

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Original Application No.75/2023(WZ)

Hasanali Nurabhai Nodoliya

.....Applicant

Versus

Collector & District Magistrate (Banaskantha) & Ors.

....Respondent(s)

Date of hearing: 12.10.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Applicant in-person
Respondent(s) : Mr. Maulik Nanavati, Advocate for R-1/Dist. Collector
& R-5/GPCB along-with
The District Collector, Banaskantha, in-person
Mr. Hemant Munshaw, Advocate for R-2 to 4

ORDER

1. From the side of the applicant, applicant has appeared in-person, who has filed reply affidavit dated 07.10.2023, where-in, in para no.3 in tabular form, directions of this Tribunal have been quoted in Column-2 and in Column-3, it is indicated by him that the same have not been complied with. Besides that, in respect of the Joint Committee Report dated 04.08.2023 (1st report), it is submitted by him that no details are mentioned therein of the technical analysis & lab reports of the samples collected. The Panchanama, which was prepared at the time of site inspection, has been deliberately removed from the report. The sewage water is also contaminating the drinking water, which is used from the bore-well in the vicinity but nothing has been stated about this in that report, despite the said matter having been raised by him in the present application. Nothing has been stated in the said report with respect to the

fact whether the Gaucher Land can be used for dumping of sewage waste. In this regard, he has also cited a Judgment of the Hon'ble Apex Court in the matter of *Rameshbhai Virabhai Chaudhari vs. State of Gujarat & Ors.* (Civil Appeal No.5135 of 2021), where-in the Hon'ble Apex Court held "the Gauchar Land can be used only for purposes for which it is permitted to be used.....".

2. In this reply affidavit, the applicant has also raised objection against the additional Joint Committee Report dated 03.09.2023, regarding which it is submitted that the said report contains incorrect details to the effect that Gram Panchayat, Badargadh is constructing separate pipeline, which passes through the said Gaucher Land (Survey No.498), exclusively for discharge of storm water overflow from village road Gam Talav (Survey No.478) leading to natural nallah, which finally meets river Umerdashi. Consent of GPCB is not required for the construction of the said pipeline. Further, it is mentioned that nothing has been mentioned regarding damage caused to the trees as they were uprooted during installation of the new gutter line at the site in question. The 2nd report is prepared without site in question having been visited. The Grey Water Treatment Plant is not made operational. In para no.2 (B) of the additional report, it is mentioned "..... For the period of last seven months (since March, 2023 till end of September, 2023) total quantity of garbage @ 10 MT, which is found dumped at this location." This dumping is done without any authorization or permission. Administration is converting the valuable Gauchar Land into a Dumping Site, which is illegal. In para 2(A) of the said additional Joint Committee report, it is recorded "Untreated sewage gets accumulated at said Gauchar Land....." Referring to it, it is stated by him that the Badargadh Gram Panchayat has installed several inlets of the untreated sewage in the site in question

from 2021 to 2023, which has massively enhanced the pollution due to untreated sewage. Hence, penalty is to be levied from the Project Proponent.

3. From the side of respondent No.2/District Development Officer, Banaskantha District Panchayat, Palanpur, a reply affidavit dated 27.09.2023 has been filed, where-in it is submitted that the answering respondent has installed Grey Water Treatment Plant having capacity of 200 KLD at Survey No.498, which is very vaguely worded as Gauchar Land and residential area. But the learned counsel for respondent No.2 orally made it clear that the part of the Survey No.498 is a Gauchar Land and partly residential area. We direct him to submit a clarification in this regard as to which part of the said Survey Number is Gauchar Land and which is residential area because the allegation of the applicant is that the said plant has been set up in Gauchar Land where it could not have been set up.

4. It is further submitted in this affidavit by the respondent No.2 that after installation of the Grey Water Treatment Plant, the water purified through it is being diverted to a field of one Mr. Aslam Mohammed Varaliya, who was the owner of Revenue Survey No.255 of Village Badargadh. The Gram Panchayat has passed a Resolution No.1 in its Meeting dated 11.08.2023 permitting Mr. Varaliya to use the purified water for a period of 5 years on a condition that he would pay Rs.5,000/- per year to the Gram Panchayat and the electricity bill would also be paid by him. Regarding solid waste, it is submitted that door to door collection is being done w.e.f. 01.08.2023 under Mahatma Gandhi Swachchhta Mission and the same is being dumped at Survey No.498 in Gauchar Land. The Gram Panchayat, Badargadh has already addressed a letter dated 24.08.2023 for earmarking 2 acres of land, out of the Survey

No.498 for dumping purpose. But it is not made clear as to what happened in regard to the said proposal nor has any document been annexed related to them. The answering respondent has also submitted an online application to GPCB on 01.09.2023 for the NOC for the Grey Water Treatment Unit of Gram Panchayat.

5. The learned counsel for respondent No.2/The District Development Officer, Banaskantha has also stated that the reply affidavits of respondent No.3/The Taluka Development Officer, Palanpur and respondent No.4/Badargadh Gram Panchayat have also been filed, which are on record and they have also contained the same facts, which are contained in the affidavit of respondent No.2.

6. The District Collector, Banaskantha/respondent No.1 has appeared in-person through Video Conferencing before us, who has submitted that as State Government Policy, certain percentage of total land of the said Village can be set apart as a grazing land. But we have not been provided any policy to that effect, therefore, we direct that if there is a policy of the State Government, the same shall be placed on record.

7. The District Magistrate also apprised us that reply affidavit on behalf of respondent No.1 shall be filed by the learned counsel for respondent No.5/GPCB by the next date, we allow him two weeks' time to file the same and the learned counsel for respondent No.5/GPCB shall also file their reply affidavit within a period of two weeks.

8. We are of the view that because of the Solid Waste Management Rules, 2016 read-with the Judgment of this Tribunal passed in Original Application No.606/2018, cut-off date has been fixed by which the solid waste treatment plant is required to be set up by each of the local body and in this case, in violation of that whether any environmental

compensation needs to be levied from the respondent No.2/Project Proponent, has to be made clear by the learned counsel for respondent No.5/GPCB, by the next date and if we find that there is any violation of the said rule then the GPCB shall also make calculation of the EDC in that regard by the next date.

9. Any reply affidavit, which would be filed by the respondents, a copy of the same shall be served upon the applicant and after its receipt, within one week thereafter, rejoinder may also be filed by the applicant.

Put up this matter for final hearing on 30.01.2024

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 12, 2023
Original Application No.75/2023(WZ)
P.Kr