



Maharashtra State Groundwater Authority
[A Statutory Authority Established u/s 3 of Maharashtra Groundwater (Development & Management) Act, 2009]

महाराष्ट्र राज्य भूजल प्राधिकरण

{महाराष्ट्र भूजल (विकास व व्यवस्थापन) अधिनियम, २००९चे कलम ३ अन्वये स्थापित वैधानिक प्राधिकरण}

No. MWRRRA/2021/Groundwater/Case No. 3(2022)/ 27

Date : 09/01/2024

In Case No. 3 of 2022


In the matter of

An appeal filed by Shri Arun Santoshrao Andhare at Post :- Dapori, Taluka; Morshi, District Amravati under Section 56(2) (1) of the Maharashtra Groundwater (Development and Management Act), 2009 challenging the Sub divisional Officer, Morshi, District Amravati Order dated 28/04/2021 regarding stopping the drilling of well and closing the private well.

Please find enclosed herewith a copy of MWRRRA Order No. 01/2024 dated 09/01/2024 in the above matter.

Encl : As above




(Dr. Ramnath Sorlawane)
Secretary, MWRRRA

Copy for information and necessary action to:-

1. Shri Arun Santoshrao Andhare, At Post:- Dapori, taluka :- Morshi, District:- Amravati, Pin code: 444 908 (Appellant)
2. Collector Amravati, Collector Office, Amravati , (Respondent -1)
3. Sub Divisional Officer Morshi, Varud Road Morshi, Taluka, Morshi, District:- Amravati, Pin code: 444 905,(Respondent -2)
4. Talathi Moje Pala Saza no.38,Pala,Taluka, Morshi, District:- Amravati, (Respondent - 3)
5. Smt Sarasvatabai Ganpatrao Badore, At Post:- Dapori, Taluka :- Morshi, District:- Amravati, Pin code: 444 908, (Respondent - 4)



Maharashtra State Groundwater Authority
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Order No. 01 / 2024

(In Case No. 3 of 2022)

In the matter of

An appeal filed by Shri Arun Santoshrao Andhare, Dapori, Taluka, Morshi, District Amravati under Section 56(2) of the Maharashtra Groundwater (Development and Management) Act, 2009 challenging the Order of Sub Divisional Officer, Morshi, District Amravati dated 28/04/2021 regarding stopping the drilling of well and closing the excavated pit cum well.

Shri Arun Santoshrao Andhare,
At Post:- Dapori, Taluka :- Morshi,
District:- Amravati, Pin code: 444 908

.....Appellant

V/s.

- 1) Collector Amravati,
Collector Office, Amravati
- 2) Sub Divisional Officer Morshi/District Authority,
Taluka, Morshi, District: - Amravati,
Pin code: 444 905
- 3) Talathi, Mauja- Pala, Talathi Office
Pala, Taluka, Morshi,
District: - Amravati



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Maharashtra Water Resources Regulatory Authority

(A Statutory Authority Established u/s 3 of MWRRRA Act, 2005)

9th & 11th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai-400005.
Tel.: +91-22-2215 2019 | Email : mwrra@mwrra.in | Website : www.mwrra.org

- 4) Smt Sarasvatabai Ganpatrao Badiore
At Post: - Dapori, Taluka :- Morshi,
District: - Amravati,
Pin code: 444 908

.....Respondent(s)

Appearance:

- 1) Shri Arun Andhare - Appellant
2) Shri Pradeep Pawar - Sub-Divisional Officer, Morshi for Res No. 1,2

Coram:

Dr. Sanjay A. Chahande, Chairman
Smt. Shwetali A. Thakare, Member (Economics)
Dr. Sadhana S. Mahashabde, Member (Law)

Date : 09/01/2024

BACKGROUND

The Authority received an Appeal dated 29/09/2021 filed u/s Section 56(2) of the Maharashtra Groundwater (Development and Management) Act , 2009 by Shri Arun Andhare challenging the Order of Sub divisional Officer, Morshi, District -Amravati .

1. Brief summary of the Appeal:-

- a. Shri Arun Andhare (Appellant) is an Agriculturist; resident of Mauja Dapori, Taluka Morshi, District: - Amravati. The Appellant submitted that; he is aware that his farm falls under dry zone and he had dug 24 ft deep and the 15 ft circular pit in his farm in village Pala, in Survey no 221/5 A, area 1.37 ha for storage of water through pipeline from Malu River for irrigation purposes.
- b. The Talathi, Pala, Morshi came to know about digging of well by Shri Arun Andhare in over exploited area without obtaining any permission



from Appropriate Authority and issued directions to Shri Arun Andhare on 08/03/2021 to stop the digging of well immediately and also to close the well otherwise action would be taken against him as per the relevant rules and regulations.

- c. Smt. Sarasvatabai Badore through her Advocate Shri Behare filed an application seeking Interim stay over digging of well by Shri Arun Andhare.
- d. The SDO, Morshi, after hearing Advocate Shri Behere on behalf of Smt. Sarasvatabai Badore granted injunction vide Order dated 25/03/2021 and directed Shri. Arun Andhare from further digging of well till final disposal of the matter. Copy of the Order passed by the SDO, Morshi is on record; however copies of the Complaint for interim injunction and replies filed by the answering Respondents are not provided.
- e. In response to SDO, Morshi's Letter no/Prastu-1/Ahawal/Kaavi-/2021 dated 05/04/2021 the Talathi, Pala on 6/4/2021 did a Panchnama in presence of Shri. Arun Andhare, Shri Ajay Raut (Sarpanch), Shri Chandan Nevare Upa- Sarpanch, Shri Sagar Sathe (Police Patil), Shri L.M. Kherde (Circle Officer) and Shri. Tushar Ingle (Farmer).
- f. The Talathi also submitted a report of site inspection to SDO, Morshi and in this report gave reference of his notice addressed to Shri Andhare dated 8/3/2021 along with Panchnama conducted on 6/4/2021.
- g. Subsequent to this; SDO, Morshi, Amravati vide Order dated 28/4/2021 passed under Section 8 (2) of Maharashtra Groundwater (Development and Management) Act , 2009 directed Shri Arun Andhare to discontinue further digging of well in such an over exploited area and also ordered to fill up the pit. The SDO, Morshi, District - Amravati also imposed penalty of Rs.10, 000/- to Shri Arun Andhare.
- h. Aggrieved by this SDO's Order dated 28/04/2021; Shri Arun Andhare filed an Appeal on 05/07/2021 before the District Collector, Amravati.
- i. It is evident from the District Collector, Amravati Office note dated 6/08/2021 that the Appeal of Shri Arun Andhare was closed by the District Collector stating that the Appeal falls under Section 56(2) of the Maharashtra Groundwater (Development and Management) Act, 2009.



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- j. Aggrieved by the decision of the SDO/District Authority, Shri Arun Andhare filed present Appeal before this Authority along with application for condonation of delay. The Authority vide Letter dated 10/11/2021 communicated some defects as prescribed in Form 3 Regulation 15(iv) of Maharashtra Water Resources Regulatory Authority (Conduct of Business) Regulations, 2013 to the Appellant and issued directions to the Appellant to rectify the same.
- k. The Appellant rectified the defects communicated by the Authority and submitted revised Appeal before the Authority on 23/11/2021.
- l. The Appellant in his appeal categorically mentioned that he was aware of Collector's declaration dated 11/02/2013. According to said declaration; his field falls under WR- 3 Over Exploited Watershed where digging of new wells or deepening of existing well was prohibited. The Appellant in his grounds of Appeal stated that he was aware of the above legal provisions; therefore he had no intention of digging well in his field.
- m. The Appellant submitted that Shri Kishor Phalke r/o Dapori obtained permission under Section 49(1) of Maharashtra Land Revenue Code, 1966 to lift water from Malu river by pipeline for irrigation purpose and there is an Agreement on Rs.100/- stamp paper between him and Shri Phalke to lift water and use it for planted Orange trees for two days and two nights in every week.
- n. The Appellant further submitted that Smt Sarasvatabai Badore in the year 2018-19 drilled bore well without obtaining any prior permission from Appropriate Authority. This borewell is located at south boundary of field of Shri Andhare at distance of 100 to 125 feet approximate. The Appellant brought this fact of illegally drilling of bore well to the notice of SDO, Morshi by way of written submissions. However, this fact was purposefully ignored by SDO, Morshi.
- o. The Appellant further submitted that the SDO, Morshi without taking into consideration above facts was biased in passing order dated 28/04/2021 therefore it needs to be set aside.
- p. The Appellant relied upon Hon'ble Bombay High Court Order in Writ Petition No.4826 of 2018 dated 4/02/2019 filed by Vilas Punjabrao Mathane V/s Government of Maharashtra wherein Hon'ble Bombay High



Court has passed Order that the SDO has no powers to hear the matter under Groundwater (Development and Management) Act, 2009. The Appellant submitted that the impugned Order of SDO dated 28/04/2021 is also in contravention to the legal provisions and thus to be set aside.

q. The Appellant also submitted reference of the MWRRA/2017/Case No. 7/2017 , 278 as Government Circular in para "z" of page no.8, SDO was not empowered under Section 28 to hear any matter and thus the act of the SDO is over and above powers vested in him.

2. In view of the above facts, the Appellant has prayed for following reliefs:-

- a. To set aside the Order of SDO Morshi
- b. To call for records related to this matter including the pleadings of Respondent no. 1 & 2
- c. To grant interim injunction against the Order passed by SDO Morshi on 28/4/2021.
- d. Any other relief as deemed fit by the Authority

3. Written Submissions of SDO, Morshi, District Amravati for (Respondent No. 1 & 2)

- a. Shri Nitin Kumar Hingole, SDO, Morshi (Respondent No. 2) filed his reply on Affidavit on behalf of Respondent No. 1 and 2 before this Authority on 15.09.2023.
- b. SDO in his reply submitted that there exist no records with any department wherein the Appellant has dug pit for storage of water with any prior permission of the Appropriate Authority. However, the Appellant in order to escape himself against complaint filed for digging of well claimed that he had dug pit for storage of water.
- c. The SDO submitted that the Appellant claimed that it is farm pond. However, it is only 13 feet in diameter and depth to the extent of 28 feet like well. If digging of well had not been prohibited then digging might have been continued till ground water became available. Thus, it proved that the Appellant was digging well in said area with the intention to extract ground water.



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- d. The SDO submitted that the said area had been declared as over exploited zone and digging of new well was prohibited in the said areas vide Collector's declaration dated 11/02/2013.
- e. He also submitted that the depth of well is not as per dimensions of Farm Pond. Shri Andhare's intention to dig the well to extract ground water is clear. Hence the SDO vide its Order has directed the Appellant to immediately stop further digging and close the well.
- f. Further, the SDO also denies Appellant's allegation stated in para D of the Appeal that Appellant had filed complaint before SDO, Morshi regarding illegally drilling of bore well by Smt Badore in the year 2018-19 and SDO, Morshi had purposefully ignored this fact.

4. Submissions of the Respondent No.3

The Respondent No 3 Talathi Pala did not submit any reply even though the notices were served upon him.

5. Written Submissions of the Respondent No 4 (Smt Sarasvatabai Badore):-

- a. The Respondent No 4, Smt Sarasvatabai Badore submitted her replies dated 21/12/2022 and also some additional submissions on 11/08/2023. The said submissions dated 11/08/2023 are along with the Letter of Authorization in favour of her son Shri Prakash Badore dated 08/08/2023. However the submissions are not in the form of Affidavit.
- b. The Respondent No. 4 submitted that well dug by the Appellant is in dry zone (Over Exploited zone) area as declared by Collector and even the said village Mauja Pala in which the well is dug up is still not out of the dry zone (Over Exploited zone) .
- c. The Respondent No. 4 further submitted that the Appellant's field is non-irrigated and adjoining to each other. Also the Appellant dug the well nearly 100 to 125 feet from the existing well of the Respondent and also without obtaining any prior permission from appropriate Authority.
- d. The Respondent No. 4 further submitted that even the Talathi vide his Report and SDO's Order has directed the Appellant to stop digging



new well and also to fill up the illegal construction/digging at own expenses.

- e. The Respondent's vide submissions before the Authority stated that as the Appellant had not taken prior permission from Appropriate Authority and had illegally dug well in dry zone area, therefore the SDO's Order be confirmed.

6. THE PROCEEDINGS BEFORE THIS AUTHORITY

- a. A hearing in the matter was conducted on 24/08/2023 in the office of the State Groundwater Authority, Mumbai. Shri Arun Andhare; the Appellant was present for the said Hearing. Shri Pradeep Pawar, SDO, Morshi was present in person and he stated that he was representing Respondent No.1, 2 respectively. None appeared on behalf of the Respondent No. 3 and 4.
- b. During the Hearing Shri Arun Andhare submitted that he had dug a pit which is 28 feet deep wherein he would use the pit for storage of water through pipeline by way of lift irrigation from the Malu River.
- c. The Authority enquired the Appellant whether any prior permission was taken from the Appropriate Authority for sinking the well. To which the Shri Andhare invited the attention of the Authority to the copy of Agreement with Shri Kishor Phalke dated 17/12/2015 on Rs.100/- stamp paper. In this Agreement; it is mentioned that Shri Arun Andhare will lift the water once in a week for two days and two nights for his field. He invited attention of the Authority to the permission of Tahsildar, Morshi dated 27/03/2014 to lift the water for survey no.230, area 1 ha 62 ares owned by Shri Kishor Phalke.
- d. The Authority further asked the Appellant to produce any document to show that he had obtained prior permission for sinking the well. To which Shri Andhare submitted that no prior permission for sinking well had been obtained by him.
- e. The Authority also enquired SDO, Morshi, District- Amravati if any such permission is required or granted for sinking of well and the provisions regarding imposing the fine of Rs.10, 000/- (rupees ten



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thousand only) imposed on the Appellant. To which SDO, Morshi, District Amravati submitted that no prior permission was obtained from any Appropriate Authority and the fine imposed is as per Section 52 (i) of the Maharashtra Groundwater (Development and Management) Act, 2009.

FRAMING OF ISSUES

7. This Authority, having considered the contentions made in the Appeal and submissions of the parties, the documents placed on record, framed the following relevant issues for consideration and adjudication.
 - a. Whether the Authority has jurisdiction to adjudicate the present matter?
 - b. Whether Sub-Divisional Officer, Morshi is empowered to pass the impugned order dated 28/04/2021 under Section 8(2) of Maharashtra Groundwater (Development and Management) Act, 2009.
 - c. Whether the SDO, Morshi is empowered to pass the order of penalty of the amount of Rs. 10,000/- to the Appellant/ Original Respondent?

FINDINGS OF THE AUTHORITY

8. Before answering the above issues, the Authority referred relevant legal provisions contained in the following :-
 - a. Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993 and Maharashtra Groundwater Rules 1995
 - b. Maharashtra Groundwater (Development and Management) Act, 2009.
- a. The relevant provisions of the Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993 are reproduced as below:-

Section 2 Definitions

Sec (2)(2) Appropriate Authority

"Appropriate Authority" means the Collector of a district and includes any officer, not below the rank of the Deputy Collector as the State Government may by notification in the official gazette, appoint for the purpose of this Act; and different officers may be appointed for different local areas of the State.



Section 2(5) Over exploited watershed

"Over-exploited watershed", means water shed where the estimated annual groundwater extraction is more than 85 percent of the estimated average annual groundwater recharge, calculated in the prescribed manner, and declared as such under section 6.

Section 2(7) Public drinking water source

"Public drinking water source", means a well from which the State Government or a local authority or such other authority as the State Government may, by notification in the Official Gazette specify, provides water to the public, and includes such weir or any other drinking water source as may be notified by the Collector;

Section 2(10) Sink

"Sink" with all its grammatical variations and cognate expressions, in relation to a well, includes any drilling, boring or digging of a new well or deepening carried out to an existing well;

Section 2(13) Watershed

"Watershed" means an area confined within the topographic water divide line, as identified and notified by the Groundwater Survey and Development Agency from time to time, having regard to the purposes of this Act.

Section 6 Declaration of over-exploited watershed

The Appropriate Authority may, on advice of the Technical Officer, declare a watershed as over-exploited watershed.

Section 7 Prohibition of sinking wells in over exploited watershed

(1) Notwithstanding anything contained in the Maharashtra Land Revenue Code, 1966 or any other law for the time being in force, and having regard to the prime need of water for drinking water purpose of the human beings and in interests of the general public to have the supply of requisite quantity of water for drinking water purposes from the public drinking water source in the over



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exploited watershed; no person shall, without the permission of the Appropriate Authority sink well within the area of an over exploited watershed.

Provided that, the provisions of sub section (1) shall not apply to the sinking of a well on behalf of the State Government or a local authority for being used as a public drinking water source.

(2) An application for permission under sub section (1) shall be made to the Appropriate Authority in such form and accompanied by such fee as may be prescribed.

(3) Every permission, granted under this Section shall be subject to:-

(a) the condition that the Appropriate Authority may, for reasons to be recorded in writing, by order prohibit, restrict or regulate the extraction of water from such well for such period as may be specified in such order, if, in his opinion, it is necessary to do so in the public interest:

(b) such other conditions and restrictions as may be prescribed.

Section 11 Powers to stop contravention of the provisions of section 3,5,7,8 or 9

(1) Wherever it appears to the Appropriate Authority that any well has been sunk or is being sunk in contravention of the provisions of section 3 or 7 or water has been extracted or is being extracted in contravention of section 5,8 or 9, the appropriate Authority or an officer duly authorised by it in this behalf may enter upon that land, remove obstruction, if any, close the pumping of the water, disconnect power supply, seize any material or equipment used in connection with such extraction of water and take any such action, as may be require to stop such contravention and may by order require the owner or the person in possession of the well to close or sink of the well at his expenses and in such manner as the Appropriate Authority may specify in such order and such owner or person shall comply with such order.

(2) Where such owner or person fails to comply with any order made under sub section 1, the Appropriate Authority may, after giving such owner or person due notice in that behalf, enter upon the land and close or seal off the well and the cost incurred therefore shall be recoverable from such owner or person as an arrear of land revenue.



The Authority also referred relevant provisions contained in the rules framed under 1993 Act.

Maharashtra Groundwater (Regulation for Drinking Water Purposes) Rules, 1995 framed under 1993 Act.

Rule 2(1(d) Definition

"The sinking of well" means with all its grammatical variations and cognate expressions in relation to a well includes any drilling, boring or digging of new well, deepening carried out to an existing well.

Rule 6 Application for permission to sink a well

(1) Any person who desires to sink a well for irrigation or drinking water purposes within a distance of five hundred meters of a public drinking water source notified under rule 3, shall apply to the Appropriate Authority in the form given in Appendix "B", either in person or by registered post. The application shall be accompanied by a fee of rupees four hundred or a counterfoil of challan for having paid rupees four hundred in the deposit head 2702, Minor Irrigation, 800, other receipts. The application shall also be accompanied by a copy of the village-map or locations of the public drinking water sources and the proposed well. The map shall be duly certified by the Talathi of the village concerned.

Rule 8 (2) Declaration of over-exploited Watersheds

The Technical Officer shall take into consideration the average recharge and withdrawal of groundwater of different watershed considered to be over-exploited for the previous 3 years in accordance with the method and guidelines laid down by the Director, Ground Water Survey and Development Agency and prepare the list of over-exploited watersheds with full area details. The Technical officer, thereafter will send the list of such over-exploited watershed with full details of calculations, technical information and area details to the Appropriate Authority.

On receipt of the report if the Appropriate Authority is satisfied, he may declare the area of the watershed as over-exploited watershed. The Declaration shall be in the Form given in the Appendix "D".

Rule 9 Application for sinking well in the over-exploited watersheds

(1) Application for sinking well in the over-exploited watershed shall be made to the Appropriate Authority in the form given in the Appendix "E" either in person or by registered post. The application shall be accompanied by a fee of rupees four hundred or a counterfoil of chalan for having paid rupees four hundred in the



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deposit head 2702 Minor Irrigation, 800 other receipts. The application shall be accompanied by a copy of the village-map or relevant part thereof showing the location of the proposed well. The map shall be certified by the concerned Talathi of the village.

(2) The Appropriate Authority shall forward the application to the concerned Technical Officer for his advice. The Director, Groundwater Survey and Development Agency shall lay down guidelines for investigation related to such applications by the Technical Officer who will forward his opinion to the Appropriate Authority.

(3) The Appropriate Authority shall maintain a register, in the form given in Appendix "C" for entering the application received, and issue acknowledgement to the applicant.

Government of Maharashtra enacted Maharashtra Groundwater (Development and Management) Act 2009 whereby Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993 Act was repealed.

b. **The relevant provisions of Maharashtra Groundwater (Development and Management) Act 2009 are as below:**

Section 2 Definitions

Sec 2 (iv) "Deep-Well" means a machine-made pit or hole, usually vertical, that derives groundwater from the pores, weathered strata, interstices, fractures or joints of the rocks or soils that it penetrates, and includes a bore-well, tube-well of normally sixty metre or of more depth, which taps one or more aquifers;

Sec 2(xvi) "notified areas" means areas included in over-exploited or critical or water quality affected watershed or aquifer or any such categorization as per the groundwater estimations carried out, based on the guidelines issued, from time to time, by the Central Government and State Government, which have been notified by the State Authority for regulation of extraction of groundwater after following the procedure indicated in section 4;

Sec 2 (xxvi) "sink" means, with all its grammatical variations and cognate expressions, in relation to a well, includes digging, drilling or boring of a



new well or an existing well, deepening and modification of radials and galleries of the existing wells,

Sec 2(xxviii) "State Authority" means the State Ground Water Authority established under Section 3.

Sec 2 (xxxviii) "Watershed Water Resources Committee" means the Watershed Water Resources Committee constituted under section 29;

Sec 2 (xxxix) "well" means a well sunk for the search or extraction of groundwater by a person or persons and includes open-well, dug-well, bore-well, dug-cum-bore-well, tube-well, filter point, collector well, infiltration gallery, recharge well, disposal well or any of their combinations or variations, excluding the structures sunk by the authorised officials of the Central or the State Government for carrying out scientific investigations, exploration, augmentation, conservation, protection or management of groundwater.

(2) Words and expressions used and not defined in this Act but defined in various irrigation or water resources or other related Acts in the State, in force shall have the same meanings as respectively assigned to them in those Acts.

Section 4 Powers to notify areas to regulate development and management of groundwater

4(1) The State Authority, after receiving recommendations from the Groundwater Surveys and Development Agency and views of various institutions working in the groundwater field including the Central Groundwater Authority, based on scientific groundwater quality studies and estimation and after ascertaining the views of the users of groundwater of the area, is of the opinion that it is necessary or expedient in the public interest to regulate the extraction or the use of groundwater or both in any form in a watershed or aquifer area, shall declare such area to be a notified area, by notification in the Official Gazette, for the purposes of this Act, with effect from such date as may be specified therein.

(2) On notifying an area under sub-section (1), the State Authority shall establish the Watershed Water Resources Committee under section 29 of this Act, with the objective of promoting and regulating the development and management of groundwater in the notified area.



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Section 5 Powers to de-notify areas

If in the opinion of the State Authority, the availability and quality of groundwater has improved in the notified area, it shall, after consultation with the Groundwater Surveys and Development Agency and after obtaining the views of expert bodies, including the Central Groundwater Authority, de-notify such area by notification in the Official Gazette.

Section 8 Prohibition of drilling of deep- wells, withdrawal of groundwater from existing deep-well and provision for levy of cess

8 (1) The State Authority shall prohibit the drilling of deep wells within the notified and non-notified areas, for agriculture or, industrial usage:

Provided that, the State Authority may, after recording the reasons in writing and in the prescribed manner grant specific permission to any person or user of groundwater to drill any deep well within the notified or non-notified area, for drinking water purposes.

8(2) The State Authority shall regulate, including total ban on, the construction of wells, including deep-wells, for any purpose within the notified area.

Section 14 Delegation of powers and duties of State Authority

The State Authority may by general or special Order in writing, direct that all or any of the powers or duties which may be exercised or discharged by it under the Act shall, in such circumstances and under such condition ,if any, as may be specified in the order issued in this behalf by the State Authority, be exercised or discharge by any employee of the State Authority ,the District Authority, the Watershed Water Resources Committee or the Groundwater Surveys and Development Agency.

Section 17 District Authority

The State Government shall, by notification in the Official Gazette, designate any officer not below the rank of Tahsildar, to be the District Authority for such area as may be specified in the notification for the purposes of this Act.



Section 28 Powers of District Authority

Section 28 (1) The District Authority shall enforce the decisions of the Watershed Water Resources Committee. Whenever, it is necessary to make an enquiry or to implement or enforce any decision under this Act, in connection with the protection of a Public Drinking Water Source or with the maintenance of a public water-supply system the District Authority or any officer duly authorized by it in this behalf, may after giving prior notice to the owner or occupier of any land-

Section 28 (1) (j) Direct any user of groundwater who does not comply with the provisions of this Act and rules framed thereunder to close down the extraction of groundwater, disconnection of its power supply and seal any hydraulic work found to be illegal accordingly to the provisions of this Act and the rules to be illegal according to the provisions of this Act and the rules framed thereunder;

Section 29 Establishment, construction, and incorporation of the Watershed Water Resources Committee.

29.(1) The State Authority shall constitute a Watershed Water Resources Committee for the notified area comprising of area of more than eleven villages in the manner as may be prescribed to perform the functions and duties assigned to it under this Act.

Section 32 Construction of new well in (the) notified area

(1) No person shall sink a well in the notified area without the prior permission of the Watershed Water Resource Committee. Such person shall apply to the Watershed Water Resource Committee in the manner and in such form, as may be prescribed

(2) On receipt of an application under sub section (1), the Watershed Water Resource Committee shall refer it to the Groundwater Surveys and Development Agency for recommendations and base on the recommendations of the Groundwater Surveys and Development Agency, decide to grant or refuse the permission.

Provided that, no permission shall be refused unless an opportunity of being heard is given to the applicant

(3) The decision regarding the grant or refusal of the permission shall be intimated by the Watershed Water Resources Committee to the applicant within a period of forty five days from the receipt of the application.



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(4) *The permission for sinking of well shall be subject to condition of construction of artificial recharge structure of appropriate size by the applicant within the specified period, as may be prescribed.*

Section 52 Offences and penalties

Whoever contravenes or fails to comply with any of the provisions of this Act or any rules made there under or obstructs the State Authority, the District Authority, the Watershed Water Resources Committee, Panchayat, Panchayat Samiti and urban local body, the Groundwater Surveys and Development Agency and any person authorized to exercise any of the powers under this Act, shall on conviction be punished, –

- (i) for the first offence, with fine which may extend to rupees ten thousand; and*
- (ii) for the subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to rupees twenty-five thousand or with both.*

Section 55 Cognizance and trial of Offences

55(1) No prosecution for an offence under this Act shall be instituted except by or with the consent of the District Authority, by general or special order.

55(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence under this Act.

55(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences punishable under this Act and rules made there under shall be cognizable

Section 56 Appeals

56. (1) Any person aggrieved by a decision, order made, action taken by the Watershed Water Resources Committee, Panchayat, Panchayat Samiti or urban local bodies under this Act may, within a period of sixty days from the date on which the action is taken or the decision or order is communicated to him and on payment of such fees as may be prescribed, prefer such an appeal to the District Authority:

Provided that, the District Authority may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within time.



(2) If the aggrieved person is not satisfied with the decision of the District Authority under sub-section (1), within a period of sixty days from the date on which the decision is communicated to him and on payment of such fees as may be prescribed, prefer an appeal against the order of the District Authority to the State Authority and the decision of the State Authority shall be final.

(3) On receipt of an appeal under sub-section (1) or (2), the District Authority or the State Authority shall, as the case may be, after giving the applicant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

Section 57 Powers of Government to make Rules

57 (1) The State Government may , by notification in the Official Gazette, and subject to the conditions of previous publication, make rules to carry out the purpose of this Act.

Section 59 Repeal and saving

59. (1) The Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done, or any action taken under or in pursuance of the said Act before such repeal, shall continue to have effect in relation thereto and section 7 of the Bombay General Clauses Act, 1904, shall apply with respect to the repeal of the said Act.

Section 7 of the Bombay General Clauses Act, 1904 -

Where this Act, or any Bombay Act 42 [or Gujarat Act] made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, than, unless a different intention appears, the repeal shall not- (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.



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9. The Authority referred to the following provisions as below:-

a. Collector's declaration dated 11/02/2013

The Collector Amravati issued Notification dated 11/02/2013 which is about over-exploited watersheds or over dug well states about villages which were classified in the mini watershed as "over-exploited" The said Notification specifically refers to Section 6 of the Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993 and read with Rule 8 (2) framed under the Act. This notification prohibits the construction of new wells and the change of use of present wells falling under overexploited and exploited watersheds villages. The list of 370 villages names is annexed, this Notification dated 11/02/2013 was issued by District Collector, Amravati.

In the Hon'ble High Court, Nagpur bench, WP/4826/2018 refers the village Belamandali from District Amravati, which falls under critical (WRC-1 entry Sr. no. 509) in district wise list of over exploited and critical watersheds declared on 31st July 2015.

Whereas, in the present matter the village Pala, Tal. Morshi from District Amravati which falls under over exploited (WR-3 entry Sr. no. 448) in district wise list of over exploited and critical watersheds declared on 31st July 2015.

b. Gazette Notification dated 26/06/2015

The Authority also referred Gazette Notification vide no 160 dated 26/06/2015, issued by Water supply and sanitation Department, Government of Maharashtra under Section 17 of Maharashtra Ground Water (Development and Management) Act, 2009 which empowers the SDO's to exercise powers, function and duties as District Authority.

c. Authority's Order dated 31/07/2015

This Authority issued Order and published it in newspapers dated 31.07.2015 u/s 8(1) Maharashtra Ground Water (Development and Management) Act, 2009 and imposed prohibition on the sinking of wells in 80 critical and over exploited zones.

The Authority vide the said Order and in accordance to the Government Gazette Notification No 160 dated 26.06.2015 (wherein the SDO was



declared as District Authority by State Government) u/s 17 also delegated its powers to SDO u/s 14 of Maharashtra Ground Water (Development and Management) Act, 2009 to prohibit sinking of deep wells within the notified and non-notified areas for agriculture or industrial uses.

10. The Authority referred to the following case:-

W.P. No.4826 of 2018; Hon'ble Bombay High Court, Nagpur Bench

The Authority referred the Judgement of Hon'ble Bombay High Court, Nagpur Bench in Writ Petition No.4826 of 2018; on which the Appellant has relied upon in his submissions. In this Judgement; Hon'ble Bombay High Court, Nagpur Bench vide its Order dated 04.02.2019 has made observation as follows:-

Para 9

A crucial fact in the present case is, that the Act of 2009 received assent of the President of India on 22.11.2013 and it was published in the Maharashtra Government Gazette on 03.12.2013. In other words, the Act of 2009 came into force on 03.12.2013. The said fact assumes importance, because the basis on which respondent no.2 Sub Divisional Officer has passed the impugned order is that the Notification dated 11.02.2013, issued by the District Magistrate, Amravati, was by exercising power under section 8(2) of the Act of 2009. When the aforesaid Act of 2009 came into force on 03.12.2013, there was no question of the Notification dated 11.02.2013 being issued under the said Act by the District Magistrate, Amravati.

Para 14

A perusal of the above quoted Section 52 of the Act of 2009, shows that it pertains to offences and penalties and that first offence would result in imposition of fine extending up to Rs.10,000/- and for subsequent offence punishment could be imposed of imprisonment for a term extending up to Rs.25,000/-. The facts of the present case show that respondent no.2 Sub-Divisional Officer erred in exercising power under Section 28(1)(j) of the Act of 2009 for taking action under Section 52 of the Act of 2009. A proper reading of the Act of 1993, Rules framed thereunder and the Act of 2009 in the context of Notification dated 11.02.2013 issued by the District Magistrate, would show that the impugned order passed by Respondent no.2 Sub-Divisional Officer is wholly unsustainable and that it deserves to be quashed and set aside.



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11. The Authority referred to MWRRRA Order dated 15/05/2020 in Case No. 7 of 2017

The Appellant in his Appeal has referred to Order passed by this Authority in Case no 07/2017. The Appellant has mentioned it as Government circular bearing no.278. However, there is no such Government circular mentioned in the Order passed by this Authority.

12. Findings of the Authority on Issues framed:-

This Authority, after giving due consideration to the pleadings, submissions and evidence on record has adjudicated the above issues. The findings of this Authority on the issues framed above are as under:

a. **Whether the Authority has jurisdiction to adjudicate the present matter?**

The Present Appeal is filed before the Authority by the Applicant/ Original Respondent who is aggrieved person and not satisfied with the decision of the District Authority. Therefore the present Appeal is filed under Section 56(2) of the Maharashtra Groundwater (Development and Management) Act, 2009.

The relevant para of Section 56 (2) reads as follows:-

Section 56 Appeals

56. (2) If the aggrieved person is not satisfied with the decision of the District Authority under sub-section (1), within a period of sixty days from the date on which the decision is communicated to him and on payment of such fees as may be prescribed, prefer an appeal against the order of the District Authority to the State Authority and the decision of the State Authority shall be final.

Ideal scheme of the 2009 Act is that the Authority is the second appellant Authority u/s 56(2) of the Act. The first appeal is u/s 56(1) of the Act where appeal originates against the decision of the Watershed Water Resources Committee /Panchayat/Urban Local Bodies before District Authority. Here though no action arose at the level of Watershed Water Resources Committee /Panchayat/Urban Local Bodies, as District Authority has passed the order, this Authority decided to entertain the appeal.



b. Whether Sub-Divisional Officer, Morshi is empowered to pass the impugned order dated 28/04/2021 under section 8(2) of Maharashtra Groundwater (Development and Management) Act, 2009?

i. The Sub-Divisional Officer has issued the impugned order in light of the Amravati Collector notification dated 11/02/2013. The Collector Amravati's notification is about over-exploited watersheds and it states about villages which were classified in the mini watershed as "Over exploited". This Notification prohibits the construction of new wells & the change of use of present wells falling under over exploited & exploited watersheds villages. The list of 376 village names is annexed, this notification dated 11/02/2013 was issued by District Collector, Amravati. The said village under consideration in this case as per Collector classified falls into over exploited category.

However, this notification was issued under the Ground Water (Regulation for Drinking Water Purposes) Act, 1993. It is also important to note that the alleged digging of the well from records, appeared was done in the period of around March, 2021. Further, the impugned order of the Sub-Divisional Officer was passed on 28.04.2021.

Thus, in this case it is important to deal with the issue whether the Collector's notification issued under the 1993 Act can be considered as valid and can further be acted upon when the Ground Water (Development and Management) Act 2009 is in force.

ii. It is important to note here that the Authority vide an Order dated 31/07/2015 u/s 8(1) of Maharashtra Ground Water (Development and Management) Act, 2009 imposed prohibition on the sinking of wells in 80 critical and over exploited zones.

iii. Further the classification of the Watersheds is a continuous process and it is modified periodically; in this case the order issued in 2013 has been taken cognizance off.

iv. It is important to note that, the Hon'ble High Court in its Order dated 04/02/2019 in W.P. 4826 of 2016, as discussed earlier, has also observed that the Collector's Declaration dated 11/02/2013 cannot be construed as Notification under the Maharashtra Ground Water



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(Development and Management) Act, 2009 and but it is under the 1993 Act as the said Notification specifically refers to Section 6 of the Act of 1993 read with Rule 8 of the rules framed under the said Act.

Considering the above facts, it is clear that the collector notification issued in the order 2013 cannot be taken into consideration and further be acted upon under 2009 Act as done by the respondent Sub-Divisional Officer in this case.

- v. So far as sec 8(2) of the MGW Act, under which the SDO passed the impugned order, the Section 8(2) of states that the State Authority shall regulate including total ban on the constructions of wells, including deep wells for any purpose within the notified areas.

This Section also deals with wells other than deep wells. However, the Authority's notification dated 31/07/2015 was issued under the section 8(1) of the 2009 act.

Section 8(1) reads as follows:

The State Authority shall prohibit the drilling of deep wells within The notified and non-notified areas, for agriculture or, industrial usage.

Provided that, the State Authority may, after recording the reasons in writing and in the prescribed manner grant specific permission to any person or user of groundwater to drill any deep well within the notified or non-notified area, for drinking water purposes.

Thus, it is important to note that this notification pertained to drilling of deep wells. The term Deep Well is itself defined as under section 2 (1) (iv) of the 2009 Act, as Sixty meter or more.

Further, in the same notification the Authority has delegated its power under section 14 of 2009 Act to enforce the provisions to the extent of this notification under section 8(1) only.

The power under section 8(2) have not been delegated, neither the section 8(2) was invoked by the Authority in its notification dated 31.07.2015. The impugned Order of SDO dated 28/04/2021 was issued by the SDO under Section 8(2) of the MGW Act, 2009.

From the above discussion, it is clear that the notification issued by the Collector Amravati in the order 2013 can be considered as valid based



on which the SDO has issued the impugned order. Further, the SDO had no power to invoke section 8(2) of the Maharashtra State Ground Water (Development & Management) Act, 2009.

Thus, the SDO's impugned order cannot be considered as valid.

- vi. It needs to be mentioned here that, the Appellant in his Appeal has mentioned that he had dug 24 feet circular pit and he also referred to some documents under Maharashtra Land Revenue Code, 1966 in this context. The SDO also stated in his submissions that the said pit is larger than size of the Farm Pond. Further, he stated that there was no permission for digging this pit from any appropriate Authority. Thus, the Authority is of the opinion that this aspect can be dealt under relevant provisions and not under the Maharashtra Ground Water (Development and Management), Act 2009.
 - vii. Further the appellant has stated that, he had filed the complaint before the SDO regarding illegal drilling of a bore well by Respondent no.4 Smt. Badore in the year 2018-19. But the SDO purposefully ignored this fact. The Sub-Divisional Officer however, has denied these allegations in his submission before the Authority. The Authority, however, is of the view that let this issue take its own legal course.
- c. **Whether the SDO, Morshi was empowered to pass the order of penalty of the amount of Rs. 10,000/- to the Appellant/ Original Respondent?**
- i. Section 52 of MGW Act 2009 states about offences and penalty that
"....any person authorized to exercise any of the powers under this act shall on conviction be punished, - (i) for the first offence, with fine which may extend to rupees ten thousand; and..."
 - ii. Further; Section 55, about Cognizance and trial of offences under MGW Act 2009 Says,
"55(1) No prosecution for an offence under this Act shall be instituted except by or with the consent of the District Authority, by general or special order.
55(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence under this Act.



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55(3) notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences punishable under this Act and rules made there under shall be cognizable."

In view of above, while enforcing Section 52, where offences and penalties are cognizable, it is required to be read along with Section 55 of MGW Act 2009.

iii. Further, the Hon'ble High Court also in Writ Petition No. 4826 of 2018 has held as below:-

a. A perusal of the above quoted Section 52 of the Act of 2009, shows that it pertains to offences and penalties and that first offence would result in imposition of fine extending up to Rs.10,000/- and for subsequent offence punishment could be imposed of imprisonment for a term extending up to Rs.25,000/-.

b. The SDO has erred in exercising power under Section 28(1)(j) of the Act of 2009 for taking action under Section 52 of the Act of 2009.

Thus, the SDO's order imposing the penalty of Rs. 10,000/- cannot be considered as valid.

ORDER

13. Having heard the parties to the litigation, and after giving due consideration to the documents as well as data on record, submissions made by the parties and having adjudicated the issues framed as above, this authority hereby orders as under:

- a. The Appeal is allowed,
- b. The Order of SDO, Morshi dated 28/04/2021 is quashed and set aside.



c. The Appellant to seek appropriate permissions from the Competent Authorities for the dug pit as discussed in para 12 (b)(vi) of pg no.23

The appeal is accordingly disposed off with no order as to the cost.

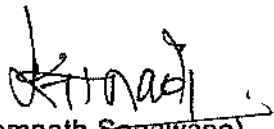
Delivered on 09/01/2024.

Sd/-
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Member (Law)

Sd/-
(Smt Shwetal Thakare)
Member (Economics)

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