

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE AT CHENNAI**

Application No. 149 of 2016

V.Ramasubbu,
Advocate,
Door No. 48/17, Theppakulam Street,
Srivaikundam - 628601

...Applicant

Vs

1. Union of India Rep. by the Secretary to Government,
Ministry of Environment and Forests and Climate Change
Government of India, Paryavaran Bhavan,
New Delhi - 110003
2. The Wildlife Preservation (Southern Region)
Ministry of Environment and Forests and Climate Change
C-2/A, Rajaji Bhawan
Besant Nagar, CGO Complex
Chennai - 600 090
3. The Principal Chief Conservator of Forest and Chief Wildlife Warden
Panagal Maligai
Saidapet
Chennai - 600 006
4. The Member Secretary
State Environmental Impact Assessment Authority State Environmental
Impact Assessment Authority Tamil Nadu
3rd Floor, Panagal Maligai,
No.1 Jeenis Road, Saidapet, Chennai-600 015,
5. The State of Tamil Nadu Rep. by the Secretary to Government,
Department of Environment and Forest, Government of Tamil Nadu,
Fort St. George, Chennai - 600 003
6. The Chairman
Tamil Nadu Pollution Control Board
76, Mount Salai, Guindy Chennai - 32
7. The District Environment Engineer
Tamil Nadu Pollution Control Board
D No. 15-4-12-A3 Back to National Theatre
SAR Complex
Theni - 625 531.
8. The Commissioner
Directorate of Town and Country Planning
807, Annasalai, Chennai-600 002.

9. M/s. Bahri Estate Pvt. Ltd., Rep. by the
201-201, Park N Shop, L-Block, DLF City Phase-II
Gurgaon – 122 022
Delhi

... Respondents

WRITTEN ARGUMENTS FILED ON BEHALF OF THE 4TH RESPONDENT

The 4th Respondent herein respectfully submits as follows:

1. The present Original Application has been filed alleging that the 9th Respondent project proponent M/s. Bahri Estate Pvt. Ltd. has failed to acquire various approvals and permissions as required under law and praying for various reliefs against the 9th Respondent Project Proponent M/s. Bahri Estate Pvt. Ltd. The relief sought for pertaining to the 4th Respondent herein is as below:

To direct the 4th Respondent to not concede the application for environmental clearance submitted by the 9th Respondent.

2. At the outset, it is most humbly submitted that the relief prayed for above is not maintainable. Due process of law must be followed by the 4th Respondent to either grant or reject the application for environmental clearance of the 9th Respondent. A bonafide applicant may approach this Hon'ble Tribunal on appeal of the decision of the 4th Respondent while disposing of an application if they are aggrieved; however, a prayer that the 4th Respondent shall not concede the application for environmental clearance is not maintainable.

Applicability of EIA Notification, 2006 to the project of the 9th Respondent:

3. It is submitted that the 9th Respondent was carrying out the project of plotted layout development under the name of "Bahri Beautiful Country". The project would have been categorized under Category B - Item 8(b) in Schedule of the EIA Notification, 2006. The Item is extracted below:

8(b) Townships and Area Development projects - Covering an area \geq 50 ha and or built up area \geq 1,50,000 sq .mtrs ++

It is submitted that since the extent is 49.31 Ha, the EIA Notification, 2006 will not be attracted.

Status of EC application:

4. It is submitted that, having stated the above, the 9th Respondent had initially applied for an EC for the extent of 803301.3 sq.mt. for development of Phase II and seeing as the project was started before obtaining environmental clearance the project was included in the list of cases involving violations of Environmental Protection Act, 1986 and it was delisted from the list of proposals under process in SEIAA-TN.
5. It is submitted that it further came to light that Phase I of the 9th Respondents project is only to the extent of 49.31 Ha, as the project proponent was interested to undertaking Phase II expansion they had applied for Environmental Clearance. However, since then 9th Respondent has dropped the expansion project and has withdrawn the Environmental Clearance application for the extent referred. It can be seen that sans the expansion into construction of Phase II, the extent of the project is only 49.31 Ha as per the DTCP approved layout plans dated 09.03.2009.

Applicability of the declaration of nearby forests as Kodaikanal Wildlife Sanctuary:

6. It is submitted that that General Conditions shall not apply to the projects covered under item no. 8- Building /construction Projects/Area Development Projects and Townships, as per the EIA Notification, 2006. The said project would have been covered under Category "B1" and Item no. 8(b) of the EIA Notification, 2006, hence the applicability of the protected areas/Wildlife Sanctuary/Eco-sensitive areas to this project does not arise. Furthermore, the Kodaikanal Wildlife Sanctuary was notified as such in 2013 vide Government Order No143 Environment and Forests (FR-V) Department dated 20.09.2013. Section 26A of the Wildlife (Protection) Act, 1972 empowers the State Governments to declare an area as a sanctuary by issuing notification specifying the limits of the area which shall be comprised within the sanctuary **and declare that the said area shall be sanctuary on and from such date as may be specified in the notification.** It is a well established principle of law that there can be no retrospective application of any law unless a contrary intention is explicit especially when such law imposes new obligations or duties

or attaches a new disability on a person. The reasoning being that there exists the belief what every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. As per the District Collector's proceedings dated 15.09.2011 the project has already been completed, furthermore, the District Collector, vide Letter dated 15.09.2011, directed the President of Panchayat to grant approval for the constructions as the discrepancies previously noted were rectified. It would be against the principles of equity and fairness to insist on approvals/permissions for a project that has been completed as early as 2011 and the residents have moved in, on the basis of a notification in the year 2013.

Project Extent and Undertaking by the 9th Respondent:

7. It is submitted that during the course of this hearing the Joint Committee has reported that Survey Nos. 426, 428, 429 and 441/1 also form a part of this project. But based on the project approval granted by the DTCP which records the actual extent of the project i.e., 49.31 Ha and the undertaking of the 9th Respondent stating that these survey numbers do not belong to the 9th Respondent and will not be used by them, it can be seen that the project does not require environmental clearance. The 9th Respondent is restricting themselves only to the extent as specified in DTCP approved plan. Furthermore, taking into account the fact that the 9th Respondents project is only to develop layouts and does any activity such as organic farming is being undertaken by the senior citizens who are residents of the estate, it is clear that the survey numbers mentioned in the Joint Committee Report do not form of a part of the 9th Respondent's project.
8. It is submitted that the Joint Committee observation that the drains/oddais available within the project area have not been realigned/obstructed has been taken note of.

It is therefore humbly prayed that this Hon'ble Tribunal may be pleased to record the above mentioned facts and pass such order (or) any other orders as this Hon'ble Tribunal may deem fit and proper in this case and thus render justice.

Dated at Chennai on this the 11th day of September, 2021

A handwritten signature in black ink, appearing to read 'M. R. Gopinathan', is written over a horizontal line. The signature is somewhat stylized and cursive.

COUNSEL FOR 4TH RESPONDENT