

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE CHENNAI  
APPEAL NO. 17 OF 2022 (SZ)  
(arising out of O.A. No. 5 of 2018)

In the matter of

ARJUNAN MUTHUKRISHNAN  
CHENNAI

APPELLANT IN PERSON

Vs

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

RESPONDENTS

REJOINDER (OF APPELLANT) TO ORAL SUBMISSION OF LEARNED COUNSEL  
OF RESPONDENT 4 ON 20.01.2023

Respected Lordships

1. On 20.1.23 during his oral submission, Learned Counsel of Respondent 4 Builder M/s Jain Housing, Shri Kamalesh Kannan Subramanian (Ms. 1754/2010) was stating before the Hon'ble Tribunal that a case was pending in the Hon'ble Madras HC on the subject matter of the above appeal and therefore wanted time. He did not mention which case number on the file of which bench. Even during stage of O.A. proceedings a criminal proceeding was on. Thus, being a member of the bar, he has not assisted the Hon'ble Bench and instead misled it.

*A. Muthukrishnan*

2. Even after 9.5 months of serving notice and also copy of appeal memo, Respondent 4 has failed to present his specific, clear and categorical objection to Appeal in writing or by Affidavit.
  
3. There are many case laws to the effect that AMBIT OF JUDICIAL PROCEEDINGS AND OF CRIMINAL PROCEEDINGS ARE DIFFERENT AND THAT SIMULTANEOUS CRIMINAL AND CIVIL PROCEEDINGS CAN BE TAKEN. In Vishnu Dutt Sharma vs. Daya Sapra in Civil Apoeal no. 3238 of 2009 (arising out of SLP ( C ) No. 10997, <sup>2008</sup> the Hon'ble Apex Court held that FINDING OF A CRIMINAL PROCEEDING IS NOT BINDING ON PROCEEDINGS IN CIVIL COURT.
  
4. Respondent 4 Advocate has further submitted that since there was no provision for Appeal from APPELLATE AUTHORITY TNPCB under Air Act, levy of compensation is not sustainable. This very same Hon'ble Bench in Appeal no. 24 of 2020 ( SZ) has held on 30.05.2022 in para 31  
 QUOTE  
*...Therefore when the impugned orders are composite in nature and incapable of being split the appeals are not maintainable before the Appellate Authority....xxxxxxx Therefore we set aside the order dated 25.02.2022 in Appeal no. 80 of 2019 and restore the order dated 06.12.2019 of the Tamil Nadu Pollution Control Board.*  
 UNQUOTE  
 Deducing from the same ratio, it is submitted that the order of Respondent 1 dated 29.09.2021 ought to be set aside and order passed in Proceedings no.T2/TNPCB/Law/ LAIII/NGT/ 022327/MMN/W&A/2020 dated 14.12.2020 ought to be restored.
  
5. Prior to filing of this Appeal the Appellant had approached the HON'BLE Madras HC under Article 226 of the Constitution of India. Its Registry had declined to accept the Petition on the ground that more efficacious and alternative remedy is available.(proof enclosed).
  
6. At the cost of repetition, there are many grounds of Appeal relevant to Environment (Protection) Act and Water Act apart from Air Act and Noise Pollution Rules.

A. Kuthubrishnan

7. In this context it is apt to note that 'polluter pays' principle, prior to enactment of environmental laws in India, was in vogue under Common Law of England, in India too and it is on this basis that compensation was levied by various courts and *fora* and upheld by the Hon'ble SC as sustainable.

8. It is prayed, above submissions may please be taken on record.

Chennai

Dated.....<sup>25</sup> 1.2023

A. Kuthubai & Co

Appellant in Person

As per Notification no 26/2013 dated 21/1/13. "No case under the above provisions of the National Green Tribunal Act shall be entertained in the Madras High Court, when there is alternative remedy available before appropriate forum."

.....Petition S.R.No. Of 20

1. It may be stated how the Appeal/Petition is maintainable.
2. Provision of law not given  
not correctly given
3. It may be stated how the Appeal/Petition is in time.  
in filing
4. Petition to excuse the delay to be filed. in re-presentation in seeking to set aside the adatement and to set aside the adatement.
5. Cause title needs revision/amendment.
6. Correct and full Address for service of the parties not given.
7. Preamble portion of grounds needs revision  
Memorandum of Grounds
8. Blank/Mistakes in the Affidavit  
to be filed up Corrected filed up and attested.
9. Memo of valuation not given  
needs correction
10. All corrections in the memo to be in incorporated in the copies.
11. Certificate from the Court below as to the value of the subjectmatter or the suit/appeal to be filed.

12. Court fees paid is not correct  
adequate (4)
13. Memorandum of Grounds  
Petition not signed by Advocate Advocate.

14. Affidavit page, correction to be stated  
not signed  
not attested  
not properly sworn

15. Certified copy/Fair copy of decree and Judgment/ Order not filed.
16. Enclosures not filed/not properly stamped.
17. Petition to dispense with etc. of decree/printed judgments to be filled.

18. Vakalat not filed  
not duly stamped  
not executed  
not attested  
not accepted by/ Advocate/Advocates  
Particulars not properly filed in.
19. Batta to be filed with full address of Respondents not sufficiently Stamped not signed by Advocate  
with authenticated copies of Grounds

20. Other side should be served Batta with authenticated copies/ proof of service should be filled.
21. T and P Application not filled.
22. Copy of Document whose construction is in dispute (Ground No.....) to be filed with a true translation thereof (if it is in a language other than English)  
Document referred 10 in the Affidavit to be filed duly marked and certified as per Rules.

2. Dates, events not filed  
3. Synopsis not properly shown  
4. W.P. prayer needs clarification  
5. Dispense with petition & affidavit to be filed  
6. Aadhar card xerox copy enclosed in the typelset  
7. Form A & B to be filed  
8. As per notification in ROC-no. 63965/2019 Form 9, dated 12/11/21 to arrange the papers in order of dates, events & synopsis, coding sheet, court fee, W.P., W.H.P., common affidavit, impugned order, typelset (relevant documents) vakalat & Batta and continuous page numbers to be assigned from item no. 1.

YPTO

9. 2 BOOK KE TO BE FILED.  
10. 3 COPIES OF WRIT PETITION & AFFIDAVIT TO BE FILED

5/5

23. Requisition Number of identical typed papers duly authenticated/duplicate sets not filed.

HIGH COURT  
MADRAS

24. Certificate of non-withdrawal not filed.

Return

25. Certificate of funds not filed.

26. Guardian petition to be filed.

27. Memorandum of compromise not signed by parties or/and Advocate on record.

28. Petition for leave to enter into compromise on behalf of the minors with a certificate of the Advocate that the compromise is for the benefit of the minor to be filed.

29. Substantial question of law not formulated and/or filed.

WR  
S.R.No. 13931/2022

30. It may be stated whether caveat has been entered.

Time Marked items to be completed  
with 10 days/week

for compliance

Mr. Arjunan Muthu Krishnan  
party-in-person  
APPELLANT/PETITIONER  
Advocate for GROSS OBJECTOR.

11/8  
15/02/22

Date: 15/2/22

Joint  
Deputy Register (WR)  
15/2/22

Hct.(No.233) Form No. 882-106.200 Dnctbrp, Chennai.