

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 93/2019 (WZ)
(I.A. No. 47/2020)

(With report dated 14.10.2020)

Bombay Environment Action Group

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 14.12.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Sanjay Upadhyay, Advocate

Respondent: Mr. Preshit Surshe, Advocate for State of Maharashtra
Mr. Vilas Jahdave, Advocate for MPCB
Mr. Subit Chakrabarti, Advocate for MMRDA
Mr. Ajay Gadegaonkar, Advocate for Matheran Hill Station
Municipal Council

ORDER

1. The issue initially raised in these proceedings was for finalization of Zonal Master Plan for Eco-Sensitive Zone of Matheran Hill Station in State of Maharashtra. Vide order dated 23.08.2018 in O.A. No. 110/2018, *Bombay Environment Action Group v. UOI & Ors.*, the Tribunal directed finalization of such ZMP. The application was disposed of.

2. However, the applicant filed *EA No. 54/2018* for execution of the above order. Vide order dated 23.08.2019, the Tribunal noted the grievance that the ZMP finalized was not complete and disposed of the

Execution Application giving liberty to the applicant to take remedies if the direction remains un-complied.

3. Thereafter the applicant filed the present O.A. No. 93/2019 pointing out that though ZMP has been published on 07.08.2019, the same was incomplete. On 09.01.2020, notice was issued. Thereafter, on 14.07.2020, the Tribunal considered the compliance status filed by the State PCB stating that 54 hotels in the area were non-compliant and seven were operating without consent. There was no arrangement for the collection of the sewage and other environmental norms. The Tribunal, accordingly, directed the State PCB to take remedial action and the Municipal Council to scientifically manage Solid and Liquid Waste and file compliance affidavits.

4. In view of above background, the matter has been taken up today. We have heard learned Counsel for the Applicant, the State of Maharashtra, the State PCB, the Regional Development Authority and the Municipal Council.

5. Learned Counsel for the Applicant submits that ZMP is still not complete and that requisite measures for Solid and Liquid Waste Management have not been taken.

6. Learned Counsel for the Regional Development Authority has pointed out that ZMP was sanctioned on 07.08.2019. It incorporates Sub-Zonal Master Plan inside Municipal Area, Heritage Plan, Forest Management Plan, Area Development Plan, etc. The stand of the Regional Development Authority in the affidavit dated 12.10.2020 is as follows:-

52. The Respondent No. 3, whilst not dealing with the Application in seriatim, shall deal with certain specific issues raised by the

Applicant, which the Respondent No. 3 is competent to comment upon:

“

i. Allegations that the ZMP does not incorporate Sub-zonal Master Plan inside Municipal Area, Heritage Plan, Forest Management Plan, Area Development Plan, etc:

In this regard, it is submitted that the Development Plan for Matheran (SZMP) and the Development Control Regulations came into force after following the procedure under the MRTTP Act, vide Notification No. TPS-1712/156/C.R.41/12/UD-12 dated 19th January 2019 and thus the first contention of the Application is completely without basis. Further, as regards Heritage Plan, it is submitted that the para 8.3.A(a) of the ZMP Report, which accompanies the ZMP for MESZ and is required to be read along with, categorically provides for 'Heritage in MESZ'. As regards the heritage sites outside the Matheran Hill Station Municipal Council, the same are located on Forest Lands and are protected by virtue of the application of the Forest (Conservation) Act. As regards Forest Management Plan, it is stated that the extract from the 'Working Circle Plans' prepared by the Forest Department, forms part of the Final ZMP report at Chapter 9. The relevant excerpt is annexed hereto and marked as Exhibit-M. As regards area development plan, it is submitted the ESZ Notification, 2003 itself provides for the requirement of the same only for habitations with population more than 5,000. None of the habitations within the MESZ have a population of more than 5,000 persons.

As such, the entire gamut of allegations in this regard are completely misconceived.

ii. Alleged discrepancies regarding heritage in MESZ, growth centre at Shedung, extension of Taloje industrial area, etc:

In this regard, it is submitted that both Taloje extension and Shedung are outside the MESZ boundary. The draft Regional Plan for MMR was (as stated above) submitted to the Respondent No. 2 by the Mumbai Metropolitan Planning Committee after duly following the procedure under the MRTTP Act, including the invitation and consideration of objections and suggestions. The Respondent No. 2 is seized of the draft Regional Plan for MMR (excluding the ZMP for MESZ which is already notified) and the same is under consideration presently.

iii. The ZMP for MESZ allegedly omits the inclusion of 2 key recommendations of the Expert Committee-(a) restriction on development in areas having a slope of more than 20 degrees and (b) restriction of height of buildings to 9.0 mtrs as per ESZ Notification:

In this regard, it is submitted that both these recommendations of the Expert Committee on ESZ of the

Respondent No. 1 have been incorporated at page nos. 41 and 42 of Chapter 10 of the Final ZMP. The provisions are already sanctioned vide the Notification dated 7th August 2019, copy of the-Zonal Master Plan Report is annexed hereto and marked as Exhibit-N.”

7. We have also perused the affidavit of the State of Maharashtra said to have been filed on 05.11.2020 which is not on record. However, during the hearing a copy of the affidavit has been e-mailed. By and large the affidavit gives the details of the Zonal Master Plan (ZMP) on the same pattern as the affidavit of the Regional Development Authority dated 12.10.2020. It is not necessary to give all the details of the affidavit in view of the fact that we are directing the Secretary, Urban Development, Maharashtra to look into any surviving issues and take remedial action.

8. The stand of the State PCB in the action taken report filed on 14.10.2020 is that it has issued closure directions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 against seven hotels operating without consent. Prosecution notice has also been issued to the Municipal Council and compensation has also been levied. Notices have also been issued to the non-compliant hotels, requiring them to show cause why they will not be closed and compensation recovered on 23.09.2020. The affidavit of the State PCB shows that there is non-compliance of environmental norms. The PCB may, apart from any other coercive measures, give a reasonable time for compliance and if the norms are still not complied with, the polluting activities will be stopped till compliance.

9. The Municipal Council may also comply with its constitutional obligation of Waste Management to enforce the environmental norms

which needs to be overseen by the Secretary, Urban Development from the Maharashtra State.

10. As regards inadequacy in the ZMP, there is some difference of opinion between the parties but it is undisputed that the ZMP has been finalised and published. Thus, instead of prolonging proceedings, it may be appropriate that the only surviving issue of coordination and checking up of factual position may be done by a Senior Authority of the State itself to coordinate with the different authorities so as to ensure compliance of law.

11. The Secretary, Urban Development may hold a meeting with concerned authorities (if necessary by video) and take further remedial measures, as found necessary. The applicant may make a representation for the purpose within four weeks. It will be open to the Secretary, Urban Development to coordinate with any State Agency who may be concerned about the matter.

The application stands disposed of accordingly.

In view of the order passed above in the main application, all I.A.s will stand disposed of accordingly.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

December 14, 2020
OA No. 93/2019 (WZ)
(I.A. No. 47/2020)
SN