

Item No. 03 (Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 58/2020(WZ)

Manoj Arjun Golher & Anr.

Applicant

Versus

The Collector and District Magistrate & Ors.

Respondent(s)

Date of hearing: 10.11.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Dalal Nilesh, Advocate

Respondents: Ms. Shubhangi Deshmukh, Advocate for R-1 to 3
Mr. Swapnajit Sanyal, Advocate for R-5
Ms. Mansi Joshi, Advocate for MPCB
Ms. Monica Verma, Advocate for NHAI

ORDER

1. This application seeks direction to comply with the requirement of green belt along the National Highway No. 53 from Mumbai to Kolkata at village *Chirvha, Tahsil Mouda*, District Nagpur, as per "Guidelines on Landscaping and Tree Plantation (IRC:SP-21-2009)" prepared by Indian Road Congress stipulating action as per Green Highways (Plantation, Transplantation, beautification and Maintenance) Policy-2015, duly adopted by the National High Authority of India (NHAI).

2. According to the applicants, National Highway No. 53 from Mumbai to Kolkata is being constructed by the NHAI. On both sides green belt is required to be maintained upto 75 mts. from the centre of

the highway. It is so provided in the plan as confirmed by the Executive Engineer, Gosikhurd Rehabilitation Division, Nagpur vide letter dated 30.11.2005. The NHAI has plantation and maintenance policy to develop eco-friendly highways to reduce the impact of air pollution and dust. Trees and shrubs are natural sink for the air pollutants. As against this requirement, the applicants learnt that there was a proposal of the Maharashtra Government to allow rehabilitation in the green belt. Prayer in the application is to set aside such proposal and to quash allotment in the green belt, including demolition of the constructions already raised. It is further submitted that some aggrieved persons, whose lands were acquired, moved the Bombay High Court at Nagpur by way of *W.P. No. 6692/2019 Shalik Shrawan Dahake & Ors. vs. State of Maharashtra & Ors.* with the grievance that they were not rehabilitated. Therein, on 14.01.2020, the High Court noted the stand of the Maharashtra State that as per rehabilitation policy, rehabilitation will be done. There was, however, no direction that such rehabilitation will be in the green belt. However, the concerned authorities started rehabilitation in the green belt, in violation of law. The applicants have impleaded the concerned authorities of the State of Maharashtra and the NHAI as party to this application.

3. On 25.09.2020, when the matter was taken up for consideration, the Tribunal, while issuing notice to the respondents, further directed as follows:

“9. We deem it just and proper to constitute a Committee consisting (i) The Collector/ District Magistrate, Nagpur, (ii) National Highways Authority of India (NHAI) and (iii) Maharashtra State Pollution Control Board (MSPCB) and to direct them to submit a factual and action taken report with regard to allegations made in the present application within four weeks. MSPCB will be the nodal agency for compliance.

10. Let a joint report in the matter be filed by MSPCB by e-mail at *judicial-ngt@gov.in* preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”

4. Accordingly, the joint Committee has filed its report dated 26.10.2020 as follows:

“.....

- 1) *A Layout plan for 203 plots at Village Chirvha, Tah. Mouda, Dist.Nagpur for the rehabilitation of Villagers of Tekepar, Tahsil Kuhi was sanctioned on dtd. 21.02.2014 by State Town Planning Department. The said layout is located on Nagpur-Bhandara National Highway having total area 19.90 Hector. At the relevant time the said layout did not require Nagpur Metro Region Development Authority (NMRDA) sanction, as this village Chirvha was under Regional Development Plan.*
- 2) *In this sanctioned layout plan, **75 meters from the center of Highway reserved for Green Belt and layout was sanctioned showing green belt of 33 meters.** Copy of layout map is annexed herewith as Annexure-III.*
- 3) *The village Chirvha was incorporated in Nagpur Metro Region Development Authority (NMRDA) on 05.01.2018, hence revised layout was prepared by Town Planning Department on 19.09.2018 on direction of the then Collector. The Nagpur Metro Region Development Authority (NMRDA) as a planning authority as per MRTP (Maharashtra Regional Town Planning) Act, 1966 has jurisdiction over Village Chirvha, Tah. Mouda, Dist. Nagpur. NMRDA has its own Development Control Rules (DCR). As per the DCR of NMRDA, **there is a provision of no development zone up to 60-meter width of National Highway but not beyond that.** There is no provision of green belt in this DCR. The Deputy Director, Town Planning, NMRDA, has given concurrence to **the revised layout on 20.10.2018 and additional 20 plots were incorporated. 14 plots were allotted to Project Affected Residents of Village Sonarwahi, Tah-Kuhi, Dist. Nagpur. Out of these 14 plots, one plot is in the front row and remaining thirteen plots are in the remaining revised layout.** The copy of revised layout is annexed herewith as Annexure-IIV. The copy of letter dated 20.10.2018 issued by the Dy. Director, Nagpur Metro Region Development Authority (NMRDA) is annexed herewith as Annexure-V. Thus, the villagers of Tekepar and Sonarwahi are now resettled in same revised layout at village-Chirvha Tah- Mouda Distt- Nagpur.*
- 4) *The Sonarwahi villagers in Tah- Kuhi were initially allotted plots at Mouza Bothali, Tahsil Kuhi. But the Sonarwahi villagers demanded the resettlement at Village Marodi, Tahsil Mouda where villagers of village Kharada in Tahsil Kuhi were resettled .But villagers of Kharada resettled at Marodi opposed*

resettlement of Sonarwahi villagers. Therefore their resettlement was proposed at Mouda, TahMouda where villagers of Chichaghat of Tahsil Kuhu were resettled. But the villagers of Chichaghat resettled at Mouda opposed resettlement of Sonarwahi villagers in their layout at Mouda. Tekepar villagers had began the “Jal Satyagraha” against allotment of plots to Sonarwahi villagers at Chirvha. Hence Sonarwahi villagers approached the Hon’ble High Court, Mumbai, Bench at Nagpur seeking direction to protect their plot allotments for resettlement at village Chirvha, where Tekepar villagers also to be resettled.

In view of the undertaking given by District Administration before the Hon'ble High Court that the Sonarwahi villagers will be resettled in village Chirvha in writ petition no.6692/2019 and in view of the same the Honble High Court has passed order on 14/1/2020 directing Collector, Nagpur to abide by the undertaking and disposed off the said Writ Petition. Copy of the order is annexed herewith at Annexure-VI. In view of rehabilitation policy, the Sonarwahi villagers started construction of building their houses on the allotted plots on rehabilitation site at Mouza Chirvha, Tah mouda, Dist.Nagpur. Total 14 families from Sonarwahi Village were shifted to this Rehabilitation site out of which 5 families built up their houses on allotted plots.

5. **NHAI is having Green Highways (Plantation, Transportation, Beautification & Maintenance) Policy, 2015, plantation has to be carried out as per the provision of IRC-SP-21-2009 within the available Right of Way (RoW) of Highway Land.** Beyond the Highway Land (RoW) NHAI does not have any planning for Green Belt.
6. Committee members had visited the site i.e. Village 7) Chirvha, Tah. Mouda, Dist.Nagpur **on 18.10.2020 and observed that, about five plot owners from Sonarwahi, who were allotted plots have started construction of their houses.** The photographs of construction of their houses are annexed herewith as Annexure-VII. These PAPs (Project Affected Persons) from Village Sonarwahi have been allotted plots as per Map, copy of which is annexed herewith at Annexure-VIII.
7. The Development Agency i.e. Vidarbha _ Irrigation Development Corporation (VIDC), Nagpur has completed basic infrastructure facilities like construction - of Grampanchayat Office, Market Yard, Anganwadi Building, Water Supply Scheme, Provision of electricity etc. The plot allotment to the villagers of Tekepar at this revised layout at village Chirva, Tahsil Mouda is under process. The allotment of plots to the villagers of Tekepar is deferred due to the Covid Pandemic. These allotments to the Tekepar villagers would be taken up in coming fortnight.”

5. From the above, it is undisputed that though sanctioned layout plan provided for 75 mtrs. for green belt, the same has been revised only on the ground that under the Development Control Rules (DCR) under the Maharashtra Regional Town Planning Act, 1966 (MRTP Act, 1966), green belt has to be of 60 meters. Therefore, it was decided to allot plots to project affected areas in the green belt, in view of the undertakings given to the High Court. The five persons to whom the plots were allotted have started construction on 18.10.2020, after the last order of this Tribunal. Earlier allotments were for some other place.

6. We find that while it is mandatory to maintain green belt upto 75 mtrs. from the centre of the highway on either side as per policy adopted by the NHAI, the allotment is proposed in the said green belt on the specious plea that in the MRTP Act, 1966 and DCR Rules there is no provision for green belt upto 75 meters. The plea is clearly untenable as the said rules do not prohibit the green belt. Once the NHAI guidelines provide for a green belt in particular area, there is no justification to allow construction in such green belt in violation of such policy. The green belts on either side in the highways are necessary to minimize increased particulate matter in the air quality. The issue is also been dealt with by this Tribunal in Execution *Application No. 29/2018 in OA 386/2016, Societies for Protection of Culture, Heritage, Environment, Traditions and Promotion of National Awareness vs. National Highway Authority of India & Ors.*, wherein the Tribunal has noted the 2009 Guidelines (Guidelines on Landscaping and Tree Plantation (IRC: SP-21-2009) prepared by IRC, stipulating maintaining green areas on the highways. Reference was also made to “Green Highways (Plantation, Transplantation, beautification and Maintenance) Policy-2015” (the 2015 Policy) and the NHAI made a statement before this Tribunal that

plantation of green belts on both sides of the roads, wherever government land was available will be implemented. Noticing that this was not happening and there was no effective monitoring mechanism, this Tribunal vide order dated 21.05.2019 directed the Secretary, MoRTH and the Secretary, MoEF&CC to evolve effective mechanism at National level to ensure maintenance of stipulated green belts and also to ensure that there is no direct access to the highways and no encroachments, which was necessary for maintaining environmental norms.¹ The matter has been further considered on 18.06.2020 and is now pending for 03.12.2020. In the report furnished by the joint Committee, NHAI is also a member but it does not appear to have insisted on adhering to its guidelines. The guidelines cannot be ignored on the ground that under the MRTP Act, provision is for lesser green belt. The said Act does not debar longer green belt on National Highways, which is governed by separate set of laws and norms.

7. Since maintaining the green belt is absolutely necessary along side the highways and when new highways are constructed and land is available, the same cannot be allowed to be used for any other purposes, except the green belt. The decision of the State of Maharashtra and its authorities has to be revisited and all allotments made in violation of such norm have to be cancelled. We are not against rehabilitation of the affected parties but the rehabilitation has to be as per norms of environment, without affecting the green belts, which are mandatory as per applicable norms. If the green belts are to be destroyed for rehabilitation, the air pollution norms will be adversely affected to the detriment of the citizens, particularly the pedestrians, who will not be

¹ The MoRTH has recently on 26.06.2020 issued "Guidelines/Norms for Grant of permissions for construction of access to Fuel Stations, Wayside amenities, connecting roads, other properties, Rest Area Complexes & such other facilities".

able to breathe fresh air in view of particulate matter which may be generated along the highways. This will also hit the laid down policy of the NHAI.

8. In view of above, we direct the State of Maharashtra and its authorities to restore the green belt on which allotments have been made and remove any construction made therein in violation of law within two months. The execution of this direction may be overseen by a Committee comprising the Collector, Nagpur, NHAI and the Maharashtra State PCB. The State PCB will be the nodal agency for coordination and compliance.

The application is disposed of.

A copy of this order be forwarded to the Collector, Nagpur, NHAI and the Maharashtra State PCB by e-mail for compliance. The applicants/appearing counsel may also produce a copy of this order before the said authorities.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 10, 2020
Original Application No. 58/2020(WZ)
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