

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

M.A.No.22/2017

**In
ORIGINAL APPLICATION NO.163 OF 2016**

CORAM:

**HON'BLE MR. JUSTICE U.D.SALVI
(Judicial Member)**

**HON'BLE DR. NAGIN NANDA
(Expert Member)**

**M/s. Goel Ganga Construction
A Partnership Firm
Through Atul Jayprakash Goel
Amit Jayprakash Goel
3rd Floor, San Mahu Complex,
Opp. Poona Club, 5, Bund Garden,
Pune – 411 001.**

**Applicant
Original Respondent No.10**

In the Matter of:

Mr. Tanajai Balasaheb Gambhire
Age: Adult, Occupation: Service
R/o. Flat No.16, CTS-296, Laxmi Apartment,
Near Shivaji Maratha High School,
White House Lane, Shukrawar Peth,
Pune-411 002.

APPLICANT

VERSUS

1.THE UNION OF INDIA,

Through the Ministry of Environment & Forest,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110 001.

**2.THE PRINCIPAL SECRETARY, ENVIRONMENT
DEPARTMENT,**

Government of Maharashtra,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032.

**3.STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY**

Through Member Secretary
15th Floor, New Administrative Building
Mantralaya, Mumbai – 400 032.

4.MAHARASHTRA POLLUTION CONTROL BOARD

Through its Member Secretary,
Kalptaru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema,
Sion (E), Mumbai.

5.MAHARASHTRA POLLUTION CONTROL BOARD

Through its Regional Officer, SRO
Jog Centre, 3rd Floor, Mumbai-Pune Road,
Wakadewadi,
Pune – 411 003.

6.PIMPRI CHINCHWAD MUNICIPAL COMMISSIONER

Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune – 411 018.

**7.SHRI. MAHAVIR THALIYAPPA KAMBE
CITY ENGINEER**

Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune – 411 018.

8.DISTRICT COLLECTOR – PUNE

President – District Environment Committee,
Pune.

9.SHRI. SHASHANK PHADAKE

Architect & Authorised person of sole space
1+2, Building No.7,
Shraddha Heritage, Pimpri,
Pune-411019.

10. M/S. GOEL GANGA CONSTRUCTION

A Partnership Firm
Through Atul Jayprakash Goel
Amit Jayprakash Goel
3rd Floor, San Mahu Complex,
Opp. Poona Club, 5, Bund Garden,
Pune – 411 001.

**11. FEDERATION OF SWAR-GANGA
CO-OPERATIVE HOISING SOCIETY LTD.**

Survey No.174/A, 176/A,177/A,
Sant Tukaram Nagar, Pimpri,
Pune-411 018.

**12. GANGA SKIES CO-OPERATIVE HOUSING
SOCIETY LTD.**

Survey No.174/A, 176/A,177/A,
Sant Tukaram Nagar, Pimpri,
Pune-411 018.

13. MR YOGESH MANGLASEN BEHAL

Vrundavan Bungalow,
Near virangula Centre,
Survey No.174/A, 176/A,177/A,
Sant Tukaram Nagar, Pimpri,
Pune-411 018.

.....RESPONDENTS

Counsel for Applicant(s):

Ms. Rashmi Shriram Pingle, Mr. Nilesh Bhandari, Mr. Abhijit Ingle

Counsel for Respondent(s):

Mr. R.B. Mahabal, Ms. Supriya Dangare for Respondent No.1.

**Mr. Aniruddha S. Kulkarni, Mr. Prashant More for Respondent
Nos.4 and 5**

Mr. Saket Mone for Respondent Nos.10,11

**Mr. Sangram Singh Bhonsle, Aarti Bhonsle, for Respondent Nos.12,
13.**

Date – 8th January, 2018

ORDER

1. Respondent No.10- M/s Goel Ganga Construction has raised exceptions to maintainability of the Main Application

No.163 of 2016 on the grounds of limitation, jurisdiction and plurality of reliefs.

2. Mr. Tanaji Gambhire, R/o Shukravar Peth, Pune has moved the Main Application for demolition of structures constructed in the project developed at Survey No.174A (Part), 175A(Part), 176A(Part) and 177A(Part), corresponding to CTS No.4859(Part), 4862(Part), 4863(Part), and 4865(Part), at Pimpri Waghere, Taluka Haveli, District Pune, falling within limits of Pune Chinchwand Municipal Corporation (PCMC) and restoration of the said area having regard to environmental damage caused by the said development. In addition thereto, the Applicant Mr. Tanaji Gambhire is seeking compensation for damage incurred to environment as a result of the said construction and for directions to the Authorities for action against the delinquents indulging in the acts of malfeasance and misfeasance, leading to development in question. At the outset, the Applicant made it clear that the relief sought at Prayer-Clause 'A' for demolition of illegal structures at the site in question and for restoration of the area is the principal relief, other reliefs being ancillary or consequential thereto.

3. Learned Counsel appearing on behalf of Respondent No.10 submitted that every Application has to be based upon a single cause of action and for one or more reliefs provided they are consequential to one another as per Rule-14 of the National Green Tribunal (Practices & Procedure) Rules, 2011.

He pointed out from the body of the Application that the Applicant had pleaded alleged violations of the Municipal Laws, the Maharashtra Regional and Town Planning (MRTP) Act, 1966, the Development Control Regulations (DCR) and the Maharashtra Land Revenue Code, 1966 (MLRC) at different stages of development giving rise to several causes of action and clubbed these causes of action to allege that illegal structures were raised during the development in question and sought several directions against the concerned Authorities for action against the Project Proponent (PP), the Architect of the project and City Engineer Mr. M.T. Kamble, and this approach to the case was in clear violation of Rule—14 of the National Green Tribunal (Practices & Procedure) Rules, 2011.

4. Learned Counsel appearing on behalf of Respondents countered these submissions and contended that the Applicant sought restitution of the environment damaged due to several illegalities committed by the Applicant in development of the said project by principally seeking demolition of the said illegal structures and other reliefs were ancillary or consequential thereto.

5. Examination of the Application reveals that the Applicant besides pleading the infractions of Municipal Laws, the Maharashtra Regional and Town Planning Act, the Development Control Regulations (DCR) and the Maharashtra Land Revenue Code, had also pleaded violations

of Environment Clearance Regulations (EC) and all the terms and conditions stipulated for 'Consent to Establish' or 'Consent to Operate' granted by the Maharashtra Pollution Control Board (MPCB) under the Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 (for short, Air and Water Acts) as well as the Hazardous Wastes (Management, Handling and Trans boundary Movement) Rules, 2008 and the Acts specified in Schedule-I of the National Green Tribunal Act, 2010. The Applicant also made references to damage to environment caused as a result of violations of law pleaded in the present case. Obviously, therefore, the Applicant chose to refer to the said structures as illegal structures and sought its demolition for bringing about restoration of the area in question.

6. The nature of environmental damage, if any, caused due to such development would ultimately decide the fate of this Application. 'Cause of action' is a bundle of facts which needs to be discerned from the total pleadings. Environmental damage is what prompts the present action. The Applicant has specifically pleaded in the Limitation Clause that what prompted him to initiate the present Application are revelation made to him in response to the R.T.I query. No other cause for action except the facts is pleaded in the present case. In this view of the matter, we are of the considered opinion that there is no violation of Rule 14 of the NGT (Practices and Procedure) Rules, 2011. The Application

being based on single cause of action and made for seeking principal relief of restitution of environment.

7. As observed hereinabove, the Applicant has raised issue of environmental damage suffered by environment due to several illegalities of laws, including enactments specified under Schedule-I of the NGT Act, 2010. How the environment suffered due to transgression of the Municipal Laws, MRTP Laws, Development Control Regulations and the Land Revenue Code is the question which needs to be answered upon hearing the Application on merits; both on the point of fact and law. At this stage, it will be imprudent to dismiss those contentions in relation to the Acts other than the Acts specified under Schedule-I of the NGT Act, 2010 i.e. the Municipal Laws, MRTP Laws, Development Control Regulations and the Land Revenue Code on the plea of jurisdiction. It will be interesting to see what cumulative effect of violations of those laws along with violations of the Environmental Control Regulations, Air and Water Acts and the Solid Waste (Management & Handling) Rules, has/had on environment so as to raise a substantial question relating to environment, including enforcement of any legal right relating to environment; and whether such violations warrant restitution of environment as claimed.

8. Referring to Section 14 and 15 of the National Green Tribunal Act, 2010, the learned Counsel appearing on behalf of Respondent No.10- M/s Goel Ganga Construction

contended that the Applications under Section 14 and 15 were to be filed within the prescribed period given in the respective provisions and the period of limitation is to be computed from the date of accrual of 'first cause of action'. He submits that the offending construction was commenced on 28th March, 2006, when the Commencement Certificate was granted by the Planning Authority and the buildings were completed far back in 2009 and, therefore, the Application filed in September/October 2016, stood clearly barred by period of limitation, which has to be computed from the date of commencement of the said construction. He further submits that the legislative intent and the scheme governing period of limitation are expressed unambiguously in the said provisions by use of the phrase 'cause of action first arose' and, therefore, the premise of continuing cause of action is clearly ruled out. In order to reinforce his contentions he relied upon the cases reported/delivered in **(2011(9) SCC 126) Khatri Hotels Pvt Ltd & Anr Vs Union of India and Anr** and the Judgment of Hon'ble High Court of Judicature at Bombay in the case of Windsor Realty Pvt Ltd (Judgment dated 1.3.2016 in **Writ Petition No.594 of 2015: Windsor Realty Pvt. Ltd Vs Secretary, MoEF & (8) Ors**). He further cited the Judgment delivered by this Bench in Jai-Javan Jai Kisan's case (Judgment dated 13th June, 2017 in **Application No.33 of 2016: Jai Javan Jai Kisan and (2) Others Vs Vidarbha Cricket Association and (9) Ors**);

Graminee Environment Development Corporation's case (Judgment dated 18th May, 2017 in **O.A 179 of 2016: Graminee Environment Foundation Vs Balaji Infrastructures Ltd and (6) Ors**). Mr. Suresh Waman Dhavale's case (Judgment dated 22nd September, 2017 in **O.A No.95 of 2014: Mr. Suresh Waman Dahvale and (2) Ors Vs MoEF and (17) Ors**).

9. It is correct that use of phrase 'cause of action first arose' has decisive consequence as regards computation of period of limitation prescribed under Section 14 and 15 of the National Green Tribunal Act, 2010. It is, therefore, necessary to examine as to when exactly 'cause of action first arose' in the present case. For understanding this, we will also have to first examine and consider the plea of dismissal of the present Application on the ground of 'locus standi' of the Applicant. He contended that the Applicant being resident of Shukravar Peth, Pune - a faraway place from the project in question - cannot be permitted to agitate as 'aggrieved person' within meaning of Section 18(e) of the National Green Tribunal Act, 2010. He submits with reference to the Judgment of Hon'ble Apex Court in the case reported in **(2013) 4 SCC 465: Ayubkhan Noorkhan Pathan Vs State of Maharashtra And Ors**. that the expression 'person aggrieved' does not include a person who suffers from psychological or imaginary injury and 'person aggrieved' must therefore necessarily be whose right, interest has been

totally affected or jeopardised. According to him, the Applicant is under obligation to show how he suffered legal injury. This submission sets us on enquiry to find out whether the Applicant is a stranger being removed from geographical distance between his residence within the limits of PMC at Shukravar Peth, Pune and the project site situate within the limits of PCMC.

10. Perusal of the main application reveals that the Applicant is seeking demolition of the illegal structure and consequently restoration of the area, substantially, therefore, the relief of restitution of the environment, allegedly damaged due to illegal construction - a relief under Section 15 of the National Green Tribunal Act, 2010. Besides, alleging breach of provisions of law other than those of the enactments specified in Schedule-I of the National Green Tribunal Act, 2010, the Applicant specifically contends that undue burden is cast on the resources and eco-system due to generation of waste water and solid waste beyond the limits stipulated in Consent to Establish at paragraph-18 of the Application. The Applicant has computed the total water requirement, total fresh water supply by the PCMC, total waste water generated and total solid waste generated with reference to residential, commercial and amenities provided in the project in question and presented in the application as follows:

“It is noted that the following table shows that the Actual Water Requirement, Waste Water Generated & Hazardous Waste, DG Sets installed at the site.

Table No.-12: Total Water Requirement

Sr.	Description	Population	Water Required	Total Water Required
1	Residential	3,510	135	3,73,850 Ltrs.
2	Commercial	62	45	2,790 Ltrs.
3	Amenity	755	45	33,975 Ltrs.
	Total Water Requirement Per Day			5,10,615 Ltrs/Day

It is noted that, as per Consent to Establish the daily water consumption is 473 CMD but actual water consumption in 510 CMD.

Table No.13:- Total Fresh Water Supply by PCMC

Sr.	Description	Population	Water Required	Total Water Required
1	Residential	3,510	90	3,15,900Ltrs.
2	Commercial	62	25	1,550 Ltrs.
3	Amenity	755	25	18,775 Ltrs.
	Total Water Supply by PCMC Per Day			3,36,325 Ltrs/Day

Table No.-14: Total Waste Water Generated

Sr.	Description	Population	Waste Water	Total Water Required
1	Residential	3,510	45	1,57,950 Ltrs.
2	Commercial	62	20	1,240 Ltrs.
3	Amenity	755	20	15,100 Ltrs.
4	68% of PCMC Supply			2,28,701 Ltrs.
	Total Waste Water Generated Per Day			4,02,991 Ltrs/Day

It is noted that, as per Consent to Establish, the daily waste water generation is 379 CMD but actual waste water generation in 402 CMD.

Table No.-15: Total Solid Waste Generated

That the solid waste generated is including the Organic waste, paper, plastic, Metals, Glass Rubber, Inert, STP Sludge etc.

Sr.	Description	Population	Solid Waste	Total Solid Waste Generated
1	Residential	3,510	0.6	2,106 Kg/Day
2	Commercial	62	0.3	18.6 Kg/Day
3	Amenity	755	0.2	151 Kg/Day
	Total Solid Waste Generated Per Day			2,275.6 Kg/Day

It is noted that the, as per Consent to Establish, the daily solid waste generated is 2,000 Kg/day but actual solid waste generated in 2,275.6 Kg/day.”

11. Learned Counsel appearing on behalf of the Applicant submitted that there is a Nalla along the site of the said project which meets River Pawna and flows downstream to meet River Mutha in Pune. This fact is not disputed by any of the parties to the present application. Thus, it can be seen that the location where the project is situated and the city of Pune are part of the common riverine system and as such the individuals in the project area and those living in the city of Pune share a common environment.

12. The record further reveals a copy of letter dated 17th November, 2014 at Annexure-IV Colly to the Rejoinder Affidavit dated 22nd March, 2017. Reading of this document on record points out that the PCMC had issued Notice to the Managing Director of the Respondent No.10 – M/s. Goel Ganga Construction to operate the STP in the project regularly. A grievance is found made in the said communication that the health of the local citizens was endangered due to overflow of sewage and its percolation in the land abutting the Nalla flowing along the said project. Obviously, the facts disclosed from the record signify damage to the environment which adversely influence the riverine system commonly shared by the locals as well as those who are part of such adversely impacted environment in the entire riverine system.

13. Environment is defined alike both in the Environment (Protection) Act, 1986 and the National Green Tribunal Act, 2010. In Section 2(a) and 2(c) of the said Acts respectively as under:

“2(a) “environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants and micro-organism and property;

(c) “environment pollution” means the presence in the environment of any environmental pollutant;”

There are no boundaries to the environment, and the inter-relationship which exists among and between water, air, and human beings, other living creatures, plants, micro-organism and properties matters when we have to interpret any legal right relating to the environment.

14. In the instant case as observed hereinabove, the Applicant shares environment with the locals in the project area, he being resident of city of Pune situated in the said riverine system. The Hon’ble Supreme Court in ***Aya Aubkhan Noorkhan Pathan case (supra)*** has held that only a person, who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. Legal injury is contemplated when there is infraction of a legal right. In this context, the Hon’ble Apex Court observed in the said case as follows:

“10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a

psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York and State of Rajasthan v. Union of India)”

15. The Applicant has prima facie shown that his legal right relating to environment i.e. right to clean environment is affected by unlawful acts of Respondent No.10 – M/s Goel Ganga Construction in the manner as pleaded in the application and it calls for its restitution. The injury alleged by the Applicant as aforesaid, therefore, cannot be dismissed as imaginary injury. The Applicant, therefore, needs to be regarded as person aggrieved having locus standi in the present proceedings.

16. In ***Khatri Hotels Private Limited and Another Vs. Union of India and Another, (2011) 9 Supreme Court Cases 126*** the Hon'ble Apex Court delineated the effect of the word "First" used by law makers in stipulating the period of limitation in following words:

"30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

17. There can be no two opinions regarding the use of the word "first" with the same rigour in Section 14 and 15

of the National Green Tribunal Act, 2010 for prescribing the period of limitation. The material provision in Section 15 of the National Green Tribunal Act, 2010 is reproduced herein below:

“15(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

(emphasis supplied)

18. In ***Windsor Realty Pvt. Ltd. case (supra)*** the Hon'ble High Court was of the prima facie view from the Section 14(3) of the National Green Tribunal Act, 2010 that by no stretch of imagination the cause of action would arise from the date of knowledge of the applicant about the alleged violation of law taking place or from the date on which environmental authorities were informed about violation and inaction on their part vide Paragraph Nos.33 and 35 of the Judgment. On similar lines and considering the facts in ***Graminee Environment Development Foundation case (supra)*** we had dismissed the application for restitution of the environment. Pertinent observations made by us in the Judgment delivered in ***Graminee Environment Development Foundation case*** are quoted herein below:

“12. In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as ‘cause of action’ but the actual act or its consequence constitutes ‘cause of action’ in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.

13. A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.”

For recognising the reason or cause necessary to actuate an action for restitution of the environment damaged, it is

not only the actual act of violation of law alone but it is the act and its perceptible adverse impacts on the environment necessitating its restitution that constitutes the cause of action in such cases.

19. In *Jai Javan Jai Kisan & Ors Vs. Vidarbha Cricket Association (Application No.33/2016 disposed on 13th January, 2017)* the application was filed by residents of Nagpur for restitution of the environment on demolition of VCA Stadium at Nagpur on 11th April, 2016.

We noticed that the cause of action first arose in the year 2008 upon the observations made by us as under:

“11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open spaces, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that

these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.”

(emphasis supplied)

20. In ***Surendra Waman Dhavale case (supra)*** we dismissed the application for restitution of environment with following pertinent observations:

“12. Here we are dealing with the case of patent event of massive construction perceptible to the public at large. Nothing was concealed as regards the construction in question. In such circumstance, the Ratio Decidendi arrived at in the case of Dr. V.N. Shrikhande is not applicable in the present case, more particularly for the reason that there was pre-existing jetty and nowhere the applicants have described or given the details of latent effects of harm/injury caused to the environment due to the construction in question which became patent in or about September 2013 the time when the notice dated 25th September 2013 was issued. It is the case of the Applicants that there has been massive cutting of mangroves in the year 2003 by Google imagery Communication ‘A-8’ for the purpose of construction of jetties. The first cause of action, therefore, in any case arose long back in the year 2003. Even by liberal estimation, the work of construction could be said to have been evident on its completion in the year 2006 vide Inspection Report dated 1st February 2006. In such situation, the Application which is filed on 6th September, 2014, in our view is grossly time barred.”

(emphasis supplied)

21. In this background we are obliged to consider the fact situation in the present case as found pleaded in the application and as revealed from the record. In the instant case it is not violations of law alone which have given rise to the present *lis* but the fallout of those acts as stated in the application in terms of damage to the environment that constitutes the cause of action. Needless to state that the cause of action is a bundle of facts and not a single fact

alone. For a person to be aggrieved in real sense, it is necessary that there exist circumstances manifesting the adverse impacts of the acts detrimental to the environment i.e. damage to the environment.

22. Furthermore, the “cause of action” has to be complete in case of an application for restitution of the environment under Section 15 of the National Green Tribunal Act, 2010. The composite set of facts necessary to culminate into the cause of action must so combine as to present all the ingredients necessary for invoking the said provision. The restitution of environment presupposes environmental damage and as observed hereinbefore environmental damage is what prompts the present action.

23. There can be cases wherein the environmental damage may not be perceptible due to assimilative and regenerative character of the nature but when it comes to light due to either increase in anthropogenic pressure of development exceeding the nature’s potential or exhaustion of nature’s potential to assimilate and regenerate herself any person aggrieved thereby is furnished with the cause of action for taking action against such wrong or injury to his legal right to clean environment. It is in this context the “Discovery Rule” evolved by the Courts in United States in case of ***Morgan Vs Grace Hospital Inc. 149 W.VA.783, 144 S.E. 2d 156*** and adopted by Hon’ble Apex Court in Dr. V.N. Shrikhande case [***AIR 2011 SC 212; Dr. V.N.***

Shrikhande Vs. Mrs. Anita Sena Fernandes] become relevant. The Hon'ble Apex Court while dealing with the issue of limitation in a case of medical negligence held:

“In case of Medical Negligence “Cause of action” does not accrue until the patient learns of injury/harm or in the exercise of reasonable care and diligence could have discovered the act constituting negligence.”

24. A person/patient may suffer legal injury due to the medical negligence when actually the negligence occurs. However, the cause of action, the Hon'ble Apex Court held does not accrue until the patient learns of harm/injury caused by such negligence in order to discover the act constituting negligence. Occurrence of harm caused to the environment is analogous to the harm caused on account of a medical negligence in a sense that it is a species for Tort like medical negligence and it could become perceptible only upon unfolding of future events. In the instant case, the cumulative effect of various illegalities or infractions of law including those of the enactments specified in Schedule-I of the National Green Tribunal Act, 2010 became evident when the incidence of overflowing of the sewage and its percolation in the land and Nalla flowing along the said project could be noticed - vide Notice/Letter dated 17th November, 2014 addressed to the Managing Director of Respondent No.10 - M/s Goel Ganga Construction at Annexure-IV Colly to the Rejoinder Affidavit dated 22nd March, 2017. The Applicant with the facts and figures collated by him has also specifically pleaded the

case of undue burden on the resources and eco-system due to generation of waste water and solid waste beyond the limit stipulated in Consent to Establish at paragraph No.18 of the application and as quoted herein above.

25. Such was not in the case in ***Application No.95/2014 [Mr. Surendra Waman Dhavale V/s 17 Ors.]***. We had, therefore, declined to apply the Ratio *Decidendi* arrived at in the case of Dr. V.N. Shrikhande in that case and more particularly observed that nowhere the applicants had described or given the details of latent effects of harm and injury caused to the environment due to the construction which became patent in or about September, 2013 the time when the Notice dated 25th September, 2013 was issued. However, in the present case the facts are different and the Applicant has specifically pleaded the facts leading to the first accrual of the cause of the action as unfolded with the turn of events.

26. The first cause of action – composite set of facts complete and distinct – arose in the present case when the environment, more particularly, its water dimension was found adversely impacted with the overflowing of sewage as pleaded in the application. The application for restitution of environment thus adversely impacted was filed on 20th September, 2016 well within the period of five (05) years prescribed under Section 15 of the National Green Tribunal Act, 2010 therefrom.

27. In view of the aforesaid discussion, the exceptions taken to the maintainability of the present application deserve to be rejected.

M.A. No.22/2017 is, therefore, rejected.

Matter be listed for hearing on 12th February, 2018.

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

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

Date: 8th January, 2018
mk

