

Item No. 2

(Pune Bench)

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

(By Video Conferencing)

ORIGINAL APPLICATION NO.02 OF 2023 (WZ)

Sunil S. Mulye & Ors.

.... Applicants

Versus

Union of India, Through MoEF and Others

....Respondents

Date of hearing: 17.01.2023

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

Applicants : Mr. Bipin Joshi, Advocate

ORDER

1. This Application has been filed with the main prayer to declare direction / observation dated 09.09.2019 passed by the Respondent No. 2 – Secretary Environment U/s 2(g) of Wetland Act (wrongly mentioned by the applicants as “National Green Tribunal Act, 2019”) to the effect that the properties i.e. Survey No. 176/A/1/A, 177 Diwanman, Vasai, is exempted from Wetland, to be illegal. There are other prayers also which are narrated in clauses (c) to (m), which appear to be incidental to the main prayer.

2. During the argument, the learned counsel for the applicants stated that the main grievance in this case is that Survey Nos. 176/A/1/A and 177 admeasuring 47H 50R 0P and 82H 56R 0P respectively situated at Village: Divanman, Taluka: Vasai, District: Palghar are wetlands, because the Property recommended to be declared as wetland is at Item No. 78 Code No. 10117 as well as Item No. 12249 as per information furnished by District Committee of various Government Officials for preparation of “brief documents” pursuant to the letter from Environment Department dated

03.09.2020. The learned counsel could not describe as to what Item No. 78 Code No. 10117 and Item No. 80 Code No. 12249 are, by placing before us any documentary evidence. It is further argued that this land is proposed to be used by Respondent No. 6 as burial ground. Regarding it, he had approached this Tribunal by filing Original Application No. 16/2017 which was disposed of by order dated 24.10.2017, dismissing the same as withdrawn, but there are several observations made therein, upon which the learned counsel has relied. The said Order reads as follows :-

“Heard Perused Record.

This Application has been moved for seeking embargo on the work of construction of burial ground as embarked upon by the Vasi Virar City Municipal Corporation, shortly referred to as VVCMC, in Survey No. 176A and Survey No. 177 admeasuring 9500.95 sq.mtrs. of village Diwanman, Taluka Vasai, District Palghar, an area falling within CRZ-I category, without seeking any permission of Resppondent No. 3 – Maharashtra Coastal Zone Management Authority (MCZMA) as per the provisions of CRZ Notification dated 6th January, 2011, issued under Section 3 of the Environment (Protection) Act, 1986 by the Ministry of Environment, Forest and Climate Change (MoEF&CC). The Applicant has also specifically pleaded that it is an area which remain flooded with water almost for four (4) months in the rainy season and in deep water in every high-tide situation.

Despite service of Notice on all the Respondents, only Respondent No. 2 Department of Environment and Forest, State of Maharashtra, Respondent No. 3 MCZMA, Respondent No. 4 Maharashtra Pollution Control Board (MPCB) and Respondent No. 6 Vasai Virar Municipal Corporation choose to respond to the Application with their replies dated 25.03.2017, 26.03.2017 and 08.05.2017 respectively. None of the Respondents have specifically countered the specific contentions of the Application on which the claim in the present Application is based. The Applicant, on the other hand, has produced the site photographs and maps/plans (pg.65/66) supported by the specific averments.

Learned Counsel appearing on behalf of Respondent No. 8 submits that the issue of identification of wetland would not arise in the present case on account of the Wetland (Conservation and Management) Rules, 2011 being amended by MoEF vide Notification dated 26th September, 2017 and the said Rules being not made applicable to the wetlands falling in the area covered by CRZ Notification, 2011 vide proviso to Sub-Rule (b) of Rule 3 of the Wetland (Conservation and Management) Rules, 2017.

At this stage, learned counsel appearing on behalf of Respondent No. 6 VVCMC on instructions from Mr. Umesh Naik, Deputy Mayor makes a statement that whatever construction

has been raised in the form of perimeter/compartment wall in the said landed property shall be removed within fifteen (15) days and the land will be restored to its original condition upon construction debris being removed from the said land. He further makes a statement, on instructions, that in case Respondent No. 6 VVCMC proposes to utilize the said land for burial ground and raise construction for that purposes Respondent No. 6 VVCMC shall duly move an Application before Respondent No. 3 MCZMA and shall not carry out nay developmental activities in the said land without specific permission from Respondent No. 3 MCZMA. Any decision taken by MCZMA in that regard shall be duly published on the website and communicated to the Applicant.

In view of the statement so made, learned counsel appearing on behalf of the Applicant submits that he be permitted to withdraw the present Application. Permission to withdraw the present Application is granted.

Original Application 16 of 2017 stands disposed off accordingly.”

3. Based on the above facts, it is argued by the learned counsel that the MCZMA - Respondent No. 3 was required to place on its website any specific permission given by it for developmental activities, but the same has not been done nor any intimation has been given to the applicants. He has drawn our attention to the impugned order / letter dated 09.09.2019, which is written by the Under Secretary to the Commissioner of Vasai Virar Municipal Corporation giving reference to the letter dated 02.03.2019 written by the said Commissioner and it is stated therein that the landed properties, S. No. 176 and 177 of above village have not been included in the said “brief document”. No Objection Certificate has been given from MCZMA to the said land as per letter under Reference No. 3. Hence, concession from definition in Rule 2(g) of the Wetlands (Conservation and Management) Rules, 2017 has been given to Wetland of the said Property and the said land is not appearing as a Wetland.

4. The Learned Counsel for the Applicants submits that the finding that the land Survey No. 176 and 177 is not falling in the category of ‘Wetland’, is absolutely erroneous, but no concrete evidence has been produced before us

to prove that the same is erroneous finding. However, in view of the fact that the said land is being claimed to be a Wetland, on which burial ground is proposed to be made, we would like this fact to get clarified from State Wetland Authority as to whether land in question stands identified as Wetland as per Rule 5(4) of the Wetlands (Conservation and Management) Rules, 2017.

5. We find that the State Wetland Authority has not been impleaded in the present case as party-respondent. We, therefore, direct the Applicants to add the State Wetland Authority as Respondent No. 8 during the course of the day and after impleadment of the said party as Respondent No. 8, the Registry shall communicate this order to the said added Respondent No. 8, directing it to place before us a report as to whether the Lands-Survey No. 176 and 177 situated at Village: Diwanman, Taluka: Vasai, District: Palghar are identified as Wetland. Copy of the Original Application along with its Annexures shall also be transmitted to the said Authority – Respondent No. 8 in order to have a detailed reply in this regard.

6. In Paragraph No. 4 of the Original Application as well as in the prayer clause thereof, where errors have been noticed, in our order also, the Applicants are granted liberty to move an application to get the same amended.

7. Place the matter for admission on 07.02.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 17, 2023
O.A. NO.02/2023 (WZ)