

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE**

EXECUTION APPLICATION NO. 2 OF 2024

IN THE MATTER OF:

SARANG YADWADKAR & ANR.

...APPLICANTS

VERSUS

PUNE MUNICIPAL CORPORATION AND ORS.

...RESPONDENTS

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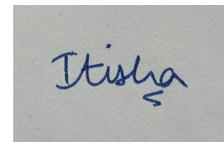
Through



RITWICK DUTTA



RAHUL CHOUDHARY



**ITISHA AWASTHI
ADVOCATES**

Counsel for the Applicant
N-73, Lower Ground Floor, Greater Kailash-1
New Delhi – 110048
Email:- litigation@dclawchambers.com

Place:- Delhi

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"If the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus — a foundation being removed, the superstructure falls.

Devendra Kumar v. State of Uttaranchal, (2013) 9 SCC 363

The maxim "Nullus commodum capere potest de injuria sua propria" (No man can take advantage of his own wrong) is one of the salient tenets of equity.

Ashok Kapil v. Sana Ullah, (1996) 6 SCC 342

A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong.

***Union of India and Another v. International Trading Co. & Another
(2003) 5 SCC 437***

1. The Present Execution Application filed by the Applicant not only raises substantial questions with respect to the non-implementation of the directions of the Hon'ble Tribunal, but also raises questions on equity and blatant disregard to the rule of law which will endanger the lives of people in and around the city of Pune.

2. The Execution Application has been filed to seek enforcement of the directions of the Hon'ble Tribunal with respect to the protection of the floodplain of the Mula-Mutha river. The protection of flood plains is crucial not only in order to ensure the recharge of ground water but also to protect the flood carrying capacity of the river to safeguard the citizens from floods. It is keeping in view this aspect that the Circular of 03.05.2018 was issued by the Government of Maharashtra with respect to all rivers in Maharashtra. It is clear from the events over the last few years that the Mula, Mutha and Mula Mutha Rivers have seen series of floods. The doctrine of Public Trust and the Precautionary Principle as well as Principle of Sustainable Development mandates that no activity is permitted on the floodplain that changes the cross section/flow area of rivers leading to eroded flood carrying. It is keeping this in view that the Blue line which demarcates the area that are likely to be inundated by a 25-year flood and Red line – demarcating the area which is likely to be inundated by a flood in 100 years are to be kept free from any construction that are likely to impact the floodplains.

3. The Hon'ble Tribunal has over the last decade recognized the importance of not only the flood plains on Mula Mutha, but also recognized the importance of the Circular dated 21.09.1989 in protecting the city of Pune and its surrounding areas from the dangers of flooding and the consequent. Vide Judgment dated 11.07.2013 in **OA No. 2 of 2013 (Sarang Yadwadkar & ors. v. Pune Municipal Corporation & Ors.)**, a 5-judge bench of this Hon'ble Tribunal had noted the following regarding importance of flood plains while considering the legality of a road on Prohibitive Zone inside blue line:

"36. Besides this, it is very important to avoid environmental damage and in the interest of ecology, flood plains are maintained properly. As the flood plains provide important ecological services like ensuring flow in streams for most of the year through modulation of the river-

discharge by conserving huge flow of water derived from peak flow and storm run off during the rainy season and releasing it gradually; recharge the ground water and improve its quality, besides flood plain produce resources like fodder, fuel and timber. Also these provide breeding and feeding ground for fish, reptiles, amphibians, birds and other living creatures in addition to improving water quality through retention and transformation of nutrients and other chemicals. These services or benefits would be adversely affected by any encroachment of the flood plains. In the present case, the total flood plain proposed to be encroached is 2.35 km."

4. The Hon'ble Tribunal clarified that a project cannot be justified on ground of larger public interest, if it causes environmental degradation:

"37. These, amongst others, are a few disadvantages of the project in question besides there being logistic deficiencies like lack of permission or grant of improper permission. The need for the project is sought to be justified on the ground of larger public interest i.e. providing an alternative route to the commuters as well as to reduce vehicular pollution. It is expected to solve public transportation problem of about 5 lakh citizens who rely on the Sinhagad Road, as their main connectivity by the arterial road to the city. It is likely to reduce travel time as well as pollution level.

...

*It is also argued on behalf of Respondent No.1 that raising construction on elevated pillars would prove much more expensive than its construction by compacting and earth filling. This argument does not impress us. **If the Corporation-authorities have taken a decision to take up the project in public interest, then it must also bear its cost and higher cost, if necessary and also unavoidable in the larger environmental interest. The authorities cannot be permitted to cause irreversible damage to the environment and ecology of the area and even expose the inhabitants of the vicinity to undue flood risks on the ground***

that the project is being taken up in public interest merely for providing an alternative road and for reducing the vehicular pollution. Firstly, Respondent No.1 has not placed any scientific data or analysis on record before us in support of its contention, even for the sake of arguments, that there would be reduction in environmental pollution and great convenience will accrue to the public by reduction in the travel time. Applying the principle of proportionality, even if an alternative route is provided, still the balance would tilt in favour of environment and we would still require Respondent No.1 to carry out the project subject to such conditions which would strive equitable balance between the development on the one hand and the environment on the other."

5. In light of this observation, the Hon'ble Tribunal directed for construction of road falling within blue line to be only constructed on pillars and for removal of all other encroachments falling within blue line.
6. The photographs annexed as **Annexure A-2 at page 51** will clearly show that the construction work is ongoing on the riverbed of River Mula-Mutha, not by way of constructing on piers but by way of dumping/placing and compacting huge quantities of foreign material on the flood plains inside both flood lines.
7. The construction activity is also in complete contradiction with the undertaking given by the Pune Municipal Corporation in its Affidavit (**Annexure A-9 at page 124**) that no construction will be undertaken within the blue line (**Page 125, Para 1.1**).
8. The present Execution Application has been filed in order to bring to the notice of the Hon'ble Tribunal about the illegal construction of the Road (100 Ft. wide -7.4 km long) inside the flood line of the river Mula – Mutha, which besides, severely endangering the lives of people in Pune due to floods, is also in violation of the direction of the Hon'ble Tribunal

in Original Application No. 130 of 2018 (earlier Original Application No. 67 of 2016) wherein the Hon'ble Tribunal had stated clearly that only 'road in piers' may be permitted subject to the following condition as suggested by the Expert Committee:

- *Comprehensive 3D mapping of the region using drone based 360 degree survey.*
- *Superimposition of road alignment and construction activity on current features to visualize impacts.*
- *Detailed Environmental Impact Assessment (EIA) and Environmental Management Plan based on analysis of alternatives.*

9. The Hon'ble Tribunal made the following direction clear:

19. We make it clear that as and when proposed 100 Ft. wide road is taken up, the recommendations of the Committee will be fully complied with and the Committee will assess the actual location of piers and its impact on river bed."

[Emphasis Supplied]

10. The Respondent PMC, however, commenced and continues to undertake construction by filling up of the river flood plains for the 100 Ft Road inside the Blue Line and Red Line (Prohibitive and Restrictive Zone). The Respondent in its Reply to IA No. 854 of 2025 (**at Page 425**) has stated that there has been a change in the 'scope of the project'. However, in reality, there has been no change – it continues to be a 100 Ft Road inside flood lines largely on Prohibitive Zone and also on Restrictive Zone. The Respondent –PMC, has not denied that the construction is not inside Blue Flood Line. It has not denied that it is not in the Prohibitive Zone; it also has not denied that it is not in the flood plains of Mula-Mutha River. PMC has also not denied the applicability of the Circular of 03.05.2018 to the area where the road has been constructed. It has also not stated that it has done any of the studies that were required to be done – 3D mapping, super imposition of road alignment and detailed Environmental Impact Assessment. Rather, it

commenced and continues to build the exact same road – on the very same alignment – without piers in complete violation of the Circular No. PuRaNi-2018/ (182/2018) Sin. Vya. (Revenue) dated 03.05.2018 of the Water Resources Department, Government of Maharashtra, direction of the Hon'ble Tribunal contained in Order dated 03.08.2018 and the undertaking given by the Respondent- PMC before this Hon'ble Tribunal in its Affidavit (**Annexure A-9 at Page 125, Para 1.1**).

Admission by PMC that they are filling up Blue Line of the river

11. The Pune Municipal Corporation in its Reply to IA No. 854 of 2025 has explicitly stated that some filling material is being used. **Para 4 (i) at Page 419** states the following:

"It is specifically denied that PMC is dumping debris or foreign material in the river. Only engineered embankment filled material approved as per technical specifications is used with layer-wise compaction. No waste/debris is used."

12. Thus, PMC has admitted that no debris are dumped but "only engineered embankment filled materials" is used. **This does not refute the fundamental contention that construction is taking place in the prohibitive and restrictive zones of the river by way of filling foreign material.** It makes no difference which material is used for filling. Whatever may be the material, when it is placed inside flood lines, it will reduce the cross section which ultimately erodes the flood carrying capacity of the river.

13. **Justifying one illegal construction through another illegal Construction:** The principle reason advanced by the PMC is that the Road is adjoining the River Front Development (RFD) project and since the RFD has obtained the Environmental Clearance, the construction of the Road next to the RFD will not be in violation of the Circular of 03.05.2018 in view of the fact that the cross section, carrying capacity

and impediment to the flow of water has already taken place in view of the construction/ approval granted to the RFD by State level Environmental Impact Assessment Authority (SEIAA). Such a contention cannot be sustained for the following reasons:

(A) The Environmental Clearance granted to the RFD project dated 12.11.2024 does not allow any construction within the Blue Line or Red Line i.e. Prohibitive Zone and Restrictive Zone: That at **Page 425**, the PMC has stated that "*the Project which is the subject matter of this Original Application is adjoining the Mula, Mutha and Mula-Mutha River Rejuvenation Project therefore all issues regarding to the river are already taken care in the Environment Clearance granted for it*". However, the Environmental Clearance issued on 12.11.2024 clearly states that the Project Proponent shall follow the following condition amongst others:

"SEIAA Conditions:

3. PP to obtain NOC from Irrigation department. PP to strictly follow all the provisions mentioned in the Irrigation Department Circular dated 30.05.2018."

(The typographical error in the EC regarding the date of the Circular was pointed out by the advocate appearing for SEIAA in Appeal No. 5 of 2025 and the said clarification regarding the change from incorrectly mentioned dated of 30.05.2018 to correct date of 03.05.2018 was given to the Appellants. The same is recorded in Order dated 17.06.2025 of Appeal No. 5 of 2025.)

(B) Acceptance by the PMC that the construction for the RFD has been undertaken on Prohibitive Zone in the Blue Line and Red Line would amount to admitting that the Environmental Clearance condition for RFD has been violated: The PMC has clearly stated that the Road is adjoining the

RFD. However, they have not denied the fact that the RFD is on Prohibitive Zone inside the Blue Line and Red Line where constructions have been prohibited in view of both, circular dated 03.05.2018 as well as Environmental Clearance granted to the project. It is clear from the photographs that the RFD has been undertaken on the riverbed on Prohibitive and Restrictive Zones inside Flood Lines.

(C) The Hon'ble Tribunal is seized of an application filed against PMC for violating the Environmental Clearance condition for the RFD project: The Hon'ble Tribunal has issued notice on Original Application No. 131/2025 (Vandana Chavan v. State of Maharashtra & Ors.) where the violation by the Respondent -PMC in commencing construction for RFD on the Blue and Red Line has been raised.

(D) Allowing the Road to be constructed is contrary to principle of equity, rule of law and would be in violation of Article 14 of the Constitution and the right to be free from the adverse impact of climate change as held by the Hon'ble Supreme Court in *M.K Ranjitsinh Versus Union of India & Ors. 2024 SCC OnLine SC 570*: The principal reason cited by PMC in not following the directions of the Hon'ble Tribunal with respect to elevated road is that the road under construction is adjoining the RFD. However, the Environmental Clearance for the RFD does not allow for any construction on Prohibitive and Restrictive Zones (inside blue line or red line) of the river. Further, it is clearly stated in the Circular dated 03.05.2018, that no activity is permitted either in the Blue Line or Red Line if the same results in the following: Impediment to the flow of water, affects the cross section and has impact on the carrying capacity. If any activity related to RFD has

caused any of the above, the same is illegal and PMC cannot be allowed to benefit from its own wrong by stating that since the flow, cross section and carrying capacity has already been impacted due to the RFD, it makes no difference if the Road of 7.4 Km is constructed adjoining the same. The crucial test is to examine if the RFD was permitted to build on the Blue Line/ Red Line or impact the Cross Section, Flow and Carrying capacity. If the same was impermissible, the Road itself is illegal. The following legal maxims are relevant on this count.

A. ***Nullus commodum capere potest de injuria sua propria*** which means that 'No man can take advantage of his own wrong', is one of the salient tenets of equity. The PMC, admittedly, violated both the orders of the Hon'ble Tribunal as well as the restrictions imposed on construction on the flood plain in view of Circular dated 03.05.2018. The PMC is seeking to take advantage of the illegal construction undertaken in the RFD on the Blue line to justify the illegality in the construction of the 100 ft wide road which is impermissible in law.

B. ***Allegans suam turpitudinem non est audiendus***: It has been held that a person alleging his own infamy cannot be heard at any forum, as explained by the legal maxim *allegans suam turpitudinem non est audiendus*. **If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong.** (Vide *G.S. Lamba v. Union of India* [(1985) 2 SCC 604 : 1985 SCC (L&S) 491 : AIR 1985 SC 1019], *Narender Chadha v. Union of India* [(1986) 2 SCC 157 : 1986 SCC (L&S) 226], *Molly Joseph v. George Sebastian* [(1996) 6 SCC 337 : AIR 1997 SC 109], *Jose v. Alice* [(1996) 6 SCC 337 at 342 (connected case)] and *T. Srinivasan v. T. Varalakshmi* [(1998) 3 SCC 112].) This concept is also explained by the legal maxims *commodum ex*

injuria sua non habere debet and *nullus commodum capere potest de injuria sua propria*. (See also *Eureka Forbes Ltd. v. Allahabad Bank* [(2010) 6 SCC 193: (2010) 2 SCC (Civ) 627] and *Inderjit Singh Grewal v. State of Punjab* [(2011) 12 SCC 588: (2012) 2 SCC (Civ) 742: (2012) 2 SCC (Cri) 614].)

C. **Two Wrongs do not make a right:** In the case of ***Union of India and Another v. International Trading Co. & Another (2003) 5 SCC 437***, it has been clearly held that one wrong cannot be allowed to justify another wrong. Therefore, allowing the Riverfront Development Project on Blue Line cannot be a ground for allowing the riverbed road to be constructed within Blue Line. Relevant part of the Order is reproduced below for reference:

*"13. What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. **It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved.** The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the*

respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

Judgment in Mahesh Kashinath Ranawade v. State of Maharashtra & Ors. cannot be relied on

14. The PMC relied upon the Judgment of this Hon'ble Tribunal in Mahesh Kashinath Ranawade v. State of Maharashtra & Ors. (OA No. 57 of 2022) (**Page 481**) to state that construction of road is permissible within Blue Line as it is a public utility area. However, a perusal of the Judgment, specifically Para 27 (**at Page 499**), will show that the Joint Committee in the matter had misled this Hon'ble Tribunal by stating that "parking" activity is allowed within Prohibitive Zone and therefore, construction of road is allowed. The Joint Committee has wrongly quoted the Circular of the Water Resource Department dated 03.05.2018 to state that 'parking' is allowed within Blue Line of a river. Only activities such as "gardens, play grounds, light crops; where there is established easement right to take crops (e.g. water melons, musk melons etc. public toilets and sewage discharge facilities)." No parking activity is allowed and therefore, no construction of road can be allowed.
15. The Hon'ble Tribunal may consider the above submissions while deciding the present Execution Application.

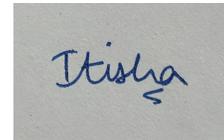
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**ITISHA AWASTHI
ADVOCATES**

Counsel for the Applicant
N-73, Lower Ground Floor, Greater Kailash-1
New Delhi – 110048
Email:- litigation@dclawchambers.com

Place:- Delhi

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