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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7404 OF 2024**

|                                     |   |                      |
|-------------------------------------|---|----------------------|
| <b>Yashwant Anna Bhoir</b>          | ) |                      |
| Age: 60 years, Occ. Agriculturist   | ) |                      |
| R/a. Room No. 140, Sonivali Village | ) |                      |
| Eranjade, Badlapur (W.)             | ) |                      |
| District: Thane – 421 503           | ) | <b>...Petitioner</b> |

**Vs.**

|                                                                                                                                                                                                                                    |                            |                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-----------------------|
| <b>1. State of Maharashtra</b><br>through its Principal Secretary<br>Urban Development Department,<br>Mantralaya, Mumbai                                                                                                           | )<br>)<br>)<br>)           |                       |
| <b>2. The District Collector</b><br>Thane District, having its office<br>at Court Naka, Prabhakar Hegde Road,<br>Kharkar Ali, Thane (W.), Thane-400601                                                                             | )<br>)<br>)<br>)           |                       |
| <b>3. The Tahasildar, Thane</b><br>having its office at New Administrative<br>Building, 1 <sup>st</sup> Floor, Ambarnath (W.)<br>Dist: Thane – 421 501                                                                             | )<br>)<br>)<br>)           |                       |
| <b>4. The Chief Officer,</b><br>Kulgaon-Badlapur Municipal Council,<br>having its address at: Dube Hospital<br>Building, 1 <sup>st</sup> Floor, Aadarsh Vidya<br>Mandir Road, Badlapur Railway Station<br>(E.), Kulgaon – 421 503  | )<br>)<br>)<br>)<br>)<br>) |                       |
| <b>5. A Plus Lifespace</b><br>A partnership firm through its partners<br>Pankaj Kumar Shivilal Patel<br>Having address at Opp. Trishul Golden<br>Ville CHS, Village Sonivali, Badlapur (W)<br>Tal – Ambarnath, Dist: Thane-421 503 | )<br>)<br>)<br>)<br>)<br>) |                       |
| <b>6. The Chairman / Secretary</b><br><b>Trishul Golden Ville CHS,</b><br>Village – Sonivali, Badlapur (W)<br>Tal – Ambarnath, Dist: Thane 421 503                                                                                 | )<br>)<br>)<br>)           | <b>...Respondents</b> |

Mr. Avinash Fatangare with Ms. Archana Shelar, for the Petitioner.  
 Ms. M. P. Thakur, AGP for the State/Respondent Nos.1 to 3.  
 Mr. Dinesh Adsule, for Respondent No.4.  
 Mr. Sumedh S. Modak i/b. Mr. Vijay Killedar, for Respondent No.5.

**CORAM : G. S. KULKARNI &  
 ARIF S. DOCTOR, JJ.**

**RESERVED ON: 14 AUGUST 2025.  
 PRONOUNCED ON: 19 SEPTEMBER 2025.**

**Judgment (Per G. S. Kulkarni, J.) :-**

1. The judgment has been divided into the following sections to facilitate analysis:

| SECTIONS | HEADING                                 | PARA NOS. |
|----------|-----------------------------------------|-----------|
| A        | Preface                                 | 2 to 5    |
| B        | Prayers                                 | 6         |
| C        | Facts                                   | 7 to 17   |
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**A. Preface:-**

2. In contemporary times, when expertise in town planning, abundance of technology in construction of buildings, scientific methods in the development of civic facilities, by adherence to the highest norms of preserving ecology and environment are available, would it be an acceptable approach for any planning authority, howsoever small or big to discard or overlook the essentials of such civic planning, in granting development permissions and/or in planning new

towns or new developments. These are seminal issues which are before the Court, in the present proceedings, which concern an unfortunate and haphazard development, and state of affairs in one of the most developing suburbs of the Thane District, namely “the Kulgaon-Badlapur”, area under the control and administration of the “Kulgaon-Badlapur Municipal Council”, District-Thane, (for short, “**KBMC**”), as the facts would unfold.

3. The petitioner, who is an agriculturist, was constrained to approach this Court in the present proceedings, being frustrated with the repeated complaints made to respondent no.4-The Chief Officer, KBMC by a nuisance caused to his land, by a large construction project namely “Skyline Building” developed by respondent no.5 (A Plus Lifespace). The petitioner's complaints were that the entire sewage from this building having 440 occupants, (a high rise construction) was let out and/or is kept overflowing into the petitioner's adjoining open agriculture land, creating filth, dirt resulting in the land being rendered wholly unavailable for any cultivation whatsoever. The reason for such horrendous state of affairs was a consequence of there being no sewer line or a municipal sewage system, provided by the municipal council (KBMC), in the absence of such civic facilities, respondent no.5 provided for such large building a very small / insufficient “septic-tank”, which was left to overflow onto petitioner’s agricultural land. Further over and above this the untreated municipal sewage is being drained in the adjoining “Ulhas river”.

4. It is a matter of serious concern when sewage and/or untreated waste is drained by the municipal bodies in the water bodies like river and the sea. This

amounts to an intolerable attack by “we the humans” on such natural resources. Such violations cannot be condoned.

5. At the threshold, it was difficult to believe that a town which is developing so rapidly, where possibly hundreds of high rise buildings are coming up, KBMC has not taken the first basic step of providing sewer lines and only thereafter granting building permissions, which in our opinion, ought to have been the most essential requirement of town planning. The materials which have come on record in the present proceedings, including the reports of the Experts appointed by the Court, to which we would advert a little later, would not only shock the conscience of the Court, but certainly becomes a matter of a very urgent concern, when it pertains to the basic legal rights of the citizens of the expectation of a clean, pollution free and well planned city with all modern town planning and civic requirements, being provided by the KBMC. Although the present petition was filed concerning the petitioner's land, lakhs of citizens in the KBMC municipal area, need to be thankful to the petitioner, in raising an important issue, touching the town planning and valuable civic rights of the citizens.

#### **B. Prayers:-**

6. On such brief preface, at the outset, the reliefs prayed by the petitioner need to be noted which read thus:-

“a. That this Hon'ble Court be please to issue a writ, order or direction in the nature of mandamus or a writ of mandamus or any other appropriate writ, directing the Respondent no.1 to 4 to take action against the Respondent no. 5 and 6 and forthwith stop releasing the drainage water in the agriculture lands including the land of the petitioner.

b. That this Hon'ble Court be please to issue a writ, order or direction in the nature of mandamus or a writ of mandamus or any other appropriate writ, directing the Respondent no.1 to 4 to cancel the Occupation Certificate of the Respondent no.5 and 6 and direct to stop the use of said building no.1 and 2 constructed on the land bearing gut no. 87/2/B/1 and gut no. 87/2/D at Village Sonivali Taluka Ambarnath for occupation and residential purpose.

c. That this Hon'ble Court be please to issue a writ, order or direction in the nature of mandamus or a writ of mandamus or any other appropriate writ, directing the Respondent no.1 to 4 to take action against the illegal constructions carried out by the Respondent no.5 while carrying out construction of the buildings on the land bearing gut no. 87/2/B/1 and gut no.87/2/D at village Sonivali taluka Ambarnath.

d. That this Hon'ble Court be please to issue a writ, order or direction in the nature of mandamus or a writ of mandamus or any other appropriate writ, directing the Respondent no.1 and 4 to hold and conduct an inquiry and take an action against the officer who has issued the Occupation Certificate.

e. Pending the hearing and final disposal of the present writ petition the Respondents be directed to stop forth with releasing the drainage water in open place and agriculture land of the Petitioner.

f. Ad-interim, interim reliefs in terms of prayer clause (e).

g. That this Hon'ble Court be direct the Respondent No. 5 and 6 to pay damages / cost to the Petitioner to the tune of Rs.10,00,000/- (Rupees Ten Lacs only).

h. And for such other and further orders as the Hon'ble Court may deem fit & proper.

### C. Facts:-

7. In the context of the aforesaid prayers, at the outset we may observe that by an order dated 24 March 2025 passed by a co-ordinate Bench of this Court, respondent no.5 ("the **developer**") was granted an adjournment upto 01 April 2025 to take instructions, qua the reliefs prayed for in prayer clause (g) of the petition, i.e., on an admitted fact of a nuisance being caused to the petitioner, due to septic tank over flowing from respondent no.5's project onto the petitioner's land, and for such reason, the petitioner claiming damages of Rs.10 Lakhs. This has relevance for the present order, inasmuch as till date, despite a clear order passed by this Court almost one year and five months back, no statement is made

before the Court, even after we called upon respondent no.5 to respond to the said order passed by the co-ordinate Bench.

8. The Supreme Court in **Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association & Ors.**<sup>1</sup> considered the parameters required to be fulfilled by the developers in undertaking constructions, and more particularly high rise construction. It was held that the process of construction as undertaken by the developers from the commencement to completion is wholly regulated by rules and regulations. It was held that the regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plans for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.) and the issuance of occupation and completion certificates. The Supreme Court also held that while the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the “protection of the environment” and the well-being and safety of those who occupy those constructions. It was held that when these regulations are brazenly violated by the developers, more often than not, with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Considering such legal position, this Court in its order dated 13 June 2025 observed that the case of the petitioner is of a nuisance being caused on account

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**1** (2021) 10 SCC 1

of sewage water being drained onto the petitioner's adjoining land from the high rise construction undertaken by respondent no.5 which is now the building of a co-operative housing society, namely, the Trishul Golden Ville CHS (for short, "the **society**"). The Court while recording a serious concern, on the issues raised by the petitioner, appointed "an Expert" so that the realistic conditions and status at the site is placed before the Court in his report. The relevant observations made by the Court in its order dated 13 June 2025 read thus:-

"2. The case of the petitioner is of a nuisance created by sewage water which has been drained in the petitioner's adjoining land from the construction undertaken by respondent No.5 - "A Plus Lifespace", which is now stated to be a building, where a Cooperative Society is formed, namely, the respondent No.6 – Trishul Golden Ville CHS.

3. The petitioner contends that respondent No.5 has failed to provide any drainage/sewage and has left the same flowing on the land belonging to the petitioner. It is petitioner's grievance that even respondent No.4 - The Chief Officer, Kulgaon, Badlapur Municipal Corporation also has illegally issued an Occupation Certificate without verifying such basic compliances. It is also the petitioner's case that the impugned action on the part of these respondents has infringed the petitioner's valuable rights to property as conferred by the Constitution under Article 300A as also the petitioner's fundamental rights under Article 14 and 21.

4. Today, Mr. Killedar, learned counsel for respondent No.5 submits that the Municipal Council has undertaken construction of a sewerage line, hence, there ought not to be any grievance from the petitioner. In supporting such contentions, he has drawn our attention to some photographs. However, from these photographs as relied by Mr. Killedar, we do not find that there is a full-fledge sewerage mechanism in operation. Also, it would not be a lawful discharge of its obligations by respondent No.4 that without verifying the completion of the building in all respects of which sewerage is an important part to grant Occupation Certificate to the building in question. In such context, we may usefully refer to the decision of the Supreme Court in the case of Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & Ors<sup>1</sup>. in regard to the commencement to completion of the process of construction and the importance of sewerage the following observations as made by the Supreme Court need to be noted:

"160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different

departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. ....”

(emphasis supplied)

5. In the aforesaid circumstances, we are of the clear opinion that the present status at the site is required to be placed before the Court. It is therefore appropriate that an independent Architect/Engineer well versed on such issues is required to be appointed who would visit the site and make a report verifying the availability of any sewerage line in respect of the building as constructed by respondent No.5 and presently stated to be belonging to respondent No.6. Such expert would also visit the adjoining land of the petitioner's to examine as to its status in the light of the petitioner's complaint, and whether any sewerage is drained from the building of respondent No.6 on the petitioner's land and make a appropriate report along with photographs to this Court.”

(emphasis supplied)

9. In pursuance of the aforesaid order, the Court appointed Expert submitted his report dated 26 March 2025 titled as **“Technical Inspection Report on verifying the availability of any sewerage line in respect of the building of the society”**. An inspection of the site by the petitioner along with his representatives and the official respondents was arranged on 20 June 2025. A visual survey *inter alia* of the following key aspects, was undertaken by the Expert :-

- i. Existence and connectivity of sewerage line.
- ii. Presence and location of any septic tank or allied disposal system
- iii. Overall sanitation infrastructure serving the subject plot.

10. Accordingly, a report was prepared by the Expert and placed on the record of this Court. The report records that during the site visit, it was observed that the petitioner's land as indicated by the petitioner was contaminated with sewage water. Open channels of drains were found flowing into the said agricultural land belonging to the petitioner from the neighbouring society. Most importantly it was observed that the land in question was a low-lying area, which was located about 1000 meters from the "Ulhas river". It was observed that the said land fell within the river's flood zone. It was found that there was no drainage/sewer system in the surrounding areas. It was further observed that although the society's building was a high rise building having flats for its 457 members, there was no sewer system, as an inadequate septic tank was constructed by respondent no.5 for want of a municipal sewer line. It is this septic tank, which was overflowing and causing the sewage to flow into the land owned by the petitioner. It was also observed that even the septic tank was not properly constructed and its capacity was wholly insufficient, considering the density of the residents of the building. The report also observed that the soak pit constructed by the developer/respondent no.5 was of poor quality, inappropriately constructed, and/or lacked adequate measures to prevent water flowing to the adjoining land.

11. Another vital observation made by the Expert is in regard to the need of the Environmental Clearance (EC) being mandatory, when the construction exceeds 20,000 square meters. It is observed that considering both the Floor Space Index (FSI) and Non-Floor Space Index areas, the total constructed area

could potentially exceed 20,000 square meters and for such reason, an environmental clearance (EC) not being obtained, was a vital issue. The report hence observes that, given the situation, neither the KBMC nor the developer/respondent no.5 had sufficiently addressed the installation of an appropriate sewerage/drainage system, resulting in the sewage overflowing onto the land owned by the petitioner. The report also makes a reference to a letter dated 19 January 2024 of respondent no.5-developer addressed to the KBMC, Health Department, Badlapur wherein respondent no.5 requested the department to desludge the septic tank. It is stated that this letter confirms that the septic tank was overflowing and not suitable for the density of residents. The report also makes serious observations that it is questionable whether the planning authority (KBMC) at all has ensured adequate infrastructure such as drainage and sewerage, while approving the building plans and whether the availability of such infrastructure was verified prior to issuance of the Occupation Certificate. The contents of the Expert's report, which are quite glaring, are required to be noted which read thus:-

**“REPORT VERIFYING THE AVAILABILITY OF ANY SEWERAGE LINE CONCERNING THE BUILDING CONSTRUCTED BY THE RESPONDENTS:-**

As ordered by the Hon'ble Bombay High Court on June 13, 2025, the suit property was inspected to verify any sewerage lines related to the respondents' building. Based on the site visit, analysis, and document review, I present the following findings.

1. The property is situated at Village Sonivali, Badlapur West, Taluka Ambarnath, District - Thane, under the jurisdiction of Kulgaon Badlapur Municipal Council.
2. The documents provided by the parties, including various permissions, letters, and the Occupation Certificate issued by the Kulgaon Badlapur Municipal Council, were submitted by the

respondents and recorded for review.

3. During the site visit, it was observed that the land indicated by the petitioner is contaminated with wastewater from storm water drain outlets. Additionally, it was noted that the buildings are adjacent to a 15-meter wide concrete road lacking a sewer line and featuring an incomplete storm water drainage system. Open channels of drains were found flowing into neighboring agricultural land. The property in question is a low-lying plot located approximately 1000 meters from the Ulhas River. It has been established that this land falls within the river's flood zone. Photographs showing the drainage/sewer system and surrounding areas are attached to this report as Exhibit-2.

4. In accordance with the permissions granted by the Kulgaon Badlapur Municipal Council, it was noted that the developer/respondent, M/s. A. Plus Lifespaces, constructed Wings A and B on Plot bearing Gut No. 87/2/B/1, Gut No. 87/2/D, and 87/2/C/2 of Village Sonivali, Badlapur West, Taluka -Ambarnath, District - Thane, and obtained the Occupation Certificate. A Co-operative Society has been established, known as Trishul Golden Ville CHS having approximately 457 members. The copies of the Occupation Certificates for Wing A and Wing B are attached to this report as Exhibit-3 and Exhibit-4, respectively.

5. The developer/respondent has built a septic tank with a capacity of 72,000 liters as specified in the approved plans, and a soak pit is also included in the plans. However, it has been noted that the septic tank may be overflowing causing drainage/sewage to flow onto the land owned by the complainant/petitioner.

6. It is further observed that the septic tank is not well-constructed, and its capacity is insufficient as per the density of the building. Also, the soak pit constructed by the developer/respondent is of poor quality, not properly constructed, or lacks adequate measures to prevent water from flowing outside.

7. According to the plans sanctioned by the Kulgaon Badlapur Municipal Council under reference number 3846-29/2018-19 dated 15/05/2018, the total proposed built-up area is indicated as 15,789.59 square meters. Regarding Environmental Clearance, it is mandatory when the area exceeds 20,000 square meters. In this instance, considering both the Floor Space Index (FSI) and Non-Floor Space Index areas, the total constructed area could potentially exceed 20,000 square meters. If Environmental Clearance had been obtained, such issues might have been avoided. Therefore, it is necessary to verify the PSI and Non-FSI areas to determine whether the Kulgaon Badlapur Municipal Council granted permissions without the requisite Environmental Clearance. The copies of the Construction Approval for Wing A and Wing Bare attached to this report as Exhibit-5 and Exhibit-6, respectively.

8. Given the situation, it has been noted that neither the Kulgaon Badlapur Municipal Council nor the developer/respondent has sufficiently addressed the installation of an appropriate

sewerage/drainage system, resulting in sewage/drainage overflow onto property complainant/petitioner. Additionally, inadequate supervision during the construction of the infrastructure was observed during the site inspection. Moreover, the septic tank's capacity is insufficient relative to the density of the housing units.

9. As per the letter issued by the developer/respondent dated 19/01/2024, addressed to the Kulgaon Badlapur Municipal Council, Health Department, Badlapur, the developer/respondent requested the department to vacate the septic tank. The letter confirms that the septic tank is overflowing and not suitable for the density of residents. The said developer/respondents dated 19/01/2024 is attached herewith as Exhibit-7.

10. In view of the above, it is questionable whether the planning authority, i.e., Kulgaon Badlapur Municipal Council, ensured adequate infrastructure such as drainage and sewerage while approving the building plans and whether the execution of such infrastructure was verified prior to issuing the Occupation Certificate.

#### ASSUMPTIONS & LIMITATIONS: -

1. Some of the points mentioned in the report are based on the documents (photocopies) provided by the clients at the site, which are presumed to be true and authentic.
2. No legal verification or procedures such as title search, final plot boundaries, actual demarcation of the plot or flats under reference, tenure, ownership, legality of the deal, or structural legality have been undertaken.
3. The report is limited solely to the captioned property and its surrounding area.
4. Wherever stated that the clients (petitioner or respondents) have supplied information, such information is believed to be true, correct, and reliable.

#### SUMMARY:-

The drainage/sewage line constructed is reported to be incomplete and partly constructed is of substandard quality. Furthermore, the septic tank built by the developer/respondent, according to the plan approved by the Kulgaon Badlapur Municipal Council, is poorly constructed and insufficient in capacity given the residential density. Consequently, it is overflowing and discharging onto the petitioner's plot/land. The soak pit indicated in the approved plans is also not effectively containing the drainage/sewage, resulting in seepage onto the petitioner's property.

Additionally, a letter from the Chief Officer of Kulgaon Badlapur Municipal Council addressed to the Secretary/Chairman of Trishul Golden Ville CHS (Letter No. 566/2023-24 dated 08/12/2023), states: "As per the Tahsildar Office, Ambarnath, it has been observed that sewage/drainage from your society is flowing into agricultural land, creating a risk of disease." This supports the petitioner's assertion that the sewage/drainage is impacting their land. The said Chief Officer of

Kulgaon Badlapur Municipal Council's Letter dated 08/12/2023 is attached herewith as Exhibit-8.

Moreover, it is necessary to verify with the Kulgaon Badlapur Municipal Council.

1. whether the total construction area exceeds the threshold that requires Environment Clearance. If such clearance had been obtained, the current issue might have been prevented.
2. Is an impact assessment conducted for converting agricultural land near the high flood zone of Ulhas River into residential areas?. The sanctioned Development Plan of the Kulgaon Badlapur Municipal Council is attached to this report as Exhibit-9.”

(emphasis supplied)

12. Considering the Expert’s report (supra), this Court passed an order dated 23 June 2025, directing the District Town Planning Officer, Government of Maharashtra or any equivalent officer from the Directorate of Town Planning, Government of Maharashtra, to file an affidavit on such serious factual and legal issues. The Court also directed the respondents to immediately adopt remedial measures to stop the flow of the sewage/septic tank water onto the petitioners land, and such measures to be taken, be also set out in the affidavit to be filed by respondent no.4 in the present proceedings. The relevant extract of the Court’s order dated 23 June 2025 needs to be noted, as it has relevance considering what has transpired thereafter, reads thus:-

“2. Apart from such large construction being undertaken without a proper sewerage system and only a small septic tank being provided which is overflowing, the water flowing on the petitioner’s land, what appears to be also quite disturbing is that the Planning Authority has not considered the necessity of an environmental clearance for undertaking such huge construction. The report also observes that an impact assessment has not been conducted before converting agricultural land beyond the High Flood Zone of the Ulhas River, into a residential zone. In this regard, the sanctioned development plan of the Kulgaon, Badlapur Municipal Corporation is also attached to the report. If what has been observed in the report is considered to be correct, in our prima facie opinion, the entire construction would be objectionable and/or illegal. A scrutiny of such issues is imperative. Let respondent No.4 consider this position, which in our prima facie opinion is quite serious and place its reply affidavit on record on or before the adjourned date of

hearing. We also direct the District Town Planning Officer, Government of Maharashtra or any equivalent officer from the Directorate of Town Planning, Government of Maharashtra to file an affidavit on the factual and illegal issues as highlighted by us.

5. In the meantime, we direct the respondents to immediately take remedial measures to stop the flow of the sewerage / septic tank water onto the petitioners land and the measures which are so taken, be also stated and set out in the affidavit of respondent No.4, which be filed in the present proceedings as directed.”

13. On the returnable date i.e. on 08 July 2025, the Court passed a further detailed order *inter alia* observing that this was a serious case where the Court was required to question the “occupation certificate” granted to the construction undertaken by respondent no.5, without providing for the basic requirements of linking the sewer outlet of the building to the municipal sewer line (which itself is not provided) prior to grant of occupation certificate. It was observed that merely providing a small septic tank for such large residential complex and in the absence of such compliances, an occupation certificate being granted was appalling. The Court observed that *prima facie*, there was a serious non compliance and/or dereliction of the responsibilities and obligations on the part of the KBMC in granting an occupation certificate. The Court accordingly directed that an affidavit be filed by the Chief Officer of the KBMC, which should also indicate the corrective steps required to be taken either by the KBMC or the Society or the developer. The Court also observed that in the meantime, respondent no.5-developer by following the procedure under the rules/law, needs to take corrective measures, for which the Planning Officer of the KBMC shall immediately consider such application of the developer and grant appropriate permissions, so as to prevent further public nuisance. Considering the seriousness

of the issue of there being no municipal sewer line, this affecting thousands of people in the KBMC area, the Court also directed the Collector, Thane to visit and inspect the KBMC area in the light of the grievances made by the petitioner, and the serious concerns flagged by the Court, and make a report to the Court. The relevant observations as made in the Court in the order dated 08 July 2025 are required to be noted, which read thus:-

“1 In the light of the serious observations as made in the report of the Court appointed expert, we direct the Chief officer of the Kulgaon Badlapur Municipal Council - Respondent No.4 to place an affidavit on record in regard to the serious concerns which are noted in the said report dated 23rd June 2025 as placed on record.

2 An affidavit as tendered on behalf of Respondent No.5 is taken on record.

3 In our opinion, this is a serious case where we need to question the occupation certificate, which has been granted to this construction undertaken by respondent no.5 without providing for the basic requirements of linking the sewer outlet of the building into a sewer line, and merely providing a small septic tank for such large complex. As to now respondent no.4 has accepted this to be the fulfillment of the requirement and proceeded to grant occupation certificate is really surprising. We, prima facie, find that there is a serious non compliance and/or dereliction of the responsibilities and obligations on the part of the municipal council in granting such occupation certificate. We shall pass appropriate orders after hearing the Chief Officer on affidavit which be filed on or before the adjourn date.

4 Also in compliance of our order dated 23rd June 2025, an affidavit on behalf of the State Town Planning Authority would be required to be placed on record. There shall not be further extension to place such affidavit on record.

5 The affidavit to be filed on behalf of the Municipal Council should also indicate the corrective steps which would required to be taken either by the Municipal Council or the Society or the developer. We also sound a note of caution in so far as the developer is concerned that in the event, we find that the developer has not made compliances under the law, the Court would have no option but to invoke the public trust doctrine and pass appropriate orders including of exemplary damages to be paid to the petitioner by the developer.

6 In the meantime the developer by following the procedure under the rules/law needs to take rectification measures, and the planning officer of the Municipal Council shall immediately consider such application and grant appropriate permission so as to prevent further

public nuisance. We do not find that for rectification of such glaring illegality and that too on compliance of the sewerage requirements, the Municipal Council can at all have any objection.

7 Another glaring aspect which as informed to us is, that within the municipal jurisdiction of Kulgaon Badlapur Municipal Council, there are no drainage, sewerage facilities provided by Kulgaon Badlapur Municipal Council resultantly, such waste including from the septic tank is stated to be discharged in the Ulhas River. There is no sewerage treatment plant although the municipal population is approximately 5 lacs. This is something which would shock the conscience of the Court. Such large city not having proper sewerage line as also not having a sewerage treatment plant, and that the municipal sewerage of all kinds are being discharged into the river and polluting the river, can never be tolerated. It is gross abuse of the environment laws.

8 Considering the seriousness of the issue affecting lakhs of people, we direct the Collector, Thane to visit the municipal area of Kulgaon Badlapur and inspect the municipal areas in the light of the grievances which are made by the petitioner and serious concerns which we have noted hereinabove, and make a report to the Court. We direct that the Court officer as appointed shall also accompany the Collector Thane, so that an appropriate report with such technical assistance would be available.

9 Let such visit take place on 12th July 2025 or 13th July 2025 as may be convenient to the Collector Thane. Awaiting such report, we adjourn the proceedings to 17th July 2025, High On Board. The representatives of the parties who are before the Court are free to participate when the Collector Thane would visit the site.

10 We also clarify that the visit of the Collector, Thane shall not confine only to the grievances in regard to the area in question but it shall be overall observation of the Municipal area and in regard to the issues of health and hygiene, which certainly would be under the revenue umbrella of the Collector Thane.

11 At the same time, we permit the developer to gather some wisdom and make all attempts to restore the health and hygiene, qua the complaint as made by the petitioner.”

(emphasis supplied)

14. In pursuance of the aforesaid order passed by the Court, Shri Ashok Shingare, Collector, Thane District, visited the KBMC municipal area on 16 July 2025. In regard to the sanitation facilities in the city, as well as the petitioner's agriculture land being continuously inundated with filth and sewage, the

Collector has made his report, which was forwarded under his covering letter addressed to the Deputy Registrar of this Court titled as “**Site Inspection Report of Kulgaon Badlapur Municipal Council**”. The Collector’s report records serious observations *inter alia* in regard to the untreated sewage from septic tanks and soak pits, being discharged onto the agricultural land of the petitioner also by percolation and underground overflow. Further, most shockingly, the sewage ultimately is drained into the Ulhas River basin. It is observed that such state of affairs breaches the Water (Prevention and Control of Pollution) Act 1974, the Environment Protection Act 1986, the UDCPR Rules and the norms of the Maharashtra Pollution Control Board. It records a clear violation by respondent no.5’s project and/or serious lapses on the part of the society is complying on several legal requirements in that regard. The Collector’s report observes that the promoters and developers of the society are liable for appropriate action for such violation. Also there are some contradictions in the report, which in our opinion, lacks absolute clarity on the existing situation on the sewerage system actually operational and as proposed. To appreciate these circumstances, the relevant contents of the report are required to be noted which read thus:-

“Site Inspection Report of Kulgaon Badlapur Municipal Council regard to the Hon’ble High Court Appellate Side, (Writ Cell) Writ Petition No. 7404 of 2024 and As per Letter No. W. P. No. 00/06731 of 2025 dated 11.07.2025.

Kulgaon-Badlapur Municipal Council is an ‘A’ class municipal council with a total geographical area of 35.68 sq. km. As per the 2011 Census, the population of the city was 1,74,226 which is currently estimated to have exceeded 3,50,000. The entire water supply for Kulgaon-Badlapur is provided by Maharashtra Jeevan Pradhkaran (MJP), which supplies approximately 32.3 million litres per day (MLD). **On average, the city generates about 26 MLD of sewage daily, out of which approximately 21.5 MLD is currently being treated.**

In compliance with order issued by the Hon'ble High Court, the following observations were made with respect to the city's sanitation infrastructure.

1. Under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), the Kulgaon-Badlapur Municipal Council implemented Sewerage Scheme Phase-1. As part of this project, one Sewage Treatment Plant (STP) with a treatment capacity of 22 MLD was constructed at Rameshwadi. Additionally, three pumping stations were established at Rameshwadi, Hope India, and Hendrepada. **A total of 83 km of underground sewer network was laid under this phase. The Phase-1 sewerage system has been operational since 2016.**

2. Apart from the municipal infrastructure, private developers had also constructed sewage treatment plants at their residential projects with total capacity of 7.13 MLD within the municipal limits. However, due to incomplete occupancy in these housing projects, only about 1.5 MLD of sewage is currently being discharged through these plants.

3. To address the needs of the newly developed and uncovered areas, the MJP (Maharashtra Jeevan Pradheekaran) has initiated Phase-2 of its sewage disposal scheme under the Central Government-sponsored AMRUT (Atal Mission for Rejuvenation and Urban Transformation) Abhiyan. **As part of this phase, the flow of sewage from six major drains entering the Ulhas River has been intercepted. Six pumping stations are being constructed at 06 locations, work is under progress. In addition, two new STPs are in construction phase namely at Shirgaon (12 MLD) and Sonivali (10 MLD). However, since the full implementation of Phase-2 is expected to be completed by December 2025, a temporary arrangement has been made using nalla in-situ method and bioremediation technology to prevent water logging and pollution near the Ulhas River.**

Furthermore, Chief Engineer, Maharashtra Jeevan Pradhikaran, Thane, has given technical approval for additional works under Suvarn Jayanti Mahabhiyan (State Level) at an estimated cost of Rs. 316.92 crores. **This proposed project includes the construction of 80 km underground sewer network in the rapidly growing areas of the city in which area of Trishul Golden Ville CHSL is also covered. A new 18 MLD STP and four sewage pumping stations at Katrap, Katrap Vidyalaya, Vrudhashram, and Eranjad. The State Level Technical Committee (SLTC) has approved this project at a total cost of Rs. 303.59 crores but Government approval pending.**

Further, petitioner Shri. Yashwant Bhoir agricultural land of bearing S. No. 88/1, Trishul Golden Ville CHSL and the sewage disposal path till the Ulhas River was observed. During the said inspection, the Chief Officer Kulgaon-Badlapur Municipal Council and his sub-ordinate officers and employees of various departments, Tehsildar Ambernath and his sub ordinates, petitioner Shri. Bhoir, officials of Trishul Golden Ville CHSL, developers and promoters of Trishul Goldn Ville CHSL, etc. were present. The statements of all concerned parties have been recorded in this regard and a panchanama has been recorded.

1. Trishul Golden Ville CHSL situated at Village Sonivali bearing Survey No. 87/2/8/1 and 87/2/D has two buildings, numbered as 'A' Wing and 'B' Wing. A Wing has 228 Residential flats and 13 shops for commercial purpose, while B Wing has a total of 216 Residential flats. Each wing has its own septic tank as well as soak pit, each having capacity of 90,000 litres.

2. Agricultural land of Shri. Yashwant Anna Bhoir S. No. as 88/1, Smt. Kishori Kisan Suroshi S. No. 67/16 & S. No. 87/2 and Shri Ghavat S. No. 67/17 is a low lying area situated to the south of Trishul Golden Ville CHSL. Petitioner Shri Yashwant Bhoir' land bearing The cultivable area is 0.24.30 Ha. R Sq. M. and Pot Kharaba of 0.03.80 Ha. R Sq.M. and Total area is 0.28.10 Ha.R Sq. M.

3. Trishul Golden Ville is a stand alone project and there are a total of 444 flats and 13 shops in this society. This project does not have the Sewerage Treatment Plant (STP). The society neither has connectivity of underground drainage system for the drainage of sewage.

4. The untreated sewage from septic tanks and soak pits is being discharged in the agricultural land of the petitioner Mr. Bhoir by percolation and underground overflow and ultimately into the Ulhas River basin.

This is not in accordance with the Water (Prevention and Control of Pollution) Act 1974, the Environment Protection Act 1986, the UDCPR Rules and the norms of the Maharashtra Pollution Control Board and prima facie it appears to be a violation.

5. The promoters and developers of Trishul Golden Ville are liable for appropriate action for the said violation.

6. Also, strict instructions were given to the Chief Officer, Kulgaon Badlapur Municipal Council to take immediate steps and corrective measures to ensure that untreated sewage is not discharged into the Ulhas river basin and also not into the agricultural land of petitioner Shri. Bhoir.

7. Also, the Chief Officer, Kulgaon Badlapur Municipal Council was instructed to complete the road side drainage (sewers) work adjacent to Trishul Golden Ville CHSL on a war footing and the office bearers of the society were also instructed to take corrective measures immediately.

8. Also, the Chief Officer, Kulgaon Badlapur Municipal Council was instructed to take persistent follow up of setting up a sewage treatment plant at Trishul Golden Ville CHSL with the promoters, developers and office bearers of the said society and to take the appropriate action against the person / employee /officer involved in the issuance of the Occupation Certificate without following Rules & Regulations.

9. Also, directed the officers of the Maharashtra Pollution Control Board to take all measures to prevent and control any untreated sewage discharge into the Ulhas river basin as per the norms of the Maharashtra

Pollution Control Board.”

(emphasis supplied)

15. The aforesaid report of the Collector, Thane, is also based on the statements of different persons as recorded by the Collector namely statements of the petitioner, the Chairman and Secretary of the Society, of the developer, of the Water Supply Officer, of the town planner and the Chief Officer of the KBMC and other persons who had attended the site inspection and who were signatories to the panchanama. Such inspection of the site and the municipal area by the Collector, Thane, was a joint inspection along with the Expert appointed by the Court, who also as directed has prepared an independent report on such larger issues flagged by us, affecting the ecology and more significantly the sewage being drained into Ulhas river on account of there being no functional sewer system in the KBMC area.

16. The report of the Court appointed Expert is dated 6 August 2025 which is titled as “**Addressing the Absence of infrastructure in Badlapur: A Report on Solutions for a Growing City**”. We may at the outset observe that this report is an “eye opener” depicting the sad plight of the chaos in town planning in the KBMC area. Such report, under various heads, *inter alia* sets out the historical background and the serenity of the place, it records that currently majority of the residences in Badlapur lack access to a “centralized sewage system”, as a result of which, it is stated that improper waste disposal is rampant *inter alia* leading to the contamination of water bodies, soil pollution, and increased disease transmission. It also records that inadequate sewage infrastructure has also produced offensive

odours, contributed to pest infestations, which have diminished the urban aesthetic. It also observes that the discharge of sewage into the Ulhas River presents considerable risks and impact on the aquatic ecosystem and the broader environment. The report also highlights the health implications, environmental impact, problems faced by residents, farmers and farmhouses. It also sets out “solution proposals” under 20 different heads, namely, immediate solution, strategic, long-term solutions etc. The contents of the said report are significant which need to form part of this order, failing which our experience shows such report simply remains buried in the Court record. The report of the Expert reads thus:-

### **“TECHNICAL REPORT**

#### **Introduction:**

Badlapur, situated in Maharashtra's Thane district, is a city experiencing significant development and urbanization. Renowned for its historical significance and cultural heritage, Badlapur provides a blend of traditional and contemporary attractions for residents and visitors.

The city is surrounded by verdant landscapes and natural beauty, attracting nature enthusiasts and outdoor aficionados. Opportunities for hiking, trekking, and birdwatching are available amid Badlapur's scenic surroundings.

Several important historical sites and landmarks are located in Badlapur, reflecting its rich past. Notable among these are the Badlapur Ganesh Temple and the Kondeshwar Temple-both prominent religious destinations for locals and tourists.

In addition to its natural and historical features, Badlapur has an active local market where visitors can purchase traditional handicrafts, textiles, and regional delicacies. The town's lively streets provide insight into everyday life and offer opportunities to experience the local cuisine. Collectively, Badlapur presents a distinctive combination of history, culture, and natural appeal for those visiting or residing in the city.

However, with a growing population, there is an increasing demand for essential infrastructure. A key concern is the insufficient

sewerage system, which poses environmental and public health risks and adversely affects living standards for residents.

This report aims to provide an analysis of the current sewer infrastructure challenges and offer recommendations for addressing the shortage of sewer lines in Badlapur, as guided by the Honourable Bombay High Court's directives.

#### **Current Situation:**

Badlapur is a small town located in Maharashtra, India, through which a river flows, contributing significantly to the region's landscape and livelihood. The river adjacent to Badlapur, identified as the Ulhas River, is integral to the town's ecosystem and sustenance. It holds both environmental and social value, merging natural features with daily life and contributing to the well-being of the community.

The river serves as a critical water source for agriculture and supports the economic activities of many local residents.

The river enhances the tranquility of Badlapur's environment as it meanders through the town. Its verdant banks, adorned with wildflowers and mature trees, create a scenic setting. The gentle sound of flowing water fosters a peaceful atmosphere, making the riverbanks a favoured destination for relaxation among community members.

Local fishermen rely on the river for their livelihoods, regularly casting nets in hope of ample catches. Children are frequently seen playing by the river, while families utilize its banks for picnics, benefiting from the refreshing breezes and natural beauty. The river also provides an opportunity for community engagement and recreation.

During the monsoon, the river's volume increases substantially, transforming its character and facilitating the transfer of nutrients and sediment downstream. This seasonal change brings about ecological renewal, resulting in lush vegetation growth along the river and surrounding areas.

Currently, the majority of residences in Badlapur lack access to a centralized sewage system. As a result, improper waste disposal is common, leading to the contamination of water bodies, soil pollution, and increased disease transmission. Inadequate sewage infrastructure has also produced offensive odours, contributed to pest infestations, and diminished the urban aesthetic.

The discharge of sewage into the Ulhas River presents considerable risks to the aquatic ecosystem and the broader environment. Key potential impacts include:

1. **Water contamination:** Sewage introduces pathogens, harmful bacteria, and chemicals that compromise water quality. Such contamination can have detrimental effects on aquatic species and render the water unsuitable for human consumption or recreational purposes.
2. **Eutrophication:** Excessive nutrients from sewage effluent may trigger algal blooms, leading to oxygen depletion in the water. These conditions can threaten fish populations and reduce overall biodiversity within the river system.
3. **Habitat degradation:** Pollution from sewage can damage habitats

along the Ulhas River, negatively impacting flora and fauna dependent on these environments. Disruptions in these ecosystems result in biodiversity loss and affect ecological stability.

4. **Health risks:** Direct exposure to contaminated river water heightens the risk of waterborne illnesses, skin infections, and other health concerns. Preventing contact with polluted water is therefore essential to protect public health.

The absence of a comprehensive sewer network in Badlapur has led to several adverse outcomes for both the city and its residents. Ineffective management of wastewater and solid waste undermines environmental quality and poses significant public health risks, such as pollution of water sources, higher rates of communicable diseases, and ecological decline. Furthermore, insufficient sewage facilities hinder progress toward sustainable urban development.

#### **Health Implications:**

The lack of an effective sewage system exposes Badlapur's population to elevated health risks. Unsanitary waste disposal contaminates water supplies, propagating diseases like cholera, typhoid, and gastroenteritis. Proximity to untreated sewage also increases the prevalence of respiratory and skin conditions among residents.

#### **Environmental Impact:**

Environmental consequences include the pollution of surface and groundwater resources, harm to aquatic ecosystems, and long-term soil degradation, which can adversely affect agricultural productivity and contribute to persistent environmental challenges.

#### **Problems Faced by Residents:**

The absence of formal waste management systems compels households to depend on septic tanks or open drains, both of which pose hygienic and environmental risks. Overflow during periods of heavy rainfall can lead to flooding and exacerbate health hazards. Additionally, the accumulation of refuse in residential zones further intensifies sanitation problems.

#### **Problems faced by farmers and farmhouses**

It's observed that sewage is passed into agricultural land, it can have various negative effects on both the environment and human health. Here are some potential consequences of this pollution:

1. **Contamination of Soil:** Sewage contains harmful pathogens, chemicals, and heavy metals that can contaminate the soil. This contamination can reduce soil fertility, inhibit plant growth, and affect the quality of crops grown on the land.
2. **Groundwater Contamination:** Sewage can seep through the soil and contaminate groundwater sources, which can affect the drinking water quality for nearby communities. This pollution can lead to waterborne diseases and other health issues.
3. **Crop Contamination:** Crops grown in sewage-contaminated soil can absorb pollutants, chemicals, and pathogens from the sewage, making them unsafe for consumption. This can pose serious health risks to

people who consume these contaminated crops.

4. **Environmental Impact:** Sewage pollution in agricultural land can harm local ecosystems by disrupting the balance of nutrients and introducing toxic substances. This can affect wildlife, aquatic systems, and other natural habitats in the area.

5. **Economic Losses:** Farmers who depend on agricultural land for their livelihood may suffer economic losses due to decreased crop yields, reduced soil productivity, and damaged crops. This pollution can impact the agricultural sector and local food supply.

#### **Solution Proposals:**

##### **A. Immediate solution:**

1. Establish a regular maintenance schedule for existing sewage disposal systems to maintain proper operation.
2. Supply temporary portable toilets for residents and workers in buildings lacking sewage disposal systems.
3. Provide education and training programs on appropriate waste disposal and sanitation procedures.
4. Form a task force to address emergency situations involving sewage backups and overflows.
5. Work with local organizations and authorities to implement solutions such as community septic tanks or temporary sewage treatment plants.
6. Install temporary portable septic tanks in buildings without sewage disposal systems to manage wastewater.
7. Schedule regular maintenance to ensure the effective functioning of the temporary septic tanks.
8. Initiate a community awareness campaign to inform residents about correct waste disposal practices to reduce strain on existing sewage systems.
9. Coordinate with local authorities to create designated collection points for waste that cannot be handled by temporary septic tanks.
10. It is important to take immediate action to prevent sewage pollution in agricultural land. This may involve implementing better sewage treatment practices, enforcing regulations to avoid illegal discharge, promoting sustainable farming practices, and raising awareness about the impacts of sewage pollution on agriculture and public health. Collaboration between local communities, government authorities, and environmental agencies is crucial to mitigate the effects of sewage pollution on agricultural land in Badlapur.

##### **B. Strategic, Long-Term Solutions:**

###### **1. Comprehensive Sewer System:**

Implement a city-wide sewer system in Badlapur with primary lines, secondary distribution, and connections for all properties. Ensure the design meets present and future demands and is environmentally sustainable.

###### **2. Sustainable Wastewater Treatment:**

Build advanced wastewater treatment plants to process sewage, meet water quality standards, and recycle water for non-potable uses like irrigation.

### **3. Public Awareness:**

Launch outreach programs to educate residents about sanitation, efficient water use, and the benefits of a working sewer system, collaborating with schools and local groups.

### **4. Stakeholder Partnerships:**

Coordinate among government, private sector, and communities to develop, finance, and manage the sewer infrastructure through public-private partnerships and integrated planning.

### **5. Integrated Sewage Network:**

Establish a modern sewage network with treatment facilities, underground lines, and regular maintenance for optimal performance.

### **6. Community Education:**

Educate citizens on effective waste management and the harm of improper sewage disposal through campaigns and workshops.

### **7. Agency Collaboration:**

Work with agencies, professionals, and environmental groups to secure funding and expertise for long-term sewage improvements.

### **8. Monitoring and Maintenance:**

Set up regular inspections, cleaning, and repairs to keep the sewage system functional.

### **9. Ulhas River Protection:**

Prevent sewage pollution in the Ulhas River through treatment, proper management, and community education to protect the ecosystem and local health.

### **10. City-Wide Sewage Disposal Strategy:**

Develop a city-wide strategy for sewage disposal in all buildings.

### **11. Resource Allocation for Infrastructure**

Allocate resources for constructing treatment plants and pipelines.

### **12. Enforcement of Building Codes**

Enforce building codes requiring adequate sewage systems in new developments.

### **13. Incentives for Retrofitting**

Provide incentives for retrofitting existing structures with compliant systems.

### **14. Partnerships for Funding**

Partner with government, NGOs, and private stakeholders for funding and resources.

### **15. Ongoing Compliance Inspections**

Conduct ongoing inspections to ensure compliance with sewage

regulations.

#### **16. Centralized Sewage Network Planning**

Plan for a centralized sewage network for all Badlapur buildings.

#### **17. Feasibility Study for City-Wide Initiative**

Assess costs and needs for a city-wide sewage initiative via a detailed feasibility study.

#### **18. Maintenance of Sewage Network**

Maintain regular inspection and maintenance for the sewage network.

#### **19. Environmental Clearances**

Secure environmental clearance for projects over 20,000 sq. meters.

#### **20. Strict Waste Management Regulations**

Enforce strict waste management regulations and penalties to ensure sustainability.

#### **Conclusion:**

In summary, the lack of sewer lines presents challenges for the expanding city of Badlapur, with implications for environmental and public health. Implementing the recommendations in this report such as developing a comprehensive sewer system, establishing wastewater treatment facilities, promoting public awareness, and encouraging cooperation between government and private entities may help to address these concerns. Timely action in line with Hon'ble Bombay High Court directives could support sustainable and healthy conditions for Badlapur residents.

The absence of a sewage system in Badlapur is an issue that necessitates attention and intervention. Steps including the development of a comprehensive sewage infrastructure, conducting public awareness programs, collaborating with government agencies, and carrying out regular monitoring are suggested approaches to address this situation and enhance living standards in Badlapur.

This report is provided for consideration with the expectation that relevant steps will be evaluated to address the sewage system situation in Badlapur.”

17. Having noted the glaring observations made in the report of the Court appointed Expert, at this juncture, we also need to comment that the photographs taken during the visit/inspection of the different sites also reveal a disturbing state of affairs and several worrisome issues affecting the public at large crop up. To name a few, there is sewage water surrounding several newly

constructed buildings, further drainage water at several places flowing into the Ulhas river, which is a major river, which not only caters to the drinking water requirements, but also to large fishing activities undertaken by the fishermen settlements. Hence, any contamination of the river water from the municipal sewer and that too of such densely populated municipal area, as revealed by the photographs, is beyond one's imagination. It is a gross illegality looked from any angle.

**D. Submissions on behalf of the Petitioner:-**

18. On the aforesaid backdrop, when the proceedings were made returnable on 11 August 2025, the parties were granted an opportunity to examine both the reports and make their submissions before the Court, on the adjourned date (14 August 2025). Accordingly on 14 August 2025, learned counsel for the petitioner has made extensive submissions. He would submit that this is a clear case of not only the most valuable fundamental rights guaranteed under Articles 14 and 21 of the Constitution but also the right to property guaranteed to the petitioner under Article 300-A of the Constitution of India being brazenly violated on several counts, on account of the municipal sewage from respondent no.5's project/society, being drained onto the petitioner's land rendering the petitioner's land of no utility whatsoever. He submits that the land in question is the agricultural land and the petitioner in such circumstances has lost the utility of the land, and consequently the petitioner has severely suffered monetarily. Hence it is submitted that the petitioner has made a prayer that compensation be granted to him of an amount of Rs.10 Lacks, which is submitted to be wholly

justified. It is his submission that in this regard, not only the developer/respondent, but also the society and the KBMC are responsible to compensate the petitioner, on the basis of the polluter pays principle. Learned counsel for the petitioner in supporting his submissions has drawn our attention to the report of the Collector as also the report of the expert, which we have noted hereinabove, to submit that this is a case of admitted grave lapses on the part of the KBMC, as also of the developer in bringing about such situation of extreme public nuisance, grossly affecting the rights of the petitioner as also of the citizens at large. It is also his submission that the manner in which the KBMC is neglecting such basic planning requirements in not providing appropriate sewage facilities, sewage system plans, scientific process of the sewage and preventing contamination of Ulhas river are major issues which are highlighted in the report of the Expert. It is submitted that they are required to be urgently attended, so that not only the ecology and environment is preserved, but also to prevent rights of the citizens being taken away, by lack of such planning initiatives. It is also his submission that till such basic facilities are provided by the KBMC, building permissions ought not to be granted by the KBMC. Also several projects, which would add to such environment pollution, brings about the need that occupation certificates ought not to be granted by the KBMC. It is submitted that if such drastic steps are not taken, it would add to further chaos on such issues. In supporting his submissions on the open water pollution of the Ulhas river, learned counsel for the petitioner has relied on the provisions of Sections 47, 48-A and Articles 51-A of the Constitution of India, as also on the provisions of the Water (Prevention

and Control of Pollution) Act 1974, and more particularly provisions of Sections 24, 25, 26, 33-A, 43, 44, 45-A, 45-D and 45-E. He also refers to the implications which are brought about by Sections 3, 4 and 5 of the Environment Protection Act 1986. In supporting his submissions on the preservation of ecology, environment and the polluter pays principle, reliance is placed on the decisions of the Supreme Court in **M. C. Mehta vs. Union of India & Ors.**<sup>2</sup>, **Vellore Citizens' Welfare Forum vs. Union of India & Ors.**<sup>3</sup>, **A. P. Pollution Control Board vs. Prof. M. V. Nayudu (Retd.) & Ors.**<sup>4</sup> and **Vellore District Environment Monitoring Committee rep. By its Secretary Mr. R. Rajebdran vs. District Collector, Vellore District & Ors.**<sup>5</sup>. Also reliance is placed on the decision of **M.C. Mehta vs. Kamal Nath & Others**<sup>6</sup> to support the petitioner's case on entitlement to receive damages.

#### **E. Submissions on behalf of the Respondents:-**

19. On the other hand, Mr. Adsule, learned counsel for respondent no.4/ KBMC referring to the reply affidavit has submitted that all effective steps are being taken by the KBMC on the issues highlighted in the two reports (supra) albeit the Chief Officer of the KBMC, not denying the fact situation depicted in the report of the Collector, as also in the report of the Expert. From the submissions of Mr. Adsule, it also appears that unfortunately the Chief Officer has taken an adversarial position in trying to justify, gross dereliction of the

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**2** (1987) 4 Supreme Court Cases 463

**3** (1996) 5 Supreme Court Cases 647

**4** (1999) 2 Supreme Court Cases 718

**5** 2025 SCC OnLine SC 207

**6** (2000) 6 Supreme Court Cases 213

mandatory obligations on the part of the KBMC in its obligation of providing the civic facilities and adhering to the pollution norms. Mr. Adsule submits that the affidavit sets out the steps being taken under the different schemes which are now available citing “the Amrut Mission” scheme of the Central Government whereunder the waste water flowing through 6 nallahs was diverted to three pumping stations under the new project-2. It is stated that at Shrigaon and Sonivali, work of Twelve and Ten Million Liter (per day) sewerage treatment plant “is in progress”, which is likely to be completed in December 2025 and till then, as a temporary measure, the waste water flowing through the Nallahs before being drained into the Ulhas river is treated by the KBMC using the ‘Nalla insitu method’ and the Bioremediation technology on the sewage/waste water, is being deployed.

20. Learned counsel for respondent no.5 – developer has made submissions drawing our attention to the correspondence as exchanged between respondent no.5 and the Chief Officer of the KBMC to submit that in July 2025 respondent No.5 had made a request to the KBMC for NOC and permission to construct compound wall below ground level, to prevent possible seepage of sewer water from its project/society’s plot, to the petitioner's land. It is submitted that these applications are dated 27 June 2025, 07 July 2025 and 08 July 2025. It is submitted that accordingly respondent no.5 is ready and willing to rectify the problems faced by the petitioner, due to the drain/seepage of sewage water from respondent no.5’s project to the petitioner's land. It is also his submission that in

this regard, the society (respondent no.6) needs to cooperate and ought not to create hurdles. Learned counsel for respondent no.5 has fairly not disputed the fact situation which has come on record under the report of the Collector as also two reports of the expert as appointed by the Court.

#### **F. Analysis:-**

21. On such conspectus, we have heard learned Counsel for the parties, we have also perused the record, the report of the Collector as also two reports of the Court appointed Expert.

22. At the outset, we may observe that the present proceedings highlight a very dismal state of affairs in regard to lack of urban planning in one of the fastest growing suburb of Thane district namely at Kulgaon-Badlapur.

23. It is clearly not in dispute that an appropriate or a well planned and a robust sewage system, is not available within the municipal area of the KBMC. In the absence of such basic planning requirements of providing of sewage lines and adequate Sewerage Treatment Plants (STPs), many of which are not functional, large building permissions are granted by the KBMC, that too, to construct high rise buildings. By no standard, a high rise building of 440 occupants, as in the present case, can be considered to be a small project being permitted to be occupied without a municipal sewer line.

24. As seen from the report dated 6 August 2025 of the Court appointed Expert, Badlapur is experiencing significant development and urbanization. Historically it is a prominent town, it has a significant cultural heritage. It

provides a blend of traditional and contemporary attractions to the residents and visitors. The town is surrounded by verdant landscapes and natural beauty, attracting nature enthusiasts and outdoor aficionados. It has a major river namely the Ulhas River, which is integral to the town's ecosystem and sustenance. It holds both environmental and social importance, merging natural features with daily life and contributing to the well-being of the community. The river is an important water source for agriculture and supports the economic activities of many local residents. It enhances the tranquility of Badlapur's environment as it meanders through the town. The local fishermen are dependent on the river for their livelihoods, regularly casting their nets in hope of ample hauls. It is observed that during the monsoons, the river's volume increases substantially, transforming its character and facilitating the transfer of minerals and sediment downstream. With such rich cultural and natural heritage, can a developing town at all be deprived of the benefits of scientific and urban planning is the question, this more particularly when the municipal sewage is being drained into the river.

25. On such conspectus, the Expert's reports observe that currently, the majority of residences in Badlapur lack access to a centralized sewage system and consequent thereto, a scenario of improper waste disposal is what is prevalent, leading to the contamination of water bodies, soil pollution, and increased disease transmission. This has also lead to offensive odours, contributing to pest infestations, and diminishing the urban aesthetic. The Expert's report has also observed that the discharge of sewage into the Ulhas River presents considerable risks to the aquatic ecosystem and the broader environment of which the key

potential impacts include water contamination, eutrophication, habitat degradation and numerous health risks. Significantly, the problems which are faced by the respondents in the absence of formal waste management systems have compelled households to depend on septic tanks or open drains, both of which pose hygienic and environmental risks. More particularly, during periods of heavy rainfall, overflow leads to flooding and exacerbates health hazards. Additionally, there is an accumulation of filth and refuse in the residential zones which has intensified sanitation problems. The Expert has also highlighted the problems faced by the farmers and farmhouses, namely of soil contamination by the sewage which contains harmful pathogens, chemicals, and heavy metals which get absorbed in the soil, resulting in reduced soil fertility, inhibit plant growth, and affect the quality of crops grown on the land. The groundwater contamination is one of the major ill effects, as sewage can seep through the soil contaminating groundwater sources, which can affect the drinking water quality for the nearby communities, leading to several health issues. Also crop contamination is one of the immediate issues, as when crops are grown in sewage-contaminated soil, they can absorb pollutants, chemicals, and pathogens from the sewage, making them unsafe for consumption. This can pose serious health risks to the persons who consume such contaminated crops. Further the environmental impact as created by sewage pollution in agricultural land can harm local ecosystems by disrupting the balance of nutrients and introducing toxic substances, and this would have an adverse impact on wildlife, aquatic systems, and other natural habitats in the area, leading to farmers suffering

economic losses which would adversely affect their livelihood, due to decreased crop yields, reduced soil productivity and damaged crops. These are some of the major issues which are required to be urgently addressed by the KBMC.

26. In regard to such concerns which affect the public at large, the learned Expert has provided immediate solutions under the heading “strategic long term solutions”, which are almost twenty in number as noted hereinabove. At the bar, it is not in dispute that all such remedial measures need to be forthwith adopted by the KBMC. Considering the aforesaid situation, our immediate concern and anxiety is not only to the serious prejudice which is caused to the petitioner but also to the thousands of persons who are similarly situated and who have become victims of such abysmal town planning, namely there being no sewerage system and/or non functional sewage treatment plants, coupled with total lack of attention to the environment and ecology.

27. We find that in enacting the “Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965”, the legislature has made robust provisions, which are required to be scrupulously followed by the KBMC in undertaking various town planning measures. Most significantly there are provisions dealing with providing of drainage and disposal of sewage. A reference to the following provisions would make the position crystal clear in regard to the various obligations of the KBMC:-

**“Section 2 Definitions:**

**Section 2 (10) “drain”** includes a sewer, tunnel, pipe, ditch, gutter or channel and any cistern flush tank, septic tank, or other device for carrying off or treating sewage, offensive matter, polluted water, sullage,

waste water, rain water or sub-soil water and any culvert, ventilation shaft or pipe or other appliance or fitting connected therewith, and any electors, compressed air main, sealed sewage mains and special machinery and apparatus for raising, collecting, expelling or removing sewage or offensive matter from any place;

... ..

**190. Powers of Chief Officer and Council to refuse permission. —**

(1) When a person has given notice to the Chief Officer under sub-section (2) of the last preceding section in regard to his intention to construct a building, it shall be lawful to the Chief Officer to refuse the permission applied for—

(i) if the Council passes a resolution proposing to acquire the land on which the building is proposed to be constructed; or

(ii) if the proposed construction would contravene the provisions of this Act, or any other law for the time being in force or any schemes, rules, by-laws or other orders under this Act or any other law for the time being in force; or

(iii) if the notice under sub-section (2) of the last preceding section is not in accordance with the provisions of that sub-section or is not accompanied by the information and documents required by that sub-section or if the person giving such notice fails to furnish all the information and documents required under sub-section (3) of that section; or

(iv) if no plan has been prepared for the laying out of streets for the area in which the building is to be constructed; or

(v) if there is no adequate provision for access to the building; or

(vi) if the proposed construction be an encroachment on Government or municipal land; or

(vii) for any other reasons to be recorded in writing, which may be deemed sufficient by the Chief Officer. Where the permission applied for is refused the decision taken and reasons therefor shall be communicated to the applicant.

(2) Refusal under clause (i) of sub-section (1) shall be subject to the following conditions :—

(a) if the property is acquired and no agreement is arrived at as regards the amount of compensation payable to the person giving notice under sub-section (2) of the last preceding section, the same shall be determined in accordance with the provisions of section 330 regard being had to the likely benefit, which would have accrued to such person, if the permission had not been refused;

(b) if within a period of six months from the date of the resolution of the Council proposing to acquire the land, the land is not acquired by the Council by agreement upon payment, or if within such period, an application has not been made to the Collector for the institution of proceedings for compulsory acquisition under the provisions of the 1Land Acquisition Act, 1894 (I of 1894), or if the Council abandons the proposal to acquire the land, the notice given under sub-section (2) of the last preceding section shall be deemed to have been revived with effect from the date on which the said period of six months expires, or with effect from the date on which the decision of the Council to abandon the proposal is arrived at, as the case may be. Such decision shall be communicated to the person giving notice, within fifteen days

from the date of the decision; and the notice shall be dealt with as if the Council had not passed a resolution to acquire the land. The Council shall be liable to pay compensation to the said person in respect of the loss which he may prove to have incurred by reason of the Council's refusal to grant the permission:

Provided that, the Council shall not be liable to pay compensation if the notice under sub-section (2) of the last preceding section is given subsequent the passing of the resolution by the Council to acquire the land.

**191. Level of buildings.** — After the appointed day, no building shall be constructed upon a lower level than will allow of the drainage thereof being led into some public sewer or drain either then existing or projected by the Council, or into some stream or river or into the sea or some cesspool or other suitable place which may be approved of by the Chief Officer.

**193. Completion certificate, permission to occupy or use.** —

(1) Every person constructing a building shall, within one month after the completion of construction of such building, deliver or send or cause to be delivered or sent to the Chief Officer at his office, notice in writing of such completion and shall give to the Chief Officer all necessary facilities for inspection of such building:

Provided that, —

- (a) such inspection shall be commenced within seven days from the date of receipt of the notice of completion; and
- (b) the Chief Officer may, not later than one month from the date of receipt of the notice of completion, by written intimation addressed to the person from whom the notice of completion was received,—
  - (i) give permission for the occupation of such building or for the use of the building or part thereof affected by such construction; or
  - (ii) refuse such permission in case such building has been constructed so as to contravene any provision of this Act or of any by-law made under this Act at the time in force or of any order passed under section 189 intimating to the person who gave the notice under sub-section (2) of that section, the reasons for such refusal and requiring such person, or if the person responsible for giving notice under sub-section (2) of the said section is not at the time of such notice owner of such building then such owner to cause anything which is contrary to any provision of this Act or of any by-law made under this Act at the time in force or of any order passed under section 189 to be amended or to do anything which by any such provision or by-law or order he is required to do but which has been omitted.

(2) No person shall occupy or permit to be occupied or use or permit to be used any such building constructed or part thereof affected by such construction, until,—

- (a) the permission referred to in proviso (b) to sub-section (1) has been received, or
- (b) the Chief Officer has failed for one month after the receipt of the notice of completion to intimate as aforesaid his refusal of the said permission.

(3) Whoever—

(a) occupies or permits to be occupied any such building or part thereof affected by such construction without giving any notice as required under sub-section (1) or in contravention of the provisions of sub-section (2); or

(b) fails to comply with any order or requisition made under sub-section (1) shall, on conviction, be punished with fine which may extend to [five thousand rupees], and in the case of continuing contravention or non-compliance with further fine which may extend to [two hundred and fifty rupees] for every day after first during which such contravention or non-compliance continues.

**200. Municipal control over drainage.**— (1) All drains, sewers, privies, water closets, house-gullies, gutters and cesspools within the municipal area shall be under the survey and control of the Council. (2) All covered drains, sewers and cesspools, whether public or private, shall be provided by the Council or other persons to whom they severally belong with proper traps, coverings or other means of ventilation; and the Chief Officer may by written notice call upon the owner of any such covered drains, sewers and cesspools to make provision accordingly.

**201. Power of making and repairing drains.**— (1) It shall be lawful for a Council for any drainage purposes to carry any drain, conduit, tunnel, culvert, pipe or watercourse through, across or under any street or any place laid out as or intended for a street, or under any cellar or vault which may be under any street, and, after giving reasonable notice in writing to the owner or occupier, into, through or under any land whatsoever within the municipal area.

(2) The Council, or any person acting under its authority, may construct a new drain in the place or an existing drain in any land wherein any drain vested in the Council has been already constructed, or repair or alter any drain vested in the Council.

(3) The Council may also erect upon any premises or land or affix to the outside of any building or structure or to any tree, any such shaft or pipe as it may deem necessary for the proper ventilation of the municipal drains, and such shaft or pipe shall be carried to a height of not less than six feet above the highest part of the adjacent house and erected so as not to cause any nuisance or inconvenience to the occupants of the building to which such shaft or pipe has been affixed or of any other building in the neighbourhood or to the public.

(4) In exercise of any power under sub-sections (1), (2) and (3), no unnecessary damage shall be done, and compensation, which shall, in case of dispute, be ascertained and determined in the manner provided in section 330 shall be paid by the Council to any person who sustains damage by the exercise of such power.

(5) The Council may discontinue, close up or destroy any municipal drain which has, in the opinion of the Council, become useless or unnecessary or prohibit the use of any such drain either entirely or for

the purpose of foul water drainage or the purpose of surface drainage:

Provided that, if by reason of anything done under this section any person is deprived of the lawful use of any drain, the Council shall, as soon as may be, provide for his use some other drain as effectual as the one which has been discontinued, closed up or destroyed or the use of which has been prohibited.

**202. Power to require sufficient drainage of houses. —**

(1) If any building or land be at any time undrained, or not drained to the satisfaction of the Chief Officer, the Chief Officer, subject to [the control of the President,] may by written notice call upon the owner to construct or lay from such building or land a drain or pipe of such size and materials, at such level, and with such fall as he may think necessary for the drainage of such building or land into—

- (a) some drain or sewer, if there be a suitable drain or sewer within fifty feet of any part of such building or land; or
- (b) a covered cesspools to be provided by such owner and approved by the Chief Officer.

(2) The Chief Officer may, subject to [the control of the President,] by written notice require any courtyard alley or passage between two or more buildings to be paved by the owners of such building with such materials and in such manner as he may direct.

(3) Whoever fails to comply with the notice issued by the Chief Officer under sub-section (1) or sub-section (2) shall, on conviction, be punished with fine which may extend to [one thousand rupees], and in the case of continuing offence with further fine which may extend to [one hundred rupees] for every day after the first during which such offence continues.

**203. New building not to be erected without drains. —**

(1) It shall not be lawful to construct or reconstruct any building, or to occupy or permit occupation of any building newly constructed or reconstructed, unless and until—

- (a) a drain is constructed of such size, materials and description, at such level and with such fall, as may be required by the by-laws or if no by-laws have been framed by the Council as shall appear to the Chief Officer to be necessary for the effectual drainage of such building;
  - (b) there have been provided for and set up in such building and in the land appurtenant thereto, all such appliances and fittings as may be required by the by-laws or if no by-laws have been framed by the Council as may appear to the Chief Officer to be necessary for the purposes of gathering and receiving the drainage from, and conveying the same off, the said building and the said land, and of effectually flushing the drain of the said building and every fixture connected therewith.
- (2) The drain to be constructed as aforesaid shall empty into a municipal drain, or into some place set apart by the Council for the discharge of drainage, situate at a distance not exceeding fifty feet from such building; but if there is no such drain or place within that distance, then such drain shall empty into a cesspool provided by the owner of

such building and approved by the Chief Officer.

**204. Powers of owners and occupiers of buildings or lands to drain into municipal drains.** — (1) The owner or occupier of any building or land within the municipal area shall be entitled to cause his drains to empty into a municipal drain:

Provided that, he first obtains the written permission of the Chief Officer and complies with such conditions as the Chief Officer may, subject to the provisions of by-laws, if any, prescribe as to the mode in which and the superintendence under which the communications are to be made between drains not vested in the Council and drains which are so vested.

(2) An appeal shall lie to the Council against any order of the Chief Officer under sub-section (1), if made within fifteen days of the receipt of such order.

**208. Power to require owners to keep drains, etc., in proper order; or to demolish or close a privy or cesspool.—**

(1) All drains, privies, water-closets, house-gullies, gutters and cesspools and drainage works of every description within a municipal area shall, unless constructed at the cost of the Council, be altered, repaired and kept in proper order at the cost and charge of the owners of the lands or buildings to which they belong, or for the use of which they have been constructed or continued; and the Chief Officer, subject to [the control of the President,] may by written notice require any such owner to alter, repair, and put the same in good order in such manner as he may think fit.

(2) It shall be duty of every such owner of land to building to get such drains, privies, water-closets, house-gullies, gutters and cesspools cleansed either by the municipal agency or such other agency as the Chief Officer may approved and at such intervals as the Chief Officer may require.

(3) Subject to [the control of the President,] the Chief Officer may by return notice require the owner the demolish or close any privy or cesspool, whether constructed before or after the appointed day, which in the opinion of the Chief Officer is a nuisance, or is so constructed as to be inaccessible for the purposes of scavenging or incapable of being properly cleaned or kept in good order.

**209. Power to close private drains and cesspools.—** When any building or land within municipal area has a drain communicating with any cesspool or municipal drain or any other place set apart for the discharge of drainage, the Chief Officer, if he considers that such drain, though it may be sufficient for the drainage of such building or land and though it may be otherwise unobjectionable, is not adapted to the general drainage of the locality, may, subject [the control of the President,] close such drain and such cesspool, or municipal drain, whether they are or are not on land vested in the Council on providing a drain or drains or cesspool equally effectual for the drainage of such building or land, and the Chief Officer may, subject as aforesaid, do any work necessary for the purpose.

**211. Power in respect of drains, etc., unauthorisedly constructed, rebuilt or unstopped.—**

(1) If any drain, privy, water-closet, house-gully or cesspool on any land within a municipal area, is constructed, rebuilt or unstopped either without the consent or contrary to the orders, directions or by-laws, of the Council or contrary to the provisions of any enactment in force at the time when it was so constructed, rebuilt or unstopped, the Chief Officer, subject to, [the control of the President,] may, by written notice, require such drain, privy, water-closet, house-gully or cesspool to be demolished, amended, or altered as it may deem fit.

(2) Any person who fails to comply with any notice issued by the Chief Officer under sub-section (1), shall, on conviction, be punished with fine which may extend to [one thousand rupees, and in the case of continuing offence with further fine which may extend to one hundred rupees for every day after the first during which such contravention continues.]

**212. Inspection of drains, etc.—**

(1) The Chief Officer, after due notice to the occupier, may inspect any drain, privy, water-closet, house-gully, gutter or cesspool; and for that purpose, at any time between sunrise and sunset may enter upon any lands or buildings with assistants and workmen, and cause the ground or any other structure to be opened or broken where he or they may think fit, doing as little damage as may be.

(2) The expense of such inspection and of causing the ground or the structure to be closed or repaired and made good as before shall be borne by the Council, unless the drain, privy, water-closet, house-gully, gutter or cesspool is found to be in bad order or condition, or was constructed in contravention of the provisions of any enactment or of any by-laws or orders thereunder in force at the time or issued in respect of such construction; in which case such expense shall be paid by the owner of such drain, privy, water-closet, house-gully, gutter or cesspool, and shall be recoverable in the same manner as an amount due on account of a property tax.”

28. Thus there are substantive provisions which are made under “the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965” which deal with the power of Chief Officer and Council to refuse building permissions in given circumstances which concern level of buildings to be maintained, issuance of completion certificate and permission to occupy or use, municipal control over drainage, power of making and repairing drains, power to require sufficient drainage of houses and most importantly Section 203

providing that no new building be erected without provision for drains and further provides for the regulatory powers under Section 204 in regard to the owners and occupiers of buildings or lands who utilize the municipal drains. Also there are powers to take action in respect of drains, etc. which are unauthorisedly constructed, rebuilt or unstopped and inspection of drains, etc. all over the municipal area.

29. Considering the facts and circumstances of the case, we have a grave doubt as to whether these substantive powers which are vested with the Chief Officer or the KBMC are at all being utilized, much less implemented so as to bring about an effective civic administration on the issues with which we are concerned in the present proceedings.

30. The KBMC needs to immediately prevent several drains, nallas finding an ultimate exit / drain in the Ulhas river. This cannot be permitted to perpetuate in any manner whatsoever. It is, hence of utmost necessity that a sewage management system, of a temporary nature be provided till a final sewage management system is made available for the town. There needs to be “ward to ward” inspection of all the high rise buildings, which are completely dependent on septic tanks and to examine whether there is overflow of the sewerage in the storm water drain or other open nallas; and after the same are identified, immediate remedial measures need to be adopted to prevent such drain.

31. It is imperative that unless appropriate sewer lines and sewage treatment plants (STP) are provided and made functional by the KBMC, permission for

high rise buildings ought not to be granted by the KBMC as this would be against the very fundamental norms of town planning. None would disagree, that for development permission to be granted to a high rise building, it is of utmost necessity, that the planning authority first and foremost has a complete layout/blue print of the essentials such as proper access, water pipelines, electricity, street lights, sewage lines etc. to name a few. It is only after such core municipal infrastructure is ready and available, building proposals can be considered and granted by the KBMC, more particularly considering that Badlapur is a fast growing suburb of Thane, having a high demand for properties of all kinds. Town Planning cannot lag behind which needs to keep pace with the development and demand for buildings created by the market.

32. However, the contemporary situation as also the experience depicts an alarming situation on such fronts. Considering the facts of the case, it appears that originally majority of these lands were agricultural lands. The agricultural lands are converted into non-agricultural lands (N.A.) by the Collector, who exercises these powers under the Maharashtra Land Revenue Code. It is on such N.A. lands, development permissions are being granted by the KBMC and that too to high rise buildings/ sky scrappers. Thus, the position which emerges is that in a particular area, NA lands are being utilized for construction of high rise buildings, whereas those lands which are not converted as NA lands continue to be utilized as agricultural lands which get adversely affected by the surrounding developments as in the present case. This is quite haphazard. There cannot be a

layout which has partially NA lands with high-rise buildings and adjoining to which there exist agricultural lands. Such scattered and disorganized development is antithetical to a systematic town planning.

33. The collector who is the originator of such indiscriminate classification of the uses of land by granting a change of user needs to take decisions on a scientific and well considered norms and for reasons to be recorded in writing and only after consultation with the different stake holders like the owners of land in the same area, expert opinions from the architects, Environment Authorities and the Director of Town Planning, failing which such unilateral decision is likely to harmful for an appropriate town planning and/or is likely to be arbitrary, causing prejudice to the different stake holders, adversely affecting their valuable rights, as in the present case.

34. If we apply the aforesaid tests to the facts of the present case, it is apparent that there appears to be lack of a systematic planning and development of residential / commercial layouts within the KBMC area. Also it appears that the building permissions are being arbitrarily granted by the KBMC at the mood of the passing moment. This is something which needs to be corrected and regulated, as actions of such nature which do not accept any rationale and are beyond the framework of law, cannot be recognized.

35. For those who have agricultural land in such areas, find agriculture less remunerative and selling of lands to developers becomes more beneficial and it is the sale of such non-agricultural lands (originally agricultural land) which has

contributed to the rapid development of the distant suburbs of Thane, whereas some landholders having agricultural land may intend to wait for the best possible opportunity when the land prices increase and then to develop their lands. However, this would not mean that a particular land owner deciding to convert his land into NA for developing the same, would be prevented from doing so, and if so permitted by the planning authority as may be permissible in law.

36. The reason we have pointed out such concerns is to highlight that it is in these circumstances, development of the municipal infrastructure becomes a *sine qua non*. As observed in the Expert's report, there is a growing need for urban housing in the KBMC area. The proximity of Badlapur to Mumbai and Thane, availability of suburban trains and road transport has made the KBMC area a popular suburb. It is, thus, an onerous responsibility on the part of the Town Planning Authority/Directorate of Town Planning as also the KBMC to adopt robust town planning measures so that an ideally planned city is created and not an urban chaos resulting in a haphazard concrete jungle. The pace with which development permissions are being granted at the insistence of the developers, as also the speed with which constructions are coming up and people occupying such high rise constructions, needs to match with the availability of the infrastructure and planning requirements, which is purely and entirely within the domain of the planning authorities.

37. It cannot be a situation that on one hand the Collector goes on granting

N.A. permissions, as also the Planning Authority keeps granting approvals to the proposals for high rise constructions, and on the other hand, the basic infrastructure facilities like a sewerage system, operational STP, roads, pavements, footpaths, playgrounds, gardens, children's parks etc. are lacking as the development progresses. This would amount to a situation of nothing less than a high degree of urban disorder, leading to an irreparable and a chaotic situation in terms of planning, which would bring about innumerable public woes including serious health concerns, like typhoid, malaria, dengue etc. For the health of the citizens not being adversely affected, it is the duty of the planning authority to maintain proper sanitation and cleanliness in the municipal areas.

38. Thus, the nightmare of such municipal chaos in the Kulgaon Badlapur Municipal Council is required to be urgently attended. Stitch in time is the immediate necessity, considering the fact that for want of an appropriate sewerage line or sewer system, there are open nallas, drains, which flow on open lands, as in the petitioner's case. In fact buildings are seen to be surrounded by pool of dirt, filth and sewage water. This is certainly not what is expected from an urban planning body, more particularly, considering the settled principles of the obligations of such statutory bodies to conserve environment and ecology. Also, any pollution of river water can never be tolerated. The law in this regard is well settled which we discuss hereunder.

39. The right to life as guaranteed under Article 21 of the Constitution of India would take within its purview, adherence and compliance of the other

provisions of the Constitution, which are intended to protect ecology and environment. We refer to the relevant constitutional provisions in this regard. Article 48A provides for protection and safeguard of various wild lives. Article 51A provides for fundamental duties as also provides that it to be a duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. We note the relevant “Articles” of the Constitution which reads thus:-

**“21. Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.

**48A. Protection and improvement of environment and safeguarding of forests and wild life.**—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

**51A. Fundamental duties.**—It shall be the duty of every citizen of India

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

....

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

.....”

40. The provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short **“the Water Act”**) are of utmost significance, in the facts and circumstances of the present case. Section 24 of the said Act provides for a prohibition on use of stream or well for disposal of polluting matter, *inter alia* providing that no person shall knowingly cause or permit any poisonous, noxious or polluting matter, determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly), into any stream

or well or sewer or on land, and further no person shall cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream, in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences. Section 25 provides for restrictions on new outlets and new discharges. Section 26 provides for provision regarding existing discharge of sewage or trade effluent. These provisions are required to be noted which read thus:-

**“Section 24** Prohibition on use of stream or well for disposal of polluting matter, etc.—

(1) Subject to the provisions of this section,—

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any 3 [stream or well or sewer or on land]; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely:—

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of

such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended.

**Section 26. Provision regarding existing discharge of sewage or trade effluent.**—Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.”

41. Sections 43, 44, 45-A and 45-D of the Water (Prevention and Control of Pollution) Act are the provisions pertaining to penalties for contravention of the provisions of Section 24, 25, 26 and the other provisions of the Water (Prevention and Control of Pollution) Act. Also Section 45E provides for offences for failure to comply with provisions of Section 25 and 26. We find that although the provisions of the Water (Prevention and Control of Pollution) Act are clearly attracted in the present case, no action under any of provisions of the said Act are taken by the KBMC. We also refer to the Environment (Protection) Act, 1986. There are measures which are required to be taken by the Central Government as provided under Section 3 to protect and improve the environment. Section 4 contemplates appointment of officers and their powers and functions. Section 5 provides for power to give directions. Several authorities under the State are empowered to take actions under the provisions of the

Environment (Protection) Act, in regard to violations of ecology and environment.

42. The importance of environment is underscored by the Supreme Court in **M. C. Mehta Vs. Union of India & Ors.**<sup>7</sup> in terms of the obligation of the State to protect the environment, also considering the fundamental duties of the citizens under Article 51A of the Constitution. The following observations as made by the Supreme Court a decade back, guide us:

4. Before proceeding to consider the facts of this case it is necessary to state a few words about the importance of and need for protecting our environment. Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51-A of the Constitution imposes as one of the fundamental duties on every citizen the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The proclamation adopted by the United Nations Conference on the Human Environment which took place at Stockholm from June 5 to 16, 1972 and in which the Indian delegation led by the Prime Minister of India took a leading role runs thus:

1. Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the manmade, are essential to his well being and to the enjoyment of basic human rights even the right to life itself.

2. The protection and improvement of the human environment is a maior issue which affects the well being of peoples and economic development throughout the world it is the urgent desire of the peoples of the whole world and the duty of all governments.

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<sup>7</sup> (1987)4 SCC 463

3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of manmade harm in many regions of the earth; dangerous levels of pollution in water, air, earth and living beings; maior and undesirable disturbances to the ecological balance of the biosphere; destruction and devletion of irreplaceable resources: and gross deficiencies harmful to the physical, mental and social health of man, in the **manmade** environment; particularly in the living and working environment.

A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build in collaboration with nature a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world- wide economic and social development.

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and National Governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. Inter- national co-operation is also needed in order to raise resources to support the developing countries carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation

among nations and action by international organisations in the common interest. The Conference calls upon the governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity.

The proclamation also contained certain common convictions of the participant nations and made certain recommendations on development and environment. The common convictions stated include the conviction that the discharge of toxic substances or of other substances and the release of heat in such quantities or concentrations as to exceed the capacity of environment to render them harmless must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems, that States shall take all possible steps to prevent pollution of the seas so that hazards to human health, harm to living resources and marine life, damage to the amenities or interference with other legitimate uses of seas is avoided that the environmental policies would enhance and not adversely affect the present and future development potential of developing countries, that science and technology as part of their contributions to economic and social development must be applied with identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind, that States have the responsibility to ensure that activities of exploitation of their own resources within their jurisdiction are controlled and do not cause damage to the environment of other States or areas beyond the limit of national jurisdiction, that it will be essential in all cases to consider the systems of values prevailing in each country and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost and that man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. These are only some of the statements of principles proclaimed by the Stockholm Conference. [Vide Lal's Commentaries on Water and Air Pollution Laws (2nd edn.) pages 6-7]".

(emphasis supplied)

43. In the context of the issue in regard to pollution of river Ganga, in the supplementary judgment of Mr. Justice K.N.Singh, the following succinct observations are made:-

22. Millions of our people bathe in the Ganga, drink its water under an abiding faith and belief to purify themselves and to achieve moksha, release from the cycle of birth and death. It is

tragic that the Ganga, which has since time immemorial, purified the people is being polluted by man in numerous ways, by dumping of garbage, throwing carcass of dead animals and discharge of effluents. Scientific investigations and survey reports have shown that the Ganga which serves one-third of India's population is polluted by the discharge of municipal sewage and the industrial effluents in the river. The pollution of the river Ganga is affecting the life, health and ecology of the Indo-Gangetic Plain. The government as well as Parliament both have taken a number of steps to control the water pollution, but nothing substantial has been achieved. I need not refer to those steps as my learned brother has referred to them in detail. No law or authority can succeed in removing the pollution unless the people co-operate. To my mind, it is the sacred duty of all those who reside or carry on business around the river Ganga to ensure the purity of Ganga. Tanneries at Jajmau area near Kanpur have been polluting the Ganga in a big way. This Court issued notices to them but in spite of notice many industrialists have not bothered either to respond to the notice or to take elementary steps for the treatment of industrial effluent before discharging the same into the river. We are therefore issuing the directions for the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people."

44. In **Vellore Citizens' Welfare Forum Vs. Union of India**<sup>8</sup> the Supreme Court was dealing with the issue of pollution created by tannery industries. It is in such context, the Supreme Court discussing the principles of sustainable development and the Polluter Pays principle, has made the following observations which read thus:

12. "The Polluter Pays" principle has been held to be a sound principle by this Court in *Indian Council for Enviro- Legal Action vs. Union of India J.T. 1996 (2) 196*. The Court observed, "...we are of the opinion that any principle evolved in this 'behalf should be simple practical and suited to the conditions obtaining in this country".

The Court ruled that

"Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to

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**8** (1996)5 SCC 647

make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". **The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.**

**13. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48A and 51A(g) of the Constitution are as under:**

*"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, The State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.*

*48A. Protection and improvement of environment and safeguarding of forests and wild life. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.*

*51A.(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."*

Apart from the constitutional mandate to protect and improve the environment there are plenty of post independence legislations on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution Act 1974 (the Water Act), The Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of one State Pollution Control boards by

various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. Also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the later Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

**14. In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country.**

15. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law. To support we may refer to Justice H.R. Khanna's opinion in *A.D.M. vs Shivakant Shukla* (AIR 1976 SC 1207), *Jolly George Varghese's case* (AIR 1980 SC 470) and *Gramophone Company's case* (AIR 1984 SC 667).

**16. The Constitutional and statutory provision protect a persons right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (*Commentaries on the Laws of England of Sir Willian Blackstone*) Vol.III, fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:**

"Also, if a person keeps his hogs, or other noisome animals, 'or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, sic utere "tuo, ut alienum non laedas;" this therefore is an actionable

nuisance. 'And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance

..... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a water-course, by erecting a due house or a lime-pit, for the use of trade, in the upper part of the stream; 'to pollute a pond. from which another is entitled to water his cattle: to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of "doing to others. as we would they should do unto ourselves ."

(emphasis supplied)

45. In a recent decision in **Vellore District Environment Monitoring Committee rep. By its Secretary Mr. R. Rajebdran vs. District Collector, Vellore District & Ors.**<sup>9</sup>, the Supreme Court considering the right to healthy environment while taking a review of the legal position, made the following observations:-

64. Right to life inherently includes the right to enjoy, pollution free environment, which are essential for the full enjoyment of life. If anything endangers or impairs the quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution to address the pollution of environment which may be detrimental to the quality of life. This court has recognised the concept of 'right to healthy environment' as part of the 'right to life' under Article 21 and thereby has also recognised the 'right to clean drinking water' as a fundamental right. Infact, environmental rights, which encompass a group of collective rights, are now described as "third generation" rights. Therefore, the State, so as to sustain its claim of functioning for the welfare of its citizens, is bound to regulate water supply by safeguarding, maintaining and restoring the water bodies to protect the right to healthy water and prevent health hazards. This court has also laid down in many cases, that the States shall ensure that the water bodies are free from encroachments and steps must be taken to restore the water bodies. In this context, we may refer to the following judgments and observations made thereunder:

i) Subash Kumar v. State of Bihar

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<sup>9</sup> 2025 SCC OnLine SC 207

“7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. ....”

(ii) **State of Karnataka v. State of Andhra Pradesh**

“175. Water is a unique gift of nature which has made the planet earth habitable. Life cannot be sustained without water. In the National Water Policy issued by the Government of India in 1987, it was declared that water is a prime natural resource, a basic human need and a precious national asset. Water, like air, is the essence for human survival. The history of water availability and its user is tied up with the history of biological evolution in all civilizations. It will not be wrong to say that not only the life started in water but rather water is life itself. It is essential for mankind, animals, environment, flora and fauna. There is no denial of the fact that in the ancient times water played an important role in the origin, development and growth of civilization all over the globe. Water is an important factor in the economic development of the countries which ultimately affects the social and human relations between the habitants. Planned development and proper utilization of water resources can serve both as a cause as well as an effect off the prosperity of a nation. Water on earth is available in the form of frozen snow, rivers lakes, springs, water ways, water falls and aqueducts, etc.”

74. The idea of the Polluter Pays Principle, though seemingly progressive, must be carefully examined to ensure it does not result in the emergence of a "right to pollute" for those who are financially capable or willing to pay. One key question that arises is the extent of liability for the pollution caused, specifically, whether the liability ends once compensation, as determined by the Court or other authorities, is paid, or whether it is a continuing liability that persists until the actual pollution is curbed and its effects reversed. This Court has recognized that the Polluter Pays Principle, when applied absolutely, has not yet sufficiently mitigated the harm caused to the environment, yielding below-average results. The tanneries have clearly exploited this system, discharging effluents, assuming that payment of compensation grants them the right to pollute. This issue is not limited to the

Vellore tanneries alone; it is a broader problem seen across industries in developing countries, where it is often seen as more cost-effective to pay the relatively low compensation than to invest in cleaner technologies that would reduce pollution. Industries, when faced with a choice between the marginal damage cost and the marginal cleaning cost, often opt for the former, thus perpetuating the cycle of environmental degradation.

77. When there is a violation in compliance with the environmental laws, be it by engaging in activities directly involved in causing pollution or failure to take steps to curb the pollution and restore the environment or violating any terms of licence granted by any State or central authority and acts in a manner detrimental to the environment, the effect of which causes or is likely to cause degradation of the environment, then the deeming fiction of polluting the environment becomes applicable and the polluter is not only liable to payment of compensation but also to restore the environment. As we have already seen, there is a persistent duty on the State to ensure that all steps are taken to ensure the protection of the environment. The State, even in the absence of any law, must put in place a mechanism to address the issue of degradation by taking preventive measures. The measures should lean towards protection and preservation rather than facilitation of economic activity by reliance upon lack of scientific details for adverse effects. The State must endeavour through its research wings to identify the industries and activities which impacts or can impact the environment before permitting such activities as there is a possibility that the damage could not only be irreversible but also the effects of such damage could be far more threatening the human race than the commercial benefits arising out of such activity. This precautionary principle, that has been recognized in various judgments as seen above and in *Vellore Citizen Welfare Forum's* case (Supra) was reiterated by this Court in *T.N. Godavarman Thirumulpad*.

79. Now that we've discussed the aspect of liability, let us turn our attention to the determination of compensation for pollution-related damage. As highlighted earlier, polluters bear the absolute liability for the harm they cause to the environment. However, it is well known that quantifying the extent of that damage is never an easy task and is usually quite complex. Unlike tangible property damage, the harm inflicted upon ecosystems—such as the destruction of flora, fauna, aquatic life, and the disruption to micro-organisms—is not easily measurable in monetary terms. Additionally, the impact on local communities, particularly their livelihoods, is difficult to assess. The loss of biodiversity, degradation of

natural resources, and long-term socio-economic consequences extend beyond the realm of financial valuation. Therefore, while the liability is clear, the process of determining an equitable compensation amount is fraught with challenges, as it must account for both the tangible and intangible damage inflicted on the environment and the affected communities. However, we can refer to past environmental cases, both Indian and international, to grasp the principles made therein relating to this aspect.”

(emphasis supplied)

46. Applying the aforesaid principles to the facts of the present case, in our opinion, certainly the petitioner has suffered an irreparable damage to his land. He suffered the filth. Also letting of the sewage and drainage into the petitioner's land rendered it uncultivable. This is certainly against any prudent and reasonable norms expected of a civilized society, therefore the aforesaid principles of law would forcefully apply. In these circumstances, applying the “polluter pays principle”, we are of the clear opinion that the petitioner is entitled to compensation as prayed for in terms of prayer clause (g) to be paid by the developer.

47. In our order dated 14 August 2025 we have directed the KBMC to provide permission to the developer to undertake construction of the wall in respect of which an application is made to the KBMC. It would be eminently in the interest of justice that such construction is undertaken and completed at the earliest.

48. In regard to the serious issues of town planning as discussed hereinbefore affecting thousand of citizens of the KBMC area, we are of the clear opinion that the town planning requirements need to be strictly implemented by the KBMC. Considering the present plight, it appears to be completely beyond the control

and/or comprehension of the Chief Officer to achieve appropriate town planning. In this situation, we are of the considered opinion that an expert Committee in town planning needs to be appointed to provide appropriate suggestions and guidance for systematic urban development of the Kulgaon Badlapur Municipal area.

### **G. Operative Orders :-**

49. In the aforesaid circumstances, we are inclined to pass the following order considering the larger issue which we have underscored hereinbelow:

### **ORDER**

- (i) We direct setting up of an **“Improvement Committee for Kulgaon-Badlapur Municipal Area”** to make suggestions and guidance for an appropriate urban development of the Kulgaon-Badlapur Municipal area within two weeks from today.
- (ii) The Improvement Committee shall consists of the following:
  - (a) An expert in town planning nominated by the Chairman/Managing Director of the City and Industrial Development Corporation of Maharashtra Limited (CIDCO).
  - (b) One Town Planning Expert to be nominated by the Director, Town Planning, Government of Maharashtra.
  - (c) Additional Collector, Thane.
  - (d) Chief Executive Officer of Kulgaon-Badlapur Municipal Council.
  - (e) A representative/expert nominated by the Maharashtra Pollution Control Board (MPCB).
  - (f) Eminent Social Worker to be nominated by Kulgaon-Badlapur Municipal Council.
- (iii) The Improvement Committee shall be tasked with making suggestions for ideal town planning measures to be implemented for identification of the

town planning issues/problems including which are highlighted in the Reports of the Collector and the Expert and as extensively discussed hereinabove and for implementation of all such measures.

- (iv) The Improvement Committee shall prepare a blue print of “**immediate measures**” to be taken in the larger public interest and the “**long term measures**”, so that a robust and proper town planning is achieved for the Kulgaon Badlapur Municipal area, so as to make it a Model Town, on the lines of a well planned city like Navi Mumbai and the other well planned towns in the State of Maharashtra.
- (v) We keep open all the avenues of such town planning, to be decided by the Committee with appropriate assistance from the Government of Maharashtra to be suggested to the KBMC and monitor its implementation.
- (vi) We direct respondent No.5 to take immediate measures to prevent sewage being drained onto the petitioner’s land, as also by undertaking appropriate filling of the land so as to bring it to the level of the adjoining plot of the society. This be complied within a period of six weeks from today.
- (vii) The compensation amount of Rs. 10 Lakhs be paid by respondent no.5 to the petitioner within two weeks from today.

50. While parting, we may observe that civic amenities like sewer lines, functional sewage treatment plant (STP), specified lands/areas to dump municipal solid waste are essential requirements of both developed and developing towns. Any disharmony, inappropriate planning and deficient working of any of such facilities severely affects the fundamental rights of the citizens as guaranteed under the Constitution of India and the several other

legislations entitling a right to healthy environment. The question which would keep bothering the citizens belonging to such large and small towns is whether the municipal bodies with the constitutional authority they wield, are fulfilling the expectations of the citizens on such counts. If the answer is an emphatic “no”, then it is high time that there is an urgent need of a concrete mechanism to be devised, so that the municipal authorities achieve and seriously implement such core requirements so as to guarantee to the citizens a clean and pollution free environment, by adhering to the highest standards. The wait on such count cannot be endless. Days, months, years, decades pass-by, however, the situation turns from bad to worse, cannot be the rule.

51. We accordingly dispose of this petition with cost of Rs.50,000/- to be paid by the KBMC to the petitioner.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)