allahabad. The River Yamuna in Delhi cuts through the city from North to 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. A total of about 9700 ha of land is situated in the designated riverbed bounded by the discontinuous marginal bunds on the eastern and western side.
- 3.2 That a study was conducted on the "Ecosystem Services of Flood Plains of the Yamuna River" in Delhi by the Institute of Economic Growth. The study highlights the importance of flood plains and the ecosystem services provided by the river Yamuna. The report specifically states that:

- **Riverbed is one of the biggest channels of recharging underground water:** As water tables in Delhi are witnessing a sharp fall in underground water level, the Yamuna Riverbed becomes almost sacrosanct;
- The ecological services provided by the wetlands in the river corridor region provide immense benefit to human society
- Reduction of area under inundation as a result of channelisation of the river adversely affects the underground water recharge capability.
- **To maintain the groundwater recharge potential of flood plains it is imperative to prevent any fresh civic structures to come up in these areas.** Any human activity impairing the water recharge functions of the flood plain ecosystem will create problems not only for the present but the future generations as well.

The copy of the draft report titled "Ecosystem Services of Floodplains: An exploration of the water recharge potential for the floodplains for Delhi" by Pushpam Kumar, Institute for Economic Growth is filed herewith and Annexed as **Annexure P-1**.

**3.3** Another study on the river flood plain was carried out for the World Bank, Ministry Of Environment and Forest, MOEF and Indira Gandhi Institute of Developmental Research, Mumbai by Prof. C.R Babu, at University of Delhi and Pushpam Kumar at Institute of Economic Growth Delhi and others. This study which is titled " Valuation of Ecological Functions and Benefits: A case study of Wetland Ecosystems along the Yamuna River Corridors of Delhi Region" says

- **Channelisation of the river in the Delhi stretch should not be carried out.** Channelisation will not only lead to reduction of the ground water reserve, it will completely stop the ground water recharge that occurs from flood plains. In light of acute scarcity of fresh water in Delhi, reduction of the ground water reserves will further aggravate the water problem.
- The recharged water into the aquifer from this flood plain area is of very high quality, maintenance and preservation of this wetland will substantially save the treatment cost of water, which we have to meet otherwise.
- The study reveals that these wetlands have a significant biodiversity value which is presently unaccounted.

The copy of relevant portion of report titled "Valuation of Ecological Functions and Benefits: A Case study of Wetland Ecosystems along the Yamuna River Corridors of Delhi Region by CR Babu, University of Delhi, Delhi and Pushpam Kumar, Institute for Economic Growth, Delhi and Lallan Prasad and Rashmi Agrawal, University of Delhi, Delhi is filed herewith and annexed as **Annexure P-2**.

**3.4 YAMUNA AS A SOURCE OF WATER.** It is well known that river Yamuna is the main source of water for the city as is clear from a report in the Master Plan of Delhi (MPD) 2021 according to which the present sources of raw water available to Delhi are as under:

Yamuna Water – 750 cusec

Ganga Water – 470 cusec

BBMB Water – 265 cusec

Ground Water – 185 cusec

**3.5 YAMUNA FLOOD PLAIN AS NOTIFIED AREA FOR GROUND WATER RECHARGE:** The Central Ground Water Authority (CGWA) has notified the Yamuna Flood plain in Delhi as protected under the Environment (Protection) Act 1986 vide notification dated 2 September 2000. The copy of the Notification dated 2.09.2000 by Central Ground Water Authority is filed herewith and annexed as **Annexure P- 3.**

**3.6 HIGHEST YEILD FROM TUBEWELLS IS FROM THE YAMUNA FLOOD PLAIN :** According to Central Ground Water Board (CGWB) the yield of tube wells ranges between 18 - 144 m<sup>3</sup>/ hr in Yamuna Flood Plain aquifers. In Older Alluvium of eastern and western sides of the ridge, the yield of tubewells ranges between 12 to 36 m<sup>3</sup>/ hr. Tubewells constructed in Chattarpur alluvial basin tapping the aquifers of both alluvium and weathered and fractured quartzite yield about 9 to 27 m<sup>3</sup> / hr. Discharge of tubewells constructed in Quartzites varies from 6-15 m<sup>3</sup> / hr. Clearly the highest yield of water is in the Yamuna flood plains.

In short the river flood plain in the city of Delhi is like the proverbial golden goose with potential for providing services in form of surface and ground water and safety from floods in perpetuity to the residents of Delhi but is currently threatened and in danger of being killed due to the greed and avarice of the human beings.

This situation leads us to the following question.

**3.7 QUESTION OF 'DEVELOPMENT' OF RIVERS :**

**3.7.1 RIVER BED IS A PRECIOUS WET LAND AND NOT A USELESS WASTE LAND -** The very thought about and any process of 'development' in terms of a river is misplaced. 'Development' as is commonly understood with respect to dry lands cannot be applied in the same manner when it comes to wetlands including lakes, ponds, reservoirs, seas, oceans and rivers. These are unique land uses with their special and unique characteristics.

**3.7.2 Ramsar Convention** which is the international convention for the protection and management of wetlands around the globe and to which India is a party has defined a Wetland as "Areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static, flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters". The wetlands may incorporate riparian and coastal zones adjacent to the wetlands, and islands. Accordingly wetlands are such areas that are either permanently under water or

such stretches around or alongside which are inundated by water on a periodic basis. River beds and river flood plains are such integral parts of a river wet land system. They carry their special vegetation and biodiversity and play an extremely important role in the water cycles including recharge of ground water.

- 3.7.3 Hence all lands are either dry lands or wetlands. And what is true for dry lands in terms of developmental planning cannot and should not be assumed for wetlands especially of river flood plains with key ground water recharge role.
- 3.7.4 Hence it is but unfortunate that the state in Delhi led by the DDA has been attempting to 'develop' the remaining river bed of Yamuna in the city as if they were dry lands and wastelands waiting to be developed as a real estate. That river bed and flood plain is but a valuable wetland in the city has been held by courts and various expert studies in the past.

### **3.8 DANGERS OF 'DEVELOPING' A RIVER BED**

- 3.8.1** The dangers involved with developing a river bed and flood plains were brought home to the people in Mumbai and those in the country on 26 July 2005 in a rather tragic manner when incessant rains in the city marooned large parts of Mumbai city with consequent loss of life and property.
- 3.8.2 Report by Concerned Citizens' Commission (CCC) - An Enquiry into the Mumbai Floods, 2005:** A reason given by most government and administration officials for the breakdown of systems on July 26 was that this rainfall was unprecedented. There is enough evidence to suggest that the deluge was definitely not a 'once in a 100 year' event and that the intensity of such events will only increase with increased human activity. Moreover, this should definitely not be used to excuse shortcomings and incompetence on the part of the administration.
- 3.8.2.1** It is widely believed that one of the main reasons for the devastation wrought by the deluge in Mumbai was the Channelisation of river Mithi in Mumbai.
- 3.8.2.2 Interference with Ecology of River Mithi in Mumbai--The Mithi river / Mahim Creek:** The Mithi river was once a channel for areas that are now the central suburbs of Mumbai. With the rapid growth of the city in the last two decades, the once extensive mangrove ecosystems along the Mithi river and the Mahim creek have been destroyed. Hundreds of acres have been reclaimed for construction. These ecosystems serve as a buffer between land and sea. It is estimated that Mumbai has lost about 40% of its mangroves between 1995 and 2005, some to builders and some to encroachment (slums). Sewage and garbage dumps have also destroyed mangroves. Much of the Bandra-Kurla complex was created by replacing such swamps and mangrove areas. The mouth of the original Mithi River was once several hundred metres wide. Today, due to a number of interferences, the mouth is only about 40 m. wide.
- 3.8.2.3** The river's catchment area covers about three-quarters of Mumbai, from the Sanjay Gandhi National Park in the North to Dadar TT in the south. The unplanned growth of Mumbai and the consequent sacrifice of the Mahim Creek



holds lessons for all large cities of the world. **It is the CCC's conclusion that vast reclamation of land over the years for purposes such as BKC, the Bandra-Worli Sea Link, the unabated construction of unauthorised settlements along the banks and the "channelisation" of the river are three main interventions that have interfered to varying degrees with the Mithi's free flow, causing the destruction witnessed on July 26.** Each of these interventions are an indication of the faulty planning that has become the norm in Mumbai, either because of skewed priorities or vested interests.

The copy of the relevant extracts from the report by Concerned Citizens' Commission is filed herewith and annexed as **Annexure –P4.**

In this context it is relevant to consider the following steps visualized by the state but left incomplete till date:

### **3.9 DRAFT RIVER REGULATION ZONE NOTIFICATION**

**3.9.1** It is well known that presently rivers as a key ecosystem and a wetland of great importance has no legal protection in the country. The 10<sup>th</sup> Five Year Plan document in Chapter 9 dealing with Forests and Environment had mandated that:

"A legislation for a River Regulation Zone on the lines of Coastal Regulation Zone would be attempted".

Realising this fact a committee to formulate draft document for River Regulation Zone (on the lines of Coastal Regulation Zone under the Environment Protection Act, 1986) was constituted by the Ministry of Environment and Forests (MOEF) in 2002. The first and second meeting of the said committee was held on 8.1.2002 and 26.9.2002 at which a draft proposal on River Regulation Zone (RRZ) was presented and discussed.

**3.9.2** According to the draft Document on River Regulation Zone –

"The conservation of rivers requires that they are treated as ecosystems and their ecological integrity (physical, hydrological, chemical and biological characteristics and natural functions) is maintained.

Rivers are not merely channels that transport water; they are dynamic ecosystems that change over time in response to hydrological and biological processes and human interventions.

Therefore all those human / anthropogenic activities that directly or indirectly damage the river and flood plain habitat or degrade the water quality also need to be prohibited or regulated. Besides discharge of domestic and industrial effluents which are already regulated by the Water (Prevention and Control of Pollution) Act, other activities include:

- flow regulation (divergence and extraction of water)
- Channelisation of rivers and streams by constructing embankments

- Reclamation and encroachment of floodplains by landfills
- Disposal of different kinds of solid wastes including religious offerings, and
- Intensive agriculture on the flood plain and river bed

**3.9.3** Despite the initiative as above at the Ministry of Environment and Forests the said River Regulation Zone notification on the lines of Coastal Regulation Zone under the Environment (Protection) Act, 1986 is yet to be notified.

The copy of the Draft RRZ Notification papers is filed herewith and annexed as **Annexure P-5**.

#### **4. YAMUNA IN DANGER**

4.1 The very existence of the river is today threatened due to large scale destructive activities in the river bed which threatens the ecological integrity of river. According to the Draft Zonal Developmental Plan for the Zone O (river Yamuna), The encroachments in the River bed area aggravate the pollution in River Yamuna i.e. the land beyond the water course, being gradually filled up attracting different kind of construction activities in unplanned manner. The area has an assortment of authorized and unauthorized uses like Delhi Secretariat, Samadhi, Cremation Grounds, Sports Complexes, and Thermal & Gas Power Stations, Bathing Ghats, Sewerage Treatment Plant and Metro depot.

4.2 The issue of concern is that with the increase in population, there is an increasing demand for water. As one of the major and secure source of water is the ground water recharged through the floodplain, construction activities impinging on groundwater recharge is bound to affect drastically the impact on recharge. The following table shows the increasing population as well as increasing demand for drinking water as well as availability of the same.

TABLE -

<b>Year / Population</b>	<b>2006 / 16.5 mill</b>	<b>2011 / 19.0 mill</b>	<b>2021 / 23.0 mill</b>
Gross <b>Demand</b> (in 1000 cubic m per day)	4935	6038	8868
<b>Supply</b> by DJB (in 1000 cubic m per day)	3827	4008	4008

Source: DWSSP – Project Preparation Study – Volume 1

#### **5 DESTRUCTIVE ACTIVITIES WHICH WOULD DESTROY THE RIVER BED AND THE FLOOD PLAIN**

5.1 That in addition to the excessive pollution of the river, an issue of equal if not more concern is the large number of destructive activities being undertaken by Government as well as private entities which requires the urgent attention of this Hon'ble Court. The following structures as under construction or planned in the river bed are of immediate concern:

- (a) the 'Commonwealth Games Village' located on the Eastern bank of the river lying north of Nizamuddin Bridge and next to the Akshardham towards the river.
- (b) The Yamuna Metro Depot / Station, Metro Bridge and Embankment in the river bed.
- (c) Metro Mall under construction by Parsvnath Builders in the river bed.
- (d) Proposed Heliport in the river bed by Pawan Hans Ltd

A copy of the detailed report on the ongoing and planned construction on the Yamuna River bed as prepared by 'Yamuna Jiye Abhiyaan' is filed along with the petition. The accompanying report provides details about the nature of construction and its location vis a vis the Yamuna Flood Plain. It is submitted that the petitioners herein although would emphasize that all the structures are on the flood plain and are violation of the existing laws as well as the orders of this Hon'ble Court, the Petitioners would like to draw special attention to the manner in which the proposed Common Wealth Games Village has been accorded environmental clearance by the Ministry of Environment and Forests, MOEF on 2 April 2007.

The copy of the detailed report on the ongoing and planned construction on the Yamuna River bed is filed alongwith the petition and annexed as **Annexure P-6**.

## 5.2 THE COMMONWEALTH GAMES VILLAGE

5.2.1 The Common Wealth Games is going to be the first mega event hosted by the City of Delhi since the 1982 Asian Games. In preparing for the Games, an array of infrastructural activities are planned which can broadly be grouped into the following:

- New Stadium and renovation of existing Stadium;
- Games Village;
- Transport Sector;
- Urban Public Services like water and electricity.

A first step in the development is the Games Village, a mammoth Rs. 650 crore project being built over a 100 acres site by the Respondent No. 5 the DDA, for more than 8500 athletes and officials expected for the event. The Village will however not be a one off structure, but will need extensive transport links, amenity providers and other infrastructural linkages. The Games Village was accorded the first Environmental Clearance (EC) by the Ministry of Environment and Forests, Government of India on 14-12-2006. However, the sequence of events related to the series of environmental clearances to the DDA given by the MOEF for the Commonwealth Games Village and specifically the events leading to the grant of the Clearance letter dated 2 April 2007 clearly proves that it were extraneous considerations over environmental and public safety considerations

which led to the Commonwealth games Village being accorded Environmental Clearance by the Ministry of Environment and Forests, MOEF :

#### 5.2.2 SEQUENCE OF EVENTS PRIOR TO AND AFTER GRANT OF ENVIRONMENTAL CLEARANCE

a) That according to the provisions of the Environment Impact Assessment Notification, 1994 as well as the EIA Notification dated 14-9-2006 read with circular dated 13-10-2006, the proposal of the DDA i.e Respondent No.5 for seeking approval for the construction of the Commonwealth Games Village in the river bed was appraised by the Expert Appraisal Committee ('EAC' for short) of MOEF for New Construction Projects and New Industrial Estates, on 14-10-2006, 3-11-2006 and 1-12-2006. A site visit was also made by the EAC on 2-11-2006. The EAC in its meeting held on 1<sup>st</sup> December 2006 noted as follows:

- DDA did not consider any other site for the Commonwealth Games Village and this was the only site shown to the Common Wealth Games Federation.
- The Study by the National Environmental Engineering Research Institute (NEERI) prepared in June 1999 contain certain recommendations which have not been adopted by DDA. Such recommendation relate to the kind of development and the increase in traffic that may be permitted in the area. Specifically NEERI recommended permitting proposals for meeting recreational, cultural, heritage, religious and aesthetic requirement. The proposed hotel and residences are not covered by these recommendations.
- DDA is not able to provide an assessment of the loss of recharge of groundwater and magnitude of efflux in the river resulting from the proposed works and the curtailment of the width of the river to provide space for the proposals.
- The EAC stated that "it is not convinced that environmental impacts and their mitigation have been studied to a satisfactory level. Under the circumstances, the Committee will go by the '**Precautionary Principle**' and emphasizes the point that that the proposed work should not be of a permanent nature.

b) That based on the recommendation of the Expert Appraisal Committee (EAC) of Ministry of Environment and Forests, environmental clearance for the project was accorded on 14-12-2006. Among the various conditions imposed while according the clearance, the following is relevant for the issue being raised by the Petitioners herein:

- Since the design of the proposed structures is yet to be made, so far as possible the work should not be of a permanent nature. It should be possible to take this point into consideration and adopt dismantable structures. Unless detailed studies lead to the conclusion that the proposed structures can be left behind permanently, the proposals should proceed with the assumption that the river bed may have to be restored to the river. (Here it is notable that the DDA already had in its possession a detailed report titled "Environmental Management Plan for Rejuvenation of River Yumuna in NCT" conducted by National Environmental Engineering Research Institute, Nagpur in 2005 at the behest

of DDA itself which had clearly stated that **“No permanent structure of residential or industrial nature be provided in the river bed”**).

### **5.2.3 SHIFT IN STAND AND CHANGE IN DIRECTION OF THE ENVIRONMENT CLEARANCE BY THE MINISTRY OF ENVIRONMENT AND FORESTS TO DDA**

- (a) That on 10-1-2007 a meeting for further modification of the Clearance letter was held in which officials of the Delhi Development Authority as well as senior officers of the Ministry of Environment and Forests were present. It was decided that Delhi Development Authority will submit a map indicating the history of flood levels of the Yamuna and the effect of afflux in the light of river bund constructed in the year 2000.
- (b) That subsequently by meeting minutes dated 19-1-2007 of the Ministry of Environment and Forests, it is stated that the DDA informed that they are going ahead with the planning and construction of the structures to meet the deadline and therefore sought modification of the Clearance letter dated 14-12-2007 to permit construction of permanent structures.
- (c) That pursuant to this, the Ministry of Environment and Forest vide letter dated 22-1-2007, further modified the letter dated 14-12-2006 by stipulating that the 'DDA could go ahead with the planning of their construction works, permanent or temporary subject to the condition that the actual work on permanent structures will not start till such time that the mitigation/abatement measures against upstream flooding are identified after the studies and their implementation begun in such a way that the work is completed on or before the date when the building will be completed'. It is pertinent to point out that the modified clearance letter stipulated two conditions viz.
  - 1) That DDA could go ahead with only 'planning' of their construction work;
  - 2) That the actual work on construction will not start till such time that work on mitigation/abatement are identified.

#### **STUDY REPORT BY CENTRAL WATER POWER AND RESEARCH STATION (CPWRS), PUNE ON IMPACT OF NEW EMBANKMENT CREATED IN 2000 ON UPSTREAM OF NIZAMUDDIN BRIDGE**

DDA commissioned a study to CWPRS, Pune to identify mitigative / abatement measures to prevent flooding of upstream areas of Yamuna river catchment in the city north of Nizamuddin bridge due to the construction of the Akshardham Embankment in 2000.

The report of this study was submitted by CWPRS, Pune to DDA on 6 March 2007 which was submitted by DDA to MOEF on 7 March 2007 with an intimation that they (DDA) are “going ahead” with the construction of residential units (on permanent basis)

and other structures which according to file notings in the MOEF was found to be not in conformity with the conditions of environmental clearance issued by MOEF dated 22 January 2007.

The MOEF found several shortcomings in the report of the CWPRS, Pune as under:

- a) The study has not identified any particular area or part of the Yamuna catchment in Delhi which are prone to flooding during rainy season and how they should be protected.
  - b) Flooding of river Yamuna may result into blocking the drains and nallas discharging into river Yamuna which may lead to back flow from the drains and nallas causing flooding of low lying areas and water logging. The study report is silent on this aspect.
  - c) The study report is based on earlier study conducted in May 1993.
  - d) The study has not covered dredging aspect of river Yamuna in Delhi.
- (d) Despite the above shortcomings found by the MOEF in the study report a further modification to the Environmental Clearance order took place on 29-3-2007 wherein it was provided that the DDA could go ahead with 'planning' of their construction works subject to condition that work on permanent structures will not start till such time till the mitigation/ abatement measures against upstream flooding as identified by the Central Water and Power Research Station is completed.
- (e) However, in complete disregard to the conditions stipulated in the letter dated 29-3-2007, the DDA in its letter to the Ministry of Environment and Forests dated 2-4-2007 stated that:
- "the mitigation/abatement measures cannot be completed in less than 2 years and the start of the work cannot be deferred till that time. DDA is therefore going ahead with the construction work on the Games Village and the mitigation measures will be completed on or before the date when building will be completed as mentioned in letter dated 22<sup>nd</sup> January, 2007".
- (f) It is imperative to highlight two facts from the proceedings as mentioned in notes dated 17-4-2007 i.e
- DDA on its own decided to proceed with the construction work without approval of the Ministry of Environment and Forests and without waiting for a formal approval.
  - The DDA on its own chose not to follow the condition as stipulated in the modified clearance letter dated 29-3-2007 and rather follow the letter dated 22-1-2007 without seeking prior approval from the Ministry of Environment and Forest.
- (k) That in a blatant act of justifying an illegality and undermining the process of the law the Ministry of Environment and Forest, issued a letter dated 2-4-2007 stating as follows:
- " DDA could go ahead with their construction works, permanent or temporary, subject to the condition that the following mitigative measures against upstream flooding as identified in the Study report by

the Central Water and Power Research Station (CWPRS), Pune, shall be completed on or before the date when the building for the Commonwealth games will be completed.

The implications of this letter is two fold:

- It justified the illegal action on the part of DDA to proceed with the actual construction of permanent structures while the applicable clearance letter dated 14-12-2006 as modified by letter dated 22-1-2007 and 29-3-2007 clearly provided that DDA could only do the 'Planning' for the structures both temporary and permanent. It clearly did not have the right to start the work of actual construction. Unfortunately, in total disregard for the law it decided to do so.
- The Clearance letter issued on 29-3-2007 provided that the work on the actual construction 'will not start' till the mitigation/ abatement measures against upstream flooding are 'completed'. However, DDA took a stand that:  

'the mitigation/abatement measures cannot be completed in less than 2 years and the start of the work cannot be deferred till that time... and the mitigation measures will be completed on or before the date when the building will be completed...'

A tabular chart showing the sequence of events and notings by the concerned Officials of the Ministry of Environment and Forests which led to the clearance being granted and the subsequent modification of the same is filed herewith and annexed as Annexure P-6 (Colly).

## **6. THE RISKS OF HAVING STRUCTURES ON THE YAMUNA RIVER BED**

### **6.1 RISKS DUE TO FLOODS**

Various studies have revealed that having structures on the river bed dramatically increases the flood risks. Between 1953 and 1990, the period for which published damages data are available, there were high floods in Delhi in 1956, 1958, 1962, 1964, 1966, 1967, 1971, 1975, 1976, 1977, 1978 and 1988. Prior to 1953 there were such floods in 1924 and 1947. Since 1990 the floods of 1995 were high. The highest flood level on record so far was in 1978, through the Yamuna. The 1924 floods, which comprised successive peaks of lesser order, had generated the largest volume of flood flows so far. Further studies by reputed organizations have revealed that Delhi is frequently exposed to high flood risks. It is necessary to quote from the relevant studies in order to understand the risks involved:

#### **(a) ARTICLE BY R. RANGACHARI FORMER MEMBER (FLOODS AND RIVER MANAGEMENT) CENTRAL WATER COMMISSION.**

The danger level at Delhi Railway bridge was indicated to be 204.83 meters and warnings area issued for likely water levels of over 204 meters. What is this magic number 204.83 m? it would appear to be no real magic. It

was considered by Delhi administration in the 1950s that water level in the Yamuna higher than 672 feet above mean sea level could lead to damages. So 672 feet it was. As India switched to the metric system, some one meticulously converted the figure in FPS units to 204.83m.

Strictly speaking, a periodic examination of the changes in the river configuration and flow pattern is required on the basis of up to date records. This should take note of the embanking and other changes made in the upstream reaches as also the extent of intrusion into the flood plains by structures, economically important installations etc. Thereafter, a fresh determination of the danger level at various locations should be done. We are not sure that this had been done. Every indication is that this has not been done. We know that much embanking upstream has been made and many gaps closed, greater intrusion into the flood plains has occurred and vast urbanization has taken place on the eastern side the Yamuna nagar area.

The vast changes in the ground situation since the last high flood of 1978 have many serious adverse implications for Delhi. It has been observed in recent years that the water levels at Delhi for lesser magnitudes of flow are higher than in the past. The next "high flood" in the Yamuna could have very serious consequences for the nation's capital area.

In 1978, a discharge of 15,690 cumec (5.54 lakh cusec) was estimated to have crossed Tajewala on 3rd September morning. However soon thereafter no more observations were possible as the observation post was abandoned and staff evacuated on considerations of safety. There were soon many breaches lower down and spills occurred. Estimates by various experts of the peak discharge then attained at Tajewala varied from 18,000 to 26,400 cumec. One does not know that the likely position would be next time. A workshop sponsored by CWC and organized by CBIP in January, 1986 to consider the design discharge for structures and embankments on the Yamuna in Delhi noted the "grave risk involved in any underestimation of the stakes to the life and property of nearly 2 million people who were then living in trans - Yamuna area which was solely dependent on the safety of the left embankments". There are many who consider that the magnitude and water level of the next 'high flood' could be of an order higher than that recorded in 1978.

We can sum up the flooding possibilities and related problems:

1. In 1978, there was only a small settlement in east Delhi. This has changed. Now nearly half of the over 14 million people of Delhi occupying low lying areas. In the past, Government tended to take care of the portion west of the river and was willing to accept serious breaches in the eastern side. This option is no more available. The maintenance of embankments is also far from satisfactory with grave risk of colossal losses should the left side embankments fail.



2. There is significant intrusion in the river bed and flood plain, much of which seems politically organized and Government condoned. This impermissible occupation is constantly on the increase. There are even some Government sponsored schemes of this nature. The DDA plan for channelization of the Yamuna and commercial use of the reclaimed area, should be viewed in this context. The CWC/CBIP workshop of 1986 had the following to say on the proposal for channelisation and urban development as was then envisaged : "the proposal ... was not considered to be sound prima facie on technical considerations. Further is came in direct conflict with the declared policy of flood plain zoning by the government of India for preventing encroachment on flood plains in order to minimize flood losses in terms of money and human lives....."
3. It is a common tendency to blame the upstream states for high floods in a downstream state. "High release from Tajewala" have often been blamed for Delhi's flood problems. This will be meaningless in the absence of any storage provided at Tajewala, or any other location upstream till now. The January , 1986 workshop recommended construction of storages at upstream sites in U.P./H.P to significantly help in floor moderation as also meet the increasing water requirements in Delhi. It also suggested use of detention basins, overflow sections and diversions upstream.
4. Delhi's Problems have been compounded by the inability of the State Government to ensure the effective implementation of the agreed Sahibi Master Plan. Nothing of real significance and beneficial to Delhi from that agreed Master Plan has been implemented in the upstream States, in the past three decades. The risk to Delhi through the Sahibi in thus continues.
5. Most of the recommendations of the Rashtriya Barh Ayog have remained only in paper. Nothing that was agreed upon and retreated from time to time has been implemented. Therefore, the extent of damages in the case of a future flood of even the same order as in the past will be much higher. Leaving aside the prospects of Disaster mitigation following a "high flood" of the future, the handling of the much lesser order of flows and normal drainage during spells of rain in recent years point out the many deficiencies in the "system". One has only to go through recent news reports to realize this.
6. The multiplicity of organizations involved, along with the less than involvement of the state Government of Delhi and its elected legislators in terms of its present constitutional position are added problems.

The copy of the report "Flood Damage: How prepared are we? By R. Rangachari" is filed herewith and annexed as **Annexure P-8**.

**(b) STUDY BY NATIONAL ENVIRONMENTAL ENGINEERING RESEARCH INSTITUTE, 2005 ON RIVER YAMUNA**

The Delhi Development Authority (DDA) retained NEERI in 1998 for a study of river Yamuna to suggest an "Environmental Management Plan" for the rejuvenation of the river stretch in the National Capital Territory (NCT).

NEERI submitted its first report in 1999 and its final report in 2005 to the DDA.

According to the said report

" The earlier proposals for interventions to rejuvenate / manage the Yamuna river have not adequately emphasised the ecological role of the flood plains and its conservation imperatives, the land-water interface phenomenon and aesthetics, recreational, and navigational potential".

General Guidelines from the study-

Through the results obtained from ground level survey and hydrodynamic simulations, it has been established that

- a) The stretch has substantially lost its carrying capacity due to long term silting
- b) The present width of the river is desirable to maintain for conveying maximum flow of 12,750 cumecs to avoid flooding of adjoining flood plains.

In addition the report has observed that:

"...three to four floods are experienced every year after heavy rains in the catchment area. (These provide the annual recharge of ground water)

The Yamuna crossed its danger level (fixed at 204.83 m) 25 times during the last 33 years."

"...Analysis shows that while Right Marginal Embankment (RME) Palla meets the requirement for with standing a 25 year frequency flood, all other bunds fail to meet the requirement."

"...Since hydrodynamic studies showed the carrying capacity of the river in NCT is just adequate for 100 years return flood, encroachment and alteration of the river bed topography must be restricted to avoid catastrophic consequences in future."

"No **residential** or industrial facilities requiring **permanent structures** should be provided on the river bed"

## **6.2 ARBITRARY SELECTION OF A RISKY, DISTURBED AND DANGEROUS SITE IN THE RIVER BED FOR THE COMMONWEALTH GAMES VILLAGE**

A Games Village is integral to the successful organisation of any international sporting event like the Commonwealth games. Hence it was imperative that the site for the Games Village was chosen carefully at a safe and secure site after considering various options available in the city for the same.

It is hence incomprehensible that the organizers chose a disturbed, risky and dangerous site in the river bed in the most arbitrary manner without even considering any alternative sites for the same.

Further incomprehensible and incredulous is now the justification being cited by the state authorities that since a temple complex was (wrongly and wilfully) constructed by a previous government at a nearby site in the river bed and hence they could also now construct the Games Village in the river bed. It is well known that two wrongs do not make a right.

**STUDY TITLED “ PAIRING MEGA EVENTS AND HYDROLOGICAL SYSTEMS FOR URBAN SUSTAINABILITY – STRAGETY FRAMEWORK FOR DELHI BEYOND THE COMMONWEALTH GAMES 2010” BY DANNY CHERIAN, 2004**

### **CRAFTING A DISASTER**

“Delhi was announced host to the CWG 2010 by the Commonwealth Games Federation General Assembly on November 13<sup>th</sup>, 2003 at Jamaica. Delhi’s bid was prepared behind closed doors by the Indian Olympic Association (IOA) with little input from local government, planning authorities or citizens. The bid’s success caught Delhi’s city planners and citizens by surprise, and created a euphoria that masked violations of the city master plan. Plans were announced to upgrade and reuse ten sports facilities on the western bank of the Yamuna River, which were largely constructed to house the 1982 Asian Games. New construction was to be limited to the eastern bank of the river, consisting of a 47.3-hectare (118-acre) dedicated Games Village and an indoor sports complex.

“Hazards can be prevented, mitigated, or avoided by proper siting, construction, and building design. Every city should know the hazards to which it is subject the most hazardous places, and how many people are at risk.”

**FLOODS AND WATER LOGGING OF COMMON WEALTH GAMES 2010 VENUES**

It is submitted that the Common Wealth Village Site lies within the 25-year floodplain belt of river Yamuna. The rectangular land parcel lies to the west of the first girdle of East Delhi's development, and thus closer to the River than any previous construction in its floodplain. The site is bound on all four sides by earth embankments, and lies more than six meters below adjacent roads and four meters below the infamous 1978 flood's water level. The Kolkata branch railway line, NOIDA city link road and flood control dykes restrict drainage possibilities and limit drainage solutions to expensive mechanical dewatering. River floods, water-logging and the high ground water table create a perennial menace to any development, with high risks of structural damage and inflated construction costs.

#### **AMPLIFYING SEISMIC VULNERABILITY OF THE COMMON WEALTH GAMES 2010 VENUES**

The abuse of Delhi's hydrological complex with construction atop unstable soils in a tectonic hot bed is a sure recipe for disaster. Delhi lies at the spearhead of the Aravalli mountain belt's northeastward thrust into the Himalayan crumple zone. The city lies in the seismic zone IV, and is classified to have a high probability of tremors measuring to 5-6 on the Richter scale, low probability of shocks of 6-7 scale and occasional shocks of 7-8 on the Richter scale.

Many quakes of 4-5 Richter scale have had epicenters along the northeast-southwest axis of the Delhi fold. Delhi is also prone to the more frequent and intense earthquakes along the Himalayan fold (Uttarkashi earthquake, October 1991 and Chamoli earthquake, March 1999). The city experienced major earthquakes (6-7 on the Richter scale). In August 1803, October 1956, August 1960 and 1994. Moderate quakes were recorded in 1720, 1819, 1905, 1934, 1937, 1945, 1949, 1958, 1966, 1975 and 1980. There has been little recent tectonic activity. Such a decline in frequency leads to built-up of the stress, which can be released any time, and the intensity of earthquake shocks depends on the amount of such energy stored in the rocks'. Not surprisingly, the region's tectonic activity is the prime instigator of the Yamuna River's eastward shift, down cutting, creation of sand banks and swampy terraces.

The CWG Village sits over an unstable base of deep sediment layer. The first relatively stable layer of consolidated clay begins at 40 meters BGL, which bedrock begins at depths around 100 meters BGL. 'Ground motions are substantially amplified near the ground surface with thick sedimentary cover' (Mine, 1898). The site invariably lies in the most seismically vulnerable part with the highest peak ground acceleration expected in the city. The high water table and poor drainage further this perilous condition. Damage may intensify as a result of liquefaction, or flow of water-saturated sand or silt. Liquefied soil may flow like a mudslide towards the Yamuna river, sinking or uprooting all structures in its path. The site thus is prone to tremendous damage from even mild tremors that may disturb the progressively abused and precarious geo-hydraulic balance.

The relevant portion of the report titled "Pairing Mega Events And Hydrological Systems For Urban Sustainability – Strategy Framework For Delhi Beyond The Commonwealth Games 2010" by Danny Cherian, 2004 is filed herewith and annexed as **Annexure P-9**.

A study on Seismic Hazard Assessment by the Central Building Research Institute, Roorkee revealed that that the Trans Yamuna Area characterized by loose alluvial soil has higher earthquake risks (Peak ground Acceleration). According to the Study published in Current Science, Delhi faces a major risk of Earthquake.

The copy of the article titled "Seismic Hazard Assessment for Delhi" published in Current Science, dated December, 2006 is filed herewith and annexed as **Annexure P-10**.

Commonwealth Games is a 10 day (3-14 October 2010) inter national sporting event. It is certainly a matter of national prestige that it is organized in the best possible manner at sites (Games Village, Stadiums etc) which are located in safe, secure and undisturbed area in the city. It is hence unfortunate that the planners have chosen a risky, disturbed and dangerous site as has been brought out above for the Games Village in the river bed which is prone to floods, and severe damage from any future earthquake in the region. The fact that there is a high use railway line and a National Highway (NH 24) just next to the said site adds to the disturbed nature of the site.

The above is when there are several other possible sites, even one which has been suggested by the Ministry of Environment and Forests where the said Games Village can easily be raised in a safe and secure manner.

There are still 3 more years to go for the Commonwealth games to take place in Delhi. Hence there is still time to shift the site of the Games Village away from the dangerous site in the river bed and secure nation's pride and prestige in time.

### **6.3 CHANGE OF SITE FOR THE GAMES VILLAGE IS IN NATIONAL AND PUBLIC INTEREST**

**6.3.1** National interest demands that the site for the Games Village for an international sporting event is safe, secure and tranquil. It should also be hassle free in terms of travel to and from the airport and to and from the Games venues. The present site is none of these. As a result huge but avoidable public expense would be required in securing ease of travel for the 10 day event and in converting the site tranquil from nearby disturbances. For example it is claimed that the Northern railways would spend Rs 5 crores in raising a sound proof wall alongside its line next to the proposed site for the Games Village in the river bed.

**6.3.2** Public Interest demands that river bed is secured against any effort to concretize it so that its natural role of safe passage of flood waters and annual recharge of ground water is not further compromised in a situation where already a significant area of the river bed has been converted and lost to the river by destructive activities of Delhi Metro (Shastri Park Metro Depot and IT park and under construction Yamuna Metro Depot) and Akshardham.

**6.3.3** The stoppage of work and an immediate change in site for the Games village away from the risky, disturbed and dangerous site in the river bed is hence in national and public interest.

**7. CONCERNS RAISED BY CITIZENS GROUPS AGAINST THE DESTRUCTIVE ACTIVITIES GOING ON IN THE RIVER BED**

7.1 That the issue of Destructive activities going on in the river bed including proposed Common Wealth Games project has led to citizens groups across the City raising protests as well as making representations to Concerned Officials as well as Public Representatives so as to save the River from mindless destructive activities. A concerted effort has been made by the Petitioners herein to approach all relevant authorities including the Hon'ble President of India in order to draw attention to this important issue.

**7.2 REPRESENTATION TO CONCERNED AUTHORITIES**

That the petitioners made representation to various authorities which included the following among others :

- (i) *Secretary, Ministry of Environment and Forests, Government of India:* A detailed Report was submitted on 3-3-2007 on the anticipated impact of the proposed Games Villages so that the same may be taken into consideration while deciding on the environmental clearance.
- (ii) *Secretary, Department of Environment, Government of Delhi and Vice Chairman DDA and Secretary, Ministry of Environment and Forests :* A request was made for making a presentation on behalf of the Yamuna Jiye Abhiyan on the threats to the river Yamuna on 19-3-3007. However no such opportunity was granted.
- (iii) *Appeal from Citizens of Delhi to the Prime Minister on 21-3-2007 and 30-4-2007:* An appeal on the need to protect the 22km stretch of river Yamuna signed by over 1000 citizens each time was sent.
- (iv) *Letter to President, Indian Olympic Association:* The letter dated 18-4-2007 highlighting threats and the problems due to commercialization of the river bed.
- (v) *Letter to the President of India dated 18-4-2007* handed over after the President of India accepted the request of the members of Yamuna Jiye Abhiyan to meet him.
- (vi) *Letter from Prof M.G.K Menon to Prime Minister on 17-7-2007:* The letter highlighted the need to shift the games village from present site on the yamuna river bed.
- (vii) *Letter to Lt Governor dated 21 July, 2007* requesting for a presentation on the impacts of construction on river bed. A meeting subsequently took place but unfortunately no assurances were given so far as the key grievances were concerned.
- (viii) *Response to the advertisement titled "facts of environment clearances of the Games Village' dated 3-8-2007 of the DDA.*
- (ix) *Representation to the President of the Commonwealth Games federation on catastrophic implications of having the games village on the Yamuna River bed dated 14-8-2007 :* This comprehensive petition was endorsed by over 150 concerned citizens which included noted scientists Prof M.G.K Menon,

Magsasay award winner Arvind Kejriwal ; Ramaswamy Iyer Former Secretary, Water Resources; representatives of different NGOs such as WWF India, INTACH, Centre for Media Studies, Toxics Link besides a number of Journalists, lawyers and academicians.

The copies of some of the representation before the concerned public functionaries and authorities is filed herewith and annexed as **Annexure P-11(COLLY)**.

**This writ petition has been filed on the following, among other grounds,**

#### **GROUNDS**

- A. Because the water is the most essential requirement to sustain the human life and, therefore, there is need to preserve and protect it. The sources from which water is available is well known. Each source carries along with it special characteristics and bio-diversity which sustains the source. The Hon'ble Supreme Court has accepted conservation and preservation of water and its need under Article 21 of the Constitution. In any case it is the basic need of human life, and therefore it is duty of the State under the Public Trust Doctrine, and also of every individual to act in furtherance of the said duty. The Courts are under obligation to see the protection and preservation of these water resources and prevention of its contamination. The Water (Prevention of Pollution) Act, 1971, Environment (Protection) Act, 1986 and several Municipal Laws aim at this basic duty. Starting from Stockholm Conference, Rio Declaration etc. it has been acknowledged that the natural resources have to be used with utmost discretion and even saved from human potentiality to destroy them irreversibly. Previously for this reason 'Precautionary Principle' was brought in. What was cautioned against nearly 35 years back is in fact happening: the water resources are over-exhausted, ponds, tanks are filled up for real estate development, ground water depletion is taking place in an alarming manner, the rivers are choked and this is resulting not only in exhaustion of whatever little water we have but also destruction of biodiversity and flood plains which is capable of recharging such sources. There is thus a permanent and irreversible damage happening. The effort, therefore, should be to urgently identify all the sources of conservation of water and take action to save them from any further damage and make all efforts to restore / rejuvenate them. If this not done the situation will soon come when water will become extremely scarce and with growing population it will create danger to the survival of mankind. The development vis-à-vis protection of water resources has also to be thought from this angle: on one hand with criminal negligence and unpardonable acts it is lost forever and on the other hand there is an alternative. But even if there is no such option it is in the interest of survival of life that such development should be given up.
- B. Because the protection of natural resources including water resources was recognized not only in different statutory enactments (Water Act, 1974, Environment Protection Act, 1986, different Municipal Laws) but also under Article 21 of the Constitution. As far as the coastal areas are concerned, they represent important marine bio-diversity and also balance through aquifers the provision of drinking water to the inhabitants of the coastal areas. It was for this reason that under the Environment (Protection) Act, 1986, Coastal Regulation Zone (CRZ) Notification was issued in 1991, which provides for no development zone in

ecologically sensitive area and regulated development in other areas from 200 to 500 meters of High Tide Lines (HTL). As far as the ponds, tanks etc are concerned, the Hon'ble Supreme Court in the case of Hinch Lal Tiwari vs. Kamala Devi – (2001) 6 SCC 496 recognized that tanks, ponds, amongst others, are nature's bounty which maintains the delicate ecological balance and they need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Art. 21 of the Constitution. Following the directions in this case, several State Governments have issued directions to the District Collectors to preserve and protect the tanks/ponds and to remove any encroachments on them and also to restore such ponds/tanks. The preservation of ponds and tanks are necessary as they provide not only source of drinking water but also maintain the ground water level. Realising the importance of ground water, the MOEF has constituted the CGWA under the EPA 1986 for preservation and protection of ground water. Rivers are the main source of drinking water and they have to be preserved and protected at all costs, which is the duty of the State under Art. 21 of the Constitution, Inter-generational Equity Principle as well as on the Concept of Public Trust Doctrine. The draft regulations which have been prepared for protection of rivers have, therefore, to be treated as part of Art. 21 of the Constitution. In any case, River Yamuna which is one out of the two bounties of nature as mentioned in the Delhi Master Plan (the other being the Ridge), its protection is the constitutional obligation of the State.

C. Because the destructive activities currently underway seriously undermine the future of the river and seriously undermines the ground water recharge potential of the area besides making the city and its residents prone to serious damages from future floods by irreversibly changing the integrity of the river flood plain and the river bed.

D. Because the Hon'ble Court by order dated 8-12-2005 in W.P (C) No 2112/2002 and W.P (c) No 689/2004 recognized the importance of reviving the biodiversity of river Yamuna and the threats that it faced and hence directed that no structure whether religious residential or commercial or any other purpose shall be allowed to exist. The order reads as follows:

'take up in right earnestness and day-to-day basis the task of removing encroachments upto 300 metres from both sides of River Yamuna in the first instance. No encroachment either in the form of jhuggi jhopri or in any other manner by any person or organization shall be permitted. Yamuna has to be re-development in such a manner that it becomes a habitat for trees, forests and centers for recreation. We make it clear that no structure whether it pertains to religious, residential or commercial or any other purpose shall be allowed to exist. We also make it clear that no sullage, no sewer, no industry, no factory shall be permitted on both sides of the embankment of Yamuna so as to prevent pollution of the river and **if any such structure is found steps will be taken by the Committee to get the same removed**".

A True and Typed copy of the order dated 8-12-2005 is filed herewith and annexed as **Annexure P-12**.

E. Because the Environment Impact Assessment has to be in consonance with the accepted environment principles and if a clearance omits to consider the importance of River Yamuna – its conservation and preservation being essential for providing drinking water to the citizens of Delhi – such clearance is arbitrary, illegal and unconstitutional. The change, for



extraneous reasons, made subsequently in the Environmental clearance dated 14.12.06 is in violation of the Precautionary Principle, and on the face of it, is violative of Articles 14 and 21 of the Constitution being arbitrary, whimsical and malafide:

It has been stated above that the EAC which made the site visit on 2.11.06 and met on several dates rejected the site inter alia on the grounds that

- a) location of the project is in the river flood plain
- b) there will be interference with recharge of ground water
- c) there will be creation of efflux in the river during the high floods

It is significant that the EAC had indicated Safdarjang airport as the possible alternative site. When the EAC met again on 1.12.06, the DDA rejected the Safdarjang Airport site on the ground that the said land was not with the DDA. The EAC however adopted the "precautionary principle" and suggested creation of temporary dismantable structures for the 10 day sporting event and emphasised that the proposal should proceed with the assumption that the river bed may have to be restored to the river. Keeping the said precautionary principle in mind the MOEF while granting the EC on 14.12.06 imposed several conditions keeping in mind that the ground water recharge potential of the river bed should not be affected. It clearly stipulated against raising structures of permanent nature for the reason that ultimately the river bed may have to be restored to the river.

It is indeed extremely unfortunate that this clearance which had used the precautionary principle was amended under extraneous and irrelevant considerations by generating a report by CWPRS, Pune which undermined the importance of river Yamuna and grave dangers which could befall the city in the event of reverse flow in drains happening during high floods. By this process the sanctity and the purpose of EIA was breached with impunity and a totally untenable, legally and constitutionally, amendment in the EC was done on 22.1.07; 29.3.07 and 2.4.07.

F. Because a study commissioned by the DDA and carried out in February 2007 by Central Water and Power Research Station ("CWPRS" for Short) at Pune was found to be deficient by the Ministry of Environment and Forests in following words:

- a) The study has not identified any particular area or part of the Yamuna catchment in Delhi which are prone to flooding during rainy season and how they should be protected.
- e) Flooding of river Yamuna may result into blocking the drains and nallas discharging into river Yamuna which may lead to back flow from the drains and nallas causing flooding of low lying areas and water logging. The study report is silent on this aspect.
- f) The study report is based on earlier study conducted in May 1993.
- g) The study has not covered dredging aspect of river Yamuna in Delhi.

It is noted that despite the MOEF finding the above mentioned shortcomings in the said study by CWPRS, Pune, it chose to ignore its own findings and depended on this deficient report to issue yet another Environmental Clearance order dated 29 March 2007 permitting DDA to plan for permanent or temporary structures..... and most incredulously issued yet another clearance order dated 2 April 2007 permitting construction of the games village. One fails to understand as to what changed in three days between 29 March 2007 and 2 April 2007 (31 March 07 and 1 April 07 being non working Saturday and Sunday) that prompted the Ministry of

Environment and Forests, MOEF to change the permission order from 'planning' into 'construction' in a most arbitrary manner? Such use of discretion without due application of mind by a state authority ie MOEF charged with securing the present and future environment of the country is most unfortunate to say the least.

G. Because as held by the Hon'ble Supreme Court in **Delhi Transport Corporation V. D.T.C Mazdoor Congress** (AIR 1991 SC101) that the exercise of discretionary powers, should not be whimsical, arbitrary or capricious action. The Court stated that the absence of arbitrary power is the first essential of the rule of law, discretion when conferred on upon the executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is anti thesis of a decision taken in accordance with the rule of law. The Hon'ble Court quoted Douglas, J . In **United States versus Wunderlich** (1951) 342 US 98 " Law has reached its finest moment when it has freed man from the unlimited discretion of some rulers...where discretion is absolute, man has always suffered. The Court observed " It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes "means should be discretion guided by law.It must be governed by rule, not by huour, it must not be arbitrary, vague and fanciful".

H. Because in **V. Purushotham Rao Vs Union of India (2001) 10 SCC 305**, the Supreme Court considered the issue of discretionary allotment of petrol pump by the concerned Minister. The Hon'ble Supreme Court held that when a State property as distinct from a Private Property is being dealt by the Minister then it is paramount importance that such public property must be dealt with for public purpose and in public interest. The disposal of a public property undoubtedly partakes the character of a trust and therefore, in the matter of such disposal, there should not be any suspicion of lack of principle. The exercise of discretion must not be arbitrary or capricious or for any external consideration.

I. Because in **S. Jagannath Vs Union of India and ors (1997) 2 SCC 87**, the Hon'ble Supreme Court recognized the ecological value of sea coasts and beaches and held that 'Sea coasts and beaches are a gift of nature to the Mankind. The aesthetic qualities and recreational utility of the said area has to be maintained. Any activity that has the effect of degrading the environment cannot be permitted.

J. Because, the Yamuna River bed has been already identified as an area which is prone to high earthquake risks and further constructions on the alluvial soil will only lead to greater hazards.

K. Because, the damage from any future floods in the city would worsen on account of the destructive activities including ongoing and planned constructions in the river bed and thus endanger the lives and property of residents of Delhi. If not checked now the city awaits a catastrophic situation as was witnessed by Mumbai from floods on 26 July 2005 which worsened on account of the choking of river Mithi in the city.

- L. Because the NEERI Report of 2005 clearly stated that permanent residential units should not be allowed to come up in the Yamuna River bed.
- M. Because, the Central Ground Water Authority has identified river flood plain of Yamuna as ground water recharge area which has to be protected as it is ecologically sensitive. No development on this area is permissible keeping view the environmental principles and article 21 of the Constitution. It is shocking that not only development in violation of legal and constitutional protection of the river flood plain area has commenced but even tube wells have been dug without prior permission of the CGWA. The role of the Central Ground Water Authority is not merely to prevent the withdrawal of ground water but also to control, manage and development of groundwater resources and in this respect is also required to restrict and regulate construction in the Notified areas.
- N. Because the ongoing construction has already damaged substantial portion of the river bed and is bound to cause further irreversible damage. It is respectfully submitted that the action of the Respondents is not only a violation of the Orders of this Hon'ble Court but also a violation of the provisions of the Environment (Protection) Act. The process of putting sand, stones, asphalts, Bajri etc in the soil comes within the meaning of "Hazardous Substances" as defined in section 2 (e) of the Act. As per the above mentioned section, hazardous substances mean any substances or preparation which by reasons of its chemical or physio chemical properties or handling is liable to cause harm to human beings or other living creatures, plants and micro organisms, property and the environment.
- O. That the ongoing construction some of which are by private entities constitutes a violation of the Public Trust Doctrine. The Hon'ble Supreme Court in **M.C Mehta Vs Kamal Nath (1996 (9) SCALE 141)** has held that "our legal system –based on the English Common Law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea shore, running water, air, forests and ecologically fragile lands. The State as the trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership". It is respectfully submitted that the Hon'ble Supreme Court held that the "Himachal Pradesh government committed a patent breach of public trust by leasing an ecologically fragile land to the motel management". It further held that " the second lease granted in the year 1994 was virtually on the land which is part of the river bed."
- P. That the Hon'ble Supreme Court further held in the above case that " in the absence of any legislation, (Rivers in India belong to this category) the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for private use"
- Q. That for the purpose of regulating human activities in the flood plain a draft River Regulation Zone (RRZ) Notification on the lines of the Coastal Regulation Zone (CRZ) was formulated by the Ministry of Environment in the year 2002. However, despite the passage of many years it has still not been finalized and this is leading to serious damage to the ecology and biodiversity of river Yamuna and its flood plains. As held in the case of Kamal Nath it is duty of the executive acting under

the public trust doctrine to protect the river. These draft regulations should be treated as part of Article 21 and implemented by the Executive.

- R. That the Hon'ble Supreme Court in **Indian Council for Enviro-Legal Action v. Union of India** [(1996) 3 SCC 212 : JT (1996) 2 SC 196] held that the "The Polluter Pays Principle" has been held to be a sound principle by this Court. The Court observed: "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country." The Hon'ble Court ruled that : (SCC p. 246, para 65) "... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".
- S. That the Hon'ble Supreme Court in **Vellore Citizens Welfare Forum Vs Union of India (JT 1996 (7) SC 375)** held that the Polluter Pay principle is a part of the law of the land and held that "the Polluter pay principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "sustainable development" and as such polluter is liable to pay the cost to the individual sufferers as well as cost of reversing the damaged ecology".
- T. That the Hon'ble Supreme Court in **Vellore Citizens Welfare Forum Vs Union of India (JT 1996 (7) SC 375)** further held that the "Precautionary Principle" along with the "Polluter Pay Principle" are essential part of the Sustainable Development. The Hon'ble Court held that " the "Precautionary Principle" - in the context of the municipal law - means :
- (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.
  - (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
  - (iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign"
- U. Because in **Subhash Kumar Vs State of Bihar (AIR 1991 SC 420)**, it was held that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to the enjoyment of pollution free water and air for full enjoyment of life. If anything impairs the quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution of the Constitution for the prevention of pollution.
- V. Because the Hon'ble Supreme Court in the **Research Foundation for Science Technology and Ecology Vs Union of India and ors** it was held that the right to information and community participation for protection of the environment and

human health is a right that flows from Article 21. The Government and authorities have to motivate the public participation. Further the Hon'ble Court relying on the decision in A.P Pollution Control Board Vs Prof M. V Nayudu (Retd) and ors (1996 5 SCC 718) held that principles of good governance is an accepted principle of international and domestic law. It comprises of the rule of law, effective state institution, transparency and accountability, respect for human rights and the meaningful participation of citizens in the political process of their countries and the decisions affecting their lives.

- W. That Article 48-A of the Constitution relating to Directive Principles of State Policy provides the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
- X. That Article 51-A. (g) states that it is a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures." The Petitioners are acting under their fundamental duty under the Constitution as stated.
- Y. That action on part of the Respondents violate Article 14 and 21 of the Constitution of India.
- Z. That the Petitioner has no other equally efficacious remedy available to them save and except moving this Hon'ble High Court by filing this instant Writ Petition.
9. That the Petitioners herein have not filed any other similar Writ Petition or other legal proceeding in this Hon'ble Court or in the Hon'ble Supreme Court of India.

#### PRAYER

In view of the above facts and circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to issue a writ of mandamus and order/direction/ declaration :

- a) Directing the respondent to remove any construction, fill up digging etc made so far and restore the ecology of Yamuna river bed
- b) Directing that Yamuna river bed in Delhi is 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 3.11.06.
- e) Directing setting aside of EC dated 14.12.06 as being violative of article 21 of the Constitution.

- f) Directing setting aside of EC dated 22.1.07; 29.3.07; and 2.4.07 as being arbitrary, whimsical, malafide and violative of article 14 and 21 of the Constitution.
- g) Directing the respondents to restore the ecology of river Yamuna in accordance with the "Polluter Pay Principle";
- h) Pass any such order as this Hon'ble Court may feel fit and proper in the facts and circumstances of the case.

PETITIONER No.1

PETITIONER No.2

PETITIONER No.3

PETITIONER No.4

Through

**Ritwick Dutta**

**Rahul Choudhary**

**Priyabrata Satapathy**

**Advocates for the Petitioners**

**C-106, Sector – 40, NOIDA, UP - 201301**