

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

APPLICATION NO.99 OF 2014

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR

(Judicial Member)

HON'BLE DR. AJAY A.DESHPANDE

(Expert Member)

In the matter of:

NAB LIONS HOME FOR AGING BLIND,

Sudder Bagu, Old Khandala Road,
Khandala-Lonavala, Taluka Maval,
District Pune, (pin-410 302)

Through its Chairman,

Mr. Darius Nariman,

Age 59 years, Occ: Business.

R/at/2/31, Mira Society,

Shankarseth Road, Pune-411037.

.....**APPLICANT**

VERSUS

1. KUMAR RESORTS,

7, Laxmi Building, 493 Linking Row,
Bandra (W) Mumbai-4000 050.

2. MR. KUMAR AILANI,

Sachadev Complex,
Near Telephone Exchange,
Ulhasnagar, Dist. Thane, (pin 421 007).

3. THE STATE OF MAHARASHTRA,

(Through the Department of Environment
And Forest, Mantralaya,
Mumbai-400032).

4. THE DISTRICT COLLECTOR,
Pune.

5. THE CHIEF OFFICER,
Lonavala Municipal Council,
Lonavala.

6. THE POLICE INSPECTOR,
Lonavala City Police Station,
Lonavala, Taluka Maval,
Dist. Pune.

**7. M/S. KUMAR RESORTS AND AMUSEMENT PVT
LTD,**
207B, Mumbai-Pune High way
Lonavala.

**8. DHIRAJ KUMAR INFRASTRUCTURE INDIA PVT.
LTD,**
Having its address as Sachdev Complex, 1st floor
Near New Telephone Exchange,
Ulhasnagar-421 002,
Dist. Thane – (Maharashtra).

**9. THE MINISTRY OF ENVIRONMENT AND
FORESTS,**
Union of India,
Through its Secretary,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. Asim Sarode a/w Vikas Shinde, Pratap Vitankar, Alka Babaladi .

Counsel for Respondent (s):

Mr. S.K. Jain, Mr. S.Shah, Mr.Rakesh Umarani, Mr. Seaul Shah for Respondent No.1 and 2.

Ujwala Pawar DGP, a/w Mr. A.S. Mulchandani, AGP for Respondent Nos.3, 4.

Mr. Ajay Gadegaonkar, Mr. Vilas M.Mahajan, Mr. Ganesh Shete for Respondent No.5.

Mr. D.M.Gupte a/w Supriya Dangare, S.P.Kinkar for Respondent No.7.

Mr. P. Narayan, for Respondent No. 8.

Shweta Busar holding for Mr. Ranjan Nehru for Respondent Nos.9.

Date: 26TH MAY, 2015

J U D G M E N T

1. By this Application, Applicant seeks injunction against construction activities of Respondent Nos.1 and 2, restitution and compensation on account of hill-cutting by latter, which is likely to cause not only environmental degradation, but is potent danger to the property of Applicant. The Application is filed under Section 14 (1) read with Ss. 15, 17 and 18 of the National Green Tribunal Act, 2010.

2. Undisputedly, Applicant runs a welfare home for blind people situated over land bearing Gut Nos. 127/1, 128/1 and 128/2 (part) at village Khandala-(Lonavala), Tal. Maval, district Pune. The Welfare Centre is housed in double storyed building used as Hostel and Workshop being run for blind people since about 1970 on donations received by large number of well-wishers. Applicant - NAB Lions Home for Aging

Blind, provides free service to all poor and helpless aged blind persons, who are above 55 years old, irrespective of caste, creed, religion, sex or state of domiciles.

3. The Respondent Nos. 1 and 2 acquired adjoining plot situated in land Gut Nos. 127/1, 128/1 and 128/2 on eastern side, which is on upper level of Applicant's double storied building. At the hill-top, Respondent Nos.1 and 2, intended to construct a resort and a big hotel. Applicant noticed movements of large boulders within that property. They also found that work of levelling of land by flattening of the hill area was going on. Applicant apprehend that many trees could have been felled and soil erosion could have been resulted of alleged activity undertaken by Respondent Nos. 1 and 2. Applicant made complaints to various authorities, when they noticed construction activity was being speedily undertaken day and night. Considering possibility of landslide, which could have caused heavy damage to the property of Applicant, there took place a meeting between the Chairperson of Applicant and the representatives of Respondent Nos.1 and 2. The representatives of Respondent Nos.1 and 2, suggested that they would construct a retaining wall of about 3/5 ft. height. Upon obtaining expert's

opinion, Applicant found that such proposal was without any practical use and hence it was given up. Notwithstanding the fact in absence of permissions of competent authorities, Respondent Nos. 1 and 2 continued to remove soil and prepared land for construction, though Municipal Council, Lonavala (MCL), gave stop-work order, yet Respondent Nos.1 and 2, did not pay any heed to said order. They have no regard for Law. Applicant, therefore, submits that the precautionary principle is required to be applied in order to avoid any disaster and loss of lives of blind inmates of the Welfare Centre (NAB). Applicant also seeks restitution of land and environment, which is degraded due to hill-cutting and excessive extraction of minor mineral by Respondent Nos.1 and 2. They further seek compensation from Respondent Nos.1 and 2 for loss of environment and ecology.

4. By filing their reply affidavit the Respondent Nos.1 and 2 resisted the Application alleging that they have no concern with plot No.19, out of Survey No.138/8, situated at Lonavala (Taluka Haveli). They would submit that they are unnecessarily dragged into this litigation. They contended that the Application is liable to be dismissed as against them, because it is unfounded, so far as they are concerned.

5. Respondent No.5- Lonavala Municipal Council (LMC) filed affidavit of Shri. Ganesh Shete, Chief Officer (C.O), which supports most of the averments made in the Application. The affidavit of C.O of LMC shows that on 15th November, 2014, officers of LMC visited the site along with designated officer of Respondent No.5. They observed that Respondent Nos.1 and 2 had not made any compliance regarding directions issued to them by NGT (WZ). According to LMC, Respondent Nos. 1 and 2 are developers of the site. The affidavit of C.O shows that during site inspection dated 24th November, 2014, it was observed that murum had been spread at some places and various heaps of murum were still laying at many places. A panchnama dated 24th November, 2014, was prepared at that time. (Ex-VI). Therefore, on 7th January, 2014 LMC issued stop-work order to Respondent No.1, because the work was found to be unauthorized. The affidavit further shows that one Tytus Jesu Nygam had obtained permission for extraction of minor mineral on basis of undertaking, wherein it is stated that within 100m/200m of the site, there are no residential houses, educational or charitable trust, road or dam. However, Applicant is a charitable trust and is situated within 200m of the site

under excavation. According to the C.O. Respondent Nos.1 and 2 have levelled top of the hill about 20ft approximately. Respondent Nos.1 and 2 under the pretext of name of said Tytus Jesu Nygam carried out hill-cutting and illegal work at the site. Thus, Respondent No.5, supports the Application.

6. The Application is resisted by the Respondent No.8, (Dhiraj Kumar Infrastructure India P. Ltd) on the ground that they have purchased 50% shares out of plot No.18, which is part of Survey No.138, situated at Lonawala and Survey No.18/A, which is out of Survey No.122, Hissa No.1 and plot No.19 out of Survey No.138, Hissa No.8, by virtue of sale-deed dated 10.12.2008. They contended that T.P Plan was sanctioned and they have developed the properties, including their part in Survey No.138 at Lonawala and Survey No.122, at Khandala. They denied that their activities are likely to cause any degradation of environment. They also denied that hill was cut by them.

7. Respondent No.7 Kumar Resorts and Amusement P. Ltd resisted the Application on the ground that necessary permission was granted by communication dated 26.11.2013 to remove minor mineral from the

area and accordingly the work was completed on 6.01.2014. It is contended that Lonavala Municipal Council (LMC) gave stop-work Notice on 7.1.2014. It is also stated that the Application is barred by limitation. According to the Respondent No.7 (Kumar Resorts), there is no cause of action available to the Applicant to file instant Application, nor any area of hill falls within Western Ghats or eco sensitive zone. Respondent No.7 denied that leveling of land would endanger the building of the Applicant, cause soil erosion or likelihood of landslide. According to Respondent No.7, adjoining land is used for construction of residential bungalows and, therefore, it is improper to assume that resort and amusement park is likely to cause potent danger to the building of NAB. Construction work is yet to be commenced. Permission for construction is yet not granted by LMC and, therefore, the Application is pre-mature. It is denied that due to leveling and excavation of top portion of hill side towards east of Applicant's plot, debris, earth and stones were fallen on the building of the Applicant and thereby possible danger of likelihood degradation was realized due to such construction activity, which Respondent No.7 was likely to undertake. It is admitted that one Mr. Ramesh Botalji carried out

inspection of site and gave report, but such report is not admitted by Respondent No.7, inasmuch as it was prepared behind his back. The contention of Respondent No.7, is that resort and amusement park, will not in any manner cause danger to the house property of Applicant (NAB), nor it would cause any environmental degradation. It is contended that the construction of resort and amusement park can be secured by cross-section of Gabion reinforced soil wall pans and various cross-sections. On these premises, Respondent No.7, sought dismissal of the Application.

8. By filing reply affidavit Respondent No.8, followed same line of pleadings as per plea raised by Respondent No.7. He contended that necessary amount of royalty and penalty is paid as per order dated 4.12.2014, for removal of minor mineral. He contended that permission was obtained by Tytus Jesu Nygam for collection of minor mineral. Thus, an attempt is made to show that said Tytus Jesu Nygam removed minor mineral from those plots and delivered the same to Respondent Nos.1 and 2 or sold them the minor mineral. There is absolutely no word about such transaction of sale in the pleadings.

9. The questions which arise for determination are:

- i) Whether Respondent Nos.1,2 and 7, have illegally removed minor mineral from the site situated on eastern side of the building of Applicant from described plot by cutting hill under clandestine and hurriedly, though LMC issued stop-work order and this Tribunal also gave direction that such activity shall be stopped, as well as the pits shall be filled up, in order to restore the land ?
- ii) Whether above named Respondents caused degradation of environment and committed illegal acts by proceeding with alleged activity of proposed construction, by preparing land without permission of LMC?
- iii) Whether the acts of Respondents named above, are required to be prohibited paranalined by applying the 'Precautionary Principle' as contemplated under section 20 of the NGT Act, 2010?
- iv) Whether above Respondents are liable to pay costs of restoration and environmental damage, if yes, to what extent and to whom?

10. There cannot be any two opinion about nature of environmental litigation. This kind of litigation is not

between the parties as such. It is a litigation to probe into and examine environmental issues. The litigation is, in fact, of inequity and partly adversarial of nature. At the same time, when it is to be proceeded with during course of trial, a technical plea of limitation is, of course, without substance, inasmuch as the Application is filed on 8th October, 2014. LMC carried out inspection on 15.11.2014, when excavation of minor mineral was found spread over on the plot Nos. 18 and 122/1 of Khandala as well as in Survey No.138/7 (Exh.I). LMC and Police authorities informed Applicant about the threat of landslide and/or heavy slit/low due to such activities on 31.7.2014 and 1.8.2014 respectively. Obviously, within period of six (6) months of knowledge of illegal removal of minor mineral, Applicant approached the Tribunal and, therefore, the Application under Section 14 of the NGT Act, 2010, is maintainable.

11. Respondent Nos. 1 and 2 as well as Respondent No.7, failed to show as to when 'cause of action' first arose in the present dispute. They have raised objection regarding bar of limitation. Obviously, they must show that cause of action for such dispute arose much prior to six (6) months of the dispute in question. It is for them to establish as to when cause of action

first triggered and that too in the context of “such dispute”. In the present case, the dispute does imply uncontrolled, unbridled and illegal removal of soil from top of the hill, which partly had fallen on top side of the building occupied by Applicant- (NAB). We find that Respondent Nos.1,2 and 7, did not show as to when cause of action first triggered beyond six (6) months of filing of the Application. Consequently, objection regarding bar of limitation to file the present Application stands rejected.

12. Before we proceed to consider material on record, let it be noted that at the earlier stage, Respondent Nos.1 and 2, came out with a case that they are unconcerned with plot No.19, situated in Survey no.138/8, nor they are owners of survey No.138/7, of which Plot No.18, is part. They also denied that they are owners of plot No.18-A out of Survey No.122, situated at village Khandala. This was their reply dated 9.12.2014. In other words, both of them sought exoneration from the dispute on the ground as if they are unconcerned with the property in question. They do not say, however, that they have no concern with M/s Dhiraj Kumar Infrastructure India Pvt. Ltd or Kumar Resorts. Whether it is M/s Dhiraj Kumar Infrastructure India Pvt. Ltd, is added as party

or not, is subsequent question, to be considered. However, Respondent No.7, Kumar Resorts and Amusement Pvt. Ltd is a party and has filed elaborate affidavit in reply.

13. In order to know true facts, an Expert Committee was appointed under auspices of Shri. T.C.Benjamin, Chairman of State Expert Appraisal Committee-I, (SEAC). The report of said Committee dated 4.12.2014 (Ex.IX), shows that said Committee visited Survey No.122 (Khandala) and Survey No.138 (Lonavla) on 4.12.2014. The Committee noted following facts:

- 1) The hilly terrain has been disturbed and the hill has been indiscriminately cut to generate a flat area of the dimensions roughly 120m x 80m. The average height of the hill so cut is 5m. The quantum of the earth removed is roughly be 11.700 cubic meters (3900 brass).
- 2) The hill cutting and the dumping of excavated material has rendered the site amenable to landslides during heavy monsoons. Already the last monsoon rains have caused considerable erosion of the hill slopes. Deep ravine formations indicate that landslides and mud flows are inevitable in future also thereby jeopardizing the safety of buildings and its inhabitants at the foot of the hill, in particular the NAB Home for Aging Blind.

The act committed by the Respondent No.1 and 2 is totally illegal which we presume has been done not for the purpose

of extracting minor minerals but for creating buildable land. In fact, had the hill existed, building permission could not have been given as the hill feature would have rendered the entire site unbuildable. This illegal act thus has created buildable land in an area which could not have been built upon. The committee feels that if such clandestine activity is allowed in ecologically fragile areas like Lonavala Khandala Belt of the Western Ghats, the carrying capacity of Region will be badly compromised leading to further deterioration of the environment.

14. The Expert Committee perused Record of rights and other record. The Expert Committee came to the conclusion that hill has been privately and clandestinely cut and, therefore, prime concern now is prevention of landslides/mudslides. The Expert Committee observed that for such purpose, it is absolutely essential to stabilize slope by benching as per recommendations given by it, particularly, by construction of retaining wall. The Expert Committee also found that the acts were committed by the Respondent Nos. 1 and 2, in totally illegal manner for creating buildable land. These are the significant findings. These findings of the responsible Members of the Expert Committee blow away case of Respondent Nos. 1 and 2 that they are unconcerned with activities of hill-cutting or removal of minor mineral from site in

question. Why LMC should give them stop-work order, if they were not concern with such work. They never took plea of being unconcern with the property before LMC after receiving such Notice.

15. Perusal of communication dated 14.11.2014, (Ex.I) of C.O. of LMC purports to show that the mining officer gave permission for extraction of minor mineral from Survey No.112/18-A, (Khandala). A copy of Application filed in this behalf for obtaining such permission shows that the Application was submitted by one Tytus Jesu Nygam. He gave his address as Resident of Durga Apartment in Survey No.13, Lonavala and occupation as Constructor/Developer. He sought permission to extract minor mineral of 1000 brass from Survey No.122/18-A (Khandala) and 138, plot No.19 (Lonavala) of which owner is shown as M/s Kumar Resorts and Amusement through Mr. Kumar Uttamchand Ailani, i.e. Respondent No.2. In support of this Application, he also gave affidavit which is supported by Architect by name Kumar Mangovani. The certificate shows that the plots are jointly owned by M/s Kumar Resorts and Amusement Pvt. Ltd and Dhiraj Kumar Infrastructure India P. Ltd. Respondent Nos. 1 and 2 and Respondent Nos.7 and 8, did not satisfactorily, convincing and properly explained their

internal relations with said Tytus Jesu Nygam, who applied for permission to extract minor mineral. The order for removal of 1000 brass minor mineral does not show that it was to be extracted after hill-cutting. It was shown as if it was extraction from plain surface of the land used for agricultural purpose. It is important to note that by order dated 4.12.2014, Tehasildar, Maval, imposed penalty and called upon said Tytus Jesu Nygam to pay amount of Rs.80.44Lakh. Significant aspect of the matter is why said Tytus Jesu Nygam was granted permission to extract minor mineral from lands in question, if he had no concern, in any manner, with the said lands? His affidavit dated 18.10.2013, shows that he claimed to be owner of Gut No.18 and Aars No.122 (Lonavala) and Gut No.18 and 19 Aars 138. There is nothing on record to show that he is owner of the said lands. On the other hand, entry No.3383, in mutation Register of the Revenue Record shows that lands survey No.138/7 and 138/8, plot No.19, had been purchased by Kumar Resorts and Amusement Pvt. Ltd for Kumar Uttamchand Ailani. It is for the concern authorities or IRS to examine whether the transaction itself was a 'Benami' and amount to be utilized for development of area for Resorts and Amusement Park came was from

unaccounted money. However, this aspect does not come within domain of the NGT Act, and, therefore, we are not concerned with it. We have incidentally referred to it having regard to inconsistent stands taken by Respondent Nos.1 and 2, 7 and 8 and affidavit of Tytus Jesu Nygam, as well as record of the LMC.

16. All said and done, the material placed on record reveals that actual hill-cutting took place at the site in question. It appears that Respondent Nos.1 and 2 for Respondent Nos.7 and 8, got hill-cutting done through said Tytus Jesu Nygam.

17. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area, which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:

Hill > noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were

climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.

The wordbook has given meaning of expression 'Hill' as follows:

231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a mountain and is lower in elevation. Hills rise less than 305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.

Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock."

18. The 'Hill' as per composition and design is meant for strengthening of earth pressure acting on the peripheral area thereof, provides speed of water flow from top side of the hill towards lower incline. The surface of dry stones, would, therefore, be destructed and natural greenery is likely to be affected, if the

earthen surface is diminished. The upper layer of soil keeps glued to dry stones pitching and thereby protects the hill. Cutting of hill, therefore, is degradation of environment.

19. Learned Advocate Shri. S.K.Jain for Intervener M/s Kumar Resorts and Amusement Pvt. Ltd strenuously argued that the Application is pre-mature and liable to be dismissed. He would submit that construction of proper retaining wall, as per advice of Experts would dispel any kind of possibility of soil erosion due to construction of amusement park. Therefore, Applicants cannot have any hypothetical apprehension which may give rise to the Application. He argued that entire Application is based upon hypothetical assumption that the project activity is likely to cause harm to Applicant's structure. He would, therefore, submit that such Application should not be entertained. It is further argued that Applicant failed to prove any kind of element of probable danger in the project activity, which would be harmful to the building of NAB.

20. Though, above argument may appear to be rather attractive in nature, yet, it is unacceptable in terms of intention of Section 20 of the NGT Act, 2010. Section 20 of the NGT Act, 2010, does not require to

prove that nature of any activity would actually cause environmental degradation or would amount to potent danger to environment. What is required to be seen is whether “Precautionary Principle” is necessarily required to be applied, having regard to peculiar circumstances of the case, in order to avert possibility/probable environmental degradation. We cannot overlook the fact that Respondent Nos.1 and 2, 7 and 8, have not filed affidavit that they have abandoned the project in respect of the Resort and Amusement park. Admittedly, no permission is granted for the said construction project. The photographs produced by Applicant, go to show that minor mineral was extracted and heaps thereof were stacked at the place. As stated before, activities were done with the help of Tytus Jesu Nygam in hush-hush and clandestine manner. The hilly terrain is required to be protected, whether it is in eco sensitive zone or otherwise. For, if the soil running with natural water flow after raining accompanied by particles of rock, will flow down with speed, that is likely to hit the lower-side buildings and constructions, which may be either seriously damaged or collapse, like bungalows of playing cards. The subsequent disaster management, has to be predicted much before such

incident is likely to occur. Needless to say, precaution is better than cure is the principle under laying Section 20 of the NGT Act, 2010. So, whether retaining wall around that resort would take care of its building and restrain the downfall of soil erosion, by adopting scientific method, is irrelevant, but whether there is existence of probability of environmental degradation would call for resorting to the 'precautionary principle'. It is necessary to restrain the activity and save degradation of environment, like that of loss of natural support to the part of hill, the natural flow of water during rainy season, the natural maintenance of hill, so on and so forth. Communications from LMC and Police dated 31.7.2014 and 1.8.2015, respectively addressed to Applicant would indicate such possibility of damages.

21. Sum total of foregoing discussion is that the Application succeeds and deserves to be allowed. We, therefore, allow the Application in following terms:

- a)** Respondent Nos.1, 2, 7 and 8 and Intervener are restrained from causing any hill-cutting in the plots situated in land Gut No.127/1, 128/1, 128/2 and 122 on east side top of structure of NAB, situated at Lonawala/Khandala and to construct Resorts and Amusement park in

question, which it has undertaken, particularly, on eastern side of hill top of NAB building.

b) Above named Respondents shall not alter, change any kind of area of site in respect of above lands bearing Survey No.127/1, 128/1 and Survey No.128/2, situated at Lonavala. They shall not disturb day today activities of Institute run by NAB by causing any extraneous pressure.

c) The above named four Respondents are directed to pay amount of Rs.10Lakhs to the management of NAB, through Secretary of NAB by sending D.D, in the name of Secretary by registered post/A.D, within four (4) weeks or otherwise, amount will carry interest @ 18% p.a. and if such amount is not paid, the entire property of above four (4) Respondents is likely to be sealed and sold away, stock and barrel by the Collector, Pune, as per the powers available under the Maharashtra Land Revenue Code, as if, it is due revenue cess, as per further directions of this Tribunal. The compliance of this direction be reported after four (4) weeks along with copy of D.D and acknowledgement receipt by the Secretary of NAB, in order to avoid coercive action, for recovery.

d) The Revenue Officers like Collector and Commissioner, may call report from the local

Municipal Council of Khandala and Lonavala and like places such as Satara, Kolhapur etc. where existence of hills ordinarily are noticeable in order to avoid instances of hill-cutting, being undertaken under guise of obtaining extraction permission for minor mineral and direct them not to issue permissions for construction on top of the hills, except for Bamboo huts/cottages.

e) Respondents named above shall pay Rs.5Lakhs to the Office of Chief Officer of Municipal Council, Lonawala for restoration/remediation of environment caused due to the hill-cutting, within four (4) weeks.

f) Compliance report be submitted to NGT (WZ) within four (4) weeks.

The Application is accordingly disposed of.

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

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

Date: 26th MAY, 2015.

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