



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO.56 OF 2023

Ramgopal Bisambhardayal Bachuka and others Vs. State of Maharashtra & another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Dr. T. D.Mandlekar, Advocate with Shri Nishant Tamgadde and Ms. Tejas Fadnavis
Advocates for petitioners.

Dr. Birendra Saraf, Advocate General (through Video Conferencing) with Mr. A.M.
Deshpande, In-charge Government Pleader for respondent nos.1 to 5 & 7.

Mr. S.K. Mishra, Senior Advocate with Mr. J.B.Kasat, Advocate for respondent nos.8
and 13.

Mr. S.K.Mishra, Senior Advocate with Shri A.M.Sharm, Advocate for respondent no.9.

Mr. S.S.Sanyal, Advocate for respondent no.11.

Mr. J.J. Chndurkar, Advocate for respondent no.12.

Mr. Rutej R. Pimpalkhute, Advocate for Intervener in CAO Nos.1509/2023 and CAW
No.3647/2023.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATED : 17/01/2024.

Civil Application (CAO) No.99/2024.

For the reasons disclosed in the application, the prayer for amendment is allowed. Amendment to be carried out within two weeks. If so required, the respondents may submit their response by next date to the said amended pleadings.

PUBLIC INTEREST LITIGATION NO.56 OF 2023.

1. We have heard the Advocate General Mr. Birendra Saraf assisted by Mr. Deshpande, Incharge Government Pleader for the State Government, Mr. Mishra, learned Senior Counsel assisted by Mr. Kasat for the local Planning Authorities - Corporation, Maharashtra Metro Rail Corporation Ltd., Nagpur

Improvement Trust, and respondent no.13 - the Heritage Conservation Committee.

2. The affidavit of the Divisional Commissioner, Nagpur Division, Nagpur, is placed on record. It is brought to our notice that by the Government Resolution dated 5th January 2024, a High Level Committee under the Chairmanship of the Divisional Commissioner is constituted, which consists of the other members i.e. the Head of the statutory bodies i.e. Divisional Commissioner, Nagpur, The Municipal Corporation, The Collector, The Chairman, Nagpur Improvement Trust, The Managing Director, Maharashtra Metro Rail Corporation, Nagpur, Regional Officer, Maharashtra Pollution Control Board, Chief Engineer, Water Resources Department/Irrigation Department, Director, Disaster Management, Nagpur, Chairman, Heritage Conservation Committee, Nagpur, Managing Director, Maharashtra Engineering Research Institute, Nashik, Director and Maharashtra Environmental Engineering Institute, Nagpur.

3. The Advocate General, on instructions informs us that the Government is contemplating the representation to be also given to the Water Resources Department, as the said department is one of the stake holders in the matter of the implementation of the projects/still in question.

4. Amongst others, the directions are issued by the said Committee to the local Planning Authorities to place on record the details of the work to be executed for the purpose of addressing the issue. As far as the discharge of statutory duties by the local Planning Authorities – the Corporation, the Nagpur Improvement Trust in the matter of removal of encroachments which is affecting free flow of the Naag river is concerned, irrespective of the details

being called and looked into by that Committee, we deem it appropriate to direct the said Planning Authorities to remove all such illegal structures, which are affecting or creating hindrance in the smooth channel of the Naag river.

5. We further deem it appropriate to have response of the aforesaid Planning Authorities on the issue of the illegal encroachments and such illegal structures, as has been erected in the catchment area of the aforesaid river, as we are of the prima facie view that such illegal encroachments/structures are affecting the smooth flow of flood/rain water in the river, thereby creating the flooding in the residential areas.

6. In response to the Court's query, the Advocate General has informed that the time-bound execution of the work shall be taken up, as could be noticed from the contents of the affidavit. As such, he would claim that the period of four weeks be granted so as to enable the Chairman of the Committee to place on record the steps taken in the matter.

7. In response to the Court's query, the counsel for the petitioners has invited our attention to the affidavit filed on record by the respondent no.12 – Executive Engineer, Irrigation Department, Nagpur Region. Para 6 of the said affidavit reads thus:

“6. In a meeting presided by the Executive Director, Vidarbha Irrigation Development on 12.04.2018 it was stated that the discharge capacity of the Spill Channel and Tail Channel has been reduced due to the fact that the monument i.e. Vivekananda Statue built on downstream of spillway of Ambazari Dam which has caused a blockage and has reduced the discharge capacity of the Spill Channel and Tail Channel. Accordingly, directions have been issued to Nagpur Municipal

Corporation (i) to move the monument to the side of the road in order to increase water discharging capacity under the road bridge in the lower part of the spillway. (ii) Also directions were issued to Nagpur Municipal Corporation to increase the water discharging capacity under the road bridge by dismantling the existing bridge and re-constructing it by considering this aspect. (iii) To restore the carrying capacity of Naag river by means of widening and deepening of the river. A copy of the minutes of the meeting dated 12.04.2018 is filed at Annexure-R12-4. It is submitted that as decided in the meeting under Chairmanship of Chief Engineer, Water Resources Department, Nagpur Dt.3.7.2018 Annexure-R12-5, EE, NID (South), Nagpur made a demand for Rs. 10 crores vide letter dated 5.7.2018 to the Nagpur Municipal Corporation, Nagpur for the proposed necessary work of Ambazari Dam. A copy of the letter dated 5.7.2018 is filed at Annexure-R12-6. The Municipal Corporation, Nagpur vide letter no.1328 dated 28.09.2018 and Cheque No.298828 dated 27.09.2018 deposited Rs.1 crore with the Nagpur Irrigation Division (South), Nagpur. A copy of the letter dated 28.09.2018 is filed at Annexure-R12-7”.

8. After perusal of the aforesaid paragraph no.6, what can be noticed is, the respondent no.12 has already carried out survey and study of the alleged encroachments so also the steps to be taken for channelizing the water flow from the very source of overflow of the dam in question.

9. We fail to understand as to why again similar exercise is required to be carried out.

10. Be that as it may, we deem it appropriate to have response of the Committee on the said issue, as we are of the view that the affidavit of the

respondent no.12 was not brought to the notice of the said Committee, which was sworn on 16th December, 2023.

11. As prayed, we deem it appropriate to defer the hearing of the present petition to 7th February, 2024 to have response and the progress in the matter of the execution of the protection work to be taken up by the Committee.

12. Stand over to 7th February, 2024.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Ambulkar