

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Original Application No.121/2023(WZ)
Earlier Diary No.2704138003482023**

Lalita Sandip Shinde

.....Applicant

Versus

Chief Executive Officer, Trimbakeshwar
Municipal Council & Ors.

....Respondents

Date of hearing: 29.07.2024

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

Applicants : Mr. Lakshyaved R. Odhekar, Advocate along-with
Ms. Indrayani R. Patani, Advocate and
Ms. Lalita Sandip Shinde, Applicant in-person

Respondent(s) : Mr. Rupesh, Advocate for R-1/TMC
Mr. Aniruddha Kulkarni, Advocate for R-3/Env't. Deptt.
Mr. Pushkal Mishra, Advocate for R-8/MoEF&CC

ORDER

1. We are passing this order in continuation to the earlier orders dated 26.09.2023, 10.01.2024 and 03.04.2024.

2. From the side of applicant, learned counsel Mr. Lakshyaved R. Odhekar has appeared before us, who has filed an objection dated 26.06.2024 to the Joint Committee Report, wherein it is submitted that the applicant attempted to show various places to the Committee where illegal mining was going on. But the Committee refused to look into the same by referring to the order dated 26.09.2023 passed by this Tribunal and stated that the order refers to only the illegal constructions. This fact was brought to the notice of this Tribunal during hearing on 10.01.2024

and it was then that this Tribunal gave clarification in paragraph nos.7 & 8 of the said order stating that the Committee would give a detailed report on any illegal activity that is going on and submit a full-fledged report on the same.

3. It is further submitted in this objection by the applicant that the detailed report, submitted by the Joint Committee, does not refer to various illegal activities as pointed out by the applicant during the site visit, which is evident from a perusal of the said report. The Committee went for the survey for preparing of the report only once i.e. on 03.01.2024. But it failed to visit the various locations, which is referred to in the present original application and those locations, which the Applicant wanted to show the Joint Committee after only the survey conducted on 03.01.2024. Thereafter, the applicant visited the Office of the District Collector, Nashik, being the nodal agency of the said Committee, requesting them to fix a date for visit and survey of various locations where clearly mining activities and illegal construction were going on. But no subsequent survey was carried out.

4. It is further submitted in this objection by the applicant that the Brahmagiri Hills are being dug up heavily from both sides, which would result in nothing but a natural Catastrophe. Applicant is aware that there are various survey numbers that the applicant could not take information about, due to her limited resources. But once the Committee was formed, the applicant could have easily shown them the locations and that the necessary information could have been obtained about illegal activities including illegal excavation/ mining/ constructions. The majority of the area is a forest land, which can be seen even from the detailed report and yet no proper enquiry was conducted in that regard. The detailed report refers to certain permissions granted to certain constructions, however,

there is absolutely no reference in the report to the excavation and mining, which is being carried out at the foothills of Brahmagiri.

5. It is further submitted in this objection by the applicant that paragraph no.6 of the detailed report only talks about the properties in question and refers to the 'Draft Notification' and that since Village Trimbakeshwar was not mentioned in the Draft Notification, the Survey Numbers of Schedule- B were not found covered by the same. It is further mentioned that the office was trying to verify whether the Draft Notifications have become final or not. It is simply stated by the Joint Committee that wherever the constructions were carried out, permissions thereof were granted. The detailed report clearly mentions that the properties mentioned therein are pertaining to the Village Talegaon, which does not find mention in the 'Draft Notification' and that the applicant could not show them any specific survey or Gat number to the Joint Committee, which is a false averment because on 03.01.2024, the applicant had also pointed out various locations mentioned in Schedule- A at that time, but the Committee refused to look into the same by referring to the order dated 26.09.2023 of this Tribunal, which was related to the constructions only and thereafter, the Joint Committee never carried out any further survey and has presented the detailed report before this Tribunal.

6. It is further submitted in this objection by the applicant that the Joint Committee gave a similar report with respect to properties mentioned in Schedule- B. The said report refers to construction permissions, which have been granted in the areas in question, however, no such permissions have been attached to the said report nor has it been stated that the construction permissions were exceeded. The report also refers to Schedule- C & D and regarding that, it simply states that in

Schedule- C, the construction is being done by the Building and Construction Department of Government of Maharashtra. As far as Schedule- D is concerned, applicant did not show any specific location to the Committee. Based on the survey conducted on 03rd January, 2024, the Joint Committee has given opinion in three small paragraphs. In paragraph 1, it is stated that *"Trimbakeshwar village is not a declared Eco-sensitive zone and therefore the Applicant may provide the copy of final draft notification"*. In this regard, it is submitted that the Joint Committee had all the powers to verify if the Notifications are final or not, irrespective of the fact whether the Notification declaring specifically Trimbakeshwar as Eco-sensitive zone is final or not. The Joint Committee ought to have visited all the spots that applicant was showing and incorporated the necessary details of the same in the report, which has not been done by the Joint Committee.

7. It is further submitted in this objection by the applicant that in para no.2 of the Joint Committee Report, opinion says that constructions were going on at various places, which were shown by the applicant but these construction were being done with the permission of the Trimbakeshwar Municipal Council. However, none of these permissions are attached. In para no.3, opinion contained to the effect *"the forest department is the agency regarding any violation of rules regarding building works in the rural area the forest department has also been informed and kept aware of any works going on in the area"*, which clearly shows that the Joint Committee has not verified whether the construction, which was being done in the forest area, had been granted any permission of the Forest Department or not. It is asserted by the applicant that the brahmagiri foothills area has clearly been dug up and 86 clearly illegal mining and sand extraction activities are going on. But

nowhere in the detailed report, these facts are contained. The report is superficial in the nature and lastly, it is submitted by the applicant that in case, this Tribunal is of the opinion that the report filed by the Joint Committee is correct, in that case necessary directions may be issued to the concerned respondents to fix a timeline to finalize the 'Draft Notifications' about the Western Ghats so that the brahmagiri region can be saved.

8. It would be appropriate to quote relevant portion of the detailed Joint Committee Report, submitted by the Joint Committee on 20.03.2024, against which above-mentioned objections have been filed, as under:

" The Joint Committee formed had visited the survey numbers mentioned in the Applicant's main application with the Applicant on -03/01/2024. The report is submitted as under.

Schedule- A

*The Applicant have not mentioned any specific Gat Number or Survey Number in her application, Schedule-A. Also even after given total freedom to her to show the places, she had not shown any specific Survey or Gat Number to Joint Committee related to schedule-A. Also Talegaon village is not mentioned in 'Draft notification' **Exhibit `C`***

Schedule- B

As mentioned earlier Trimbakeshwar village is not included in the said 'Draft notification' Exhibit C'. But only the village Metghar Killa is included in it which is a part of Trimbakeshar Municipal Council. The survey numbers & gat number shown in schedule-B by the Applicant are of village Trimbakeshwar & not of village Metghar Killa.

The report above Schedule-B is as under:

- 1. Gat No.331 :- The area of Gat No.331 is a forest land and no construction or work is found there.*
- 2. Gat No.335 / Survey No.458 :- It is owned by Private person & reservation of public housing is there in Development Plan of Municipal Council. And no construction work has been found on this land.*
- 3. Gat No.330:- This land is in Possession of Bada Udasin Akhada & old construction is there on this land.*

4. Gat No.337 / Survey No.413 :- On the spot when visited by the Committee with the Applicant as shown by the Applicant. On the said land a bridge has been found to be under construction over the Ahilya River and as an easement road was found to be connected to the said bridge. The grant for the said work was found to be sanctioned from the State Government's Nagar Utthan Yojana. At the time of visit the Applicant has mentioned that the bridge is bigger than required and has been constructed for the use of Resort / Commercial use and a smaller bridge can serve the same purpose. At the time of visit it is seen that work of bridge is stopped. According to estimate and The Indian Road Congress IRC: 5-1998 section 112.1 the minimum width of the two lane bridge should be 7.5 M. The Work is sanctioned according to Res. No.355 Dated 03/11/2020 and Res. No.260 Dated 01/01/2020. Technical sanction was given by B & C department on 26/11/2021 And administrative approval was given on 25/06/2021.

5. Then the Joint Committee visited as shown by Applicant to Gat No.337 / Survey NO.413; On this spot there is a building of Maharashtra Tourism Development Corporation (under taking of Maharashtra Government) The building is of an Auditorium & Tourist Facility Centre under Prasad Yojna. According to Town planning and Valuation department vide Trimbak/ no.31/survey no.413/535 Dated 15/02/2021 building plan was sanctioned.

6. Survey NO.455:- The land is owned by Naya Udasin Alchada and no work of construction is found.

7. Survey No.418:- No construction work is found on the land.

8. Survey NO.414, 416, 417 are the lands reserved for 'Sinhanstha Kumbha Mela' and no construction work is found on the land.

9. Gat No.335 / Survey No.458 is the land reserved for public housing and no any work is found on the land.

10. Survey No. 384 is a land reserved for 'Sinhanstha Kumbha Mela' & no work is found on the land.

11. Gat No.343/1 on this land & private tourist home building work is going on. The private land owner have placed pipeline for removal of rain water. The permission was granted by Trimbakeshwar Nagar Parishad by letter No. 2179/2022 Dated 29/11/2022 for building permission.

Schedule- C

The Joint Committee had visited Gat No. 428 situated at the bottom of Gangadwar Hill the land is owned by Atal Akhada & Construction of worship House (Bhakta Niwas) is going on by the Building and Construction Department of Maharashtra Government at Mhalsadevi Trimbakeshwar.

Schedule- D

The Applicant has not mentioned any specific Gat Number or Survey Number in her application Schedule-D. Also even after given total freedom to her to show the places she had not shown

any specific Survey or Gat Number to The Joint Committee related to Schedule-D Also it is humbly submitted that the village Pahine is mentioned in the said 'Draft notification 'Exhibit-C'.

On the basis of the above observations, the Committee is giving the following opinion:

- 1. The issue regarding Trimbakeshwar village being in the declared Eco- sensitive zone is not confirmed. The Applicant may provide copy of final notification.*
- 2. The Construction work going on in the various spots shown by the applicant are being done with the permission of the Trimbakeshwar Municipal Council. The remaining Gat no. do not have any ongoing construction activity.*
- 3. The Forest department is the agency regarding any violation of rules regarding building works in rural areas. The Forest department has also been informed and kept aware of any works ongoing in the area.”*

9. We may also note here that the Joint Committee has submitted rebuttal of the objections filed by the applicant, wherein they have denied all the averments made by the applicant, contrary to the report. In para no.19, it is specifically submitted by the Joint Committee that there is no permission given for construction or mining or sand extraction in the forest area of Brahmagiri nor is any such work going on the forest area. It is totally denied that the Brahmagiri foothills area has clearly been dug up or illegal mining and sand extraction activities are going on.

10. We have already noted with respect to the constructions that these constructions have been carried out after obtaining permission. Therefore, nothing objectionable has been found by the Joint Committee.

11. The learned counsel for applicant is raising objections against the said report and insists that the said report is not correct one. But we have no reason to believe the submission made by the applicant because the Committee comprised six Members headed by the District Collector, Nashik, which also included the Chief Conservator of Forest, Nashik apart from other authorities. Therefore, we have no reason to disbelieve the contents of the said report.

12. We find some force in the argument made by the learned counsel for applicant that there should be some timeline fixed for finalization of the Notification for declaring the Western Ghat Eco-Sensitive Area, for which number of times, Draft Notifications have come up but they have not been finalized. As prayed by the applicant, some timeline should be fixed for finalizing the same, we expect the authorities concerned, particularly, the respondent No.8- MoEF&CC to pay attention to it and try to finalize the same at the earliest.

13. With the above direction, we dispose of this Original Application.

14. Pending application, if any, also stands disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

July 29, 2024
Original Application No.121/2023(WZ)
Earlier Diary No.2704138003482023
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