

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

APPLICATION NO. 60(THC) OF 2014

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR

(Judicial Member)

HON'BLE DR. AJAY A.DESHPANDE

(Expert Member)

In the matter of :

THE VILLAGE PANCHAYAT OF TOP,
Taluka Hatkanangale, District Kolhapur
By its' Sarpanch, Shri. Avaghadi Sakhoba
Ganjane, Age-47 Yrs, Agriculturist,
Resident of village Top, Taluka Hatkanangle,
Dist. Kolhapur for and on behalf of the
Villagers of village Top in representative capacity.

.....**APPLICANT**

VERSUS

- 1. THE STATE OF MAHARASHTRA,**
Represented by Collector of Kolhapur
Collectorate, Swaraj Bhawan, Nagala Park,
Kolhapur.
- 2. THE COLLECTOR OF KOLHAPUR,**
R/o. as above.
- 3. THE TAHASILDAR,**
Taluka Hatkanngale,
Tahasil office Hatkanangale,
District Kolhapur.
- 4. THE DISTRICT SUPERINTENDENT OF POLICE,**
Trabai Park, Kolhapur.
- 5. THE KOLHAPUR MUNICIPAL CORPORATION,**

Bhausingji Road, Kolhapur,
Through its Commissioner.

6. THE MAHARASHTRA POLLUTION CONTROL BOARD,

Having its office at Kalpatru Point,
2nd, 3rd and 4th Floor, Opp. Cine Planet,
Near Sion € Mumbai 400 022
Through its Principal Secretary.

7. THE MAHARASHTRA POLLUTION CONTROL BOARD,

Regional Office, Kolhapur, Udhog Bhavan
Near Collector office, Kolhapur 416 003.
By its regional officer.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. O.D. Bhorkar a/w Mr. M.P. Patil

Counsel for Respondent (s):

Mr. Manojkumar Aitwade, for Respondent No.1 to 3.

**Mr. A.S. Mulchandani, AGP a/w Mr. Sunil Dongre for
Respondent No. 4.**

**Mr. Dhairyashil V. Sutar, a/w Vijay Laxmi Mr. A.K.
Waghmode, DMC for Respondent Nos.5,6.**

**Mr. D.M.Gupte a/w Supriya Dangare, for Respondent
Nos.6,7.**

DATE: 7TH JULY, 2015

J U D G M E N T

1. Originally, Civil Suit (Regular Civil Suit No. 351 of 2010) was filed by Applicant – Village Panchayat of Top, in the Court of Civil Judge, Senior

Division, Kolhapur, seeking declaration that allotment of land for Kolhapur Municipal Corporation (KMC), waste landfill site within limits of village Top, particularly, within area of Gaothan, is illegal and the Respondents be injuncted from using the said lands for filling of Municipal Solid Waste (MSW). By order dated March 27, 2014, learned Civil Judge, Senior Division, Kolhapur, transferred the suit to this Tribunal, in view of Judgment of the Apex Court in case of **Bhopal Gas Peedith Mahila Udyog Sangathan v/s Union of India (2012) 8 SCC 326.**

The proceedings were thereafter converted into the Application under Section 14(1) of the National Green Tribunal Act, 2010.

2. The dispute relates to land bearing Block No.520, admeasuring 14-H, 31-Aars and block No.565-A, admeasuring 5H, 15-Aars, situated at Top, taluka- Hatkanangale (District Kolhapur). It is an admitted fact that previously disputed lands were used as stone quarry, for period of about thirty (30) years. The stock of said minor mineral had exhausted due to extraction of the same up-to optimum quantity and, as such, the quarry was abandoned since long before commencement of litigation. The disputed lands were inspected by the Collector and other

Authorities of Kolhapur district. A report dated March 7, 2007, was submitted by the District Mining Officer (DMO), to the District Collector, Kolhapur. By order dated September 17, 2008, the Collector allocated disputed lands to Respondent No.5- KMC, for use thereof as landfill site for dumping of waste generated in the KMC.

3. It is the case of Applicant that one Ramesh Desai, who is President of Employees Union of Respondent No.5 – KMC, had filed Writ Petition No.8296 of 2008, in the Hon'ble High Court of Bombay, seeking mandamus against KMC and others, directing KMC to takeover possession of the disputed lands for use thereof as landfill sites for MSW. The Applicant alleges that though it was a necessary party yet it was not impleaded in the said Writ Petition, notwithstanding the fact it was party in the earlier suit bearing R.C.S. No.567 of 2007, and reference of said suit was made in that Writ Petition. The real facts and important material had been suppressed from the record from the Hon'ble Division Bench of High Court. By suppressing the real facts, ex-parte order was asked for to deliver possession of disputed lands in favour of Respondent No.5 –KMC. The Hon'ble Division Bench issued such orders on

19-12-2008, which had been fraudulently obtained by suppressing material facts and in collusion between Respondent No.5 -KMC and Petitioner Ramesh Desai. Thereafter, water pump installed by the Applicant at the disputed land for suction of the water, accumulated in the quarry, for use of the villagers, was forcibly removed and thereafter Respondent No.5 -KMC intends to fill up the abandoned quarry with garbage collected from Kolhapur city. The use of abandoned quarry for dumping of garbage will give rise to serious environmental problems due to toxic gaseous emissions that would be generated and would cause health hazard to the villagers. The population of Top is about 12,000 around the disputed lands. The disputed land is scientifically unfit to be used as landfill sites. The disputed land is in the proximity of National Highway (NH) No.4 and also near a protected Sanctuary. The area of MIDC, Shirol, is at a distance of 40m from the disputed land on the southern side thereof. The necessary Environmental Clearance (EC), is not obtained by Respondent No.5 -KMC for the project activity. There are other alternative lands available with the KMC in the city of Kolhapur for landfill purpose and, as such, very selection of the

disputed lands, is illogical, irrational, malafide and improper. Therefore, the Applicant has sought quashing of relevant orders whereby the landfill site is allotted to the KMC and has also sought perennial injunction, restraining the KMC from using the disputed lands for dumping of garbage/MWS therein.

4. While denying all material averments made by the Applicant, main contesting party, namely, Respondent No.5 –KMC countered allegations by filing its written statement. According to the KMC, the disputed lands are not within Gaothan area, but are about 3km away from Gaothan. It is further alleged that NH No.4, runs between the proposed landfill sites, which are on western side thereof and village Top, which is on eastern side thereof. Thus, location of village and the disputed lands are flanked at distance of more than 3km from NH No.4. It is, therefore, alleged that the disputed lands cannot possibly be used as Gaothan (Pasture lands), inasmuch as the cattle cannot be brought from village Top to other side of NH No.4 for the purpose of grazing in the disputed lands. Respondent No.5 – KMC denied that the landfill site would create gaseous emissions. According to the KMC, abandoned quarry is sometimes partly filled with

stagnant rain water, because hard rocks do not allow percolation of the water in the adjoining lands. Therefore, it is the case of KMC that water available during rainy season in the quarry is not potable, cannot be used for human consumption, consumption of animals or any irrigation purpose. There is no aqua-life in the stagnant water and, as such, there would be no loss to ecology if the abandoned quarry is allowed to be used as landfill site. Respondent No.5 –KMC denied that dumping of waste material in the disputed lands would cause any environmental harm to the Applicant and as such activity requires any EC. So also, it is denied that there is alternative land available with the KMC for compliance of the Municipal Solid Waste (Management & Handling) Rules, 2000. According to the KMC, the Collector, Kolhapur is under legal obligation to select proper site for use of garbage disposal and waste handling/disposal. The KMC further averred that the authorities have acted with due diligence and in accordance with the provisions of the Municipal Solid Waste (M &H) Rules, 2000.

5. It appears from the record that originally Respondent No.1- State, Respondent No.2, the Collector and Respondent No.3- Tehasildar had filed

reply affidavits in the suit. They supported case of Respondent No.5 – KMC. According to them, landfill site is selected because it is away from local habitation exposure and water bodies. They denied that there are historical monuments or places of religious interest in the vicinity of disputed lands. They denied that EC is necessary for the site selection and project of MSW. They contended that they have taken due care to follow the Municipal Solid Waste (Management & Handling) Rules, 2000. They further denied that the use of disputed lands for dumping of garbage is likely to cause environmental degradation in the area surrounding the disputed sites. They submitted that necessary approval for selection of landfill site is granted by the Maharashtra Pollution Control Board (MPCB) and it is for public purpose that dumping of garbage is sought to be undertaken in the disputed lands. The contesting Respondents allege that the Application is filed without any substantial environmental dispute and without having any cause of action. It is for such reasons that they sought dismissal of suit/Application.

6. It may be noted that after conversion of the suit into the Application under Section 14 of the NGT Act,

2010, additional reply was filed by Respondent No.5-KMC and its Commissioner (Respondent No.6), which practically reiterates the earlier pleadings. Therefore, in order to avoid repetition of pleadings, the averments in the additional reply are not required to be reproduced.

7. We have heard learned Advocates for the parties and learned DGP. We have carefully perused the entire record. The issues involved in the present Application are set out as stated below:

- i) Whether disputed lands are selected and ordered to be used as landfill sites by the Collector, Kolhapur without following due procedure laid down under the Municipal Solid Waste (Management & Handling) Rules, 2000 and with any kind of malafide intention, though other landfill sites at Kolhapur are available which could be selected without any hindrance and could be permitted to be used for landfilling, disposal of MSW and composting plant as per the Municipal Solid Waste (M & H) Rules, 2000?

- ii) Whether use of disputed lands require any EC for the purpose of landfilling under the Municipal Solid Waste (M & H) Rules, 2000?
- iii) Whether the Applicant has established that disputed lands are adjacent to any recognized religious place of archeological importance, wildlife sanctuary and could not be selected as landfill site under the Municipal Solid Waste (M & H) Rules, 2000 on any valid ground?

8. Considering entire internal dependency of above three (3) points, we deem it proper to deal with them collectively. The generation of MSW from KMC appears to be approximately 70-75MT/D. Respondent No.5- KMC has come with a clear and unambiguous case that the disputed lands will be used only as landfill site and not for the purpose of processing MSW by installation of MSW processing plant. Nay, no composting activity also is proposed in the disputed lands or any remaining land. Thus, except and save for the dumping of dry garbage/litter, landfill site will not be used by the KMC. The KMC has submitted an action plan in this context, during course of final argument, which changed the texture

of the main defences and narrowed down the controversy. Obviously, if the disputed lands are not to be used for processing of the MSW and no such plant is to be installed at the place of disputed lands, it appears *prima facie* unlikely that mere dumping of dry garbage in the abandoned quarry will cause any substantial environmental degradation, which will be hazardous to health of the villagers. We may take note of the fact that there is hardly any record to show that use of stagnant water from quarry for drinking purpose by the villagers of the Applicant. There is no record to show that electricity connection was made available for any electricity pump to draw water from the quarry in large quantity, which could be poured in a tank wherefrom that might be distributed to the villagers of Top for drinking purpose. The averments, in this behalf, appear to be untrue.

9. Mr. Suryakant Doke, the Regional Officer of MPCB filed affidavit to the effect that on basis of report of a Committee for scrutiny of material to consider authorization of MPCB to disputed lands as per the Municipal Solid Waste (M & H) Rules, 2000, the Application for authorization was considered. The Committee recommended the

Application for grant of authorization in favour of Respondent No.5- KMC up to limit of 100 MT/D at disputed lands (sites). So, the MPCB granted authorization under Rule-6 (3) under the Municipal Solid Waste (M & H) Rules, 2000 on basis of material available before the Committee. The affidavit, thus, corroborates case of Respondent No.5- KMC as regards due authorization of MPCB for use of disputed lands as landfill site.

10. Before proceeding further, it may be noted that Applicant – Village Panchayat of Top, had filed a suit for perpetual injunction, (RCS No.451 of 2010). It appears that the suit was filed after withdrawal of the Writ Petition No.1997 of 2009, which was permitted to be withdrawn on 25th January, 2010. Much prior to that Hon'ble High Court in the Writ Petition No.8296 of 2008 (Ramesh Desai vs Kolhapur Municipal Corporation), directed the Collector, Kolhapur to immediately take over possession of the disputed lands. The possession of both the lands was transferred to KMC. The use of disputed lands could not be, however, done for landfilling and disposal of MSW, in view of ad-interim injunction issued by the Civil Court. Now, since the civil suit

itself is transferred to this Tribunal, ad-interim injunction would be subject to final decision of this Tribunal and would not hinder directions of this Tribunal, which may be passed at the end of the proceedings.

11. With above clarification, we shall proceed to examine legal aspects of the Municipal Solid Waste (M & H) Rules, 2000.

12. The Hon'ble High Court of Bombay took cognizance of relevant issues in various Public Interest Litigations, and gave directions which may be reproduced as follows:

- i) All dumping sites which do not comply with MSW Rules and other governing applicable laws and these directions and the sites which are not designated as per rules shall be discontinued and closed within a period of three months or an acquisition of new site whichever is earlier.
- ii) All sites which have exceeded their capacity shall be closed down as per procedure under MSW Rules.
- iii) The Local authorities shall take steps for treatment of solid waste in accordance with MSW Rules either through themselves or through an identified agency.
- iv) The Municipal Corporation and counsels shall adopt measures as per Schedule III of MSW Rules to ensure—

- (a) Segregation of Municipal Solid Wastes.
- (b) Setting up facilities for processing biodegradable wastes by composting, vermin composting, anaerobic digestion or any other biodegradable processing.
- (c) Eventual elimination of landfilling requirements for biodegradable wastes.
- (d) The State Government shall take decision on the pending proposals/applications made by the local authorities for grant of lands on lease or otherwise, or grant of NOC etc. within a period of 45 days from date of this order.
- (e) The Local authorities which have not made such applications shall do so within a period of 4 weeks to the State Government and the State Government shall take a decision thereon within 45 days thereafter...

The Hon'ble High Court in Para No.15 also given directions about Action Plan and time schedule for Treatment and Processing of Solid Waste as follows :

Sr.No	Action Plan Details	Time Schedule
1	To develop mechanism for collection, segregation (at source/site) and transportation to processing facility and landfill site.	Within 2 months after possession of land.
2	To settling up and commissioning of waste processing facility.	
	(a) Selecting technology	Within 2 months after possession of land.
	(b) Preparation of detailed project report,	Within 2 months after selection of technology.
	(c) Obtaining clearance from MCZMA/MOEF	Within 4 months from submission of the proposal by the ULB.
	(d) Inviting tenders and appointment of Agency.	Within 2 months after obtaining clearance from MCZMA/MOEF.
	(e) Issuance of Work Order with the time frame & necessary conditions by	Within 1 month.

	Municipal Authority	
	(f) Settling of MSW processing facility & making it operational.	Within 18 months from the date of work order.
	Development & Commissioning of secured landfill site	Within 18 months from the date of work order.
3	Development & Commissioning of secured landfill site.	Within 12 months from the date of work order.
4	Closure of cell & its monitoring for at least next fifteen years as per Rules.	After exhausting capacity of the existing cell.
5	Improving of existing facility.	
	(a) Closure of existing dump site if required as per MSW Rules.	Within 16 months.
	(b) Setting up and commissioning of waste processing facility if not available at existing site.	
	(c) Improvement in the existing waste processing facility and secured landfill site in accordance with the MSW Rules.	
	(d) Development of new secured landfill site at existing site if not available.	
6.	(a) Application for Authorization by Municipal Authority (Rule 4(2))	As per Rules.
7.	(b) Grant of a authorization for processing facility and landfill site (Rule 6(2))	

The Hon'ble High Court in the above said cited order further gave directions that –

“ In the Solid Waste/Garbage Management following issues shall be considered for long term and future planning by Local Authorities State and Central Government and Pollution Control Boards :

- i) Daily operations and maintenance of Dumping and Landfill sites.

- ii) Daily operation and maintenance of Waste Treatment Facilities of Biodegradable wastes.
- iii) Fire protection during dump levelling.
- iv) Garbage Bio-mining
- v) Closure of sites which have attained their maximum capacity.
- vi) Use of closed landfill sites as per MSW Rules.
- vii) Subsequent land use.
- viii) Water consumption for capping.
- ix) Methane Generation.
- x) Encouraging the Local authority to adopt these measures and comply with the direction to earn Carbon credits.

The local bodies may assign the above work to private entrepreneurs who will undertake this work in entirety including acquisition of land as well as installation of treatment plants.

(b) The local authority/corporation shall issue directions to the residents for solid waste segregation of garbage as per rules and take steps for its compliance.

The State Government/Local Authorities shall give highest priority for establishing/setting up common facilities or landfill/dumping sites/processing facilities.

Above directions were issued by the Hon'ble High Court vide order dated 2.4.2013, in the context of Writ Petition No.4542 of 2010, along with Civil Application No.9199 of 1998 and similar other Applications (**Sadashiv Shivaram Jadhav Vs Ambarnath Municipal Council and Ors, M/s Ramtek Industries vs State of Maharashtra and Ors etc.**)

13. Perusal of record shows that the entries in 7x12 extracts do not indicate any use of disputed lands for residential purpose. The revenue record does not show existence as locality nearby the disputed lands. It appears, however, that in the recent past few small houses are constructed nearby the disputed site. The case of Applicant appears to be on shaky grounds. Still, however, during course of hearing, it came to our notice that certain land is available with KMC at Kasba-Bawda. Availability of such alternative land could be explored by the KMC and, therefore, we enquired with learned Advocate Shri. Sutar to obtain instructions from the Municipal Commissioner of KMC as to whether activity of treating MSW collected from city of Kolhapur can be managed at Kasba Bawda. Learned Advocate obtained such instructions. We must appreciate his fair efforts and place on record the facts that due to his indulgence, at least, KMC has decided to hand over 5 Acres land available from demolition of old establishment of Sewage Treatment Plant (STP), to deal with MSW disposal. The MSW plant work is being handed over to M/s Kolhapur Green Energy P. Ltd, w.e.f. 30.3.2015. A plan dated 22nd May,

2015, in compliance to query and necessary steps to be taken for degradation of waste, MSW Proceeding plant/incineration, is now placed on record along with affidavit of the concerned Authority, under the signature of Deputy Commissioner, KMC. We accept statement of learned Advocate Shri. Sutar and compliance report dated 22nd May, 2015. KMC has also obtained authorization for a small landfill site at Takala, within corporation area, which would be used in transition period, till the proposed MSW proceeding plant is operational. Obviously, the disputed lands will not be used for MSW dumping or installation of incineration plant. The disputed lands will be used only and only for the purpose of landfilling of non-biodegradable waste as permissible under the MSW Rules. Necessary fallout of said arrangement would be that village Top is not likely to suffer serious environmental degradation, because there would not be overflowing of leachates, foul odor of MSW, etc. Already, the disputed lands are abandoned quarries and, therefore, are sufficiently deep in which some dry garbage can be dumped without causing environmental degradation and any

problem to the inhabitants of village Top. Obviously, the KMC will have to develop this landfill site, in strict compliance of specifications given in the MSW Rules, which shall be verified by the MPCB and GSDA. Under these circumstances, we do not find any substance, in the instant Application and, particularly, in the changed circumstances which occurred during intervening period of the present Application.

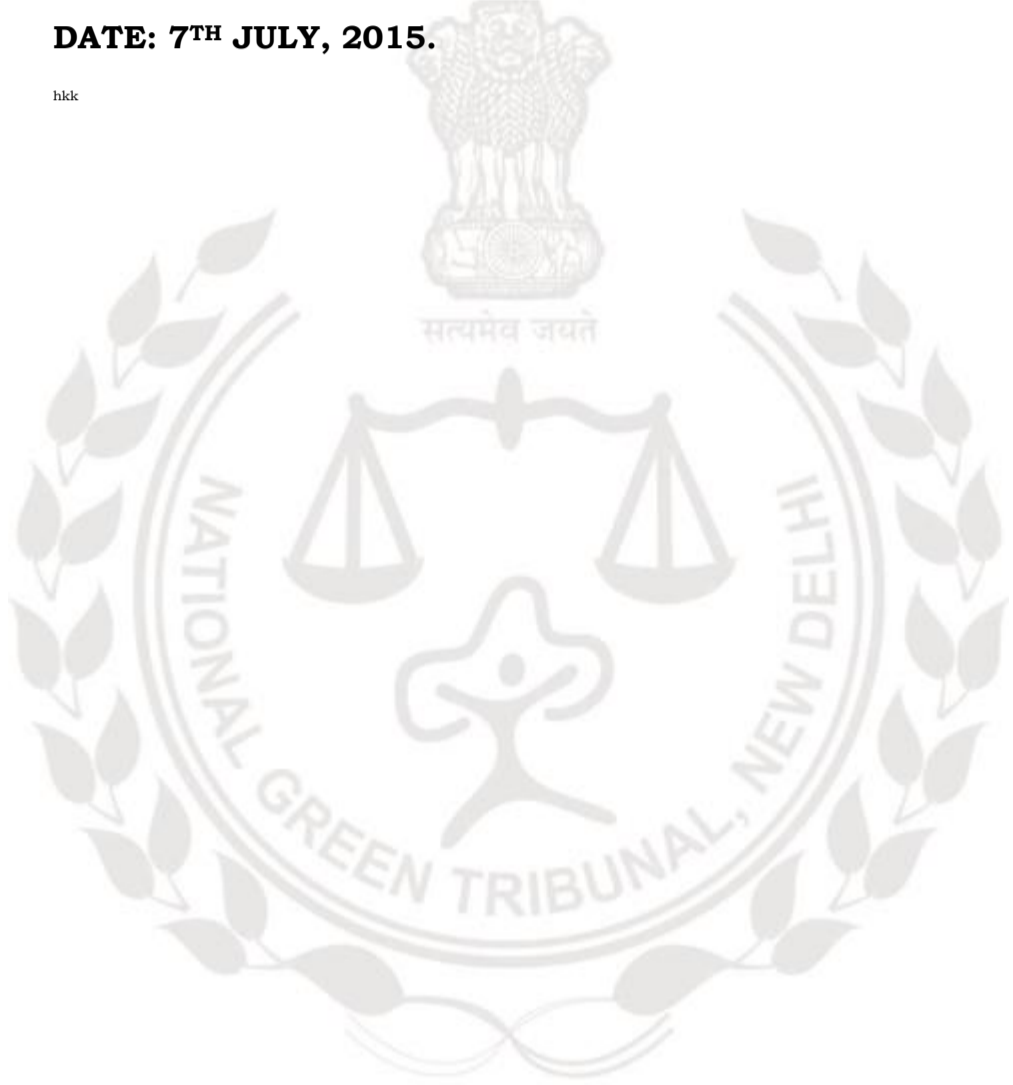
14. Considering totality of discussion made above and reasons ascribed hereinabove, we dismiss the Application with direction to the KMC to abide itself by the programme submitted to this Tribunal on 22nd May, 2015 with further direction that the landfilling activity in the disputed lands shall not be undertaken without construction of compound wall of 6ft. height around the disputed lands, and without installation of MSW Plant, Incineration Plant, Composting Plant, at Kasba Bawda as per proposed action plan dated 22nd May, 2015, which activities shall be undertaken '*Pari-pasu*'. With these directions the Application stands disposed of with no order as to costs. All Misc. Applications also stand disposed of in above Application as may have been pending.

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

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

DATE: 7TH JULY, 2015.

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