

Item No.05

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 76/2022(WZ)
I.A. No. 107/2022(WZ) & I.A. No. 139/2022(WZ)

Mr. Ibra Mashnaji Konapure & Ors.

.....Applicant(s)

Versus

Union of India through Secretary MoEF &CC
& Ors.

....Respondent(s)

Date of hearing: 19.09.2022

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

Applicant(s) : Mr. Nitin Lonkar, Mr. S. S. Deshmukh, Mr.
Tanaji B. Gambhire, Mr. Ratan Bhingardive, & Mr. Vijay
Mhaske, Advocates along with Applicants

ORDER

1. I.A. No. 139/2022(WZ):- this application has been moved by the Applicant seeking amendment in the original application whereby wrong survey no.69(part) is prayed to be amended as survey no.67(part) and the consequential amendment.
2. Apart from that in paragraph no.8 of this application prayer is made to add sub paragraph no.5(b) in original application no. 76/2022 wherein survey numbers over which the construction by Respondent No.11/Project Proponent is said to have been raised, is stated.
3. It is prayed that this paragraph should be allowed to be added.
4. We find that there is justification in allowing this application and accordingly, it is allowed.
5. The Learned Counsel for the Applicant is directed to amend the original application in course of the day today itself.

6. This Application has been moved with the prayer to direct the Respondents to demolish the illegal structures at the site in question and restore the area to its original position and further Respondent No.11/Project Proponent be directed to deposit a heavy amount of compensation to the environment relief fund on the Principle of Polluter Pays to meet out the damages caused to the public health, property and environment.

7. The submissions made is that Respondent No.11/Project Proponent is carrying out illegal building construction project "M/s. Seven Eleven Club" in their starred Hotel-Commercial Building Project situated at survey nos. 52/1, 52/2, 52/3, 67/1, 67/2, 67/3, 67/4, 67/5, 67/6, 81/2 & 81/4, Village Navghar, Mira-Bhayandar, District-thane, Maharashtra.

8. The submission is made by the Learned Counsel for the Applicant that vide minutes of the 152th meeting of the MCZMA/Respondent No.4 dated 22.02.2021 at item no.3 the complaints regarding construction on Starred Hotel/Club House were considered which also contained the plot numbers. The relevant portion of the said minutes is herein below:-

"Item No.3:Complaints regarding construction on starred hotel/club house carried out by M/s. Seven Eleven Hotels Pvt. Ltd. on Old S. no. 266/1 to 6, 265/2, 265/4, 267/2, 267/3 (new S. No.67/1 to 6, 81/2, 81/4, 52/2, 53/3) Village Navghar, Tal & Dist. Thane.

The Authority noted the detailed background of the matter. The Authority is receiving persistent complaints through letters and emails in the matter.

The matter was earlier deliberated in detailed in 142nd meeting of the MCZMA held on 31st December, 2019. Reports from various Authorities such as District Collector, MBMC, Mangrove Cell and NCSCM, Chennai were sought.

Regarding mangrove destruction, the Authority noted the report of the mangrove cell and District Collector received in the matter. The Mangrove Cell report dated 17.2.202 states as follows:

Minutes of the 152th meeting (Day 2) of the Maharashtra Coastal Zone Management Authority (MCZMA) held on 22nd February, 2021:-

- 1) As per MRSAC map, Mangroves Forest and water body were present in Survey No.50,51,68, 69 and 81 pt. in the year 2005.
- 2) Google Image in the year 2009 to 2013 shows extension of Mangroves Forest and water body in Survey No. 67 as well.
- 3) systematic dumping of debris and destruction all of mangrove on above mentioned survey numbers happened right from the year 2015, onwards as it is visible on the Google super imposed images.
- 4) As per the Google Earth super imposed maps, the main building of Seven Eleven Hotel on. S. No. 67 pt. and 81pt. is not located on the mangrove forest. However some of the facilities like sports club, recreation ground, Lawn etc. are being constructed on the reclaimed mangrove forest and water body.
- 5) These Land parcel are not a notified forest and it is not in the possession of the Mangrove Cell.
- 6) Destruction of the mangrove and wetlands is an offence as per Environment Protection Act. 1986 Hence, the Environment Department and District Collector may initiate necessary action.

District Collector report dated 15.2.2021 states about in 9 cases FIR have been filed in the matter. After deliberation, the Authority instructed that District Administration should pursue the cases for taking action regarding the destruction of Mangroves.

The Authority further noted that with respect to CRZ issue, reply is awaited from the NCSCM & MoEF, New Delhi. Further, MBMC need to provide additional information in the matter. Therefore, after detailed discussion and deliberation, Authority decided to seek following details in the matter:-

- a) MBMC to provide details as to whether the construction is started has been carried out in CRZ area, as per approved CZMP, 1991.
- b) MBMC to provide the date on which the construction is started one site.
- c) Reminder letter to be sent to NCSCM, Chennai and MoEF in the matter.

After receipt of the report stated above, the matter would be taken up in MCZMA meeting for further appropriate decision in the matter.”

9. It is apparent from the above minutes of the meeting that the complaints were already made in respect to the illegal construction as some of the facilities of the Seven Eleven Hotel like sports club, recreation ground, lawn etc were found to have been constructed on reclaimed mangrove forest and water body which was absolutely barred under law, as per CRZ Notification, 2011.

10. Therefore, we find that substantial question affecting the environment is made out in the present matter and we admit this Application.

11. Issue notices to the Respondents, returnable within four weeks.

12. Applicant is directed to provide copy of the application and relevant documents to the respondents within a week.

13. Respondents are directed to submit their reply affidavits within by the next date.

14. Applicant is also directed to take necessary steps for service upon the respondents by both ways and also through available email.

13. We deem it just and proper to call a report on the matter in issue in present application from a Joint Committee consisting of:-

- (i) The Principal Secretary, Environment Department, State of Maharashtra;
- (ii) The Principal Chief Conservator of Forest, Maharashtra;
- (iii) One Representative from the Maharashtra Coastal Zone Management Authority(MCZMA);
- (iv) Mira Bhayander Municipal Corporation (MBMC).

15. The Committee is directed to visit the place and submit a factual and action taken report within four weeks. The Maharashtra Coastal Zone

Management Authority (MCZMA) will be the nodal agency for coordination and logistic support.

16. The report in the matter be filed by the Committee within four weeks 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.

17. Applicant is directed to supply the required documents and copy of the application to the members of the Committee within a week.

18. Put up with the report on 07.11.2022.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 19, 2022
Original Application No. 76/2022(WZ)
I.A. No. 107/2022(WZ & I.A. No. 139/2022(WZ)
JG