

Item No.2

(Pune Bench)

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

[THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)]

ORIGINAL APPLICATION NO.02 OF 2023 (WZ)

Sunil S. Mulye & Ors.

.... Applicants

Versus

Union of India, through MoEF & Ors.

.... Respondents

Date of Hearing : 18.05.2023

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

Appellant : Mr. Bipin Joshi, Advocate

Respondents : Mr. Raghvendra Kulkarni, Advocate holding for
Mr. Rahul Garg, Advocate for R-1
Mr. Aniruddha Kulkarni, Advocate for R-2
Ms. Manasi Joshi, Advocate for R-3 and R-4
Mr. Prashant More, Advocate for R-6 along with
Mr. Kishor Gavas, Dy. Commissioner
Mr. Mukesh Verma, Advocate for R-8
Mr. Sanjiv Punalekar, Advocate for Intervener

ORDER

1. From the side of the applicants, learned counsel Mr. Bipin Joshi has appeared. The service affidavit has been filed as per which the service on all the respondent is sufficient.

2. From the side of respondent No.1 – MoEF&CC, learned counsel Mr. Raghvendra Kulkarni holding brief for Mr. Rahul Garg, learned counsel has appeared and states that he has not received the copy of the Original Application and therefore, a direction may be issued to the applicants to provide a copy of the same. The learned counsel for the applicants states that the copy of Original Application has already been served. Even then, we direct him to provide a copy to the learned counsel for respondent

No.1 today itself and thereafter, the reply-affidavit may be filed within two weeks.

3. From the side of respondent No. 2 – Environment Department, State of Maharashtra, learned counsel Mr. Aniruddha Kulkarni has appeared and seeks two weeks' time to file the reply-affidavit. The same is allowed.

4. From the side of respondent No.3 – MCZMA and respondent No. 4 – MPCB, learned counsel Ms. Manasi Joshi has appeared and seeks two weeks' time for filing the reply on behalf of respondent No.3. The same is allowed.

5. From the side of respondent No. 5- District Magistrate/Collector, Palghar, none has appeared despite sufficient service.

6. From the side of respondent No.6 – Vasai Virar City Municipal Corporation, learned counsel Mr. Prashant More has appeared and seeks three weeks' time for filing the reply-affidavit. The same is allowed.

7. From the side of respondent No.7 – Mahaveer Enterprises, none has appeared.

8. From the side of respondent No.8 – the State Wetlands Authority, learned counsel Mr. Mukesh Verma has appeared.

9. By our previous order dated 31.03.2023, we had instructed respondent No.8 i.e. Wetlands Authority to clarify as to whether the survey numbers in question were identified as wetlands and they are notified so or not, but today, learned counsel Mr. Mukesh Verma, who appeared after considerable delay, states that the information was required to be gathered from the end of the District Magistrate which he could not obtain. He tried to communicate several other difficulties but we want a written communication to be made as to why this clarification is not possible to be given. He seeks two weeks' time to submit the

clarification/reply before us. By way of last opportunity, we allow the same.

10. Today, learned counsel Mr. Sanjiv Punalekar has appeared on behalf of one MR. Yogesh Deshpande who intends to seek his impleadment in this Original Application by making an application very soon. He states that the land on which the burial ground is being constructed falls in wet land as per the judgment of the Hon'ble Supreme Court. He has sent us an e-mail today sending therewith a copy of the judgment passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.230 of 2001, dated 08.02.2017 (M.K. Balakrishnan & Ors. Vs. Union of India & Ors.) wherein our attention is drawn to the directions contained on page No.8 thereof, which read as follows:

“Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India will identify and inventorize all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 3,02,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, that is to say:

“(i) reclamation of wetlands;

(ii) setting up of new industries and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified vide S.O. No.966€, dated the 27th November, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/Genetically engineered organisms or cells notified vide GSR No.1037 €, dated the 5th December, 1989 or the Hazardous Wastes (Management, Handling and Transboundry Movember) Rules, 2008 notified vide S.O. No.2265€, dated the 24th September, 2008;

(iv) solid waste dumping: provided that the existing practices, if any, existed before the commencement of these rules shall be phased out within a period not exceeding six months from the date of commencement of these rules;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements: provided that the practices, if any, existed before the commencement of these rules shall be phased out within a period not exceeding one year from the date of commencement of these rules;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules;

(vii) any other activity likely to have an adverse impact on the eco-system of the wetland to be specified in writing by the Authority constituted in accordance with these rules."

11. Based on above, it is alleged by learned counsel that the land in question is falling in one of the wetlands which have been notified and mapped. Therefore no burial ground can be allowed to be constructed there. He states that by tomorrow, he will be moving an application for impleading said Mr. Yogesh Deshpande as an intervener, giving all the details along with the aforesaid judgment of the Hon'ble Supreme Court and all other relevant documents. We direct him to file the same tomorrow with a direction to serve copy of the same to other parties.

12. We deem it appropriate to constitute a Joint Committee comprising one member each of (i) Member Secretary, State Wetlands Authority, (ii) Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA), (iii) District Collector, Palghar, (iv) Chief Engineer, Irrigation Department and (v) Commissioner, Vasai-Virar Municipal Corporation. MCZMA will be the Nodal Agency of the Committee. The Committee shall visit the spot after giving notice to the applicants at the earliest and following will be the Terms of Reference (ToR) for the Joint Committee:

1. Visit the site after intimating applicant and all other respondents
2. Find out status of site as per National Wetland Atlas 2010
3. Find out if the site meets definition of wetland as per the Wetlands (Conservation and Management) Rules, 2017 ("wetland" means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include

river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes).

4. Find out if the site meets definition of wetland as per MOEFCC Guidelines for implementing Wetlands (Conservation and Management) Rules, 2017.
5. Find out maximum depth of water at the central portion of the site during peak monsoon based on past records.
6. If the site meets definition of wetland –
 - I. Demarcate wetland boundary supported by accurate digital maps with coordinates in consultation with revenue and irrigation department.
 - II. Demarcate its zone of influence and land use and land cover
 - III. Describe Ecological character of the site – flora and fauna found at the site and its importance.
 - IV. Recommend if proposed activity can be permitted within the wetland and/or in its zone of influence.

A report of the Committee shall be submitted before us by the MCZMA within one month, 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.

13. A copy of this order shall be served upon all the members of the Joint Committee by the MCZMA for compliance as above.

14. Put up this matter for next consideration on 25.08.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

May 18, 2023
O.A. No.02/2023 (WZ)
npj