

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE
APPLICATION NO. 38 /2020

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT
VERSUS
UNION OF INDIA & ORS. ... RESPONDENTS

FILE-A

VOLUME-_____

SR.	DESCRIPTION	PAGE NO.
1.	OBJECTION TO THE JOINT COMMITTEE REPORT AND REJOINDER TO THE REPLIES of PP, MoEFCC-PMC, MPCB & SEIAA	___ - ___
2.		
3.		

Date: 23.02.2023

Bombhise
APPLICANT

2. I state that, this Original Applicant have filed this Rejoinder to the Replies filed by PP dated 07.01..2023, MPCB dated 11.01.2023 as below;

PART-B

3. REPORT OF JOINT COMMITTEE AND ADMITTED FACTS BY RESPONDENTS:

OBJECTION

- a) I state that, the Joint Committee have observe and concluded the violations of PP (P@268-288), However, Joint Committee is failed to compute the Environmental Compensation and only penalty is imposed by the MPCB to the tune of Rs. 2910616.42 M² under circular dated 12.07.2022.
- b) I state that, this case is totally covered by the Goel Ganga Case, therefore Environmental Compensation has to computed as per the principle of "Exemplary Compensation to be imposed on PP to have its deterrent affect"

ADMITTED FACTS BY JOINT COMMITTEE

- c) I state that, it is fully admitted case of violations as per the Joint Committee final Report. PP have carried out illegal excess construction to the tune of **13574.17 M2** and Also not obtained the prior CTE/CTO for the period 25/05/2007 to 31/07/2008; 01/01/2012 to 11/10/2013; and 01/01/2015 to 04/04/2015 and 01/01/2017 to 06/07/2021.

PART-C

4. REPLY TO PRELIMINARY ISSUES RAISED BY PP:

- a) I state that, the preliminary objections raised by PP are false, misleading, baseless, vexatious, misconceived, filed with malafide intention and it is also abuse of process of this Hon'ble NGT and it shall be dismissed with cost.
- b) I state that, this Original Applicant is replying the issues raised by PP in his Reply Affidavit in respect of preliminary objections as below;

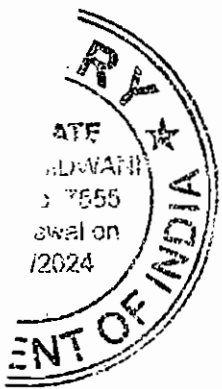


- i) **Limitation:** PP states cause of action arose on 09.09.2009, when 1st Occupancy certificate was issued by PMC. **{Para-6 to 15 of Reply Affidavit}**
- ii) **Plural Remedies:** As per Rule No. 14 of the NGT (Practice & Procedure) Rules, 2011, OA is based on the multiple causes of action instead of single cause of action as mandated in Rule-14. **{Para-16 to 21 of Reply Affidavit }**
- c) **REPLY TO LIMITATION & CAUSE OF ACTION:** In respect of the cause of action, I state that the cause of action is bundle of actions. In this case, PP have started expansion of construction in the year 2019 by procuring amended EC dated 20.09.2019 and Consent dated 17.12.2019 {excluding the period from 13.03.2020 to 30.03.2022 on account of Covid-19 pandemic} with suppression of total Construction carried out to the tune of 45132.83 M² against the TBUA of 22592.86 M² sanctioned in previous EC dated 25.06.2007 with expansion to the tune of 49069.55 M², for reasons best known to the PP.
- d) That the PP again procured the CTE vide dated 17.12.2019 for expansion of the project having total BUA of 49069.55 M² **{P@272, JC Report}**.
- e) Therefore, the cause of action first arose to file this Original Application is on 17.12.2019 on grant of CTE **{ANNX-A-14, P@232-237}**, which is well within limitation of 6 months as well as 5 years from filing of OA vide dated 06.07.2020 as held by this Hon'ble NGT in "**Para-20 to 33 of Forward Foundation Case-2015 SCC OnLine NGT 5**" and as uphold by Hon'ble SC in **Para-39 to 50 of Matri Techzone Vs. Forward Foundation-(2019) 18 SCC 494**, and **Para-125 of Common Cause Case-(2017) 9 SCC 499**".
- f) **REPLY TO LOCUS:** it is duty of every citizen to protect the environment under article 51A(g) of Constitution and therefore, the concept of the Locus is liberal in environmental cases as per



“Para-10, 37, 42, 86, 88, of MCGM Vs Ankita Sharma, Para-47 of **(1996) 5 SCC 281 Indian Council for Enviro-Legal Action Vs Union of India & Ors.**, Para-29 & 30 in *M. A. No. 108/2014 in Appeal No. 9/2014 (WZ) in the matter of Anil Tharthare Vs. Secretary DoE & Others* decided on 04.05.2016, Para-164@469 of (2019) 15 SCC 401, (1998) 7 SCC 270 in *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Ors.*, AIR 1976 SC 578 in *Jasbhai Motibhai Desai Vs Roshan Kumar*, (1977) 1 SCC 155 in *Maharaj Singh Vs State of Uttar Pradesh*”. That the Original Applicant is Vigilant Citizen, whistle blower, informer of environmental cause to the court of law performing his fundamental duties casted by constitution as well as by this Hon’ble Court and acting punctually, diligently, promptly and Original Applicant have raised various environmental issues having three reported judgments of Hon’ble Supreme Court to his credentials for protection of Environment i.e. (2018) 18 SCC 257-Goel Ganga Case, (2019) 9 SCC 288-Goel Ganga Case and 2021 SCC OnLine SC 1133-Sai Baba Sales Case and number of judgment of this Hon’ble NGT i.e. OA No. 184/2015(WZ), OA No. 83/2019, OA No. 64/2019(WZ), OA No. 34/2020(WZ), Appeal No. 32/2020(WZ), Appeal No. 34/2020(WZ).

- g) **REPLY TO THE PLURAL REMEDIES:** That the Hon’ble NGT have also resolved the issue of Plural Remedies i.e. single cause of action in “**Para-29 of Forward Foundation Case-2015 SCC OnLine NGT 5**”. That, this Original Applicant has instituted present OA based on single cause of action with multiple consequential prayers based on the information collected and this relates to the single cause of action i.e. CTE granted by the MPCB to PP vide dated 17.12.2019. Therefore, OA is based on the single cause of action and not hit by plural remedies as mandated by the Rule No. 14 of NGT (Practice & Procedure Rules), 2011.



- h) **ACCESS TO THE INFORMATION:** That the **access to the information** for technical knowledge of the cause is also very important aspect for dealing with the environmental issues, as it is direct fight between common man having limited resources and mighty & powerful polluters having all means as observed by Hon'ble SC in "**MCGM Vs Ankita Shinha & Ors., 2021 SCC OnLine SC 897**" have held that;

*"75. While discussing the NGT's power and responsibility, it is essential to keep in mind the **Principle 10 of the Rio Declaration** which speaks of three fundamental rights i.e., **access to information, access to public participation and access to justice**, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional."*

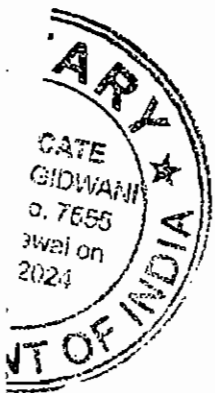
"86. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi."

"The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."

- i) Therefore, this Hon'ble NGT may kindly reject the preliminary objection raised by the PP.

PART-D

5. REJOINDER TO REPLY OF PP:



- a) I state that, the Reply affidavit filed by PP vide dated 07.01.2023 is false, misleading, baseless, vexatious, misconceived, filed with malafide intention on one hand and on other hand, chronology of the events & annexures itself proves the, procurement of ex-post facto EC & Consent after carrying substantial construction.
- b) I state that, the Joint Committee Report, itself proves the illegal construction carried out by the PP without prior EC & Consents.
- c) I stat that, the Respondent No. 12-PP is abusing the process of this Hon'ble NGT by misleading on account of preliminary objections and liable for the action under section 19(5) of the NGT Act, 2010 for filing of false affidavit.
- d) Therefore, Respondent No. 12-PP have committed the violation of EIA Notification, 2006, Water (P&CP) Act, 1974, Air (P&CP) Act, 1981 r/w Environment (Protection) Act, 1986 and also intentionally avoided to avail the remedy provided under MoEFCC Notification dated 14.03.2017 for regularisation of illegal construction carried out without prior EC & CTE, as the ex-post facto EC does not protect such construction.

PART-E

6. REJOINDER TO REPLY OF MoEFCC, MPCB, SEIAA & PMC:

- A) **REJOINDER TO THE REPLY OF R-1-MOEFCC & R-9-10-PMC:**
That as per the Order dated 12.01.2023, MoEFCC & PMC have made statement that their reply affidavit may be included in the Joint Committee Report.
- B) **REJOINDER TO THE REPLY OF MPCB:** That the MPCB have filed their reply affidavit vide dated **11.01.2023** and stated that, the PP have not obtained/renewed the CTE/CTO for the period of 25/05/2007 to 31/07/2008; 01/01/2012 to 11/10/2013; and 01/01/2015 to 04/04/2015 and 01/01/2017 to 06/07/2021 and imposed the penalty under the circular, however, failed to imposed the Environmental Compensation.



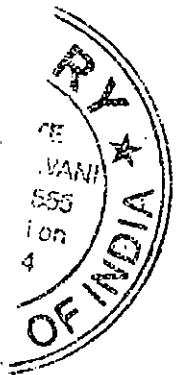
Therefore, PP has carried out substantial construction without obtaining requisite CTE/renewal of CTO and also started occupation of project well prior to obtain CTO as admitted in Joint Committee Report.

- C) **REJOINDER TO THE REPLY OF SEIAA:** That the SEIAA have not filed their reply affidavit till date despite sufficient opportunity. However, the SEIAA have granted amended EC dated 20.09.2019 under EIA Notification, 2006. In respect to this, I state that the SEIAA have also granted ex-post facto EC against the settled provisions of EIA Notification, 2006 as well as the directions of Hon'ble Supreme Court given in **Common Cause Case-(2017) 9 SCC 499 at Para-125, Goel Ganga Case (2018) 18 SCC 257 at Para@17 & 26-28, Tanaji B Gambhire Vs Union of India & Ors in OA No. 34/2020(WZ) Order dated 24.02.2022 at Para@8-10, Tanaji B Gambhire Vs Union of India & Ors, In OA No. 64/2020(WZ) Order dated 23.03.2022 at Para-13, Alembic Pharmaceuticals Ltd. vs. Rohit Prajapati and Ors., 2020 SCC Online SC 347 and Keystone Realtors (P) Ltd. v. Anil v. Tharthare reported in (2020) 2 SCC 66.** Therefore, PP has carried out substantial construction well prior to obtain amended EC dated 20.09.2019 as admitted in his Architect Letter dated 17.01.2022 { P@308} as well as **Joint Committee Report.** Therefore, SEIAA & PS-DoE have abused due process of law.

PART-F

7. **CASE LAWS BY ORIGINAL APPLICANT:**

- a) Forward Foundation Case-**2015 SCC OnLine NGT 5 at Para-20-33:** Entire pleadings has to be considered, Cause of Action & Limitation & **Para-29:** Plural Remedies/Single Cause of action.
- b) Tanaji B Gambhire Vs Union of India & Ors.-**2016 SCC OnLine NGT 4213 at Para-40-43:** set aside the illegal communication/order on own motion, **Para-46-47:** Illegal



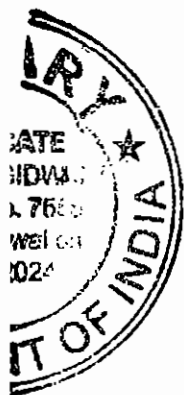
activity of PMC-City Engineer & Principle of sustainable development, **Para-52-53**: Damage to Environment, remedial & restorative steps, Careless & Reckless attitude of PP.

- c) Common Cause Case-(2017) 9 SCC 499 at **Para-125**: Grant of EC is not mechanical exercise, Grant of EC after due diligence since damage to the environment can have long term impact, Grant of ex-post facto EC would be detrimental to the environment and could lead to irreparable degradation of the environment, concept of the ex-post facto or retrospective EC is completely alien to the environmental jurisprudence, EC will come into force not earlier than the date of its grant.
- d) Goel Ganga Case-(2018) 18 SCC 257 at **Para-17**: Natural Resource-sand, gravel, steel, glass, marble-Building Material does not concern FSI & Non-FSI, entire covered area to be considered for Adverse impact on environment by use of natural resources, **Para-26-28**: Ex-post facto EC granted without scientific appraisal & assessment is quashed, **Para-64**: Manipulation of Government Officials & Higher damage to be imposed on polluter,
- e) Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors. (2019) 18 SCC 494 at **Para-39-50**: Maintainability, Cause of Action, Limitation, powers u/s. 14, 15, 20, 33 (Overriding Effect) etc. **Para-49**: Environmental Degradation gives rise to an independent cause of action, **Para-50**: No mention of provisions, well settled principle of law, non-mention or erroneous mention of provisions would not be any relevance, if court had requisite jurisdiction to pass an order, it would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.
- f) Cavelossim Villagers Forum Vs Village Panchayat of Cavelossim, 2019 SCC Online NGT 1662 at **Para-14**: Cause of Action & Limitation "*Forward foundation case Para-24 to 32*", **Para-15**:



Limitation commences not merely from first step in the matter but from continuing facts which show substantial question of environment on account of violation of relevant environmental laws. **Para-19:** Sec. 20 of the Act i.e. 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. It may be inevitable to pass orders in the nature of public interest. It may be said to be comparable or otherwise to PIL jurisdiction. Fact remains that jurisdiction under Section 15 read with Section 20 of the Act has to be exercised meaningfully to protect environment.

- g) **MCGM Vs Ankita Sinha & Ors. 2021 SCC Online SC 897: Para-75: Principle 10 of the Rio Declaration** which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, **Para-86:** Larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi.
- h) **Tanaji B Gambhire Vs Union of India & Ors in OA No. 34/2020(WZ)** Order dated **24.02.2022** at **Para@7:** OA filed on 29.06.2020. Even according to the Project Proponent, the projects were continuing beyond 30.06.2015 and thus, threshold bar which applies to proceedings filed five years after the accrual of cause of action is not attracted, **Para-8:** Application for ex-post facto EC & PP not informed for requirement of EC while issuing commencement certificate cannot be accepted as ignorance of law is no excuse, **Open Space** on Podium-as per DCR-ignoring the law laid down in **MCGM Vs. Kohinoor CTNL Infrastructure Co (P) Ltd., (2014) 4 SCC 538**.
- i) **Tanaji B Gambhire Vs Union of India & Ors, In OA No. 33/2020(WZ)** Order dated 02.03.2022: **Para-5: Grant of subsequent EC does not exonerate the PP of consequences of violation** in obtaining prior EC, as held inter-alia in *Alembic Pharmaceuticals Ltd. vs. Rohit Prajapati and Ors., 2020 SCC*



Online SC 347 and Keystone Realtors (P) Ltd. v. Anil v. Tharthare reported in (2020) 2 SCC 66.

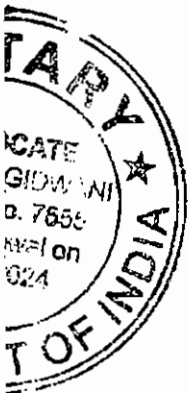
- j) Tanaji B Gambhire Vs Union of India & Ors, In **OA No. 64/2020(WZ)** Order dated 23.03.2022 at **Para-10**: Joint Committee Report-BUA more than 20000 M²-If there are violations, the petition has to be held to be maintainable, Para-13: Even if ex post facto EC is granted, PP has to be held accountable for past violations.
- k) M/s. Ekta Housing Pvt. Ltd. Vs. Tanaji B Gambhire, In **CA No. 4494/2022** Order dated 14.07.2022: There will, however, be stay of the impugned order insofar as compensation of 10% (Rs. 15.99 Crores) has been imposed on the Appellant.

PART-G

8. REPLY TO THE CASE LAWS OF PP:

- a) That the cases relied by PP are Appeal No. 37/2012 (Real Gem Buildtech Pvt. Ltd. Vs. State of Maharashtra), Appeal No. 77 of 2013 (Shri. Arvind Vs. Aswal & Ors Vs Arihant Realtors & Ors.) Order dated 03.10.2012, Hon'ble NGT (WZ) Judgment in MA 74/2015 in OA 10/2014(WZ) Lakhan Musafir Vs. Sardar Sarovar Narmada Nigam Ltd Order dated 08.04.2015, OA No.31/2020 order dated 01.09.2015, (Shashikant Kamble vs Embassy Property Development Pvt Ltd.) Order dated 10.02.2022 relied by the PP are just applications simplicitor for violations of enactments without specific pleadings of environmental damages. The limitation to file every application has to be computed from the cause of action first arose under both the section 14(3) & 15 (3) of NGT Act, 2010. However, it does not mean that the PP is allowed to manipulate & misrepresent the facts of case.

PART-H



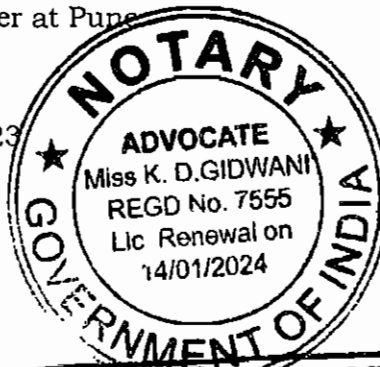
9. THEREFORE, IT IS HUMBLE SUGGESTIONS OF ORIGINAL APPLICANT THAT:

That the present case is totally covered Common Cause Case, Goel Ganga Case as the PP have carried out substantial illegal construction of more than TBUA 13574.17 M² without prior EC & CTE and thereafter expanding the project with help of amended EC dated 20.09.2019 procured with misdeeds by maneuvered & manipulated the Government Authorities as similarly happened in Goel Ganga Case as observed by the Hon'ble Supreme Court in Para-64 of (2018) 18 SCC 257. Also PP have not providing 10% Open Space on virgin ground. Therefore, this Hon'ble NGT may kindly pass appropriate Orders/directions/reliefs for restitution & restoration of area.

10. Hence this Affidavit.

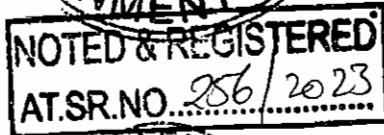
Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune

Place: Pune
Date: 23.02.2023



Gambhire

MR. TANAJI B. GAMBHIRE
ORIGINAL APPLICANT



BEFORE ME

[Signature]

Miss. K. D. Gidwani
Advocate & Notary
Govt. of India

23 FEB 2023

