

Machindra Mahadeo Shinde vs Ministry Of Heavy Industries And Public ... on 31 March, 2023

Item No. 10

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Original Application No. 01/2023(WZ)

Machindra M. Shinde

.....Applicant

Versus

The Principal Secretary, MoEF & Ors.

....Respondent(s)

Date of hearing: 31.03.2023

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant : Mr. S. Sanjay Bhaskar, Advocate
Respondent(s) : Mr. Aniruddha Kulkarni, Advocate for R-2/CPCB,
R-3/Env't. Deptt. and R-4/MPCB
Mr. Ajay Gadegaonkar, Advocate for R-6/AMC

ORDER

1. This application has been filed with the prayers that Respondent Nos. 1 to 6 (Statutory Authorities) be directed to take necessary steps against the encroachment in Survey No. 38 of Mauje Nalegaon at Ahmednagar City and to remove all encroachments in the Seena River Bed; Respondents be directed to demarcate properly Seena River Bed; and Respondent Nos. 5 & 7 be directed to cancel all the illegal mutation entries and cancel the order of non-agricultural status and maintain agricultural status of the Survey number in question.

2. In brief, the facts of this case are that the Applicant is an agriculturist. Every year, Seena River Bed inundates large portion of the Ahmednagar City, which causes a lot of physical and financial damages to the residents of Ahmednagar City. Due to encroachments, bed of the Seena River is reduced to a great extent. Many industrialists have also extended their industries in the Bed of Seena River. The reference is made with respect to Survey Nos. 38 & 39 of Mauje-Nalegaon in the City of Ahmednagar. Some Administrative Officers had sanctioned the illegal permissions including non-agricultural permissions and transfer of property illegally. The Local Authorities of the

Government have illegally converted Green Belt Land of Gat No. 38 of Mauje Nalegaon, Taluka & District: Ahmednagar into non-agricultural land. The mutation entry has been taken place at Mauje Nalegaon, Taluka & District: Ahmednagar on 11.02.2019 and thereafter, the said land was sold into different sub- parts. Ahmednagar Municipal Corporation had sanctioned park in the Bed of Seena River, hence the above prayers have been made.

3. At the outset, we would like to make it clear that it is incomprehensible as to how, on the one hand, the Applicant is saying that there is encroachment being done in the River Bed of Seena River, which he has prayed to be got cleared and also prayed that demarcation of the River Bed be done properly, while on the other hand, he is alleging that the said area falls in Survey No. 38 of Mauje, Nalegaon. We gather from the argument made by the learned Counsel for the Applicant that his main relief is regarding demarcation of the River Bed of Seena River and whatever illegal structures are found to be there by way of encroachment, they should all be cleared.

4. We have heard this matter initially on 09.01.2023 and notices were directed to be issued to the Respondents and also constituted a Joint Committee to submit a factual and action taken report.

5. The service affidavit has been filed, as per which service of notice upon all the Respondents is found to be sufficient.

6. None has filed any reply affidavits, though today from the side of Respondent No. 2/CPCB, for Respondent No. 3/Env't. Deptt. and for Respondent No. 4/MPCB, learned Counsel Mr. Aniruddha Kulkarni has appeared; and from the side of Respondent No. 6/AMC, learned Counsel Mr. Ajay Gadegaonkar has appeared.

7. None-else has appeared.

8. In compliance with our order, the Joint Committee has submitted its report, recommending as follows:-

"As per the aforesaid mentioned communications of Town Planning Department, AMC, Land Record Department, Ahmednagar and also observed by the Committee during the visit on 14.02.2023, there is encroachments in the Survey no 38, Mouje Nalegaon, Ahmendnagar by way of old constructions of building/properties and construction of tin shed was in progress. There was also filling of portion of the Seena river bed and area near the river by debris, bricks, sand, soil, other materials etc. Town Planning Department, AMC issued notices on 13.03.2023 under sections- 52, 53, 54 Maharashtra Regional & Town Planning Act, 1966 to the 16 persons for the encroachment in the survey no. 38. Land Record Department has provided the measurement sheet of 1991 and not provided the measurement sheet with current conditions of the Survey No. 38. The demarcation of the boundary and stone marking is yet to done by the Land Revenue Department. Town Planning Department is informed to provide the demarcation of three boundary and stone marking to take further action for the removal of encroachment.

Land Record Department informed that the person who has made encroachment in Survey No. 38 has made fake survey map illegally with the help of Shri Sandip Dhere, Surveyor which is not matching with any of the official records. Further, Survey No. 38 is earmarked as Green Belt and therefore corporation cannot give permission and not given any persimmon for constructions, then also encroachment have been took place in one acre of land by filling with sand, bricks, rocks and other materials. Role of officials of Corporation is suspicious in the encroachment.

In view of the above, appropriate action may be taken by the Collector Ahmednagar and Commissioner, Ahmednagar Municipal Commissioner towards demarcation of the boundaries and removal of the encroachments in Survey no.38 with co-ordination. Further, blue line and red line may be considered for demarcation of the boundaries of the Survey Numbers, for identification and removal of encroachments. Precautions/necessary actions may be taken by concerned authorities/departments in co-ordination to avoid any encroachments/filling on either side of near river/in the river beds based demarcated blue and red line in order to protect the Seena River, also to control flood situation, if any, in the future."

9. We find from the above report that the Joint Committee has found that there are encroachments in Survey No. 38, Mouje Nalegaon, Ahmednagar by way of old encroachments of building/properties and construction of tin shed was in progress. It has also been found that filling of some portion of the Seena River Bed is being done by debris, bricks, sand, soil and other materials etc. The demarcation of the boundary and stone marking are yet to be done by the Land Revenue Department. The Survey No. 38 is earmarked as Green Belt, therefore, the Corporation/ Respondent No. 6 could not give permission for construction, despite that the fact is that in one acre area, land is filled with sand, bricks, rocks and other materials. We are agreeing with the proposal given in this report, which says that the District Collector, Ahmednagar and the Commissioner, Ahmednagar Municipal Corporation be ordered to ensure demarcation of the boundaries of the River bed of River Seena and removal of the encroachments found there-in.

10. We further direct that the District Collector shall ensure that blue line and red line of the said river be also drawn and whatever illegal constructions are found within the bed of River Seena, be immediately removed and that no further new construction be allowed to be done there, the same being prohibited area.

11. We direct the District Magistrate to ensure that this task is completed within a period of 03(three) months considering the fact that monsoon is coming soon and submit a report to this Tribunal within a period of one week thereafter.

12. If any grievance remains thereafter, the Applicant may approach us.

13. In view of above, we dispose of this application accordingly.

14. Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM March 31, 2023 Original Application No. 01/2023(WZ) P.Kr