

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.116 OF 2014**

CORAM :

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

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

In the matter of:

BHARAT SHAMRAO GAJENDRAGADKAR,

Age: 68 years, Occupation: journalist.

R/at Plot No.G8, Gokul Apartment,

First Floor, Naikwadi Nagar

Samta Colony, Osmanabad-413 501.

APPLICANT

A N D

- 1. SHRI THEATRE,**
Samta Colony, Osmanabad
Through its Proprietor
Mrs. Sucheta Jivanrao Gore,
R/at Vidyanagar, Tambari,
Osmanabad-413 501.

2. MAHARASHTRA POLLUTON CONTROL BOARD,
Paryavaran Bhavan, A-4/1, MIDC Area,
CHikalhana, Near Seth Nandlal Dhoot Hopsital,
Jalna Road, Aurangabad-431 210.

3. THE DISTRICT COLLECTOR,
Collector office,
Osmanabad-413 501.

4. THE SUPERINTENDENT OF POLICE,
Osmanabad-413 501.

5. CHIEF EXECUTIVE OFFICER,
Municipal Council,
Samata Colony,
Osmanabad-413 501.

.....**RESPONDENTS**

Counsel for Appellant(s):

**Mr. Asim Sarode Advocate a/w ALka Babaladi, Ms Astha Gupta,
for the Applicant.**

Counsel for Resppendent(s):

Mr. Mahendra B.Deshmukh for Respondent No.1.

Mr. Saurabh Kulkarni a/w Supriya Dangare for Respondent No.2.

DATE : JULY 22ND, 2015

P.C.

1. By this the Application – the Applicant, who is senior citizen, claims certain directions against the

Respondent No.1, particularly, to monitor noise control system, to avoid noise pollution. He also seeks direction to the effect that the Respondent No.1 be made liable to pay compensation on the basis of 'Polluter Pays Principle', for the reason of causing noise pollution in the area.

2. Undisputedly, Respondent No.1- Shri Theatre, which is situated in Samta Colony at Osmanabad, become functional somewhere prior to ten (10) years or little above of ten (10) Years, of filing of the Application. It is undisputed that the Applicant started residing in a building situated on backside of the theatre since about 2-3 years prior to filing of the Application. The Theater is surrounded by residential and commercial complex. There is hospital at ground floor level of the Respondent No.1- Shri Theatre. There is also Heart Care Hospital called "Spandan Hospital" located in south-east corner of Respondent No.1- Shri Theatre. There is another hospital called "Paris Hospital" across the parking area. On the backside i.e. western side, there is 10ft wide drainage (Nullah) and thereafter, a residential complex called 'Gokul Apartment' is located. The Applicant resides on first floor of that residential complex.

3. Briefly stated, case of the Applicant is that due to high decibels of sound caused, on count of Cinema-Theatre while in operation, which is operated without taking due care to maintain noise level below the standards of decibels as prescribed, the residents of nearby area and, particularly, himself, being a senior citizen, are facing health problems, noise pollution problems, which makes them difficult to listen internal conversation in the residential complex, as well as in the nearby area. They made several complaints to the authorities. The complaints, however, were unheeded by the authorities. Some of the complaints, however, were considered and inspections were carried out by the Revenue Authorities and Respondent No.1 Shri- Theatre and the owner was directed to carry out necessary repairs to maintain proper sound system. Still, however, it was a general direction, which did not indicate what the term 'necessary repairs' means and what was expected to be done by Respondent No.1- Shri Theatre owner. Consequently, such directions remained only on paper, without compliance.

4. It is further case of the Applicant that MPCB carried out various inspections, but did not give proper

data, except and save, one of the authority of Police force by name Sh. Kokane, who also verified sound decibels by using necessary equipment. The Applicant, therefore, relies upon the report of Sh. Kokane, Assistant Police Inspector (API), in support of the Application. He also rely on the affidavits of several residents of the area.

5. Countering averments made by the Applicant, main contesting party, namely, Respondent No.1- Shri Theatre, contended that there is no ring of truth in the contentions of Applicant that prescribed limits of sound decibels are increased due to exhibition of film in the Theatre. It is contended that while running Cinema shows, the sound levels are maintained within control and same did not caused any harm or pollution degradation in the area. It is further contended that there are three (3) hospitals adjoining the Theatre and none of them have grievance about noise pollution. It is also contended that though the Theater started operations in 2002, according to Respondent No.1- Shri Theatre, there was absolutely no complaint made prior to residence of the Applicant in the area and his complaints were found to be untrue, when they were examined by the concerned authorities. The Respondent

No.1, further states that they have carried out several improvements, mainly as per MPCB's suggestion for noise pollution control. In this view of the matter, Respondent No.1- Shri Theatre sought dismissal of the Application.

6. We have perused relevant documents, which are placed on record, including affidavits of the parties. We have also heard learned Advocates for the parties. We have gone through the reports of MPCB. It is important to note that recently under directions of this Tribunal, which were issued on May 22nd, 2015, the officers of MPCB in presence of Manager of Respondent No.1- Shri Theatre and the Applicant as well as authorized officer of the Municipal Council, jointly visited the premises and examined relevant area in order to ascertain the facts pertaining to sound decibels, which extended on the date of spot inspection and during hours of operation of Theatre as well as period of non-operation of the Theatre from various angles and places, including terrace of the residential complex of the Applicant. It is clear from the visit dated June 16 & 17th, 2015, that there was variance in the sound decibels as per the timing indicated in the visits and the area.

7. Considering material placed on record, it is manifest that materialistically data is not collected by the MPCB to show as to what is the foundation of report in respect to sound decibels reported from various points, particularly, from source of backside of Theatre when it was found in operation. It is the main thrust of Applicant that when the songs, particularly, item songs are played, or songs backed with pop music are played, the sound decibels is enhanced, so as to entertain the public members, because many of the public members, who attend the movie in the Theatre are from different classes and strata, more of them being of lower income group to which such songs are sought to be reached. For, they like such high pitched, high decibels and rather dual meaning songs, which influence the mob. They stir the mood of the crowd, if the volume of the sound is increased and, therefore, Cine-goers infatuated by kind of attractive tricks. Be that may as it is, we need not go into nitty-gritties of such allegations, yet, the report of MPCB indicates that sound pollution which is noticed on backside i.e. western side of Respondent No.1- Shri Theatre, appears to be of high decibels, particularly, when noise is 71.6 DBA, when the sound amplifier Nob indicator fixed at 9. This ostentation is

done near the source of noise, within premises of Respondent No.1. We have noted that the MPCB has monitored noise levels (Leg) at receptor i.e. source of noise and receptor i.e. complainant's area at different occasions and timings. It would be rather impossible to develop, even empirical relationship between source and receptor, with such kind of data. Further, the mixed land use in the area also will result into various sources of noise contributing to ambient noise at complainant's premises. The report of MPCB recommends that Respondent No.1- Shri Theatre should install automatic sound amplifier system of Nob at 7 in the indicator, instead of manual system, so as to keep noise level low, which shows juxta potion of sound emanating from operational part of entire system, while movie is being exhibited. We specifically enquired with learned Advocate for Respondent No.1- Shri Theatre as to whether this recommendation is acceptable to Respondent No.1- Shri Theatre. Under the instructions of Respondent No.1- Shri Theatre's owner, learned Advocate Sh. M.B. Deshmukh, states that such recommendation of the MPCB is acceptable to Respondent No.1- Shri Theatre.

8. We have noticed that Municipal Council, Osmanabad has filed affidavit which shows that no silence zone is so far demarcated and declared. This is rather non-compliance of the Govt. Resolution (G.R) dated 21st April, 2009. By the said G.R, direction is given to all the Municipal Corporations and local bodies to declare silence zone within limits of the city. Such direction has been issued in order to comply with the orders of Hon'ble High Court of Bombay in PIL No.2053 of 2013 and other similar Writ Petitions (Group) bearing W.P. No.74 of 2007, Writ Petition No.85 of 2007 and Writ Petition No.1 of 2009. Non-compliance of G.R. dated 21st April, 2009, also tantamount to non-compliance of the orders of Hon'ble High Court of Bombay. It is surprising to note that such non-compliance is clearly set out in the affidavit filed on behalf of Municipal Council, Osmanabad. Therefore, we are constrained to deprecate conduct of the authorities of Municipal Council, Osmanabad, in filing such affidavit and non-compliance of Govt. Resolution.

9. Considering recommendation of MPCB as well as statement of learned Advocate Respondent No.1- Shri Theatre, in our considered opinion, it would be

appropriate on the “Precautionary Principle” to direct the Respondent No.1, to install automatic sound amplifier control system so as to fix indicator Nob at level 7, which shall not exceed beyond that point, so as to avoid increase of excessive sound. We also direct Respondent No.2 – MPCB to ensure such system is installed by Respondent No.1- Shri Theatre within period of (2) two month hereafter and report the compliance thereof. In case of failure to comply with the directions, Respondent No.1- Shri Theatre will be held liable to pay penalty at the rate of Rs.1,000/- per day, until compliance is made on the basis of ‘Polluter Pays Principle’. We also direct that, in case, such automatic sound amplifier control system is unavailable in the market, in spite of search, as recommended by MPCB, Respondent No.1- Shri Theatre shall fix the indicator normally at level 7 with the help of an Expert in such a manner that it shall not allow to exceed the limit and such exercise shall be verified by the Regional Officer of MPCB as and when such compliance report by Respondent No.1- Shri Theatre is submitted within above timeframe. The MPCB shall provide necessary assistance to the Respondent No.1 to identify such automatic system as recommended by them. In case of

further complaint of the Applicant that in spite of fixing of sound system manually by Respondent No.1- Shri Theatre, there is violation of directions, Respondent No.1- Shri Theatre may be called upon by the Respondent No.2, to face necessary action, in case after due verification if violation is noticed. Of course, it would be pre-condition that violation shall be duly verified by Respondent No.2 in presence of owner or authorized agent of the Respondent No.1., in a scientific manner.

10. By applying 'Precautionary Principle' as contemplated under Section 20 of the NGT Act, 2010, we also direct Respondent No.1- Shri Theatre to erect rubber cladding of 9 to 10ft height on western side to ensure proper acoustic system to preferably enclose/encase the noise sources, so that sound would not propagate outside from western side of the Theatre in excessive manner. The compliance of these directions shall be made within four (4) months of which due verification be made by the Respondent No.2 and compliance report be filed in this Tribunal thereafter, after verification. It is due to such directions that we have not mulcted Respondent No.1 Shri Theatre for payment of any compensation for causing alleged noise

pollution, inasmuch as it will have to bear extra burden of expenditure required for installation of rubber cladding on western side of the Theatre.

11. We direct Municipal Council, Osmanabad to comply with G.R dated 21st April, 2009, within period of eight (8) weeks and report the compliance thereof to this Tribunal or to face penal action, as may be required under Section 26 of the NG Act, 2010, which would be initiated in the circumstances of the matter.

12. The Application is allowed and disposed of. No costs.

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

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

DATE: JULY 22ND, 2015.

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