

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Original Application No.84/2022(WZ)
I.A. No.211/2024(WZ) & I.A. No.214/2024(WZ)**

Lalitkumar Namdeo Chaudhari

.....Applicant

Versus

State of Maharashtra & Ors.

....Respondents

Date of hearing: 11.11.2024

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

Applicant : Applicant in-person
Respondents : Mr. Aniruddha Kulkarni, Advocate for R-1/Envvt. Deptt.
Mr. Preshit Surshe, Advocate for R-7/TPPD
Mr. Janardan Pawar, Jt. Commissioner, Urban
Development Department, Jalgaon for R-3 & 9

ORDER

1. Today, from the side of applicant, applicant has appeared in-person before us and argued his case. When we enquired from him as to what is the main grievance raised in this matter, he submits that the respondent No.8 – the Chief Officer, Faizpur Municipal Council has constructed the road illegally in the river bed, which is shown in the DPR Final Plan of Faizpur, which is annexed by him at page no.246 of the paper book, wherein illegal construction of road (and some other constructions are also alleged to be there) is shown by him by blue line and encroachment has been written by him in hand writing.

2. At this stage, we have gone through the reply affidavit dated 10.01.2024 filed by the respondent No.8 – the Chief Officer, Faizpur Municipal Council, wherein, in para no.4, it is submitted that all the allegations made by the applicant are wrong. It is further submitted that as per the order dated 28.07.2021 passed by this Tribunal in Original

Application No.54/2022, a Committee, comprising the District Magistrate/Collector, Jalgaon; the Executive Engineer as well as concerned official of the Maharashtra State Pollution Control Board, was constituted with a direction to visit the site in question and submit report. Thereafter on 01.09.2021, the said Committee submitted its report, wherein clause 5.2 of which specifically states “there is *prima facie* observation is that the flow of the river is not affected by the construction work as the river is non-perennial and dry throughout the year”.

3. We find from the Unified Development Control & Promotion Regulations-2020 for Maharashtra State (in short ‘UDCPR’) that para no.3.1.3 sub-clause (i) states as follows:-

- “
- a) *The Red Flood Line and Blue Flood Line shall be considered as per the plan prepared by the Irrigation Department. The area between the river bank and blue flood line (Flood line near the river bank) shall be prohibited zone for any construction except parking, open vegetable market, garden, lawns, open space, cremation and burial ground, sewage treatment plant, water / gas / drainage pipe lines, public toilet or like uses, provided the land is feasible for such utilization.*
Provided that, redevelopment of the existing authorised properties, within river bank and blue flood line, may be permitted at a plinth height of 0.45 m. above red flood line level”.
 - b) *Area between blue flood line and red flood line shall be restrictive zone for the purposes of construction. The construction within this area may be permitted at a height of 0.45 m. above the red flood line level.*
 - c) *If the area between the river bank and blue flood line forms part of the entire plot in Development Zone, then, FSI of such part of land may be allowed to be utilised on the remaining land.*
 - d) *The red and blue flood line, if shown on the Development/Regional Plan / Planning Proposal shall stand modified as and when it is modified by the Irrigation Department”.*

4. It is apparent from the above-mentioned provision that the burden is cast upon the Irrigation Department to prepare the Red Flood Line and Blue Flood Line and the area between the river bank and blue flood line

(Flood line near the river bank), shall be prohibited zone for any construction except parking, open vegetable market, garden, lawns, open space, cremation and burial ground, sewage treatment plant, water/ gas/ drainage pipelines, public toilet or like uses, provided the land is feasible for such utilization. This provision appears to make exception for the above kind of activities, which might include construction of road as well. So, it will be treated to be a permissible activity. But question remains as to whether the Irrigation Department has drawn the Red Flood Line and Blue Flood Line in this matter.

5. The Joint Committee in its Report, which is submitted in response to our previous order dated 22.05.2023, which is annexed at page nos. 202 to 209 of the paper book, has submitted at point no.3.2 under Observations that “flood line is not demarcated by irrigation department. However, the high flood line is mentioned in the DPR plan of Faizpur Municipal Council, map enclosed”.

6. From the side of respondent No.3 –the Divisional Commissioner, Nasik and for respondent No.9- the District Collector, Jalgaon, Mr. Janardan Pawar, Jt. Commissioner, Urban Development Department, Jalgaon has appeared in-person before us through Video Conferencing. When we enquired from him as to why the Irrigation Department, which comes under their jurisdiction, was not directed to draw the blue flood line and red flood line, it is submitted by him that the reason for the same is mentioned in para no.3.2 of the Joint Committee Report/Action Taken Report, which says that when the Irrigation Department was told to draw the said lines, it is submitted by the said Department through their letter that the said process will take 1 year and 6 months’ period, which was too long period, hence it was dispensed with.

7. We fail to understand as to how this could be permissible when these lines were to be drawn by the Irrigation Department, before their

drawl, no activity of any kind of construction should have been permitted, even if that was permissible activity, these lines were to be drawn. We direct that a clear affidavit be filed in this regard from the side of respondent Nos.3 & 9 within two weeks, mentioning therein as to why the said lines were not got drawn prior to any kind of construction being allowed. We also direct the respondent Nos.3 & 9 that these authorities shall get demarcation of that lines and also place before us a sketch map showing the construction existing over there, which is being alleged by the applicant to be there in violation.

8. We also find from the perusal of the earlier orders that none has appeared from the side of respondent No.5 – the Executive Engineer, Minor Irrigation Department, Jalgaon before this Tribunal despite sufficient service. Therefore, we direct the Registry to send a letter to the said authority directing therein to show cause as to why no one is deputed to represent the respondent No.5 before this Tribunal and no written reply has been filed in the present case. It be further directed therein to depute someone to represent them and submit reply before this Tribunal within two weeks, failing which we will be left with no option but to direct for personal appearance of the respondent No.5 before this Tribunal.

Put up this matter for final hearing on 22.01.2025

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

November 11, 2024

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