

BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE, AT CHENNAI

APPEAL NO. 17 OF 2022 ( SZ )

BETWEEN

ARJUNAN MUTHUKRISHNAN

APPELLANT IN PERSON

And

1. The Appellate Authority  
TNPCB
2. The Chairman TNPCB
3. The District Environmental  
Engineer, Chengalpattu Dist
4. M/s JAIN HOUSING

RESPONDENTS

REVISED SUPPLEMENT TO APPEAL NO. 17 OF 2022 (SZ) OF THE APPELLANT

( owing to Supplement uploaded on 2/9/22 not having been found on file)

RESPECTED LORDSHIPS

1. The Appellant herein submits that the Respondent 4 -Developer/Builder had resorted to APPROBATE AND REAPPROBATE—which is against principle of equity and therefore not tenable—by taking different stands before different statutory authorities, viz Chennai Metropolitan Development Authority, TN State Level Environment Impact Assessment Authority and TN PCB, -- to be specific, before CMDA that Jains Pebble Brook is one single project and before others, Phase 1 and Phase 2 of JPB are different independent projects.
2. In this clubbing /amalgamation, no public interest is involved.
3. One of the important grounds for upholding the Appeal no. 58/2020 (preferred by Respondent 4 herein – and is being assailed by the Appellant herein—was that the actual constructed area in Phase 1 (620 flats) is less than that approved by Environment Clearance of 2009 for 412 flats. In order that this Hon'ble Tribunal can analyse this facet in greater detail and in greater depth, a table juxtaposing the relevant information in Environment Clearance of 2009, CMDA approval of March 2011 for 620 flats, CMDA approval of Dec 2013 for 1016 flats

*A. Muthukrishnan*

and Environment Clearance dated 1.4.2015, along with area Statements of CMDA and Schedule A of agreement with Phase 1 and Phase 2 purchasers is annexed hereto, ( on page nos. <sup>5</sup> 1011 ) depicting the anomalies in built up area vis a vis undivided share of land. In this regard, it is respectfully pointed out that nowhere has it been transparent as to how built up area had been arrived at by the Respondent 4 herein and by CMDA. In my respectful submission, floor space INDEX has to be applied to net plot area after deduction of open space reserved area, since OSR area had already been gifted and registered before approval by CMDA. Moreover, according to the Hon'ble SC observation in Civil Application no.10854 of 2016 dated 10.8.2018, there is no artificial distinction BETWEEN FSI and non-FSI area.

4. The Appellant herein also respectfully submits that the purity, quintessence and sublimity of EIA Notification 2006, Water and Air Acts has not undergone any depreciation nor their effectiveness and enforceability over the years. As a matter of fact, in 2017 there were two windows for regularisation of violation of Environment (Protection) Act and the Respondent 4 herein did not take advantage for the reasons best known to him. The recent Office Memorandum dated 5.5.2022 of the MoEF&CC is also annexed ( on page nos. <sup>12213</sup> ) for ready reference, in the teeth of which, all the grounds raised by the Respondent 4 herein based on which AA TNPCB set aside the Order dated 14.12.2020 passed by the Chairman TNPCB, fall flat. When prior EC was not obtained for 208 flats, how can one argue that no consent from TN PCB is required under Water and Air Acts?
  
5. The Respondent 4 herein has not provided details of built up area for each flat in phase 2. The built up area of phase 2 alleged at 36,623.19 sq m in AA TNPCB Order does not connect /correspond with FSI area based on plot area of 35,325 sq m. nor with built up area allowed by EC dated 1.4.15 of 48,115.17 sq m. In this context, the observations of the Hon'ble SC on 17.03.2020 in Civil Appeal No.2566 of 2019 -Bangalore Development Authority vs Sudhakar Hegde and others are

*A. K. Subramanian*

pertinent: “ Material concealment of the project proponent invalidates the Environment Clearance which was granted by the SEIAA. Post facto explanation are inadequate to deal with a failure of due process in the field of environment governance. Doctrine of proportionality must be applied to matters concerning the environment as part of judicial review.”

6. It is respectfully submitted that Section 14 (1) of NGT Act gives vires to this Hon'ble Tribunal to adjudicate over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. My civil legal right is injured que Environment (P) Act, Water Act and Air Act.
7. There are plethora of case laws on violation of environmental laws, especially on escalation of built up area, notable among which are following: a. Hon'ble SC – Keystone Realtors Private Ltd vs Anil Tharthare and others (2020) 2 SCC 66 -on incremental expansion. B. Hon'ble NGT PB ND – O.A.No. 66/2019 (wz) dated 13.5.2022 Kumar City Residents Cooperative Housing Society Ltd vs Kumar Urban Development Private Ltd and others. C. Hon'ble PB NGT in O.A.No. 245/2021 dated 28<sup>th</sup> Sep 2022 Vineet Sinha vs UOI and ors.
8. The Appellant submits that the Respondent 4 herein has been indulging in misrepresentation / deception / fraud. Eg: Respondent 4 herein has maintained that the project has been handed over to the Association. This is utterly false Moreover, his allegations, contentions and statements are totally false.
9. It may be pertinent to point out that Jain Pebble Brook Flat Owners Association's Writ Petitioner. 24147 of 2018 filed with Hon'ble Madras HC is pending. Its Respondents are i. Chennai Metropolitan Development Authority ii. Jain Housing This WP has challenged grant of revised planning permit issued in Dec 2013 and also LACK OF ENVIRONMENTAL CLEARANCE FOR 208 FLATS in phase 1. It was filed much later than filing of O.A. No. 5/2018 (sz). The Respondent 4 herein has not implead<sup>ed</sup> the Appellant herein in this WP.

A. K. Subramanian

10. The total built up area in Phase 2 is about 4,33,528 sq ft according to my information.

11. IT IS PRAYED THAT THE CONTENTIONS OF THE APPELLANT *QUE* OVER/EXTRA CONSTRUCTION, *QUE* TAKING ENVIRONMENT CLEARANCES IN TWO DIFFERENT NAMES AND *QUE* TAKING ENVIRONMENT CLEARANCE IN TWO DIFFERENT INDEPENDENT PROJECTS BE TAKEN ON RECORD.

Chennai  
5th Nov 2022

A. Muthusubramanian

APPELLANT IN PERSON

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ANOMALIES IN BUILT UP AREA *vis a vis* UNDIVIDED SHARE OF LAND IN JAINS PEBBLE  
BROOK

	AS PER EC/SEIAA 2009	AS PER CMDA MAR 2011	AS PER CMDA DEC 2013	AS PER EC/SEIAA 01-04- 2015	REMARKS
Number of flats covered	412 flats in 12 blocks	620 flats in 13 blocks	1016 flats in 22 blocks	396 flats in 8+1 blocks	NO EC FOR 208 FLATS.
Plot area as per site as per patta	34,363 sq.m.	34,363.81 sq.m	57,913.81 sq.m	23,550 sq.m.	
Plot area as per document		33,683.94 sq.m.	57,236.45 sq.m.	23,552.51 sq.m.*	*Extrapolated
Total open space reservation provided		3,373.37 sq.m.	5,666.78 sq.m.	2,293.41 sq.m.*	*Extrapolated
UDS to be allotted to flat purchasers		30,310.57 sq.m.(as per construction agreement with about 492 flat buyers	51,569.67 sq.m.	21,259.10 sq.m.*	*Extrapolated
UDS as per contract agreement Schedule A		About 30,322.03 sq.m.	About 57,349.00 sq.m.		Statutory obligation would override contractual clauses in agreement.
Allowable FSI area @ 1.5 (to be constructed area)		50 525.91 sq.m. (as per planning approval)	85 850.91 sq.m.(as per planning approval) However, FSI allowable ought to have been 77,354.50 sq.m	35,325 sq.m.*	*Extrapolated

A. Kuttubillaman

BUILT UP AREA	<u>51020.61</u> sq.m.			<u>48,115.17</u> sq.m.	Total of both ECs' built up area: 99,135.78 sq.m. (AS AGAINST disputed TOTAL BUILT UP AREA ALLOWED BY CMDA OF 85,850.91 SQ.M
Built up area as per affidavit dated 20.8.2019 of JH before NGT SZ for 396 flats					<u>42,411.15 sq.m</u>
Actual area utilized for 396 flats in phase 2 as per AA order dt 29.9.21					<u>36,623.19 sq.m</u>

NB:

UDS as per construction agreement with about 492 home buyers : 3,26,265.06 sq.feet.

UDS as per construction agreement with phase 2 home buyers (about 524) including 128 flat buyers in phase 1: 2,69,628.43 sq.ft .

There is no demarcation between phase 1 and phase 2 of boundaries, however, Respondent is maintaining that phase 1 phase 2 are independent, by AFFIDAVIT though CMDA had cancelled March 2011 planning approval. It is humbly and respectfully submitted that contractual requirement has to be in consonance with statutory requirement.

*A. K. Kulkarni*

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Area calculation in CMDA approval of Dec 2013 and Environment Clearances already issued (except 208 flats) are questionable and contestable since facts have been masked and material irregularity has been perpetrated.

It is also prayed that this Hon'ble forum to stay further sale of undivided share of land in the project in as much as built up space is linked to undivided share of land, until competent forum adjudicate this issue and gives its order.

A. Kuttubishman

8. THAT the Vendor(s) and the Purchaser(s) herein declare that the principal is/are alive and the power is still in force.

SCHEDULE A

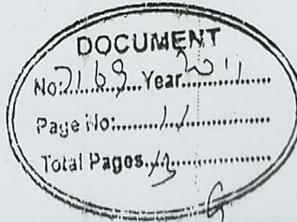
All that piece and parcel of vacant land situated at Jains Pebble Brook Thoraipakkam Village, Sholinganallur Taluk, (formerly Tambaram Taluk), Kancheepuram District, comprised in S.Nos. 384/10A, 10B, 10C, 12, 18, 397/1B, 398/1, 2, 3, 400/2C, 418/1A, 1B, 2A, 2B1, 2B2, 384/6B, 10D, 10E, 10F, 10H, 10I, 11, 397/1A, 399/1A, 1B, 2B, 2A, 3, 400/1, 2A, 2B, 384/10G, 13B, 396/4B, 5C and 396/5D measuring an extent 326265.06 Sq.ft (135.94 Grounds) or thereabouts, bounded on the:

North by : S.No.402 & S.No.420,  
South by : S.No.397/2B,  
East by : Vacant Land,  
West by : S.Nos.386, 396 & 33' Road.

Situated in Registration District of Chennai South and Sub Registration District of Neelangarai.

*[Handwritten signature]*

A. Kuttubuddin



A. Kuttubuddin

2 WHEELER PARKING		
BLOCK 1	( 96X1 )	96 NOS.
BLOCKS 2,3,4 & 8	( 56X4 )	224 NOS.
BLOCK 12	( 6X1 )	6 NOS.
TOTAL NO. OF COVERED 2 WHEELER PARKING =		326 NOS.

*Mar 2011 9*  
*Phase 1*

### AREA STATEMENT

PLOT AREA AS PER PATTA	✓ 34363.81 sq.m
PLOT AREA AS PER SITE	34363.81 sq.m
PLOT AREA AS PER DOCUMENT	33683.94 sq.m ✓
O/S R AREA REQUIRED	33683.94 sq.m
O/S R AREA PROVIDED	3373.37 sq.m
FSI AREA ALLOWABLE ( 1.5 )	50525.91 sq.m
FSI AREA ACHIEVED ( 1.44 ) ✓	48614.44 sq.m
ACHIEVED NFSI AREA	423.92 sq.m
ALLOWABLE NFSI AREA	4861.44 sq.m
ALLOWABLE PLOT COVERAGE	65.00%
ACHIEVED PLOT COVERAGE	36.03%

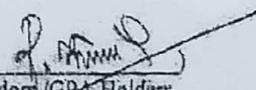
*A. Murukrishnan*

SCHEDULE A

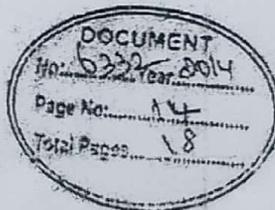
All that piece and parcel land Jains Pebble Brook situated at Okkiam Thoraipakkam Village, Sholinganallur Taluk, (formerly Tambaram Taluk), Kancheepuram District, comprised in S.Nos. 384/6B, 384/10A, 384/10B, 384/10C, 384/10D, 384/10E, 384/10F, 384/10G, 384/10H, 384/10I, 384/11, 384/12, 384/13B, 384/18, 396/4B, 396/5C, 396/5D, 397/1A, 397/1B, 398/1, 398/2, 398/3, 399/1A, 399/1B, 399/2B, 399/2A, 399/3, 400/1, 400/2A, 400/2B, 400/2C, 418/1A, 418/1B, 418/2A, 418/2B1, 418/2B2, 393/2C, 395/3B1 & 3B2, 394/2A, 394/1E, 394/1C, 394/2D2, 394/3B1, 394/2D1, 394/3B2, 394/3A, 393/3, 393/4, 394/2E3, 394/2E2, 394/2E1, 394/1B, 394/1D, 394/2C, 395/4, 395/5A, 395/5B, 395/6, 396/7, 395/10A, 394/2B1, 394/1F1, 394/1A, 395/9, 395/10B, 395/8, 395/11, 395/1A2, 395/2A, 386/8, 396/6A, & 6B, 396/7, 397/2, 394/2B2 measuring an extent of 269628.439 Sq.ft (112.35 Grounds) out of 617075.31 sq.ft or thereabouts (after deducting 347446.871 sq.ft towards OSR and extent conveyed to various persons) and bounded on the :

- North by : S.No.402 & S.No.420.
- South by : Okkiam Maduvu
- East by : Vacant Land,
- West by : S.Nos.386, 396 & 33' Road.

Situated In Registration District of Chennai South and Sub Registration District of Neelangurai.

  
Vendors/CDA Holders

  
Purchaser



15 Page Correction

BLOCK  
 TOTAL NO. OF COVERED & WHEELER PARKING = 407 NOS.

(Revised 282)  
 202013  
 Combined

AREA STATEMENT

PLOT AREA AS PER PLAN 57913.81 sq.m  
 PLOT AREA AS PER SUPERIMPOSED 57235.94 sq.m  
 PLOT AREA AS PER DOCUMENT 57236.45 sq.m  
 PROPOSED ROAD 1 AREA 123.98 sq.m  
 PROPOSED ACCESS TO OSR AREA 576.71 sq.m  
 TOTAL PROPOSED ROAD AREA 700.69 sq.m

OSR AREA 1 (ALREADY APPROVED) 3373.37 sq.m  
 PROPOSED ROAD 1 AREA 123.98 sq.m  
 OSR AREA AFTER PROPOSED ROAD 1 AREA DEDUCTION 3249.39 sq.m

ADDITIONAL AREA FOR OSP 1 132.63 sq.m  
 OSR AREA 2 (PROPOSED) 2804.71 sq.m  
 TOTAL OSR AREA PROVIDED 5686.78 sq.m

FSI AREA ALLOWABLE (0.5) 65850.91 sq.m  
 FSI AREA ACHIEVED (BLOCK 1 TO 13) 42614.44 sq.m  
 FSI AREA ACHIEVED (BLOCK 14 TO 22) 66823.19 sq.m

EXCESS NON FSI CREATED  
 TOTAL FSI AREA ACHIEVED 109437.63 sq.m

2284.76

36881.48

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F. No. IA3-22/10/2022-IA.III  
Government of India  
Ministry of Environment, Forest and Climate Change  
(Impact Assessment Division)

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Indira Paryavaran Bhawan  
Aliganj, Jorbagh Road  
New Delhi-110 003  
Dated 5<sup>th</sup> May, 2022

**OFFICE MEMORANDUM**

**Sub.: Clarification with regard to non-requirement of EC amendment due to change in conceptual plan arising out of statutory requirements in building and construction sector- regarding.**

The EIA Notification 2006 as amended from time to time states that the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after prior environmental clearance.

2. Building or Construction projects or Area Development projects and Townships are covered under the schedule 8 of the above Notification and require prior Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA) for projects with built up area of 20,000 sq. mts., and above.

3. The projects under Schedule 8 of the Notification are appraised for the grant of EC, based on the building plan, which may undergo further changes necessitated because of local site conditions before the final building/construction/ township/ area development project is undertaken by the project proponent.

4. The Ministry is in receipt of representations from various stakeholders requesting that amendment of prior EC for building construction/area development projects may not be insisted upon for minor changes in building projects at the time of execution/implementation of the project so long as they do not adversely impact the environment and are within the scope of already approved Environmental Management Plan.

5. Accordingly, matter has been examined and it has been decided that any change in configuration/planning/design of the appraised building Project for which EC was granted shall not require amendment of EC, subject to no change in (i) Built Up Area (ii) Floor Area Ratio (FAR) (iii) change in exterior spaces/green belts, parking, walkways and driveways that are covered including attics and outdoor sports courts. Further there shall be no change in the designated use of the building, number of

13/13

dwelling units, height of the building, number of floors & basements and total excavation of earth of the building/construction/ township/ area development project so as not to require any changes in the already approved Environmental Impact Analysis (EIA) and Environmental Management Plan (EMP).

6. The above dispensation shall be applicable subject to the Project Proponent filing an application in prescribed format on PARIVESH portal and obtaining a self-generated acknowledgement to this effect from the portal.

7. Any addition, alteration, modification in the conceptual plan, as stated at para-6 of the EIA Notification 2006, for which prior EC was granted other than the changes falling under the category of permissible changes as explained in para 5 above which results in the increase in pollution of any type beyond the approved levels necessitating fresh EIA/EMP shall be treated as Violation and shall be dealt with accordingly as per the provisions of the Office Memorandum dated 7<sup>th</sup> July 2021.

8. This issues with the approval of the Competent Authority.

*Ashish*  
05.05.2022  
(Dr. Ashish Kumar)  
Additional Director

To

1. Chairman/Member Secretary, Central Pollution Control Board
2. Chairman/ Member Secretaries of all Expert Appraisal Committees
3. Chairperson/Member Secretaries of all SEIAAs/SEACs
4. Chairmen/Member Secretaries, all PCBs and PCCs
5. All Officers of IA Division, MoEF&CC

Copy to

1. PS to Hon'ble MEFCC
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to AS (TK)/AS(NPG)
5. PPS to JS (SKB)
6. Website, MoEF&CC
7. Guard file