

Civ. W.P. Mo. 14/05/2005
Dated 29/10/2005

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO. 2244 OF 2004
IN
PUBLIC INTEREST LITIGATION NO. 39 OF 2003
IN
WRIT PETITION NO. 7308 OF 2002**

1. Bombay Environmental Action Group. Bombay and anr.

.... Applicants / Orig.Petitioners

V/s.

2. State of Maharashtra & Ors.

.... Respondents

To,

1. State of Maharashtra
Through Addl. Govt. Plader
High Court. A.S. Bomaby
2. Mahabaleshwar Municipal Council
Office at Mahabaleshwar,
District Satara.
3. Pnachgani Munciapal Council
Office at Panchgani
District Satara
4. Collector, Satara
5. The Maharashtra Pollution Control Board,
Shri Chatrapati Shivaji Maharaj Municipal Marrket , Bldg.,
Mata Ramabai Amedkar Road, Mumbai-1.

WEHREAS, the above named application/ orig. petitioners in writ petition, have filed civil application, being civil application No. 2244 of 2004. Praying therein that (a) Respondent Nos. 1 to 5 be ordered and directed an implement and give effect to the suggestions and recommendations of the High Court Monitoring Committee with respect to forest conservation as more particularly set out in Annexure 5 and the

recommendations at pages 12,13 & 14 under the heading "Forest Matters" to their said full status report dated 16th Feb.2004, (ai) that Respondent No.2, Respondent No.3 and Respondent No. 4 co-operate with the Forest Department in all matters relating to the preservation and conservation of forest in the Mahabaleshwar-Panchgani Region; etc.

AND THEREAFTER, the above said application was pleased before the Court for orders, when upon hearing Mr. D.J. Khambatta, Senior Advocate, with Mr. Riyaz Chagla instructed by M/s Federal & Rashmikanat, for the Applicantas, Mr. Ravi M. Kadam, Advocate General with Mr. P. M. Patil. Assistant Government Pleader, for respondent Nos. 1 and 4, Mr. A. V. Anturkar, Advocate for respondent No.2, Mr. J.Reis with Mr. Y.M. Chaudhari, Advocate for Respondent No.3. Mr. Rajiv Chavan instructed by Dr, T. C. Kaushik, Advocate for Respondent No. 5, Mrs. Sadhana Mahashabdhe, Adv. For Respondent No. 10, the Court (Coram: Dalveer Bhandari, C.J. and S.J.Varifdar, J.) has on 19/09/2005 passed the following order:-

"True copy of the order dated 19/9/20025 is enclosed herewith."

It is accordingly ordered that a note of the above Court's order be taken and act accordingly.

The Civil Application is due on 21/11/2005.

WITNESS Shri Dalveer Bhandari, the Chief Justice at Bombay, aforesaid this 19th day of Sept 2005.

By the Court

**Deputy Register
(Civil)**

The day of Oct, 2005.

Note: The return of this writ
should be made immediately
Duly certified.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2244 OF 2004

IN

PUBLIC INTEREST LITIGATION NO. 39 OF 2003

IN

WRIT PETITION NO. 7308 OF 2002

Bombay Environmental Action Group & Anr.

.....Applicants

Versus

State of Maharashtra & Ors.

.....Respondents.

Mr. D.J. Khambatta, Senior Advocate, with Mr. Riyaz Chagla instructed by M/s Federal & Rashmikant for the Applicants.

Mr. A.V. Anturkar for Respondent No.2.

Mr. J. Reis with Mr. Y.M. Chaudhari for Respondent No.3.

Mr. Rajiv Chavan instructed by Dr. T.C. Kaushik for Respondent No.5.

Mrs. Sadhana Mahashabdhe for Respondent No. 10.

**CORAM: DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.**

DATE: SEPTEMBER 19, 2005.

P.C.:-

1. This petition has been filed by the Bombay Environmental Action Group and another, in which the problem of large-scale unauthorized construction in Mahabaleshwar-Panchgani area has been highlighted. According to the petitioners, all Building Bye-laws have been given a total go by. It is seriously affecting and equally, the eco-system of the said region.
2. The petitioners have also complained about the excessive de-forestation in a clandestine manner.
3. The petitioners have also highlighted the extremely urgent problem of water and Air pollution created by hotels, restaurants, institutions, hospitals, schools and other building in Mahabaleshwar and Panchgani region. It is submitted that the main lake, Venna, which is the principle source of water supply, is also not free from pollution. Garbage and solid/plastic waste is dumped in the valley. It is submitted that unless immediate steps are taken, the only beautiful hill-station of Maharashtra would lose its significance and charm.
4. On consideration of totality of the facts and circumstances, it has become imperative to give following directions: -
5. Each of the hotels, institutions, hospitals and schools to install and commence operation / use of sewage, effluent treatment plant, which is deemed proper in the facts and circumstances of each case by the Maharashtra Pollution Control Board (for short, 'MPCB') by 31st December, 2005. The orders of closure and sealing of the premises of such hotels and institutions (but not hospitals and schools) that fail to install and commence operation / user of such sewage / effluent treatment plant to the satisfaction of the MPCB on or before 31st December 2005.
6. MPCB shall take all necessary actions, including launching of prosecution against all persons and officers of the aforesaid institutions (including the Officers identified in this order) in the event of any failure in complying with the directions.
7. Respondent Nos.2 and 3 are directed to install and put into full operations such sewage system, including sewage, effluent treatment plants as also additional pipelines, sewage lines as are directed by MPCB for Mahabaleshwar and Panchgani Municipal areas. The sewage, effluent treatment plants to be completed and put into operation by 31st January 2006. The efforts would be made by respondent Nos. 2 and 3 to ensure that additional pipelines / sewage water lines are installed and put into operation by 31st December 2006. Mr. Anturkar. Learned Counsel appearing for Mahabaleshwar Municipal Council (for short, 'MMC'), submits that on next date of hearing, he would submit the entire phase-wise plan. He, on behalf of the MMC, also stated that the work would be initiated within four weeks from today.

8. Respondent Nos. 1,2,3 and 4 (and their servants, agents and officers) are directed to fully co-operate and act in accordance with MPCB's directions to cleanse the valleys, forests, lakes and rivers in and around the Mhabaleshwar and Panchgani Region and all polluted areas resulting from the discharge of untreated sewage and effluent as also as a result of the dumping or release of other garbage and solid / plastic waste.
9. Respondent Nos. 1 to 4 are also directed to forthwith comply with all the directions and orders set out in the order of this Court dated 18th November, 1998 in Writ Petition No. 2754 of 1997 and order dated 11th August 2004 in Civil Application No. 2244 of 2004 in Writ Petition No. 7308 of 2002 (except regarding the orders for a full survey and demarcation of all forest areas in Mahabaleshwar Panchgani region) within three months. Respondent Nos. 1 to 4 and their officers, servants and agents are directed to fully co-operate with the Forest Department and to act in accordance with its directions in this regard. The learned Advocate General appearing for the State submit that the process of demarcation shall be initiated within four weeks from today and it would be completed as early as possible and he would submit a detailed schedule on the next date of hearing. The learned Advocate General further submits that he would also indicate whether it would be feasible for the State to demarcate private forests first. The learned Advocate General would also indicate within what period, demarcation can be carried out on the map by the next date of hearing.
10. Respondent NO.3 is directed to implement the recommendations and plans Land and to file an affidavit within one month from the date of this order reporting compliance. submitted in the Monitoring Committee's report dated 16th February 2004 or any amended plan to be submitted within one month from the date of this order reporting compliance.
11. Respondent No.2 is directed to take immediate action (including demolition of all structures forming part of the Jijamata and Munavar Settlement at Chinaman waterfall and to prohibit any further building and structure in the said area.
12. Respondent Nos. 1,2,3 & 4 are also directed not to make any relaxation or change permitting increased development in the zoning / land use provisions or development control regulations and other building regulations and bye-laws until the master plan and the sub-zone master plan under the Eco-sensitive Notification dated 17th January, 2001 are brought into force and finally approved by the Ministry of Environment and Forests, Government of India.
13. Respondent Nos. 1,2,3 and 4 are further directed to forward to this Court copies of all permissions and other supporting documents and plans in respect of applications for permissions or sanctions for any further development and re-construction.

14. It is ordered and directed that the following Officers will, in addition to any other Officers, who are responsible and liable in law for ensuring compliance, are hereby charged with and will be specifically held liable and responsible for any default in expeditious compliance with all the aforesaid orders and directions (including those issued by **MPCB and the Forest Department**):-

- (a) Shri Dilip Boralkar, Member Secretary, Maharashtra Pollution Control Board (and all future incumbents of that post), in respect of all directions, orders and obligations operating upon MPCB.
- (b) Shri S. Hussain, Principle Secretary, Forests, Government of Maharashtra, (and all future incumbents of that post) in respect of all directions, orders and obligations operating upon respondent No.4.
- (c) Shri Kishore Borade, Chief Officer, Mahabaleshwar Municipal Council (and all future incumbents of that post) and Shri D.M. Barlekar, President, Panchgani Municipal Council (and all future incumbents of that post) in respect of the obligations, directions and orders operating upon respondent No.2 and its servants, agents and officers.
- (d) Shri R. V. Shavan, Chief Officer, Panchgani Municipal Council (and all future incumbents of that post) and Mrs. Laxmi Karhadkar, President, Panchgani Municipal Council (and all future incumbents of that post) in respect of all the obligations, directions and orders operating upon respondent No.3 and its servants, agents and officers.
- (e) Shri Subbarao Patil, District Collector, Satara (and all future incumbents of that post) in respect of all directions, orders and obligations operating upon respondent Nos. 2,3 and 4 and their respective servants, agents and officers.
- (f) Shri B.S. Parhad, Sub-Divisional Officer, Wai (and all future incumbents of that post) in respect of the directions, obligations and orders operating upon respondent No.4 (and his servants, agents and officers).
- (g) Shri Sunil Limaye, Deputy Conservator of Forests (and all future incumbents of that post) in respect of all directions, orders and obligations operating upon the Department of Forests.

It shall be the duty of each of the forenamed officers and also of _____ the institution / entity they represent to bring this order to the attention of any new incumbent of the aforesaid posts.

15. Each of the aforesaid officers shall file detailed affidavit on a six-monthly basis i.e., on or before 15th January and 15th July of every year in this Court indicating

exactly the steps taken and how the orders and directions have stood complied with.

16. Shri. V.D. Kulkarni, Retired Deputy Director of Town Planning, shall be appointed as a Member of the High Court Monitoring Committee with immediate effect.
17. The High Court Monitoring Committee is directed to prepare a full Photographic / videographic record (to be maintained on CD or DVD) of all the existing construction / development and of all Heritage sites, points, rides, walks in the Mahabaleshwar Panchgani region.
18. Mr. Antukar, learned counsel appearing on behalf of the MMC, stated that the MMC was experiencing enormous difficulties in controlling the illegal construction due to the fact that they were understaffed. He stated that the MMC also did not have adequate facilities to enforce law against the unauthorized and illegal construction. It is difficult to accept this submission on behalf of the MMC. We do not find that the MMC had really taken any steps in this regard. The MMC is directed to abide by its statutory obligations and duties. We intend passing the following directions to obviate any similar plea on the part of the MMC in future. We clarify that mere passing of these directions will not, in any manner, absolve the MMC of discharging its functions, including in respect of the illegal constructions:-
 - a. The MMC shall not regularize any illegal construction henceforth, without the leave of this Court. The MMC may consider the application for regulation but shall not pass any final orders, if it intends regularising such unauthorized construction, without the leave of this Court.
 - b. In the event of the MMC coming to know of any illegal construction either by itself and even in the event of any illegality being brought to the notice of the MMC by any other person or persons, or in any other manner, it shall take steps in accordance with law, in respect thereof with the assistance of the police, if necessary.
 - c. It is directed to file appropriate application to the higher authorities, including the Director General of Police, for development of additional police force, if it becomes imperative.
 - d. The MMC would also be at liberty to approach this Court for appropriate in case the MMC is not able to receive proper assistance from the Government in implementations of the directions passed by the Court of to carry out its statutory obligations.
19. The MMC shall serve a copy of this order in addition to any other material on the persons concerned in respect of the illegal construction who shall thereby be put to notice that any continuation of the work would not only be violative of the

various enactments and the rules and regulations there under but would also be in violation of this order as well. A copy of the affidavit to be tendered as aforesaid shall simultaneously be served by the MMC on the Police Station

20. The President of the MMC shall circulate a copy of this order to all the members of the MMC. The President of the MMC shall also furnish a copy of this order to any new incumbent. Every new President of the MMC is ordered and directed
21. The Registry is directed to ensure that a copy of this order is forwarded by the Register General of this Court to --
 - (i) all the District / Additional District Judges of the Wai and Satara District Courts (and thereafter to all new appointees to the position of District Judge of Wai and Satara),
 - (ii) all the Judges of Senior and Junior Civil Divisions (and thereafter to all new appointees to the position of Senior Civil Division Judges and Junior Civil Division Judges).

Respondent Nos. 2,3,and 4 are also directed to bring this Order to the attention of all Courts or authorities before whom any proceedings are adopted by any person, hotel or institution with regard to this order or any orders / directions passed pursuant thereto by the MPCB or the Forest Department. This shall be done at the earliest possible opportunity. Any person, hotel or institution which considers itself aggrieved by any directions / orders passed by the MPCB or by the Forest Department, pursuant to this order shall file its objections in the present writ petition.

22. The High Court Monitoring Committee has not been paid its expenses for the last several years towards secretarial expenses, traveling, transportation, photography, preparation of reports, typing charges and other miscellaneous expenses. The learned counsel appearing for respondent Nos. 2,3, and 4 undertake to deposit in this Court a sum of Rs. 1,00,000/- (Rupees one lakh) each to defray the costs and expenses of the Monitoring Committee within four weeks from today.

23 WE would like to record our appreciation for the sincere efforts put in by the Maharashtra Pollution Control Board and its officers and Shri Sunil Limaye, Deputy Conservator of Forests, Satara, for carrying out their obligation. List this matter again on 21st November 2005 for further directions.