

Item No.01

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**

(By Virtual Mode)

Original Application No.57/2022(CZ)

Krishna Social Awareness Welfare Society

Applicant(s)

Versus

State of M.P. &Ors.

Respondent(s)

Date of hearing: 18.07.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Ms. Meenakshi Patidar, Adv.

For Respondent(s): Mr. Sachin Kumar Verma, Adv. Standing
Counsel State of M.P.
Ms. Parul Bhadoria, Adv. for MPPCB
Ms. Gunjan Chowksey, Adv. for BMC
Mr. Brajesh Sharma, RO, MPPCB

ORDER

1. Heard Learned Counsels Ms. Meenakshi Patidar for applicant, Mr. Sachin Kumar Verma for State of M.P., Ms. Parul Bhadoria, for MPPCB, Ms. Gunjan Chowksey for BMC, Mr. Amit Pandey for respondent 4 and Mr. Brajesh Sharma, RO, MPPCB and perused the record.

2. This Original Application (hereinafter referred to as '**OA**') under Sections 14, 15 and 18 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') has been filed by Krishna Social Awareness Welfare Society through its authorized representative Mr. A.K. Saxena complaining about non-maintenance of sewage system, dumping and storage of sewage water and waste in the open land of residential colony i.e., New Chowksey Nagar Colony (hereinafter referred to as '**Colony**'), also causing health hazards to the residents, besides pollution

of land and air in violation of provisions of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**').

3. The facts stated in the OA are that respondent 4 i.e., SBI Staff GrahNirmanSehkariSansthaMaryadit is Cooperative Housing Society registered under M.P. Co-operatives Societies Act, 1960 (hereinafter referred to as '**MPCS Act, 1960**'). The said society developed way back in 1995-96, the colony in question. About 800 plots were demarcated and made available for public at large. Presently, (that is at the time of filing OA), 500 families are residing in the colony who had purchased plots, constructed houses and residing there at.

4. On account of non-maintenance of sewage system, issues of environmental pollution and damage to health of the inhabitants, have arisen. Following complaints of non-maintenance have been made in the OA:

- i. *"Untreated sewage water tends to overflow in open spaces causing nuisance and creating an unhygienic environment for the residents of Colony.*
- ii. *There is no proper supply of water for residents of New Chowksey Nagar.*
- iii. *There is no rain water harvesting system in the Colony for capturing the rain water and reusing it for everyday activities of the residents.*
- iv. *Unhealthy and poisonous environment is created due the heap of dumped garbage and debris of construction material, plastic wastes found alongside the road and in vacant plots of the New Chowksey Nagar. Subsequently, these dumped waste gets mixed with the sewage water and rainwater and make the surrounding completely unhealthy and dirty leading to breeding ground for mosquitoes and insects."*

5. Tribunal, considering the grievance of applicant on 22.07.2022, thought it appropriate to constitute a Joint Committee comprising a representative of Bhopal Municipal Corporation (hereinafter referred to as

'BMC') and Madhya Pradesh Pollution Control Board (hereinafter referred to as **'MPPCB')**).

6. Committee inspected the site on 24.08.2022. The observations of Committee, action taken and recommendation as contained in its factual report, read as under:

"The geographical location, photographs and visual observations were recorded. The committee recorded the observations during the inspection in reference to the points mentioned in the petition and observations are as follows:-

- 1. The New Chowksey Nagar colony is situated approx 360m away on the right side of Bhopal-Berasia road. GPS location of colony New Chowksey Nagar, Village Lambakheda, Ward 79, Tehsil huzur, Bhopal has been recorded using a mobile-based GPS application. GPS coordinates of Society is 23.31616°N, 77.41206°E. The location is marked on Goole map and it is enclosed as Annexure-I and photographs taken during the inspection are enclosed as Annexure- II.*
- 2. As per the information shown in petition the New Chowksey Nagar colony is developed by M/s SBI Staff GrahNirmanSehkariSansthaMaryadit, Bhopal in the year 1997.*
- 3. The approx area of the colony is 27 Acre and as per petition colony is consisting approx 500 plots.*
- 4. The approach road from main road to the colony is made of cement concrete. The internal roads of the colony are made of cement concrete having width of approx. 15 feet. The roads are found clean and in good condition.*
- 5. It is observed during inspection that approx 03-04 small pieces of 5-8 meters of internal roads are found damaged and not having cement concrete over it.*
- 6. New Chowksey Nagar colony is a developed colony and approx 90% plots are occupied and pucca houses are constructed. It consist of singlestorey, multi-storey and row houses.*
- 7. 04 parks are provided within the colony area which are having area of approximately 100 square meter, 150 square meter, 200 square meter, and 2500 square meter. The parks are not maintained properly.*
- 8. One overhead tank and a sump well of approx 150 KLD storage capacity is provided within the colony at a park for water supply in the colony.*
- 9. Residents informed that the water supply system is not operative.*
- 10. The sewer network system, chambers & manhole along with septic tank is provided in the colony. The sewage is sent to septic tank through underground drainage system.*
- 11. The manholes and chambers are located at suitable places and are in working conditions.*
- 12. A septic tank of approx 450 cubic meter capacity is provided on north-east corner of the colony for the sewage treatment. The*

location is marked on Google map. The sewage line is connected with the septic tank. Septic was found in operational condition.

13. Water logging is observed in some vacant plots. The water is seems like rain water as there was a heavy rains in the area in previous day.
14. Residents informed the committee that sewage overflows from some manhole is collected in to a vacant plot. MPPCB has collects water samples from the stagnated water for analysis.
15. The sewage overflow from manhole is due to blocking of sewer line. Residents informed that there is no cleaning and maintenance arrangement of the sewer system in the colony.
16. Electric poles are provided in the colony but street lights are not functional.
17. The solid waste is collected by door to door arrangement of Bhopal Nagar Nigam.
18. It is observed that the sewer line over flow and street light problem is occurs due to non maintenance of these facilities. Presently there is no maintenance arrangement in the colony.
19. During inspection the residents of the colony are asked to provided documents such as allotment letter, property agreement letter, Town and Country department permission of colony to know the year of establishment of the colony and who is responsible for the operation and maintenance work colony, but the documents are not provided.
20. The residents informed that there is no financial arrangement for the regular operation and maintenance of the colony.

Action Taken:

1. A notice is issued by MPPCB to SBI Staff GrahNirmanSehkariSansthaMaryadit, Bhopal for operation and maintenance work of sewage line of the New Chowksey Nagar colony. The copy of notice is enclosed asAnnexure-III.
2. For instant relief Bhopal Municipal Corporation has cleaned the sewer line of the New Chowksey Nagar colony. Photographs taken during the cleaning of sewer line in New Chowksey Nagar colony are enclosed as Annexure-IV.

Recommendations:

1. The sewer line is required regular cleaning and maintenance so that sewage overflow from manhole should not take place.
2. For regular operation and maintenance of sewage line, street light, water supply, internal roads of colony New Chouksey Nagar Colony residents should developed a society of residents and create a financial support based on sharing basis of each resident.
3. The funds should be used for regular operation and maintenance of colony.

7. Dissatisfied with the report, applicant filed objections dated 31.08.2022 stating that Joint Committee has failed to show actual ground reality of the colony; it has not taken note of absence of rain water harvesting system in colony; garbage being collected in vacant plots and

alongside of the roads and overall cleanliness of the society has been ignored. Respondent 3 i.e., BMC, who is a statutory local body to monitor overall cleanliness of the society, was made part of Joint Committee and hence veracity of report is questionable. Applicant also pointed out that septic tanks constructed by Developer are of inadequate capacity, unable to store untreated drainage water as a result whereof there is overflow and waste is discharged in open land; proper drainage system is not provided; there was water logging though there was no heavy rainfall reported in the previous week; whole drainage water is being accumulated in the park which is harmful for the residents and also for the environment at large; root cause is poor drainage system of the colony on account whereof park has become a breeding ground for mosquitoes and spreading diseases.

8. Vide application dated 13.03.2023, applicant has also filed certain photographs and cutting of newspaper to show pathetic condition of society due to accumulation of sewage water etc.

9. Some of the respondents have filed their response separately.

10. Respondent 2 i.e., MPPCB, in its reply dated 13.07.2023, has stated that Colony is situated approximately 360m away on the right side of Bhopal-Berasia road, GPS location of colony NewChowksey Nagar, Village Lambakheda, Ward 79, Tehsil Huzur, Bhopal has been recorded using a mobile-based GPS application and GPS coordinates of Society is 23.31616°N, 77.41206°E. Colony is developed by M/s. SBI Staff GrahNirmanSehkariSansthaMaryadit, Bhopal in the year 1997 and area of the colony is 27 Acres. As per petition, colony consists of approximately 500 plots. The approach road from main road to the colony and internal roads of colony are made of cement concrete. Internal roads have width of

approximately 15 feet.Colony consists of single story and multi-story pucca row houses, along with four parks with an area of 100 square meter, 150 square meter, 200 square meter, and 2500 square meter. Parks inside the colony are not properly maintained.One overhead tank and a sump well of approximately 150 KLD storage capacity is installed within the colony, whereas water supply system was not operative. Sewers, sewer chambers & manholes along with septic tank are installed within the colony. Sewage from entire colony is sent to septic tanks for processing through an underground drainage system. Manholes and chambers are located at accessible spots and maintained properly. Septic Tank possesses a capacity of 450 KLD, and the same is located in the North-East corner of the colony.Solid waste collection within the colony is carried out as per door to door arrangement with Bhopal Municipal Corporation. Further, sewer line overflow occurs due to non-maintenance by Colony.Water samples of impounded water in the vacant plot of Colony was collected at the time of joint inspection in presence of residents and as per analysis report, water sample quality is similar to impounded rain water as the value of pH, BOD, COD and Chloride are within norms prescribed by Central Pollution Control Board (hereinafter referred to as '**CPCB**'). BMC cleaned choked sewer line of Colony to make sewage flow towards septic tank uninterrupted. Letter dated 24.08.2022 was issued by MPPCB to SBI Staff GrahNirmanSehkariSansthaMaryadit, Bhopal to take up regular operation and maintenance of sewage system of Colony. SBI Staff GrahNirmanSehkariSansthaMaryadit, Bhopal submitted reply vide letter dated 05.09.2022 denying such responsibility. Environmental Compensation of Rs. 15,50,000/- (Rs. fifteen lakhs and fifty thousand only) is levied on the SBI Staff GrahNirmanSehkariSansthaMaryadit, Bhopal as per CPCB guidelines.Notice was issued to SBI Staff GrahNirmanSehkariSansthaMaryadit, Bhopal to take appropriate

remedial measures for regular maintenance of cleaning of colony sewerage system and proper arrangement of drainage system of the colony.

11. In the reply dated 17.07.2023, submitted on behalf of respondent 3, it is said that Joint Committee was constituted by this Tribunal, comprising Brajesh Sharma, Regional Officer MPPCB, Bhopal and Santosh Gupta, Superintendent Engineer, BMC. They visited the site on 24.08.2022 and prepared report. The observations in the report are quoted in para 2.5 of reply of respondent 3, as under:

- I. *“That a septic tank of approx 450 cubic meter capacity is provided on north-east corner of the colony for the sewage treatment. The sewage line is connected with the septic tank, and septic was found in operational condition.*
- II. *It was further observed that one overhead tank and a sump well of approx 150 KLD storage capacity is provided within the colony at a park for water supply in the colony.*
- III. *That it was alleged that the Respondent no.3 has failed to provide any proper drainage system but it was observed that the sewer network system, chambers & manhole along with septic tank is provided in the colony. The sewage is sent to septic tank through underground drainage system.*
- IV. *That the approach road from main road to the colony is made of cement concrete. The internal roads of the colony are made of cement concrete having width of approx. 15 feet. It was further observed that the roads are found clean and in good condition.*
- V. *It is observed during inspection that approx 03-04 small pieces of 5-8 meters of internal roads are found damaged and not having cement concrete over it. That the new Chowksey Nagar colony is a developed colony and approx 90% plots are occupied and pucca houses are constructed. It consist of single storey, multi-storey and row houses.*
- VI. *That the Residents informed that the water supply system is not operative. That the manholes and chambers are located at suitable places and are in working conditions.*
- VII. *That Water logging is observed in some vacant plots. It is further submitted that as there were heavy rains in the area in previous day due to the same situation of water logging arose.*
- VIII. *That the Residents informed the committee that sewage overflows from some manhole is collected in to a vacant plot. In regard to this, MPPCB has collected water samples from the stagnated water for analysis.*
- IX. *That the sewage overflow from manhole is due to blocking of sewer line. That the Residents informed that there is no cleaning and maintenance arrangement of the sewer system in the colony.*
- X. *It is submitted that during the inspection it was observed that the only issue faced at sight was of non maintenance. In this regard it is pertinent to mention that it was Respondent no.4 duty and*

liability to maintain the said society and therefore a notice is issued by MPPCB to SBI Staff GrahNirmanSehkariSansthaMaryadhit (Respondent no.4) for operation and maintenance work of sewage line of the New Chowksey Nagar Colony.”

12. BMC has cleaned sewer line of Colony on the date of inspection itself. The promises were made by respondent 4 to the residents of colony for providing sanitary facilities, power supply, water connections, concrete roads, proper sewage lines and good drainage system but it has failed to take necessary steps and respondent 3 cannot be saddled with the said responsibility. Respondent 3 is still continuing to provide cleaning and maintenance facility to the residents of the colony. The colony is private and has not been handed over to BMC for maintenance. Respondent 3 is not directly involved in the matter but acting as a supporting party only, and in good faith, providing facility of maintaining and cleaning sewers.

13. Respondent 4 has also submitted its reply dated 03.03.2023 stating that it is neither a Builder nor a Promoter; it is a registered Co-operative Housing Society formed with the objective of providing open plots for housing and residential accommodation to its members; Respondent 4 did not sell any house to any of its members; all the houses constructed in New Chowksey Nagar were by respective members of respondent 4 society. Initially only development charges were taken from the members while executing registered sale deeds in their favour; Respondent 4 has undertaken development of the colony; no additional charges for repair, maintenance or for future infrastructure was levied by the society from its members; the entire colony was handed over to the maintenance society by respondent 4 and hence liability of maintenance is upon the society and BMC since BMC collects maintenance charges, property tax and garbage collection charges from the members; before

allotment of plots to respective members, respondent 4 ensured construction of roads, sewage line as well as septic tanks; a water tank was also erected within the colony for storage and water supply of potable water; the allegation of misuse or misappropriation of development charges is incorrect; the grievance raised by applicant is not with regard to protection of environment but with regard to maintenance of residential colony; there is no obligation upon respondent 4 to setup any STP within colony for storage and treatment of waste being produced by the residents of colony; respondent 4 would agree to setup STP plant within colony only if residents agree to bear cost of installation; development charges levied by respondent 4 did not include cost of STP; development has been carried out by respondent 4 as per norms of T&PC and Municipal Corporation; Respondent 4 was not supposed to construct STP for treatment of septic tank waste; colony is situated within BMC jurisdiction who collects septic tank waste from colonies in case septic tank overflows; the septic tanks laid down in colony have sufficient capacity to store sewage water as well as waste currently being produced by residents of colony and the averments otherwise are incorrect; Respondent 4 is a registered society and lacks sufficient means for establishment of STP; residents of the colony refused to pay any maintenance charges to respondent 4 hence it is not able to generate requisite funds necessary for maintenance; it is not correct that due to inaction of respondent 4 ground water has depleted in the colony; there was no obligation on respondent 4 to install rain water harvesting system in the colony; if residents agree to bear cost respondent 4 may provide rain water harvesting system; the development charges did not include the cost of installation of rain water harvesting system; Respondent 4 has constructed a water tank for supply of safe potable water but the residents are not using said water tank and instead have installed their

own borewells which is the reason for depletion of ground water in the area;respondent 4 is neither the developer nor promoter but a co-operative society who has allotted open plots to its members but before allotment requisite development was carried out; and the grievance of the applicant is in fact against respondent 3 and not 4.

14. In the additional submissions, it is said that residents of New Chouksey Nagar are paying property tax and other taxes to BMC hence BMC is under statutory obligation of maintenance of the colony.

15. No objection has been filed by respondents 2, 3 and 4 to the Joint Committee report and the facts stated therein.

16. It is evident from record including Joint Committee's report which has not been objected or protested by respondents 2,3 and 4, that there are maintenance issues in the colony particularly in regard to sewer line which was overflowing as a result whereof sewage waste got collected in open land, causing not only environmental pollution on land but contaminated ground water and also caused air pollution, creating health hazards to residents.

17. Respondent 4, is the developer of the colony. It is stand taken otherwise is incorrect and hence rejected.

18. Respondent 3 is the local body who is realizing various taxes from the residents of colony and under the provisions of Local bodies Act responsible for maintenance of sewer and drainage system etc.but it has failed to discharge its statutory duties.

19. Respondent 3 has specifically admitted that on the date of inspection of Joint Committee only, chocked sewer line was cleared. Prior to that, situation was allowed to worsen. It allowed sewage overflow and

collection of waste water on the open on land in the colony.

20. Counsel for applicant stated that maintenance of sewage system in residential colony is responsibility of Respondent 3 and 4, both, and for violations of environmental laws they are liable to pay environmental compensation on the principle of 'Polluter Pays'.

21. Learned Counsels appearing for the respondents adhered to their stand taken in the pleadings.

22. Having considered rival submissions and the record, we are of the view that neither respondent 4 can wriggle out of its responsibility of maintenance of Colony, being a 'Developer' nor respondent 3 can shirk away from its statutory obligations of cleanliness of residential area lie within its jurisdiction.

23. Respondent 4 being developer of the Colony, is responsible for maintenance of the colony and cannot shirk off its liability and responsibility of maintenance on the ground that its duty is over after execution of sale deeds of plots and construction of roads etc. If it is developing a residential colony in such a big area where 800 plots are carved out, the development would include establishment of Sewage Treatment Plant since post construction activities of residential buildings and occupancy will ultimately result in discharge of domestic sewage in the colony and such sewage cannot be allowed to get discharged directly either on the open land or municipal drain or any other water body unless appropriate treatment is met at the site by first carrying these domestic sewage to treatment plant and thereafter discharging treated water for appropriate purpose.

24. Respondents 3 and 4, have adopted an attitude of shifting of blame.

In our view, both are responsible for committing gross negligence, acting in violation with the provision of Water Act, 1974 by allowing discharge of untreated sewage on the open land and contaminating ground water as also causing damage to the land and causing health hazards to residents.

25. It is true that on the date of inspection, respondent 3 has cleaned choked sewer but maintenance is an activity which has to be taken care on daily basis and not a one time activity. Therefore, maintenance has to be carried regularly in ordinary course of business and this is responsibility of respondents 3 and 4, both, collectively and severally. Non-compliance of provisions of Water Act, 1974 is also an offence for which respondent 2 i.e., MPPCB can initiate criminal proceedings against Municipal Commissioner, BMC and the office bearers of respondent 4. We, therefore, direct respondent 2 to take appropriate action in this matter.

26. With regard to the past violations, which virtually stand proved in the case in hand, since violations have caused damage to environment, appropriate environmental compensation must be paid by respondents 3 and 4, both, on application of principals of 'Polluter Pays'.

27. We accordingly, impose environmental compensation of Rs. 10 lakhs each upon respondents 3 and 4 which shall be deposited by them within 2 months with MPPCB. The said amount shall be utilized by MPPCB for remediation and restoration of environment in the area of New Chouksey Nagar Colony, in accordance with the plan which shall be prepared by a Joint Committee comprising MPPCB and District Collector, Bhopal within 2 months from today and execution of the said plan shall be completed within next 3 months.

28. Respondents 3 and 4 are also directed to continue to observe

maintenance of sewer and drainage system in New Chouksey Nagar Colony on day to day basis and if they fail to take appropriate steps, timely, respondent 2 shall monitor the function, and in case of failure would take appropriate action under relevant statute which action will include assessment of environmental compensation for future violations, criminal prosecution etc.

29. With the aforesaid directions, this OA is partly allowed.

30. Copy of this order be forwarded to CPCB, MPPCB, Collector, Bhopal, BMC and SBI Staff GrahNirmanSehkariSansthaMaryaditby e-mail for compliance.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

July 18, 2023
Original Application No. 57/2022(CZ)
N