

BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL

WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION NO. 30 OF 2020

IN THE MATTER OF:

Sarang Yadwadkar and Ors.

...Applicants

VERSUS

Pune Municipal Corporation and Ors.Respondents

AFFIDAVIT IN REPLY ON BEHALF OF
RESPONDENT NO. 1 PMC

I, BIPIN SHINDE, EE....., incharge of BUILDING DEVELOPME
NT
Department, Pune Municipal Corporation, am conversant
with the facts of this case and I am competent to file this
affidavit in reply thereof.

I am filing this affidavit in reply to bring certain facts on
record and in response to the Original Application 30/2020
filed by the Applicants.

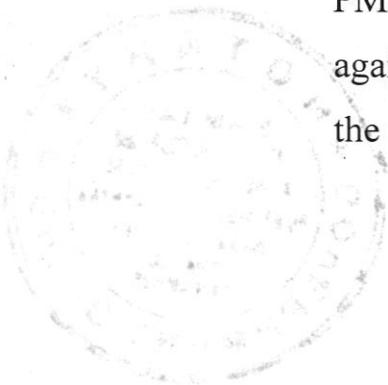
I state that I deny each and every allegation made in the
Original Application and failure to deny each and every
allegation does not amount to admission thereof.

27 NOV 2021



AFFIDAVIT ON BEHALF OF R-1 PMC IS AS UNDER:

1. I state and submit that PMC received complaint regarding the breakage of sewer chamber from Mr. Sarang Yadwadkar on 12/04/2020.
2. Upon receiving the said complaint by Mr. Sarang Yadwadkar, officers from the drainage department, PMC along with government contractor Mr. Lalu Devkar visited the site of broken sewer chamber. During the visit, it was observed that the chamber of the sewer line coming from Warje connected to the Erandawane STP has been broken.
3. On 13/04/2020, Mr. Lalu Devkar, government contractor, was instructed by R-1 PMC to repair the damaged sewer chamber. On 13/04/2020, the Drainage Department, PMC, via letter bearing Outward 24, requested Building Permission Department, PMC, to inspect the actual site of breakage and surrounding areas, to demarcate blue and red flood lines and to take further action.
4. On 14/04/2020, the Executive Engineer, Building Permission Dept., Zone 6, was requested by Drainage Dept., PMC to take appropriate action in accordance with the law against plot-holders who had illegally dumped debris along the river banks. Letter addressed to the Executive Engineer,



Zone 6, dated 14/4/2020 requesting appropriate action against plot-holders is annexed herewith and marked under **'Annexure A'**

5. It is pertinent to note that India was under a strict lockdown due to the Covid-19 pandemic during April 2020. The city of Pune was also under a strict lockdown in the light of first wave of corona virus. Taking into account the pollution that was being caused due to discharge of sewage directly into the river and the resulting environmental damage, Mr. Lalu Devkar, Government contractor, repaired the damaged chamber of sewer line between 15/05/2020 and 18/05/2020 inspite of the lockdown. Letter written by the Government contractor dated 20/5/2020 informing the PMC about the completion of repair work is annexed herewith and marked under **'Annexure B'**
6. Due to the damage to the sewer chamber, 20% of the sewage carried by the sewer line was being discharged into the river and 80% of the sewage was flowing smoothly into the Erandwane STP. After the repairs were completed by the PMC, no sewage is being discharged into the river. I state and submit that the damaged sewer chamber has been repaired and presently there is no sewage being discharged into the river.



**PARA-WISE RESPONSE TO ORIGINAL
APPLICATION 30/2020 IS AS UNDER:**

7. I state and submit that paras. 1 to 5 are statements of fact and do not require any response from this Respondent no. 1.
8. I state and submit that para. 10 and 11 contains a statement of fact and does not require any response from this present Respondent No. 1.
9. I state and submit that, at para. 12 it is alleged that the authorities are negligent and that there has been illegal commercial exploitation of the riverbed. This statement is false and baseless and hence denied by this Respondent no. 1. The applicant is making these allegations about the negligence of authorities solely on the basis of Google Maps extracts.
10. I state and submit that para. 13 contains the personal opinion and analysis of the applicant and hence requires no response from this Respondent no. 1.
11. I state and submit that para. 14 contains details about Circular dated 3rd May 2018 issued by the Water Resources Department, Government of Maharashtra and hence requires no response from this Respondent no. 1.



12. I state and submit that, with reference to para. 15, this Respondent no. 1 PMC has taken many steps in order to remove encroachments along the river bank.
13. I state and submit that, with reference to para. 16, officers of City Engineer Office, Pune Municipal Corporation visited the site of damaged sewer line and damaged sewer chamber on 13/04/2020, that is on the very next day after receiving the complaint made by Mr. Sarang Yadwadkar. Officers of the City Engineer Office, Pune Municipal Corporation have repaired the damaged sewer line and sewer chamber. There was some delay in repairing the damaged sewer line due to the serious Covid-19 situation and the lockdown imposed in Pune.
14. I state and submit that the contents of para. 17 are within the knowledge of the applicants and outside the knowledge of the present Respondent no. 1 PMC. I state that Officers of the City Engineer Office, Pune Municipal Corporation have promptly repaired the damaged sewer line and sewer chamber.
15. I state and submit that the contents of para. 18 are within the knowledge of the applicants and outside the knowledge of the present Respondent no. 1 PMC. I repeat that action has



been taken and the damaged sewer line and sewer chamber have been repaired.

16. I state and submit, at para. 19, it is alleged that the photograph of sewage leaking into the river also shows the reclamation of land along the river banks. It is also alleged that this illegal reclamation has damaged the sewage lines and chamber. I state that Respondent no. 4, and respondent no. 5 have been issued notices u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966 on 15/04/2020 and 14/05/2020 respectively. In his reply dated 16/05/2020, Respondent no. 5 has stated that the previous encroachments along the blue line have been removed by him. Respondent no. 4 in his reply dated 22/05/2020 has stated that he did not dump debris into the Mutha river.
17. I state and submit in respect of para. 20, notices under Section 53(1) of Maharashtra Regional Town Planning Act, 1966 was issued to Respondent No. 4 and 5. I state that section 53(1) is the only section available for PMC to initiate action against the polluters.
18. I state and submit that para. 21 contains a statement of fact and hence requires no response from this Respondent No. 1.



19. I state and submit that, with reference to para. 22, respondent no. 4 was also served with a notice under u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966.
20. I submit that, with reference to para. 23, upon being served with notices under u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966, respondent no. 5 stated that he has removed previous encroachments along the blue line of the river and respondent no.4 has stated that he did not dump any debris into the river for reclamation of land.
21. I submit that, with reference to para. 24, the PMC has fulfilled its responsibility by repairing the damaged sewer line and raw sewage is no longer being discharged into the Mutha river. Previously, between 12/08/2017 and 27/08/2017, the Respondent no. 1 PMC and Irrigation Department have jointly removed 43505 Sq. ft. of illegal construction and 9300 cu. Meter of dumped material between the blue line and the river basin in compliance of the order passed by this Hon'ble Tribunal in O.A. 08/2015 Sujal Sahakari Gruharachana Sanstha. In the present case, the damaged sewer line and sewer chamber has been repaired by the officers of PMC. It is respectfully submitted that a lockdown was in force due to the Covid-19 pandemic situation and the PMC officers were deputed on Covid-19 related duties. The Hon'ble Tribunal may be pleased to



consider the constraints placed on PMC during the lockdown period and the Hon'ble Tribunal may be pleased to consider that the PMC repaired the damaged sewer chamber between even during lockdown period.

22. I state and submit that, with reference to Ground A, the present respondent No. 1 PMC has fulfilled its responsibility by issuing notices u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966 to the violators, that is, Respondent no.4 and Respondent no. 5. The PMC has also repaired the damaged sewer line and sewer chamber. Thus, sewer water is no longer being discharged into the Mutha River. Thus, there has been no omission on part of the Respondent No. 1 PMC.
23. With reference to Ground B, I state and submit that the PMC has not been negligent. The PMC promptly repaired the damaged sewer line even during the strict lockdown period and issued notices u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966 to the violators, that is, Respondent no.4 and Respondent no. 5. Thus, sewage is no longer being discharged into the Mutha River. Previously, between 12/08/2017 and 27/08/2017, the Respondent no. 1 PMC and Irrigation Department have jointly removed 43505 Sq. ft. of illegal construction and 9300 cu. Meter of dumped material between the blue line and the river basin in



compliance of the order passed by this Hon'ble Tribunal in O.A. 08/2015 Sujal Sahakari Gruharachana Sanstha. Thus, it is amply clear that the PMC has not been negligent about fulfilling its duties and the PMC has protected the river banks from encroachment.

24. I state and submit that, with reference to Ground C, the Hon'ble Tribunal is required to apply the polluter pays principle, the precautionary principle and the principle of sustainable development according to Section 20 of the NGT Act 2010. Polluter principle states that the one who is responsible for causing pollution must bear the cost of repairing the damage to the environment. In the present case, the sewer line and chamber was damaged because of illegal dumping by Respondents no. 4 and 5. On the other hand, PMC repaired the damaged sewer line and chamber thereby stopping the discharge of sewage in the Mutha river. As mentioned previously, PMC also took appropriate steps by issuing notices u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966 to the polluters R-4 and 5. Thus, PMC has not violated section 24(1)(a) of the Water (Control and Prevention of Pollution) Act, 1974.
25. With reference to Ground D, In the present case, the PMC has repaired the damaged sewer line even during the lockdown period. I repeat that previously between



12/08/2017 and 27/08/2017, the Respondent no. 1 PMC and Irrigation Department have jointly removed 43505 Sq. ft. of illegal construction and 9300 cu. Meter of dumped material between the blue line and the river basin. Thus, PMC has fulfilled its responsibility and there has been no violation of the order in *The Commissioner, Pune Municipal Corporation and Ors., 2013 SCC Online NGT 448*.

26. With reference to Ground E, I repeat that show-cause notices were issued u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966 to the Respondent No. 4 and No. 5. In his reply dated 16/04/2020, Respondent no. 5 has stated that the previous encroachments along the blue line have been removed by him. Respondent no. 4 in his reply dated 22/05/2020 has stated that he did not dump debris into the Mutha river.
27. With respect to Ground F, I state and submit that PMC has already undertaken restitution of property by repairing the damaged sewer chamber and sewer lines. The pollution of Mutha river has been stopped at the site of damaged sewer line and chamber. The persons responsible for pollution, that is, Respondent No. 4 and Respondent No. 5 have already been served notices.



28. With respect to Ground G, I state and submit that Respondent no. 4 and Respondent no. 5 should be made liable to pay for the damage to the sewer line and chamber and also the subsequent pollution of Mutha river according to the Polluter pays principle enshrined in section 20 of the NGT Act 2010.
29. With reference to grounds H and I, I state and submit that the PMC has repaired the damaged sewer line and chamber. Additionally, the people responsible for the damaged to the sewer line have been served appropriate notices. Thus, the PMC has not been negligent and the PMC has been been conscious of their duty to prevent and remove pollution and pollutants.
30. With reference to Ground J, I state and submit that the PMC has discharged its obligation of preventing pollution and preventing encroachments along the Mutha river.

ON LIMITATION

31. I state and submit that there is no cause of action for the present application. The damaged sewer line and sewer chamber has been repaired by the PMC between 15/05/2020 and 18/05/2020. PMC has also removed dumped debris and also removed many unlawful structures from time to time. In

the present case, notices were issued u/s 53 (1) of the Maharashtra Regional and Town Planning Act, 1966 to the Respondent No. 4 and No. 5. Thus PMC has done everything within their power and according to the laws in force to prevent and control dumping of debris along the banks of the river Mutha. Hence, there is no viable cause of action for the present application.

PRAYERS

32. Respondent No. 1 humbly prays that the prayers of the applicant may not be granted as this suit is filed on the basis of incomplete information.
33. Any other order that this Hon'ble Tribunal may be pleased to pass in the interest of justice and fairness.

27 NOV 2021



BIPIN SHINDE.,

BUILDING DEVELOPMENT Department,

Pune Municipal Corporation,

Pune

VERIFICATION

I, BIPIN SHINDE, EE, incharge of BUILDING DEVELOPMENT Department, Pune Municipal Corporation, do hereby state on solemn affirmation that what is stated in this Affidavit in paragraphs 1 to 33 is true and correct on the basis of documents and records available with me and information given to me.



Solemnly affirmed at Pune

Date: 27/11/2021 27 NOV 2021

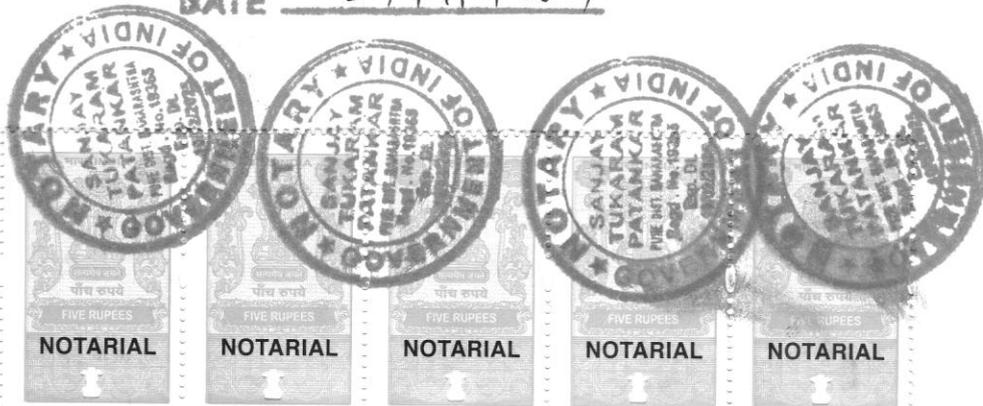
Deponent/Affiant

I know the deponent.



Advocate

NOTED AND REGISTERED
AT SR. NO. 1778/2021
DATE 27/11/2021



BEFORE ME

SAJAY TUKARAM PATANKAR
NOTARY, GOVT. OF INDIA
PUNE DIST. MAHARASHTRA
Regd. No. 19365 Exp. Dt. 18/02/2023

27 NOV 2021

✓ मा.अधिक्षक अभियंता
बांधकाम विकास विभाग
पुणे महानगरपालिका

अधिक्षक अभियंता कार्यालय
मलनि:सारण देखभाल व दुरुस्ती विभाग
पुणे महानगरपालिका
जावक क्र : २४
दि. १२/०४/२०२०

याचकडेस सदर...

विषय :- नदी पात्रामध्ये राडारोडा टाकून अतिक्रमण केलेबाबत.

संदर्भ:-श्री.सारंग यादवाडकर यांनी मा.महापालिका आयुक्त पुणे महानगरपालिका यांचे कडे
दि.१२.०४.२०२० रोजी केलेली तक्रार.

उपरोक्त संदर्भ अन्वये एंरडवणा येथील शुभारंभ लॉन्स च्या मागील बाजूस परतानी लॉन्स नजीक G.M
पॉवर बॅटरीज व लगतच्या मिळकत धारक यांनी नदी पात्रामध्ये राडारोडा टाकून अतिक्रमण केले बाबतची तक्रार
करण्यात आल्याने सदर ठिकाणी दि.१२.०४.२०२० रोजी मलनि:सारण विभागाकडून पाहणी करण्यात आली
असता संबंधीत मिळकती धारक यांनी नदी पात्रामध्ये राडारोडा टाकून अतिक्रमण केलेचे सकृतदर्शनी निदर्शनास
येत आहे. त्यामुळे नदी पात्रामध्ये असणारी टूंक टूॅनेज लाईन वरील चॅबर्स तुटलेने त्याची दुरुस्ती करणेसाठी
मशीनरी व साहीत्य वाहतुक करणे अडचणीचे होत असलेने काम करणे अडचणीचे होत आहे.

सबन्न सदर ठिकाणी आपले खात्याकडील बांधकाम निरिक्षक यांचे कडून प्रत्यक्ष जागेवरील व
आसपासच्या परिसरातील Red line, Blue line व संबंधीत मिळकतीचे डिमाकेशन नकाशे तपासून तात्काळ
पुढील कार्यवाही होणेस विनंती आहे.

मा.स.कळावे.

R. S. D.
प्र. अधिक्षक अभियंता
मलनि:सारण देखभाल व दुरुस्ती विभाग
पुणे महानगरपालिका

प्रत: श्री.सारंग यादवाडकर



Deokar Enterprises

- + Government Contractor
- + Road + Drainage
- + Earth Movers + Building Work

Deep Bungla Chowk, 1001 Juni Wadarwadi, Opp Akshay Ganga Society,
Shivajinagar, Pune - 411 016. Mobile : 9822720720

Ref. No

Date : 20/5/2020

मा. अधीक्षक अभियंता
मलनि:सारण देवभाल व दुरुस्ती विभाग,
पुणे महानगरपालिका

श्रीमंतकडेला सादर

विषय: नदीपात्रामधील चेंबर दुरुस्ती करणे बाबत
अंदाज: आपल कार्यालयाकडील कनिष्ठ अभियंता यांचे समावेत दि-
13-04-2020 रोजी केलेले अंदाज जागा पहावी

उपरोक्त अंदाज आणखी पुंडवणा येथील सुमारे
दोनव्या भागात बाजूस परतानी लॅम्ब गजिक जी.पुम पावर
बॅटरीज लागत असलेल्या मिळकतीच्या कडेला नदीपात्रामध्ये असलेल्या
लेव्हल हेतूने इकलर नदरील फुडलेला चेंबर दुरुस्ती करण्याच्या
अनुषंगाने अंदाज जागा पहावी केली
त्यानंतर लॉकडाऊन काळातही असल्याने चेंबर
बांधण्यासाठी साहित्य उपलब्ध करणे, कामगार उपलब्ध करणे व
प्रत्यक्ष जागेवर माशिनरी शिफ्ट करणे या कारणा वीस दिवस
लागले व दि-15-05-2020 ते 18-05-2020 या कालावधी
मध्ये चेंबर दुरुस्ती करण्यात आलेली आहे
सदरील बाब आपल माहितीसाठी सादर.

अधीक्षक अभियंता
मलनि:सारण देवभाल व दुरुस्ती विभाग
आवक क्र.: ७१०७१
दिनांक : 20.5.2020

श्रीमंतकडेला कालवर्षी असाउमे वगळे
पत्र हातधेस रिक्वाळे आहे. विभाग
20/5/20

True translation from Marathi to English

Deokar Enterprises

Deep Bungala Chowk, 1001 Juni Wadarwadi, Opp. Akshay
Ganga Society, Shivajinagar, Pune 411016. Mobile No.
9822720720.

No.
20.5.2020

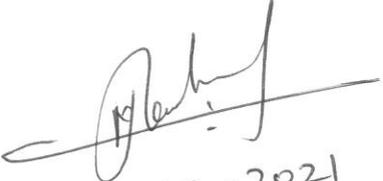
Date :

The Superintendent Engineer,
Sewerage Maintenance & Repairs Department,
Pune Municipal Corporation.

Subject : Regarding repairs to the river bed
chamber.

Ref. : Site inspection done on 13.04.2020 along
with the Junior Engineer of your Office.

As per the above reference, a joint inspection
was done in the context of repairs of the burst
chamber on the drainage trunk line in the river bed of
the property near Partani Lawns, adjoining G.M.


1-12-2021

Power Batteries, behind Shubharamhh Lawns at Erandwane.

Due to the lock down period thereafter, it took twenty days to make material, labour available and shifting the machinery for the chamber construction at the site and during the period from 15.05.2020 and 18.05.2020 the chamber has been repaired.

The said matter is submitted for your information.

Enterprise
Partner

Deokar

Sd/-


1-12-2021

1

Office of the Supdt. Engineer,
Sewerage Maintenance and
Repairs Department, Pune
Municipal Corporation.

Outward No. 24

Date : 13.04.2020

To
The Superintendent Engineer,
Building Permission Department,
Pune Municipal Corporation.

Subject : Regarding encroachment by laying obstruction
in the river bed.

Ref. : The complaint made by Mr. Sarang
Yadvadkar on 12.04.2020 to the Municipal
Commissioner, Pune.

As per the above reference, as the
complaint has been received that G.M. Power
Batteries and the adjacent property holder have
made encroachment in the river bed by putting
obstruction near Partani Lawns behind

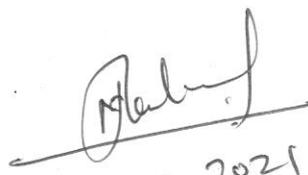

1-12-2021

Shubharamh Lawns at Erandewan, an inspection was done by the Sewerage Department on 13.04.2020 at the said place, the said property holder is seen prima facie to have encroached by putting up obstruction in the river bed. Therefore, as the trunk drainage line on the river bed has burst, for repairing it, it is cumbersome to transport the machinery and material, as it is obstructing in carrying out the work.

Therefore, the construction inspector of your department by examining the demarcation drawing of the concerned property at the said place and the red line, blue line in the surrounding area, it is requested to take immediate further action in the matter.

Thanking you,

Sd/-


1-12-2021

3

Pr. Supdt. Engineer
Sewerage Maintenance

&

Repairs Dept,
Pune Municipal

Corporation

Copy to :

Mr. Sarang Yadwadkar



1-12-2021