

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.35 OF 2014**

CORAM :

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

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

B E T W E E N:

GAJANAN BALARAM PATIL,

Adult, Age 35 years, Indian inhabitant
Occupation: Agriculturists, residing at
Village inampuri, at Post Kharghar,
Taluka Panvel, District: Raigad,
State Maharashtra.

APPLICANT

A N D

**1. CITY AND INDUSTRIAL DEVELOPMENT
CORPORATION (MAHARASHTRA LTD,
POPULARLY KNOWN AS (CIDCO),**

Through its Managing Director,
Having its main office at CIDCO Bhavan,
Belapur, Navi Mumbai Pin-400 614,
State -Maharashtra.

2. MINISTRY OF ENVIRONMENT AND FORESTS

Having its office at Paryavaran Bhavan
C.G.O Complex, Lodi Road, New Delhi,
Pin-11003.

3. CENTRAL POLLUTION CONTROL BOARD,

Through Member Secretary,
Parivesh Bhavan, CBD-Cum Office Complex,
East Arjun Nagar, Delhi-110032.

**4. MINISTRY OF STATE FOR ENVIRONMENT,
GOVERNMENT OF MAHARASHTRA,**

Mantralaya, Bombay-400 032.
State Maharashtra.

**5. MAHARASHTRA POLLUTION CONTROL
BOARD (MPCB), Sub Regional Office,
Raigad 1.**

Having its office at Raigad Bhavan,
6th Floor, Sector 11, C.B.D. Belapur,
Navi Mumbai 400 614.
State Maharashtra.

.....**RESPONDENTS**

Counsel for Applicant(s):

**Mr. Ravi Kadam Advocate, Mr. Parul Abhyankar Advocate, Mr.
Abhimanyu Kharaote Advocate for the Applicant.**

Counsel for Respondent(s):

Mr Krishna D.Kelkar Advocate a/w Lalit Pusalkar Advocate for Respondent No.1.

Mr. Krishna D. Ratnaparkhi Advocate for Respondent No.2

Manda Gaikwad Advocate for Respondent No.3.

Mr. D.M.Gupte Advocate a/w Supriya Dangare Advocate for Respondent Nos.4, 5.

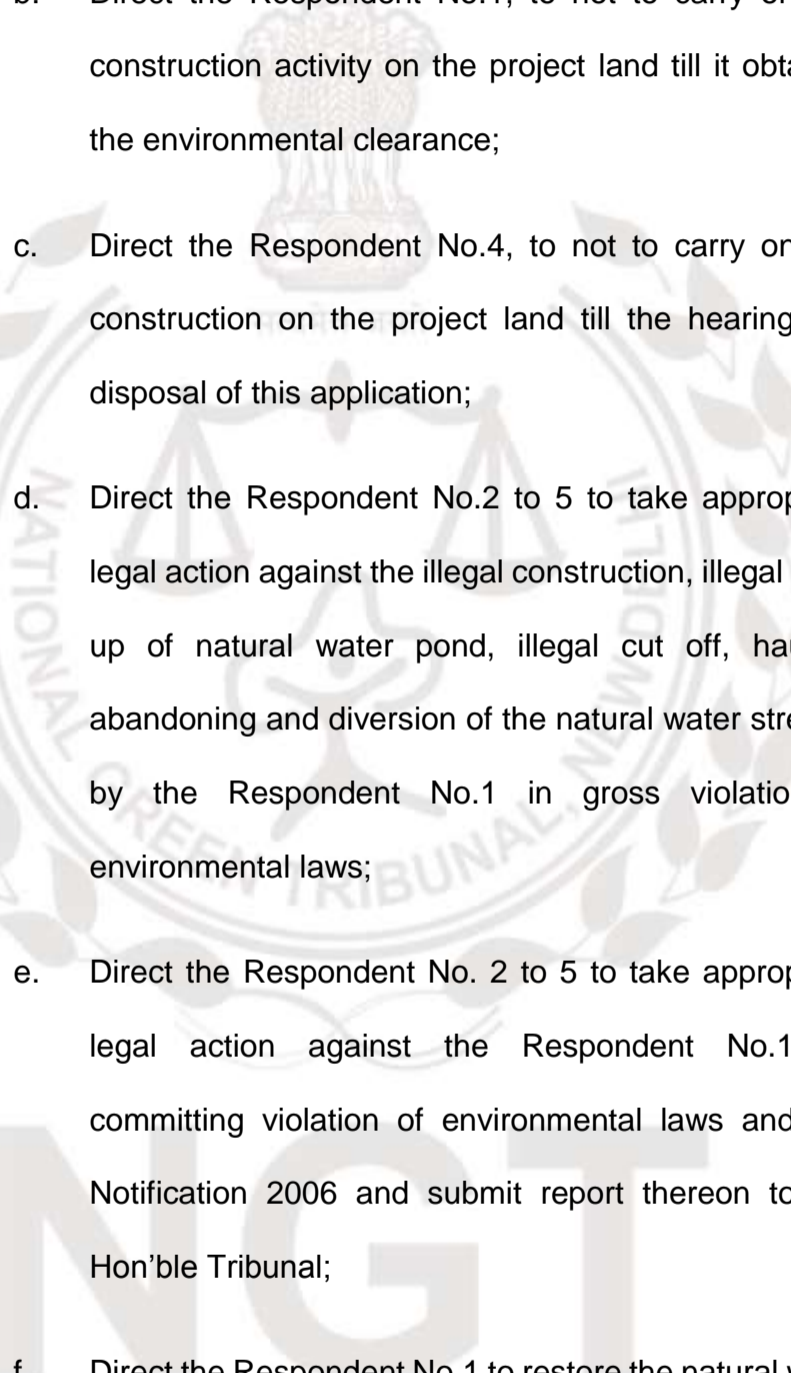
Date : February 23, 2015,

ORAL JUDGMENT

1. By filing this Application, Applicant Gajanan Patil, sought certain directions from this Tribunal. The directions, particularly, relevant to construction allegedly natural water body which refers to be water pond in the project land and alleged to be used for providing irrigation and drinking water facilities to nearby land users and the members of vicinity.

2. The conspectus of dispute lies in a narrow compass. Shorn of unessentials, it maybe stated that CIDCO (Respondent No.1), is carrying out certain construction project in Sector 36 (Plot No.2) and 37, at Kharghar, Navi-Mumbai, district Raigad. It is of common knowledge that CIDCO, is established by State of Maharashtra as development and planning agency for

Navi-Mumbai, somewhere in 1970, under the a special enactment. According to the Applicant, his family land bearing Survey No.85, is the near subject matter of the construction, of the project which is going on in plot No.2, of Sector 36. His case is that the public housing scheme undertaken by CIDCO, is likely to impair his right to draw water for irrigation and to cultivate his lands. His main contention is that there is a natural pond in Sector Nos.36 and 37, which are part of the housing schemes and both the housing schemes are likely to close down the natural pond by reclamation, on account of illegal construction, which being is carried out at the said place. The farming of lands around the vicinity of project will be adversely affected due to loss of the natural pond. The illegal project activities of CIDCO, would, therefore, cause irreversible damage to environment in the area and, thus, water stream flowing from hill side will also be obstructed and would be shifted elsewhere in nearby agricultural lands instead of flowing towards the natural pond. In other words, the project will have adverse impact on environment and, therefore, Applicant – Gajanan has sought following reliefs:

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- a. Direct the Respondent No.1, to not to carry on any construction in the area of natural water pond on the project land till the hearing and disposal of this application;
 - b. Direct the Respondent No.1, to not to carry on any construction activity on the project land till it obtained the environmental clearance;
 - c. Direct the Respondent No.4, to not to carry on any construction on the project land till the hearing and disposal of this application;
 - d. Direct the Respondent No.2 to 5 to take appropriate legal action against the illegal construction, illegal filling up of natural water pond, illegal cut off, hauling, abandoning and diversion of the natural water streams by the Respondent No.1 in gross violation of environmental laws;
 - e. Direct the Respondent No. 2 to 5 to take appropriate legal action against the Respondent No.1 for committing violation of environmental laws and EIA Notification 2006 and submit report thereon to this Hon'ble Tribunal;
 - f. Direct the Respondent No.1 to restore the natural water pond by removing the construction carried out in the water pond area;

3. Let it be noted that the Application, is chiefly directed against the Respondent No.1 – (CIDCO), whose project is undertaken at plot No.2, sector 36, where alleged pond is said to exist. Other Respondents are formal parties, notwithstanding the fact some of them have filed their response to the Application.

4. Respondent No.1 CIDCO, filed reply affidavit, through its Executive Engineer (Housing-iii). According to CIDCO, there never existed any natural pond in plot no.2, of sector 36 of the property situated at Kharghar. It is stated that the Application is devoid of merits, inasmuch as whatever is being described as 'natural pond' is only stagnation of water caused during rainy season in a ditch. It is further alleged that the ditch is caused due to construction activity, particularly, after excavation of material from the site, including debris, soil etc. and, thereafter, ditch is filled up due to rain water, which wrongly is being described as natural pond by the Applicant. CIDCO also submits that earlier there were many brick kilns which used the top soil for bricks manufacturing, which led to creation of such ditches. According to CIDCO, the Applicant resides at village Rohinjan, Taluka Parnave, (district Raigad) on other side

of the land of village Owe, and Taloja, which have been acquired and handed over to CIDCO for development. So, he has nothing to do with any right of irrigation, whatsoever it may be in respect of Sector 36 (2) of Kharghar, situated in Navi Mumbai. The contention of CIDCO, is that all the 7x12 record concerning Survey Nos.432 to 444 of village Owe do not indicate any water-body located in that area. It is also pointed out that the map superimposed in respect of housing scheme project, does not show existence of any natural pond in the property bearing Sector 36(2) in any nearby area of Kharghar. Nor it shows existence of such natural pond in revenue record. The Application, according to the pleadings of CIDCO, is ill-motivated, unfounded and liable to be dismissed.

5. We find it unnecessary to reproduce other pleadings of the Respondent Nos. 3,4 and 5, who are supporting to the Respondent No.1, with similar kind of pleas.

6. Question of significance, is as follows:

“ Whether there exists or existed at the relevant time of filing of the Application any natural pond at the site of construction project, in or within premises of plot No.2, Sector 36 of

Kharghar, Navi Mumbai, which is being developed by CIDCO – (Respondent No.1)?”

7. If the above question is determined in favour of the Applicant, then and then only the incidental question regarding environmental impact thereof, would crop up. Otherwise, it would have no foundation and may not be required to be dealt with. We may point out that Applicant – Gajanan Patil, never appeared before this Tribunal since day one, except on one occasion during the proceedings. The reason for which he filed the Application is best known to him. We fail to understand why he did not take any interest after filing of the Application. No doubt, initially, he filed certain photographs to indicate that some work of filling in the pond and putting up certain iron bars for construction work, was being done at the first stage. The photographs, however, were placed on record along with the Google map. The Google map is said to be prepared on 11.12.2003, which does not show existence of pond at the place. The photographs also are dated 11.6.2013. In other words, those photographs were taken in June, 2013. Obviously, the photographs were taken during the rainy season. It may be noted that in the stretch of Mumbai and nearby coastal area, rain season starts

earlier than other parts of the Maharashtra. With the result, it is quite probable that in the first or second week of June, 2013, there could be stagnation of water at the places excavated for the purpose of digging soil and taking out debris, stones and other material from the plot situated at Sector 36(2), during course of proposed construction.

8. The Applicant sought to place implicit reliance on communication issued by the Revenue Inspector on 17th October, 2013. This communication also does not show in any manner that existence of natural pond was at the site. The communication indicates that there was water stagnation like 'pond'. Thus, the Revenue Inspector did not take any risk of giving official certificate to the effect that it was natural pond. This is obvious for the reason that the Revenue Inspector is not the authority to give such certificate under the Maharashtra Land Revenue Code. (MLRC). Issuance of such certificate does not come within his domain and he cannot exercise such powers. Moreover, the 7x12 record also does not show existence of natural pond in the land Survey NOs.429, 430 to 440, 441 to 452, situated at Owe, Tal. Panvel.

9. At this juncture, we may refer to the entries in 7x12 record, which are clearly indicative of the fact that there is no existence of natural pond, shown in the revenue record. The 7x12 extracts of these agricultural lands are produced vide Annexure 'B' (Colly) in Volume II of the affidavit filed by the Executive Engineer of CIDCO. The voluminous record produced by Respondent No.1, CIDCO, thus, rules out probability of existence of any natural pond at the lace of plot No.36(2). Besides such public record, the Applicant has not placed on record affidavit of any other villager of which he is inhabitant, in order to probablize his case. The existence of natural pond, ordinarily could have been recorded in the 7x12 extracts available in respect of the land, where plot in Sector 36(2) and 37, is located. In any case, when the agricultural lands of those plots had been acquired the owners of said lands must have been compensated and compensation could have been included in respect of natural pond also. The Applicant has not produced the Award passed by the Collector in this behalf. Having regard to all the relevant aspects of the matter, we are of the opinion that the Applicant has failed to make out any case, not only by failure in attending the matter, but by placing on record any scintilla to corroborate his case.

10. Mr. S.A.Naik, Executive Engineer, CIDCO, has placed on record a map which is clear and shows also the location of pond 'A' and pond 'B', which have been created artificially for the project. Therefore, CIDCO had no business to hide the facts, if at all there existed any natural pond in Sector 36, plot No.2. The place of pond 'B' (part), is also clearly shown in the map. The map also shows that village Rohinjan is on eastern side of the housing scheme and is adjacent of plot No.2 of Sector 36. Nor there is any record to show that the villagers of Rohinjan had ever adopted resolution to utilize money for hand-pumps for the purpose of using water of so called pond. There is also no record to show that the villagers had applied for using the water of that pond through any tap and sought permission from the competent authority to do so. We appreciate efforts of the Executive Engineer, Mr. S.A.Naik, who collected relevant material and assisted the Tribunal as and when required.

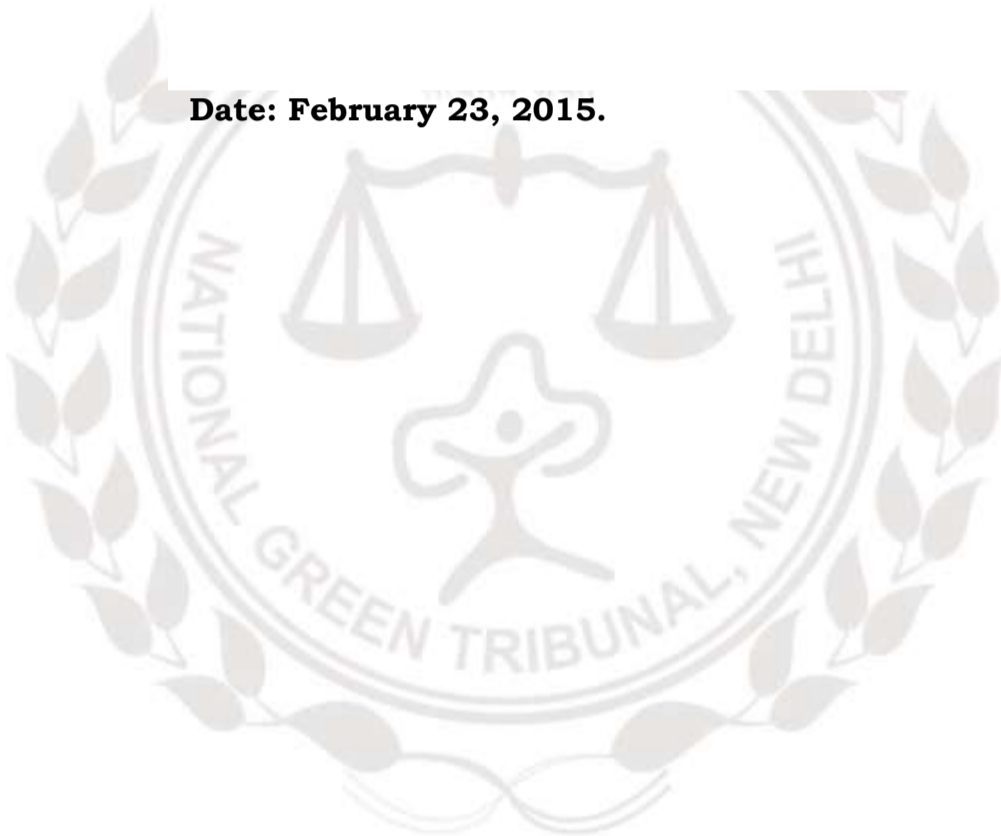
11. Taking stock of situation, we are of the opinion that the question stated above deserves to be answered in Negative and the Application is without any substance. Needless to say, it will be have to be

dismissed. Accordingly, the Application stands dismissed with no order as to costs.

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

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

Date: February 23, 2015.



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