

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3543 OF 2021

Sushil Ratnakar Nimbalkar] **Petitioner**

Vs.

State of Maharashtra and others.] Respondents

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Mr. Amogh Singh a/w Yogendra Singh i/b Jeet Gandhi, for Petitioner.

Mr. R. P. Kadam, A.G.P, for Respondent-State.

Mr. A. S. Rao, for Respondent No.7-Kalyan Dombivali Municipal Corporation.

Ms. Sharmila Deshmukh, for Respondent No.10-Maharashtra Coastal Zone Management Authority and Respondent No.12-Maharashtra Pollution Control Board.

Mr. Narayan Sahu a/w Kaushal Parsekar i/b Legasis Partners, for
Respondent No.11-Maharashtra Maritime Board.

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**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 27th AUGUST, 2021.

P.C.

1. As per order dated 11th August, 2021, matter is taken for final hearing at the stage of admission.

2. Learned Counsel appearing on behalf of the petitioner submits that all the respondents are duly served by private notice. To that effect, affidavit of service is filed. Statement is accepted.

3. By this petition under Article 226 of the Constitution of India, the petitioner is seeking direction against respondents No.1 to 12 to take appropriate steps to protect and clean Nilje Desai Creek at Sheel Phata, Village Nilje, Taluka Kalyan, District. Thane. The petitioner approaches this Court with a prayer that this Hon'ble Court be pleased to direct respondents No.1 to 12 to forthwith carry out the de-silting and cleaning of the Nilje-Desai Creek. The petitioner is also seeking to restrain respondent No.13 from carrying out construction in furtherance of Work Order dated 28th February, 2019 issued by respondent No.11.

4. Mr. Amogh Singh, learned Counsel for the petitioner submits that the creek falls within the teeth of the coastal regulation zone and, is therefore an ecologically sensitive water body. He further submits that the dumping and discharge of pollutants, effluents and dumping of debris, boulders etc. into the rivers/creek has led to catastrophic flooding around the Creek. The issue of flooding can easily be resolved by de-silting of the creek prior to monsoon every year which will lead to increasing the depth of the Riverbed and allow easy access for the storm water to be drained into the sea.

5. Learned Counsel for the petitioner has drawn our attention to paragraph 5 of the reply filed by respondent No.11-Maharashtra

Maritime Board which reads thus;

*“5.The said project had been undertaken by Respondent No.11 pursuant to Work Order dated 28th February, 2019 being Work Order No.MMB/Muka-A/A-BH-1/Nilje J/306 (“Work Order”) issued by Respondent No.11 in favor of Respondent No.13. Pursuant to the issuance of the Work Order, Respondent No.13 **has successfully completed the beautification of the said Project on 5th March, 2021...**”*

6. In view of the statement made by respondent No.11, learned Counsel for the petitioner submits that the said project is in violation of the C.R.Z Norms. He relies upon the letter dated 13th February, 2020 issued by respondent No.7-Kalyan Dombivali Municipal Corporation (KDMC) addressed to respondent No.13 which reads thus;

“महाशय,

आपणांस या पत्रान्वये सुचित करण्यात येते आहे की, आपण संदर्भित पत्रान्वये निळजे देसाईवाडी, ता. कल्याण, जि. ठाणे येथे खाडी किनारी सुशोभिकरणाचे सुरु केलेले काम हे सी आर झेड क्षेत्र अंतर्गत पक्के कॉक्रीटीकरण करणे म्हणजेच सी.आर.झेड कायद्याचा भंग आहे तरी आपण सुशोभिकरणाच्या नावाखाली सीआरझेड क्षेत्रात सुरु केलेले कॉक्रीटीकरणाचे काम तातडीने बंद करण्यात यावे अन्यथा आपना विरुद्ध महाराष्ट्र महानगरपालिका अधिनियम अन्वये पुढील कार्यवाही/कारवाई करण्यात येईल याची नोंद घ्यावी^१.

7. Learned Counsel for the petitioner submits that K.D.M.C has issued a stop work notice of the beautification work being carried out by respondent No.13 for flouting CRZ norms but the same has not happened.

8. Learned Counsel for the petitioner submits that for the same cause of action, Palava Rahivashi Sangh (Kalyan-Maharashtra) had filed Original Application No.67 of 2020 (WZ) before the National Green Tribunal, Principal Bench, New Delhi. Even the said Tribunal by order dated 28th May, 2021 has directed the Maharashtra Coastal Zone Management (MCZA) to take appropriate action immediately. Said order reads thus;

“1. This application seeks direction to stop work at the bank of Nilje-Desai Creek, Village Nilje, Taluka Kalyan, District Thane, Maharashtra. Case of the applicant is that such constructions are in violation of Coastal Regulation Zone (CRZ) norms. The construction in question will result in reduction of width of the water channel. This will cause flooding in the rainy season affecting the inhabitants, including houses, schools, hospitals and other buildings in the area which may result in loss of life and damage to property. No environment impact assessment has been carried out before the execution of the work. The work is being executed by M/s. Subhash Constitution, Dombivali east, Tq Kalyan, District Thane.

2. Though none has appeared for the applicant, we have perused the papers. We are of the view that the issue raised may in the first instance be looked into by Maharashtra Coastal Zone Management Authority, Mumbai and SEIAA, Maharashtra. If any violations are found, remedial action may be taken, following due process of law. We order accordingly.

The application is disposed of.

A copy of this order be forwarded to the applicant and the Maharashtra Coastal Zone Management Authority, New Administrative Building, Mantralaya, Mumbai – 32 and SEIAA, Maharashtra by email for compliance”.

9. Learned Counsel for the petitioner submits that this Court vide order dated 30th July, 2021 had directed the respondents to explain as to what steps are being taken to protect the said creek and comply with the order dated 28.05.2021 passed by the National Green Tribunal in Original Application No.67 of 2020 in their reply.

10. In the above mentioned facts, the learned Counsel appearing on behalf of the petitioner submits that in the interest of justice this Hon'ble Court be pleased to direct the respondents, particularly respondent nos 1 to 12 to take action to protect Nilje Desai Creek immediately. For this purpose, learned Counsel for the petitioner relies on following grounds :-

*“A. That the issue pertaining to deteriorating condition of the ‘Nilje Desai’ Creek caused due to (i) dumping of debris, garbage, pollutants, boulders, etc. in ‘Nilje Desai’ Creek and (ii) the ongoing construction activities being carried out by Respondent No.13 and other contractors / individuals / entities, both governmental and non-governmental, etc., at / near the banks of ‘Nilje Desai’ Creek, in violation of applicable environmental laws and policies is of grave importance and deserves urgent attention of this Hon’ble Court as the pollution of the Nilje-Desai Creek which causes flood in the adjoining areas not only poses the problem of destruction of life, livelihood and property only but it also poses a great threat to the health and hygiene of the people. Article 21 of the Constitution of India reads as under :- **Article 21** - “No person shall be deprived of his life or personal liberty except according to procedure established by law”.*

B. That this right of life guaranteed by Constitution of India forms the very basis of democracy in India. Various judgments of the Hon’ble Supreme Court of India have expanded its ambit to include the right to livelihood, healthy life among other things. The floods which are occurring due to (i) dumping of debris, garbage, pollutants, boulders, etc. in ‘Nilje Desai’ Creek and (ii) the ongoing construction activities being carried out by Respondent No.13 and other contractors / individuals/entities, both governmental and non-governmental, etc., at/near the banks of ‘Nilje Desai’ Creek, in violation of applicable environmental laws and policies, not only took away several lives but also destroyed the properties and sources of livelihood of the people living in these areas.

C. That the floods have now posed the danger of epidemics like gastroenteritis and have affected the basic hygiene of the people with sewage water getting mixed with drinking water and other offshoots. The right to life of the people of these areas has been

reduced to a mere mockery of democracy. It is indeed shocking to see the abject apathy that the Respondents have shown to the plight of the people of these areas. The omissions committed by the Respondents in their failure to act deserves to be censured and condemned.

D. That the Respondent Nos. 1 to 12 which form part of the executive have failed to execute anything at all and therefore the Petitioner now relies only on this Hon'ble Court as the last beacon of hope to alleviate the plight of people of these areas.

E. That there is no reason or justification as to why the Respondent Nos. 1 to 12 have not taken any action in response to the recommendations and directions issued by several Courts and Tribunals to initiate actions to remedy the pollution of the 'Nilje-Desai Creek'.

F. That because of the delay on the part of the Respondent Nos. 1 to 12 for initiating any action pertaining to the Creek due to which several people, residing in and around the areas through which the Creek flows, have been put to severe difficulty and have suffered loss to life, livelihood, property and health.

G. That all the powers to take the said remedial measures are vested with the Respondent Nos.1 to 12. Consequently, the Respondent Nos. 1 to 12 being a State and other statutory authorities are expected to discharge these directions and recommendations as efficiently as possible and without any delay.

H. That the total inaction of the part of the Respondent Nos. 1 to 12 in not responding to the reports, recommendations, directions and correspondences to remedy the pollution of the Creek after a period of almost 2 years is unjust and unpardonable and is causing tremendous loss of life, livelihood, property, health and hygiene to thousands of citizens of Kalyan, Dombivali and Thane viz., the areas through which the Creek flows.

I. That the lapses and omissions on the part of the Respondent Nos. 1 to 12 in not dealing with Respondent No.13 and preventing / stopping the (i) dumping of debris, garbage, pollutants, boulders, etc. in 'Nilje Desai' Creek and (ii) the on-going construction activities being carried out by Respondent No.13 and other contractors / individuals / entities, both governmental and non-governmental, etc., at/near the banks of 'Nilje Desai' Creek, in violation of applicable environmental laws and policies, shows abject, apathy towards the plight of the people living in and around the areas through which the Creek flows and presents the constant danger of the repeated tragic events.

J. That the Constitution of India guarantees right to live. This right is being denied to the several people living around the areas through which Creek flows by such wrongful conduct of the Respondents.

K. That the inactions of the Respondent Nos. 1 to 12 and the construction activity being carried out by Respondent No.13 has unnaturally altered the course of the Creek; risking the life, livelihood and property of several thousands of people living in the areas through which the Creek flows.

L. That the Creek falls within the ambit of the CRZ. However, the Respondent Nos. 1 to 12 have completely turned a blind eye to the CRZ norms and are permitting constructions in the Creek in a haphazard and unscientific manner.

M. That the Respondents have failed to carry out any EIA study prior to sanctioning any constructions at/near the Creek. In the absence of such EIA study as mandated by the Environment Protection Act, the Respondents have given a go by to the statutory scheme as envisaged in the Environment Protection Act.

N. If the (i) dumping of debris, garbage, pollutants, boulders, etc. in 'Nilje Desai' Creek and (ii) the on-going

construction activities being carried out by Respondent No.13 and other contractors / individuals/entities, both governmental and non-governmental, etc., at/near the banks of 'Nilje Desai' Creek, in violation of applicable environmental laws and policies is not stopped by the Respondent's there shall be grave injustice, irreparable loss and prejudice caused to the citizens and residents of the nearby villages at the Bank of the Creek, Kalyan, Dombivali and Thane.

O. The impugned inaction is otherwise illegal, arbitrary and against the established principles of law and equity and liable to be quashed and set aside."

11. Learned Counsel for the petitioner submits that in the interest of justice, this Hon'ble Court be pleased to allow the present writ petition in terms of the minutes of the order tendered by him during the course of arguments. He submits that if the petition is not allowed several persons residing in the same vicinity are going to be affected each year.

12. Respondents No.1, 2, 3, 4, 5, 6, 8, 9 and 13 have not filed reply.

13. In it's short reply, respondent No.7-Kalayn Dombivali Municipal Corporation contends that reset notice was issued in view of the complaints received from the citizens such as Palava Rahivasi Sangh, Kalyan Dombivali Vikas Parishad and Mrs. Pooja Gajanan Patil, elected Corporator from Ward No.121. However, due to transfer of concerned officers no further action has been initiated. However, respondent No.7 undertakes that further steps in the matter would be taken to its logical end.

14. Respondent No.10-Maharashtra Coastal Zone Management Authority in its affidavit in reply, more particularly in paragraphs No.3 to 8 has stated thus;

“3) I say that this Authority has been constituted by the Ministry of Environment, Forest from time to time in exercise of powers conferred by Section 3 of the Environment (Protection) Act, 1986 and vide the orders of constitution have conferred powers to take the measures enumerated therein which includes inter alia power to regulate all developmental activities in the CRZ areas, to enforce and monitor the provisions of the CRZ areas, to enforce and monitor the provisions of the CRZ Notification and to inquire into cases of violation. I say that this Authority was last constituted by an order dated 06/07/2018 for a period of three years which expired on 06/07/2020. The issuance of further orders of constitution is under process at the office of the Ministry of Environment, Forest and Climate Change.

4) I say that all activities proposed in the CRZ areas is required to be submitted to this Authority for their prior recommendation to ensure compliance with the CRZ Notification. I say that the proposal of construction of the promenade and beautification along the creek initiated by the

Respondent No.11 was not submitted to this Authority for their recommendations. The proposals for construction in the CRZ areas are regularly assessed by this Authority and recommendations are granted only in accordance with the CRZ Notification.

5) It appears that one Palava Rahivasi Sangh (Kalyan – Maharashtra) filed an application before the Hon'ble National Green Tribunal (WZ) being O.A. No.67/2020 seeking direction to stop the work on the bank of Nilje-Desai Creek on the ground that such construction is in violation of CRZ norms and will result in reduction of width of the water channel leading to flooding. I say that vide order dated 28/05/2021 the Hon'ble NGT was pleased to direct this Authority to look into the issue raised in the application and if any violations are found to take remedial action in accordance with law.

6) I say that the copy of the order was furnished to this Authority by the Applicant therein i.e Palave Rahivasi Sangh vide email dated 26/07/2021. After receipt of the copy of the order, this Authority vide its order dated 06/08/2021 has constituted a two member committee consisting of Dr. Mahesh Shindikar/Shri Maruti Kundale – expert member of this Authority and Dr. Pankaj Joshi – expert member

of this Authority and Dr. Pankaj Joshi- expert member of State Environment Impact Assessment Authority with a request to carry out site visit and to submit a report. Hereto annexed and marked Exhibit "A" is a copy of the said letter of constitution dated 06/08/2021.

7) The captioned Petition has also raised an issue of dumping of solid waste/debris etc in the Nilje Creek resulting into flooding of the creeks. I say that it is necessary that a study be carried out in respect of the de-silting of the creek and based on scientific studies the decision of de-silting needs to be taken by the District Collector to avoid probable flooding. It is also necessary to put into a place a mechanism by the Planning Authority to ensure that there is no dumping in the creek water. The work of de-silting of the creek is the responsibility of the District Collector and it is for the Kalyan Dombivali Municipal Corporation to ensure that the dumping in the creek water is stopped.

8) I say that the report of the two member committee will be placed before the Authority and necessary action will be taken in event any violation of the CRZ norms is observed".

15. Respondent No.11-Maharashtra Maritime Board has in its affidavit in reply in paragraphs No.5 and 6 has stated as under;

*“5. The said Project had been undertaken by Respondent No.11 pursuant to Work Order dated 28th February, 2019 being Work Order No. MMB/Mu-Ka-A/A BH-1/Nilje J/306 (“**Work Order**”) issued by Respondent No.11 in favor of Respondent No.13. Pursuant to the issuance of the Work Order, Respondent No.13 has successfully completed the beautification of the said Project on 5th March, 2021. In view of the completion of the said project, the present Writ Petition filed by the Petitioner is belated and an afterthought. This petition is nothing but a tactic to cause undue harassment to the present Respondent who have acted keeping in mind the interests of public at large. Hereto annexed as Exhibit-”A” are the photographs of the completion of the project with respect to the beautification of Nilje Desai Creek.*

6. It is further stated that the intent and purpose of Respondent No.11 for undertaking the said Project was to protect the lands in question from encroachments and to stop illegal dumping of debris at the Nilje Desai Creek. The said Project was undertaken and completed in order to cater to the demands and interests of the local public for the beautification of the Nilje Desai Creek and therefore no ulterior agenda can be

attributed to the Respondent No.11 for undertaking the said Project as falsely alleged by the Petitioner. The completion of the said Project was done purely keeping in mind the public interest and in fact the present petition under the garb of protecting the public interests is in actuality against the local public at large”.

16. Respondent No.12-Maharashtra Pollution Control Board in its affidavit in reply in paragraph 2 has stated as under;

“2) I say that on 13/08/2021 the Sub Regional Officer of this Respondent Board visited the site wherein the beautification work of the Nilje Creek had been carried out. At the time of the visit, the Sub Regional Officer did not find any debris, garbage or boulders dumped in the said area. The Sub Regional Officer contacted the Engineer of the Maharashtra Maritime Board, who informed him that the work of beautification had been carried out by the Maharashtra Maritime Board through M/s Subhash Construction. Hereto annexed and marked Exhibit “A” are the photographs of the site”.

17. We have heard Mr. Amogh Singh, learned Counsel for the petitioner, Mr. R.P. Kadam, learned A.G.P, for respondent-State, Mr. Rao, learned Counsel for respondent No.7, Ms. Deshmukh, learned Counsel for Respondent No.10 and 11 and Mr Sahu, learned Counsel for respondent No.11. We have also gone through the

draft minutes of the order tendered by learned Counsel for the petitioner which read thus;

(a) The Respondents to inquire into the legality of the construction carried out by Respondent No.13 as directed by the National Green Tribunal order dated 28.05.2021 in Original Application No.67/2020 and if the same is found to be unauthorised then take appropriate steps in accordance with law within a period of 6 months;

(b) The Respondent No.4, District Collector, Thane shall form a Committee comprising of officials of Thane Municipal Corporation and Kalyan Dombivali Municipal Corporation and prepare an action plan for the de-silting and removal of debris, boulders, into the Nilje-Desai Creek every year prior to the arrival of monsoon;

(c) The Respondent Thane Municipal Corporation and Respondent Kalyan Dombivali Municipal Corporation shall carry out de-silting and removal of debris, boulder etc into the Nilje-Desai Creek every year prior to 30th May (prior to the arrival of monsoon);

18. It is to be noted that in the present proceedings, the petitioner as well as other persons have filed various complaints to the Authorities for taking appropriate step to clean the said Nilje

Desai Creek immediately. They tried to draw attention of several Authorities for the said purpose but those Authorities failed and neglected to do anything. It is to be noted that the National Green Tribunal, Principal Bench, New Delhi passed order dated 28th May, 2021 in *Original Application No.67 of 2020 (WZ) in the matter of Palava Rahivasi Sangh (Kalyan-Maharashtra) Vs. District Collector, Thane and others* and directed respondent No.10 and SEIAA Maharashtra to take appropriate action immediately. In spite of that, no action is taken by the Authorities. On the basis of the submissions made by the learned Counsel for the petitioner and respondents-Authority, it seems that the State of Maharashtra failed to take appropriate action as per River Regulation Policy which was formulated by them pursuant to the orders passed by this Court in other matters. It itself shows that the respondents-Authorities are taking the orders in casual manner. Because of that, several persons staying nearby the said creek are being affected each year. Therefore, we are satisfied that in the interest of justice, it is necessary to direct the respondents-Authorities to take appropriate steps to clean the said creek every year prior to the arrival of monsoon. To keep check on that, we direct respondent No.4-District Collector to take appropriate steps. Hence, the following order is passed;

: ORDER :

(a) The Respondents to inquire into the legality of the construction carried out by Respondent No.13 as directed by the National Green Tribunal order dated 28.05.2021 in Original Application No.67/2020 and if the same is found to be

unauthorised then take appropriate steps in accordance with law within a period of 6 months;

(b) The Respondent No.4, District Collector, Thane shall form a Committee comprising of officials of Thane Municipal Corporation and Kalyan Dombivali Municipal Corporation and prepare an action plan for the de-silting and removal of debris, boulders, into the Nilje-Desai Creek every year prior to the arrival of monsoon;

(c) The Respondent Thane Municipal Corporation and Respondent Kalyan Dombivali Municipal Corporation shall carry out de-silting and removal of debris, boulder etc into the Nilje-Desai Creek every year prior to 30th May each year (prior to the arrival of monsoon);

(d) The Respondent Thane Municipal Corporation and Respondent Kalyan Dombivali Municipal Corporation shall submit a report to the Collector, Thane stating the work carried out by them of de-silting and removal of debris, boulder etc into the Nilje-Desai Creek every year prior to 30th June;

(e)Liberty is granted to the petitioner to make appropriate application with respondent No.4- District Collector, thane for copy of the report, if any,

submitted by Thane Municipal Corporation and Kalyan Dombivali Municipal Corporation to the Collector and same to be made available on payment of charges.

19. Writ Petition stands disposed of the in the aforesaid terms.

20. No order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]