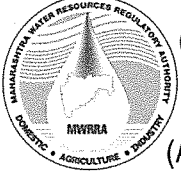




सत्यमेव जयते

# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण



(महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण अधिनियम, २००५ चे कलम ३ अन्वये स्थापित वैधानिक प्राधिकरण)

## Maharashtra Water Resources Regulatory Authority

(A Statutory Authority Established u/s 3 of Maharashtra Water Resources Regulatory Authority Act, 2005)

MWRRA/2019/Legal/Case No. 7 (2019)/274

Date : 15/05/2020

MWRRA/2017 / Case No. 7 (2017)/274

Case No. 7 of 2017

Appeal filed by Shri Subhash Bhagavantrao Ghotkar R/o Morshi,  
Taluka, Morshi, Dist. Amravati in the matter arising out of denial of  
permission to dig wells in the notified area.

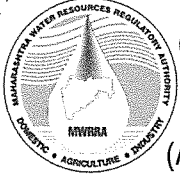
Please find enclosed herewith a copy of MWRRA Order No. 05/2020  
dated 15/05/2020 in the above matter.

Encl : As above

(Dr. Ramnath Sonawane)  
Secretary, MWRRA

### Copy for information & necessary action to :-

1. Shri Subhash Bhagavantrao Ghotkar, Taluka Morshi, District Amravati.
2. District Groundwater Authority & Sub Divisional Officer, Morshi, Dist. Amravati
3. Senior Geologist, Groundwater Survey and Development Agency, Amravati.
4. District Collector, Amravati
5. Divisional Commissioner, Amravati
6. Director, GSDA, Pune



# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

(महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण अधिनियम, २००५ चे कलम ३ अन्वये स्थापित वैधानिक प्राधिकरण)

## Maharashtra Water Resources Regulatory Authority

(A Statutory Authority Established u/s 3 of Maharashtra Water Resources Regulatory Authority Act, 2005)

ORDER NO. 05 /2020

In the Matter of

Appeal filed by Shri Subhash Bhagavantrao Ghotkar R/o Morshi, Taluka,  
Morshi, Dist. Amravati in the matter arising out of denial of permission to dig  
wells in the notified area - Case No. 7/2017

Shri Subhash Bhagavantrao Ghotkar

Taluka Morshi, District Amravati.

.... Appellant

...Vs....

1. District Groundwater Authority & Sub Divisional Officer, Morshi, Dist. Amravati
2. Senior Geologist, Groundwater Survey and Development Agency, Amravati.
3. District Collector, Amravati
4. Divisional Commissioner, Amravati
5. Director, GSDA, Pune

..... Respondents



*[Handwritten Signature]*

CORAM: Shri. Vinod Tiwari, Hon. Member (L & I/c - GW)  
Shri. V. M. Kulkarni, Hon. Member (WRE)  
Dr. S. T. Sangale, Hon. Member (Eco)

Date: May 15, 2020

**Background**

1. The Appellant had approached the Respondent No. 3 through the Application dated December 22, 2014 for permission to sink new open well for irrigation in the Gat No. 30/2A of Village Kopara, Taluka Morshi, Dist. Amravati and in Lokshahi Din of Commissioner Office, Amravati but matter could not concluded and disposed off, from the cases of Lokshahi Din on January 12, 2017 denying the permission for new well on the grounds that the area is in over exploited watershed WR-3, as notified by the District Collector, Amravati, in the year 2013 as per the provision in Maharashtra Groundwater (Regulation for Drinking Water) Act 1993.
2. Thereafter, Appellant had applied to Respondent No 1 through Application dated March 2, 2017 for permission to sink three new open wells for irrigation at three different locations a) Survey no. 30/2A, village Kopara, Taluka, Morshi b) Survey no. 14/1A, c) Survey no. 14/1, Survey no. village Ahamadpur, Taluka, Morshi
3. Respondent No. 1 who is designated District Groundwater Authority under the provisions of Maharashtra Groundwater (D & M) Act, 2009, had rejected application based on the opinion given by Respondent No.2 through letter No. 233/2017 Dated July 29, 2017. The reasons given for the rejection of the permission is the proposed locations are included in the WR/3/II mini watershed which being of over exploited area and declared as a notified area by the Respondent No.3 vide his order dated February 11, 2013. Therefore the State Groundwater Authority in exercise of power vested in it under Section 8 (2) of the Maharashtra



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Groundwater (Development and Management) Act, 2009 has banned the new bore well in notified area for agricultural or industrial use.

4. The State Ground Water Authority (SGWA) has notified 80 overexploited and critical watersheds in the State u/s 8(1) of Maharashtra Groundwater (D&M) Act, 2009 on date July 31, 2015. The said order of SGWA has banned deep bore wells more than 60 M for agricultural and industrial use in the notified area. This notification dated July 31, 2015 was based upon the existing Notifications as regards to the notified areas issued under the provisions of old Act of 1993 as per the saving clause under provisions of Section 59 of the new Act of 2009.
5. Being aggrieved by the refusal order from Respondent No. 1, the Appellant has filed an Appeal before this Authority on September 18, 2017.

#### PRAYER OF APPELANT

The Applicant has made following prayers through his Application

1. To permit three wells at three locations a) Survey no. 30/2A, Kopara, Taluka, Morshi b) Survey no. 14/1A, c) Survey no. 14/1, Ahamadpur, Taluka, Morshi
2. To permit groundwater recharge of bore well (160 ft) with farm pond and use that water partially.

#### THE PROCEEDINGS BEFORE THE AUTHORITY

##### A) GIST OF FIRST HEARING ON NOVEMBER 23,2017

- i) This hearing was attended by the Appellant, respondent No. 1, 2 and representative of respondent No. 5. Appellant read out the prayers mentioned in the application. Appellant pointed out that GSDA has given technical opinion based on the groundwater data of the year 2011-12. But existing fact is that in the area there is ample of groundwater because of back water of Upper Wardha irrigation project and various water conservation structures which



have been constructed during last two years under Jalyukt Shivar scheme of the State Govt. With these arguments Appellant requested the Authority to grant permission of at least one well along with permission for recharge.

- ii) Representative of respondent no. 5 said that groundwater assessment of the State for year 2013-14 has been approved by the Ministry of Water Resources, New Delhi recently and as per this assessment the elementary watershed no. WR/II is overexploited. The percentage of groundwater withdrawal is 123%.
- iii) Respondent no. 2 submitted that these two Kopara and Ahamadpur villages are not water scare villages and hence are not included in Jalyukt Shivar scheme of the Govt. The location of land of Appellant is at the height of 20 meter above the backwater of Upper Wardha irrigation project.
- iv) Representative of respondent no. 5 further submitted that mini watershed wise reassessment of the elementary watershed no. WR/3/II can be done within 4 to 5 months.
- v) Taking in to consideration the pleading made by the Appellant and respondent during the hearing, Authority decided to give relief to the Appellant and issued following Directions:
  - a) Respondent no. 2 should complete the mini watershed wise reassessment no. WR/3/II on the basis of recent data with involvement of Appellant up to March, 2018 and should submit the report to the Authority up to April 15, 2018.
  - b) Respondent no. 1 will submit to the Authority possibility of including the area under consideration in Jalyukt Shivar scheme of the State Govt.



#### B) GIST OF SECOND & FINAL HEARING ON OCTOBER 15, 2019

This hearing was attended by the Appellant only, Respondent 1, 2,3,4 and 5 were absent. Appellant said that GSDA has not involved him



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- 4 -

in the process of assessment and has not shown him the assessment after its completion. Appellant said that the number of observation wells are less and not sufficient for the data collection. He further pointed out that farmers have dug several wells in the area and Respondent No.1 has registered it. On this basis Appellant requested this Authority for grant of permission to dig at least one well for irrigation use.

### C) GIST OF THE WRITTEN SUBMISSIONS

#### 1. Note Submitted by Assistant Director (GW)

1.1 District Collector, Amravati vide his order no. 27/अ.का./पाट/कावि-८८/२०१३,दि. ११/२/२०१३ notified the area u/s 6 of Maharashtra Groundwater (Regulation for Drinking Water) Act 1993 and prohibited the construction of new well in the area.

1.2 Deputy Director, GSDA, Amravati region and Senior Geologist, GSDA, Amravati in their joint technical report has mentioned that as per groundwater assessment year 2008 (Reassessed in 2011) these two villages Kopara and Ahamadpur are included in over exploited mini watershed No. WR3/II/II.

1.3 District Authority/Sub divisional Officer, Morshi vide his order no. राली-२/नवीन विहिर पर/ कावि-२३/२०१७, दि. २९/७/२०१७ denied permission for new well to Appellant as the area is notified as over exploited by the order of District Collector, Amravati u/s 6 of Maharashtra Groundwater (Regulation for Drinking Water) Act, 1993 which is valid u/s 59(2) of Maharashtra Groundwater(D&M) Act, 2009.

1.4 Mini-watershed No.WR3/II/II is not notified u/s 4(1) of Maharashtra Groundwater (D&M) Act, 2009. Hence the order of District Collector, Amravati u/s 6 of Maharashtra Groundwater (Regulation for Drinking Water) Act, 1993 is



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valid u/s 59(2) of Maharashtra Groundwater (D&M) Act, 2009.

2. Senior Geologist GSDA, Amravati vide letter dt. October 9, 2017 has submittal that :

- a. On the recommendation of Director GSDA, vide it's letter dated August 27, 2012, The Collector Amravati, in exercise of powers, under Section 6 read with Section 8 (2) of the Groundwater (Regulation for Drinking Water Purposes) Act, 1993, has notified the exploited and overexploited catchments and prohibited new wells in 370 villages in the Amravati district.
- b. The field of the petitioner, Survey No. 14/1 and 14/1(A) of Ahemadpur and Survey No. 30/2-A of village Kopara of Amravati District lies in II/II mini watershed of WR-3 watershed which is over exploited.
- c. The said WR-3 watershed is overexploited as per the assessments done in 2004, 2007, 2008, 2011 and 2013.
- d. The assessment of groundwater has been done following the guidelines and procedure laid down by Central Groundwater Estimate Committee-1997.
- e. The recharge due to backwater of Nal-Damayanti Project has been duely considered in the assessment and this fact has been communicated to the petitioner.
- f. As per the assessment of 2011 the groundwater development of WR-3 elementary watershed is 147.95% and hence new well is prohibited in this watershed. Further, the locations proposed the petitioner and the drinking water well is in the same WR-3 (II/II) watershed.
- g. Petitioners proposed locations of wells, being in WR-3 (II/II) overexploited watershed (as per groundwater assessment of 2011), the permission to dig new well has been denied by the Sub-divisional Officer, Morshi under Section 8 (2) of the



Maharashtra Groundwater (Development & Management) Act, 2009 vide his letter dt. July 29, 2017.

3. The Additional Director GSDA, Pune vide letter dt. December 20, 2018 has submittal that :

- a. The Additional Director GSDA, vide it's letter dated December 20, 2018, has submitted that the assessment of groundwater 2013-14 has been done following the guidelines and procedure laid down by Central Groundwater Estimate Committee-1997. The GSDA has developed a software in consonance with these guidelines. In this software all the related information such as rainfall, groundwater table, number of irrigation wells, cropping pattern, irrigation projects and canal irrigation is filled. The result obtained from the software indicate that the development of groundwater in the mini watershed WR-3 (II/II) is still more than 100% and there is no change in its existing status of overexploited watershed.

### FRAMING OF ISSUES

The Authority, having examined the entire records of the present Appeal as well as the facts and circumstances based on the legal position, is of considered opinion that the dispute can be resolved by framing following vital issues, which primarily arosed due to non-appreciation of the correct legal position by the Respondents while passing the impugned order. Hence, for better adjudication and the decision, the Authority found it prudent to frame following issues;

1. Whether the Order passed by the Respondent No. 1 is valid as per the provisions of the Maharashtra Groundwater (D&M) Act, 2009?, if not, whether the Order is liable to be quashed & set aside?
2. Whether any appropriate relief or order need to be passed in the factual and legal position in the present case?





## FINDING OF AUTHORITY

1. Whether the Order passed by the Respondent No. 1 is valid as per the provisions of the Maharashtra Groundwater (D&M) Act, 2009?, if not, whether the Order is liable to be quashed & set aside?

- i) It is the fact that the Maharashtra Groundwater (D&M) Act, 2009 has come into force with effect from 01 June 2014. It means when the impugned order passed by Respondent no. 1, the provisions of the Maharashtra Groundwater (D&M) Act, 2009 was applicable & not the provisions of the old Act i.e. Maharashtra Groundwater (Regulation for Drinking Water) Act, 1993. But the Respondent No. 1 failed to appreciate this legal position while passing the impugned order.
- ii) As such, the order passed by the Respondent No. 1 by exercising the provisions of old Act is not valid and legal as the Respondent No. 1 passed the order and conveyed to the Applicant, thereby refusing the permission to sink new well for irrigation use in notify area as per the provision u/s 6 of the Maharashtra Groundwater (Regulation for Drinking Water ) Act, 1993 is bad in the eyes of law, given the fact that the said old Act has already been repealed u/s 59 of Maharashtra Groundwater (D&M) Act, 2009 with effect from 01 June 2014. In fact, the Application of the Appellant should not have been entertained by the Respondent No. 1 as he has no powers to entertain and decide such application for grant of permission to sink well.
- iii) As per the provisions of Section 32 of Maharashtra Groundwater (D&M) Act, 2009, in the Notified areas, Watershed Water Resource Committee (WWRC) is the competent authority to grant or refuse the permission to sink new well for irrigation use.
- iv) As such, the order passed by the Respondent No. 1 is not valid and therefore, need to be quashed and set aside.

Hence, the issue is answered in affirmative.



*(Signature)*



2. Whether any appropriate relief or order need to be passed in the factual and legal position in the present case?

- i) Considering the facts & circumstances of the case, the Competent Authority to entertain and decide the applications for grant of permission to sink deep well as per the provisions of the new Act of 2009, is with the Watershed Water Resource Committee (WWRC).
- ii) As the areas where the Appellant wants to dig well is in notified areas as per the existing valid Notification as on date, the Appellant need to approach the WWRC for such permission as per the provisions of the Act.
- iii) Since, for the said notified area, the formation of WWRC has not been completed so far and hence, the Ld. Secretary of this Authority is need to be directed to complete the process of formation of WWRC with respect to the notified areas in consultation with Respondent No. 5 so that the Appellant can approach WWRC for such permission.

Hence, the issue is answered in affirmative as observed herein above.

**DIRECTIONS**

Having heard the parties to the litigation, and after giving due consideration to the documents on record, submission made by the parties and having adjudicated the issues framed, this Authority, hereby directs as under:

- i) The order of Respondent No. 1 dated July29,2017 is not as per the provision of Maharashtra Groundwater (D&M) Act, 2009 and hence the same is quashed and set aside, being not valid and legal.
- ii) The Ld. Secretary of this Authority is hereby directed to complete the process of formation of Watershed Water Resource Committee (WWRC) with respect to these notified areas in the Amravati District in consultation with Respondent No. 5 within period of 3 months from the date of this Order.



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iii) Once, the WWRC is formed and notified, Appellant will be at liberty to submit the application seeking permission to sink new well for irrigation use in said notified area as per provision u/s 32 of Maharashtra Groundwater (D&M) Act, 2009.

The Appeal is accordingly disposed off with order to the costs.

Sd/-

(Dr. S. T. Sangle)  
Member (Economics)

Sd/-

(V.M. Kulkarni)  
Member (W.R. E.)

Sd/-

(Vinod J. Tiwari)  
Member (Law & I/c - GW)



(Dr. Ramnath Sonawane)  
Secretary

