

Filed on: 19.12.2022

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SZ), CHENNAI**

**IA No. 196 of 2022 (SZ)
in
APPEAL No. 5 OF 2022**

BETWEEN

Landmark Builders & Developers (India) Pvt. Ltd.

NH-17 Bypass, Kozhikode -

: APPLICANT

Versus

AK SHAJI & ORS

: RESPONDENTS

**OBJECTION FILED ON BEHALF OF THE 1ST RESPONDENT/ APPELLANT
IN THE ABOVE MENTIONED IA.**

HARISH VASUDEVAN (H-253) [K/779/2013]

RAJAN VISHNURAJ (R-1268) [K/653/2010]

Counsel for the Appellant

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PAPER BOOK

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Dated this the 15th day of December, 2022


Counsel for the Appellant / 1st Respondent.

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**OBJECTION FILED ON BEHALF OF THE 1ST RESPONDENT/APPELLANT
IN THE ABOVE MENTIONED IA.**

I, Shaji A.K. Aged about 47 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District – 670 706, do hereby solemnly affirm and state as follows:

1. I am the 1st respondent in the above mentioned IA and the appellant in the Appeal No.5 of 2022 and as such I am conversant with the fact of the case. I am competent to swear this affidavit.
2. It respectfully submits that in the above matter, the petitioner/5th respondent have obtained sufficient and more time to produce any document or make any argument against the appeal and before making final arguments on 19.10.20220. It was only after concluding the

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arguments of both parties on 19.10.2022, this Hon'ble Tribunal was pleased to reserve the matter for passing judgment and uploaded a copy of the said order dated 19.10.2022. It was only thereafter, the appellant's counsel has prepared Argument note/Written submissions before this Hon'ble Tribunal. Only after receiving a copy of the argument note filed by the Counsel for appellant, the petitioner/5th respondent has filed this IA on 07.11.2022, much after the final argument note is filed in this regard. I have serious objection in this considering this IA both on fact and on legal grounds.

3. It is respectfully submitted that IAs filed for re-opening the case hearing / accept additional documents / advance hearing are not maintainable and are unsustainable in the eye of law. All the arguments / documents produced along with the IA for reopening the hearing was with the custody of the Proponent himself at the time of filing of his pleadings and he did not choose to plead or produce the same. The dictum laid down in the Judgment of the Hon'ble Supreme Court in Baqai Construction vs. M/s Gupta Building Material Store reported in 2013 (14) SCC 1 is applicable in this case. The dictum laid down by the Rajasthan High Court in the matter of Leeladevi and Anr vs. Narayan and Anr reported in AIR 2017 NOC 922 clearly held that the power of the Court to reopen the hearing should sparingly be used. It was also held that the reason for requesting to reopen the case must be reasonable and clear from the affidavit and if only to protract the process, then such application must be dismissed without even without calling for objections. In this case, sufficient and more time was provided by the Hon'ble Bench for patient hearing. There is absolutely no extra ordinary circumstance explained in the affidavit as to why such

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sparingly used power of the Tribunal should be used here, and no extraordinary circumstance is explained in the application to use such a power to reopen the case or accept additional documents.

4. I respectfully submit that the IAs filed for re-opening the case hearing, advance hearing and accepting additional documents are a mere delay tactics to escape from the forthcoming Judgment and thereby complete the construction based on a falsely obtained EC. Reopening of argument at this stage is unfair, unjust and defeat the purpose of the Appeal. It will also be a bad precedent before this Hon'ble Tribunal. This IA is an aftermath of the crooked brain of the 5th respondent to simply prolong the judgment in this appeal and to complete the construction without even having sufficient safeguards and to escape from the provision of law.
5. It is fundamental that the 5th respondent cannot develop any argument beyond the scope of the Form-I application duly signed by them. A copy of Form-1 itself produced along with the argument note and hence the production of any other document for any lame excuses beyond the scope of it will not help the 5th respondent in any manner. There is no new facts or law to be brought to the notice of this Hon'ble Tribunal. The facts mentioned in the IA is beyond the scope of the Appeal and liable to be dismissed.
6. The crux of the argument raised in the IA is that the 'Category' of the Project in which EC has been granted should be decided upon the external conduct of the applicant and NOT BASED ON FORM-1 Application. This is absurd, irrational and unheard in the history of EIA Process. When EC is granted based on their own Form-1 application, in which Category of the Project was expressly stated by them, any external conduct related to local

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laws need absolutely no consideration in this Appeal. Impugned EC is issued based on Form-1 application. If the argument is that it was faulty, EC should be recalled on that basis alone.

7. The project proponent had filed application for building permit on 16.03.2019 itself, for the total extent of area. Even according to them, the project is a building construction project from the date of preparation of such an application. Any Earth development activity altering the land, construction activity, after 16.03.2019 is violation of EIA Notification 2006 and invite violation proceedings under Section.15 and 19 of the EP Act.

8. I submit that the 5th respondent is a continuous violator of the Environment (Protection) Act and any averment to the contrary is false. The starting of construction without waiting for prior EC or a proper appraisal is done by the 5th respondent even before the impugned EC. This is a regular modus operandi of the 5th respondent. The argument that the 5th respondent was unaware of the provisions of EIA Notification is absolutely false and hence denied. A similar application for obtaining EC for building construction project about 1,45,000 sq. m. in Kodanchery Village of Kozhikode District was filed by the same project Proponent, 5th respondent before SEIAA and after site visit, it was found that they have started construction without waiting for prior EC. The SEIAA in its 61st meeting held on 13.11.2016 decided to reject the proposal. As in the case of present appeal, on receipt of an application from the 5th respondent, the SEIAA had even withdrawn an appeal filed before the High Court of Kerala against the construction in ecologically sensitive area of Western Ghats and permitted the 5th respondent to construct buildings more than 20,000 sq.m.in the ESA Village. Even though the said project was also

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named as 'Township Project' since the construction of building was involved, the project was appraised as category 8(a) and granted with EC on 28.12.2019.

9. It is respectfully submitted that the main argument of the petitioner/5th respondent is that they have obtained a Development Permit from the Panchayat initially and therefore it should be considered as a development project. The said argument is absurd. Any person who wants to construct a building after leveling the plot, such person is mandatorily required to obtain a Development Permit from the Panchayat as per Kerala Panchayat Building Rules 2019. Without obtaining a Development Permit, no person can level any plot for the construction of building. The very intention of the 5th respondent was to construct a building project and for the purpose of leveling the plot alone, they have obtained a Development Permit from the Panchayat. This legal aspect of the requirement of Development Permit for the building construction as per the Kerala Panchayath Building Rules 2019 is considered in detailed and held by a Division Bench of Kerala High Court in Panjal Grama Panchayath Thrissur and Anr vs. Aneesh P. reported in **2022 (2) KHC 775**. In the said case, the Division Bench headed by the Hon'ble Chief Justice clearly held that the obtaining of Development Permit is statutorily mandated for the construction of building project if the leveling of plot is needed. Therefore, the argument that the 5th respondent has obtained a Development Permit and therefore the project is not a building construction but an 'an area Development project' is absurd, irrational and without any factual or legal basis. The 5th respondent is only trying to mislead this Hon'ble Tribunal by creating confusions.

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10. When the Form-1 application itself is crystal clear about the intention and the purpose of project envisaged by the 5th respondent, the date of application for Building Permit also makes the intention of the construction of building project very evident, any argument in contrary will only be a wastage of time, effort and energy and therefore such argument cannot be entertained again, after the arguments are once over.
11. The appellant had never raised an argument that if the 5th respondent really intended to develop a Township project at the site, then they should have applied for and got a Development Permit from the Panchayat. The argument of the appellant was that, once the Form-1 application is filed and Building Permit application is preferred before the Panchayat, after preparation of a detailed building plan before the Authority, the 5th respondent cannot play the ground of 'ignorance of law' as if he conceptualized the said project as the Township Project alone. From the EC dated 28.12.2019, it is evident that modus operandi of the 5th respondent in overlooking the provisions of EIA Notification is not for the first time and not an innocent act.
12. It is respectfully submitted that the impugned EC itself mandates to spend Rs.7 Crore as CER at the time of construction. There is absolutely no remediation plan and Natural and Community Resource Augmentation Plan either prepared or submitted by the 5th Respondent / applicant. Even as per the compliance report and Inspection Report from the Regional Office of MoEF&CC, only 1% of the same, that is, Rs.7 Lakhs have been spent till date, as name sake compliance. Even as per the notification dated 14.03.2017 and amendment notification dated 08.03.2018, implementation of Damage remediation Plan and Natural and Community

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Resource Augmentation Plan by the proponent at the time of Construction is a mandatory requirement in case of violation cases. No such procedure is mandated in this impugned EC. Any further delay in stopping the project and taking damage assessment / implementation of remediation plan in the site, will cause irreparable damage to the local environment, including the water streams, paddy lands, butterflies and related species of flora and fauna.

13. I respectfully submit that serious prejudice will be caused to the appellant if the IA is allowed and the appeal is again taken for further arguments. The construction of the 5th respondent is creating heavy nuisance in the area and the violation is being continued in the site because of the non-obtaining of a judgment in this appeal. Even in the IA, the 5th respondent did not utter a word regarding the mentioning of category in the Form I application. Any delay in passing a final judgment in this appeal will prejudicially affect the rights of the appellant and the local environment. The filing of IA without filing a copy of the argument note/written submission even after assuring about the same before the Hon'ble Tribunal, this is an unfair attempt to sabotage a fair hearing which is already done in this case.

14. The IAs filed for reopening the hearing, accepting additional documents / advance hearing is neither maintainable nor having any merits and therefore to be dismissed.

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Therefore, it is most humbly requested and prayed that this Hon'ble Tribunal may be pleased to dismiss the IAs filed in this case and pleased to reject the request for any further arguments / acceptance of additional documents in this regard and pass a final judgment tin the appeal, without any further delay and thus render justice.

All the facts stated above are true to the best of my knowledge, belief & information.

Dated this the 15th day of December, 2022

Shaji A.K

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DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 15th day of December, 2022 in my office.

[Signature]

Harish Vasudevan
ADVOCATE

VERIFICAION

I, Shaji A.K. Aged about 47 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District – 670 706, do hereby verifies that the contents of the above paragraphs 1 to 14 are true to the best of my knowledge and I have not suppressed any material facts.

Shaji A.K SN

DATE : 15.12.2022

SIGNATURE OF THE APPELLANT / 1st Respondent.

PLACE: Ernakulam