

Item No. 02

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 02/2020(WZ)
(I.A. No. 75/2021)

Vaibhav Tapkir & Anr.

Applicant(s)

Versus

M/s Tanish Associates & Ors.

Respondent(s)

Date of hearing: 09.03.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant: Mr. Omkar Wangikar, Advocate

Respondent: Ms. Manshi Joshi, Advocate

ORDER

1. Grievance in this is against diversion of a drain for housing project of Respondent No. 1 – M/s Tanish Associates, Village Charoli KH, Taluka Khed, District Pune. It is also alleged that there is discharge of untreated sewage into the drain. However, further question which has arisen is that the project is hit by the mandatory requirement of EC and requisite consents under the Water and the Air Acts which have not been taken.

2. On 17.08.2020, the Tribunal issued notice to the Project Proponent (PP) as well as the State PCB and also constituted a joint Committee comprising District Collector, Pune, Pune Metropolitan Region Development Authority and State PCB to furnish a factual report in the matter.

3. The project proponent has chosen not to appear. It has to be proceeded ex parte. The joint Committee has filed its factual report on 23.08.2021 after undertaking visit to the site which mentions that requisite STP has been set up and there is no discharge of untreated sewage. Drain has been channelised by use of RCC. Report of the Committee is reproduced below:-

*"It is submitted by PMRDA authority that Sub-Divisional Officer Khed has granted building permission on Gat No. 498/1, Charoli, Taluka Khed, District Pune, for total plot area of 8,434 sq.mtr. on 02.01.2015. In this matter PMRDA Authority has also issued **occupancy certificate on 31.08.2017 for built up area of 5,797.28 sq.mtr.** Having building no. A, B & C.*

*Also, Sub-Divisional Officer Khed has granted **building permission on 07.11.2013 on Gat No. 498/2, 498/3 for group building having total plot area of 13,004 sq.mtrs.** which includes building no. I & J, having built-up area 7,544.97 sq.mtr. **Again, PMRDA authority has granted revised building permission on Gat No. 498 dt. 28.06.2016 for total plot area of 13,004 sq. mtr. and built-up area of 11,170.89 sq. mtr.***

*During visit, it is observed that there are building no. A, B, C which are constructed on Gat. No. 498/1 and building no. I & J which are constructed on Gat. No. 498/2 & 498/3, with due permission from competent authority separately. However, **the main gate, internal roads, approach roads, amenities are same for all the projects, and there is no demarcation / physical barrier between Gat. No. 498/1, 498/2, 498/3, and hence it seems that the project is group project.***

During visit it is observed that PP has provided sewage treatment plant for the treatment of domestic effluent generated from the project at Gat. No. 498/1. 498/2 & 498/3 and no untreated sewage found discharged into the nalla i.e. for the entire project.

Sr. No.	Points stated in application	Summary/Conclusion
1.	<i>The present Application pertains to substantial issue of environment, as the Respondent No.1 has constructed his site under the name and style "Tanish Srushti" situated at Property bearing No. 498/1, 498/2, 498/3 at Village Charoli Kh, Tal-Khed, Dist-Pune on natural nalla which has totally</i>	<i>As per the report submitted Tahsildar Khed it is observed that, the natural nalla is flowing from Western side of Gat no.498/1.This nalla is an open drain coming from Alandi-Markal road. This open nalla is channelized by project proponent i.e. builder and at some places it is channelized</i>

	blocked the Nala and also obstructed the natural nala which has totally blocked the Nala and also obstructed the natural flow of water. The Respondent No.1 is also letting the untreated sewage effluent in the adjoining Nala which meets the Indrayanai river thereby polluting the entire water body.	through by laying RCC pipelines, this nalla further meets to the another nalla situated in the Gat no.497, as per the records submitted by the developer this open nalla is not marked on the map. During visit no untreated effluent found into the nalla. PP has provided the Sewage Treatment Plant (STP) for the treatment of domestic effluent. During visit no construction activity/ construction observed on nalla. It is also observed that, there is a parking lot in between channelized nalla and constructed buildings.
2.	The Applicant states That the entire project of the Respondent No.1 is spread over Gat No.498/1, 498/2, 498/3 Village Charoli, Kh, Tal-Khed, Pune. The Applicant seeks to raise "substantial question relating to the environment pertaining to the construction of Parking and temple done by the Respondent No.1 on the Natural Nallah situated at Gat No.498/1 at Village Charoli Kh, Tal-Khed, Dist-Pune, and has totally blocked the Nala thereby obstructing the free flow of water.	As per the report submitted by Tahsildar Khed it is observed that, the natural nalla is flowing from Western side of Gat no.498/1. This nalla is an open drain coming from Alandi-Markal Road. This open channelized by project proponent i.e. builder and at some places it is channelized through by laying RCC pipelines, this nalla further meets to the another nalla situated in the Gat no.497, as per the records submitted by the developer this open nalla is not marked on the map. During visit no untreated effluent found into the nalla. PP has provided Sewage Treatment Plant (STP) for the treatment of domestic construction activity / construction observed on nalla. It is also observed that, the there is a parking lot in between channelized nalla and construction buildings.
3.	The Applicant states the Respondent No. 1 has constructed buildings on the Gat No.498/2 & 498/3 is also letting the untreated Sewage- • Into the adjoining Nallah taking a drainage line from the land of the farmers adjacent to the said Project. • Into the Indrayani river directly by taking a drainage line about 15 mtrs deep from the ground which directly meets the river	As per the report submitted by Tahsildar Khed it is observed that, for the treatment of Domestic effluent generated from the project at Gat no.498/1, 498/2, 498/3, PP has provided STP & no untreated sewage found discharge in to the nalla.
4.	The Applicant states that there are clear Rules defined by the Government of Maharashtra, Urban Development Department, Mantralaya,	As per the report submitted by Tahsildar Khed it is stated that, as per DCPR notification -Rules no.

	Mumbai regarding the Regional Areas. The DCPR bearing Notification No-TPS-1812/157/CR71/12/REC NO 34/12/UD 13/DT. 21st November 2013 clearly states- No piece of land shall be used as a site "if the site is within a distance of 9 m. From the edge of water mark of minor water course (like nallah) and 15 m. From the edge of water mark of a major water course (like river, water body) shown on Development Plan or village /city survey map or otherwise, provided that where a minor water course passes through a low lying land without any well-defined banks, the owner of the property may be permitted by the Commissioner to restrict and or to re-align the same within the same land, along with cross section as determined by the Municipal Commissioner without changing the position of the inlet and outlet of the water course. In such case marginal open space shall be at least 4.50 m. From the edge of the trained nala. The DCRP bearing Notification No-TPS-1812/157/CR71/12/REC NO 34/12/UD1/3 DT. 21st November 2013 is hereby marked and Annexed as "Annexure I" by the applicant.	11.1(b), PP has channelized the open nalla & the edge of nalla is 9.0mtr away from constructed building.
5.	The Applicants state that moreover the Respondent No.1 does not have a functional STP. The Respondent No. 1 even after being aware of the Rules and Regulations and with the help of the other Respondents is letting the untreated sewage effluent directly into the adjoining Nallah which meets the Indrayani river thereby causing a grave Water Pollution. Photographs showing the same are hereby marked and	For the treatment of Domestic effluent generated from the project at Gat no. 498/1, 498/2,498/3, PP has provided STP & no untreated sewage found discharge in to the nalla.

	Annexed as "Annexure 4" by the applicant.	
6.	The Applicant states he has visited the office MPCB (R.2) dated 9th December 2019 on an open inspection day. The Respondent No. 2 turned a blind eye and gave them a reply stating- "The Documents are not available in this office". The RTI Application dated 9th of December and the Reply of MPCB dated 10/12/2019 is hereby marked and Annexed as "Annexure 5" by the applicant.	RTI received to this office & submitted reply on 10.12.2019 that, Application for obtaining Consent by project M/s. Tanish Associates and Jalaram Park, Charoli Kh, Tal-Khed, Dist-Pune is not available with this office.

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4. From the above, it is seen that the total built-up area is said to be about 30000 sq. mtrs., which could not be built without EC as per EIA Notification dated 14.9.2006. To avoid the law, the project has been split into three. In absence of EC, the project is liable to be demolished or compensation required to be paid as held inter-alia in *Alembic Pharmaceuticals Ltd. v Rohit Prajapati & Ors.*¹ and *Keystone Realtors Pvt. Ltd. v. Anil v. Tharthare and Ors.*². Further requirement is for consents under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and the Air Act. There is nothing to show such compliances. Further, channelizing of drain and covering the area and use of the land for parking is impermissible. Drain vests in people and no individual can take over the same or channelise it. The rule referred to in para 4 of the above table does not justify the same. The drain is meant to carry rain water and also performs ecological functions, including ground water recharge. Channelizing the drain by RCC is impermissible and detrimental to the environment. Land above the drain cannot be taken over by any private person. Even where no EC is required, sewage

¹ 2020 SCC OnLine SC 347
² (2020) 2 SCC 66

management has to be scientific as held by this Tribunal vide order dated 24.02.2022 in OA No. 34/2020(WZ), Tanaji Balasaheb Gambhire vs. Union of India & Ors., as follows:

"10. It is observed in several matters that residential societies are facing the issue of lack of proper sewage and solid waste management system. This requires the concerned authorities to lay down standards for disposal of sewage effluent and existence of sewerage system in housing societies including those not requiring EC to enforce the water and air quality standards and clarify that even if EC is not required, consent mechanism is not dispensed with. MoEF&CC and CPCB may take necessary action in this regard within three months."

5. We also note that the MoEF&CC has brought out draft Notification No. F. No. 19-103/2021-IA.III) dated 25.02.2022 called the Building Construction Environment Regulation, 2022 which inter alia provides as follows:

"xxxxxxxxx

3. Applicability of the Regulation

- (1) *The Regulation shall be applicable for projects involving construction of buildings, having built up area $\geq$ 5000 sq.mts.*

xxxxxxxxx

C. Management of sewage/waste water, Reuse and recycle of treated wastewater by dual plumbing system

10. *Dual Plumbing System shall be implemented - one for supplying fresh water for drinking, cooking and bathing etc. and another for supply of treated water for flushing.*

11. *Only treated water shall be used for flushing.*

12. *In no case, sewage or untreated waste water generated within the project area shall be discharged through storm water drains or otherwise into water bodies nor discharged/injected into the ground water by any mode.*

13. *Subject to Clause*

- (13) *Subject to Clause (3) of this notification, the project authority may opt or avail to common off-site treatment facility, as feasible, for treatment with reuse & recycle of corresponding*

quantity of treated water through the dual plumbing system for flushing and other non-potable use.

A. For projects with built up area of 5,000 sq.mtrs. to 20,000 sq.mtrs. –

- i. In areas where there is no municipal sewage network,*
 - a. Either Onsite Sewage Treatment Systems with capacity to treat 100% waste water may be installed with appropriate tertiary treatment system with disinfection for black & grey water. Such treated water should be used with dual plumbing system for flushing and other non-potable use;*

OR

- b. In case of usage of septic tank, only black water shall be discharged in the septic tank. Grey water may be treated through natural treatment systems or other secondary treatment as feasible. Such treated water should be used with dual plumbing system for flushing and other non-potable use;*

The excess treated water should conform to the general discharge norms of CPCB/MoEF&CC.

- ii. In areas where there is municipal sewage network,*
 - a. Either Onsite Sewage Treatment Systems with capacity to treat 100% waste water may be installed with appropriate tertiary treatment system with disinfection for black & grey water. Such treated water should be used with dual plumbing system for flushing and other non-potable use;*

OR

- b. The project authority may opt to discharge only black water in such municipal sewage network subject to availability of trunk sewer line. For this purpose, two separate pipeline network– one for black water discharge and other for collection of grey water shall be installed. Grey water may be treated through natural treatment systems or other secondary treatment as feasible. Such treated water should be used with dual plumbing system for flushing and other non-potable use;*

B. For projects involving built-up area of 20,000 sq. mts. or more –

- 14. Subject to Clause (3) of this notification, Onsite Sewage Treatment Plant with capacity to treat 100% waste water generated within the project area through tertiary treatment shall be installed. Treated waste water shall be*

reused on site for landscape, flushing, HVAC, fire-fighting, and other end-uses.

15. *The adequacy of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the authorized agency.*
16. *Discharge of excess treated wastewater outside the premises, after treatment in STP, should meet the discharge standards as notified by CPCB/MoEF&CC from time to time.*
17. *Wastewater and treated water quantification system through metering/sub-metering shall be installed.*
18. *Sludge from the onsite sewage treatment shall be collected, conveyed and disposed as per the Central Public Health and Environmental Engineering Organization (CPHEEO) Manual, Ministry of Housing and Urban Affairs, on Sewerage and Sewage Treatment Systems.*
19. *Where Common Sewage Treatment Plant facility has been availed, it shall be ensured that treated waste water is recycled back to respective building for reuse.*

D. Solid Waste Management

20. *Subject to Clause (3) of this notification, onsite solid waste management facility should be developed and a formal contractual arrangement shall be ensured with authorized recyclers/concerned municipal agency for disposal of all non-biodegradable waste.*
21. *Subject to Clause (3) of this notification, where there is no alternate arrangement for disposal of biodegradable waste, Organic waste composter/Vermiculture pit with a minimum capacity of 1.0 kg/ 150 sqm. of built-up area/day shall be installed & operated.”*

6. In view of above, it has become necessary to require the matter to be looked into further and a further report filed considering the above aspects. Such report may be furnished by a joint Committee of CPCB and State PCB with State PCB as the nodal agency for compliance. The report may be filed within two months by e-mail at ngt-pune@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List for further consideration on 21.09.2022.

A copy of this order be forwarded to the CPCB and State PCB by e-mail.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

March 09, 2022
Original Application No. 02/2020(WZ)
(I.A. No. 75/2021)
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