

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. ___ OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)

Anuj Abhay Deshpande

..... Applicant

Versus

The Commissioner,

Pune Municipal Corporation & Ors.

..... Respondents

COMPILATION I

Sr. No.	Particulars	Page No.
1	Synopsis	2
2	Original Application	3 - 18
3	Vakalatnama	19

FILED BY

ADV. SUPRIYA DANGARE

FLATNO.4, LUV KUSH BUILDING,

BHARAT KUNJ VASAHAAT 1,

OPPOSITE NEW KARNATAK SCHOOL,

ERANDAWANE, PUNE-411038

CONTACT NO. 9923106109

SYNOPSIS

I. THE CHALLENGE IN BRIEF:-

The Applicant by the way of this application seeks for adjudication with respect to the violation of The Environment (Protection) Act, 1986 and tremendous damage which will be caused due to the proposed cutting of trees on the Hanuman Tekdi, the environment shall be damaged to a great extent due to the construction of this water tank on the land which is a Forest.

II. DATES AND EVENTS :

DATES	EVENTS/ PARTICULARS
2006-2007	Water tank constructed by the PMC which have been unused till today.
24.05.2022	Approval by MoEF & CC for diversion of 0.7031 ha. Reserved forest land for construction of water reservoir in Sy. No. 262 at Village – Bhamburda, Taluka-Haveli District- Pune.
17.12.2023	The applicants held agitation at Balgandharva Chowk and were joined by many.
10.01.2024	The Applicants noticed JCB Machines at the site.

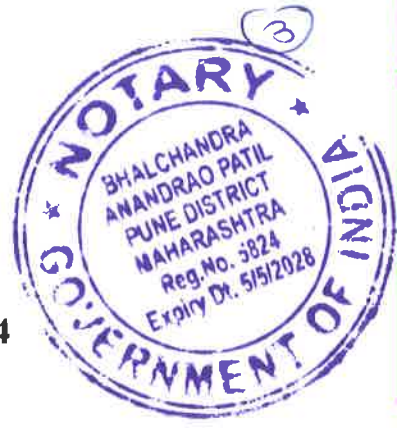
Place: Pune

SRDangane
Adv. for the Applicant

Date: 27.01.2024

2

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. OF 2024**



(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)

1. Anuj Abhay Deshpande

Age : 31 yrs. Occupation : Computer Engineer

R/At : 6, Krushnali Apartment,

2 Nav Rajasthan CHS, S.B. Road,

Pune 411016

Mob. No. 9422314960

e-mail : anujdeshpande92@gmail.com

2. Shardul Abhay Mhalgi

Age : 39 yrs. Occupation : Business,

41/a Hanuman Nagar,

'Sankalp Bungalow',

Senapati Bapat Road,

Pune 411016

Ph. No. 9422523355

E Mail : shardulmhalgi@yahoo.co.in

3. Shrirang Prakash Joshi

101 Lotus Residency,

④

Opp. Joshi Museum Kothrud, 52,

Pune- 41088

Mob No. - 986004562

Email : shrjoshi@outlook.com

4. Amol Moreshevar Koshe

Age : 45 yrs. Occupation : Service,

R/At : 1098/3a Omkar Bungalow,

Model Colony Road.

Near Model Colony P.O.

Pune - 411016

Ph. No. :8407978664

E Mail : amolkoshe@gmail.com

5. Venkatesh Gosawi

Age- 53 yrs. Occupation : HR Admin.

Laxman Thite Aop Plot No: 11

Shivaji Nagar .

Pune 411005.

Mob No.-9561110590

E Mail : Venkatesh.laxmantithe@gmail.com

6. Atul Kulkarni

Age: 59yrs., Occupation : Self Employed

R/At :G-303,Mayurnagri Society,



New Sangvi,

Ph. No. 8766886710

E Mail : astro11@gmail.com

..... Applicants

Versus

1. The Commissioner,

Pune Municipal Corporation, Shivaji Nagar, Pune 411005

Email : info@punecorporation.org, Ph No. 25501000

2. The Secretary,

Environment Department State of Maharashtra,

Mantralaya ,Mumbai 400032

Email : psec.env@maharashtra.gov.in

Ph. No. 022 2873845

..... Respondents

1. The addresses of the Applicants are as given above for the service of notices of this application and that of their Representatives is as given above.

2. The addresses of the Respondents are as given above for service of notices of the application

3. The Applicant above names begs to present the Memorandum of Application with respect to the erroneous site selection for construction of water tanks and rampant tree cutting which will occur.

FACTS OF THE CASE

1. The applicants are the residents of Pune and regularly visiting Fergusson college hill Gat No. 262, Village Bhamburda, Taluka Haveli, Dist. Pune.



The Applicants have taken up issue for saving the Tekdi through various medium including Letter Applications, Letters to the various Authorities etc., started signature campaign under name of Change.org and the Applicants received 1371 signatures, agitation was held at Balgandharva Chouk on 17.12.2023 where many people joined.

2. The applicants herein want to invoke the original jurisdiction of this Hon'ble Tribunal by raising an issue as to the construction activity of water tanks undertaken by the Respondent No.1 i.e. Pune Municipal Corporation.
3. The applicants submit that at the site; there already exists two water tanks admeasuring approximately 150m* 80m and 60m* 70m respectively. These existing water tanks were constructed way back in the year 2006 – 2007. The said water tanks are never being used till date since inception. The portion of land which has already been excavated for the existing water tanks can be leveraged without expanding the foot print of excavation which will be optimum usage of already excavated portion to avoid further damage to the environment. The Respondent No.1 has started construction of water tank considering the alleged additional requirement of water for the city of Pune just adjacent to the existing old water tanks. The applicants further state that already while constructing the old water tanks destruction of trees had happened in the past. By taking up construction of the new proposed water tanks will add to damage to the environment.
4. The subject matter of the present Application that is the portion of land on which the Respondent No.1 is proposing construction of water tanks is admittedly "Reserve Forest". The Respondent No.1 under the "Equitable Water Supply Project" has started construction of 82 new water tanks in the city and the said task is entrusted to PMC-Water Supply Department. The Respondent No.1 has engaged services of M/s. Studio Galli Ingegneri to study the existing water supply system, storage and prepare a detailed



project report to cater the water requirement of the city of Pune considering the projected population till the year 2047.

5. The applicants submit that the Respondent No.1 has obtained 'in-Principle' clearance and final approval from the MoEF & the CC vide proceedings dated 24.05.2022. According to the Respondent No.1 necessary permissions for tree cutting is also been procured from the Tree Authority. The copy of approval dated 24.05.2022 is annexed herewith as "**Annexure A**".
6. The applicants submit that the issue was earlier raised before this Hon'ble Tribunal in OA No. 46/2020 thereby raising an issue as to the illegal construction activities undertaken by the Respondent No. 1 – Corporation through the contractor on the forest land in violation of the Forest Conservation Act,1980 and the rules framed thereunder. This Hon'ble Tribunal was pleased to dispose off the matter vide judgement dt. 02.12.2021.

A copy of the said Judgement is attached here and marked as "**Annexure B**".

7. The applicants in the present Application are coming before this Hon'ble Tribunal under "Precautionary Principle". Although this Hon'ble Tribunal has considered the issue earlier, the present application is different on the following points:

- i) In the present application the applicant is not challenging the construction activity to be 'non forest activity' in the forest land.

- ii) The present applicants are not contending that the construction of water tank is 'illegal' because the same has been adjudicated by this honourable tribunal in OA No. 46/2020 Dr. Sushama Date Vs. PMC and Ors.



The applicants would like to clarify as to why they have come before the Tribunal which can be enumerated as under :

- i) The applicants are raising the issue of site selection .
- ii) The applicants are strongly objecting the tree cutting.
- iii) The fundamental right to have potable water cannot supersede the fundamental right to have healthy and clean environment.

GROUNDS

- a) The Respondent no.1 has failed to select the site for the construction of new water tanks.
- b) The Respondent no. 1 does not have any justification as to why approximately 140 trees are to be cut, as already there exist two water tanks.
- c) The Respondent no.1 is by selecting the site is taking away the right of the citizens to have clean and healthy environment.
- d) The 'in-principle' approval from MoEF dt. 24.05.2022 is a mere paper formality to show that the activity is in accordance with law but in reality it is frustrating the right of people to have clean air.
- e) The small hills (Tekdi) such as Vetral Tekdi, Hanuman Tekdi etc. are the lungs of the city and by scooping out a portion of this for alleged 'public utility project' is erroneous and detrimental to the right to live in clean environment. When such a portion of hill is scooped out; the same will cause irreparable damage to the environment.
- f) The Respondent no. 1 does not have any justification as to why the said site has been selected for constructing the water tanks. Moreover, when the existing two water tanks are not used since its construction till date



what is the justification to have two more water tanks constructed adjacent to the existing tanks.

- g) The Respondent no ,1 has not considered a sustainable design such as revamping the existing tanks or/ and construction of overhead tanks which would reduce the footprint causing comparatively less damage to the environment.
- h) The Respondent no. 1 , Respondent no. 2 that is Water Supply Department PMC and also the Tree Authority are in fact can be said to be one and the same hence the proposed project has not been scrutinised and nor being weighed on the environmental parameters while considering the project the Respondent no. 1 has considered the proposed increase in population and the requirement of the same but has failed to consider the requirement of unpolluted air to the increased population.
- i) The Third Party Report also has failed to consider the environmental aspect involved or any other suitable sites other than the site involved.
- j) The Respondent no.1 has tried to justify its project by showing as to how it falls in four corners of law but has forgotten its responsibility under the principle of '*parent patria*' to give pollution free environment to its citizens.
- k) The area which will be covered by the proposed construction not less than 0.7 ha. The same will also have ingress and egress of vehicles which will lead to pollution.
- l) Without carrying out any plantation in the area the Respondent no. 1 has started with the project in full swing.



LIMITATION

The cause of action for the present Application first arose on 10.01.2024 when the Applicants noticed JCB Machines carrying out levelling of land for carrying out the construction work of water tanks.

PRAYER

The Applicants **pray** as under:

- a) The Respondent No. 1 may kindly be directed to change the location of the construction of water tanks considering the environmental damage.
- b) The Respondent No. 1 may kindly be directed to stop the work with immediate effect as the same may cause irreparable damage to the citizens of Pune City till the present Application is finally decided.
- c) Any other just and equitable Order in the interest of justice may kindly be passed.

Pune

Deshpande
(ANUJ-ABHAY-DESHPANDE)

Muralgi
(SHARDUL ABHAY MURALGI)

Joshi
(SHRIRANG PRAKASH JOSHI)

Koshe
(AMOL KOSHE)

Gosavi
(Venkatesh T. Gosavi)

Kulkarni
(ATUL KULKARNI)

Applicants
SRDangane
Adv. for the Applicants.

Date : 27.01.2024

VERIFICATION

I Anuj Abhay Deshpande, Age- 31 yrs., Occupation-Computer Engineer, R/at-6,Krushnali Apartment, 2 Nav Rajasthan CHS,S.B. Road, Pune 411016, state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

A. Deshpande
Applicant

VERIFICATION

I Shardul Abhay Mhalgi, Age- 39 yrs., Occupation-Stock Broker, R/at-41/a, Hanuman Nagar, 'Sankalp Bungalow', Senapati Bapat Road,Pune-411016, state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

S. Mhalgi
Applicant

VERIFICATION

I Shrirang Prakash Joshi, Age- 52 yrs., Occupation-IT Entrepreneur, R/at- 101 Lotus Residency, Opp. Joshi Museum,Kothrud,Pune-411038, state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

S. Joshi
Applicant



12

VERIFICATION

I Amol Moreshwar Koshe, Age- 45 yrs., Occupation-Software Engineer, R/at- 1098/3a, Omkar bungalow, Model colony, near model colony post office, Pune- 411016, state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

Applicant

VERIFICATION

I Venkatesh Gosawi, Age- 53 yrs., Occupation-HR Admin, R/at- Laxman Tite AOP, Plot No.11, Shivajinagar-411005, state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

Applicant



VERIFICATION

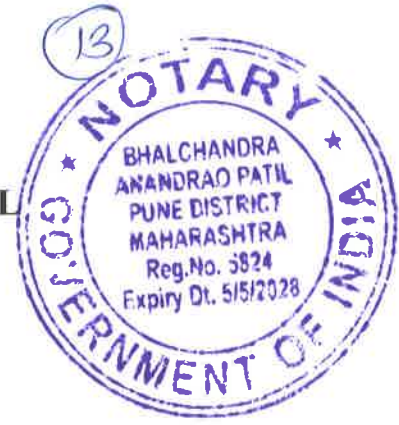
I Atul Kulkarni, Age-59 yrs., Occupation- Self Employed , R/at- G- 303, Mayurnagari society, New Sangvi, Pune-411061, state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)



Anuj Abhay Deshpande & Ors.

...Applicants

Versus

1. The Commissioner,

Pune Municipal Corporation,

2. The Secretary,

Environment Department

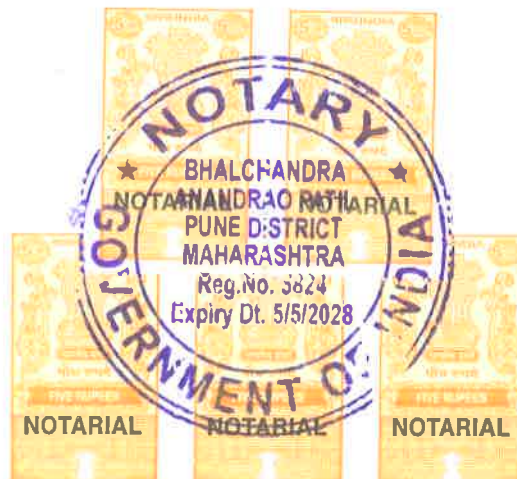
..... Respondents

AFFIDAVIT

I Shrirang Prakash Joshi, Age- 52 yrs., Occupation-IT Entrepreneur, R/at- 101 Lotus Residency, Opp. Joshi Museum, Kothrud, Pune-411038, do take oath and state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

I know the Affiant

SRDangane
Advocate



Affiant

BEFORE ME
R. Patil
BHALCHANDRA ANANDRAO PATIL
NOTARY
GOVT OF INDIA
13-1-2024



**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION OF 2024**

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)

Anuj Abhay Deshpande & Ors. ...Applicants

Versus

The Commissioner,

Pune Municipal Corporation,

2. The Secretary,

Environment Department

..... Respondents

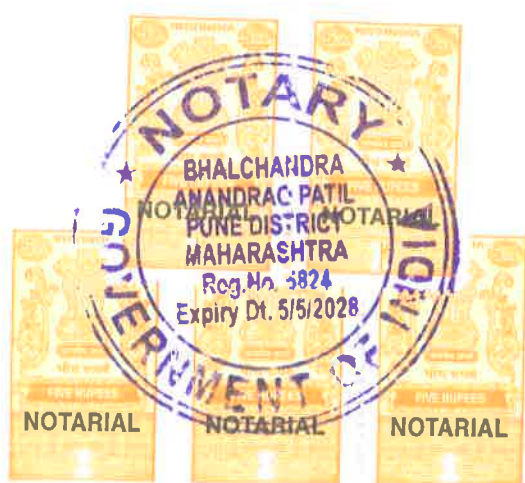
AFFIDAVIT

I Shardul Abhay Mhalgi, Age- 39 yrs., Occupation-Stock Broker, R/at-41/a, Hanuman Nagar, 'Sankalp Bungalow', Senapati Bapat Road, Pune-411016, do take oath and state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

I know the Affiant

Shardul Mhalgi
Affiant

SRDangare
Advocate



BEFORE ME
[Signature]
BHALCHANDRA ANANDRAO PATIL
NOTARY
GOVT OF INDIA
13-1-2024

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)

Anuj Abhay Deshpande & Ors.

...Applicants

Versus

The Commissioner,

Pune Municipal Corporation,

2. The Secretary,

Environment Department

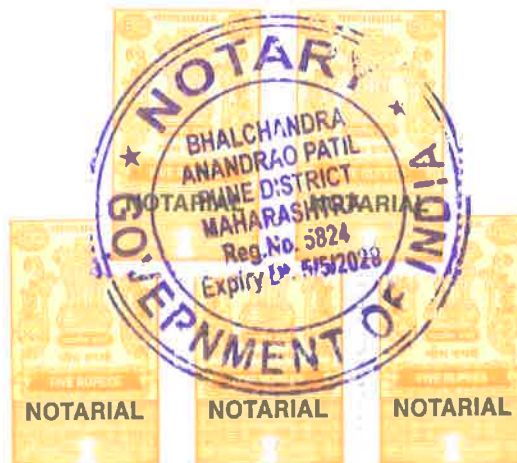
..... Respondents

AFFIDAVIT

I Anuj Abhay Deshpande, Age- 31 yrs., Occupation-Computer Engineer, R/at- 6,Krushnali Apartment, 2 Nav Rajasthan CHS,S.B. Road, Pune 411016, do take oath and state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

I know the Affiant

SRDangne
Advocate



B. Deshpande
Affiant

BEFORE ME

B. Deshpande
BHALCHANDRA ANANDRAO PATIL
NOTARY
GOVT OF INDIA
13-1-2024

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)



Anuj Abhay Deshpande & Ors.

...Applicants

Versus

The Commissioner,

Pune Municipal Corporation,

2. The Secretary,

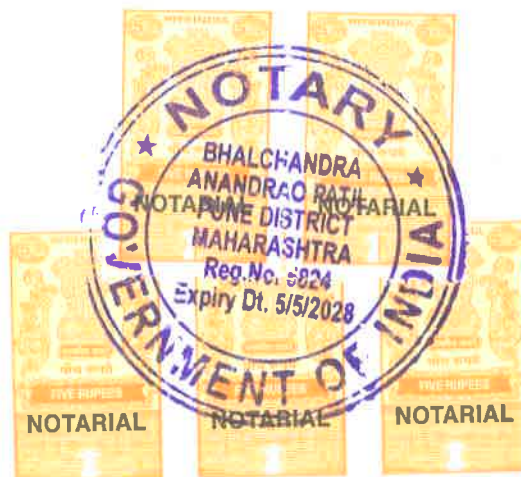
Environment Department

..... Respondents

AFFIDAVIT

I Amol Moreshwar Koshe, Age- 45 yrs., Occupation-Software Engineer, R/at-1098/3a, Omkar bungalow, Model colony, near model colony post office, Pune-411016, do take oath and state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

SRDangaul
I know the Affiant



A. Koshe
Affiant

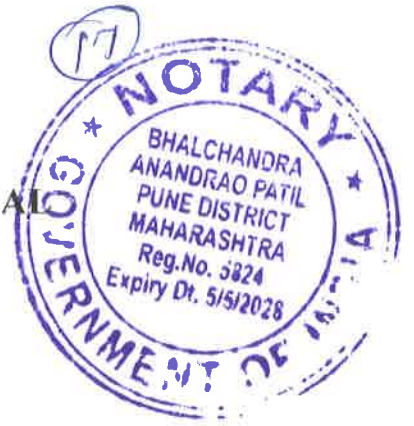
BEFORE ME
Bhalchandra Anandrao Patil
BHALCHANDRA ANANDRAO PATIL
NOTARY
GOVT OF INDIA
13-1-2024

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)



Anuj Abhay Deshpande & Ors.

...Applicants

Versus

The Commissioner,

Pune Municipal Corporation,

2. The Secretary,

Environment Department

..... Respondents

AFFIDAVIT

I Venkatesh Gosawi, Age- 53 yrs., Occupation-HR Admin, R/at- Laxman Tite AOP, Plot No.11, Shivajinagar-411005, do take oath and state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

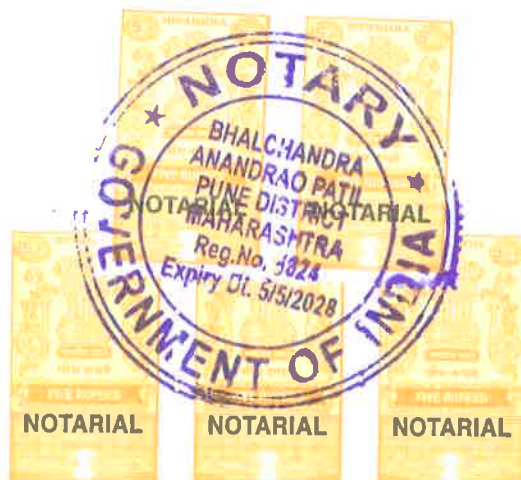
I know the Affiant

SRDangale
Advocate

Cairaj
Affiant

BEFORE ME

Bhalchandra Anandrao Patil
BHALCHANDRA ANANDRAO PATIL
NOTARY
GOVT OF INDIA
13-1-2024



BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)



Anuj Abhay Deshpande & Ors.

...Applicants

Versus

The Commissioner,

Pune Municipal Corporation,

2. The Secretary,

Environment Department

..... Respondents

AFFIDAVIT

I Atul Kulkarni, Age-59 yrs., Occupation- Self Employed , R/at- G-303, Mayurnagari society, New Sangvi, Pune-411061, do take oath and state on solemn affirmation that the contents in the Application are true and correct to the best of my personal knowledge, information and belief and hence I have signed hereunder on this the 13th day of January 2024, at Pune.

I know the Affiant

SRDangane
Advocate



Atul Kulkarni
Affiant

BEFORE ME

Bhalchandra Anandrao Patil

BHALCHANDRA ANANDRAO PATIL
NOTARY
GOVT OF INDIA
13-1-2024

VAKALATNAMA

IN THE COURT OF National Green Tribunal AT Pune

Original Application NO. _____ OF 2024

Anuj Deshpande and
Ors

*Appellant's / Applicant's
Complainant's
Petitioner's / Plaintiff's

VERSUS
The Commissioner,
Pune Municipal Corporation

*Respondent's /
Opponent's
Accused / Defendant's

* I/We The Undersigned Anuj Deshpande and ors



the Applicants above named hereby appoint & authorise

ADV. SUPRIYA DANGARE
LL.M.
Flat No. 4, Lav-Kush Building,
Bharatkunj Vasahat-1, Erandwane,
Pune-411 038.
Sanad No. : Mah/1599/2002

* I am a member /not a member of the Maharashtra Advocates Welfare Fund & I have / have not affixed the required stamp.

* to appear and plead for me/ us as my/our Advocates in the matter.
* In witness where of I? we have signed below this 12th
day of January 2024

Witness

- 1) Anuj Deshpande (ANUJ DESHPANDE)
- 2) Shardul Mhalgi (SHARDUL MHALGI)
- 3) Shrirang Joshi (SHRIRANG JOSHI)
- 4) Amol Koshe (AMOL KOSHE)
- 5) Venkatesh Gosavi (VENKATESH GOSAVI)
- 6) Atul Kulkarni (ATUL KULKARNI)

Accepted and filed on 20/01/2024.

SRDangare
Signature of Advocate/s

*(Strike Out that which is not applicable.)

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

ORIGINAL APPLICATION NO. ___ OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)

Anuj Abhay Deshpande

..... Applicant

Versus

The Commissioner,

Pune Municipal Corporation & Ors.

..... Respondents

COMPILATION II

SR. No.	Particulars	Page No.
1.	Annexure 'A' A copy of approval letter from MoEF dt. 24.05.2022	21 - 23
2	'Annexure B' Copy of Judgement in OA 46/2020	24 - 46

Place: Pune

SRDangane
Adv. for the Applicant

Date : 27.01.2024



भारत सरकार
GOVERNMENT OF INDIA
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
MINISTRY OF ENVIRONMENT, FORESTS
& CLIMATE CHANGE

Integrated Regional Office
Ground Floor, East Wing
New Secretariat Building
Civil Lines, Nagpur - 440001
apccfcentral-ngp-mef@gov.in

Eno. FC-1/MIH-175/2020-NGP /9-712

Date: 24.05.2022

To: The Principal Secretary (Forests),
Revenue and Forest Department,
Hutatma Rajguru Chowk
Madam Cama Marg
Mantralaya, Mumbai - 400032.

Sub: Diversion of 0.7031 ha Reserved Forest land in favour of Water Supply Department, Pune Municipal Corporation (PMC), Pune for Construction of ground water reservoir capacity 13 ML, 2ML and 3.5 ML ESR to supply drinking water to Shivajinagar Pune area under PMC, Pune in forest Sur. No. 262 at Village- Bhamburda, Tal. Haveli, District- Pune District in the State of Maharashtra- regarding.

Sir,
The undersigned is directed to refer to APCCF & Nodal Officer (FCA), Government of Maharashtra letter No. Desk-17/NC/II/ID 12764/(19)1732/2019-20 dated 24.01.2020 on the above subject seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980. After careful examination of the proposal of the State Government, 'in-principle' approval was accorded by the Central Government vide its letter of even number dated 25.08.2021. The Addl. PCCF & Nodal Officer (FCA), Government of Maharashtra has now submitted a report on the compliance of conditions stipulated in the 'in-principle' approval and requested the State Government to grant final approval to the proposal.

In this connection, I am directed to say that on the basis of compliance report submitted by the APCCF & Nodal Officer (FCA), Government of Maharashtra vide letter no. Desk-17/Nodal/Pune/ID-12764(19)/191/2022-23 dated 25.04.2022, the Central Government hereby accords 'final approval' under Section - 2 of the Forest (Conservation) Act, 1980 for diversion of 0.7031 ha Reserved Forest land in favour of Water Supply Department, Pune Municipal Corporation (PMC), Pune for Construction of ground water reservoir capacity 13 ML, 2ML and 3.5 ML ESR to supply drinking water to Shivajinagar Pune area under PMC, Pune in forest Sur. No. 262 at Village- Bhamburda, Tal. Haveli, District- Pune District in the State of Maharashtra subject to the fulfilment of the following conditions

- i. Legal status of the forest land shall remain unchanged;
- ii. **Compensatory afforestation**
 - a. Compensatory afforestation shall be taken up by the Forest Department over 1.00 ha degraded forest land in Gut No. 425 at Village- Vadgaon Shinde, Taluka- Haveli, District- Pune at the cost of the User Agency. As far as possible, a mixture of local indigenous species along with 10% RET species of Pune District shall be planted and monoculture of any species may be

F.C
SRD
5/2/24

avoided. At least one water body shall be constructed in the form of tank/ sloop/ dams etc if the same are not available in the area or in nearby vicinity;

- iii. User agency shall restrict the felling of trees to minimum number in the diverted forest land and the trees shall be felled under the strict supervision of the State Forest Department and the cost of felling of trees shall be deposited by the User Agency with the State Forest Department;
- iv. The complete compliance of the FRA, 2006 shall be ensured by way of prescribed certificate from the concerned District Collector;
- v. Action against violation shall be undertaken as per the provisions made under Para 1.21 of Handbook of Forest Conservation Act, 1980 published in 28.03.2020. Further, a formal enquiry shall be conducted by State Forest Department as per the provisions made under Para 1.21 of Handbook of Forest Conservation Act, 1980 published in 28.03.2019;
- vi. To improve the Forest/ Tree cover and to reduce pollution in the State, as mandated in National Forest Policy, 1988 and Environmental (Protection) Act, 1986 respectively, the User Agency with involvement of Joint Forest Management Committees (JFMC's) and in consultation with local DCF shall raise at least 1000 seedlings of forestry species along with bamboo, fruit bearing, medicinal, ornamental and indigenous/local for 10 years. At least 50% of seedlings shall be planted in the vicinity of project area and remaining 50% of seedlings shall be distributed among villagers as per choice of villagers. The concerned JFMC's shall maintain record of plantation/ seedling distribution to villagers;
- vii. State Forest Department shall undertake avenue plantation at the cost of User Agency along the approach road. Material excavated while execution of construction shall be used as staggered trenches and terrace and plant with native species;
- viii. Speed regulating signage will be erected along the road at regular intervals in the Protected Areas/ Forest Areas;
- ix. The pipeline shall be laid down 1.5 meter below the ground and after lying down of pipe line the ground will be leveled;
- x. The User Agency shall provide an outlet for waterhole for watering plants and the period of supply of water shall be continuous throughout the year at the cost of User Agency;
- xi. User Agency shall obtain Environmental Clearance as per the provisions of the Environmental (Protection) Act, 1986, if applicable;
- xii. The layout plan of the proposal shall not be changed without prior approval of Central Government;
- xiii. No labour camp shall be established on the forest land;
- xiv. Sufficient firewood, preferably the alternate fuel, shall be provided by the User Agency to the labourer after purchasing the same from the State Forest Department or the Forest Development Corporation or any other legal source of alternate fuel;
- xv. The boundary of the diverted forest land shall be suitably demarcated on ground at the project cost, as per the directions of the concerned Divisional Forest Officer;

- vi. No additional or new path will be constructed inside the forest area for transportation of construction materials for execution of the project work.
- vii. The period of diversion under this approval shall be co-terminus with the period of lease to be granted in favour of the user agency or the project life, whichever is less;
- viii. The forest land shall not be used for any purpose other than that specified in the project proposal;
- ix. The forest land proposed to be diverted shall under no circumstances be transferred to any other agencies, department or person without prior approval of Govt. of India;
- x. Violation of any of these conditions will amount to violation of Forest (Conservation) Act, 1980 and action would be taken as per the MoEF&CC Guideline F. No. 11-42/2017-FC dt 29/01/2018;
- xi. Any other condition that the Ministry of Environment, Forests & Climate Change may stipulate from time to time in the interest of conservation, protection and development of forests & wildlife;

This issues with the approval of DDGF (C)/ Regional Officer (Central), Integrated Regional Office, MoEF & CC, Nagpur.

Yours faithfully,

(C.B. Tashildar)
AIGF (Central)

- Copy to:
- i. The PCCF (HoFF), Government of Maharashtra, Nagpur.
 - ii. The Addl. PCCF & Nodal Officer (FCA), Government of Maharashtra, Nagpur.
 - iii. User agency.
 - iv. Guard file.

(C.B. Tashildar)
AIGF (Central)

अधिक्षक अभियंता
पाणी पुरवठा प्रकल्प
पुणे महानगरपालिका
जाचक क्र. YOC

दिनांक २/९/२०१९
श्री भुलकर / श्री क्षिरसागर
कार्यकारी अभियंता
पाणी पुरवठा प्रकल्प
पुणे महानगरपालिका

श्री. क. व. कोरे
Please discuss about fulfillment of conditions stipulated above.
उप अभियंता
पाणी पुरवठा प्रकल्प
पुणे महानगरपालिका

श्री. क. व. कोरे
अधिक्षक अभियंता
पाणी पुरवठा प्रकल्प
पुणे महानगरपालिका

KB

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
(By Video Conferencing)

Original Application No. 46/2020(WZ)

In the matter of:

1. Dr. Sushma Date

Lokmaya Hospital,
13/4 off Karve Road
Pune-411004.

2. Madhavi Rahirkar

16/4, Erandwane, Santa Krupa
off Karve Road
Pune-411004.

3. Sumita Abhijit Kale

Durgadhiwas, 823-B,
Bhandarkar Institute Road,
Pune-411004.

Applicant(s)

Versus

1. PUNE MUNICIPAL CORPORATION

Through the Commissioner,
PMC Main Building,
Congress house, Shivajinagar
Pune-411001.

2. ENVIRONMENT DEPARTMENT

Through Secretary,
Room No.217, Mantralaya Annex,
Mumbai-400022.

3. FOREST DEPARTMENT, MAHARASHTRA

Through Principal Chief Conservator of Forests,
First Floor 'B' Wing, Van Bhavan,
Civil Lines, Nagpur-440001.

4. LARSEN AND TOUBRO CONSTRUCTIONS

Through its Chairman,
Mount Poonamallee Road, Manapakkam,
P.B.No.979, Chennai-600 089.

T-C
SRD
5/12/24

5. STATE OF MAHARASHTRA

Through Chief Secretary,
Chief Secretary Office,
Hutatma Rajguru Chowk
Madame Cama Road,
Mantralaya, Mumbai-400032.

6. UNION OF INDIA

Through Secretary,
Ministry of Environment, Forest and Climate Change
Indira Paryavaran Bhavan,
Jor Bagh, New Delhi-110003.
Respondent(s).

Counsel For Applicant (s): Mr. Maitreya Ghorpade, Advocate.

Counsel For Respondent (s) Mr. Rahul Garg, Advocate for R-1.
Mr. Deepak Gupte Advocate for R-3,6.
Mr. Devyansh Chaurosia, Advocate for R-4

PRESENT:

CORAM: HON'BLE MR. JUSTICE M. SATHYANARAYANAN, (JUDICIAL MEMBER)
HON'BLE DR. ARUN KUMAR VERMA, (EXPERT MEMBER)

Orders Reserved on: 28.10.2021

Pronounced on: 02.12.2021

ORDER

1. The Original Applicants are the residents of the Deccan Gymkhana/Erandwane area of the city of Pune and claim that they are voluntarily working on the civic issues under the umbrella of "Deccan Jimkhana Parisar Samiti", Pune, and they further state that they have a deep concern and the interest in the issues concerning environment and ecology of the area and carrying on the said activities for very many years with the objective of protecting the environment of the area.
2. The Applicants came forward to invoke the original jurisdiction of this Tribunal, by raising an issue as to the illegal construction activities

undertaken by the 1st Respondent- Corporation through the 4th Respondent - Contractor on forest lands in violation of the Forest (Conservation) Act, 1980 (In short, "FC Act") and the rules framed thereunder.

The Original Applicants would contend as follows:-

3. The 1st Respondent-Corporation through the services of the 4th Respondent - contractor is putting an illegal construction of the water tanks on the following three forest lands in the city of Pune:

- a) Panchavati Hill (Gutt Nos. 38 and 39)
- b) Law College Hill (Gutt Nos.49-53 and
- c) Fergusson College Hill (Gutt No.262).

4. The 1st Respondent under the garb of said construction, also resorted to illegal felling of trees in blatant and brazen violation of the provisions of FC Act without getting any prior Environmental Clearance (EC) from the Ministry of Environment, Forest and Climate Change (MoEF&CC) of the Govt. of India. The lands in Survey No.49-53 situate in the Law College Hill, are identified 'forest' in terms of the decision of the Hon'ble Supreme Court of India reported in **1997 (2) SCC, 267- (T.N.Godavaraman Thirumulpad Vs Union of India & Ors.)**. The Deputy Conservator of Forest, Pune Forest Division also sent a communication dated 16/07/2021 addressed to the 1st Respondent-Corporation stating amongst others that they become aware of the fact that the 1st Respondent-Corporation intends to construct 100 ft width road connecting Bal-Bharati with Paud-Phata passing through the existing vegetation in the Law College premises in plot No.97 Survey No.53 and that the said area is regarded as "Forest" in the light of the above cited Judgment of the Hon'ble Supreme Court of India and as such, no non-forest activities can be taken without obtaining prior sanction of the Government of India under the FC Act.

5. The 1st Respondent despite the said communication dated 16/07/2001 (Annexure-A) proceeded to construct the water tanks without Forest Clearance and in process, also felled the trees in an illegal manner and also cleared the forest land. The Law College hill area is also an important aquifer for the city of Pune and as such, any construction on the said area would also decrease the percolation and accumulation of the groundwater.

i) As regards the construction activities taking place in Panchvati Hill (Gut Nos.38-39) it is contended by the Original Applicant, the said area is also classified as 'forest' within Revised Draft Development Plan 2007-2027 published under Section 26(1) of the Maharashtra Regional and Town Planning Act, 1966 and that of all the explained meaning of definition 'forest' as held by the Supreme Court of India in the above cited decision, would also have application. The 1st Respondent-Corporation also putting the water tank at Panchvati Hill without any prior EC also resorted illegal cutting and felling of trees.

ii) The construction activities undertaken by the 1st Respondent on Fergusson College Hill within Gut No.262 is also a "Reserved Forest" and the Original Applicants took similar stand as that of the construction activities being undertaken in the Law College Hill as well as in Panchvati Hill area.

6. In sum and substance, it is a case of the Original Applicants that though the lands in above said areas/places are forests, 1st Respondent without getting any prior EC from the Govt. of India, is proceeding with the construction of water tanks and in the process, resorted to illegal cutting and felling of the trees, and also cleared the forest land, and as such by applying the "Polluters pay Principle" they are not only liable to pay environmental compensation but should be prevented from carrying on the said activities and

therefore, came forwarded to file this Original Application with the following prayers:

- A. Direct the Respondent No.1 to carry out compensatory afforestation at the ratio of 1:10 near the forest areas situated on Gut Nos.38-39,262 and Survey Nos.49-53 where there has been illegal tree felling for the construction;
- B. Direct the Respondent Nos. 1 to 4 to be permanently restrained from carrying on construction on Gut No.262 and Survey Nos.49-53;
- C. Direct the Respondent No.1 to pay environmental compensation for damage caused to the forest land situated on Gut No.38-39,262 and Survey Nos.49-53;
- D. Direct that the officers from Respondent Nos. 1 and 3 penalized and action taken to be taken against them for violating the provisions of the Forest (Conservation) Act,1980;

7. This Tribunal has entertained the Original Application vide order dated 06/08/2020.

8. Mr. Rahul Garg, learned Counsel, is appearing for the 1st Respondent, Mr. Deepak Gupte, learned Counsel, is appearing for the Respondent Nos. 3 and 6 and Mr. Sunil Tilochandra, learned Counsel, is appearing for the 4th Respondent.

9. The 1st Respondent has filed the affidavit in reply dated 20/03/2021 with Annexures A to H. The 1st Respondent in the reply affidavit would state as follows:-

i) The 1st Respondent under the "Equitable Water Supply Project", started constructing eighty two (82) new water tanks /renovation in addition to

the existing tanks, through the city of Pune, and the said task is entrusted to PMC- Water Supply Department.

ii) The said construction/renovation is undertaken for the purpose of ensuring an equal - pressure and sufficient supply of water throughout the city of Pune by taking into account the rising population.

iii) Three (3) tanks out of eighty two (82) water tanks are being constructed on the Fergusson College Hill (Survey No.262), one (1) tank is being constructed on Panchvati Hill (Survey No.38) and two (2) tanks are constructed at the Law College Hill (Survey Nos. 44,49 to 50).

iv) The period for implementation of the entire project, is from the year 2014-2023 and this project is being implemented to address problems like high level of water losses due to leakage, loss of revenue to the 1st Respondent – Corporation related to NRW category the quality in distribution of water, in various parts of the city. The 1st Respondent has also engaged services of a project consultant namely; M/s Studio Galli Ingegneri to study the existing water supply system, storage and prepare a detailed project report to cater the water requirement of the city of Pune considering the projected population till the year 2047. Accordingly, the Project Proponent (PP) has prepared a detailed project report during February, 2014 and accepting the same, the 1st Respondent has issued a Tender Notification dated 08/07/2016 and after processing the Tender, the 4th Respondent has been chosen as the contractor for the project of construction of ESR and GSR at various locations in PMC area and an agreement dated 23/09/2016 also came to be entered with them. The estimated cost of the project is at Rs.245,24,90,252/-.

v) The 1st Respondent took the preliminary objection as to the claim of the Original Applicant, is barred by limitation in the light of the fact that it is their own admissions that illegal felling of trees began in late 2019 and in the

light of Section 14(3) of the National Green Tribunal Act, 2010, it is hopelessly barred by limitation.

vi) The 1st Respondent dealing with the merits of the case, took a stand that in Survey No.38-Pashan-Panchvati hills, there were no trees on the site in which water tank is being constructed. In Survey No.262- Fergusson College Hill there were existing water tanks and those tanks were demolished and new water tanks are being constructed. Since the construction of new water tanks require more area, permission from the Tree Authority vide Outward No.403, 357 and 358 dated 23/05 and 17/05 of 2018 respectively had been obtained. As regards Survey Nos.49-53- Law College Hill is concerned, the lands continue to be in possession of the 1st Respondent-Corporation for construction of the water tank, permission from the Tree Authority vide Outward No.7234 dated 21/01/2019 has been obtained.

vii) The 1st Respondent dealing with the contends that the lands in question are 'forest lands', took a stand that the lands continue to be in possession of the 1st Respondent-Corporation for the water tank purpose and since the proposed construction is also of water tanks and that requisite permissions from the Tree Authority have also been obtained, stand taken by the Original Applicant in this regard a per-se unsustainable.

viii) Insofar as plea taken by the Original Applicant that the construction of the water tank, does not come into the definition of 'non-forest purpose' would contend that the 1st Respondent -Corporation submitted a proposal dated 20/07/2018 to the Forest Department praying for necessary permission to put up construction and their response is awaited. Now, coming to issue relating to illegal cutting and felling of trees the 1st Respondent took a stand that the contractor namely; the 1st Respondent had already planted 54750 trees and adequate care has been taken to rear and it may take years to become trees fully grown.

ix) The 1st Respondent in the light of plea taken in their reply affidavit prays for dismissal of this Application with permission to proceed with the construction.

10. The Original Applicant has filed the rejoinder and repudiation with Annexure A-10 to A-30 dated 27/10/2021 and apart from reiterating a stand taken by them in the Original Application would contend the lands in all of the three (3) areas continued to be classified as 'forest land' as per the Government record and since construction activities had commenced without getting any prior FC, *post-facto* clearance cannot be given and whatever environmental degradation taken place on account of the construction of water tanks, should be set right by levying environmental compensation. As regards the tree plantation undertaken by the 4th Respondent-Contractor, no such plantations took place at the project site Survey No.49-53 - Law College Hill and whatever the tree saplings took place the same have been maintained by the 4th Respondent.

11. The 1st Respondent has filed the additional affidavit with four (4) Annexures dated 22/09/2021 to the said Rejoinder filed by the Original Applicant and reiterated their earlier stand and took the stand that the Fergusson College Hill site is classified as 'forest land' and the construction site in land Survey No.38/Panchvati is classified as 'open class land' and with regard to 'deemed forest' in respect of the said survey numbers in-principle clearance has been obtained from the MoEF&CC vide proceeding dated 25/08/2021 as well as in respect of the land Survey No.262 of Fergusson College hill. Insofar as cutting of trees are concerned, necessary permissions have been obtained from the Tree Authority and taking into consideration the increase in population and procurement of the water supply, the construction of water tanks undertaken is only in the public interest for the benefit of the residents of Pune city at large and it cannot be faulted with.

12. The learned Counsel appearing for the Original Applicants has invited attention of the Tribunal to the supporting documents filed in support of the Original Application as well as with rejoinder affidavit and would submit that as per the Annexure A-1 and A-2 dated 31/03/2000 and 16/07/2001, the lands in Fergusson College hill Survey Nos. 49-53 are regarded as 'forest' and admittedly, the *post-facto* FC has been accorded by the MoEF&CC dated 25/08/2001 and the same is sustainable in the light of the provisions of the FC Act, and the decision of the Hon'ble Supreme Court of India is reported in 1997 (2) SCC 267 (cited supra). It is further contended by the learned Counsel appearing for the Original Applicants that the construction of water tanks, lies inside the forest areas and process of illegal cutting/felling of trees, is unsustainable for which the 1st Respondent -Corporation is liable to pay environmental compensation and also under obligation to undertake afforestation activities. It is also submission of the learned Counsel appearing for the Original Applicants that the lands Survey Nos.49-53 are also aquifer areas in the light of the Report by the Advance Centre for Water Resources, Development and Management dated July, 2019, any construction, resulting degradation of the groundwater supply as well as percolation/accumulation and therefore would contend that the Tribunal may issue appropriate directions by directing the 1st Respondent to carry out compensatory afforestation in the forest areas, forbidding them from proceeding with the construction and to pay environmental compensation and also a direction to initiate an appropriate penal action against the concerned officials of the Respondent Nos. 1 to 3.

13. Per contra, the learned Counsel appearing for the 1st Respondent, would contend that taking into account the increase in the population and the water requirement up to the year 2047 a fair, conscious and transparent decision has been taken to augment the water supply in the city of Pune and after

33

engaging the services of an expert, it has decided to construct the water tanks and most of the constructions pertain to demolition of the existing water tanks and putting their new one and since it is also undertaken in the public interest, it cannot be faulted out.

14. It is further submission of the learned Counsel appearing for the 1st Respondent, insofar as the stand taken by the Original Applicant as to the areas declaration as 'forest', the revenue records say otherwise and insofar as felling of the trees is concerned necessary permission/approval had been obtained from the Tree Authority. The learned Counsel appearing for the 1st Respondent has drawn attention of the Tribunal to the reply affidavit of the 3rd Respondent dated 22/02/2021, and would submit that the 3rd Respondent is the best person to speak about this Application and according to them the land Survey No.38/39 (Pashan hill) is classified as 'unclassified forest' lands and came into the possession of the Forest Department from the Revenue Department in the year 1988 and 1991, and the said official took the stand that the construction of water tanks has been commenced with prior permission and it was pointed out, the construction has been stopped in the year 2018. So far as the planting of trees is concerned, it is pointed out from the reply-affidavit of the 3rd Respondent that the Survey Nos.49-53 are not identified as 'forest' and in terms of "Green Pune Scheme" launched in the year 1998 the Forests Department as well as the 1st Respondent had planted trees on these lands. As regards the lands in Survey Nos.38 and 39 - Panchvati Hill, the 1st Respondent has submitted a proposal of diversion of the forest land for construction of water tanks vide communication dated 26/08/2019 and 09/09/2019 respectively. The Deputy Conservator of Forest, Pune Division Pune sent communications to the Chief Conservator of Forest territorial Pune, pointing out the land in Survey No.38 is identified 'forest' and measures at 0.571 ha and land in Survey No.262 is 'Reserved forest' and lands are to be

diverted of 0.7031ha and the said proposal is under consideration. Therefore, it is contended by the learned Counsel appearing for the 1st Respondent, in the light of the reply affidavit as well as additional reply to the Rejoinder filed by the Original Applicants coupled with stand of the 3rd Respondent, the act of construction of water tanks is purely in the public interest and for benefit of the residents of Pune city and surrounding areas and it cannot be faulted with and on account of pendency of this Original Application proposal for diversion of the forest land is pending consideration and it also leads to time and cost overrun of the project and prays for dismissal of the Application with exemplary costs.

15. The learned Counsel appearing for the 6th Respondent, who is also appearing for the 3rd Respondent took the stand that the 6th Respondent filed two (2) proceedings dated 25/08/2021 had accorded diversion of 0.571ha land in Survey No.262 of Bhamburde village in favour of the Water Supply Department of the 1st Respondent-Corporation and 0.571ha of land in Pashan village is identified as 'forest' land in Pashan village in favour of the said department, subject to various conditions and one of the conditions is that the legal status of the 'forest' shall remain unchanged and as such, the grievance expressed by the Original Applicant has been taken care of and addressed and prays for dismissal of the Original Application.

16. The Tribunal paid it's anxious consideration and best attention to the rival submissions and also perused the material placed on record.

17. The issue arises for our consideration is :

Whether the construction of water tanks by the 1st Respondent-PMC through the contractor namely; the 4th Respondent on the lands classified as 'forest' is sustainable?

18. In **1997 (2) SCC, 267** (cited supra) the Hon'ble Supreme Court of India having noted

*“there is misconception in certain quarters about true scope of the Forest (Conservation) Act, 1980 and the meaning of word ‘forest’ used thereon and also a resulting misconception about the need of prior approval of the Central Government under Section 2 of the FC Act in respect of certain activities in the forest area which are more often of a **commercial nature** that clarified the said proposition”.*

(Emphasis Supplied).

19. In **2011 (1) SCC 744 (IN RE: Construction of Park at Noida near Okhla Bird Sanctuary Versus Union of India & Ors)** a Bench consisting of three (3) Hon'ble Judges of the Hon'ble Supreme Court considered the issue relating to determination of the 'forest' land as well as manmade forest and afforestation. Perusal of the said Judgment and the facts leading to the said decision would read that the Government of Uttar Pradesh had undertaken a very large project and objecting to the same two (2) Applicants, who are residents of Sector-15-A, Noida, by invoking the jurisdiction of the Hon'ble High Court of Allahabad by contending that the said project is a huge construction and in the process, larger number of trees were cut down for clearing the ground for the project and it is also a forest. The petitioners also placed reliance upon the decision rendered by the Hon'ble Supreme Court of India reported in **1997 (2) SCC, 267** (cited supra). The Hon'ble Supreme Court of India after considering the decision reported in **1997 (2) SCC 267**, on which the learned Counsel appearing for the Applicants also placed heavy reliance, had observed as follows:

“30. The order dated December 12, 1996 indeed gives a very wide definition of “forest”. But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered. In the order the Court said “The term ‘forest land occurring in Section 2, will not only include ‘forest’ as understood in the dictionary sense, but also an area recorded as forest in the Government record irrespective of the ownership” (emphasis added). Now what is meant by that is made clear by referring to the earlier decision of the court in State of Bihar v. Banshi Ram Modi, (1985) 3 SCC 643.”

20. In paragraph 35, the Hon'ble Supreme Court having noted that “almost of the orders and the Judgment of this Court, defining ‘forest’ and ‘forest land’ for the purpose of FC Act, were rendered in the context of Mining, or Ore, illegal felling of trees for timber or illegal removal of other forest produce or the protection of natural power from wild centuries observed as follows:

“35. Almost all the orders and judgments of this Court defining “forest” and “forest land” for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of National Parks and wild life sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon by Mr. Bhushan can be applied only to an extent and not in absolute terms. To an extent Mr. Bhushan is right in contending that a man made forest may equally be a forest as a naturally grown one. He is also right in contending that non forest land may also, with the passage of time, change its character and become forest land. But this also

cannot be a rule of universal application and must be examined in the overall facts of the case otherwise it would lead to highly anomalous conclusions.”

21. In paragraph No. 37, the Hon'ble Supreme Court of India concluded that “the project site is not forest land and construction of the project without permission from the Central Government does not in any way contravene Section 2 of the Forest (Conservation) Act”.
22. The Hon'ble Supreme Court of India in the said decision has also considered the scope and purport of the EIA Notification, 2006, especially the Item-8 (n and b) - categorisation observed as follows:

65. It is extremely difficult to accept the contention that the categorization under items 8 (a) and 8 (b) has no bearing on the nature and character of the project and is based purely on the built up area. A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project. Further, an area development project may be connected with the township development project and may be its first 53 stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.

66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1,50,000 would be huge by any standard

and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized that the converse of the illustration given by Mr. Bhushan may not be true. For example, a project which is by its nature and character an "Area Development project" would not become a "Building and Construction project" simply because it falls short of the threshold mark under item 8 (b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.

67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the "Common Parlance" test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres. 58. The inescapable conclusion, therefore, is that the project does not fall within the ambit of the EIA notification S.O. 1533(E) dated September 14, 2006. This is not to say that this is the ideal or a very happy outcome but that is how the e notification is framed and taking any other view would be doing gross violence to the scheme of the notification.

68. Since it is held that the project does not come within the ambit of the notification, the other three arguments based on the activity area, the application of general condition and the application of the office memorandum dated December 2, 2009 become irrelevant and need not be gone into in this case.”

23. The Hon'ble Supreme Court of India having noted that the projects/activities centre Items A and B of the Schedule to the EIA Notification, dated 14/09/2006 need to be described with greater precision and clarity etc directed the conducting of environment impact studies.

24. It is to be noted at this juncture that the decision rendered by Hon'ble two (2) Judges Bench in **1997 (2) SCC 267** (cited supra) was considered and distinguished by a larger Bench of Hon'ble Supreme Court of India in **2011 (11) SCC 744** and in paragraph 35, it is observed that **“but this also cannot be a rule universal application and must be examined in the overall facts of the case, otherwise, it would lead to highly anomalous conclusions”**.

25. The Hon'ble Supreme Court of India also in the above cited decision noted that the earlier decisions came into being, in the context of granting a Mining lease or renewal and the Court expanded the definition of 'forest'. (Para-33).

“33. Before proceeding to examine the issue in detail it would be useful to see the views taken by the different authorities, agencies and the MoEF on the question whether the law required prior environmental clearance for the project. It appears that once the controversy was raised, the project proponents, by letter dated April 24, 2009 approached the State Level Environment Impact Assessment Authority, Uttar Pradesh constituted under the EIA notification, 2006, seeking environmental clearance for the project. In

reply the SEIAA by its letter dated May 7, 2009 stated that having regard to the nature and the area of the project it was not covered by the schedule of the notification No. S.O.1533 (E) dated September 14, 2006 issued by the Government of India”.

26. The Hon'ble Supreme Court of India in the interim order dated 09/05/2008 in WP (Civil) No. 202 of 1995 and I.A.No.826.... Etc reported in **2008 (8) SCCR (152) (T.N. Godvarman Thirumulpad Vs Union of India & Ors)** has passed the order regarding Net Per cent Value (NPV) and by taking into consideration error expecting a substitute the category which is as follows:-

Category:-

i) Schools

ii) Hospitals

iii) Children's playground of non-commercial nature

iv) Community centres in rural areas

v) Over-head tanks

vi) Village tanks,

vii) Laying of underground drinking water pipeline upto 4 diameter and

viii) Electricity distribution line upto 22 KV in rural areas.

Relocation of villages from the National Parks/Sanctuary to alternate forest land Collection of boulders/silts from the river belts in the forest area Laying of underground optical fibre cable Pre-1980 regularisation of encroachments and conversion of forest villages into revenue villages' Underground mining.”

27. In the same matter, vide Judgment dated 28/03/2018 and the Hon'ble Supreme Court has taking into consideration “ **as part developmental activities, some areas of the forest used to be taken as 'non forest purpose' and the payment of NPV found that the NPV now fixed is more**

scientific it is based on all available data and also recommended following exemptions:

Exemptions.....

- (i) public works such as schools, hospitals, children play grounds of non-commercial nature and the public welfare projects such as community centres in rural areas which require forest land upto 2 ha;
- (ii) rural infrastructure and basic services such as the construction of the overhead tanks, village roads, etc.
- (iii) the minor irrigation projects upto 10 ha. of storage area, municipal water supply projects, drinking water supply pipelines;
- (iv) activities necessary for the ecological management, relocation of the villages from the sactruaries and the national parks, regularization of pre-1980 eligible encroachers;
- (v) housing for the rehabilitation of tribals; laying of the underground optical fibre cables;
- (vi) laying of the pipelines for the underground gas transportation;
- (vii) the district and rural roads;
- (viii) shifting cultivation;
- (ix) roads constructed by Defence in border areas;
- (x) construction of the transmission lines.

The above recommendations for exemptions are accepted. If, in any case, exemption is required by nature of the peculiar circumstances of the case, the same would be decided as and when necessary on a case to case basis".

28. In the case in hand, the dispute mainly pertains to the classification of the lands in question. Therefore, the reply-affidavit of the 3rd Respondent dated 22/02/2021 with Annexures assume importance. According to the 3rd Respondent the lands in Survey No.49-53 (Law College Hill- Pashan) are unclassified forest came in their possession from the Revenue Department on 18/08/1980 and 13/06/1991 respectively and since then those forest lands

have been in their possession and having noted the construction of water tank was taken by the 1st Respondent as illegal one it was pointed out to them in year 2008 and immediately such construction activities have been stopped. Insofar lands in Survey Nos. 49-53-Law College hill are concerned, it is the stand of the 3rd Respondent that said lands having been identified as 'forest' and in times of within the 'Green Pune Scheme' launched in 1990 the Forest Department as well as the 1st Respondent had planted trees on those lands and that apart the said lands are not in possession of the Forest Department. It is also stated by the 3rd Respondent that the 1st Respondent has submitted a proposal for diversion of the forest land in Survey Nos.38/39- Pashan-Panchvati hills, and the proposal is still under consideration and according to the learned Counsel for the 3rd Respondent in the light of pendency of this Original Application, further process could not take place. It is also stand of the 3rd Respondent that no felling of trees took place in Survey Nos.38 and 39, so far as Survey No.262-Fergusson College hill is concerned, it is a Government land in possession of the Forest Department from 01/02/1990 and having noted that levelling of the land took place which was stopped by the RFO on 31/01/2019 and thereafter the 1st Respondent has stopped the proposal for construction of water reservoir, vide letter dated 26.08.1990 and it is also under consideration. It is also relevant extract of the paragraph No.18 of the reply affidavit.

29. The learned Counsel appearing for the 6th Respondent, who is also appearing for 3rd Respondent would submit, with regard to diversion of 0.0703ha of the forest land in Survey No.262 of Bhambudra village and 0.571ha identified forest land in the village of Pashan, the 1st Respondent vide two proceedings dated 25.08.202P1, has accorded in-principle approval under Section 2 of the Forest (Conservation) Act,1980 in favour of the Water Supply Department of PMC, subject to twenty four (24) conditions and also pointed

out despite such approval for diversion, it has been made very clear that legal status of the 'forest' land shall remain unchanged.

30. It is not in serious dispute that demolition of old water tanks and on construction of new water tanks and creation of a reservoir, is for the benefit of the residents of Pune and surrounding areas in large and it is also in the public interest. The 1st Respondent in the reply affidavit took a stand that considering the water requirement with regard to the project and population till year 2047, services of the project consultant was utilized by taking into consideration all the relevant aspects and the project report, floated tender in the year 2016, and after processing, awarded the construction work to the 4th Respondent to execute the said project and an agreement was also signed on 23/09/2016 and insofar as objection raised by the Forest Department is concerned, necessary proposal has been submitted and admittedly no construction activities in respect of the lands which are the subject matter of the objection taking place from the year 2018. As regards, felling of trees is concerned, the reply affidavit of the 1st Respondent also discloses that permissions/approvals have been obtained from the concerned statutory authorities. As to the planting of trees is concerned, the 1st Respondent took a stand that so far the 4th Respondent-contractor had planted 54750 trees and rearing of the same is being looked after, however same has been seriously disputed by the learned Counsel appearing for the Original Applicant.

31. The Hon'ble Supreme Court of India in a decision reported in **(2008) 12 SCC 646 A. Chowgule & Company Limited vs Goa Foundation and Ors** had considered the issue relating to re-forestation and afforestation and observed as follows:-

23. Some arguments have flown during the course of the hearing that the appellants were willing to reforest an identical area in case the lease was allowed to be

effectuated. In this connection, some observations need to be made. The basic question is as to what is implied by the terms afforestation or re-forestation. Is it merely the replacement of one tree with another or does it imply something a little more complex? "Reforestation is the restocking of existing forests and woodlands which have been depleted, with native tree stock, whereas afforestation is the process of restoring and recreating areas of woodlands or forest that once existed but were deforested or otherwise removed or destroyed at some point in the past".

24. In the present case, we are concerned with afforestation and the promise of the appellant to plant trees in an equivalent area. We, however, find from experience and observation that the re-forestation or afforestation that is being carried out in India does not meet the fundamentals and the planting of new trees to match the numbers removed is too simplistic and archaic a solution, as in the guise of compensatory replantation, local varieties of trees are being replaced by alien and non-indigenous but fast growing varieties such as poplar and eucalyptus which make up the numbers but cannot satisfy the needs of our environmental system. It must be borne in mind that both re-forestation and afforestation envisage a resurrection and re-plantation of trees and other flora similar to those which have been removed and which are suitable to the area in question.

25. There is yet another circumstance which is even more disturbing inasmuch as the removal of existing forest or trees suited to the local environment have destroyed the eco system dependent on them. This is evident from the huge depletion of wild life on account of the disturbance of the habitat arising out of the destruction of the existing forest cover. A small but significant example is the destruction of plantations alongside the arterial roads in India. 30 years ago all

arterial roads had huge peripheral forest cover which not only provided shade and shelter to the traveller but were a haven to a large variety and number of birds and other wild life peculiar to that area.

26. With the removal of these plantations to widen the roads to meet the ever growing needs of the traffic, and their replacement by trees of non-indigenous varieties, (which are often not eco or bird friendly) in the restricted and remaining areas bordering the widened roads, the shelter for birds has been destroyed and where thousands of birds once nested and bred, there has been a virtual annihilation of the bird life as well.

32. Whatever the alleged reforestation/afforestation took place said to have been taken place, is to be monitored at regular intervals.

33. In the light of the recent decision and more particularly, a larger Bench of Hon'ble Supreme Court of India in a decision reported in **2011 (1) SCC 744** (cited supra) distinguishing the earlier Judgment reported in **1997 (2) SCC, 267**, ***"it cannot be said that the construction of water tanks/ allied activities on the lands in Law College hill and Fergusson College hill on the part of the 1st Respondent cannot be faulted.*** It is also to be noted at this juncture that as per a stand of the 3rd Respondent, a proposal for diversion of 'forest land' made by the 1st Respondent-Corporation, is also pending consideration and that apart, the 6th Respondent has also granted in-principle approval for the diversion for the 'reserved forest land' in Survey No.262 Bhambudra village in respect of 0.0571ha identified as 'forest land' at Pashan and Sutarwadi area, subject to many very conditions and also made it clear that legal status of the 'forest land' shall remain unchanged.

34. However, taking into consideration facts and circumstances, the Respondent Nos. 2, 3 and 6, shall cause periodical as well as surprise

inspection and if any infractions/violations are noted, shall take immediate, necessary and appropriate actions on accordance with law against the concerned violators. The said Respondents shall also ensure that the trees claimed to have been planted by way of afforestation, are reared and maintained properly so that adequate green/forest cover is created.

35. In the result, the Original Application is dismissed subject to above observations. However, in the circumstances of the case, there shall be no order as to costs.

M. Sathyanarayanan, JM

Dr. Arun Kumar Verma, EM

December 02, 2021.
Original Application No.46/2020(WZ) nk

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. ___ OF 2024

(U/S 18 (1) R/w 14, 15 and 20 of the National Green Tribunal Act 2010)

Anuj Abhay Deshpande

..... Applicant

Versus

The Commissioner,

Pune Municipal Corporation & Ors.

..... Respondents

CLARIFICATION ON DEFECTS RAISED BY NGT

Reason	Remarks	Clarification
Has the Vakalatnama/Memo appearance authorization been filed?	Prescribed court fee stamp is not affixed on Vakalatnama.	The court fee stamp has been affixed on the Vakalatnama
Have legible copies of the annexures duly attested been filed?	1. Annexure A is not scanned properly. Applicant to scan the annexure in high resolution to avoid inconvenience to the Hon'ble Tribunal. 2. Annexures are not attested.	The uploaded document is the best available resource with the Applicants.
Is the application/appeal made in time or maintainable?	Limitation clause is not elaborate properly. Applicant to explain that how present application is maintainable and	The applicants are regular visitors of the subject matter of the present petition. The applicants for the first

	<p>within limitation under which section of the NGT Act, 2010 and NGT Practice and Procedure rules.</p>	<p>time noticed some JCB machined at the site and thereafter started enquiring. The applicants, got to know that the Respondent No.1 is proposing construction of a water tank. Hence, the cause of action first arose on 11.01.2024 when the applicants noticed the machinery for carrying out construction work by the Respondent no. 1, the petition is thus filed within six months from the cause of action first arose. Hence the same is within limitation.</p>
<p>Proceed further?</p>	<p>Applicant to refilled the properly scanned complete copy of the petition with date of refilling in one PDF within 7 days.</p>	<p>Yes</p>
<p>Whether all the necessary parties are impleaded?</p>	<p>It appears that, Applicant has not made party to the Forest Department officials in present OA.</p>	<p>There is no relief against the Forest Department officials hence the Forest Department officials is not necessary party.</p>

Pune

SRDargave
 Advocate for the Applicant

Date: 05.02.2024