

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

Original Application No. 58/2016 (CZ)

Apsara Complex House Owners Association Applicant(s)

Versus

Municipal Corporation & 5 Ors Respondent(s)

Date of hearing: 04.08.2021

Date of uploading: 06.08.2021

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s): Mr. Rohit Sharma, Adv

For Respondent(s): Mr. Sachin K. Verma, Adv
Ms. Parul Bhadoria, Adv

ORDER

1. The grievance in this application is non-compliance of Solid Waste Management Rules, unplanned and improper sewage system, Non-maintenance of the Nullah and overflow of the polluted and contaminated water from the same, which subsequently enters the homes of the residents of the petitioner society resulting in accumulation of sewage/rainwater and also the threat caused by the various venomous and dangerous creatures nurturing in the said nullah behind the property of the petitioner society. It is further alleged that there was a pond adjacent to the colony to take care of rain water, but now the plot being sold for industrial purposes, it has been filled up and an industry is setup over the same and is currently operational. As a result colony becomes over flooded during rainy season in the absence of inadequate drainage system. The petitioner with other residents, residing in Apsara

Complex House which is known as Apsara Complex House Owners Association, affiliated to Nagar Nigam, Bhopal, which is being maintained by the Municipal Corporation, Bhopal and the cause of action is inaction by not providing proper sewage and drainage system and also not properly maintaining the said Nullah flowing and passing right behind the petitioner society. By means of this application, the relief sought are as follows:

1. To direct the Respondent No. 1 and 2 to conduct fresh survey and assessment of carrying capacity of sewage and drainage system of Apsara Complex and accordingly drainage and sewage system should be reorganized/developed. Pipe culvert should be immediately removed and well-designed of appropriate capacity full-fledged culvert should be constructed before the rainy season so that over flow of sewage and rain water could be stopped and flooding in the Apsara Complex should be checked, and take best possible steps to reconstitute the environment by proper maintenance as the protection of the Environment in the concerned area has been overlooked by the Respondent No.1.
2. To direct the Respondent No.2 to devise a comprehensive plan of how to make good, the loss caused to the environment and also to ensure the proper maintenance of the nullah in the future.
3. To direct the Respondent No.1 and 2 to disconnect sewage system of Indrapuri A Sector from the sewage system of Apsara Complex. The sewage of A Sector should be discharged separately so the resident of Apsara complex should not suffer. Untreated sewage needs to be treated before discharging in nullah.
4. To direct Respondent No. 6 to instruct the concerning industry to provide separate storage and drainage system of rain water in their own campus so that the flooding in Apsara Complex is stopped.
5. Pass any other appropriate orders which this Hon'ble Tribunal deems just and proper for compensation against the Respondents.

2. The matter was taken up on 08.07.2016, 01.09.2016, 23.09.2016 and finally the application was disposed of on 22.11.2016 relevant orders are quoted below:

Order dated 08.07.2016

“Shri Vivek Choudhary, Learned Counsel for the BMC has filed a reply along with the inspection report. However, during the course of the inspection, we find that representatives of the Applicant society were not present. Today, Zonal Officer of the BMC, the Vice President of the society along with Shri Rohit Sharma, Learned Counsel for the Applicant are present. We direct that on 09.07.2016 the Zonal Officer shall constitute a team of 2 to 3 officers from the Zonal Office and if possible accompany the said team himself along with the representative of the society and conduct inspection. The society representative may point out troublesome spots which they want the Municipality to rectify. Based upon their identification the Municipal Corporation will carry out the works after prioritising such works which may be emergent so as to avoid any flooding etc. of sewage water and storm water which had occurred in the past. A detailed plan for undertaking rectification measures thereafter be prepared by the Municipal Corporation and submit before this Tribunal in consultation with the residents of the Applicant society.

Let the matter be listed on 1st September, 2016.”

Order dated 01.09.2016

“Shri Sachin K.Verma, Learned Counsel prays for time to submit the information from the Industries Department as directed in our earlier order.

In the meanwhile, we would direct that the Respondent No. 3 through the R.O. to carry out the physical inspection of the area which is alleged to be industrial on the issue as to number of industries and the kind of products and activities that are being carried out by each of these industries and also whether they are following the environmental norms and the manner of disposal from their effluent / waste from such industries. It is alleged that the industries are at higher level and the water from the site of industries flows towards the residential areas which is creating problem in the instant case. The MPPCB shall submit its recommendation as well as the report inter alia on the question whether the industries can be allowed to continue at the said location or should be ordered to be shifted to an industrial area. Let the matter be listed on 23rd September, 2016.”

Order dated 23.09.2016

“The PCB has today filed before us a reply along with the affidavit the inspection report containing various measures suggested to be undertaken as also some photographs showing the condition in support of the observations made in the inspection.

Learned Counsel Shri Vivek Choudhary appearing on behalf of the BMC as assisted by the engineers of BMC and the OIC has brought to our notice that the BMC itself has taken up the matter and having examined the same prepared a plan for dealing with the issue which by and large is in conformity with the observations made in the inspection report and suggestions given by the PCB. We would direct that the inspection report and the observations and the suggestions made by the PCB be given to the BMC which has been handed over to the Learned Counsel Shri Vivek Choudhary by the Learned Counsel appearing for the PCB.

Wherever necessary the plan that has been prepared by the BMC may be suitably altered and the observations made in the inspection report given in page No. 5 of the reply filed today be taken care of and suggested measures be incorporated in the plan.

One of the major observations and suggested measures to be incorporated for eradication of the problem on a permanent basis is with regard to an appropriate storm water management plan. The BMC needs to take the said into account while preparing their plans for improvement of the situation of the Apsara Colony and adjoining areas. The OIC had also brought to our notice that they have already issued tenders for the work to be commissioned and undertaken with estimates for various works and the same would in all probability be completed by the end of March 2017. The Learned Counsel for the Applicant has also placed for our perusal the satellite pictures of the location of the year 2005 and 2015 which show the position as it existed in the year 2005 and as has been altered due to construction by filling up of the area which was allegedly a pond existing in 2005 which has subsequently partly been allotted for construction and setting up of the industry. It is also surprising that in a residential area such permissions for setting up of industries have been given. The same needs to be re-examined and reviewed in the light of the recent experiences with regard to floods in the city of Bhopal. The concerned department of the T&CP, BDA, Directorate of Industries as well as the Municipal Corporation will take the same into account and also hear the affected persons in this matter with the option of allotment of alternative site for the same.

Let this matter be listed on 25th October, 2016”

Order dated 22.11.2016

“Reply has been filed by the Respondent No. 6 indicating the compliance of the directions issued by this Tribunal. The TVS Service station has stopped all the activities and the electricity and water connections have also been disconnected to the polluting industries. They have also started removing the equipments from the plant and all encroachments upon the nallah are also being removed. In the event of any claims for damage having been raised by the affected persons of the colony before the Municipal Authority they be addressed and as the TVS Service station was one of the reason for flooding in the colony they shall be made accountable after issuing notice to the said TVS Service station as to why they may not be required to pay damage to the affected persons. This matter shall be taken up by the District Collector / Municipal Authority by appointing an Officer on Special Duty (OSD) for the aforesaid purpose. We have been informed that removal of encroachment and construction of drainage system & pipe line are under way, the tenders have already been issued and bids invited. Learned Counsel submits that as soon as the bids are finalised and the work of construction of drainage system shall be completed within three months.

With the aforesaid directions and directions issued earlier for removal of encroachment on nallah, the Original Application No. 58/2016 stands disposed of with liberty to approach this Tribunal for any further directions that may be necessary.

M.A. No. 683/2016 also stands disposed of.”

3. Thereafter, a Miscellaneous Application No. 367 of 2017 was filed for non-compliance of the order and the Tribunal observed as follows:

Order dated 05.09.2017

“Compliance on behalf of the Respondent No.1 has been filed thought it only indicates that work has been initiated. However, it is stated that the Respondent No. 6 has so far not paid the amount which is required to be paid by the Respondent No. 6, after recovering it from the industry concerned.

For submitting the progress made in this behalf as well as whether the Respondent No. 6 has recovered the amount, let the matter be listed on 13th November, 2017.”

Order dated 03.01.2018

“As directed on 13.11.2017 personal affidavit of Commissioner Municipal Corporation has been filed on 01.12.2017. Learned Counsel for the BMC has filed an affidavit of Assistant Engineer (Civil) Zone 15 Municipal Corporation Bhopal in compliance of the order of the Tribunal dated 13.11.2017 today, wherein it has been submitted in para no. 3 that the construction of box culvert and construction of drain has been completed and the work has also been verified by the SE (Civil) BMC, Shri Pradeep Jain. Copy of the affidavit has been given to the Learned Counsel for the applicant and the State. They may respond if they wish.

Learned Counsel for the applicant submitted that the directions of the Tribunal dated 13.11.2017 has not been fully complied with to the extent that the recovery of the damages from those who are accountable is yet to be made by the Collector / Industries Department. The Item no. 15 Jr details of the expenditure incurred in construction of the culvert and pipeline incurred by the BMC also been given in the affidavit filed today, copy of which has also been given to the Learned Counsel for the Collector / Industries Department. The action taken by the Collector / Industries Department regarding recovery of the damages may be filed before the next date of hearing.

List this matter on 6th February, 2018.”

4. In compliance thereof, the Municipal Corporation, Bhopal had submitted the affidavit with the facts that vide order dated 13th November, 2017, the Commissioner, Bhopal Municipal Corporation was directed to take up the compliance of the order dated 22.11.2016 and to submit a progress report on weekly basis.
5. Construction of box culvert and construction of drain have been given top priority as per report submitted by the Superintending Engineer, Nagar Palika Nigam, Bhopal. The above works (i) Box culverts and (ii) construction of drainage amounting to

Rs.1806855/- and Rs. 1119461/- has been completed and the report had been submitted with affidavit.

6. Learned counsel appearing for the applicant had submitted that since the work has been completed and affidavit has been filed, in compliance thereof, the application may be finally disposed of.
7. Accordingly, no further action is required as no further grievance subsists as reported. Thus, the Original Application No. 58/2016 is finally disposed of and proceeding is dropped and consigned to record.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

06th August, 2021
O.A. No. 58/2016 (CZ)
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