

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

APPLICATION NO.82/2016 (WZ)

CORAM:

**Hon'ble Mr. Justice U.D. Salvi,
(Judicial Member)
Hon'ble Mr. Ranjan Chatterjee,
(Expert Member)**

B E T W E E N:

1. Suresh Kumar Pukhrajji Dhoka,

Age 56 yrs. Occn : Business,

2. Smt. Kusumben Suresh Kumar Dhoka,

Age 54 Yrs. Occn : Business at shop

Both R/o. No.8, Ground & 109, 1st floor,

Pandya Mansion, At 625, Jagannath

Shankar Sheth Road, 43, Bomanji Master

Lane, Next to Kalbadevi Head Post Office

Jagannath Shankar Seth Road,

Mumbai- 400 002

.....Applicants

A N D

1. M/s. T.N. Pandya & Others

Carrying business at 625, J.

Shankarsheth Road, Dhobi Talao,

Mumbai 400 002 and 10

Navjeevan Wadi, Dhobi Talao,

Mumbai 400 002.

2. Shri Tripuraprasad Nanalal Pandya,

Age 85 yrs. Occn : Business,
Indian Inhabitant,
R/o. Meera, 4th Floor, Flat No.19,
18, L.D. Ruparel Marg, Malabar
Hill, Mumbai 400 006

3. Shri Prakash Tripuraprasad Pandya,

Age 57 Yrs. Occn : Business,
Indian Inhabitant, R/at.4/47,
A 1 Apartment, 270, Walkeshwar
Road, Mumbai 400 006.

4. Shri Manoj Mahendrakumar Pandya

Age 56 Yrs. Occn : Business,
Indian Inhabitant, R/at Meera,
4th floor, Flat No.19, 18, L.D.
Ruparel Marg, Malabar Hill,
Mumbai 400 006.

5. The Addl. Chief Secretary,

Office of the Environment
Department, Govt. of Maharashtra,
New Administrative Bhavan,
15th Floor, Madam Cama Road,
Mantralaya, Mumbai 400 032.

6. The Assistant Municipal Commissioner,

“C” Ward, Municipal Corporation of
Greater Mumbai, 76, Shrikant
Palekar Marg, Mumbai 400 002.

7. Central Ground Water Authority,

Central Ground Water Board,
Bhujal Bhavan, NH-IV,
Faridabad-121 001.

.....Respondents

Counsel for Applicants

Mr. Abhay D. Parab, Adv.

Counsel for Respondent No.2 to 4 :

Mr. Saurabh Kulkarni, Adv.

Counsel for Respondent No.5 :

Mrs. Supriya Dangare, Adv.

Counsel for Respondent No.6 :

Mr. Rahul Garg, Adv. a/w. Mr. Makarand Rodge,

Counsel for Respondent No.7 :

Mr. K.D. Ratnaparkhi, Adv.

Dated : March 2nd, 2017

JUDGMENT

Per U.D. Salvi J.

1. The Applicants holding premises on lease in 'Pandya Mansion' Cadastral survey No.88, City survey No.4387, situated at 43, Bomanji Master lane, 625, Jagannath Shankar Sheth road, Mumbai-400 002 and professing to be the social activist espousing the environmental causes to protect in the society, have filed the present Application for the reliefs as under :

- A) Injunction restraining the Respondent Nos.1 to 4 from abstracting water from two (2) bore wells situated at the said property;
- B) Injunction restraining the Respondent No.5 Environment Department, State of Maharashtra and Respondent No.6 Municipal Corporation of

Greater Mumbai from granting any permission to the Respondent Nos.1 to 4 to abstract water from the said two wells;

- C) Compensation to the Applicants towards medical expenses incurred by them for their son's treatment.

2. According to the Applicants, the Respondent Nos.1 to 4 are claiming to be the owners of two wells at the plot bearing Cadastral survey No.88, City survey No.4387, situate at 43, Bomanji Master lane, 625, Jagannath Shankar Sheth road, Bombay-400 002, a crowded business area and extract water from the said bore wells for the purposes of trade without having any NOC or valid permission therefor from the local authority i.e. Respondent No.6 Municipal Corporation of Greater Mumbai. The Applicants state that they raised objection and made complaint regarding aforesaid activities of the Respondents causing nuisance due to unregulated filling of water tankers blocking the traffic on the road with the water drawn from the said wells, and causing pollution and unhygienic condition in the said area due to accumulation of spilled well water, dirt and consequent breeding ground for mosquitoes. The Applicants state that the unhygienic condition so developed have resulted in creation of conditions propitious for spreading the dangerous diseases

like Dengue; and the son of the Applicants Mr. Ketan Dhoka got afflicted with the Dengue fever and was compelled to undergo hospitalization between 26th October 2014 and 4th November 2014 vide Discharge Summery of Global Hospitals, annexed to the Application Exhibit-‘H’.

3. We found that service of notice was duly effected on all the Respondents vide affidavit of service dated 8th August 2016. Only Respondent Nos.2 to 4, 6 and 7 preferred to file the replies to the Application. The Applicants filed rejoinder dated 16th November 2016.

4. The Respondent Nos.2 to 4 contend that the Applicants have been holding the said premises since 1st October 1971 and they were/are well aware that there was a well in existence in the said building and as such the Application is hopelessly barred by the Limitation as prescribed under Section 14 of the National Green Tribunal Act, 2010. The Respondent Nos.2 to 4 further contend that the present Application has not been filed in prescribed Form **No.II** as per Rule 8 of the National Green Tribunal (Practice and Procedure) Rule 2011, and have not specified the amount of compensation to avoid 1 (one) per cent stamp duty as mandated under Rule 12 of the National Green Tribunal (Practice and Procedure) Rule 2011 and therefore, the present Application is not maintainable. Respondent Nos.2 to 4 further contend that the Applicants ought to

have impleaded the Collector as a party-Respondent to the present Application, as he is appropriate authority under the provisions of 2(2) of the Maharashtra Ground Water (Regulation of Drinking Water) Act, 1993 and therefore, the Application is not maintainable.

5. Respondent Nos.2 to 4 by their replies dated 19th September 2016 have controverted the Applicants' case as revealed through the Application and has specifically contended that they have obtained requisite permission from the Municipal Corporation of Greater Mumbai (MCGM) as per copies annexed to the reply as annexure 'A-3' and did not engage in any illegal activities.

6. Respondent No.6-Assistant Municipal Commissioner for the Municipal Corporation of Greater Mumbai filed affidavit in reply dated 20th October 2016 wherein he categorically asserted that the Municipal Corporation has not granted any permission/licence/NOC to the Respondent Nos.1 to 4 for using and/or abstracting water from the said two unauthorised wells; and the activities carried out by the Respondent Nos.1 to 4 in the said property are in violation and contravention of the provisions contemplated under Section 381 of Mumbai Municipal Corporation Act and as such upon noticing the said activities following site inspection of the said wells by the Pest Control Officer 'C' Ward, a direction was issued to serve a notice under Section

381 of the Mumbai Municipal Corporation Act and accordingly a notice dated 30th May 2015 under the said provision was issued in the name of the Respondent No.2 for and on behalf of Respondent Nos.1, 3 and 4 by the Pest Control Officer, calling upon them to dismantle pipeline, fill up the two wells with good earth to surrounding ground level and consolidate the site leaving no depression to collect or hold water therein and further to obtain necessary permission from respective authorities for use of the well water. The reply further reveals that the prosecution under Section 471 of the Mumbai Municipal Corporation Act has also been lodged vide Criminal Complaint No.410/708/SS/15 against the Respondent No.2 in the Court of learned 41st Metropolitan Magistrate, Dadar, Mumbai and the process has been issued in the said case. The reply further reveals illegal use of electricity for abstracting water from the said two wells for commercial purposes.

7. Respondent No.7 have revealed the facts in relation to the Ground Water abstraction vide reply dated 8th September 2016. The reply reveals that the entire area of the State of Maharashtra is “Non notified area” and permission of Central Ground Water Authority (CGWA) is mandatory for abstracting ground water for commercial use and any violation of the stipulated guidelines attract penal

action under section 15 of the Environment (Protection) Act, 1986. The reply further reveals that Central Ground Water Authority (CGWA) New Delhi has issued public notice in all the leading local and national dailies wherein all the existing/new/under expansion industries/projects are directed to apply for permission to abstract ground water. In short, the reply indicates that NOC is to be obtained from the State Ground Water Authority (SGWA) and in absence of SGWA from the Central Ground Water Authority (CGWA).

8. Controversy, thus, raised before us warrants answers to the following issues :-

- 1) Whether the present Application is barred by Limitation as prescribed under Section 14 or 15 of the National Green Tribunal Act, 2010 ?
- 2) Whether the Application is bad for non-joinder of necessary party ?
- 3) Whether the Application is not maintainable for not being filed in form No.2 as required under Rule 8 of the National Green Tribunal (Practice and Procedure) Rules, 2011 ?
- 4) Do Applicants prove occurrence of environmental damage ?
- 5) What order ?

Issue No.1 :

9. Learned counsel appearing on behalf of Respondent Nos.2, 3 and 4 argued that the present Application fails to reveal the facts concerning limitation, particularly the facts necessary for ascertaining as to when cause of action first arose. According to him, the Applicants entered the property as lessees holding the shop premises in the said property in or around the year 2003 when wells in question were in existence and by their own showing vide letter dated 14th December 2015 **Exhibit-‘J’** had a grievance about the said two wells since the year 2005 and thus, the first cause of action accrued for the present Application then and as such the present Application is miserably barred by the limitation prescribed either under Section 14 or 15 of the National Green Tribunal Act, 2010.

10. Learned counsel appearing on behalf of Applicants countered the aforesaid arguments with submission that it took time to consolidate the information about the illegal and unauthorised abstraction of the water from the wells and promptly after getting the information on 30th April 2016, the present Application was filed on 25th May 2016. He further submitted that period of limitation triggered on occurrence of facts from which environmental degradation became tangible i.e. when the Applicant’s son suffered Dengue fever-a tangible consequence of environmental

degradation. According to him, the present Application is therefore, well within the prescribed period of limitation.

11. It is true that under the limitation clause mentioned in the Application, there is nothing substantial which can reveal as to when the cause of action first arose. “Cause of Action” is a bundle of facts disclosed in the case and to understand the composite matrix of facts one has to read the Application holistically. The Applicants are essentially seeking reliefs :-

1) Restitution of environment with ban on abstraction of water from the said two wells.

2) Compensation to the Applicants in respect of the medical expenses incurred by them for their son’s treatment;

the reliefs referred to in Section 15 of the National Green Tribunal Act, 2010.

What prompted them to seek these reliefs is the “Cause of Action” for the present Application. Reading of the Application reveals illegal and unauthorised activity of extraction of water and sale, which created unhygienic conditions propitious for mosquitos breeding and its deleterious/damaging impact on environment and the son of the Applicants falling victim to damaging impact on environment on getting afflicted with Dengue fever. Evidently, these composite facts together prompted the

Applicants to file the present Application, and thus the bundle of these facts constitutes a distinct composite and fresh cause of action for filing the present Application.

12. Discharge summary of Global Hospitals, Parel Mumbai, dated 4th November 2014 annexed to the Application **Exhibit-‘H’** clearly reveals that the son of the Applicant Mr. Ketan Dhoka was a victim of Dengue fever between 26th October 2014 and 4th November 2014. Needless to say that the cause of action for the present Application, thus, arose for the first time on or about 26th October 2014.

13. Section 15 sub clause (3) of the National Green Tribunal Act, 2010 prescribes the limitation period of five (5) years in following words :-

Section 15 : *Relief, compensation and restitution. . (1) The Tribunal may by an order provide.—*

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

14. The present Application has been filed on 25th May 2016 well within the period prescribed under Section 16 of

the National Green Tribunal Act, 2010. The issue, therefore, needs to be answered negatively.

Issue No.2 :

15. Learned Counsel Mr. Saurabh Kulkarni on behalf of Respondent Nos.2, 3 and 4 submitted that the suppliers of the water who have entered into contractual relationship for drawing the well water have not been made parties though they are necessary parties to the present Application and therefore, the present Application must fail. In our view, the Applicants have clearly contended that Respondents are claiming to be owners of the said well vide para 7 of the Application and the Respondent Nos.2, 3 and 4 in their reply have admitted that they are the owners of the said property where the wells are situate. They have not specifically denied the assertion made by the Applicants as regards ownership of the wells vide para 2 of the Application. In our opinion, for rendering complete and effectual justice, the presence of the Respondent Nos.2, 3 and 4 before the Tribunal is sufficient. The issue No.2 is, therefore, answered negatively.

Issue No.3 :

16. It is true that the present Application is not in the form as prescribed under Rule 8 under National Green Tribunal (Practice and Procedure) Rules, 2011. National Green Tribunal (Practice and Procedure) Rules 2011 have

been framed in exercise of powers conferred under section 4 read with section 35 of the National Green Tribunal Act. Reading of Section 4 sub-clause 4 of the National Green Tribunal Act, 2010, reveals that these Rules have been made to regulate generally the practice and procedure of the Tribunal. The conjoint reading of this provision with Section 35(1) of the National Green Tribunal Act, 2010 reveals that these Rules have been made for carrying out the provisions of the said Act. Section 18(3) of the NGT Act, 2010 requires the Tribunal to deal with the Application or the Appeals as expeditiously as possible. To attain this purpose, the Rules have prescribed the forms for the Application both under Section 14 and 15 of the Act. In our considered opinion, this has been done to facilitate the ease in disposal of the Application expeditiously. Thus, these Rules serve as handmaid of justice. We, therefore, cannot insist upon presentation of the Application in the given format to such an extent as to deny justice to the Applicants in any given case unless it is so evident that non presentation of their case in the given format would come in a way of delivery of justice. In the present case, we find that all necessary facts have been placed before us. We, therefore, are not inclined to dismiss the present Application for the reason that it has not been presented in form **No.II**. Therefore, issue no.3 is answered negatively.

Issue No.4 :

17. Respondent Nos.2, 3 and 4 have produced two requisitions dated 11th November 2006 made by the Medical Officer of 'C' Ward in respect of water tankers Nos. MH-04-BU/5832 and MH-04-CG/5166 as the permissions **Annexure A-3** granted in respect of the abstraction of water from the wells. At the best, these requisitions show licence granted by the Municipal Corporation of Greater Mumbai for the business of carrying water through tankers. Nothing further can be inferred from the said requisitions/communications. On the other hand, the affidavit in reply filed on behalf of Respondent No.7 Assistant Municipal Commissioner 'C' Ward MCGM clearly reveals a fact that at the place where the said two wells are situate the Pest Control Officer had noticed abstraction of water from two wells with energised means i.e. electricity in violation and contravention of the provision under Section 381 of the Mumbai Municipal Corporation Act. Affidavit in reply filed by the Corporation further reveals the prosecution lodged by the Corporation under Section 471 of Mumbai Municipal Corporation Act against Respondent No.2 for the said contravention of the Law. The Corporation categorically asserted in its reply that it had/has not granted any permission/licence/NOC in favour of the

Respondent Nos.1 to 4 for use and abstraction of water from the said two (2) wells.

18. Notice dated 30th May 2016 issued by the Municipal Corporation, Mumbai requires the noticee to dismantle the pipeline, fill the two wells with good earth upto the ground level and consolidate the site leaving no depression to collect and hold the water therein, and further to obtain necessary permission from respective authorities for the use of the well water within a period of seven days. Nothing appears to have been done by the Respondent No.2 in compliance of the requisitions made in the said notice.

19. Respondent No.7-Central Ground Water Authority (CGWA) in its affidavit dated 8th September 2016 has clearly revealed that the entire area of the State of Maharashtra comes under non notified area wherein the guidelines of CGWA annexed to the affidavit of **Annexure-1** do not necessarily restrict the residents/land owners in relation to construction of water well in their occupied portions of land/property and its further utilization for ground water withdrawal, even though there exists public water supply system and no permission is required for withdrawal of ground water, if withdrawal is done through non energised means, however, commercial use of ground water/sale of ground water mandatorily requires prior permission of CGWA, New Delhi irrespective of the quantity of ground

water withdrawal. In the instant case, the said reply reveals that the project proponent i.e. Respondent Nos.1 to 4 have not obtained prior permission of Central Ground Water Authority, New Delhi for withdrawal of ground water for commercial purposes from the said two water wells.

20. Before we comment on environmental degradation/damage in the present case, it is worthwhile to refer to the identical definitions of “environment” as quoted hereunder available in section 2(a) of Environment (Protection) Act, 1986 and 2(c) of National Green Tribunal Act, 2010 :

“Environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings other living creatures, plants, micro-organism and property;

Not only the material quality and quantity of water, air and land but also the inter-relationship among and in between these material components and life drawing sustenance therefrom as well as the property made of these components is what that constitutes environment. Thus the environmental degradation/ damage caused is not only in terms of quality and quantity of the said material components affected but also its deleterious effects on the life and property that draws sustenance and maintenance from the said material components.

21. The prime objectives of the guidelines issued by the Central Ground Water Authority for evaluation of proposals/requests for the withdrawal of ground water is to focus on specific part of ground water management namely, ensuring sustainability of ground water both in terms of quantity and quality and also focus on land based management of ground water resources; looking into the variations of availability of water in different climatological regions and diverse hydrogeological conditions in various states of the country. The Applicants in their rejoinder have brought-forth the facts in relation to the morphological condition at the location of said wells (No. of wells 576 wells in 'C ward), effect of unregulated abstraction of ground water on ingress of salty water in the aquifers and danger posed to ground water resources and old dilapidated buildings/properties due to ingress of salty water. These facts have not been controverted by the Respondents in any manner, what so ever. Likewise, there is bland denial of the contentions raised regarding injurious effect of unregulated abstraction of ground water on the health of the individuals living in or around the said property. The Applicants have averred that illegal and unauthorised (unregulated) abstraction of water from the wells have resulted in unhygienic and unhealthy environmental conditions due to which the Applicants' son was afflicted with Dengue fever

and hospitalized in a serious condition. This fact is substantiated with the Discharge Summary **Exhibit-H** annexed to the Application. The Applicants' son Mr. Ketan Dhoka, aged 25 years, as per Discharge Summary, suffered from complicated Dengue fever and remained hospitalised from 26th October 2014 till discharged on 4th November 2014 with advice to continue treatment for a period of three months. There is no reason to disbelieve this fact. Evidently, the development of such pathological condition, particularly due to Dengue causing mosquitoes bred on clear pooled water, is the result of unhygienic conditions created due to unregulated abstraction of water and its collection in or about the location of the said wells. Imbalance in the environment, thus, has the effect on the inter-relationship between the ground water and biotic components of the environment i.e. human being, micro-organism and other living creatures. Danger likely to be caused to the material components of the environment i.e. ground water aquifer as well as properties due to possible ingress of salty water, as a result of unregulated abstraction of ground water for commercial use has also become evident with the rejoinder of the Applicants.

22. Pertinently, it needs to be noticed that ground water abstraction is not regulated in non-notified areas, particularly when withdrawal is done through non

energised means, but withdrawal of the ground water for commercial use is mandatorily regulated in non-notified areas also. Such distinction as regards the commercial use of ground water is made for the reason that more often, the commercial exploitation of any natural resource which includes ground water is driven by greed-more the turn over more the profits. It was therefore, incumbent upon the Respondent Nos.1 to 4 to reveal before us that their activity of abstraction of ground water for commercial use was/is benign to the environment. On their failure to show such effect on the environment. We have to necessarily to hold that the activities of Respondent Nos.1 to 4 as aforesaid degraded the environment and caused damage to it in the given facts and circumstances revealed before us. The issue No.4 is, therefore, answered affirmatively.

Issue No.5 :

23. First step towards the restitution of environment is to stop the unregulated abstraction of ground water by Respondent Nos.1 to 4 from the said bore wells. Fact that the abstraction of ground water for commercial use in non-notified area is a regulated activity and that the Respondent Nos.1 to 4 have right to carry out trade and commerce in accordance with law, it is not just and proper to pass an order of permanent injunction restraining the authorities

namely Respondent Nos.5, 6 and 7 from granting any permission to the Respondent Nos.1 to 4 in respect of said two wells.

24. Considering the period of hospitalization, consultation involved, diagnostic efforts, medicines prescribed and having regard to the common course of natural events, human conduct and public and private business in relation to the facts of the present case, we are of the considered view that the Applicants must have modestly incurred loss of Rs.30,000/- (Rs. thirty thousand). Hence, the following order.

Order

1. The Respondent No.1-M/s. T.N. Pandya & Others, Respondent No.2-Shri Tripuraprasad Nanalal Pandya, Respondent No.3-Shri Prakash Tripuraprasad Pandya and Respondent No.4- Shri Manoj Mahendrakumar Pandya, their business agents, contractors, servants and any other person claiming through, are restrained from abstracting water from the said two bore-wells situated at 43, Bomanji Master lane, 625, Jagannath Shankar Sheth road, Mumbai-400 002, without obtaining requisite permissions/NOCs from the concerned authorities namely Municipal Corporation of Greater Mumbai (MCGM) and Central Ground Water Authority (CGWA) or State Ground Water Authority (SGWA) as the case may be.

2. The Respondent Nos.1 to 4 shall jointly and severally pay and deposit an amount of Rs.30,000/- (Rs. thirty thousand) with the Registrar, National Green Tribunal, Western Zone Bench, Pune for being disbursed to the Applicants on payment of one (1) per cent Court Fees payable on the said amount of compensation awarded as per Rule 12 of the National Green Tribunal (Practice and Procedure) Act, 2011. The amount so deposited shall be paid to the Applicants on payment of Court Fee payable as per Law.

3. The Respondent Nos.1 to 4 shall jointly and severally pay an amount of Rs.20,000/- (Rs. twenty thousand) as costs of this Application to the Applicants.

Application No. 82/2016 shall stand disposed of accordingly.

....., **JM**
(Justice U.D. Salvi)

....., **EM**
(Mr. Ranjan Chatterjee)

Date : March 2nd, 2017

ajp