

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

[Through Physical Hearing (with Hybrid Option)]

**ORIGINAL APPLICATION NO.14 OF 2023 (WZ)
WITH
I.A. NO.202/2023 (WZ) IN O.A. NO.14/2023 (WZ)**

Vanshakti & Anr. **... Applicants**

Versus

Chief Conservator of Forests, Thane & Ors. **... Respondents**

Date of Hearing : 14.10.2024

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

Applicants : Mr. Zaman Ali, Advocate

Respondents : Mr. Saket Mone, Advocate for R-4/MMRDA
Mr. Aniruddha Kulkarni, Advocate for SEIAA

ORDER

1. From the side of the applicants, learned counsel Mr. Zaman Ali has appeared and states that he has filed an affidavit/objections dated 20.02.2024 against the Joint Committee report, wherein it is stated by the applicant that the Joint Committee has not placed complete facts in its report as it has failed to take cognizance of Marathi letter dated 23.05.2023 issued by the Deputy superintendent of Land Records (DSLRL), Bhiwandi to the Deputy Conservator of Forests, Thane Forest Division, English version of which is annexed as Annexure-R1 to the affidavit, wherein our attention is drawn to the following :

“It is observed from the above table that there is a discrepancy in the area in 7/12 Hissa details in S.No.106 and S.No.107 and the area as per the Original Records Akarband. Similarly, the Certified gat Book Records were not prepared in the area of both the survey numbers 106

and 107 at the time of original jamabandi measurements, it is imperative to take reference of Village Map for deciding the boundaries of the said Survey Numbers. Accordingly, on perusal of this office Original Village Map, it is observed that the boundary line between S.No.106 and S.No.107 has not been mentioned in the original records itself. Further, after the said measurements, the consolidated area of both these Survey numbers as per the Village Map is 54.46.20 H.R. and this area as per total area of Akarband (82.68.79 H.R.) is discrepant to the extent of 28.22.59 H.R. Therefore, so long as the discrepancy in 7/12 Record of Rights according to the original Records (Akarband) in S.No.106 and S.No.107 is not removed and boundary marks in Survey Number and Hissa Number are not created, it will be technically difficult to decide the boundary as per Survey Number/Hissa Number.”

2. Having drawn our attention to the above discrepancy, it is stated by the learned counsel that it is clear that there was discrepancy to the extent of 28.22.59 H.R. in the area of Survey No.106 and Survey No.107 and therefore, so long as the discrepancy in 7/12 Record of Rights in Survey No.106 and Survey No.107 is not removed and boundary marks in survey numbers and Hissa numbers are corrected, it would be difficult to know the boundaries as per Survey Number/Hissa Number. It is also pointed out by him that in the Joint Committee Report, Survey No.107 is wrongly marked as Survey No.106, Survey No.106 is wrongly marked as Survey No.205 and Survey No.105 is not shown on the Village Maps. Therefore, it is argued that this discrepancy needs to be rectified, for which necessary steps are required to be taken by the State Authorities with the prior approval under Section 2 of the Forest Conservation Act, 1980.

3. The Joint Committee Report dated 25.11.2023 has been submitted, relevant part of which is quoted hereinbelow for the sake of convenience:

3. Accordingly, a meeting was convened and held on 11.04.2023 (the member of State Environment Impact Assessment Authority was absent). In order to verify the fact of difference between actual location of land survey Nos. 106 and 107 and location shown in the village map, it was decided in the meeting dated 11.04.2023 to measure survey no.106 and 107 jointly on payment of necessary measurement fees to Land Record Department. The said fees of Rs.1,35,000/- was deposited with Land Record Department on 21.04.2023. The officer from Land Record Department, Bhiwandi on 01.05.2023 measured only area of land of the school on site.

4. The Deputy Superintendent of Land Record, Bhiwandi gave Measurement Report specifically mentioning therein that the School of Vajreshwari Shikshan Prasarak Mandal, Ganeshpuri is located in Survey No.107 (Copy of Measurement Report is annexed herewith

and marked as **Exhibit-A**). The officer of Land Record Department suggested to move proposal for rectification of land record in order to show proper location of Survey No.106 and 107 in village map of Ganeshpuri.

5. The joint inspection was carried out by the members on 22.06.2023. For the joint site visit the Chief Conservator of Forests (T) Thane and Sub Divisional Officer, Bhiwandi, on behalf of District Magistrate, Thane (the member of State Environment Impact Assessment Authority was absent) were present. The Committee members visited the site in presence of the forest officers of the area, surveyor of forest department and some villagers. It was found in joint site visit that the School building and other structures of Vajreshwari Shikshan Prasarak Mandal, Ganeshpuri, on the site are in Survey No.107 (part). A map prepared by the officer/ Surveyor of the Office of Deputy Conservator of Forests, Thane Division, with the help of Global Positioning System (GPS) reading shows the location of the School Structure in Survey No.107 (part). (Copy of map is annexed herewith and marked as **Exhibit- B**).

6. In the village map of Ganeshpuri, as per factual position and four boundaries are wrongly marked. In fact area marked as "Survey No.105" is Survey No.106 and area marked as "Survey No.106" is Survey No.107. As per record of rights i.e.7/12 extract, area of Survey No.105 is only 0.04 Hect (4Gunthas).(Copy of 7/12 extract is annexed herewith and marked as **Exhibit- C**) Area of actual Survey No.105 is not shown in the village map.

7. The 7/12 extracts of Survey No.107/B admeasuring 0.44 Hect and Survey No.107/C admeasuring 1.82 Hect to a total area of 2.26 Hect show the name of Vajreshwari Shikshan Prasarak Mandal in ownership column (Copies of 7/12 extracts are annexed herewith and marked as **Exhibit- D** collectively). It is clear from the Notification No.FLD 1765/98117-Y dated 21/07/1966 issued by Revenue and Forest Department, Sachivalaya, Bombay that Survey No.107 pt. Part I admeasuring 1 Acre 3.0 Gunthas and Survey No.107 pt. Part II admeasuring 4 Acre 20 Gunthas totally admeasuring 5 acres 23.0 Gunthas was disforested (Copy of 7/12 Notification is annexed herewith and marked as **Exhibit- E**).

8. It is clear from above mentioned facts and record that the construction / structure of the School of Vajreshwari Shikshan Prasarak Mandal, Ganeshpuri is in Survey No.107 (part) (old Survey No.88 (part)) of village Ganeshpuri which has been disforested.

Submitted with respect for kind perusal of this Hon'ble Tribunal.

4. The above report clearly indicates that the construction/structure of the school Vajreshwari Shikshan Prasarak Mandal, Ganeshpuri is in Survey No.107 (part) (old Survey No.88 (part) of village Ganeshpuri, which has been deforested. We are of the view that since the Joint Committee comprised the Chief Conservator of Forests, Thane as one of the members, who has signed this report and it is this Joint Committee which found that the construction of the school done, was not in forest area, rather it was in deforest area. Therefore, the submission of the learned counsel for the applicants that the said school, is being constructed in forest area, is not found to be correct by the Joint Committee, although it is being disputed by the learned counsel for the applicants saying that this discrepancy is occurring only because Survey No.105 not being located by the Joint Committee. This correction

needs to be done before finalizing the issue. We are of the view that had this area been forest area where the construction is being carried out, the Chief Conservator of Forests would definitely have raised grievance and this would need prior approval from the Central Government under Section 2 of the Forest Conservation Act. Since the Chief Conservator of Forests has not raised any objection, we hold that the construction has not been done in forest area.

5. As regards the correction of the revenue record, the same does not fall in our domain and for that, appropriate forum i.e. revenue authorities will have to be approached by the applicant.

6. The learned counsel for the applicants has drawn our attention to Annexure-A4 (page 27 of the paper-book) which is the Final Regional Plan prepared by the Mumbai Metropolitan Region Development Authority (MMRDA) and at page 28 of the paper-book is the map which is showing by horizontal lines the forest area in Survey No.106. He has also drawn our attention to page 25 of the paper-book, which is a Village Model Seven (Rights Record Sheet), wherein Survey Number and sub-division is shown as 106/3/2 and in the column of name of the occupant, it is recorded as "Divisional Forest Officer, Thane (Forest)" and based on this, it is submitted that Survey No.106 is a forest area and therefore, no construction could have been done over there without prior permission from the Central Government. The learned counsel for the applicants has also drawn our attention to Annexure-A3 (page 26 of the paper-book), wherein Survey No.106 is shown as reserved forest. Therefore, it is being argued by him that this documentary evidence is contrary to the finding given by the Joint Committee in its report. But we have to make clear that the Joint Committee has found that the construction is being carried out in Survey No.107 (part) and not in Survey No.106.

7. On perusal of the record, we find that no other documentary evidence is produced on record in support of the argument/submissions by the

learned counsel for the applicants and therefore, we do not find any reason to order demolition of any construction raised in the area concerned.

8. From the side of respondent No.4 – MMRDA, learned counsel Mr. Saket Mone has appeared, whereas from the side of SEIAA, learned counsel Mr. Aniruddha Kulkarni has appeared.

9. In view of what has been observed by us hereinabove, we dismiss the Original Application.

10. In view of dismissal of Original Application, I.A. No.202/2023 does not survive and stands disposed of accordingly.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 14, 2024
ORIGINAL APPLICATION NO.14/2023(WZ)
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