

Item No.9

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Original Application No.87/2023(WZ)  
I.A. No.168/2023(WZ)**

Vanashakti (NGO) & Anr.

.....Applicant(s)

*Versus*

Municipal Corporation of Greater Mumbai & Ors.

....Respondent(s)

Date of hearing: 15.04.2024

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

Applicant : Mr. Mohammad Mehdi Abdi, Advocate  
Respondent(s) : Mr. Sameer Khale, Advocate along-with Mr. Rahul Garg,  
Advocate for R-1/MCGM  
Ms. Manasi Joshi, Advocate along-with Ms. Pooja Natu,  
Advocate for R-2/MPCB  
Mr. Rahul Garg, Advocate for R-6/MoEF&CC  
Mr. Aniruddha S. Kulkarni, Advocate for R-7/Env. Deptt.  
& R-8/UDD  
Ms. Poonam Pandey, Advocate for R-9/Aarey Milk Colony

**ORDER**

1. From the side of applicants, learned counsel Mr. Mohammad Mehdi Abdi has appeared.
2. In compliance with our previous order dated 29.01.2024, respondent No.1-MCGM has filed reply affidavit dated 08.04.2024, wherein it is submitted that the subject land is under ownership and possession of Aarey Authority- respondent No.9. Therefore, the answering respondent has neither any authority to issue any permission/consent regarding dumping of any debris nor has any responsibility to remove the same. According to the Government Notification dated 10/10/2013, Revenue and Forest Department, Government of Maharashtra had

clarified that it is the duty of the concerned Department/Authority, in whose name the Government Land vested that it shall protect those lands from any encroachments and shall take all legal actions against the encroachers including filing of Police Complaints etc. A copy of said Notification is annexed as Annexure-E to the I.A. No.168/2023 at page nos.88 to 92 of the paper book.

3. It is further mentioned in this reply affidavit by the respondent No.1- MCGM that being the owner, it is the duty of respondent No.9 to remove the debris from the site and also to take action against the illegal dumpers. A copy of the property card has also been annexed as Annexure- F in order to show that the respondent No.9 is an owner of the said land, which is annexed at page no.94 of the paper book, wherein, in front of original owner, the name of H Mumbai Milk Scheme, Government of Maharashtra is recorded and it is being said that H Mumbai Milk Scheme is the respondent No.9 only.

4. It is further mentioned in this reply affidavit by the respondent No.1-MCGM that in compliance with this Tribunal's orders dated 07.08.2023 and 29.08.2023, a direction was issued to the answering respondent to coordinate with the respondent No.3-The Collector, Mumbai Suburban; the respondent No.8-Principal Secretary, Urban Development Department, State of Maharashtra; and the respondent No.9-Chief Executive Engineer, Aarey Milk Colony for getting the work executed and submit a report, in compliance with which a co-ordination meeting was held in the office of answering respondent on 09.10.2023, wherein all concerned stake holders were invited. However, only representative of Respondent-MPCB had arrived to attend the meeting.

5. It is further mentioned in this reply affidavit by the respondent No.1-MCGM that the expenses towards clearing the debris must be borne

by the Aarey Milk Colony- respondent No.9, as per the proposal of the Joint Committee Report. Having made these averments, it is prayed that order dated 29/08/2023 may be recalled to a limited extent that instead of the answering respondent, respondent No.9 should be directed to remove the debris and coordinate with other respondents for the same.

6. The learned counsel Mr. Sameer Khale representing respondent No.1-MCGM has given proof of having deposited a sum of Rs.10,000/- by way of cost.

7. By our previous order, we had also directed the respondent No.2 to file report of NEERI. In compliance with the same, the respondent No.2-MPCB has filed reply affidavit dated 28.02.2024, wherein it is submitted that the NEERI vide letter dated 25/01/2024 has submitted the Project proposal titled "Assessment of the Environmental Damages due to debris dumped at Mithi River, Mumbai", a copy of which is annexed as Annexure-II, in which the project cost is recorded as Rs.75 lakhs + GST, which would include the charges of man power, sample analysis, assistance in site visits, TA/DA for visiting NEERI staff, contingencies, and Institute overheads as per the Norms of Council of Scientific and Industrial Research (CSIR). The schedule of payment of the said amount is also given in para no.7.0 to the following effect:-

“ **7.0 Payment Terms**

- 1<sup>st</sup> installment: 50% + GST to initiate the study with Work Order
- 2<sup>nd</sup> installment: 40% + GST after 12 months
- 3<sup>rd</sup> & final installment: 10% + GST after submission of final Draft report. ”

8. Our attention is drawn by the learned counsel for applicants to the Construction and Demolition Waste Management Rules- 2016, wherein Rule-3 (c) provides “**construction and demolition waste**” means the

waste comprising of building materials, debris and rubble resulting from construction, re-modeling, repair and demolition of any civil structure; and Rule-3 (g) provides “**local authority**” means an urban local authority with different nomenclature such as municipal corporation, municipality, nagarpalika, nagarnigam, nagarpanchayat, municipal council including notified area committee and not limited to or any other local authority constituted under the relevant statutes such as gram panchayat, where the management of construction and demolition waste is entrusted to such agency.

9. Thereafter, the learned counsel for appellants has drawn our attention to Rule-6 pertaining to duties of local authority, which are recorded as below:-

- “
- 1) *issue detailed directions with regard to proper management of construction and demolition waste within its jurisdiction in accordance with the provisions of these rules and the local authority shall seek detailed plan or undertaking as applicable, from generator of construction and demolition waste;*
  - 2) *chalk out stages, methodology and equipment, material involved in the overall activity and final clean up after completion of the construction and demolition ;*
  - 3) ***(3c) seek assistance from concerned authorities for safe disposal of construction and demolition waste contaminated with industrial hazardous or toxic material or nuclear waste if any;***
  - 4) ***shall make arrangements and place appropriate containers for collection of waste and shall remove at regular intervals or when they are filled, either through own resources or by appointing private operators;***
  - 5) *shall get the collected waste transported to appropriate sites for processing and disposal either through own resources or by appointing private operators;*
  - 6) *shall give appropriate incentives to generator for salvaging, processing and or recycling preferably in-situ;*
  - 7) *shall examine and sanction the waste management plan of the generators within a period of one month or from the date of approval of building plan, whichever is earlier from the date of its submission;*
  - 8) *shall keep track of the generation of construction and demolition waste within its jurisdiction and establish a data base and update once in a year;*

- 9) *shall device appropriate measures in consultation with expert institutions for management of construction and demolition waste generated including processing facility and for using the recycled products in the best possible manner;*
- 10) *shall create a sustained system of information, education and communication for construction and demolition waste through collaboration with expert institutions and civil societies and also disseminate through their own website;*
- 11) *shall make provision for giving incentives for use of material made out of construction and demolition waste in the construction activity including in non-structural concrete, paving blocks, lower layers of road pavements, colony and rural roads.”*

10. Having drawn our attention to the above, it is urged by the learned counsel for appellants that it is the bounden duty of the local authority herein MCGM to take appropriate steps for safe disposal of the construction and demolition waste, which is not being done in the case in hand.

11. It is further argued by the learned counsel for appellants that it is true that the respondent No.9 is the owner of the land in question but the responsibility of clearing that debris lies on the respondent No.1- MCGM.

12. We had already passed an order to the effect that debris would be cleared by the respondent No.1-MCGM in coordination with the respondent No.3-The Collector, Mumbai Suburban; the respondent No.8-Principal Secretary, Urban Development Department, State of Maharashtra; and the respondent No.9-Chief Executive Engineer, Aarey Milk Colony but the same could not be executed because of the responsibility being thrown by one upon other by the respondent No.1-MCGM and the Aarey authority. It is also not disclosed as to where this debris would be shifted, if at all, it has to be shifted; and who will bear the cost for the same. The respondent No.9 has clearly stated in its affidavit that they do not have the manpower nor the resources to clear the debris at the site in question on their own, although it has been

submitted that the area where the same has been thrown belongs to the respondent No.9.

13. In order to solve this impasse, as to where the debris would have to be shifted, if at all, it is required to be shifted; who will bear the expenses because both the respondent No.1 and respondent No.9 are passing the buck on each other in this regard; and how this work would be carried out, we deem it appropriate to constitute a Committee, headed by the Chief Secretary, State of Maharashtra, which shall comprise one Member each from the respondent No.1-MCGM; respondent No.2- MPCB; respondent No.8-Principal Secretary, Urban Development Department, State of Maharashtra; respondent No.9-Chief Executive Engineer, Aarey Milk Colony; Environment Department, State of Maharashtra; one Senior Principal Scientist from the NEERI; and one Professor from IIT namely Mr. Anil Dikshit, who has submitted the proposal.

14. The Committee is directed to visit the site, prepare time bound action plan and submit its report along-with documentation and photographs, after giving hearing to the applicants in order to have suggestions from them, within a period of one month, looking to the fact that the rainy season is about to ensue.

Put up this matter for further consideration on 30.05.2024

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 15, 2024  
Original Application No.87/2023(WZ)  
I.A. No.168/2023(WZ)  
P.Kr