

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
ORIGINAL APPLICATION NO. 91 OF 2019**

IN THE MATTER OF:-

POHRA BACHAV SAMITI

...APPLICANT

VERSUS

AMRAVATI MUNICIPAL CORPORATION AND ORS.

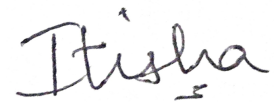
...RESPONDENTS

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Through


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Place:- Pune/Delhi

Dated:- 10.09.2024

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AFFIDAVIT IN COMPLIANCE WITH ORDER DATED 13.02.2024

I, Sagar Ashokrao Maidankar, aged about 36 years, R/o 40/1, Vijay Colony, Tower Line, VMV Road, Amravati- 444604, do hereby solemnly affirm and declare as under:

1. That I am the authorized representative of Applicant in the above titled application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the above-titled Application has been filed under Section 14 and Section 15 of the National Green Tribunal Act, 2010 raising substantial question relating to the environment arising out of massive reclamation and concretization of construction of Chattri Talao, wetland situated in Amravati District, Maharashtra in violation of Wetland Rules, 2017 and Orders dated 08.02.2017 ((2017) 7 SCC 810 (2)) and 04.10.2017 of the Hon'ble Supreme Court in **M. K. Balakrishnan v. Union of India (Writ Petition (Civil) No. 230 of 2001)**.

AP
ANUP V. PATIL
Advocate & Notary
Reg. No. 15877
04/07/2024



3. That vide Order dated 13.02.2024, this Hon'ble Tribunal had directed the Applicant to clarify what all structures have come up within the Chattri Talao, which are required to be demolished. The Order read as follows:

"10. We direct the learned counsel for applicant to specifically indicate as to which particular structures have come up over there, which need to be ordered to be demolished by us, in view of the fact that the same would fall within the wetland area of Chhatri Talao."

4. That Rule 4 of the Wetland (Conservation and Management) Rules, 2010 provides that any construction of a permanent nature within 50 metres from the High Flood Line is a prohibited activity:

"4. Restriction on activities within wetlands.-

(1) The following activities within the wetlands shall be prohibited, namely:-

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

5. That the Applicant, through satellite imagery, has prepared maps of high flood lines of 2015 and 2023, to ascertain the location of the structures constructed at Chattri Talao.
6. That map of flood lines from November 2015 will show that the land which was reclaimed and construction was undertaken was completely submerged under water from Chattri Talao.

Copy of Google Earth image from November 2015 is annexed herewith as

ANNEXURE A-1.



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7. That after the construction was undertaken, the flow of water and flood line of Chattri Talao was restricted due to construction of such structures and therefore, the flood line of 2023 is only up till the constructions. If the construction had not taken place, the reclaimed land would have been completely submerged.
8. That currently, due to the construction, these structures are within 50 metres from the high flood line, as is clear from the map of flood lines from April 2023 annexed with this Original Application as **ANNEXURE A-2**.
9. That the Applicant submits that all structures that have been constructed in Chattri Talao comes under the flood levels of 2015, an area which was later reclaimed and construction was undertaken upon it. These structures, as listed below, are required to be demolished since they are in violation of Rule 4 of Wetland (Conservation and Management) Rules, 2010:
- i. Concrete pavements
 - ii. Lamp posts
 - iii. 2 washing areas
 - iv. 2 sports area/ kids play area
 - v. 3 cafeterias
 - vi. 2 open gymnasiums
 - vii. 8 resting huts
 - viii. Water tank
 - ix. Open auditorium
10. That the Applicant is also annexing photographs of each of these structures and map showing the location of each of the structures to show their



proximity to the Chattri Talao. These photographs and map will make it clear that the structures have been constructed in the prohibited zone of Chattri Talao and are required to be demolished and reclaimed land is to be restored.

Copy of photographs of illegal structures is annexed herewith as **ANNEXURE A-3.**

Copy of map showing location of the structures is annexed herewith as **ANNEXURE A-4.**

11. That the illegal structures have been constructed in the buffer zone of Chattri Talao by Amravati Municipal Corporation, a statutory authority. Statutory authorities have a higher responsibility for preservation of environment and a duty of care towards the citizens, as has been held by the Hon'ble Supreme Court in *Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum*, (1997) 9 SCC 552 wherein it was held that:

"39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may



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be greater difficulty in proving causation and requires examination in greater detail."

12. That the Hon'ble Supreme Court in the case of ***M.C. Mehta (Stubble Burning & Air Quality) v. Union of India, (2020) 7 SCC 573*** had also held that the every State agency is responsible for ensuring compliance with environmental laws and any inaction is clearly tortious and punishable under statutory provisions. The relevant paragraph reads:

"6. Everybody has to be answerable including the top State machinery percolating down to the level of gram panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortious one and is clearly punishable under statutory provisions, besides the violation of the Court's order. In the circumstances, as widespread stubble burning has taken place, we direct the States of Punjab and Haryana and adjoining State of Uttar Pradesh where there is blatant violation which has taken place, to halt it. We direct the Chief Secretaries of the States of Punjab, Haryana and Uttar Pradesh to be present in this Court on 6-11-2019 including Chief Secretary of the Government of NCT of Delhi."

(Emphasis supplied)

13. That in the case of ***H. P. Rajanna v. Union of India & Ors. 2021 SCC OnLine NGT 190*** in its Order dated 30.07.2021, while taking cognizance of constructions in the buffer zone of a wetland, had observed that lack of



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accountability and responsibility on the part of executive authorities has led to degradation of environment:

"322...Executives primarily have responsibility to preserve, protect and maintain environment as clean and green but unfortunately, treat as enemy to their own notion of development. A lot of seminars, lectures and debates are held in the name of protection of environment by Executives, political and otherwise but on the ground level substantial work is wanting. The Executives feel satisfied sometimes by framing some laws without being serious to the execution and implementation thereof. Statutory Authorities/Regulators who are made responsible for protection of environment and heavily managed by Executives lack will to do, intention to perform and desire to achieve the ultimate goal of protection of environment. Even when orders are passed on judicial side, the real problem comes with regard to implementation and execution of the orders. All excuses and pretext are put forth more to demonstrate difficulties in execution instead of showing any genuine effort towards compliance. Even the concerned departments are not honest to discharge functions in a manner which will promote preservation and protection of environment and ecology. On the other hand, it appears to be taken as a burden and obstruction in development. This approach is neither conducive nor coherent to the concept of sustainable development. Sooner is the better that the Executives understand and show more responsibility and accountability towards nature and ecology before it is too late rendering the things improbable and impossible to be reversed."



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14. That in light of above, it is imperative that environmental compensation is imposed on the authorities for undertaking construction in violation of the Wetland Rules and causing degradation of the ecology of Chattri Talao.

15. That, in the past, the Hon'ble Tribunal has not only directed for demolition of structures that were constructed illegally within the prohibited zone of a wetland but also imposed environment compensation on authorities for undertaking construction within 50 metres from the high flood line of wetlands and directed for such compensation to be used for ecological restoration. In the case of *Rashid Noor Khan v. Bhopal Municipal Corporation & Ors. Original Application No.74/2022(CZ)*, this Hon'ble Tribunal held as follows:

"46. In such matters, we find that real damage to ecology and environment with scientific precision is difficult to ascertain. It is further difficult to measure it very accurately in terms of money. However, this Tribunal is under Statutory duty to seek restoration of degraded environment by applying principal of "Polluter Pays" and if necessary, can ascertain and assess the damage in terms of money. In assessing environmental compensation, objective consideration involving some element of subjective satisfaction, due to very nature of function to be performed by this Tribunal, have to be followed. In the entirety of the facts of this case, in our view, an interim compensation of Rs. One Crore should be directed to be paid by respondent 1 which shall be utilised for restoration of ecology and environment



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and if any further amount is required, the same later on can be demanded and realised by MPPCB from BMC.

47. In view of the above discussion, OA is hereby allowed. Respondents, and in particular respondent 1, is restrained from going ahead with raising of any permanent construction over the site in question. RCC pillars, to the extent construction has already been raised, shall be demolished within one month from today. Since permanent construction at the prohibited site has caused damage to the site and requires restoration of the site as also restoration of the ecology and remediation of damage already done to environment, we impose inter-alia environmental compensation of Rs. One Crore upon respondent 1 i.e., BMC which it shall deposit within three months with MPPCB. The said amount of environmental compensation shall be utilized/spent for restoration of the site in question as it originally was and also for restoration of ecology and environment by preparing a plan. The said plan shall be prepared by a Joint Committee of CPCB, MPPCB, Integrated Regional Office, MoEF&CC and Collector, Bhopal within two months."

16. That this Hon'ble Tribunal may be pleased to pass appropriate directions with respect to demolition of the structures, restoration of reclaimed land and imposition of environmental compensation, in light of the above facts and circumstances.



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DEPONENT

VERIFICATION:

Verified on this 04th day of July 2024 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.



DEPONENT

I do swear in the name of God solemnly affirm That This is my name and signature or mark and that the Contents of this my affidavit are true and correct

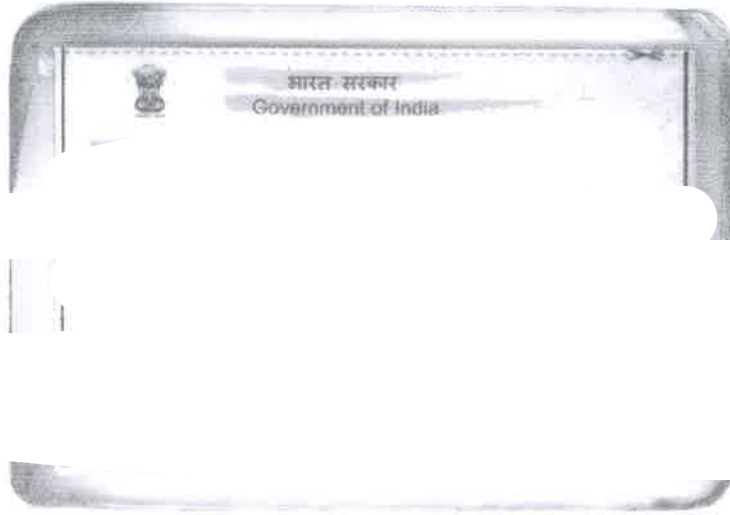

Sign. of deponent
Sign. of Notary


ANUP V. PATI
Advocate & Notary
Reg. No. 15877
04/07/2024

ATTESTED THE SIGNATURE OF THE EXECUTANT AND NOT RESPONSIBLE FOR THE CONTENTS OF THIS DOCUMENT
N.R.S. NO. 1157/2024 DATE 04/07/24

N.R.S. NO. 1157/2024
THIS DOCUMENT CONTAINS 16 PAGE 08





(Deponent)

04/07/2024





















Latitude: 20.898393
Longitude: 77.774493
Elevation: 355.37±31 m
Accuracy: 40.5 m
Time: 04-27-2024 13:31
Note: chatri talab

Powered by NoteCam





357

DC Law Chambers <dclaw160@gmail.com>

Copy of Affidavit on behalf of the Applicant in OA No. 91 of 2019 Pohra Bachav Samiti Vs. Amravati Municipal Corporation, through The Commissioner and Ors.

1 message

DC Law Chambers <dclaw160@gmail.com>

Tue, Sep 10, 2024 at 11:49 AM

To: dnyaneshkumar kale <dmkale176@gmail.com>, Mukesh Verma <mvermadv@gmail.com>, Aniruddha Kulkarni <aniruddha1488@gmail.com>

Cc: itishaawasthi@proton.me

Dear Sir,

Please find attached- Copy of Affidavit on behalf of the Applicant in OA No. 91 of 2019 Pohra Bachav Samiti Vs. Amravati Municipal Corporation, through The Commissioner and Ors.

Thanks & Regards

Counsel for the Applicant

 **Affidavit on behalf of the Applicant.pdf**
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