

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.9 (THC)/2013**

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

B E T W E E N:

- 1. BHAUSAHEB S/o BHIMAJI KULAT,**
Age: 48 years, Occ: Agril.
R/o Burudgaon, Taluka, Ahmednagar,
District : Ahmednagar.
- 2. JANARDHAN S/o NANA KULAT.**
Age: 55 years, Occ: Agril.
R/o Burudgaon, Taluka, Ahmednagar,
District : Ahmednagar.

....APPLICANTS

A N D

- 1. THE STATE OF MAHARASHTRA,**
(Copy to be served on Govt. Pleader
of High Court of Judicature of Bombay
Bench at Aurangabad).
- 2. THE COLLECTOR,**
Ahmednagar, Dist: Ahmednagar.
- 3. AHMEDNAGAR MUNICIPAL COUNCIL**
Ahmednagar, Taluka, Ahmednagar,
District : Ahmednagar.

Through its Chief officer.

4. THE SECRETARY,
Urban Development Department,
Mantralaya, Mumbai.

5. General Manager,
Vehicle Research Research and
Development Establishment (**VRDE**),
Ahmednagar.

6. Maharashtra Pollution Control Board,
Wakade-wadi, Jog Centre,
Mumbai Pune Road, Pune-411 003

.....**RESPONDENTS**

Counsel for Applicant(s): नमो जयते

Mr. Vinod Ambad Advocate.

Counsel for Respondent(s):

**Mr.V.S. Bedre Advocate a/w Mr.K.N.Lokhande Advocate, Mr.
B.S.Behare, Mr. Kulkarni, Dy Commissioners for Respondent
No.3.**

**Mr. D.M.Gupte a/w Supriya Dangare Advocates for Respondent
No.6**

Date: November 5th, 2014

J U D G M E N T

1. Writ Petition No.967 of 2013, was filed by the Applicants in the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad, raising various environmental issues of substantial nature, particularly, in respect of MWS plant and

disposal of garbage in Ahmednagar city. The Writ Petition came to be transferred to this Tribunal in view of the order dated 10th October, 2013 passed by Hon'ble Division Bench. Thereafter, it came to be registered as an Application under Sections 14,15 read with Section 18 of the National Green Tribunal Act, 2010, for the purpose of trial and decision.

2. Both the Applicants, named above, are inhabitants of village Burudgaon, Taluka & district Ahmednagar. They are agriculturists. The Applicant No.1 is owner of land bearing Survey No.35 and the land Survey No.34 is in the proximity of land Survey No.35, situated in that village. Undisputedly, village Burudgaon is in the outskirts of Municipal Corporation limits of Ahmednagar. It is located at a distance approximately 4 k.m. from outer limits of the Municipal Corporation. There is no dispute about the fact that village Burudgaon is in the proximity of village Arangaon, wherein a Military Institute called 'Vehicles Research and Development Establishment' (VRDE), is established. From security point of view, that area is therefore, a prohibited place.

3. It is undisputed that population of Ahmednagar city was approximately 35 lacks in 1963. So also, it is undisputed that large quantity of garbage, waste material and MSW are generated in the city area, which require to be scientifically disposed of, in order to avoid pollution. Somewhere in the year 1937, the Municipal Council took 27 acres of land of Burudgaon on lease for landfill purpose. Since then the

Municipal Council and thereafter the Municipal Corporation, Ahmednagar, has been dumping the garbage, waste material generated from Ahmednagar City in the said dumping/landfill site, without hindrance.

4. Case of the Applicants is that due to expansion of limits of the Municipal Corporation and hike in the prices of lands situated at the outskirts of city limits, some of the local politicians, land shafts/builders, Councilors entered in the development of lands adjacent to Burudgaon road. According to the Applicants, with a view to achieve such sinister design, they cooked up a plan to grab chunk of adjoining land situated on Ahmednagar-Burudgaon road. With such ill-intentions, lands touching Burudgaon road, were purchased by such builders like Sh.Nirmal Sharad- Mutha. Although that land was reserved one, yet the Municipal Council de-reserved it for alleged use of dumping garbage in view of increasing requirements of landfill site. This was done by private negotiations, without calling objections from the residents of the village or affected persons.

5. It is further case of both the Applicants that thereafter the Municipal Corporation started dumping of garbage collected from Ahmednagar city in land Survey No.34, which is an agricultural land, situated at Ahmednagar- Walki Road and is surrounded by other agricultural lands. The Municipal Solid Waste (MSW) and garbage are being dumped every day by the Respondent No.3 (Municipal Corporation), irrespective

of grievances ventilated by the farmers and nearby residents. The Applicants have suffered loss of agricultural income due to dumping of such garbage, loss of health due to foul smell and there is contamination of water of several wells and tube wells, used for irrigation of agricultural lands in the area, including their lands. The water is not fit for drinking of human being, drinking cattle or even for agricultural purpose. There is no facility for segregation of wet material for composting purpose and dry material. There is no composting plant, which could be used for composting. The piece of agricultural land is being used only for drawing of garbage, including bones of animals, debris, waste material of any kind, rubble and hazardous material, which has potential to percolate in the earth, so as to cause groundwater pollution. Polythene and plastic waste material is spread over in the area, which has caused serious air pollution and therefore, both the Applicants allege that they have suffered loss to the land and health.

6. The Applicants allege that they made complaints to the Authorities but all that was in vain, because, such complaints were not heeded and no action was taken by the Authorities. They allege that alternate Govt. lands are available with the Respondents, near the city area of Ahmednagar, such as Gat No.147, admeasuring about 27 Ha, 93R, for landfill site, yet the land Survey No.34 of village Burudgaon, is being used for dumping of garbage, with a view to change agricultural use of

entire land and close down the well situated therein, so that one day or other, the land will be available to the developers. They allege that the land SurveyNo.35, and adjoining lands are being affected adversely due to the landfill site in Survey No.34 and absence of Sewage Treatment Plant (STP), therein. They further allege that garbage dumped in the land Survey No.34, is sometimes burnt away, which causes threat to their health and fertility to soil of the land Survey No.34. Consequently, they have sought mandamus against the Respondent Nos. 1 to 3, from using land Survey No.34, as landfill site. They have also sought mandamus against the Respondent Nos.1 to 3, to select some other suitable site for shifting of landfill site and dump the waste and other material of city area to that site.

7. Reply affidavit was filed by the Respondent No.3, in the High Court, giving details regarding acquisition of land Survey No.34, situated on Burudgaon road, as landfill site. It is contended that enormous development took place in the area towards western side of the Industrial Area on Aurangbad Pune Road and Ahmednagar- Kalyan Highway, which gave rise to increase in generation of garbage and MSW, necessitating dumping ground. There was no suitable Govt. land available and therefore, the Municipal Corporation purchased part of Survey No.34, with approval of the Health Department, Groundwater Research and development Management (Bhujal Sarvekshan Vikas Yantrana), as per

Resolution dated 8.6.2002, bearing No.21. There is no ill intention of the Municipal Corporation while securing land which is 3-4 K.m. away from Gaothan of Burudgaon village and the same is declared as No Development Zone (NDZ) by the Town Planning (TP) Department. It is averred that the Municipal Corporation also is examining the proposal to set up and operate waste disposal facility in land Survey No.34. According to the Respondent No.3 - Municipal Corporation, 220 rag pickers have been given identity cards for collection of plastic bags, which can be used for recycling and re-useable material. The Respondent No.3, denied that bones of animals, debris and other material like non-bio degradable materials, are being dumped at the landfill site. It is alleged that the medical waste is being disposed of through M/s Bio-clean System P. Ltd, Pune, as per outsourcing under contract dated 25th April, 2003. The Municipal Corporation, claims to have prepared an action plan, which is being forwarded to the Secretary, Urban Development, Mantralaya, Mumbai. According to the Respondent No.3, tender of Agency to operate MSW plant on BoT basis, is accepted as per Resolution No.13, dated 25, April, 2013, and therefore, the Application is without substance. The Respondent No.3, categorically denied that the Applicants have suffering any financial loss due to dumping of garbage or MSW material in the land Survey No.34. it is further denied that the wells adjacent to the land and particularly in the land Survey

No.35, and water of wells, is polluted due to depositing of garbage/untreated solid waste in land Survey No.34, of village Burudgaon. On these premises, therefore, the Respondent No.3, sought dismissal of the Application.

8. While the Writ Petition was pending before the High Court, the reply affidavit, in addition to only the Respondent No.3, was filed on behalf of the Respondent No.2. The Respondent No.2, contended that garbage generated in the city of Ahmednagar, is about 65-70 M/T per day. Meanwhile, the Municipal Council, Ahmednagar, is converted into Municipal Corporation, Ahmednagar, on 30th June, 2003, because of enormous growth in the population and growth in the city area. The complaints were received from the Authorities after growth in the population that the landfill site situated at Chaurana (Bk) was insufficient, as per the norms laid down in the MSW (Management & Handling) Rules, 2000, due to excessive garbage and MSW generated in the city area. So also, considering future increase of barge of about next 25 years, Ahmednagar Municipal Corporation, decided to secure a aprt of land Survey No.34, which is already declared as NDZ, under the Town Planning Act. The possession of that area was taken after private negotiations under the registered sale-deed. The transaction was transparent. The site was selected after consultation with the Senior Geologist of the Groundwater Storage and Development Authority (GSDA).

9. According to the Respondent No.3, use of landfill site in the land Survey No.34 at Burudgaon, does not cause any contamination of drinking water, nor has it caused water pollution of water in the well situated in land Survey No.35. It is averred that the Municipal Corporation has prepared a plan to dispose of the MSW by installation of composite plant. It is alleged that alternate site is unavailable and unsuitable for the purpose of shifting of landfill site, nor it would be practicable to shift the present site to any other site. The Respondent No.2, therefore, urges to dismiss the Application.

10. The questions, which need determination, are as follows:

- i) Whether the landfill site at Survey No.34, is required to be shifted elsewhere?
- ii) Whether the Respondent Nos.2 and 3, have scientifically maintained and managed the landfill site situated in Survey No.34, so as to avoid pollution in the nearby areas and particularly, the impact thereof on the Applicants, including loss to land Survey No.35? If not, whether the Applicants are entitled to compensation of any kind, in terms of money?
- iii) Whether the Respondent Nos.1 to 3, are required to follow certain directions, in accordance with the MSW (Management &

Handling) Rules, 2000, and the same may be issued in this regard?

11. All the three (3) issues are interlinked and as such it is unnecessary to separately deal with them. There is no dispute about the fact that the land Survey No.34, is adjoining to land Survey No.35. There is also no dispute about the fact that before use of land Survey No.34, as landfill site, no objections were called for from the villagers of Burudgaon or adjacent land owners. Municipal Corporation, Ahmednagar acquired a part of land Survey No.34, from a private party and started using the same as dumping ground. The photographs produced by the Applicant (Exh.5 – Coolly) go to show that the waste material is lying helter-skelter at the place. It also appears that previously the land Survey No.35, was well irrigated and there were standing crops in the same, but, now, it has become practically barren after dumping of garbage. We cannot overlook the fact that the Municipal Corporation also appears to be aware of the problem of excessive MSW, which is generated in the city area, day by day. This is the reason as to why, now, the Municipal Corporation, appears to have acquired one more land bearing Survey No.289 situated at village Savedi for which proposal to seek authorization from the MPCB is mooted. The Writ Petition was filed in 2003. It is but natural that after lapse of more than ten years, the problem is aggravated and therefore, the Municipal Corporation is now

compelled to take steps for acquisition of some other land at Savedi to deal with such problem. Still, however, the fact remains that till the date the Municipal Corporation has not established effective MSW plant at the dumping site, which is being used since 1965.

12. We may take note of the fact that the Municipal Solid Wastes (Management & Handling) Rules, 2000, came into force w.e.f. on 25th September, 2000. Section 5 of the Enactment mandates that the State, District Magistrate, all the Deputy Commissioners of concerned district, shall have responsibility for enforcement of provisions of the Rules within territorial limits of its jurisdiction. The details of definition of landfill site and other expressions may not be spelt out. We may reproduce what facilities at the site of land filling ought to be provided:

Facilities at the Site

11. Landfill site shall be fenced or hedged and provided with proper gate to monitor incoming vehicles or other modes of transportation.
12. The landfill site shall be well protected to prevent entry of unauthorized persons and stray animals.
13. Approach and other internal roads for free movement of vehicles and other machinery shall exist at the landfill site.
14. The landfill site shall have wastes inspection facility to monitor wastes brought in for landfill, office facility for record keeping and shelter for keeping equipment and machinery including pollution monitoring equipments.
15. Provisions like weigh bridge to measure quantity of waste brought at landfill site, fire protection equipments and other facilities as may be required shall be provided.
16. Utilities such as drinking water (preferably bathing facilities for workers) and lighting arrangements for easy landfill operations when carried out in night hours shall be provided.
17. Safety provisions including health inspections of workers at landfill site shall be periodically made.

13. So also, Rule 22, of the Enactment specifically provides that care to be taken in order to avoid prevention of pollution

due to landfill site. In our opinion, Rule 22 of the Municipal Solid Wastes (Management & Handling) Rules, 2000, must be read in consonance with Section 20 of the NGT Act, 2010. Section 20 of the NGT Act, categorically indicates that “the ‘Precautionary Principle’ shall be one of the important and basic principles which shall be followed while deciding environmental issues. The expression ‘precautionary principle’ is not limited to temporary type of precaution needed for situation available at the relevant time. The precaution must be taken to avoid pollution or disasters which can be contemplated in view of at least reasonable period of over 25 years or more. We are aware that nothing is permanent in this world, but preservation of environment and ecology is prime duty, which this Tribunal is required to follow under provisions of the NGT ACT, 2010, as mandated under the Law. This principle is illustrated and clearly stated in **“Vellore Citizens ‘Welfare Forum’ v. Union of India”**, (AIR 1996 SC 2715). We may usefully refer to the said Dicta.

14. Considering the record of the present case, we are of the opinion that the Municipal Corporation has failed to take due care to segregate dry and bio-degradable material, bio-degradable waste generated in Ahmednagar city in order to appropriate composting facility duly established. There is additional affidavit of one Sanjiv Parshurame, Assistant Commissioner, which shows that since 2003, the Municipal Corporation has taken steps for installation of facility for

composting of the MSW. An attempt to execute agreement could not materialize due to the Code of conduct and e-tendering process also failed to cold response. It is admitted, however, that a part of compound wall of the existing landfill site was broken, which will be immediately required to be built up to protect the landfill site. Needless to say, there are assurances and assurances. We called for report from the MPCB. The affidavit of Anksuh Phulse, the Regional Officer of MPCB (P-272) reveals that the Municipal Corporation has not provided the MSW weighing system. There were various deficiencies in the landfill site process and much it needed to improve to land filling site.

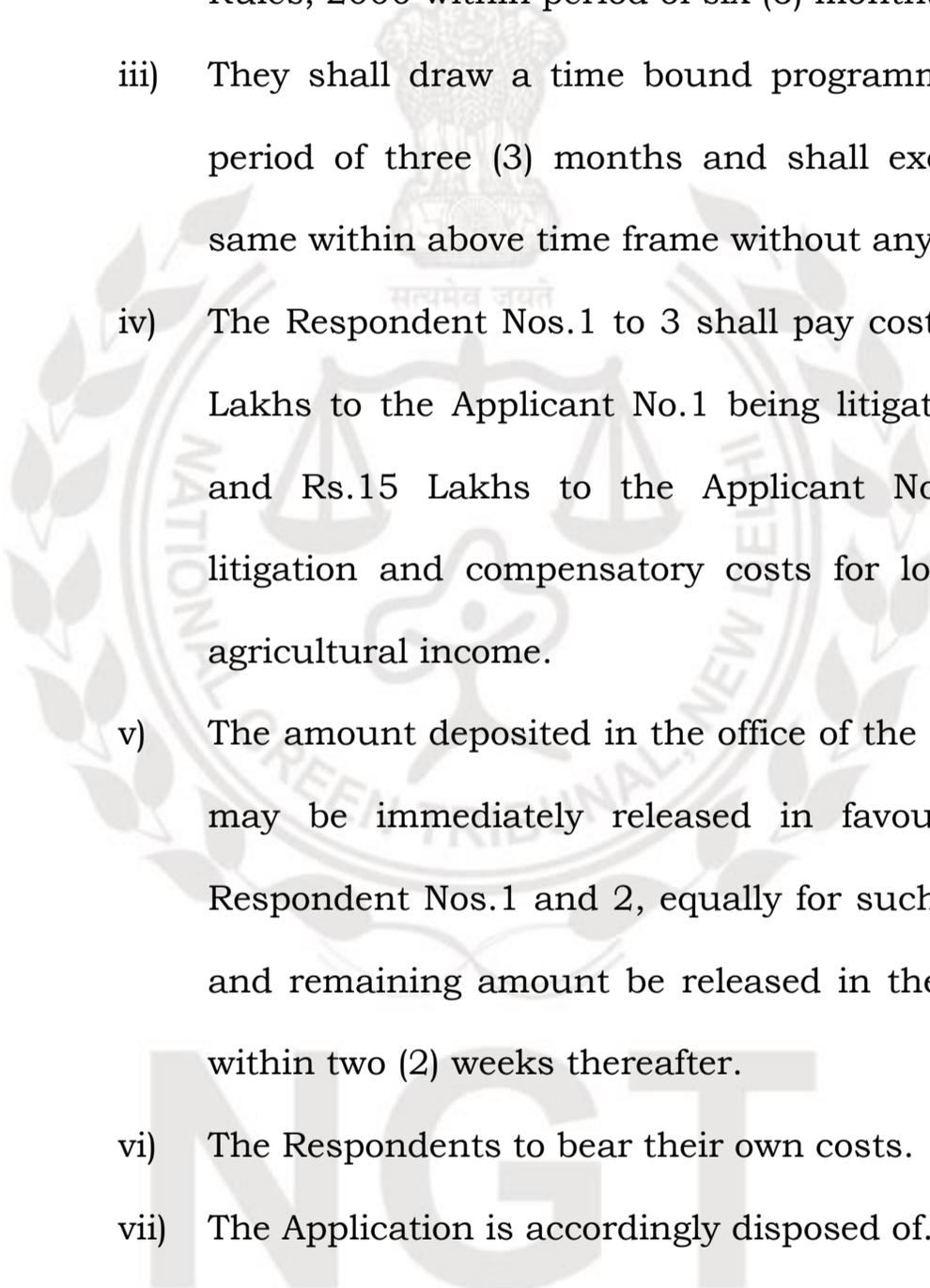
15. It need not be reiterated that the MSW plant is not made functional and is being operated as per the Rules. The paper work, however, appears to have been started. For Example, the City Engineer of the Municipal Corporation, issued a Notice dated 28th January, 2014 to the service provider agency (contractor) that if actually this work will not be started within three (3) days, then contract work will be deemed as revoked. What happened thereafter, is not known or informed to the Tribunal. The actions are like to show on record that “I have beaten you, and the service provider will show that he has received beatings”. Nothing more, nothing less, but no work and nothing is in the place. Only hopeful development is that as directed by the NGT (WZ), the Respondent No.3 has started proceeding to prepare joint

action plan. It appears that estimated costs is also drawn. We are of the opinion that it is not the business of this Tribunal to prepare any action plan for the Municipal Corporation, except to give appropriate directions that it shall be prepared in accordance with the Municipal Solid Wastes (Management & Handling) Rules, 2000 and execute the same within a time frame. In case of failure to do so, however, we may put the Respondent Nos.2 and 3 on guard to abide themselves by certain conditions, in order to avoid pollution in the city of Ahmednagar.

16. Perusal of the record shows that the Applicant No.2 has suffered agricultural loss about Rs. 10 lacs. The Applicant No.1, however, has not suffered any loss. The Applicants could not establish the allegations that water of the well has become polluted due to any kind of wrong handling of the MSW by the Respondent Nos.2 and 3, particularly, in land Survey No.34. Therefore, we hold that the Applicant No.2 is entitled to compensation of Rs.10 lakhs (Rs.ten lakhs) and Rs.5 lakhs as costs of litigation i.e. Rs.15 lakhs in toto and the Applicant No.1 is entitled to costs of litigation, which is determined as Rs.5 lakhs. (Rs.five lakhs).

17. Cumulative effect of the foregoing discussion, is that the Application deserves to be allowed by giving following directions:

- i) The Application is allowed.

- 
- ii) The Respondent Nos.1 to 3, are directed to upgrade installation of appropriate (if necessary upgrade) the MSW plan in the land Survey No.34 situated at village Burudgaon, in accordance with the Municipal Solid Wastes (Management & Handling) Rules, 2000 within period of six (6) months.
- iii) They shall draw a time bound programme within period of three (3) months and shall execute the same within above time frame without any excuses.
- iv) The Respondent Nos.1 to 3 shall pay costs of Rs.5 Lakhs to the Applicant No.1 being litigation costs and Rs.15 Lakhs to the Applicant No.2 being litigation and compensatory costs for loss of his agricultural income.
- v) The amount deposited in the office of the Collector, may be immediately released in favour of the Respondent Nos.1 and 2, equally for such purpose and remaining amount be released in their favour within two (2) weeks thereafter.
- vi) The Respondents to bear their own costs.
- vii) The Application is accordingly disposed of.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr.Ajay A. Deshpande)

Date: November 5th, 2014



NGT