

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

OA NO. 108 OF 2022

21 MAR 2023

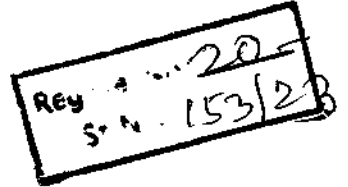


Jandakumar Waman Pawar and Anr.

...Applicants

Versus

Maharashtra Industrial Development Corporation



And Ors.

...Respondents

Affidavit-in-Reply on behalf of Respondent No. 1

Mr Rajesh Manohar Muley, Age: 56 years, Occ.: Deputy Engineer, office at: Office of the Executive Engineer, MIDC, Division Dombivli, Dombivli (East) Pin Code- 421203, the Authorized representative of the Respondent No. 1 above named, do hereby state on solemn affirmation as under:

1. I say that I have read a copy of the above Original Application and perused the relevant records pertaining to the above matter. I am conversant with the facts and circumstances of the present case to the extent the same concern the Respondent No. 1 and able to depose to the same. I am dealing with the allegations, submissions and contentions contained in the Original Application only so far as the same relates to the Respondent No.1 and that

no fact or allegation should be deemed to have been admitted by the Respondent No. 1. I am filing this affidavit for the limited purpose of opposing the admission of the Original Application and grant of any interim relief. I crave leave of this Hon'ble Court to file a further affidavit, if necessary. I am therefore not dealing parawise with the allegations, contentions and submissions in the Original Application.



2. I say that the Maharashtra Industrial Development Corporation, Respondent No.1 herein has been established under the provisions of the Maharashtra Industrial Development Act, 1961 ('the MID Act'). I say that the Respondent No.1 herein has been established with the avowed objective of a planned and accelerated establishment and development of industries in the State of Maharashtra. In furtherance of the objectives of the MID Act, the Respondent No. 1 has established various industrial areas and industrial estates throughout the State of Maharashtra. The principal and predominant purpose of the Respondent No. 1 is the establishment, growth and development of industries in these Industrial Areas and Industrial Estates in the State of Maharashtra. The organization of industries, acquisition of land in that behalf and carrying out purpose of the MID Act by setting up Industrial Areas and Industrial Estates in a planned manner is the objective of the Respondent No. 1. The Industrial Areas and Estates are developed in an orderly manner to facilitate growth of industries in these areas/estates. The Respondent No. 1 also provides various amenities like laying down roads,



water supply, stream lining the provisions of electricity, telecommunications etc. to the industries in these Industrial Areas/ Estates.


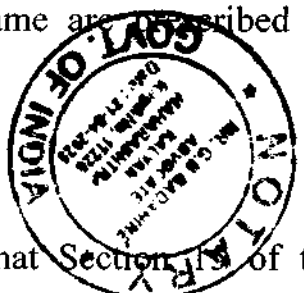
3. I further say that the Respondent No.1 is a Special Planning Authority as per section 40 (1A) of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act). I say that the Respondent No. 1 has framed separate Development Control Regulations in respect of the MIDC area. The said Development Control Regulations have come into force with effect from 7th January 1999 and Revised D.C. Regulations-2009 sanctioned by the State Government Urban Development Department Notification No. TPB/4308/465/CR-64/08/UD-11, dated-31st August 2009 & come into force with effect from 24th September, 2009. I say that the said Development Control Regulations deal with various aspects including open spaces and amenity area to be kept in the various Industrial Areas developed by the Respondent No. 1. As per Revised D.C Regulation-2009, clause No. 16, the C.E.O, MIDC has discretionary powers to regularize the structures in marginal open spaces for hardship caused by plot holders. This clause state that

a) " In specific cases, where clearly demonstrable hardship is caused, Chief Executive Officer may for reasons to be recorded in writing by special permission, permit any of the dimensions prescribed in these rules to be modified except those relating to Floor Space Indices front margin parking requirements unless otherwise permitted under these rules, provided that



relaxation will not affect the health, safety fire safety, structural safety & public safety of the inhabitants of the buildings & the neighborhood.”

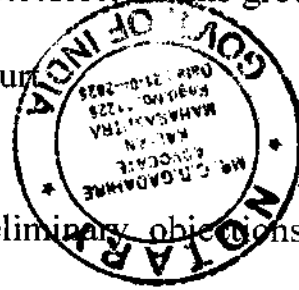
b) The Chief Executive Officer may, from time to time, add or alter or amend Appendix-I except where same are prescribed in the MR & TP Act, 1966 or in the MID Act, 1961.

4. I say that it is pertinent to note that Section 15 of the said MID Act empowers the Respondent No. 1 inter alia “to acquire and hold such property, both moveable and immovable as the Corporation may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by it on such condition as may be deemed proper by the Corporation”. Thus, the Respondent No. 1 can acquire the property in its own name and dispose-off on such terms and conditions as it may deem fit in accordance with the Rules and Regulations framed in respect thereof.

5. I say that the prayers made by the Applicants in the above OA are not at all maintainable and are beyond the purview of this Hon’ble Tribunal. The Original Application raises no substantial question of environment as envisaged under the provisions of Sections 14, 15, 17, 18 and 20 of the National Green Tribunal, Act 2010. I say at the outset that the prayers in the original application are wholly inconceivable in law and unsustainable within the four corners of law.

6. I say that the Applicants have suppressed several material facts from this Hon'ble Tribunal and have not come before this Hon'ble Tribunal with clean hands. The Applicants have suppressed vital facts which are imperative for fair adjudication of the captioned matter. Therefore, on this ground alone the Application is liable to be thrown out of the Court.



7. I say and submit that I raise certain preliminary objections against the maintainability/ admission of the present original Application and grant of any ad-interim or interim reliefs which are as follows:

a) The Applicants have suppressed several material facts and on the ground of suppression of material facts itself the present Applicant is liable to be dismissed at the outset. The following material facts have been deliberately suppressed by the Applicants which are fatal to the maintainability of the present Application:

i) I say that the Applicants have suppressed that the order dated 25.06.2021 passed by this Hon'ble Authority in OA No. 134 of 2021 was challenged in Review Application bearing No. 29/2021 before the Principal Bench of this Hon'ble Tribunal by M/s Vishal Fireworks which was dismissed vide order dated 18.08.2021. Thereafter, M/s Vishal Fireworks preferred Civil Appeal No. 2045-46/2022 before the Hon'ble

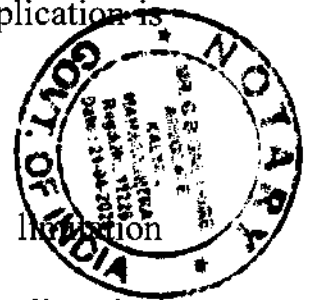


Supreme Court wherein the operation, execution, implementation and effect of the judgment dated 25.06.2021 passed by this Hon'ble Tribunal has been specifically stayed by the Hon'ble Supreme Court and the same is still pending before the Hon'ble Supreme Court. Therefore, as the matter is already sub-judice before the Hon'ble Supreme Court and the judgement dated 25.06.2022 has been stayed therein, the present OA seeking implementation of the said judgement dated 25.06.2022 cannot be entertained by this Hon'ble Tribunal. Moreover, such a prayer seeking implementation of the judgment of this Hon'ble Tribunal in an original application is wholly unconceivable and unsustainable in law even otherwise. Moreover, since the prayer regarding implementation of the judgement dated 25.06.2022 itself does not survive, then the other prayers regarding demolition of industrial structures also cannot sustain in isolation as the said prayer is incidental and consequential to the prayer regarding implementation of the judgement dated 25.06.2022. Therefore, the entire Application is wholly bereft of law and deserves to be dismissed at the outset as none of the prayers are sustainable in the eyes of law.




- ii) Moreover, the Applicants have also suppressed that the Applicants had filed a Writ Petition bearing No. 8372 of 2017 before the Hon'ble Bombay High Court seeking similar reliefs as claimed herein, which was withdrawn by the Applicants with liberty to file PIL and the said Writ petition was disposed off vide order dated 20.08.2018.

Therefore, on the ground of suppression itself the present Application is liable dismissed and thrown out of the Court.



- b) Further, the present Application is hopelessly barred by the limitation prescribed by the Section 14 of NGT Act, 2010 as the incidents alleged of and the Survey Report of Respondent No. 1 and demolition notices issued by the Respondent No. 1 referred to in the present Application date back to the year 2015-16 and the Applicants are seeking direction against the present Respondent to act upon the said notices and survey report conducted in the year 2016. It is settled position of law that the limitation period starts from the date on which the cause of action had first accrued or arisen in case of multiple cause of actions and considering the same, the present Application ought to have been filed within 6 months from the date of occurrence of the first incident in 2015-16 after which the Applicants had also preferred the said WP No. 8372 of 2017 wherein similar reliefs were claimed by the Applicants and the same was withdrawn vide order dated 20.08.2018 so in any case within 6 months

there from the present Application ought to have been filed by the Applicants. Therefore, the present Application is also liable to be dismissed on the ground of being barred by limitation.



c) Further, the present Application is also not maintainable as no substantial question of environment is shown to be involved as per Section 14, 15, 17, 18 and 20 of the NGT Act, 2010, as the issue related to the alleged encroachments in the open marginal space and the issuance of the notices in 2015-16 by Respondent No. 1 and steps thereto, are all issues of purely civil nature which can be considered only in a civil court. Therefore, on the ground of maintainability as well the present Application is liable to be rejected.

d) Further, the present Application is also not maintainable on the ground that none of the prayers sought in the present Application can survive or sustain in view of the fact that the Hon'ble Supreme Court is seized off with the matter in Civil Appeal No.2045-46/2022 and the Hon'ble Supreme Court has also stayed the judgement dated 25.06.2022 passed by this Hon'ble Tribunal and therefore, the matter being sub-judice before the Hon'ble Supreme Court, this Hon'ble Tribunal cannot entertain the present Application and therefore also the present Application is liable to be dismissed.

e) Moreover, the present Application is in essence seeking implementation of the judgement dated 25.06.2021 passed by this Hon'ble Tribunal which is inconceivable and unsustainable under Section 14, 15, 16, 17, 18 and 20 of the NGT Act, 2010. Therefore, on that count also the present Application is liable to be dismissed at the outset.

f) Further, the Applicants have failed to show their locus as per Section 18 (2) of the NGT Act, 2010 and therefore, on that count as well the Application is liable to be dismissed at the outset.

8. I further say and submit that, the averments in the present Application, are absolutely false and misleading to the extent that due to any alleged encroachment in open marginal space, there exists any environmental hazard as sought to be impressed by the Applicants. I say and submit that there is absolutely no correlation between alleged encroachments in the open marginal spaces by the industries and the environmental hazards or threat posed by the industries on account of their manufacturing process or activity carried out in the industries as the same is not regulated by the Respondent No. 1.

9. I say and submit that the Respondent No. 1 being the special planning authority under Section 40 (1A) of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act), the only limited role of the Respondent No. 1 is to sanction plans for construction/ development of the building on the plots

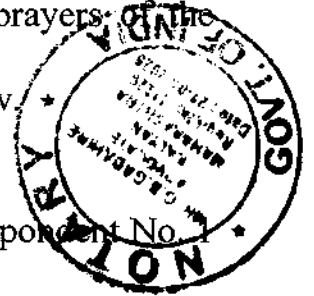
allotted by the Respondent No. 1 as per the D.C. Regulations framed by the Respondent No. 1 dated 07.01.1999 and Revised D.C. Regulations-2009 sanctioned on dated – 24/09/2009. I say and submit that all the necessary environmental clearances and permissions required for the installation of plant and machinery are issued by the Respondents No. 2 to 4. I say and submit that therefore the environmental impact as alleged by the Applicants on account of the alleged encroachments in the open marginal space cannot be assessed by the Respondent No. 1 for the purpose of taking any action thereupon against the allegedly defaulting industries. Therefore, unless the study is conducted by competent authorities as per the directions issued by this Hon'ble Tribunal by judgement dated 25.06.2021 no further steps can be taken by the Respondent No. 1 in furtherance thereof on the ground that any environmental hazard is posed by the defaulting industries. Moreover, so far as the issue of encroachment, if considered in isolation without considering its environmental impact, then it becomes an issue beyond the purview and jurisdiction of this Hon'ble Tribunal as it is not empowered to entertain any purely civil nature dispute, which can only be entertained by a Civil Court. Therefore, considering from any angle the prayers sought by the Applicants are not grantable at all and thus, the present Application is liable to be dismissed at the outset.



10. I further say and submit that the Respondent No. 1 is also not empowered to demolish the structures of the industries only on account of any failure on

the part of the industries to comply with fire safety norms. I say and submit that therefore, the prayer to that extent also stands redundant as it is beyond the powers of the Respondent No. 1 to demolish and/ or to issue demolition notice to the defaulting industries solely on account of failure to comply with the safety norms. Therefore, as stated above, none of the prayers of the Applicants are maintainable and/ or grantable in the eyes of law.

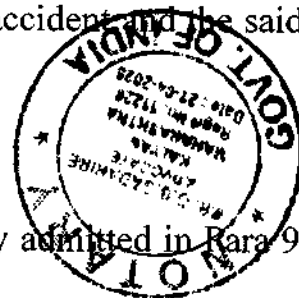
11. I further say and submit that it is absolutely false that the Respondent No. 1 has failed in taking action or has failed in its responsibility under the law and hence it is denied in total. The Respondent No. 1 has been nothing short than vigilant and compliant of all its duties and responsibilities under the law and therefore, it had initiated action even in the year 2015-16. However, the survey chart of 2016 and the notices issued in 2015-16 referred to in the present Application have all lapsed now on account of passage of time and would hold no relevance today due to the change in the circumstances with the advent of time. Therefore, no further action can be initiated by the Respondent No. 1 on the basis of the said survey chart of 2016 and/ or the notices issued in 2015-16 which have already lapsed and have become time barred. Thus, considering from any angle, the prayers of the present Applicants are not at all grantable and hence, it is prayed to dismiss the present Application at the outset.



12. I further say and submit that, as per Section 20 of the NGT Act, 2010, this Hon'ble Tribunal is also bound to apply the principles of sustainable development and considering from that angle as well such blanket prayers of demolitions of industries cannot be sustained as it would have cascading effect and huge financial and developmental repercussions that too without any substantial proof of the alleged environmental hazard or threat posed by the industries simpliciter on account of alleged encroachments in open marginal spaces. I further say that it is also pertinent to note that the defaulting industries are all situated in industrial zone/ area and therefore, applying the principles of sustainable development, the environmental threat or hazard alleged ought to be that much more grievous, real and potent rather than being superficial or superfluous to warrant any action that would hamper the development of the nation and cause huge economical loss to the nation. However, no such real, eminent or potent threat to the environment is shown to exist by the Applicants only on account of alleged encroachment in the open marginal spaces. Therefore, by the application of the principle of sustainable development as well, the reliefs sought by the Applicants cannot be granted and thus, the present Application deserves to be dismissed.

13. I further say and submit that the contents of Para 5 are hereby denied in total and more specifically to the extent of the alleged contention of the Applicants that due to the alleged encroachments made in the open spaces by the industries, that by itself lead to or caused industrial accidents in the past.

I say and submit that the alleged industrial encroachments by itself cannot be and has not been the cause or reason for any industrial accident and the said contention of the Applicants belies logic and facts.



14. I further say and submit that the Applicants have clearly admitted in Para 9 and Para 13 of the present Application that the cause for the industrial accidents or threat to the environment is from the unregulated, uncontrolled and unsystematic boiler plants and chemical processing units, the regulation of which is not within the purview of the Respondent No. 1. Therefore, the logical corollary there from would be that irrespective of the place or position of the unregulated boilers plants and/ or chemical processing units, it would still continue to pose environmental threat even if it is not in encroached open space. Thus, it is absolutely clear that the encroachments made in open space has no correlation with the alleged environment threat posed by these unregulated boiler plants or chemical processing units as irrespective of whether it is situated in the open space or within the premises of the industry, the alleged threat would still continue. Therefore, the Respondent No. 1 cannot be found at fault in any manner and moreover, even the direction of demolition cannot be granted on account of environmental hazards as there are other alternate remedies available to curb the same such as stop work notice etc. which has nowhere been sought by the Applicants in the present Application. Therefore, the present Application is wholly misconceived and hence, deserves to be dismissed in limine.



15. Further, the contents of Para 10 is also denied to the extent that the Respondent No. 1 was or is aware of any alleged danger to the environment due to the alleged encroachment in the open space. Hence, the same is denied.

16. I say and submit that the contents of Para 11, 12 and 17 of the present Application does not concern the present Respondent No. 1 as it is not the appropriate authority to deal with the regulation of boiler plants. I further say and submit that even in case of any irregularity regarding the boiler plants, the Respondent No. 1 is not empowered to issue order of demolition as the Section 44 (1) of MID Act clearly provides that the order of demolition can be issued only where the terms and conditions on which the permission for construction of building is granted by the Respondent No. 1 has been violated or the terms on which the land is granted by the Respondent No. 1 has been violated, only then the order of demolition can be issued and so far as the permissions regarding boiler plants under the Indian Boilers Act is concerned, the same is not granted by the Respondent No. 1. Therefore, the provisions of Section 44 (1) of MID Act cannot be invoked.

17. I further say and submit qua Para 14 to Para 16 that the issue of alleged illegal encroachment by industries in open spaces is a question of pure civil nature and does not involve any substantial question of environment as envisaged in Section 14, 15, 17, 18 and 20 of the NGT Act, 2010. I further

say and submit that it is denied that the alleged illegal encroachments by itself poses any environmental hazard for the reasons specified above. Therefore, these contentions are not maintainable and are beyond the purview and jurisdiction of this Hon'ble tribunal.

18. I say and submit that so far as the contents of Para 18 are concerned, the Respondent No. 1 can issue orders of demolition only in compliance with Section 44 (1) of MID Act and the indemnity bond cannot form the basis for any such coercive action as contended in Para 18 by the Applicants. Hence, the same is denied.

19. I say and submit that so far as the Para 19 is concerned the Applicants are put to strict thereof and especially with respect to the alleged photographs mentioned in the said Para, the authenticity and veracity of the said photographs is doubtful and hence, the same are denied by the Respondent No. 1.

20. I say and submit that so far as the Para 21 is concerned, the same does not make out any substantial question of environment and the alleged contention regarding encroachment in open spaces is a purely civil dispute which cannot be considered by this Hon'ble tribunal. I further say and submit that the Applicants are put to strict proof regarding the contention that the alleged encroachment poses any threat to environment. Hence, the same is denied.

21. I say and submit that so far as the Paras 26 to 31 are concerned, the same cannot be gone into by this hon'ble Tribunal in view of the stay order passed by the Hon'ble Supreme Court as stated hereinabove



22. I say that I have dealt with all the contentions of the Applicants made against the answering Respondent No. 1 and say that for the aforesaid reasons no case or cause of action is made out by the Applicants for the intervention of this Hon'ble Tribunal and hence the present Application needs to be dismissed with costs.

Solemnly affirmed at Mumbai)

on this 21st day of March, 2023)

Explained & interpreted by me)

~~Deponent~~

DEPUTY ENGINEER
SPA Sub Division
MIDC, Dombivli Division

Deponent

21 MAR 2023

~~Before me~~

Advocate for the Respondent No.1



BEFORE ME

G. B. Gadani
G. B. GADANI
ADVOCATE
Vidya Asha, MIDC, Dombivli (E), Thane - 401 204
(INC 11226)

21 MAR 2023