

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

APPLICATION NO.04 OF 2014

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(Judicial Member)
HON'BLE DR. AJAY A.DESHPANDE
(Expert Member)

In the matter of:

AAM AADMI LOKMANCH,

Through its President

Mr. Pannalal Patiram Goyal,

Age 60 years, Occ: Advocate

Having registered office at:

S-8, Indraprastha Apartment,

112, Tadiwala Road, Pune-411 001.

And having its Correspondence office at

13 & 14, Balsara Apartments,

Next to Tata Consultancy Services,

113/2, Tadiwala Road,

Pune-411001.

.....**APPLICANT**

VERSUS

1. THE STATE OF MAHARASHTRA,

Through the Secretary,

Ministry of Environment and Forest,

Mantralaya, Mumbai.

- 2. THE DISTRICT COLLECTOR,**
Pune District, Pune.
- 3. THE COMMISSIONER,**
Pune Municipal Corporation,
Pune-5.
- 4. THE COMMISSIONER,**
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune-411018.
- 5. Mr. KISHANRAO DHAVJI RATHOD,**
Age 55 years, Occ: Business,
Having address at:
Kushal Saffron Associates,
427/2, Gultekdi Indl. Estate,
(Kataria High School),
Pune-411037.
- 6. MR. PANDIT DHAVJI RATHOD,**
Age 55 years, Occ: Business,
Having Address at:
Decom, Manik Baug,
Next to Puspa Mangal Karyalaya,
Sinhagad Rod, Pune.
- 7. THE SECRETARY,**
Environment Department,
Govt. of Maharashtra,
Maharashtra.
- 8. THE DIVISIONAL COMMISSIONER,**
Pune.
- 9. THE DIRECTOR GENERAL (Road Development)**
National Highways Authority of India,
G5 & 6, Sector 10, Dwarka,
New Delhi-110075 or, BAIF Bhavan Campus
Dr. Anibhai Desainagar, Warge Pune.
- 10. THE CHIEF EXECUTIVE OFFICER (NH-4)**
Reliance Infrastructure Ltd.,
H-Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. Pannalal P. Goel.

Counsel for Respondent (s):

Mr. D.M.Gupte a/w Supriya Dangare for Respondent No.1.

Ujwala Pawar DGP, Mr. A.S. Mulchandani AGP, Mrs. S.B.Vaidya, Law officer, for Respondent No.2.

Mr. Mr. P.S. Suryawanshi, a/w P.B.Joshi, EE PMC. Respondent No.3.

Mr. Amol Patoyeet, Mr. A.C. Potdar, Mr. Raju Kadu for Respondnet No.4.

Mr. Mr. Ashwin N.Misal, Rupali Nikam for Respondent Nos.5,6.

Mr.S.S.Chavan a/w Mr. V.V.Nighojkar, Mr. T.K.Tayade, M.V.Kini & Co, for Respondent No.9.

Mr. Hemant C. Chavan, Mr. D.T. Take-Deshmukh for Respondent No.10.

Date: 19th May, 2015.

J U D G M E N T

1. Pannalal Goyal, Advocate, claims to be the President of Aam Aadmi Lokmanch, a registered organization concerned with environmental issues. By filing this Application under Section 14 (1) read with Ss. 16 and 18 of the National Green Tribunal Act, 2010, mandatory injunction is sought to restore natural contour at foot base of a hill, particularly, the hill which is allegedly cut by the Respondent Nos. 5

and 6, situated at Wadachiwadi, within area of Pune Municipal Corporation (PMC). Besides, general relief is sought to issue directions to other Respondent Authorities to take necessary action for protection of hills from destruction and maintain foot based design of the hills in the natural survey.

2. According to Applicant – Aam Aadmi Lokmanch, there were large number of newspaper reports as well as electronic media reports, which showed destruction of hills around city of Pune for the purpose of land grabbing and illegal construction of buildings. Upon collecting due information, it was noticed by the Applicant that the hills were covered with vegetation and trees, but some of them were flattened, which diminished areas of township, forest areas as well as availability of oxygen stock available for inhaling. The hill cutting could give rise to landslides, loss of human life, floods and like calamities and, therefore, it is necessary to protect terrain of hills. The hills around the city are protective to ecology as well as possibility of encroachment of forest lands is also thereby curtailed. The Respondent Nos.5 and 6 have cut the hills at village Wadachiwadi, to facilitate illegal construction of buildings at the instance of developers. This violation of illegal extraction of the Minor Mineral

(Development & Regulation) Rules, 1957, was brought to notice of the District Collector, Pune and thereafter penalty of Rs.5,40,65,761/ was imposed on the Respondent Nos.5 and 6, which is recovered from them. The hill cutting not only caused natural shortening of one hill, but it also indicates potential danger of the hill-cutting being a threat to soil erosion that reduces vegetation, forestry, flora and fauna, natural support to the earth and ultimately pose environmental danger to nearby area, including residential area, which is likely to be avoided if there would be heavy rains that will cause slurry or mud to come down with force gush below the hill and enter in nearby houses without any control. There is no control mechanism to avoid such disaster as such. Therefore, hill-cutting ought to be avoided and dealt with stern hand.

3. By filing their written submissions – the Respondent Nos.5 and 6, submitted that the Application is not maintainable for the reason that it does not fall within domain of the NGT Act. They have pleaded that the Applicant ought to have approached the Civil Court concerned, seeking proper relief, if they wanted to file any suit. According to them, they have not done any illegal act. They submitted that they are

the occupants of plot which is 300m. away from the service road. They had obtained due permission for extraction of minor mineral (soil) from the Govt. authorities on payment of royalty. There was heavy raining on 10th July, 2013, at village Shindewadi, during course of heavy raining, huge debris heaped on road between two tunnels. Thereafter, a false media report was published that this incident occurred due to illegal hill cutting by the Respondent Nos.5 and 6. Therefore, they are falsely impleaded in the present proceedings on basis of media reports. They alleged that the Application is based upon media trial. They denied that they illegally had done hill cutting at the alleged site of Wadachiwadi.

4. By filing written say, the Respondent No.4, contended that the Application is not maintainable against it, because the area of hill in question falls within limits of PMC.

5. So far as the Respondent No.3 is concerned, it is pleaded that the accident had occurred on 10th July, 2013, at Shindewadi on National Highway No.4, due to unprecedented rainfall on that day and unauthorized construction activities carried out by the Respondent No.5 and 6 on Katraj hill-top due to which

the drainage line had caused blockage of the road at both sides. The Respondent No.3, submits that it has no role to play in so far as maintenance of the road and alleged destruction of hill is concerned. The Respondent No.3, submits that it has no control over the legal activity of the Respondent Nos.4,5 and 6. Therefore, the Respondent No.3, sought exoneration from liability in the matter.

6. By filing affidavit in reply for and on behalf of the Respondent Nos.1 and 2, the District Collector, Shri. Saurabh Rao, would submit that those who were found in illegal construction of minor mineral were dully duly penalized and recovery of royalty along with fine recovery was effected. He also filed another affidavit dated 14th November, 2014, which gives detailed information as regards area covered by the development control board, which comes within ambit of PMC. This affidavit shows that on fringe of Corporation, there is about 10km area which is available for development. His affidavit shows that unless building permissions are issued by the competent authority, no construction can be permitted in the said area. The developments and building permission is regularized and covered by the Maharashtra Regional and Town Planning Act, 1966

(MRTPA). The Municipal Corporation and Council, are declared as Standing Authority within their jurisdiction. Still, however, no such Planning Authority is constituted for remaining areas under the MRTP Act, 1966. The Collector is the Authority to permit development under sub-section (1) of Section 18 of the MRTP Act, 1966 in the said area. According to the Collector, he can impose fine along with collection of due royalty for extraction of minor mineral to get regulated unauthorized extraction of such minor minerals. He has, however, no power to grant, consent to regulate and control such activities beyond limits of Municipal Corporation and Council. However, he has submitted a proposal to the State Govt. to sanction adequate staff and delegate powers of Standing Committee to him vide various letters written from 21st August, 2009 till 3-12-2014. In view of essence of adequate number of staff, his control over such illegal activities of hill-cutting, removal of minor mineral without permission, non-compliances of various environmental regulations outside city of Pune cannot be duly controlled and particularly when such activities are done during Monsoon season in clandestine manner. He gave directions to the Tehsildar and SDO to submit action plan about

demarcation of flood line of rivers in Pune district vide his letter dated January 30th, 2015. The Municipal Corporation states that demarcation of BDP area under hill top and hill-top in slope, will have to be done physically. This work could not be carried out due to inadequacy of staff members and it is stated that for this purpose appointment of private agency may need for appointment to do such work through tender process to carry out the work within period of two (2) years. A separate budgetary provision is being made in this behalf with Pune Municipal Corporation (PMC) and the Govt. is moved for allocation of funds. It is stated that no permission is recommended or sought within area affected by slope of 1:5 and above, in the regional plan. According to the affidavit of the Collector, the Respondent Nos.5 and 6, carried out illegal hill-cutting and that it resulted into an accident, because the soil, debris and mud had blocked the middle road, which made it difficult to save life of victims who were pressed under the fallen debris of unauthorized construction activity, which collapsed at the place. It is stated that the Respondent Nos.5 and 6, have caused heavy damage to environment by their unauthorized acts.

7. By filling reply affidavit the Respondent No.9 (concessionaire/contractor) who had been working for construction of road at the place on BOT/DBFOT basis, resisted the Application. According to the Respondent No.9, all clearances etc. to the project are obtained from the concern departments prior to handing over road development work to it and responsibility of contractor is limited to execute the work as per specifications. The Respondent No.9, would submit that the work of National Highway (NHAI) No.4, was being executed by it as a contractor. The Respondent No.9, however, admits that it is duty of concessionaire/contractor to protect ROW/road from all kinds of encroachment and encumbrances as per clause (10.5) of the concessionaire agreement executed between the Respondent Nos.9 and 10. It has taken necessary steps for stoppage of illegal construction activity at Katraj hill-top by issuing a Notice dated 25.4.2011 to the Respondent No.5 of which a copy was marked to Tehsildar, Bhor, prior to occurrence of accident during rainy season. It is further submitted that the Respondent No.9 by letter No. NHA/PIU/PUNE/P-S-6 LANING /O &J/664 dated 15th July, 2011, requested the Collector to look into the matter of illegal construction activities at Katraj

hill-top and to stop such activities in order to avoid other mishap in future. The Respondent No.9, contends, therefore, that it has no legal concern or liability in the context of alleged hill-cutting and incident of alleged accident.

8. In view of pleadings narrated as above, following points arise for determination:

- i) Whether there took place illegal hill cutting at Katraj, somewhere between April to June or first week of July, 2014, which narrowed down passage of available entry or egress to Pune and outside?
- ii) Whether the Respondent Nos. 5 and 6 were issued permit to extract minor mineral by the office of Collector and under the garb of such permit they committed illegal activity of hill-cutting?
- iii) Whether the then Tehsildar, Bhore was made aware and could have probably stopped the illegal activity of hill-cutting with the help of Respondent No.9 or, other officials and could have also stopped illegal construction of building, which was being constructed by the Respondent Nos.5 and 6 at the hill-top, which he could have noticed without any extraneous aid?
- iv) Whether the Respondent Nos. 5 and 6, in connivance with Tehsildar, Bhore and the Respondent No.9 caused extensive irreversible

and uncontrolled environmental loss due to hill-cutting at Katraj, which resulted into death of innocent girl, and her mother who were pressed under debris that had fallen on them?

v) Whether above Respondents are liable to pay compensation, restoration charges and restoration? If yes, in what manner and to what extent?

9. At the threshold, it may be stated that the reply affidavit filed by District Collector Saurabh Rao, reveals that out of eight (8) talukas, within Pune district, certain violations were found to have been committed by the Residents of Haveli Taluka. His affidavit shows that Notices were issued to 65 persons and fine has been recovered from one Ghanshyam Dahiwal, to the tune of Rs.12.50Lakhs. So also, Notice is issued to M/s Kumar Sinu Developer P. Ltd to show cause as to why fine of Rs.94,600/- be not recovered from it. There is report dated September 15, 2014, (Ex.A-1), from Tehsildar Haveli. This report shows that a large number of violations and extraction of minor mineral by the villagers. Other record purports to show various violations, which ultimately resulted into action taken by the revenue officer under Section 49 (1) of the Maharashtra Land Revenue Code. Obviously, the revenue record clearly shows that there are blatant

violations committed by a large number of villagers, who extracted minor mineral without authorization and due permission. There is categorical statement in the report dated September 15, 2014 (Exh A-4) submitted by Tehasildar, Haveli (Pune) that reveals unauthorized hill-cutting/hill destruction, minor mineral extraction during 2011-13. This report shows that there were 62 cases and in many cases hill-cutting was done by the developers. It goes without saying that hill-cutting was adopted by the villagers to earn easy money at the behest of developers/contractors of buildings, and some of the builders which projects could be without permission, but nobody bothered to take care of loss of environment and also unauthorized acts of developers.

10. The Panchnama in respect of present hill-cutting depicts that in Gut No.112, approximately, hill-cutting of area at the height of 75 x 30 ft or more was being done with the help of Poklain machine. The operator of the machine named both the Respondents, who had engaged them on daily wages for such work. There is clinching evidence about involvement of the Respondent Nos.5 and 6, in the act of destruction of midst of hill and that too at height of about 25-30 ft. which appears to be improbable unless and until they

had determined to cause serious damage to environment to the area. The mud, soil and debris as well part of hill collapsed on earth, under which an innocent girl was pressed to death. Result of such hill-cutting is not only an adverse impact on environment, but is pathetic due to death of small girl.

11. It is not in dispute that the Respondent Nos.5 and 6, were given permit to extract minor mineral from land Survey No.112/A, at Shindewadi, Taluka Haveli. They were, however, not permitted to destruct any part of the hill for the purpose of extraction of minor mineral. At the same time, it is also true that no authority controlled the work at the site where extraction of minor mineral was being done and verified whether under the guise of permit the Respondent Nos.5 and 6, indulged in hill-cutting for using minor mineral, in order to construct unauthorized buildings. It appears from the record that land Survey No.112, is owned by the Respondent Nos.5 and 6 and their family members. There are hills in the said land. They illegally cut hills without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. Acts of the Respondent Nos.5 and 6 made the area of hill

fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. At many places, the hill cutting is noticed prior to and after the pathetic incident and now inquiry is undertaken by the concerned revenue officials.

12. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area, which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:

Hill > noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.

The wordbook has given meaning of expression 'Hill' as follows:

231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a

mountain and is lower in elevation. Hills rise less than 305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.

Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock."

13. Draft Development Control Regulation Plan (DCR) of Pune is yet not approved by the PMC or Government. The cutting of hill by the Respondent Nos.5 and 6, created destruction to render a part of land useless, including development thereof for plantation of trees. It goes without saying that the destruction of hill could not have occurred without connivance or at least purposeful act or omission by the Project Proponent i.e. NHAI (Respondent No.9). It is in the affidavit of Mr. Rajeskumar Kundal, that agreement requires to take necessary steps for stoppage of illegal construction activity at Katraj hill

top. However, a Notice dated 25th April, 2011, was issued to the Respondent No.5 and copy of the same was marked to the Tehsildar, Bhore before occurrence of the incident. The Collector, Pune was requested to look into the matter. The authorities were thus, asked to take appropriate steps for stoppage of illegal activity in order to avoid major mishap and to ensure not to occur. They stated that one Mrs. Vishakha Vadekar, and her daughter died due to water flow, which gushed from the hill top and poured on the road.

14. We do not find any significant material to show that the Respondent No.9 (NHAI) has taken reasonable steps to avoid the untoward incident. We do not find copies of the complaint made by NHAI to the authority. Assuming for a moment that such communications were made at the fag end of April, 2011, yet, it was responsibility of NHAI to persuade said authority or the higher authority about inaction after 2011. The incident of raining in which Mrs. Vishakha Vadekar and her daughter had flown away, is said to have occurred on 10th July, 2013. Obviously, the Respondent No.9, appears to have kept silence for about two (2) years, inspite of knowledge that the work of hill cutting was going on. In our opinion, NHAI (Respondent No.9) perhaps was likely to be impliedly

benefited due to the illegal act of hill cutting due to availability of murum, stones and soil for the work for its project. The contractor of NHAI was, therefore, interested in keeping the fingers crossed.

15. Considering probability and circumstances appearing on record, we have no hesitation in holding that there took place degradation of environment to large extent due to hill cutting at Katraj. We have further no hesitation in holding that the hill cutting occurred due to illegal acts of the Respondent Nos. 5,6 and with or due to act of omission of the Respondent No.9. They are liable to pay compensation to the legal representatives of the victims of incident in question. They are also liable to pay restitution charges and penalty for causing damage to the environment, in order to avoid such incident in future.

16. We deem it proper to give certain further directions to the concerned authority. In keeping with these findings, we direct:

17. a) The Respondent Nos.5, 6 and 9 shall pay amount of Rs.50Lakhs as joint penalty imposed on them for causing environmental damage in the nearby area of Katraj, due to the hill-cutting.

b) This amount shall be deposited with Collector (Pune) within six (6) weeks, else Collector can recover the amount as arrears of Land Revenue. This amount shall be deposited by Collector in special escrow account, and the amount be spent for environmental protection and conservation activities, including hill protection and conservation in the district.

c) The Respondent Nos.5, 6 and 9 shall jointly and severally pay amount of Rs.15Lakhs towards compensation to the legal representatives of deceased Mrs Vishakha Vadekar, and her daughter if identity of legal representatives is proved before the Collector. The above three (3) Respondents shall immediately within four (4) weeks, deposit such amount in the office of Collector, Pune for payment to the legal representatives of deceased in the incident. The Collector may issue a publication for locating legal representatives of above deceased women for payment of compensation and pay to them compensation after satisfaction of identity of the legal representatives by making due proportion as provided under the relevant provisions of the Succession Act.

d) The Respondent Nos.5, 6 and 9 shall also deposit amount of Rs.10Lakhs with the office of Collector for plantation of trees in order to restore damage caused to environment, though it may not be a sufficient remedy.

e) The Respondent Nos.1,2,3,4,7 and 8 shall give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. So also, instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages.

f) In case of emergency or public purpose, the Hill cutting may be done by the concerned office of the Collector/Commissioner by passing a reasoned order or if so required by Law as provided under the Environment (Protection) Act, 1986 and the Regulations thereunder.

g) Respondent Nos.5, 6 and 9 shall pay amount of Rs.20,000/- to the Applicant as litigation costs and shall bear their own costs.

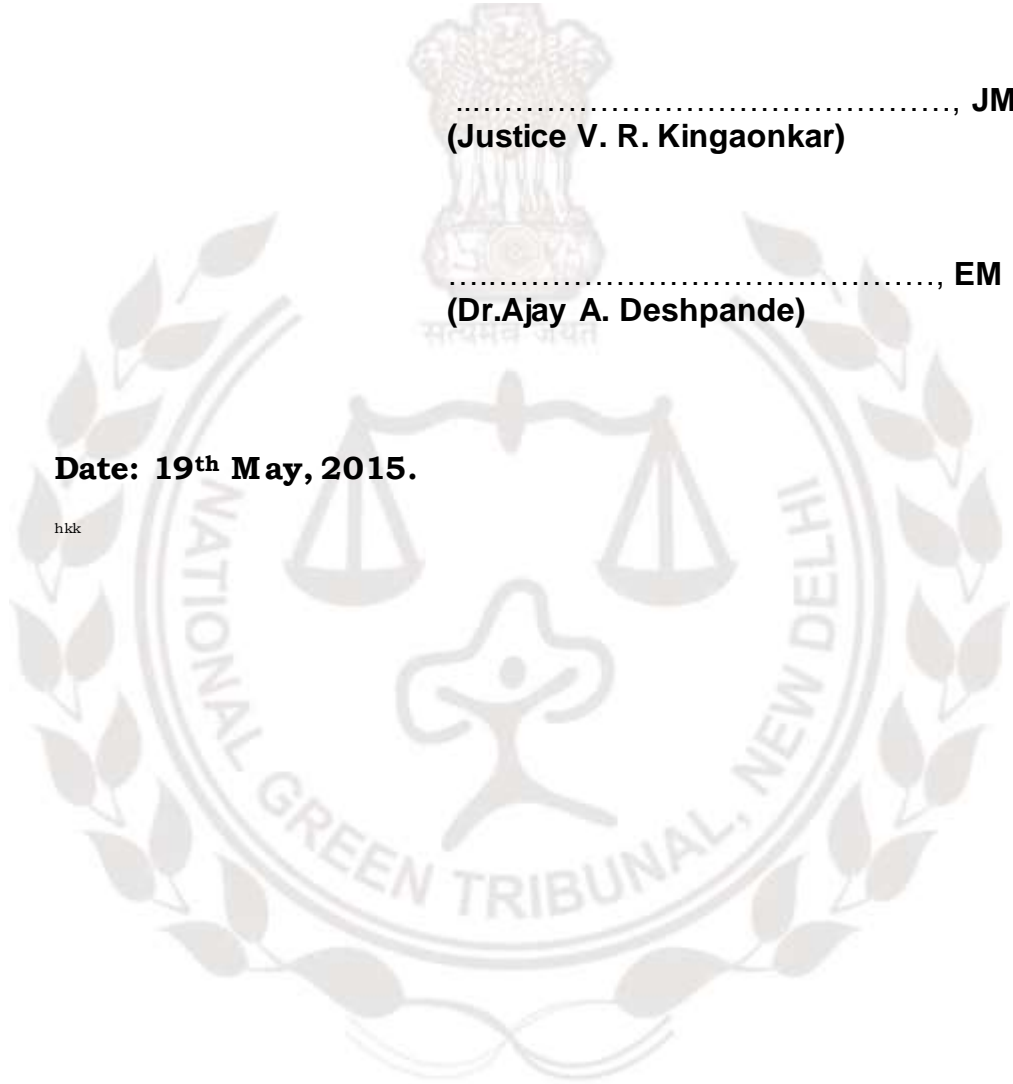
The Application is accordingly disposed of.

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

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

Date: 19th May, 2015.

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NGT