

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO.71 OF 2020 (WZ)**

Sarang Yadwadkar & Ors ...Applicants

Versus

Gokhale Landmarks LLP & Ors ...Respondents

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Manish S. Kelkar

Advocate for the Respondent No.1

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**AFFIDAVIT-IN-REPLY ON BEHALF OF THE RESPONDENT NO.1 TO THE
RESPONSE OF THE ORIGINAL APPLICANTS TO THE COMMITTEE REPORT**

I, Vishal Vasant Gokhale, the authorised signatory of the Respondent No.1 Gokhale Landmarks LLP having my office at Gokhale House, CTS No.104, Plot No.61, Opp. Income Tax Office, Lane No.14, Prabhat Road, Pune - 411004 do hereby state on solemn affirmation as under:

1. I am filing this Affidavit-in-Reply to oppose the contents of the Response of the Original Applicants (received on 23 March 2021) to the Committee Report (dated 9 February 2021). I have perused the Committee Report and have understood the contents of the Response of the Original Applicants to the Committee Report and on the basis of the documents and information available in relation to the said issue, I am filing this Affidavit-in-Reply to oppose the contents of the said Response of the Original Applicants to the Committee Report which are incorrect and which are contrary to the correct factual position. I crave leave to file a further and detailed Affidavit-in-Reply to the Response of the Original Applicants to the Committee Report as and when sought necessary.
2. At the outset I say and submit that the Response filed by the Original Applicants is totally misleading, factually incorrect and seeks to again shift the burden on the answering Respondent by holding it responsible for polluting the river. It is submitted that under the provisions of the Maharashtra Municipal Corporations Act, 1949 and the Maharashtra Regional and Town Planning Act, 1966 it is the responsibility of a Municipal Corporation being a local body or a local authority, to maintain drains and sewers and which the Respondent No.2 PMC has failed to discharge. The answering Respondent states that the entire issue in the Original Application and the Response of the Original Applicants to the Committee Report is based on an incorrect premise that a trunk line/sewerage carrying line/drainage line and chamber was broken by the answering Respondent and that there was a

discharge of raw sewage. The Original Applicants do not have any locus standi under the provisions of the Environment Protection Act to file the present Original Application and as such the Original Application and any other Reply ought to be rejected on this ground.

At the further outset I say and submit that the contents of the Response to the Committee Report and more specifically the calculation of Environmental Compensation is denied by me as being incorrect and wrong. It is rather misleading. The reliance placed by the Original Applicants on the Report of CPCB in-house Committee on methodology for assessing Environmental Compensation and action plan to utilise the said funds is completely misplaced. A perusal of the said Annexure-1 would itself go on to reveal that the said formula which the Original Applicants seek to apply in the present case, is applicable to industrial pollution and to polluting industries. The answering Respondent is neither an industry nor is it causing any industrial pollution.

4. In the case at hand, as is already stated by the answering Respondent in its Affidavit-in-Reply to the OA as well as the Affidavit-in-Reply to the Committee Report, the answering Respondent is not the producer of the sewerage. In the case at hand an old trunk line/sewerage carrying line/drainage line was passing along the boundary of its plot and which got ruptured due to slippage of black cotton soil on one occasion at midnight when there was no construction happening at the site and on second occasion during lockdown, when construction activities were banned in the entire country. Thus both incidents happened due to no mistake of the answering Respondent and therefore the applicability of the formula relied upon by the Original Applicants does not arise at all. The Committee Report has suppressed the fact that there was no construction activity going on at the site and thus the Response which has proceeded on an incorrect premise also ought to be rejected.
5. In any case it is clear from the Report annexed by the Original Applicants in their response to the Committee Report, that the said formula is applicable only in the case of pollution by industries and industrial sectors which generate sewerage due to their activities and do not install treatment plants to remedy the same. Thus the said formula does not apply to the case at hand at all and thus the calculation of Environmental compensation payable as Rs. Forty-six crore Ninety-nine lakhs according to the Original Applicants is absolutely absurd, misleading and the Original Applicants be put to strict proof thereof.

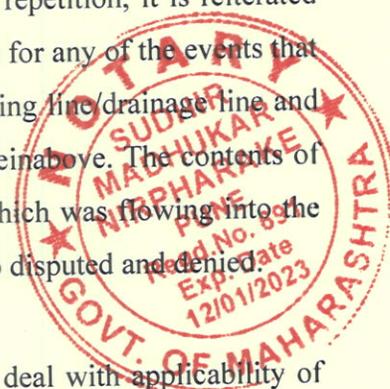
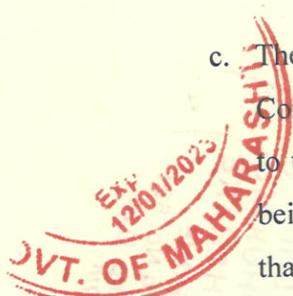
6. It is submitted that the further assertions of the Original Applicants that the answering Respondent is responsible for the said event is also incorrect and wrong. The true and correct turn of events establishing the same have been clarified in detail by the answering Respondent in its Affidavit-in-Reply to the OA, to which there is no response, as well as the Affidavit-in-Reply to the Committee Report. The answering Respondent craves leave to refer to and rely upon the contents of the Affidavit-in-Reply to the OA and the Affidavit-in-Reply to the Committee Report as a part and parcel of the current Affidavit-in-Reply. It is clear that the said rupture of trunk line/sewerage carrying line/drainage line has not happened at the behest or due to the actions of the answering Respondent. That the answering Respondent has repaired the trunk line/sewerage carrying line/drainage line and the chamber at its own expense inspite of it not being responsible for the said rupture. Thus it is clear that the Committee Report and the Response to the Committee Report proceed on an completely incorrect footing and thus there is no reason to accept the Committee Report filed by the Maharashtra State Pollution Control Board (Hereinafter for the sake of brevity referred to as "the MPCB") and the Response to the Committee Report filed by the Original Applicants and thus both the documents only ought to be rejected.

7. In response to the contents of the Response to the Committee Report it is stated thus:

- a. The contents of paragraph No.1 of the Response deal with calculation of number of days for which the raw sewage was flowing into the nallah which leads to the Mula river. The said contents of paragraph No.1 are denied. It is submitted that the calculation of days is completely incorrect.
- b. The contents of paragraph No.2, 3 and 4 of the of the Response allege that the two inspection chambers of the sewer line were illegally broken by the answering Respondent and thus the Original Applicants allege water pollution having been caused due to the same. The contents of paragraph No.4 deal with the order dated 16 October 2020 passed by the Hon'ble NGT for constituting a Committee. In response to contents of paragraph No.2, 3 and 4 the same are denied to the extent that the responsibility for rupture/breakage of chambers is being sought to be pushed on the answering Respondent. The true and correct events have been clarified hereinabove and in the Affidavit-in-Reply to the OA and the Affidavit-in-Reply to the

Committee Report. The answering Respondent craves leave to refer to and rely upon the same to deny the said incorrect allegations.

- c. The contents of paragraph No.5 of the Response alleges that the findings of Committee show the level of environment damage that has taken place due to the negligence of the answering Respondent and the same are denied as being wholly incorrect and wrong. At the cost of repetition, it is reiterated that the answering Respondent was not responsible for any of the events that led to the rupture of the trunk line/sewerage carrying line/drainage line and the chamber and the same have been clarified hereinabove. The contents of paragraph No.5 that the amount of raw sewage which was flowing into the nallah was 20.24 MLD per day for 201 days is also disputed and denied.
- d. The contents of paragraph No.6 of the Response deal with applicability of formula for calculating Environmental compensation and seeks to recover the amounts from the answering Respondent and the same is denied as being baseless and false. The contents of paragraph No.6 in respect of the formula set out for recovery of Environmental compensation, based on the formula formula accepted by the Hon'ble NGT in Paryavaran Suraksha Samiti and Anr. Vs Union of India and Ors (OA No.593/2017), are denied as they do not apply to the case at hand.
- e. The contents of paragraph No.7 of the Response deal with the calculation done by the Original Applicants relying upon the formula given in paragraph No.6. As it has already been clarified that the said formula is not applicable in the case at hand and thus the calculation carried out, relying upon the said formula is also denied as being incorrect and wrong. The Original Applicant is in the habit of misleading the forum and the same is clear from the pleadings in the Original Application and thus the same only ought to be rejected.
- f. The contents of paragraph Nos.8, 9 and 10 of the Response deal with Judgments for seeking criminal action against the answering Respondent under provisions of Water Act and are denied as being not relevant to the case at hand. The contents of paragraph Nos.8, 9 and 10 that further action should be taken including criminal prosecution is incorrect as it is already brought on record by the answering Respondent as to the actions which it



has taken and therefore the said contents and the reliance placed by the Original Applicants on the said Judgments is also denied.

- g. The contents of paragraph No.11 seek imposition of environmental compensation to the tune of Rs. Forty-six Crores and Ninety-nine lakhs and interim compensation and also seeks to set into motion criminal prosecution and the same is also denied. The answering Respondent states that it is the Pune Municipal Corporation which is the responsible authority for the purpose of maintenance, updating and upkeep of drainage lines in the City of Pune.
- h. The answering Respondent had by an application dated 4 December 2020 filed under the Right to Information Act 2005, sought information from the Drainage Department of the PMC as to when the said trunk line/sewerage carrying line/drainage line was laid, whether permission of the plot owners was obtained while laying the said trunk line/sewerage carrying line/drainage line, the frequency with which the said trunk line was repaired and how many times the said line was repaired/maintained and the exact layout of the said line.
- i. The answering Respondent states that by a Reply dated 10 February 2021 it was informed that the Drainage Department of the PMC shockingly had no information as regards when the said trunk line/sewerage carrying line/drainage line was laid, whether permission of the plot owners was obtained while laying the said trunk line/sewerage carrying line/drainage line. In response to the query pertaining to repairs of the trunk line/sewerage carrying line/drainage line it was stated that trivial repairs are carried out by the Drainage Department, but even as regards the same specific information, as sought for, was not provided. Further in response to the query pertaining to the exact layout of the drainage line a google map with vague outline marked with pen was supplied to the answering Respondent. Thus it is clear that even the Drainage Department of the PMC does not have specific information as regards the trunk line/drainage line and the same amounts to gross negligence on the part of the Drainage Department of the PMC. The answering Respondent states that the Drainage Department of the PMC is now only trying to shift onus of its responsibility of maintaining the said trunk line/sewerage carrying line/drainage line on the answering Respondent

and is trying to blame the answering Respondent. Thus it is clear from the Reply to the RTI Applications that the Pune Municipal Corporation is trying to shirk its responsibility and the same ought not to be permitted.

8. Thus, from all the above it is evident that the Original Applicants are seeking action and reliefs against the answering Respondent inspite of it being vigilant in safeguarding the environment and having repaired the trunk line/sewerage carrying line/drainage line and chamber inspite of not having ruptured it. Infact it is the Respondent No.2 PMC through its Drainage Department and Building Construction Department which is completely responsible and in charge of building permissions and drainage issues in the City of Pune and which responsibility it has failed in discharging. No explanation is given by the Drainage Department of the PMC in the Committee Report about why it has not done any repairs. Further, no explanation has been given as to why it has not taken any measures even now, to see to it that in future such an incident will not happen.

9. Further it is important to note that the answering Respondent is not the creator of the sewerage passing through the trunk line/sewerage carrying line/drainage line. The answering Respondent states that the entire issue in the Original Application is based on an incorrect premise that a trunk line/sewerage carrying line/drainage line and chamber was broken by the answering Respondent and that there was a discharge of raw sewage. There is also a further allegation that no repair was carried out by the answering Respondent for considerable amount of time and that the actions of answering Respondent have led to pollution of the river. The Committee Report on the contrary does not point to any wrongdoing on the part of the answering Respondent for rupture in the trunk line/sewerage carrying line/drainage line and the chamber and thus the Original Application and the Response to the Committee Report ought to be dismissed on this ground alone.

10. In the case at hand, the answering Respondent had applied to the Drainage Department of the PMC seeking its No-objection for obtaining a prior environmental clearance. The same was granted to the answering Respondent on 15 May 2019. In the NOC dated 15 May 2019 received by the answering Respondent (annexed as Exhibit "3" of the Affidavit-in-Reply, Pg90-97), the existence of an old trunk line/sewerage carrying line/drainage line passing through the said plot was never disclosed by the Drainage Department of the PMC. Infact when an Application was made on 26 August 2019 by the answering Respondent to shift the

drainage line out of the plot it was necessary for the Drainage Department to take a decision thereon and to communicate such a decision, because there is already a nallah flowing in the vicinity of the answering Respondent's plot. No answer has been given to the answering Respondent's Application to shift the trunk line/ sewerage carrying line/drainage line out. Thus it cannot be said that the answering Respondent is responsible for the untoward incident.

11. Even at present the factual position is such that a nallah flows right adjoining the answering Respondent's plot and even in that nallah some sewage water is flowing and therefore it is responsibility of the MPCB to check the quality of water flowing through the nallah before ascertaining whether, any damage has been caused to the environment by the actions of the answering Respondent.

12. Even the construction activity of the answering Respondent is carried out in a way so as to fulfil its obligation of handing over to the PMC three basements for parking. Thus, the answering Respondent is constructing its project completely in compliance with the permissions granted by the PMC and other statutory authorities.

13. In view of all of the above, the answering Respondent states that, the Response to the Committee Report being based on an incorrect premise and being full of factual inconsistencies, ought to be rejected and/or be ignored and the Original Application ought to be dismissed atleast *qua* the answering Respondent. The answering Respondent craves leave to file a further detailed Affidavit-in-Reply as and when found necessary.

Date: 16 July 2021

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Handwritten signature

Advocate for the Respondent No.1

VERIFICATION



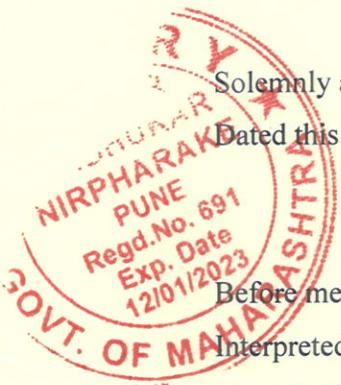
I, Vishal Vasant Gokhale, the authorised signatory of the Respondent No.1 - Gokhale Landmarks LLP having my office at Gokhale House, CTS No.104, Plot No.61, Opp. Income Tax Office, Lane No.14, Prabhat Road, Pune - 411004 do hereby state on solemn affirmation that what is stated in this Affidavit-in-Reply in paragraphs Nos.1 to 13 are true and correct on the basis of documents and records available with me and information given to me.

Solemnly affirmed at Pune)

Dated this 16 July 2021)

Hokhal

DEPONENT



Before me

Interpreted, explained &

Identified by me

BEFORE ME
S. M. Nirpharake
S. M. NIRPHARAKE
NOTARY STATE OF MAHARASHTRA
PUNE

Noted and Registered
at Sr. No. *818* 20 21
Date:- *16 JUL 2021*

16 JUL 2021

