

Item No. 03

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL  
(Through Video Conferencing)**

**Original Application No.37/2023(CZ)  
(I.A.No.27/2023)**

Mrs. Krishna Singh

Applicant(s)

Vs

Bhopal Municipal Corporation & Ors

Respondent(s)

Date of Hearing: **08.02.2024**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant (s): Mr. Rakesh Singh, Adv.

For Respondent(s): Mr. Prashant M. Harne, Adv.  
Mr. Vivek Choudhary, Adv.

**ORDER**

1. This Original Application under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') has been filed by Mrs. Krishna Singh alleging that there is Nirmal Palace Colony developed by M/s. Equator Construction at Khasra No. 146/1/1 admeasuring about 9000 square feet wherein there is a land designated for park as per the plan wherein Bhopal Municipal Corporation is raising construction, destroying the nature of the land as park. It is further contended that conversion of open space meant for park/public park is not permissible in view of law laid down by Supreme Court in Bangalore Medical Trust vs. B.S. Muddappa and Others, (1991) 4 SSC 54.
2. The matter was taken up by this Tribunal on 11.07.2023 and a committee consisting Collector, Bhopal and the MPPCB was constituted to submit the factual and action taken report.
3. In compliance of the order the Members of the Committee visited at the site and submitted that the Sanivani Hospital is being under

construction at the planning stage under the policy of the State and duly sanctioned by the State. It is further submitted that the damaged sewer lines has been repaired by the Bhopal Municipal Corporation.

4. Notices were also issued to the Respondent/Bhopal Municipal Corporation and the State Pollution Control Board and in compliance thereof the Bhopal Municipal Corporation has submitted the reply with the facts as follows :

- i. That State Government has initiated the Sanjeevini Clinics scheme as part of the National Health Mission (NHM). NHM, in coordination with Chief Medical and Health Officers CMHOs, has issued directives for the establishment of Sanjeevini Clinics. BMC which is a construction agency, under NHM's guidance, has been hired as a contractor for the construction of these clinics. CMHO is responsible for earmarking the areas where these clinics are to be established. Once NHM designates an area, it is obligated to allocate the space to BMC for the clinic's development. However, in the present case, it is crucial to emphasize that before development, while entering into an agreement with BMC the Builder M/s Equator had allotted the 'Open Land' in question to BMC for community facilities, which encompass the health center and other sub-divisional requirements.
- ii. Consequently, taking into account the NHM's framework and further direction of CMHO and the agreement in place, BMC embarked on the construction work with a sincere commitment, keeping the broader public interest in mind.
- iii. Empahasizing the significance of universal healthcare and aligning with directives of the Health & Family Welfare Ministry, Government of India, a letter dted 08.02.2022 from the Additional Chief Secretary of the Public Health and Family Welfare Department, Government of Madhya Pradesh underscores the establishment of Health & Wellness Centres, This initiative, supported by health grants from the 15th Finance Commission for the period spanning from the financial year 2021-2022 to 2025-2026, mandates all Municipal Corporations and Councils to enhance and construct 570 Health & Wellness Centres. Under the framework of this program, every Commissioner of Municipal Corporations and Municipal Council is designated as a Nodal Officer responsible for the oversight, management, and construction of these centers.

They will operate under the 15th Finance Commission Committee, seeking technical assistance from district CMHOs for effective management and construction.

- iv. a letter dated 13.04.2022 authored by the Joint Commissioner and Ex-Officio Principal Secretary of the Directorate of Urban Administration & Development, Government of MP to all Municipal Corporations and Councils in the state. This correspondence, made in reference to NHM's letter dated 08.02.2022 and the Urban Development & Housing Department's letter dated 09.03.2022, acknowledges the provision of a town-wise list comprising 611 Mukhyamantri Sanjeevini clinics slated for construction statewide. It specifies that State Level Urban Bodies are designated as the agencies responsible for the construction of these clinics, with guidelines dictating site selection to be carried out in consultation with CMHO.
- v. Subsequently, a letter dated 11.11.2022 was issued by the Mission Director of NHM to all CHMOs in Madhya Pradesh, outlining the construction of 611 new health centers and the upgrading of 172 previously operated Sanjeevini Clinics and Dispensaries. In this directive, they were instructed to collaborate with UADD for the identification and earmarking of sites for these facilities.
- vi. A letter dated 02.02.2023 was issued by the Assistant Commissioner of Urban Administration and Development, Madhya Pradesh, addressed to all Municipal Corporation and Councils in the state. The letter instructs the entities to expedite the development and ensure the timely completion of Sanjeevini clinics. The directives encompasses various aspects such as upgrading existing clinics, earmarking land, providing technical support, and managing tenders. The instructions pertain to a total of 172 previously established clinics and 611 new clinics. Regarding land allocation the letter specifies that the respective Chief Medical and Health Officers CHMOs and corporation officers must collaborate to ensure the proper earmarking of land.
- vii. With respect to the area in question, Original Layout was passed in 2000 by Town & Country Planning wherein separate provision was made for park and open spaces. It is pertinent to mention at this juncture that the Open Space is left in every layout of a colony for providing Community facilities. In this present case open land which admeasures 9000 sq feet was lying vacant, and was being encroached upon by Applicant & some other residents, out of which only 1600 sq feet is being used for Polyclinic. Addressing this concern the President of Nirmal Palace Vikas Sewa Samiti wrote a letter dated

06.02.2023 to the concerned MLA of the area in question, Mrs. Krishna Gour, representing the Govindpura Assembly constituency in Bhopal, wherein he has highlighted the challenges faced by residents due to the absence of essential healthcare facilities and the encroachment of open land in Nirmal Palace Society & had further requested Mrs. Krishna Gour to facilitate the construction of a Sanjeevini clinic on the available premises. The same is annexed herewith as ANNEXURE A-7 to address the community's primary health needs. In response to the said letter, Mrs. Krishna Gour penned a letter to the Chief Medical and Health Officer, (CMHO) in Bhopal, wherein she conveyed that 15-20 residents from the colony had written to her, expressing the collective demand for & necessity for constructing a Sanjeevini clinic in Nirmal Palace Awadhpuri, citing the absence of primary health facilities. The proposal for the clinic's construction was made with the intent of serving the public's welfare.

- viii. Apart from above, the President of Nirmal Palace Vikas Sewa Samiti penned a letter on 16.02.2023 to the Commissioner BMC and CMHO Bhopal, wherein he requested the construction of a Sanjeevini Health Clinic on a small part of the said open land, emphasizing that the said specified area at present is being utilised for community purposes and the same will cater to the health care needs of approximately 15 to 20 colonies, including a slum area in Vallabh Bhawan, the letter highlighted the importance of constructing the Sanjeevini Clinic for the broader benefit of the public.
- ix. Initially, a designated open space in Purvanchal phase 2, Rohtash Nagar, Khajuri Kalan, near Awadhpuri, was earmarked for the establishment of Sanjeevini Polyclinic. However, upon conducting a survey led by members of the NHM namely, Ms. Archana Awasthi and Hemant Pateriya, on 20.03.2023, an engineer from the Health Department, it was determined that a Polyclinic was already operational within a 2-kilometer radius of Purvanchal, rendering a change of location necessary from Purvanchal Phase 2, Rohtash Nagar, Khajuri Kalan, near Awadhpuri to Nirmal Palace near Vallabh Nagar Slum Awadhpuri.
- x. that approximately 500 residents from various colonies, including-
  - Nirmal Palace Society,
  - Tanvi State Rehwasi Samiti
  - Somya Vihar Phase 4, Kalyan Samiti
  - Amritpuri Society, Bhopal
  - Somya Park Land,

- Vallabnagar Slum Area,
- Awadhpuri Grah Nirman Society, Sanstha Maryadit
- Awantika Avenue Phase 1&2, Rehwas Kalyan Samiti
- Lavkush Nagar Grah Nirman, Sehkari Samiti

supported by their respective colony presidents, had submitted letters highlighting the misuse and encroachment upon an open land intended for community use and have requested for establishment of Sanjeevini Health Clinic in the said location.

- xi. In adherence to this, the CMHO Bhopal composed a letter dated 24.03.2023 to the Director TNCP, Bhopal, informing about the initiation of construction for the Sanjeevini Clinic Primary Health Care center on a designated portion of open land at Khasra no. 1461/1 in Nirmal Palace. Subsequently, a follow-up letter dated 20.04.2023 was sent by the CMHO Bhopal to the Director TNCP, Bhopal, reiterating the earlier communication and updating the construction activities in the mentioned area have commenced.
- xii. Respondent No. 1 issued a work order through the Executive Engineer of Municipal Corporation Bhopal in a letter dated 27/03/2023. The same is annexed herewith as ANNEXURE A-14. It should be noted that Respondent No. 1 has not removed or discarded eight trees and numerous plants, nor has there been any significant damage to the land designated as a park. In fact, it is important to clarify that there was no park in the location as claimed by the complainant. Respondent No. 1 did not undertake any tree or plant uprooting for construction purposes and the open land in question doesn't fall in Green belt. To corroborate this, Respondent No. 1 possesses a letter dated 04.04.2023 from Lalit Sharma, the President of Nirmal Palace Society, stating that there are nearly 146 families in Nirmal Palace which area being represented by President and out of the said 146 only 3-4 families who have "vested interest", as they were using the open land for parking & other purposes are objecting the construction of said clinic. The same is annexed herewith as with ANNEXURE A-15. It has been further mentioned that no trees were present and no greenery was harmed, where the clinic work is being carried out. The construction of said clinic would ensure timely treatment to senior citizen and residents of approximately 12 societies of nearby areas whose residents have tendered written request to BMC in support of estate of said SC and the facility of said clinic is pertinent in the larger public interest

- xiii. Clause 9 of the agreement dated 18-08-2002 between the Municipal Corporation Bhopal and Managing Director Equator Construction Pvt Ltd., which explicitly establishes that the Bhopal Municipal Corporation retains preferential ownership rights over all open lands& lands to be used for parks, schools, primary hospitals, dispensaries, religious sites, roads, sports grounds, post offices, in the said colony and other lands intended for public use in perpetuity. The ownership and possession of all open lands, parks, schools, and other lands to be utilized for providing public utility given to BMC for eternity and so the land in question being in possession of Answering Respondent No.1, the same requiring no further allotment by the collector.
- xiv. Answering Respondent is a legally mandated entity dedicated to public service. As previously mentioned, BMC commenced construction work within the NHM's framework with genuine dedication. Therefore, employing derogatory terms such as 'mafia' in reference to this reputable statutory body, which is diligently serving the public interest, is unwarranted & calls for strict action against the Applicant. Such language appears to be a deliberate attempt to tarnish BMC's reputation.
- xv. Additionally, it is worth noting that NHM is taking "Regular Progress Report" from BMC with respect to the construction status of the said clinics across the city which includes the land in question
- xvi. The complainant's involvement in this petition stems from a vested interest, as she was utilizing this open land for personal activities and parking her vehicle. This perspective has also garnered support from some residents.
- xvii. Timely completion of the Mukhyrnantri Sanjeevini clinic Primary Health centre is the essence as said construction need to be completed in the span of 90 days in conformity of the direction given by National Health Mission

5. The Learned Counsel for the Municipal Corporation has submitted that as per agreement the open land is to be used for the public purposes and the area earmarked for the use of public purposes and development has been decided to be used for the medical health for the persons residing there on the demand of the public and the State Government has taken a decision on the public demand. The relevant record with recommendation of the demand of the public

and the representative of the area has been annexed with the reply. The Learned Counsel for the State Shri Prashant M. Harne has submitted that the Ministry of Health and Family Welfare, Government of India in the 15<sup>th</sup> Finance Commission has issued directives for establishment of Health and Welfare Centers in urban area throughout the nation. Vide letter dated 08.02.2022, the Additional Chief Secretary, Department of Public Health and Family Welfare, Government of Madhya Pradesh, proposed to all Municipal Commissioners within the state of Madhya Pradesh for the establishment of Health and Wellness Centers in urban areas in accordance with the allocation from the 15<sup>th</sup> Finance Commission. Furthermore, the Principal Secretary, Urban Development and Housing Department vide Letter dated 08.03.2023 directed all District Collectors within the State of Madhya Pradesh for allotment of land for establishment of Health and Wellness Centers. In compliance of the aforementioned letter, the Municipal Corporation of Bhopal is in the process of establishing Sanjeevani Clinics/Health and Wellness Centers in various sectors across the city. As part of this initiative, a request has been made for the establishment of a Sanjeevani Clinic in Ward Number 61 and the residents of this ward, under the Nirmal Palace Development Services Committee, have requested the construction of a Sanjeevani Clinic on the available government land in their vicinity vide letter dated 06.02.2023, and thereafter. Smt. Krishna Gaur Ji, Parshad vide letter dated 08.02.2023 recommended the construction of a Sanjeevani Clinic on the open government land located at Nirmal Palace, specifically for the public use. The area for the aforementioned Sanjeevani Clinic was suggested by the Parshad, in response to the demand from the residents of the area and the same is presently allocated to Bhopal Municipal Corporation. The

construction work on this land is being carried out by the Municipal Corporation Bhopal and presently the area has not been allocated to the answering respondent.

6. That there are no trees/plants on the said area, and it was an open area where unauthorized encroachments were being made by the residents of the colony for vehicle parking. Furthermore objections to the construction of Sanjeevani Clinic have been filed only by those who were extensively engaging in unauthorized use of the land.
7. The applicant has filed the rejoinder with the facts that construction of the Sanjeevani clinic is not in accordance with the rules and that the land is open land and the State cannot act in contravention of the rules. Learned Counsel for the State has submitted that this land was left for public utility and as per provision of Section 82 (2) of Municipal Corporation 1956 the places meant for public utility are vested in the Corporation and the Corporation may utilise it for that purpose.
8. In view of the above contention and situation submitted by the Learned Counsel for the Applicant (1) *Bangalore Medical Trust vs. B.S. Muddappa and others*, (1991) 4 SCC 54. (2) *Bhanwar Singh Vs. State of Rajasthan & Ors.* (D.B. Civil Writ Petition No. 15150/2021) has not been violated any way. It is further contended that there is no cutting of any trees and the policy of providing health facilities have been taken by the Govt. of India, Ministry of Finance vide letter no. 15(2)FC-XV/FCD/2020-25, Ministry of Finance, Department of Expenditure directing all the states to formulate a policy and provide space for PHC facilities urban areas. The Government of India has formulated the policy to establish approximately 26123 health facilities till the financial year 2025-26. In the Financial Year 2023-24 there is a target of establishing 5166 health facilities. The policy and introduction of the letter reveals that in 12<sup>th</sup> Schedule to the

Constitution, Public Health, Sanitations and Solid Waste Management are listed for Municipalities. In order to achieve the objective of universal health, rural and urban local body can play a role in the delivery of Primary Health Care specially service at the cutting edge level strengthening the local government in terms of the resources.

9. In view of implementing the above policy an amount of Rs. 8685 Crores have been allotted for Finance Year 2023-24 and the State Government has allocated the land and necessary orders have been issued by the Urban Administration and Development Department, State of Madhya Pradesh. Vide communication dated 17.04.2023 the place in Awadhupuri has been earmarked. The Town and Country Planning Department, State of MP vide letter dated 09.03.2022 has prepared a list of such places in State of Madhya Pradesh which find place of Awadhupuri where the present health unit is in construction.
10. Accordingly, the land belonging to the utility services of the area and is within the control of Municipal Corporation. In compliance of the order of Health Mission the Corporation permitted the land for the public utility in the form of health service unit/Sanjivni Clinic. There is no violation of the rules and land of the public utility is being used for the public utility.
11. As per the discussion made above, there are no violation and no interference of this Tribunal is required. Accordingly application has no merit and deserves to be dismissed and accordingly dismissed.
12. However, the agency/Municipal Corporation is directed to ensure that there should not be any damage to the trees standing there and in case of requirement of cutting of any trees necessary permission must be taken from the appropriate authorities subject to compulsory plantation.

13. Accordingly, Original Application No. 37/2023 (CZ) stands **disposed** of.

**Sheo Kumar Singh, JM**

**Dr. Afroz Ahmad, EM**

08<sup>th</sup> February, 2024  
O.A No. 37/2023  
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