

# Sun Planet Welfare Association Through ... vs Sarang Yadwadkar on 31 May, 2022

**Author: Adarsh Kumar Goel**

**Bench: Adarsh Kumar Goel**

Item No. 02

(Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH

(By Video Conferencing)

M. A. No. 243/2017(WZ)  
IN  
E. A. No. 18/2017(WZ)  
IN  
O. A. No. 02/2013

Sun Planet Welfare Association & Ors.

Applicant(s)

Versus

Sarang Yadwadkar & Ors.

Respondent(s)

Date of hearing: 31.05.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Chinmay Vaidya, Adv for Applicant in M.A 243/2017 (WZ)  
Respondent: Ms. Supriya Dangare, Adv for Irrigation Department  
Mr.Rahul Garg, Adv for PMC

ORDER

1. This application has been filed in Execution Application No. 18/20- 17 in O.A. No. 02/2013 seeking a direction to restore a part of the road, demolished in pursuance of order of this Tribunal.

2. The applicant in MA is an Association of occupants of Housing Project at Pune which was alleged to be in the blue line of the river bed of Mula Mutha river, Pune. The O.A. was disposed of by this Tribunal vide order dated 11.07.2013 as follows:-

"38. However, keeping in mind the public interest, that by imposition of certain conditions, environmental and ecological interests can be safeguarded, we would permit Respondent No. 1 to complete the project. Accordingly, we impose the following conditions subject to which the project could continue:

(a) The interim order dated 4th January, 2013 and subsequent interim orders shall stand vacated and Respondent No.1 would be permitted to carry out and complete the project of building only 24 metre wide road from Vitthalwadi to NH-4 bypass as shown in Annexure R-2/1 strictly and subject to the conditions stated hereinafter.

(b) Respondent No.1 shall make every effort to realign the road to bring it as far as possible closer to and beyond the blue line, right from chainage of 0+400 to 1+750 of Exh. Annexure 2/1. It shall ensure to extend the least part of the project in the river bed/blue line.

(c) The road/project shall be constructed on elevated pillars alone in the area that falls within the blue line.

(d) We direct Respondent No.1 to remove the debris dumped at the present site and shift the same to the red line by following 1 in 25 years rule.

(e) A massive plantation should be undertaken on both sides of the river, also in the no-development zone by Respondent No.1 as well as the State Government of Maharashtra.

Adequate protective measures should be undertaken to prevent flooding and submerging of the residential area along the proposed road.

(f) The conditions imposed by the Chief Engineer, Irrigation Department, vide his NOC dated 15th April, 2013 shall mutatis mutandis be part of the present directions. The same shall be read in aid and not in derogation to the conditions stated in this order.

g) As already noticed and highlighted during the course of the hearing, a large number of structures have come up at and even inside the blue line of the river Mutha. Respondent No.1 itself has issued notice to some of such structures for demolition. Thus, in the peculiar facts and circumstances of the case, we further direct that Respondent No.1, 3 and 4 shall take appropriate steps against unauthorised constructions, if any, raised on and inside the blue line and pass order of demolition or such other order as is permissible in accordance with law. We also direct the said authorities to ensure that no encroachment is permitted and no construction in future is permitted on and inside the blue line of the river Mutha.

39. The imposition of the above conditions is necessary in the interest of environment and ecology. It is better to take precautions at this stage, even at the cost of additional expenses rather than to face floods, disaster, loss of person and property and irreversible damages to ecology and environment. The precautionary principle, which is a part of the law of the land of and is a Constitutional mandate in terms of Article 21, 48A and 51A(g) of the Constitution of India, that require the State to safeguard and protect the environment and wild life of the Country. It is expected of Respondent No.1 and 3 to anticipate and then prevent the causes for environmental degradation. Furthermore, no public interest would suffer by imposition of the above conditions. If the conditions imposed under this order are found to be onerous by the State, particularly, Respondent No.1 then they can even give up the project on river Mutha as an alternative road on the other side of the river has already been constructed to provide the connectivity. In the event that Department decides to give up the road project, it shall be incumbent on it to remove all debris from within the blue line that has been used to create the high rise road segment. It is stated to be a 100 ft. wide road on the left bank of the river Mutha giving connectivity with the same bypass. Thus, in the present case, Respondent No.1 has options and alternatives available to it while ensuring that both the public interest and the environment do not suffer.

40. The application is partly allowed to the above extent and with the directions aforesaid while leaving the parties to bear their own costs."

3. The above direction was to ensure unrestricted flow of the river water by keeping the flood plain of the river free of encroachment. After the above order, M.A. No. 52/2014 was filed by the original applicants with a grievance that no steps were being taken to implement the directions in the order dated 11.07.2013. The said application was considered and disposed of by order dated 14.01.2015 directing as follows:-

"28. We are therefore left with no alternative but to pass following directions in execution of our directions vide Judgment dated 11th July, 2013.

1. The Respondent No.1 Pune Municipal Corporation shall remove all the debris dumped including embankments constructed at the present site particularly, within blue line right from chainage from 0+400 to 1+750 of Exhibit Annexure 2/1 and shift the same to red line by following 1 in 25 year Rule, within three months beginning of the work being made for such removal within 15 days from the date of this order.

2. The Chief Engineer, PWD of the state of Maharashtra is appointed to do the work of removal of debris dumped including embankment constructed as referred to in clause 1 above on failure of the Respondent No.1, Pune Municipal Corporation to do so as directed in execution of the directions passed in Judgment dated 11th July, 2013, and such work shall be carried out by the PWD under the direct supervision of its Chief Engineer, who shall be held personally liable for conduct of said execution.

3. On failure of the Respondent No. 1- Corporation to act the Public Works Department of the State of Maharashtra shall carry out the said work of removal

referred to herein above in execution of the directions passed in Judgement dated 11th July, 2013 under the direct supervision of Chief Engineer of the Department, who shall be held personally responsible for conduct of the said execution.

4. Cost and expenses incurred shall be recovered from the respondent no. 1- Pune Municipal Corporation and shall be defrayed from their account accordingly.

5. We hope and trust that these directions shall be carried out in letter and spirit in the interest of both the environment and public at large. We, therefore, do not see any reason to dwell on the issue of contempt. However we may like to warn all concerned that the penal consequences under NGT Act, 2010 shall follow in the event of the failure to comply with the directions of this Tribunal, and the applicant, for that matter anyone, can initiate proceedings as per section 30 of the NGT Act, 2010

6. M.A. No 52 of 2014 is disposed of accordingly."

4. Thereafter, order dated 16.03.2016 was passed as follows:-

"

1. That the 14% of the cross-section area which are falling within the flood plain/blue line would be identified by the authorities concerned and Respondent No. 1 shall remove all debris and other material of construction in that area. It will bring it entire within the ambit of the blue line.

2. The Respondent No. 1 would not carry out any activity whatsoever beyond the blue line towards the river bed.

3. The Chief Engineer, Irrigation, Municipal Corporation and other Concerned authorities shall identify and demarcate the blue line particularly with reference to the property, subject matter of the present dispute, irrespective of whether private ownership or otherwise within two weeks.

4. Respondent No. 1 shall use the property prior to blue line that is towards the land only subject to permission of the competent authority and orders of the civil court in the proceedings which are stated to be pending before the different courts."

5. The original applicants thereafter filed M.A. No. 399/2017 wherein following order was passed:-

"Respondent no. 1 is, therefore, directed to remove all dumps from the said polygon portion for restoration of cross sectional area between Chainage 9/780 to 9/960 of Mutha River under the supervision of Chief Engineer Irrigation Department within a month.

We direct the Chief Engineer Irrigation Department to provide help to Respondent no.1 to carry out removal of debris as directed."

6. Still further E.A. No. 17/2018 was filed by the original applicant which was disposed of on 27.08.2018 as follows:-

"5. In spite of the above the order of the Tribunal has not been carried out. The execution application on being transferred to the Principal Bench has been now Registered as Execution Application Number 17 of 2018.

6. Only difficulty put forward by learned counsel for the Pune Municipal Corporation is that removal of all debris and the construction in terms of the order dated 16.03.2016 will involve huge cost. This plea cannot be accepted. It is undisputed that the consent order was passed whereby Respondent No. 1 was directed to take steps as above. Respondent no. 1 is private party. This Tribunal passed further order on 01.11.2017 requiring Chief Engineer, Irrigation Department to provide all help to respondent No. 1.

7. Learned counsel for the applicant states that Irrigation Department is the custodian of the river bed and if respondent no. 1 has failed to carry out the orders of this Tribunal, the Irrigation Department itself should carry out the said work, at the cost of respondent No. 1. The Municipal Corporation Pune may also provide assistance in the matter. The entire action be overseen by the Maharashtra Pollution Control Board. We accept the submission and issue directions in these terms.

8. If the order which has being passed today is not carried out within three months from today, the marriage hall of Respondent No. 1 may be attached by the Police Commissioner, Pune. The said attachment will continue till order of this Tribunal is complied with.

9. The application has also referred to an undertaking of respondent no. 1 with the Municipal Corporation Pune that the debris will be removed, if the same is found obstructing the flow of the river. We record this submission.

10. The applicant will be entitled to Rs. 1 lakh towards cost which may also be recovered from respondent no. 1."

7. The present applicant came up for hearing on 16.07.2018 and was deferred to await order of the Principal Bench in E.A. No. 17/2018.

8. In view of order dated 27.08.2018 in E.A. No. 17/2018, nothing survives in this M.A. which will stand disposed of accordingly.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM Arun Kumar Tyagi, JM Dr. Vijay Kulkarni, EM Dr. Afroz Ahmad, EM May 31, 2022 M. A. No. 243/2017(WZ) In E. A. No. 18/2017(WZ) In SN