

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPLICATION NO. 26 OF 2013 (WZ)**

**CORAM:**

- 1. Hon'ble Shri Justice V.R. Kingaonkar  
(Judicial Member)**
- 2. Hon'ble Dr. Ajay A. Deshpande  
(Expert Member)**

**B E T W E E N:**

**M/S. Riverside Resorts Pvt. Ltd.**

A Company registered under the Indian Companies Act, 1956, having Its registered office at: 14, Motilal Talera Road, Pune-411 001,  
Through its Director  
Mr.Kanhaiyalal Motilal Talera,  
Age: 74 years, Occupation: Business  
Office at 9, Jaiprakash Narayan Garden,  
Pune-411 001.

.....Applicant

**A N D**

- 1. Pimpri Chinchwad Municipal Corporation,**  
Mumbai-Pune Road,  
Pimpri, Pune-411 018.  
**Maharashtra Pollution Control Board,**  
Wakadewadi, Jog Centre,  
Mumbai Pune Road, Pune-411 003.
- 2. M/s Yashak Associates**  
Presently working at S.No.293,  
CTS No.1703,  
Chinchwad Gaon, Pune-411 033
- 3. The Collector**  
Collector office Compound,  
Pune-411 001.

**4. Irrigation Department**

Sinchan Bhavan,  
Mangalwar Peth,  
Pune-411 001.

.....Respondents

**Counsel for Applicant**

Mr. Pradip Havnor,  
Mr. Vikas V. Joshi

**Counsel for Respondent(s):**

Mr. Amol Patayeet for Respondent No.1.  
Mr.D.M.Gupte, with Ms, Supriya Dangre,  
for Respondent No. 2.  
Mr. Moneesh Phatak, for Respondent No.3.  
Mr. G.K. Phatak, for Respondent No.4.  
Mr. D.D.Shinde for Respondent No.5.

---

**DATE : 29<sup>th</sup> January, 2014**

---

**J U D G M E N T**

**1.** This Application is filed under Section 18 (1) read with Sections 14 and 15 of the National Green Tribunal Act, 2010. M/s Riverside Resort Pvt. Ltd., the Applicant, herein, is a Company incorporated under the Indian Companies Act, 1956. The Applicant, for the purpose of brevity, will be hereafter referred to as “M/s Riverside Resort”.

**2.** The Application is mainly filed against the construction of a crematorium activities of Respondent No.1, Pimpri Chinchwad Municipal Corporation (PCMC). Respondent No.2, Maharashtra Pollution Control Board (MPCB), and Respondent No.4, Collector, Pune are the formal parties. Respondent No.3- M/s Yashak Associates, is a

building contractor, in whose favour tender work is allegedly given by the PCMC for construction of the crematorium in question. The Respondent No.5, Irrigation Department, is also a formal party, but seems to have been joined, because it is supervisory authority over flood line areas of the rivers.

**3.** From the pleadings of the Applicant, we found that he has tried to inject certain civil dispute pertaining to acquisition of land bearing CTS No.1703, to the extent of 7499.76 sq. mtrs situated at village Chinchwad, Tal. Haveli, (District Pune), out of the property described in paragraph (iA) of the Application. Though he has referred to certain acquisition proceedings in respect of the property and legality about such acquisition proceedings, yet such pleadings are irrelevant for the present purpose.

**4.** Shorn of unessentials, case of the Applicant is that the land described as the property in paragraph (iB) admeasuring 7499.76 sq. mtrs, situated adjoining to bank of the river 'Pavana', is not lawfully acquired by the PCMC. The State Government Circular dated 2.9.1989, envisages safety measures for use of lands falling within area of flood zone and irrigation projects. The categories have been set out as below:

- (I) Prohibited flood line (Blue Line)
- (II) Restrictive zone,

**5.** The Appellant has come out with a case that no construction activity is permissible on bank of the river. The open plot bearing CTS No.1703, ought to be used only for restrictive purpose as per the specific permissible use, under the directions of the Central Pollution Control Board (CPCB). The permissible use of the open plot in question, does not cover construction of crematorium as such. The PCMC is not at all entitled to raise construction of any permanent structure, least that of the proposed crematorium. The legally imposed restrictions, as enumerated in the Government Circular dated 2.9.1989, cannot be violated by the PCMC.

**6.** The Applicant further alleges that the PCMC, did not obtain necessary permissions from the PWD, MPCB and the Irrigation Department, prior to commencement of the work of crematorium. The PCMC illegally constructed a retaining wall above the ground level. The Applicant alleges that proposed construction of crematorium falls within prohibited zone due to probability of Flood during any year. The land within blue line area, is declared as prohibited zone and therefore the proposed construction of crematorium is illegal. Not only that it is illegal due to alleged infringement of the Government Circular or Resolution dated 2.9.1989/21.9.1989, but it poses eminent danger to the environment in the nearby area, as well as to ecology of river zone. The Applicant further alleges that inspite of his

repeated requests, the PCMC and the contractor refused to stop the construction work. Hence, the Applicant filed present Application alleging that act of the PCMC and its contractor would tantamount to violation of environment Laws and may lead to environmental pollution, and may cause permanent damage to the environment.

**7.** By filing a detailed reply affidavit, the Respondent No.1,- PCMC resisted the Application. It is not necessary to reproduce all the averments made in the reply affidavit. Suffice it to say that the PCMC denied allegations that construction of the proposed crematorium, was being illegally carried out. The PCMC further denied that the proposed construction of crematorium, is likely to cause environmental damage to nearby area. The PCMC, categorically denied that the proposed construction is being carried out in breach of Rules and Regulations of the Environment (Protection) Act,1986, or the Rules made thereunder. According to the PCMC, dispute is raised with malafide intention due to issue raised by the Director of M/s Riverside Resort in respect of shifting of the land Reservation. The PCMC alleges that funeral rites were found being carried out indiscriminately in part of the land S.No.293, corresponding to CTS No.1703, (part) of village Chinchwad, Tal. Haveli, by the villagers and inhabitants of the nearby area. There was no security wall and, therefore, the dead

bodies were being exposed to danger from attacks of stray dogs, scavenging birds etc. Therefore, PCMC adopted resolution to make construction of crematorium, in order to regulate the funeral ceremonies by maintaining dignity of the dead bodies. The PCMC further alleges that only a part of protective wall is constructed alongside of bank of 'Pavana' river, in order to avoid any soil erosion, slippage of earth or debris in river 'Pavana' from open land in the prohibited area.

**8.** According to the PCMC, ordinarily incineration places/crematorium grounds are situated by the side of river banks. The present construction will not be carried out by making any permanent type of construction wall above the ground level as and when the incineration sheds are planned out to be constructed, the same will be constructed as per the guidelines of the MPCB and after obtaining NOC from the concerned departments of the State Government. According to the PCMC, the open land between the river bank and Blue Line can be used for establishments of public utility services, tracks etc. and, therefore, the proposed construction is not illegal. On these premises, the PCMC has denied that the proposed construction of the crematorium/incineration shed will amount to environmental damage, or threat to ecology. The PCMC, therefore, sought dismissal of the Application.

**9.** The Respondent No.5, (Irrigation Department), filed affidavit of Baburao Lohare, Executive Engineer. He

explained through his affidavit that the survey of flood line of 'Pavana' river was carried out by the Engineers of the Water Resources Department, in the year 2009, and thereafter vide letter dated 18.2.2009, the Municipal Commissioner of PCMC, was given maps of Blue Line and Red Line drawn by the concerned Engineers of the said department. He categorically stated that the proposed construction of crematorium shed and waiting shed will obstruct flow of the river, as proposed construction is coming and/or falling within prohibited zone, which is not permissible. He also placed on record a copy of Plan prepared by the Water Resources Department, indicating area between Blue Line and Red Line, as well as the river bank.

**10.** On behalf of Respondent No.2- Maharashtra Pollution Control Board (MPCB), Hiravprasad Gandhe, filed his affidavit. In his affidavit, it is clarified that the MPCB, has no concern with the construction of crematorium in question. According to the MPCB, it is required to monitor water quality of 'Pavana' river at various places, which are indicated in the affidavit. The water quality monitoring near the proposed place of crematorium will be undertaken after commissioning of the Project. At the present stage, the MPCB has no role to play and, therefore, could not express any particular opinion about environmental impact of the proposed construction of crematorium at the site in question.

**11.** No reply affidavit is filed by any other Respondents.

**12.** We have heard learned Counsel for the parties in *extenso*. We have gone through the documents and relevant Government Circulars/Resolutions.

**13.** There is no dispute about the fact that the PCMC has resolved to undertake the work of proposed crematorium on land of CTS No.1703 of village Chinchwad. The land in question admeasures 7499.76 sq mtrs and is adjacent to bank of river 'Pavana'. There is also no dispute about the fact that the open land falls within area of prohibited zone, in as much as it comes within Blue Line area. What emerges from the record is that the said chunk of land is acquired by the PCMC, as per the Award dated 14<sup>th</sup> March, 2011. That Award rendered by the Special Land Acquisition Officer (SLAO), Special Unit No.2, Pimpri, is subject matter of challenge in the Writ Petition No.7869 of 2009, pending before the Hon'ble High Court of Bombay. It appears from the record that the Applicant offered to shift reservation of another land reserved for crematorium, situated on eastern side of the bridge of 'Pavana' river, on his land, which is the disputed land and thereafter challenged the Award on the ground that possession was not handed over to the PCMC. Be that may as it is, we are not concerned with the legality of the acquisition proceedings. We are also not much concerned with the motive of the Applicant, in filing of the Application.



It may be that the Application is filed with certain malafide motive. The PCMC is at liberty to take appropriate steps to do needful, if and when the Applicant – Riverside Resort, will apply for necessary construction permission over the land that was exchanged/offered etc. The subject matter of dispute does not come within ambit of Municipal Laws, nor does it fall within ambit of nature of acquisition of land in question. Needless to say, we need not go to examine the question to alleged malafides of the Applicant in approaching the Tribunal.

**14.** The main issue to be addressed in the Application is:

“Whether the proposed construction of crematorium/incineration shed etc. is likely to cause serious damage to environment, because it is likely to reduce width of the River and may enhance possibility of causing damage to crops, properties or human beings in the vicinity ?

**15.** Before we proceed to consider merits of the matter, let it be noted that the Irrigation Department of State Government, has issued circular dated 21.9.1989, whereby two (2) zones have been demarcated. First is prohibited zone and second one is restrictive zone. We are concerned with first category, namely, ‘prohibited zone’. ‘Prohibited zone’ as per description in the said circular, with reference to Blue Line, is as follows:

A) Prohibited Zone:-

The area required to carry discharge receiving from reservoirs in controlled conditions and the discharge from free catchments during the monsoon is known as prohibited zone. It should be decided on the basis of once in 25 years frequently flood discharge. The area required in river course and along the banks necessary to carry the flood discharge of once in 25 years return flood or a flood equivalent to 1.5 times the capacity of the established river channel whichever is higher. And this area should be decided as prohibited zone.

This area may be used only for the open land type of use such as playgrounds, gardens, river side esplanades or cultivation of light crops whenever such riparian rights exist.

B) **Blue line:-**

The contour line deciding boundary of prohibited zone on both banks of river called as blue line.

*(Emphasis supplied)*

**16.** The real contentious issue is about interpretation of last line of paragraph A of the Circular. The line reads as follows:

“This area may be used only for the open land type of use such as playgrounds, gardens, river side esplanades or cultivation of light crops whenever such riparian rights exist.”

**17.** According to learned Counsel for the PCMC this kind of description is of inclusive nature. He submits that use of area in the prohibited zone, can be made for activities of 'open land type' and, therefore, when incineration activity will be carried out in the open area by temporary construction of shed, or for that matter, construction of a shed with sitting arrangement, then it cannot be termed as construction activity of prohibited nature. He argued that the main purpose of such demarcation of prohibited area is to ensure that due to Floods, there shall not be loss of property or human life. He argued that burning of dead bodies will not cause any kind of such loss, nor there will be property loss, if incineration sheds or sitting arrangement are made by carrying out construction of crematorium. Consequently, he urged to dismiss the Application.

**18.** *Per Contra*, learned Counsel for the Applicant, would submit that open land type use of prohibited zone is categorically restricted to playgrounds, gardens, river side esplanades or cultivation of light crops and, therefore, no other activity is permissible within such area. He invited our attention to the affidavit filed by the Executive Engineer of Irrigation Department. He argued that if dead bodies and construction of crematorium will be mixed with flood water, then also it may cause environmental damage. He would submit that the Applicant has proved possible threat to the

environment. He argued further that there is no need to establish up to the hilt, whether actual environmental damage will be caused due to any such activity. He, however, conceded that temporary construction of incineration shed may not be prohibited activity in the said area.

**19.** From the available record, it is amply clear that PCMC, has carried out the construction of protective walls on both the sides of 'Pavana' river. These walls are up to the level of one (1) meter above the ground level. The PCMC had filed affidavit in PIL No.207 of 2010, wherein it was stated that the construction, which falls within Blue Flood Line, was unauthorized and was violation of environmental norms. The PCMC had issued notices to the violators of the Municipal and Environmental Regulations. The PCMC had demolished 243 structures, which had been found illegally constructed within Blue Flood Line. Having regard to such stand of the PCMC, now, it is not permissible to the PCMC to take somersault and say that proposed construction will be legal and proper. Once the proposed construction is said to be within Blue Flood Line, then it goes without saying that the same is against the Environmental Norms and cannot be permitted. The PCMC is a Planning Authority within meaning of the Maharashtra Regional Town Planning Act, 1966 (MRTPA) and therefore is duty bound to enforce the provisions made there under. The PCMC is also under obligation to follow the norms fixed by the Irrigation Department. If the PCMC itself will commit breach of

environmental norms, it will be difficult to expect adherence to environmental regulations from common citizens.

20. We are of the opinion that meaning of Government Resolution/Circular issued by the Irrigation Department, is not as interpreted by the PCMC. A plain reading of Government Circular dated 21.9.1989, goes to show that said prohibited zone is the area that can be used 'only' for open land type of use. The construction of crematorium or sitting place like amphi theater etc. cannot be treated as open type use of the land. The construction of protection walls over and above is ground level of the river also cannot be permitted under the relevant norms of the Irrigation Department. The main purpose of blue line demarcation is to allow natural flow of the water to continuously flow, without it being obstructed, cabined or cribbed in any manner. The purpose is that natural flow of the river water shall not be chocked at any place and no artificial water bottle necks shall be created by any construction activity.

21. Learned Counsel for the PCMC, vehemently argued that principle of 'Sustainable Development' is applicable in the context of the present Application. He invited our attention to the Judgment of Hon'ble Principal Bench of this Tribunal in the Application No.2 of 2013 in **'Sarang Yadvadkar & Anr Vs Commissioner of PMC and Ors'**. The Hon'ble Principal Bench of this Tribunal, duly considered the concept of 'Sustainable Development' in the context of peculiar circumstances of that case. The following are relevant observations :-

*“All these principles have to be examined and applied on the touch stone of “reasonable person’s test”. As already indicated, we are a developing country, and therefore, have to take somewhat liberal approach towards development but certainly not by compromising the environmental interest. The precautionary principle can be explained to say that it contemplates that an activity which poses danger and threat to environment is to be prevented. Prevention is better than cure. It means that the State Governments and the local authorities are supposed to anticipate and then prevent the causes of environmental degradation. The likelihood of danger to the environment has to be based upon scientific information, data available and analysis of risks. Ecological impact should be given paramount consideration and it is more so when resources are non-renewable or where the end result would be irreversible. The principle of precaution involves anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. Again it is based on scientific uncertainty.”*

22. We may refer to the observation of the Apex Court in **“Vellor Citizens’ Welfare Forum Vs. Union of India, (1996) 5 SCC 647”** and further explained in **M.C. Mehta Vs. Union of India, (2004) 12 SCC 118**, the Apex Court observed:- "Law requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment." The Supreme Court, thereafter, observed in paragraph 26:

*"26. The concept of "sustainable development" has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place*

*and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generations of revenue; therefore, cannot be ignored. In such eventuality, a balance has to be struck, for the reason that if the activity is allowed to go, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A Similar view has been reiterated by this Court in T.N. Godavaram Thirumulpad (104) vs. U.O.I. & Ors. (2008) 2 SCC 222; and M.C. Mehta vs. Union of India & Ors. (2009) 6 SCC 142".*

We are of the opinion that if any permanent structure is proposed to be erected within the prohibited area then it may amount to development of the land in question. It will amount to threat to the environment and as such can not be allowed. Nor it is permissible under the Government circular referred too hereinabove.

23. So far as the present case is concerned, construction of the additional crematorium in the area, cannot be termed as 'development activity' as such. The crematorium/incineration, does not lead to any production/development of anything new or creation of something which may be needed as development activity for progression of the society. As a matter of fact, it is

an activity connected with disposal of dead bodies with human dignity. There cannot be any two opinion about the fact that the crematorium/incineration place, shall be appropriately maintained to avoid any exposure from attack of stray animals, scavenging birds and like dangers. Still, however, it does not require any extra safeguards by making 'pucca' construction. It would suffice if a temporary construction is done with appropriate channeling work and fixing of adequate number of iron (casted) metal poles to ensure proper fencing around the place of incineration/crematorium ground. As stated before, learned Counsel for the Applicant fairly conceded that for such kind of temporary construction there cannot be objection by any prudent person. We are of the opinion that proposed 'pucca' construction of crematorium is not required for any development purpose, nor it can be branded as 'sustainable development' within the meaning of Environment Laws.

24 It is of common knowledge that in India and Nepal Cremation is usually done in open ground and is alterative to burial or other forms of disposal. So, ordinarily a constructed building of Crematorium is not required. Crematorium normally comprises of one or more furnaces. Those are industrial furnaces which are able to generate temperature of 870 to 980°c to ensure disintegration of the corpse. In such a crematorium there are containers. A container in which dead body is placed is inserted into a



chamber, called “retort” as quickly as possible to avoid heat loss, through top door. Considering the proposed plan of the construction activity which is to be undertaken by the PCMC, it is amply clear that there is no such electric chamber or place of incineration provided nor the crematorium is being equipped with modern facilities. Incineration means “to burn to ashes, to cremate, to burn completely”. “The wood based system consist of a man-sized gate beneath a roof and a chimney, which reduces heat loss. The wood is placed on the metal base, which enables better air circulation around the flames”.

25. There cannot be duality of opinion that the traditional wood based system is not environment friendly. It causes loss of trees and creates gas emissions. The incineration caused by use of wood also generate quantities of ash which are later thrown into river, adding toxicity of the waters. The loss of environment on one hand and religious sentiments of large section of public members on the other hand is the big issue in the context of the wood based system. Obviously, in due course it will be necessary for the PCMC to sensitise the citizens for promoting modern crematorium so as to avoid loss of wood and forest resources.

26. Reverting to the meaning of expression “development” it may be stated that this expression has

various tinges/shades of meanings. Few of the meanings may be reproduced as follows :-

**“Development”** :-Synonymous: evolution, progress, improvement, advancement, progress, broadening, elaboration, working out, unfolding, changes, modification, exploitation.

These nouns mean a progression from a simpler or lower to a more advanced, mature, or complex form or stage : the development of an idea into reality, the evolution of a plant from a seed, attempts made, to foster social progress.

1. The act of developing
2. The state of being developed.
3. A significant event, occurrence, or change.
4. A group of dwelling built by the same contractor.
5. Determination of the best techniques for applying a new device or process to production of goods or services.
6. The organized activity of soliciting donations or grants; fund raising.
7. The act or process of growing, progressing.  
A fact, event or happening, esp one that changes a situation.
8. An area or tract of land that has been developed.  
  
A recent event that has some relevance for the present situation.

27. Expression “Facility” does imply availability of “amenity”. The facilities can be space or equipment that is necessary for a person or a group of workers to carry out their work, or they can be “extras” that are provided for workers. The facility is something which is provided to put the process in action or to ease performance of action. It is something designed built or installed to afford a specific convenience or service a new research facility. It is a type of utility service for a group of persons.

28. We find on examination of the true meaning of both the expressions, that the place of incineration/crematorium is only a facility provided for disposal of dead bodies. It may be also regarded as a public utility service. Still, however, by no stretch of imagination, it cannot be branded as “development activity”. In this view of the matter, we find it difficult to countenance the argument of learned Counsel for the PCPM that construction of the crematorium is permissible on the basis of the principle of “Sustainable Development”. The argument itself is unsustainable and hence stands rejected. It need not be reiterated that the proposed construction of the place of incineration/crematorium within prohibited area (blue line) is illegal, against the environmental parameters and liable to be stalled. So also, any construction of the wall retaining/protective and

above the ground level is liable to be demolished/dismantled.

29 For the reasons discussed herein above, we are inclined to allow the Application in the following way :

(i) The construction of the retaining/protective walls on the side of the Pavana river in CTS No.1703 or land S.no.293 to the extent it is over and above the ground level shall be immediately demolished by the PCMC within period of two (2) weeks, at its own costs. On its failure to do so the PCMC shall be liable to pay amount of Rs.25,00,000/- (Rs. Twenty five lacs) as cost for restitution work which will be carried out by appointment of a Commissioner.

(ii) The PCMC shall not carry out any construction activity within the blue line area (prohibited zone) so as to construct the crematorium by raising pucca construction.

(iii) The PCMC may erect poles by fixing them in cement-concrete foundation, keeping a distance of atleast 25 ft. from river bank and may fix channeling/barbed wire fencing around the poles so as to secure the proposed place of cremation from danger of entry of stray animals scavenging birds or like birds/animals. The fencing so fixed around the place may be kept open for entry or gate may be fixed at the entry

point from western side. There shall be no exit gate fixed or any exit place made available from eastern side site so as to facilitate the members of the public to go to the river for bathing or undertaking any activity like emersion of the ashes of the dead etc.

(iv) A temporary bathing place/washroom facility may be provided within the place of cremation ground that will be earmarked for the purpose

(v) The PCMC however may seek appropriate permission from the water resources authority and any other competent authority as provided under the Law if modern type crematorium with use of electric energy or furnaces charged with bio-gas, solar energy, or like fuel are to be used in order to avoid air pollution and deforestation.

30 The application is accordingly disposed of. No costs.

....., JM  
(Justice V. R. Kingaonkar)

....., EM  
(Dr. Ajay.A. Deshpande)



**NGT**