

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

[Through Physical Hearing (with Hybrid Option)]

ORIGINAL APPLICATION NO.104 OF 2023 (WZ)

Charan Bhatt

... **Applicant**

Versus

Environment and Climate Change Department & Ors.

... **Respondents**

Date of Hearing : 24.01.2025

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

Applicant : Applicant in person present through VC

Respondents : Mr. Aniruddha Kulkarni, Advocate for R-1 and R-14
Mr. Shivshankar Swaminathan, Advocate for R-3, R-4 and R-6
Mr. Raghunath Mahabal, Advocate for R-9
Ms. Manasi Joshi, Advocate for R-15

ORDER

1. The issue involved in the present application pertains to the restoration of alleged water pond in Survey Nos.47/5, 47/7A, 47/7B, 48/6, 48/10, 48/11 and 50/3, admeasuring 26,810.00 sq.mtrs situated in mauje Waliv, Taluka Vasai, District Palghar, Maharashtra, which is owned by respondent No.8 – Mrs. Mona Atul Patel. It is alleged by the applicant that respondent NO. 9 – Mohammad Yusuf Abdul Latif Qureshi, who is the Power of Attorney holder of respondent No.8, has been granted development permission for the proposed layout of residential/residential with shopline buildings and development permission of residential building No.1, building No.2, commercial building No.5 and CFC building on land bearing Survey No.47, H.No.5, 7A, 7B, Survey No.48 H.No.6, 10, 11, Survey No.50, H.No.3 (Old), Survey No./H.No.47/5/7A, B/48 6/10/11/50/3 (New) of village Waliv, Taluka Vasai, District Palghar, which had a pond on it, which is reflected from the plan, which is annexed at page 68 of the paper-book with blue colour. This permission was granted by respondent Nos.3, 4 and 6 – Vasai-Virar City Municipal Corporation vide order dated 01.11.2022 to Mrs.

Mona Atul Patel – respondent No.8. The allegation made by the applicant is that this pond has been filled up by soil and stones by respondent Nos.8 and 9 in which above development project and its restoration has been prayed. He has annexed that permission at page Nos. 69 to 75 of the paper-book.

2. Thereafter, the applicant drew our attention to page No.343 of the paper-book, which is an Environmental Clearance (EC) dated 10.11.2023 granted to the Project Proponent – respondent No.8 in the name of Sagar Developer i.e. partner of respondent No.8, wherein condition No.6 under ‘Specific Conditions’, indicates that the PP was directed to submit an undertaking that they will maintain status quo with respect to pond area till the decision/clarification is awaited/received from the Urban Development Department.

3. Applicant thereafter drew our attention to page 49 of the paper-book, which is an order dated 18.07.2005 passed by the District Collector, Thane, wherein the District Collector has granted permission to respondent No.8 for raising the construction of residential and commercial buildings on the aforementioned survey numbers, on the following conditions:

“..... Construction shall not be permitted in the pond area of 2903.30 sq.mtrs.”

4. Applicant drew our attention to page 85 of the paper-book, wherein in red rectangular line pond is shown, which is alleged to be filled up by the Project Proponent by soil and stones illegally. Thereafter, he has drawn our attention to page 455 of the paper-book, which is reply-affidavit of respondent Nos.3, 4 and 6 – Vasai-Virar City Municipal Corporation, wherein in paragraph No.3, it is recorded that a communication dated 27.03.2023 was addressed by Vasai-Virar City Municipal Corporation to the Urban Development Department for clarification on rectification of the drafting error in the Development Plan. Having pointed out these pieces of evidence, the applicant argued that it is clearly established by these documents that

there was a pond in the site in question, which has been illegally filled up by respondent Nos.8 and 9 – Project Proponent with soil and stones and the same should be ordered to be restored to its original condition.

5. In rebuttal, from the side of respondent Nos.3, 4 and 6 – Vasai-Virar City Corporation, learned counsel Mr. Shivshankar Swaminathan has argued that SEIAA in the EC dated 10.11.2023 had put a condition to the effect that the Project Proponent shall maintain status quo with respect to the pond till the decision is taken by the Urban Development Department for clarification. This clarification was submitted by the Urban Development Department, which is at page 419 of the paper-book, English translation of which is annexed at page 420 of the paper-book and at the bottom of page 420 is the translation of relevant part of this letter, which reads thus:

“As per the unified development regulation and promotion plan 2020 Clause No.2.5, under Drafting Error, errors on site can be corrected by the Planning Authority, after site inspection. As per that Clause No.2.5 required documents be checked and error can be corrected at your level as per rules.”

6. Having pointed out the above reply from the Urban Development Department, correction was made, which is evident from the letter dated 22.02.2023, which are submitted on record from page 425 to 431 of the paper-book. This letter is written by the Commissioner, Vasai-Virar City Municipal Corporation addressed to Mrs. Mona Atul Patel and one another. The said letter contains at page 430 point No.39 as below:

“This approval is granted on the basis of –

- a) Spot inspection report from Circle officer Mandvi, vide order No.M.M./Waliv/Kavi-1075/2022 dated 16/06/2022 which states that there is no existing pond at site.*
- b) Tahsildar report vide order No.Rev/K-1/T-Jaminbab/Kavi-6243/N.V.K.238/2022 dated 22/06/2022 to VVCMC informing that there is no pond at site based on Circle officer Mandvi, vide order No.M.M./Waliv/Kavi-1075/2022 dated 16/06/2022. If any legal administrative issue raised in future this order stands cancelled.*

c) *Village form 14 issued by Talathi Waliiv which does not show any pond/well on the plot under reference.*”

7. It is urged by learned counsel Mr. Swaminathan that since it was well within the domain of the answering respondent – Corporation, they have done this correction in the initial approval which has been given by the District Collector, who had wrongly shown a pond to be there. It is very strange, however, for us to see as to why notice was not taken of this correction by the SEIAA, which had granted EC on subsequent date i.e. 10.11.2023, because had it been taken into consideration, they would not have put condition No.6, cited above, as one of the conditions while granting EC. Be that as it may, we find that the correction has been made.

8. Having pointed above, it is argued by learned counsel for the Municipal Corporation that the pond has been shown at the site, which is an error committed by the Authorities, which has been rectified and there is no question of any pond to be ordered to be restored at the site in question.

9. From the side of respondent No.9 – Project Proponent, learned counsel Mr. R.B. Mahabal has appeared and pointed out the same document, which has been cited by respondent Nos.3, 4 and 6 at pages 419 and 420 of the paper-book, which we have already considered as well as the correction letter and thereafter, he took us through page 406 of the paper-book, which has also been pointed out by learned counsel for respondent Nos.3, 4 and 6. Mr. Mahabal has also drawn our attention to page 394 of the paper-book, which is a Google Earth map of July, 2024, which shows the site in question belonging to respondent No.9, far away from the pond, which he points is still in existence. He further drew our attention to page Nos. 284 to 292 of the paper-book, which is a Joint Committee report, relevant part of which is quoted hereinbelow:

“4.0 Conclusions

i. The respondent no. 8 i.e. Mrs. Mona Atul Patel through P.A. holder Mr. Mohammad Yusuf Abdul Latif Kureshi, Partners of M/s Sagar Developers initially had obtained layout sanctioned plan and commencement certificate vide dated 02/09/2008 for the total built-up area of 13,276.75 sq-m for the construction of proposed residential with shophline buildings at the alleged survey nos. viz. 47, H. No. 5, 7A, 7B, S. No. 48, H. No. 6, 10, 11, and S. No. 50, H. No. 3 (old), S. No. 47/5/7A/7B, 48/6/10/11, 50/3 (New) of Vill. Waliv, Tal. Vasai, Dist. Palghar. The respondent no. 8 completed the project as per the aforesaid layout plan and subsequently obtained occupancy certificate vide dated 24/06/2015 for the building no. 4 (Wing C) and 31/07/2019 for building no. 3 (Wing A to E).

[Please refer S. no. i to iii of Section 3.1, as above]

ii. The respondent no. 8 during November, 2023 has obtained revised layout plan & revised development permission for the proposed residential building no. 1 (Wing: A & B & CFC building) with the increased built-up area at the aforesaid alleged survey nos. Also, obtained environmental clearance (EC) from SEIAA, Maharashtra, dated 10/11/2023 for the proposed residential cum commercial project at the aforesaid alleged survey nos. for the plot area of 26,810 sq-m & total built-up area of 43,094.57 sq-m (FSI: 26,327.83 sq-m & Non-FSI: 16,766.74 sq-m) and obtained Consent to Establish from MPCB, dated 22/08/2023. During the joint committee inspection, construction works as per EC, dated 10/11/2023 i.e. foundation & footing works of building no. 1 is in progress, commercial building no. 5 is completed up to plinth level and construction works of CFC building is yet to be started.

[Please refer S. no. iv to viii of Section 3.1, as above]

iii. Various records of Gaon Nakasha and Village form no. 14 doesn't mention about existence of pond at the aforesaid alleged survey nos. Whereas, various past permissions/orders issued by the Govt. agencies i.e. nonagriculture order, DP remarks, layout plans & drawings approved by the local planning authority specifies about the existence of pond admeasuring 2,903.36 sq-m at the aforesaid alleged survey nos. Further, the EC granted by SEIAA, Maharashtra also reiterate about the existence of pond at the aforesaid alleged survey nos. and mentioned that the PP to maintain status quo with

respect to pond area till the decision/clarification is awaited/received from the Urban Development Department.

- iv. The Commissioner, Vasai Virar Municipal Corporation in its letter dated 27/03/2023 addressed to the Urban Development Department that the existence of pond at the aforesaid alleged survey nos. & as mentioned in the DP remarks of 2007 is a drafting mistake. Subsequently, the Commissioner, Vasai Virar Municipal Corporation by following duly administrative procedure by exercising the powers as mandated in clause 2.5 of UDCPR, 2020 has granted the revised development permission i.e. specifying that there is no existence of pond in the alleged survey nos. However, confirmation/decision in this regard from the Urban Development Department is awaited.*

[Please refer S.no.ix to xi of Section 3,1, as above]

- v. The joint committee upon detailed analysis of various Govt. records & due deliberation in respect of Gaon Nakasha, Village Form No.14, Development Plan remarks of 2007, non-agricultural order/permission issued by the Collector, layout plans sanctioned by the Vasai Virar Municipal Corporation and recent communication letter of Vasai Virar Municipal Corporation addressed to the Urban Development Department, dated 27/03/2023, it is observed that there is disparity in the records of various State Govt. Departments about the existence of pond admeasuring 2,903.36 sq-m at the aforesaid alleged survey nos. Further, the alleged location of pond site is observed to be a flat surface and as per the S.no.6 under specific conditions of the EC, dated 10/11/2023, the PP is maintaining status quo with respect to construction at alleged pond area till the decision/clarification from the Urban Development Department.*
- vi. In view of the above and in respect of disparity in records of various State Govt. Departments about the existence of pond admeasuring 2,903.36 sq-m at the aforesaid alleged survey nos. and pending decision by the Urban Development Department in respect of ratifying the decision (i.e. by amending the revised development permission issued to the respondent no.8) taken by the Commissioner, Vasai*

Virar Municipal Corporation, dated 27/03/2023; the joint committee opined that the Hon'ble NGT may take a suitable decision, as deemed fit."

10. Having cited above, it is submitted by Mr. Mahabal that even the Joint Committee has not submitted any controversy with respect to existence of the pond in question and admitted that there was discrepancy in the location of pond by the Government Authorities and it has left the decision to the discretion of this Tribunal.

11. Mr. Mahabal further drew our attention to pages 369 and 370 of the paper-book, which are photographs of the site in question to show that there is no pond shown therein. But he did admit that a question arises here to be decided by this Tribunal as to whether there was pond earlier on the site in question. In this regard, he drew our attention to page Nos.394 to 398 of the paper-book, which are photographs of July, 2024, January 2018, December, 2013, December, 2012 and March, 2011 and states that these images clearly show that oldest image of 2011 does not show any pond to be there at the site in question.

12. Apart from above, Mr. Mahabal has also drawn our attention to page Nos.441 to 449 of the paper-book, which are completion certificates issued by the City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) on different dates of the years 2009 and 2010 in favour of respondent No.8 and having drawn our attention to these certificates/permissions, it is argued by him that had there been a pond, these certificates/permissions would not have been issued/granted and mention in this regard would have been made in those permissions.

13. Having heard both sides and perusing the evidence on record, we have arrived at a conclusion that it appears that there was a clerical or drafting error in recording that there was a small pond existing at the site in question when the permission was granted by the District Collector.

Because of that error only, the entire controversy has arisen with respect to existence of the pond at the site in question. We find that there was no pond in existence at the site in question and hence, there is no question of its restoration.

14. With above observations, we dispose of this Original Application.

15. No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 24, 2025

ORIGINAL APPLICATION NO.104 OF 2023 (WZ)

npj