

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

**Original Application No.67/2016(WZ)
[M.A. No.184/2016, M.A. No.198/2017]**

CORAM:

**Hon'ble Mr. Justice U.D. Salvi
(Judicial Member)**

**Hon'ble Dr. Nagin Nanda
(Expert Member)**

In the matter of:

1. Mr. Sarang Yadwadkar

Age: 57, Occ: Architect
R/AT: A-9, Pradnyangad Appts,
S.No.119/3, Sinhagad Road,
Pune-411030.

2. Mrs. Amavaz Aga

Age : 73 years, Occ: Business
Member of Parliament,
Boat Club Road,
Pune-411 001.

3. Mr. Dileep Padgaonkar

Age: yrs, Occ: Journalist & Writer,
601, Hariyali, Modi Baug II,
Ganeshkind Road,
Pune-411 016.

4. Mrs. Arti Kirloskar

Age: 55 years, Occ: Artist,
Radha, 453, Gokhale Road,
Model Colony,
Pune-411 016.

... **Applicants**

Versus

1. The Pune Municipal Corporation

Through Municipal Commissioner
Shivajinagar, Pune-411 005.

2. The Divisional Commissioner,

Pune Division, Council Hall,
Camp. Pune – 411 001.

3. The Joint Director,

Town Planning Department,
Government of Maharashtra,
Central Building, Pune 411 001.

4. The Urban Development Department,

Through the Principal Secretary,
Urban Development (I)
Govt. of Maharashtra, Mantralaya,
Mumbai 400 032.

5. The Ministry of Urban Development,

Through the Secretary,
Govt. of India, Nirman Bhavan,
New Delhi-110 001.

6. The Managing Director,

DMRC Ltd.
Metro Bhawan, Fire Brigade Lane
Barakhamba Road, New Delhi.

7. Maharashtra Pollution Control Board

Through the Regional Officer, Pune
Jog Centre, 3rd Floor, Mumbai Pune
Road, Wakdewadi, Pune-411 001.

**8. The Maharashtra State Biodiversity
Board**

Jaivavidhata Bhavan, Civil Lines,
Nagpur – 440 001.

**9. Maharashtra Metro Rail Corporation
Ltd.**

Having its office at: Metro House, 28/2
Anand Nagar, C.K.Naidu MG Civil Lines,
Nagpur-440 001.

... Respondents

Counsel for Applicant (s):

Mr. Asim Sarode, Advocate for the Applicants.

Counsel for Respondent (s):

Mr. Pralhad D. Paranjape for Respondent No. 1.

Mr. Saurabh Kulkarni for Respondent No.6.

Ms. Manasi Joshi for Respondent No.7.

Mr. D.M. Gupte, Advocate a/w Mr. Shashank Vakil, Advocate for Respondent No.8.

Mr. S.K. Mishra, Senior Advocate a/w Mr. Pralhad D. Paranjape, Advocate for Respondent No.9

Date: - 13th October, 2017

ORDER

1. In the present application, the Applicants are seeking prohibitory injunction against the Respondents, particularly, the Respondent No.9 – Maharashtra Metro Rail Corporation Ltd. (MMRCL), a special purpose vehicle created for executing the project of Metro Rail within the limits of Pune Municipal Corporation, from proposing, planning, approving or constructing any roads, Metro or structures of any other type on prohibited zone inside Blue Line in the river bed of Mula Mutha. The issue regarding jurisdiction of this Tribunal was duly answered by us vide Order dated 29th August, 2017 in following words:

“13. In our view, therefore, explicit of provisions of the NGT Act, 2010 have been enacted for effective and expeditious disposal of the cases relating to environment protection, conservation of forest and other natural resources including enforcement of any legal right relating to environment and granting relief and compensation for damages to the persons and property, and for the matters connected or incidental thereto; and as such confer a jurisdiction on us to entertain, try and dispose off the present Application regardless of the provisions of MR Act, 1978, which stand superseded by virtue of Section 33 of the NGT Act, 2010. Hence, the Application is rejected.”

2. In the Civil Appeal No.14941/2017 preferred by Respondent No.9 – MMRCL against the said order before

the Hon'ble Supreme Court of India, the following order dated 18th September, 2017 came to be passed:

“O R D E R

Issue notice.

Tag with Civil Appeal No.8762/2016 and C.A. No.9070/2016.

The National Green Tribunal by the impugned order has only decided on its jurisdiction and has not yet taken any view in the merits of the case. The Tribunal may decide the case finally as we are informed that the case is fixed finally on 21st September, 2017. However, in case the final order goes against the appellant no effect to that shall be given without leave of this Court. At the same time, we make it clear that there is no stay on the project which is being undertaken by the appellant and it will have the right to continue with the project.” (emphasis supplied)

In substance, therefore, the Hon'ble Supreme Court has permitted us to exercise our jurisdiction subject to its supervision.

3. Broadly speaking, it is the case of the Applicants that the construction of Metro Rail over 1.7 km of stretch of land and 100 ft. wide roads proposed in the Draft Development Plan of City of Pune, more particularly, shown at Annexure 4 to the Application, falling within the Blue Line along the banks of River Mutha and even in the river bed i.e. No Development Zone is bound to cause tremendous environmental and ecological damage in terms of adverse effect on free flow of river Mutha, unprecedented flooding, Water and Air pollution and irreversible damage to the bio diversity in the river bed with consequent invitation to unforeseen disaster resulting in incalculable loss of lives and property. The

Applicants submit that the proposed actions of the Respondents in execution of the construction of Metro Rail and 100 ft. wide as conceived through the No Development Zone along the River Mutha raise a substantial question of environment arising out of implementation of enactments prescribed in Schedule I of the National Green Tribunal Act, 2010 more particularly, the Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, the Biological Diversity Act, 2002, the Air (Prevention and Control of Pollution) Act, 1981; and Section 20 of the National Green Tribunal Act, 2010 exhorts Tribunal to apply the precautionary principle and principles of sustainable development in the matter of decision making in the present Application for grant of relief of prohibitory injunction as solicited.

4. Fact that the construction of Metro Rail in the said 1.7 km of stretch of land and 100 ft. wide roads as shown at Annexure 4 to the application falling within the Blue Line along the bank of River Mutha as conceived is on the verge of implementation is not disputed by any of the Respondents. Keeping in mind the principles of sustainable development and the precautionary principle, we have to ascertain the environmental damage which would occasion as a result of such construction/s before taking a final view in the case.

5. It is, therefore, necessary to examine what the Respondents have to say as regards the environmental damage that would occur due to construction of Metro Rail through the said 1.7 km of stretch of land as well as construction of 100 ft. wide roads graphically shown in the maps at Annexure 4 (page 37-39) to the Application falling within the Blue Line along the banks of River Mutha within the limits of Pune Municipal Corporation.

6. The Respondent No.1- Pune Municipal Corporation (PMC) filed Affidavits in Reply dated 27th July, 2016 of City Engineer and 19th November, 2016 of Chief Engineer (Project). The Respondent No.1 – PMC besides pleading the benefits of the project in terms of improved mode of transportation and commutation, submitted that the decision of implementing the Pune Metro Project was taken after considering all the issues concerning feasibility, technical and environmental impacts of the Metro. Learned Counsel appearing on behalf of Respondent No.1 – PMC besides adopting the legal submissions made on behalf of Respondent No.9 – MMRCL invited our attention to Exhibit I annexed to the Affidavit in Reply dated 19th November, 2016 of Chief Engineer (Project) viz PMC's correspondence in relation to No Objection Certificate given to the Metro Rail Project by Bio-Diversity Committee of Pune Municipal Corporation and the Preliminary Report of Technical Support Group of

Bio-Diversity Management Committee, PMC for Proposed Metro Alignment along the Mutha River. It is an admitted fact as the NOC from the Bio-Diversity Committee of PMC reveals that the stretch of 1.7 km of land passes through the dense locality and the construction of Metro Rail pillars warrants tree felling along the said stretch. The Bio-Diversity Committee of PMC has also acknowledged the fact that the proposed site for Metro alignment in question falls in the Outer Channel/bank of River Mutha along the Central Channel holding main river flow and affords sparse marshy habitats. According to the said report, approximately 60 trees of various local species namely *Acacia nilotica*, *Cassia saimea*, *Ficus benghalensis*, *F.racemosa*, *Pithecellobium dulce*, *Polyalthia longifolia*, *Pongamia pinnata*, *Samania saman* and *Sterculia foetida* are likely to be affected due to the proposed alignment in the river bed and its loss will have some effect on local ecological balance such as the disruption of habitat for small birds, raptors, arboreal mammals, etc., resulting in their migration to other areas. The Committee prepared check list of fauna for the purpose of studies of adverse impacts on them and claimed to have made Biodiversity assessment based on one time observations, and further acknowledged that the extant flora and fauna is already under tremendous impact due to various anthropogenic pressures. The report also took cognizance of our Order

passed in **Vitthalwadi Riverbed Road case (O.A. No.2/2013 passed on 11th July, 2013)** thereby prohibiting any encroachment/ construction in future inside the Blue Line of River Mutha to prevent restriction to the free flow of the river water and finally concluded as follows:

“ In view of the preservation of the existing ecology and environment of Mutha River, the metro project should be executed in a way which will avoid a significant damage to the extant biodiversity of Mutha River and other alternatives pertaining to the alignment can be explored. As per our preliminary observation approximately 60 trees are likely to be affected along the proposed Metro alignment in the river bed, however the detailed engineering will reveal the exact number of trees which will be affected. The removal of these trees and the loss of vegetation cover will have some effect on local ecological balance, such as the disruption of habitat for small birds, raptors, arboreal mammals, etc. Hence, the mitigation measures such as restoration of habitats in the riparian zone and compensatory afforestation should be done in a way that will help to nurture the native biodiversity. We strongly recommend a detailed Environment Impact Assessment of the proposed Metro alignment in the riverbed in order to safeguard the biodiversity and people along the Mutha River.”
(emphasis supplied)

7. Respondent Nos.2 – The Divisional Commissioner and 3 – The Joint Director, Town Planning Department filed Affidavit in Reply dated 16th July, 2016 giving their comments as regards Draft Development Plan for the city of Pune vis-à-vis the Metro alignment and in particular brought on record the note regarding Draft Development Plan in relation to the flood in the following words:

“Flood lines (red and blue) along Mula and Mutha river, shall be part of Development Plan as and when

received from Irrigation Department duly marked with reference to Survey No. /C.T.S. No./ F.P. No. boundary.

Therefore, red and blue lines are part and parcel of the Development Plan. For want of survey no. wise detailed maps from the Irrigation Department in time, they could not be included in the Development Plan itself.”

Nowhere we find any note regarding the environmental damage that would be occasioned as a result of the said construction in the Affidavit dated 16th July, 2016. As a matter of fact, Respondent No.4 – Urban Development Department, Government of Maharashtra through the Joint Director, Town Planning, Pune Division has distanced itself from the issue of floods and pollution of rivers that may arise from the Development Plan while commenting on Section 22 of Maharashtra Region and Town Planning Act in following words:

“ It is very clear from the above provisions that the Development Plan can be prepared for any or some of or all of the items listed in the said section. Therefore, the Petitioners’ contention that ‘components that control floods and prevent pollution of rivers should necessarily be an integral part of the DP’ does not hold good.”

8. Respondent No.5 – Ministry of Urban Development, Government of India has interestingly revealed in its Affidavit dated 15th September, 2016 that it is proforma party and the proposal of Metro Rail project is under approval and has not yet be approved by Government of India and the responsibility of preparation of Detailed Project Report of Pune Metro and

Development Plan of Pune city lies with the State Government of Maharashtra. The reply further makes an interesting revelation that 'In Principle' approval for Pune Metro was given on 11th February, 2014 subject to conditions that 'in principle' approval should not be taken as "prior approval" in part or whole for Central Financial Assistance.

9. Affidavit in Reply of Respondent No.7 – MPCB dated 20th September, 2016 merely acknowledges the fact that the construction in question is proposed inside the Blue Line of Mula-Mutha river beds wherein no construction is allowed and the Board has not received any application for grant of Consent to Establish/Operate the said project.

10. Respondent No.8 – Maharashtra State Biodiversity Board filed Affidavit dated 26th August, 2016 making a material comment as under:

“However, in the present case (67/2016), the Respondent No.1 does not involve the Maharashtra State Biodiversity Board (MSBB) during the preparation of Development Plan (D.P.) of the city and Metro Rail which is passing through the Mutha River Bed in the Pune city. The Environment Impact Assessment i.e. EIA Report as per the guidelines of Environment Protection Act, 1986 published by Metro Rail Authority indicates there is no specific comment on the biodiversity present in the river water and ecological assessment of the river from where the Metro is proposed. The report is mentioning about number of trees to be cut down which are 685 (as per page no 12/21) and 900 (as per page 17/21). The report provided local name of the main species to be cut down and not the botanical names.”

The Respondent No.8 referring to Rule 14(1) of the Biological Diversity Act, 2002 asserted that it is authorised to give directions to the local bodies/Biodiversity Management Committees in writing and through appropriate oral means for effective implementation of the Act and to facilitate their meaningful participation in all measures relating to conservation, sustainable use and equitable benefit sharing, and further authorised to undertake physical inspection of any area in connection with the implementation of the Act and to constitute a committee for verification of status of biodiversity in the river bed and its overall ecological significance. The Respondent No.8 Board sought directions to the Respondent No.1 – PMC to provide all copies related to Development Plan of the city and Metro Rail passing through the Mutha river bed in the city of Pune along with EIA report prepared by the project proponent.

11. Respondent No.9 –MMRCL filed Affidavit in Reply dated 8th May, 2017. Except making a bland statement that the decision to have alignment to the project through the corridors along the banks of the River Mutha was taken after considering environmental impacts, and that there would not be any impediment to the free flow of water due to the design of the construction of pillars, and that the whole project complies with the Disaster

Management Act, 2005. There is nothing before us to answer with clarity the questions which arise in our mind regarding the environmental damage which would occur due to the construction/s in question.

12. While finally deciding the present case we will have to scrutinise the material before us and ascertain the merits of the case, particularly, the irreparable loss, if any, that would occasion to the environment on account of the construction in question. Any construction, for that matter any change in the situation, brings about certain amount of impact on the environment – physical, chemical and biological as well. Environmental jurisprudence requires the project proponent to establish that its activities are benign to the environment before he acts.

13. We do not find any other replies in the record. The Applicants have no objection to appoint the Expert Committee for acquiring judicial acuity and are willing to submit to the orders of the Tribunal.

14. In this background, learned Senior Counsel Mr. Mishra appearing on behalf of Respondent No.9 – MMRCL much to our consternation made a submission that the Central and the State Government had considered the environmental impacts of the Metro Rail project and only thereafter granted sanction to the project vide Letter dated 9th January, 2017 and Notification dated 23rd

December, 2016 respectively, making particular reference to the environmental studies made in that regard in the said sanction-vide paragraph Nos.6, 8(O), (P) and 10 in Letter dated 9th January, 2017 and paragraph No.3 of the Notification dated 23rd December, 2016 respectively. Sadly, we have to record that we do not find reference to any environmental studies in the said Notification/Sanction. By no stretch of imagination, environmental studies could be said to be part of any Sanction/Notification issued by the State ever. More responsible submission befitting the stature of the Senior Counsel, therefore, was expected by us in that regard. Learned Counsel appearing on behalf of Respondent No.9 further submitted that appointment of the Expert Committee would amount to enlarging the scope of the application and exercising *suo motu* powers in collection of evidence and thereby going beyond the liberties granted by the Hon'ble Apex Court to this Tribunal vide Order dated 18th September, 2017.

15. Learned Counsel appearing on behalf of Respondent Nos.1 and 2 adopted the submissions made on behalf of Respondent No.9. Learned Counsel appearing on behalf of Respondent No.6 also towed the same line. He did make a reference to some environmental studies in DPR which has not been placed before us. Nevertheless, the material before us points out

that the proposed construction is in No Development Zone i.e. inside the Blue Line along the river bed of Mutha River and falls short of answering the pertinent question in relation to the bio-diversity and ecological assessment of the river.

16. The Hon'ble Apex Court has permitted us to decide this case finally subject to the rider that no effect shall be given to the adverse order passed against the Respondent No.9 – MMRCL without their Lordships leave.

Before taking a final view we have to clearly answer certain material questions that figure in our mind, and the answers to these questions can only be given after site specific scientific investigation, which cannot in our opinion be conducted by us or before us. In ordering such scientific investigation, we are of the considered opinion that neither we are enlarging the scope of the application or going beyond the liberties granted by the Hon'ble Apex Court nor indulging in an exercise of collecting evidence inasmuch as it will only enrich our understanding of the material before us through science.

17. In the instant case, the construction/s are proposed by the Respondent No.1-PMC and Respondent No.9 – MMRCL and as such they are under obligation to reveal before us the benign nature of the proposed construction/s. The cost of the scientific investigation, therefore, shall be equally borne by them.

18. Adverting to paragraph Nos.15 to 20 in the Judgment dated 22nd September, 2017 delivered by the Hon'ble Apex Court in Civil Appeal No.1359 of 2017; ***Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.***, learned Counsel appearing on behalf of Respondent No.9 – MMRCL submitted that the application fails to raise a substantial question relating to environment resulting in a dispute as contemplated under Section 14 of the National Green Tribunal Act, 2010. At this juncture, when we are in the process of finding answers to some of the pertinent questions raised by the controversy before us, we do not find the submission made in that regard relevant.

19. We, therefore, pass the following order:

1. We constitute a Committee of Experts drawn from the field of Hydrology, Ecology and Bio-diversity, and Water pollution and direct NEERI, Maharashtra State Bio-Diversity Board, Maharashtra Pollution Control Board (MPCB) to nominate Senior Scientists one each respectively to the said Committee to:
 - (a) Visit the site/s of construction/s of Metro Rail and proposed roads as indicated in the order;
 - (b) Take photographs, collect samples and carry out local investigation as deemed necessary by them;
 - (c) Assess impact of the said construction/s on the environment namely ground water recharge, bio-diversity in the river bed, free flow of the water, risk of flooding, debris disposal, water pollution and air pollution,

and also the mitigating factors involved therein.

2. NEERI shall be the convenor of the Expert Committee
3. The Expert Committee shall study whether the impacts assessed by them individually or cumulatively are irreparable or not and make their recommendations, if any, in that regard.
4. All logistic support to the Expert Committee shall be provided by Respondent No.7 – MPCB.
5. Cost of the scientific investigation shall be borne by Respondent No.1 and Respondent No.9 – MMRCL equally and for that purpose they shall initially deposit an amount of Rs.2.5 Lakhs each with the Respondent No.7 – MPCB within a week.
6. Respondent No.1 – PMC is directed to furnish copies of the Development Plan of the City of Pune and Metro Rail to the Expert Committee within a week.
7. Respondent No.6 – DMRC Ltd and Respondent No.9 – MMRCL are directed to furnish detailed project report along with environment assessment report, if any, to the Expert Committee within a week.
8. The work of scientific investigation shall be completed within a month and report thereto shall be placed before us on the next date.

Registry to communicate this order to Director NEERI, Chairman Maharashtra State Biodiversity Board and Member Secretary, Maharashtra Pollution Control Board.

List this case for compliance on 14th November, 2017.

....., **JM**
(Justice U.D. Salvi)

....., **EM**
(Dr.Nagin Nanda)

Date: 13th October, 2017
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