

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION No.149 OF 2016

IN THE MATTER OF:

V. Ramasubbu (Advocate)
Door No. 48/17, Theppakulam Street,
Srivaikundam

... Applicant

-VERSUS-

Union of India
MOEF&CC, Government of India, New Delhi & Others

... Respondents

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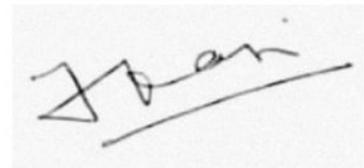
DATE: 21.02.2022

PLACE: Chennai

DRAWN AND FILED BY:

Sanjay

Sanjay Upadhyay, Kamlesh Kannan, Saumitra Jaiswal,
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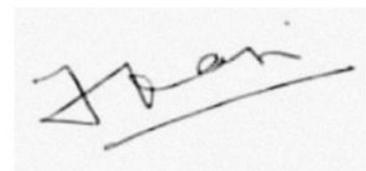
Union of India
Represented by its Secretary
MOEF&CC, Government of India,
New Delhi & Others

... Respondents

**REJOINDER ON BEHALF OF RESPONDENT NO.9, M/S BAHRI
ESTATE PVT. LTD TO THE REPLY DATED 05.01.2017 OF TAMIL
NADU POLLUTION CONTROL BOARD (RESPONDENT 6 AND 7)**

MOST RESPECTFULLY SHOWETH:

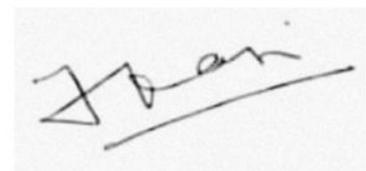
1. It is submitted that the Applicant filed the original application praying for the following directions;



- a. *“ To direct the 4th Respondent to not concede the application for environment clearance, submitted by the 9th Respondent,*
- b. *To direct the 1st Respondent and 7th Respondent to prosecute the 9th Respondent for violation of Environment Protection Act.*
- c. *To direct the 9th Respondent to take steps towards compensating and remedying the social and environmental damage caused.,*
- d. *To direct the 9th Respondent to restore the natural streams as it is existed prior to the commencement of the project.,*
- e. *Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case. “*

2. It is submitted that in pursuance of notice issued by this Hon’ble Tribunal on 14.07.2016, the answering Respondent filed its Reply to the Original Application on 03.08.2016. That subsequently on 08.08.2016 and 08.12.2016, the Hon’ble Tribunal granted opportunity to Respondents 1-8 to file their Reply to the present OA. Accordingly, the Tamil Nadu Pollution Control Board has filed its Reply to the OA on 05.01.2017 and the answering Respondent seeks leave to Reply to the averments made therein through the instant pleading.

3. That it is also pertinent to mention that in pursuance of Orders of this Hon’ble Tribunal, a Joint Committee was constituted which has submitted three reports. That the answering Respondent has also filed his

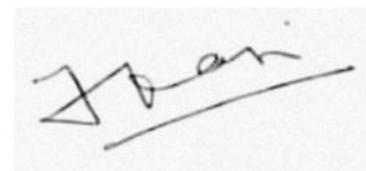


Objections to the First Report of the Joint Committee on 25.08.2020, to the second Report of the Joint Committee on 19.12.2020 and to the Third Report of the Joint Committee on 03.02.2022.

4. That at the outset, the answering Respondent denies each and every averment made in the Reply of the Tamil Nadu Pollution Control Board (hereinafter 'TNPCB') as being wrong, false and devoid of any merit, save what are matters of record. It is submitted that no part of the Reply of TNPCB will be deemed to be accepted for the lack of a specific denial. Further, the contents of the Objections to the Third Committee Report filed on 03.02.2022 are reiterated as true and correct and are not being repeated for the sake of brevity.
5. That before averting to the para-wise Reply on merits, the answering Respondent seeks to place certain preliminary objections which are vital for a holistic adjudication of the matter.

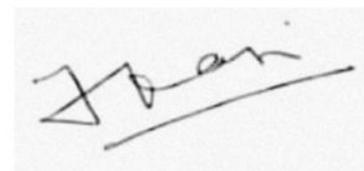
Preliminary Objections

1. It is submitted that the answering Respondent has undertaken plotted development of lands, for an area of 49.31 ha with the permission of the DTCP on 09.03.2009. That the said promotion of plots in an extent of 49.31 Ha was completed in the year 2011 as affirmed by the Completion

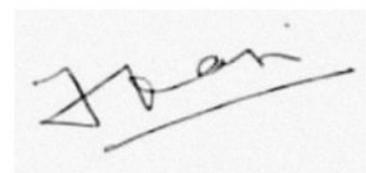
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Certificate of the District Collector dated 15.09.2011. The Completion Certificate of the District Collector has been submitted before this Hon'ble Tribunal as **Annexure I** of the Objections to Joint Committee Report dated 08.10.2020.

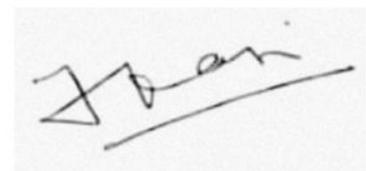
2. After completing the promotion of plots, this Respondent approached the 8th Respondent (DTCP), seeking permission to build a club-house, in the lands marked as "owners use". Vide order dt. 22.04.2013, the DTCP granted permission for construction of clubhouse, with total plot area of 79,081 Sq. ft and built up area of 38,855,64 sq. ft. (approximately 3,609 sq mt.) A copy of the DTCP permission dated 22.04.2013 for construction of club house is annexed as **Annexure R/30** of the Objections dated 03.02.2022 of Respondent No. 9 to the Third Report. The said permission of the DTCP had wrongly included a condition that for the outlet of drainage water, permission should be obtained from the Pollution Control Department under the Water (Prevention & Control of Pollution) Act, 1974 (hereinafter referred as the Water Act, 1974) when in fact construction of the clubhouse was not more than 20,000 sq. mt, nor attracted under the Board proceedings of the TNPCB, which categorized the commercial activities requiring to obtain prior consent.

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3. But this Respondent, without seeking any amendment to the said condition in the DTCP approval, approached the TNPCB for issuance of consent under the Air Act, 1981 and Water Act, 1974 for the construction of the Club House, on 12.12.2013 even though its construction does not require consent. It is pertinent to note that as per Final Report of the Working Group of CPCB on “Inventorization of 17 category/GPI/Red Category industries”, a direction dated 04.06.2012 was issued under section 18(1)(b) of the Water Act 1974 of CPCB. In pursuance of the same, the TNPCB issued its Board Resolution dated 05.10.2012 wherein under item No. 308 of the table it provided that building and construction projects of more than 20,000 sq. mt built up area were categorized under Orange category and no other building and construction project below 20,000 sq meters was listed under any category which implies that no consent was required for the same. That given the fact the total built up area of the Club House in question is far less than 20,000 sq meters, the same did not required any Consent from the Respondent No 6 or 7. The Board Resolution dated 05.10.2012 is annexed as **Annexure R/ 31 (Page 230-244)** of the objections of the answering Respondent dated 03.02.2022 to the Third Committee Report.

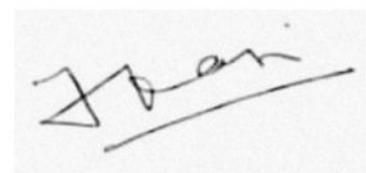


4. That further the revised classification of CPCB dated 07.03.2016 shows that only those building and construction project which are more than 20,000 Sq mt. built- up area require to obtain CTE/CTO and not otherwise. That the Relevant Pages of the Revised classification dated 07.03.2016 is annexed as **Annexure R/16 (Page 167-168)** of the objections of the answering Respondent dated 03.02.2022 to the Third Committee Report.
5. That the revised classification of CPCB dated 07.03.2016 was adopted by the State of Tamil Nadu on 2.8.2016 and under its Item 21 building and construction which exceeds 20,000 sq. mts. only have again been categorized under Orange category and no categorization has been provided for projects which are less than the same. .
6. That given the above position of law, it is clear that the Clubhouse of the answering Respondent being less than 20,000 sq. mt built- up area, nor being attracted under any other categorization under the Board Proceedings, did not require CTE in the first place.
7. To the shock and surprise of this Respondent, on 14.02.2014 the application of this Respondent received a communication from the TNPCB, stating that the construction activity of this Respondent, which

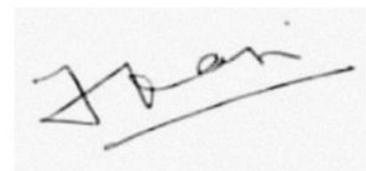
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is of an extent of 3,609 Sq. m, requires Environmental clearance. On 19.03.2014, the present Respondent clarified that the total construction is only 3,609 sq. mt. and the layout promotion, which was completed in 2011 was for 49.31, thus it will not be covered under the EIA, 2006. However, the application for CTE of the present Respondent was wrongly rejected by the TNPCB vide communication dated 28.03.2014 for want of SEIAA Clearance (Environmental Clearance). It is necessary to state that the TNPCB couldn't have rejected the CTE Application for want of EC. It is due to the financial crises and the present proceedings before this Hon'ble National Green Tribunal no appeal was undertaken against the said rejection.

8. It is submitted that the club-house was only about 3,609 Sq. m and thus did not require prior EC under EIA, 2006 and infact did not even require the Consent. It is pertinent to state that the TNPCB was not even clear of the fact, on what basis the application of club-house construction was returned. (i.e.) for want of EC under 8(a) category or 8(b) category. In any circumstances the NOCs required under Water and Air Acts are different from environment clearance and without application of mind the 6th Respondent had rejected the application for CTE to the club-house.

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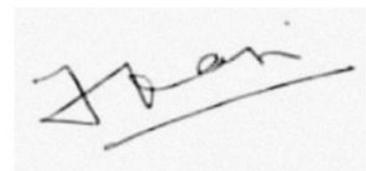
9. Subsequent to the said rejection, vide communication dt. 18.05.2016 the Board had issued a showcase notice under S. 25 of the Water Act, stating that the Unit in S. Nos. 400/6, 401/1 and 401/2 are in operation without consent. It is pertinent to point out that even the showcase notice did not have a whisper about the nature of industry that was alleged to be in violation. That since then and under a wrong presumption of law the construction of club-house is stopped and remains incomplete till date, thereby not allowing the senior citizens to enjoy recreational facilities and social gatherings which are so essential at this ripe age for their longevity.
10. It is pertinent to highlight that months after rejection of the present Respondent's consent applications TNPCB issued another letter dated 27.10.2016 to the present Respondent enquiring regarding the project details of the present Respondent, the kind of permissions obtained for the same and number of residential villas, among other queries, which clearly establish that the TNPCB had rejected the Consent Application and issued subsequent show cause notice without application of mind and in complete misunderstanding of the facts and law to the prejudice of the present Respondent. They have engaged in a general fishing and roving enquiry for reasons known to them. That the same has embroiled the

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present Respondent in protracted litigation leading to waste of time and resources of this Hon'ble Tribunal and this Tribunal may take strict note of the same. A Copy of the TNPCB letter dated 27.10.2016 is marked and appended as **Annexure R/32 (Page 245)** of the Objection dated 03.02.2022 of the present respondent to the Third Report of the joint Committee.

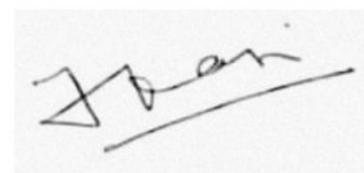
Para-wise Reply on merits

1. That the contents of the corresponding paragraph are matters of record and do not merit any response.
2. That the contents of the corresponding paragraph are wrong, false and devoid of any merit. It is submitted that the application was made to TNPCB only in furtherance of the conditions in the DTCP approval dated 22.04.2013 for construction of clubhouse, to the land earmarked as "owner's use". It is reiterated that as per the statutory mandate the answering Respondent is not required to obtain CTE. That it is also denied that application was made for carrying out any activity for any township of more than 20,000 sq. mts. That it is submitted the larger project in question is not a township but a plotted development project of



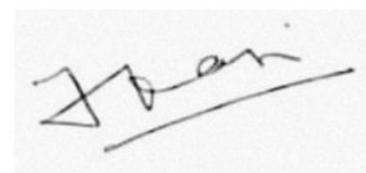
49.31 Ha, and towards which Consent procedure would not be applicable. Therefore, the submission of the Respondent in the corresponding para is wrong and misleading wherein the application for the club house is being tried to be integrated with a made-up application for some 'township'. That the present Respondent had only made an application for the Club house which again does not need a Consent in the first place and explained above. The further, contents of the paragraph 2 to 10 of the Preliminary Objections may be read in addition to the response to the corresponding paragraph.

3. That in response to the contents of the corresponding paragraph it is submitted that club house in question never needed a Consent as the same was less than 20,000 sq meters. However, the construction for the same was stopped and is still incomplete and non-operational. . That further, it is surprising that the TNPCB has issued the show cause notice on 18.05.2016 without examining the factual position of operation of the clubhouse nor referring to their own Board Resolution of 05.10.2012 nor the revised classification of CPCB dated 07.03.2016, which was the guiding principle for the State Governments, and which was subsequently

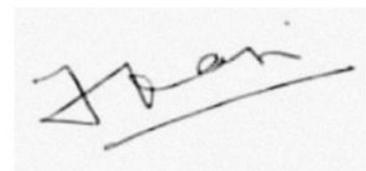
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adopted by TNPCB Board Resolution dated 02.08.2016 wherein construction of the answering Respondent does not come within the consent procedure. The TNPCB has failed to give any cogent reasons in accordance with their own Board Resolutions as mentioned above. Moreover, this was latter written by the Applicant after filing the case in this Hon'ble Tribunal, clearly a fishing and roving enquiry for reasons best known to him and the TNPCB instead of clarifying the legal position furthering his cause for reason best know to them.

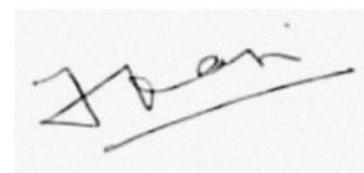
4. That the contents of the corresponding paragraph are wrong, false and devoid of any merit. The 8th Respondent has failed to acknowledge that the said project is a plotted development project wherein lands are sold to third parties which can then be used for construction of villas on their own discretion. That therefore the villas constructed by the purchased owners cannot be included under the total area of the plotted development project as the same gets reduced from the same as and when it is sold. That such villas can be constructed by the said owners either by them or through a third party constructor including the answering Respondent. That therefore, the individual villas which were being constructed were individual projects and were separate from the plotted development

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project of the present Respondent which stood completed in the year 2011 itself and the same was limited to developing plots for selling purpose. That further, with regard to the contention of use of the mobile concrete cement mixture, it is submitted that the same is owned by a third party and does not belong to the answering Respondent and the applicability and compliance of environment laws for the operation of the said activity is a separate issue and the same should not be integrated with the present case in hand. However arguendo fly ash brick manufacturing comes under the white category and does not require consent as per notification dated 02.08.2016 of the TNCPB. That further, with regards to the use of DG sets, it is submitted that as per the CPCB revised classification of Industries issued vide OM dated 07.03.2016, the DG sets of the answering Respondent amounts to less than 1 MVA and thus do not require consent from the TNPCB. Relevant extracts of the 07.03.2016 CPCB revised classification is marked and annexed as **Annexure R/1**. That it is also pertinent to note that the TNPCB Board Resolution dated 02.08.2016 has also not included any DG sets less than 1 MVA in any of the category of industries.

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5. That the contents of the corresponding paragraph to the extent that they are matters of record do not merit any response. However, the said area for the residential plotted layout is 121.84 acres amounting to 49.31 ha.
6. That in response to the contents of the corresponding paragraph it is submitted that the said content of SEIAA was generic in nature and had not insinuated any observation towards any conduct of the present Respondent. That it is further submitted that within the existing project of 49.31 ha any construction would itself constitute a separate project and which would get excluded from the total area of the plotted development project. That it also pointed out that the SEIAA in its written submission dated 11.09.2021 has categorically stated that the application for EC by the answering Respondent has been withdrawn and that there is no requirement of EC as the project area is less than 50 ha.
7. That the contents of the corresponding paragraph are wrong false and devoid of any merit. The contents of the preceding paragraph may be read as response to the contents of the corresponding paragraph along with contents of para 2 to 10 of the Preliminary Objections.
8. That the contents of the corresponding paragraph are outrightly denied as wrong, false and devoid of any merit. That it is humbly submitted that the

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answering Respondent does not require prior EC as the area for plotted development is 49.31 ha and further the construction of club house for which CTE was sought amounts to a built-up area of 3607 sq. mt. That further the built-up area being less than 20, 000 sq mt there is also no requirement of obtaining CTE.

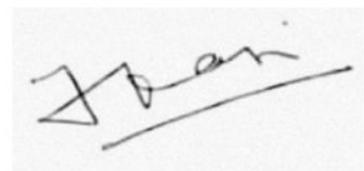
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.... Applicant

Versus

1. Union of India

Rep. by its Secretary

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New Delhi & Others.

... Respondents

AFFIDAVIT

Hemant Bahri, S/o Late J.N. Bahri, aged about 58 years old, am the Managing Director of M/s Bahri Estates Private Limited, having office at Jamals Nainar Enclave, 2nd Floor, 44, Eldams Rd. Alwarpet, Chennai, Tamil Nadu 600018, do hereby solemnly affirm and declare as under:

1. That I am well conversant with the facts and circumstances of the case and duly authorized to sign the present affidavit on behalf of Respondent No. 9 and hence competent to swear this affidavit.
2. That the contents of the accompanying rejoinder are true and correct to my knowledge based on the records available and the same has been drafted under my instructions.
3. That the Annexures in the accompanying Rejoinder on behalf of Respondent No. 9 are true and correct to the best of my knowledge.



DEPONENT

VERIFICATION

I, the above- named deponent, do hereby solemnly affirm and verify that the contents of the above paras of the Affidavit are true and correct to the best of my knowledge and belief, and that nothing has been concealed therefrom.

Verified at Chennai on 21st day of February, 2022.

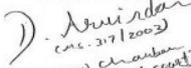


DEPONENT

Solemnly affirmed

on this the 21st day of February, 2022,

at Chennai

BEFORE ME

D. Anuradha
C.No. 317/2002
(104, 1000 Chennai
MADRAS High Court)
ADVOCATE