

BEFORE THE HONBLE NATIONAL GREEN TRIBUNAL (SZ), AT CHENNAI

APPEALS NO. 17 & 18 OF 2022

1. Arjunan Muthukrishnan
S/o. Late Shri R. Arjunan,
Flat No. TE/12,
Jain Pebble Brook, Shakthi Gardens,
Cross Street No. 1, Okkiampettai,
Thuraipakkam, Chennai 600 097. ...Appellant in Appeal 17 of 2022
 2. Tamil Nadu Pollution Control Board,
Rep by its Chairman
No. 76, Mount Salai,
Guindy, Chennai- 600 032 ...1st Appellant in Appeal 18 of 2022
 3. District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalai Nagar. ...2nd Appellant in Appeal 18 of 2022
- Vs-
1. The App. Authority,
Tamil Nadu Pollution Control Board. ..1st Respondent in Appeal 17 of 2022
 2. Tamil Nadu Pollution Control Board,
Chairman ...2nd Respondent in Appeal 17 of 2022
 3. District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalai Nagar. ...3rd Respondent in Appeal 17 of 2022
 4. M/s. Jain Housing,
98/99, Habibullah Road,
T. Nagar, Chennai- 17 ..4th Respondent in Appeal 17 of 2022
....1st Respondent in Appeal 18 of 2022

TYPED SET OF DOCUMENTS FILED BY THE RESPONDENT (JAIN HOUSING)

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**CERTIFIED THAT THE ABOVE DOCUMENTS ARE TRUE COPIES OF THEIR
ORIGINALS**

DATED AT CHENNAI ON THIS THE 8TH DAY OF MARCH,2023



COUNSEL FOR THE 4TH RESPONDENT

F. No. J-11013/41/2006-IA-II (I)
 Government of India
 Ministry of Environment and Forest
 IA Division

Paryavaran Bhawan, CGO Complex
 Lodi Road, New Delhi-110 003
 Dated the December 14, 2006

CIRCULAR

Subject: EIA Notification dated 14th September, 2006 - Clarification regarding EIA Clearance for Change in Product-Mix.

Pursuant to the new Environment Impact Assessment Notification of 14th September 2006 (EIA 2006) replacing the EIA Notification of 27th January 1994 and its various amendments (EIA 1994) and in terms of the provisions of Para 12 of EIA 2006, the Ministry had earlier issued Interim Operational Guidelines on 13th October 2006. Further to these Guidelines, the following clarification is issued for Environment Clearance for the category of products involving change in Product-Mix.

- (i) In cases of change in Product -Mix, changes in the quantities or numbers of products may be allowed without prior Environmental Clearance by the concerned State Pollution Control Board provided such changes in the quantities of products are in the same category and are within the previously granted overall total limits.
 - (ii) Projects involving modernization of the existing unit with increase in the total production capacity beyond the threshold limit specified in the Schedule to the Notification, through change in process or technology or change in the product mix or debottle-necking or a combination of these, involving increase in pollution load will obtain prior Environment Clearance from the concerned regulatory authority under the EIA Notification, 2006.
2. This issues with the approval of the Competent Authority.

(Sanchita Jindal)
 Additional Director

To:

1. All State Environment Departments
2. All State Pollution Control Boards
3. All Officers of IA Division, MoEF
4. UT Administrations

Copy to: (i) PPS to Secretary (E&F), (ii) PPS to AS (CC) and (iii) PPS to JS (CC-II)

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
NOTIFICATION

New Delhi, the 9th December, 2016

S.O. 3999(E) —Whereas, by notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O.1533 (E), dated the 14th September, 2006 issued under sub-section (1) read with clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 and clause (d) of the sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the Schedule to the said notification entailing the capacity addition with change in process or technology and or product mix shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified therein,

And whereas, the said Ministry has received suggestions for ensuring Ease of Doing Responsible Business; and streamlining the permissions for buildings and construction sector which is important for providing houses and for this purpose the scheme of Housing for all by 2022 with an objective of making available affordable housing to weaker sections in urban area has ambitious target;

And whereas clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 provides that, whenever the Central Government considers that prohibition or restrictions of any industry or carrying on any processes or operation in any area should be imposed, it shall give notice of its intention to do so;

And whereas a draft notification for making amendments in the Environment Impact Assessment Notification, 2006 issued in exercise of the powers conferred under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 read with clause (d) of the sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 was published, vide number S.O.1595 (E) dated the 29th April 2016, inviting objections and suggestions from all the persons likely to be affected thereby, within a period of sixty days from the date of publication of said notification in the Gazette of India;

And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;

Now, therefore, in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments in the Environment Impact Assessment Notification, 2006 namely:-

In the said Notification,-

(1) after paragraph 13, the following paragraph shall be inserted, namely:-

"14. Integration of environmental condition in building bye-laws.-

- (1) The integrated environmental conditions with the building permission being granted by the local authorities and the construction of buildings as per the size shall adhere to the objectives and monitorable environmental conditions as given at Appendix-XIV.
- (2) The States adopting the objectives and monitorable environmental conditions referred to in sub-paragraph (1), in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the Ministry of Environment, Forest and Climate Change for individual buildings.
- (3) The States may forward the proposed changes in their bye-laws and rules to the Ministry of Environment, Forest and Climate Change, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments.
- (4) When the State Governments notifies the bye-laws and rules concurred by the Ministry of Environment, Forest and Climate Change, the Central Government may issue an order stating that no separate environmental clearance is required for buildings to be constructed in the States or local authority areas.

- (5) The local authorities like Development Authorities, Municipal Corporations, may certify the compliance of the environmental conditions prior to issuance of Completion Certificate, as applicable as per the requirements stipulated for such buildings based on the recommendation of the Environmental Cell constituted in the local authority.
- (6) The State Governments where bye-laws or rules are not framed may continue to follow the existing procedure of appraisal for individual projects and grant of Environmental Clearance for buildings and constructions as per the provisions laid down in this notification.
- (7) For the purpose of certification regarding incorporation of environmental conditions in buildings, the Ministry of Environment, Forest and Climate Change may empanel through competent agencies, the Qualified Building Environment Auditors (QBEAs) to assess and certify the building projects, as per the requirements of this notification and the procedure for accreditation of Qualified Building Auditors and their role as given at Appendix-XV.
- (8) In order to implement the integration of environmental condition in building bye-laws, the State Governments or Local Authorities may constitute the Environment Cell (herein after called as Cell), for compliance and monitoring and to ensure environmental planning within their jurisdiction.
- (9) The Cell shall monitor the implementation of the bye-laws and rules framed for integration of environmental conditions for construction of building and the Cell may also allow the third part auditing process for oversight, if any.
- (10) The Cell shall function under the administrative control of the Local Authorities.
- (11) The composition and functions of the Cell are given at Appendix-XVI.
- (12) The Local Authorities while integrating the environmental concerns in the building bye-laws, as per their size of the project, shall follow the procedure, as given below:

BUILDINGS CATEGORY '1' (5,000 to < 20,000 Square meters)

A Self declaration Form to comply with the environmental conditions (Appendix XIV) along with Form 1A and certification by the Qualified Building Environment Auditor to be submitted online by the project proponent besides application for building permission to the local authority along with the specified fee in separate accounts. Thereafter, the local authority may issue the building permission incorporating the environmental conditions in it and allow the project to start based on the self declaration and certification along with the application. After completion of the construction of the building, the project proponent may update Form 1A online based on audit done by the Qualified Building Environment Auditor and shall furnish the revised compliance undertaking to the local authority. Any non-compliance issues in buildings less than 20,000 square meters shall be dealt at the level of local body and the State through existing mechanism.

OTHER BUILDINGS CATEGORIES ($\geq$ 20,000 Square meters)

The project proponent may submit online application in Form 1 A alongwith specified fee for environmental appraisal and additional fee for building permission. The fee for environmental appraisal will be deposited in a separate account. The Environment Cell will process the application and present it in the meeting of the Committee headed by the authority competent to give building permission in that local authority. The Committee will appraise the project and stipulate the environmental conditions to be integrated in the building permission. After recommendations of the Committee, the building permission and environmental clearance will be issued in an integrated format by the local authority.

The project proponent shall submit Performance Data and Certificate of Continued Compliance of the project for the environmental conditions parameters applicable after completion of construction from Qualified Building Environment Auditors every five years to the Environment Cell with special focus on the following parameters:-

- (a) Energy Use (including all energy sources).
- (b) Energy generated on site from onsite Renewable energy sources.
- (c) Water use and waste water generated, treated and reused on site.
- (d) Waste Segregated and Treated on site.
- (e) Tree plantation and maintenance.

After completion of the project, the Cell shall randomly check the projects compliance status including the five years audit report. The State Governments may enact the suitable law for imposing penalties for non-compliances of the

environmental conditions and parameters. The Cell shall recommend financial penalty, as applicable under relevant State laws for non-compliance of conditions or parameters to the local authority. On the basis of the recommendation of the Cell, the local authority may impose the penalty under relevant State laws. The cases of false declaration or certification shall be reported to the accreditation body and to the local body for blacklisting of Qualified Building Environment Auditors and financial penalty on the owner and Qualified Building Environment Auditors.

No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters."

- (11) In the Schedule, for item 8 and the entries relating thereto, the following item and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
8	Building / Construction projects / Area Development projects and Townships			
8 (a)	Building and Construction projects		≥ 20,000 sq. mtrs and < 1,50,000 sq. mtrs of built up area	The term "built up area" for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the buildings and construction projects. Note 1 The projects or activities shall not include industrial shed, universities, college, hostel for educational institutions, but such buildings shall ensure sustainable environmental management, solid and liquid and implement environmental conditions given at Appendix-XIV. Note 2.-General Condition shall not apply Note 3 -The exemptions granted at Note 1 will be available only for industrial shed after integration of environmental norms with building permissions at the level of local authority.
8 (b)	Townships and Area Development projects	≥ 3,00,000 sq. mtrs of built up area or Covering an area ≥ 150 ha	≥ 1,50,000 sq. mtrs and < 3,00,000 sq. mtrs built up area or covering an area ≥ 50 ha and < 150 ha	Note.- General Condition shall not apply".

[F. No. 19-2/2013-IA-III (Pt.)]

MANOJ KUMAR SINGH, Jt. Secy.

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(ii) vide number S.O. 1533(E), dated the 14th September, 2006 and subsequently amended vide numbers S.O. 1737(E) dated the 11th October, 2007, S.O. 3067(E), dated the 1st December, 2009, S.O. 695(E), dated the 4th April, 2011, S.O. 2896(E) dated the 13th December, 2012, S.O. 674(E), dated the 13th March, 2013, S.O. 2559(E), dated the 22nd August, 2013, S.O. 2731(E), dated the 9th September, 2013, S.O. 562(E), dated the 26th February, 2014, S.O. 637(E), dated the 28th February, 2014, S.O. 1599(E), dated the 25th June, 2014, S.O. 2601 (E), dated 7th October, 2014, S.O. 2600(E) dated 9th October, 2014, S.O. 3252(E) dated 22nd December, 2014, S.O. 382 (E), dated 3rd February, 2015, and S.O. 811(E), dated 23rd March, 2015, S.O. 496 (E) dated 10th April, 2015, S.O. 1142 (E) dated 17th April, 2015, S.O. 1141 (E) dated 29th April, 2015, S.O. 1834(E) dated 6th July, 2015 and S.O. 2572(E) dated 14th September, 2015, S.O. 141(E) dated 15th January, 2016, S.O. 648(E) dated 3rd March, 2016 and S.O. 2269(E) dated 1st July, 2016

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केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जल संधि विभाग
MINISTRY OF ENVIRONMENT & CLIMATE CHANGE, GOVT. OF INDIA

No. C- 29012/ESS/CPA/2016-17/2570

February 2, 2017

To,

The Member Secretary,
All the State Pollution Control Boards / Pollution Control Committees
(As per List Attached)

Sub: Grant of Consents under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, and charging Consent fees thereon.

Sir / Madam

This has reference to the subject matter relating to streamlining the modalities of consent mechanism which has been discussed with SPCBs / PCCs in earlier meetings and conferences.

The matter was also deliberated at the 175th Meeting of the Board of CPCB held on 21st December, 2016 and it has been decided that the following modified mechanism for granting of consent to various categories of Industries / projects may henceforth be followed :

- i. For White category of industries, there is no need to obtain Consents, Information to concerned SPCB is sufficient.
- ii. Combined Consent for Establishment & Operation can be issued to Green category of industries irrespective of their sizes i.e. large/ medium/ small. In such cases, the industry shall submit an undertaking regarding expected date of start-up of production and intimate the SPCB/ PCC atleast 15 days in advance before start-up of commercial production.
- iii. There should not be any need to obtain Consent to establish for Building / Construction Projects / Area Development Projects and Township Projects, which are mentioned at serial no. 8(a) and 8(b) of Schedule of Projects in EIA Notification, 2006. For such projects, Environment Clearance shall suffice subject to the condition that there should be a permanent member from SPCB in the State Level EIA Authority to represent the views of SPCB.

Contd...2/-

परिवेश मि@एनएन नगर, दिल्ली-110032
Parivesh Bhawan, East Arjun Nagar, Delhi-110032

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Annexure I

Dr.R.ANNAMALAI,I.F.S.,
DIRECTOR OF ENVIRONMENT AND
MEMBER SECRETARY



STATE LEVEL ENVIRONMENT
IMPACT ASSESSMENT AUTHORITY,
TAMILNADU,
Tamilnadu Pollution Control Board Premises
76, Mount Salai, Guindy,
Chennai- 600 032.

No.SEIAA/TN/EC/8(a)/042/F-15/2009 Date: 27/04/2009

To

The Director,
M/s.Jain Housing and Constructions Limited,
No.11, Somasundaram Street,
T.Nagar,
Chennai-600 017.

Sub: SEIAA - M/s. Jain Housing and Constructions Ltd - Construction of
Multistoried Residential Complex at S.No.384/6B,10,11,12,13,18,
396/4B, 5C, 5D, 397/1,etc. No.48, Okkiam Thoralpakkam, Village,
Tambaram Taluk, Kancheepuram District - Environmental Clearance -
Reg.

Sir,

This has reference to your application No. Nil, dated 23.10.2007 submitted to MoEF, seeking Environmental Clearance under the Environment Impact Assessment Notification, 2006. Later, the SEIAA, Tamil Nadu had received this application from the Ministry of Environment & Forests, Government of India, after formation of the State Level Environment Impact Assessment Authority (SEIAA), and the State Level Expert Appraisal Committee (SEAC), for Tamil Nadu. The proposal has been appraised by the State Level Expert Appraisal Committee (SEAC) in its meeting held on 8th - 10th, May 2008, 19th & 20th December 2008 and 19th & 20th March 2009 as per the prescribed procedure in the light of provisions under the EIA Notification, 2006 on the basis of the mandatory documents enclosed with the application Viz., the Application Form- I, Form-IA, Conceptual plan, and the additional clarifications furnished by the proponent.

It is noted, interalia that the project proposal involves the construction of multistoried residential complex as per Annexure II of Form IA. The area of the plot is 34363 Sq.m and the total built-up area as reported is 51020.61 Sq.m comprising of still + 4 floors of 12 blocks. Water requirement of the project is 278

KLD and daily fresh water requirement is 185 KLD, which will be met from the supply of CMWSSB as per Lr No. CMWSSB/ENGG/CCRCP/ITC/spl/2008 Dated 10.11.2008. It is proposed to provide Sewage Treatment Plant 250 KLD capacity for the treatment of sewage. The treated sewage of 249 KLD will be used for toilet flushing (93 KLD), gardening & landscaping (12 KLD) and the excess will be discharged into CMWSSB sewer line. Solid waste generation has been projected as 1236 Kg/day. The power required is 0.8 MW with backup power of 250 KVA DG Set. The total cost of the project is about Rs.21.46 Crores.

The project activity is covered in 8(a) of the Schedule and is of 'B2' category. It does not require Public Consultation as per Para 7 (i) III. Stage (3) (b) "Public Consultation" of EIA Notification, 2006.

The SEAC after due considerations of the relevant documents submitted by the Project Proponent and additional clarifications furnished in response to its observations have recommended to the SEIAA, Tamil Nadu to grant Environmental Clearance to this project. The proposal was considered by SEIAA, Tamil Nadu in its meeting held on 16.04.2009 and as the public consultation is not required for the project, the SEIAA hereby accords Environmental Clearance to the above project under the provisions of EIA Notification dated 14th September, 2006 based on the recommendations of the SEAC subject to the strict compliance of the following terms and conditions.

PART A- SPECIFIC CONDITIONS

Construction Phase

- i) "Consent for Establishment" shall be obtained from the Tamil Nadu Pollution Control Board and a copy shall be submitted to the SEIAA, Tamil Nadu before taking up of any construction activity at the site.
- ii) All required sanitary and hygienic measures should be in place before starting construction activities and they have to be maintained throughout the construction phase.
- iii) A First Aid Room shall be provided in the project site during the construction of the project.



- iv) Adequate drinking water and sanitary facilities should be provided for construction workers at the site. The safe disposal of waste water and solid wastes generated during the construction phase should be ensured.
- v) All the labourers to be engaged for construction should be screened for health and adequately treated before and during their employment on the work at the site.
- vi) For disinfection of waste-water, system using ultra violet radiation shall be adopted.
- vii) For Solid-waste management, composting arrangements shall be provided for biodegradable waste at site.
- viii) All the topsoil excavated during construction activities should be stored for use in horticulture/ landscape development within the project site.
- ix) Disposal of muck during construction phase should not create any adverse effect on the neighboring communities and be disposed of only in approved sites with the approval of competent authority with necessary precautions for general safety and health aspects of people.
- x) Soil and ground water samples shall be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.
- xi) Construction spoils, including bituminous materials and other hazardous materials, must not be allowed to contaminate watercourses. The dump sites for such materials must be secured so that they should not leach into the ground water.
- xii) Low sulphur diesel shall be used for the diesel generator sets to be used during construction phase. The air and noise emission shall conform to the standards prescribed in the Rules under the Environment (Protection) Act, 1986.
- xiii) Vehicles hired for bringing construction materials to the site should be in good condition and should conform to air and noise emission standards, prescribed by TNPCB/CPCB. The vehicles should be operated only during non-peak hours.

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- xiv) Ambient air and noise level should conform to residential standards prescribed by the TNPCB both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase.
 - xv) Fly ash should be used as building material in the construction as per the provision of Fly ash Notification of September, 1999 as amended in August, 2003.
 - xvi) Ready mixed concrete must be used in building construction.
 - xvii) Storm water control and its re-use shall be as per CGWB and BIS standards for various applications.
 - xviii) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices prevalent.
 - xix) For extraction of water the applicant should obtain necessary permit/permission from the competent Authority notified under the Chennai Metropolitan Water Supply & Sewerage Board, in respect of Chennai city and the villages notified to come under its jurisdiction under the Chennai Metropolitan Area Ground Water (Regulation) Act, 1987/Central Ground Water Authority in respect of other areas of the State for the extraction of ground water for accessing supply to the project and for transportation of water to the project for domestic/other uses during the construction and occupation stages.
 - xx) Separation of grey and black water should be done by the use of dual plumbing line for separation of grey and black water.
 - xxi) The entire grey water i.e 100% shall be treated by decentralized treatment.
 - xxii) Fixtures for showers, toilet flushing and drinking water should be of low flow type by adopting the use of aerators / pressure reducing devices / sensor based control.
 - xxiii) Use of glass may be reduced up to 40% to reduce the electricity consumption and load on air conditioning. If necessary, high quality double glass with special reflecting coating in windows shall be used.

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- xxiv) Roof should meet prescriptive requirement as per Energy Conservation Building Code by using appropriate thermal insulation material to fulfill requirement.
- xxv) Adequate measures to reduce air and noise pollution during construction shall be adopted, conforming with norms prescribed by the TNPCB on noise limits.
- xxvi) Opaque wall should meet prescriptive requirement as per Energy Conservation Building Code which is mandatory for all air conditioned spaces by use of appropriate thermal insulation material to fulfill requirement.
- xxvii) The Project proponent is requested to indicate the probable date of commissioning of the project supported with necessary bar charts.
- xxviii) The construction of the project and commissioning of the project could be so phased as to coincide with the readiness of the CMWSSB scheme to provide water supply and sewerage connections.

Operation Phase

- i) The installation of the sewage treatment plant (STP) shall be certified by an independent expert and a report in this regard shall be sent to the SEIAA before the project is commissioned for operation. Discharge of treated sewage shall conform to the norms & standards prescribed by the Tamil Nadu Pollution Control Board.
- ii) For disinfection of waste-water, system using ultra violet radiation shall be adopted.
- iii) The unit shall furnish separate plan of action for disposal of treated sewage during monsoon.
- iv) Rain water harvesting for roof run-off and surface run-off, as per plan submitted should be implemented. Before recharging the surface run off, pre-treatment with screens, settlers etc. must be done to remove suspended matter, oil and grease.
- v) Permission to draw water for operation should be obtained from the competent authority prior to operation of the project.

- vi) A First Aid Room shall be provided during operation of the project.
- vii) The domestic solid waste generated shall be properly collected, segregated & composted within the premises with respect to organic waste.
- viii) The STP sludge shall be composted along with other biodegradable solid waste and used as manure.
- ix) The Plastic wastes shall be segregated and disposed through recyclers.
- x) Any hazardous waste including biomedical waste shall be disposed off as per applicable rules & norms with necessary approval of the Tamil Nadu Pollution Control Board.
- xi) The acoustic enclosures shall be installed at all noise generating equipments such as DG sets, air conditioning systems, etc. and the noise level shall be maintained as per MoEF/CPCB /TNPCB guidelines/norms both during day and night time.
- xii) The green belt design along the periphery of the plot shall achieve attenuation factor conforming to the day and night noise standards prescribed for residential land use. The open spaces inside the plot shall be suitably landscaped and covered with vegetation of suitable variety.
- xiii) Incremental pollution loads on the ambient air quality, noise and water quality shall be periodically monitored after commissioning of the project.
- xiv) Application of solar energy should be incorporated for illumination of common areas, lighting for gardens and street lighting in addition to provision for solar water heating. A hybrid system or fully solar system for a portion of the apartments shall be provided.
- xv) Traffic congestion near the entry and exit points from the roads adjoining the proposed projects site shall be avoided. Parking shall be fully internalized and no public space should be utilized.
- xvi) A report on the energy conservation measures conforming to energy conservation norms prescribed by the Bureau of Energy Efficiency shall be prepared incorporating details about building materials & technology, R & U factors etc and submitted to the SEIAA in three month's time.

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(9)

PART-B. GENERAL CONDITIONS

- 1) It is mandatory for the Project proponent to furnish to the SEIAA, Half yearly compliance report in Hard and Soft copies on 1st June and 1st December of each calendar year in respect of the conditions stipulated in the prior Environmental Clearance.
- 2) In the case of any change(s) in the scope of the project, a fresh appraisal by the SEIAA shall be obtained.
- 3) The SEIAA reserves the right to add additional safeguard measures subsequently, if found necessary and to take action including revoking of the Environmental Clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.
- 4) All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire and Rescue Services Department, Civil Aviation Department, Forest Conservation Act, 1980 and Wild Life (Protection) Act, 1972, State / Central Ground Water Authority, Coastal Regulatory Zone Authority, other statutory and other authorities as applicable to the project shall be obtained by project proponent from the competent authorities.
- 5) The project proponent shall advertise in at least two local newspapers widely circulated in the region, one of which shall be in the vernacular language informing the public that
 - i) The project has been accorded Environmental Clearance.
 - ii) Copies of clearance letters are available with the Tamil Nadu Pollution Control Board.
 - iii) Environmental Clearance may also be seen on the website of the SEIAA.

The advertisement should be made within 7 days from the date of issue of the clearance letter and a copy of the same shall be forwarded to the SEIAA.

- 6) All the stipulations stated under Part A and Part B above would be enforced in addition to the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006.

- 7) Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it was found that Construction of the project has been started without obtaining Environmental Clearance, and for action for any violation of any condition stipulated in Part - A & Part - B of the Environmental Clearance.
- 8) This Environmental Clearance is subject to final orders of the Hon'ble Supreme Court of India in the matter of Goa foundation Vs. Union of India in Writ Petition (civil) No.460 of 2004 as may be applicable to this project.
- 9) This Environmental Clearance is valid for five years from the date of issue.

Sd/xxxxxxxxxxxxxx

**Member Secretary,
State Level Environment Impact
Assessment Authority,
Tamil Nadu.**

Copy to:-

1. The Secretary to Government, Environment & Forests Dept,
Govt. of Tamil Nadu, Fort St. George, Chennai-9.
2. The Chairman, Central Pollution Control Board, Parivesh Bhavan,
CBD Cum-Office Complex, East Arjun Nagar, New Delhi 110032.
3. The Member Secretary, Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy, Chennai-600 032.
4. The CCF, Regional Office, Ministry of Environment & Forest (SZ),
Kendriya Sadan, IV floor, E&F wings, 17th Main Road,
Koramangala II Block, Bangalore - 560034.
5. Monitoring Cell, I A Division, Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex, New Delhi 110003.
6. The Commissioner, St. Thomas Mount Panchayat Union.
7. Stock File.

//True Copy//

DR. H.MALLESHAPPA, I.F.S.,
MEMBER SECRETARY



STATE LEVEL ENVIRONMENT
IMPACT ASSESSMENT
AUTHORITY,
TAMILNADU,
3rd Floor, Panagal Manligui,
No.1 Jeonis Road, Saidapet,
Chennai-15.

Letter No. SEIAA-TN/F - 1696/A/EC(8n)/401/2015 Dt: 01.04.2015

To
Mr. Chenaram Seni
"HIGH GATE"
No.82, 9th Floor,
Dr. D.G.S Dinakaran Salai,
M.R.C Nagar, Chennai - 600 028

Sir / Madam,

Sub: SEIAA, Tamil Nadu - Environmental Clearance - Mr. Chenaram Seni, - Proposed construction of a Residential Development, at S. Nos. 386/8 (386/1D2), 393/2C (393/2), 3, 4, 394/1A, 1B, 1C, 1D, 1E, 1F1, 2A, 2B1, 2B2, 2C, 2D1, 2D2, 2E1, 2E2, 2E3, 3A, 3B1, 3B2, 395/1A2 (395/1A), 2A, 395/3B (3B1, 3B2), 4, 5A, 5B, 6, 7, 8, 9, 10A, 10B (395/10), 11, 396/6 (6A, 6B), 7 & 397/2 (397pt) of Okkiyam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District, Tamil Nadu under Category "B2" and Schedule S.No. 8(a) - Issued - Reg.

This has reference to your application dated 18.03.2015 submitted to the State Level Environment Impact Assessment Authority, Tamil Nadu seeking Environmental Clearance under the Environment Impact Assessment Notification, 2006, as amended.

It is noted, interalia that the project proposal involves to construct a Residential development, at S. Nos. 386/8 (386/1D2), 393/2C (393/2), 3, 4, 394/1A, 1B, 1C, 1D, 1E, 1F1, 2A, 2B1, 2B2, 2C, 2D1, 2D2, 2E1, 2E2, 2E3, 3A, 3B1, 3B2, 395/1A2 (395/1A), 2A, 395/3B (3B1, 3B2), 4, 5A, 5B, 6, 7, 8, 9, 10A, 10B (395/10), 11, 396/6 (6A, 6B), 7 & 397/2 (397pt) of Okkiyam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District, Tamil Nadu. Comprising of Residential Blocks - 8 Nos. of Stilt + 4 Floors. Total No. of Dwellings - 396 Units and Expected occupancies - 2178. The area of the plot is 23550.00 m² and the built up area is 48115.17 m². The parking area as per report is 11649.44 m² as covered + surface parking. The green belt area is 3596.22 m².

Daily fresh water requirement for the project will be 181 KLD, which will be met from CMWSSB Provisions. The sewage generated after treatment will be 225 KLD out of which 92 KLD will be recycled for Flushing, 13 KLD will be utilized for Greenbelt & 120 KLD will be disposed through CMWSSB Sewer Lines.

MEMBER SECRETARY
SEIAA-TN

State Level Environmental Impact Assessment Authority, TN | 2015

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Solid Waste generation has been projected as 1.31 MT/day out of which 0.79 MT/day of Biodegradable waste will be disposed through Authorized Waste Handlers, the 0.52 MT/day of Non-Biodegradable / recyclable waste will be handed over to the Authorized Recyclers and 26 Kg/day of Organic sludge generation from STP will be used as manure for gardening.

The power required will be of 5750 KVA with backup power for 5 Nos. of 500 KVA with stack height of 18 m from ground level. The total cost of the project is about Rs. 52 crores.

The proponent also furnished a commitment letter stating that,

I commit to the SEIAA that the fresh water requirement of 181 KLD [Domestic purpose @ 181 KLD] for the proposed development will be met from CMWSSB. The required permission from the competent Authority for supply of fresh water for entire operation period will be obtained before handing over of the flats or before obtaining completion certificate from the competent authority, whichever is earlier.

The total quantity of treated wastewater generated from the above Development will be 225 KLD, out of which 13 KLD will be utilized for greenbelt development (The treated water used for greenbelt development inside the project premises will not pollute the soil/ground water/adjacent canals/lakes/ponds etc), 92 KLD for flushing and 120 KLD of excess treated wastewater will be disposed through CMWSSB sewer line during the entire period of operation, after obtaining necessary permission from competent Authority.

The total quantity of Solid Waste generated from the above Development will be 1.31 MT/day. The Biodegradable waste @ 0.79 MT/day will be disposed through Authorized Waste Handlers / Recyclers. Non Biodegradable waste @ 0.52 MT/day will be disposed through Authorised Recyclers & the STP generated sludge @ 26 Kg/day will be used as manure for gardening.

I am furnishing the commitment on CSR activity and related fund allocation as advised by the Authority.

Wherein as the requirement specified by the authority, I confirm an allocation of not less than INR 29.00 Lakhs as Capital Outlay inclusive of Recurring Cost [@ Rs 1.00 Lakh] towards the Infrastructure and Educational Amenities of Panchayat School in immediate vicinity

The project activity is covered in 8(a) of the Schedule and is of 'B2' category. It does not require Public Consultation as per Para 7(i) III Stage (3) (d) 'Public Consultation' of EIA Notification, 2006. Based on the application made in Form-1, Form-1A, Conceptual plan,

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- tree species with large potential for carbon capture shall be planted in the proposed green belt area based on the recommendation of the Forest department.
- xvii) The entire water requirement during construction phase shall be met from private tankers as committed.
 - xviii) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices prevalent.
 - xix) STP (Design Capacity - 250 KLD) shall be constructed with treatment units such as Screen chamber, Grit chamber, Collection tank, Aeration tank, Settling tank, Filter press, Clarified water tank, Pressure sand filter, Activated carbon filter & UV treatment for the treatment of sewage generation from the project as proposed.
 - xx) All the labourers to be engaged for construction should be screened for health and adequately treated before and during their employment on the work at the project site.
 - xxi) Provision shall be made for the housing labour within the site with all necessary infrastructures and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.
 - xxii) A First Aid Room shall be provided in the project site during the entire construction phase of the project.
 - xxiii) Adequate drinking water and sanitary facilities should be provided for construction workers at the site. The safe disposal of waste water and solid wastes generated during the construction phase should be ensured.
 - xxiv) Personnel working in dusty areas should wear protective respiratory devices and they should also be provided with adequate training and information on safety and health aspects. Occupational health surveillance program of the workers should be undertaken periodically to observe any contractions due to exposure to dust and take corrective measures, if needed.
 - xxv) Periodical medical examination of the workers engaged in the project shall be carried out and records maintained. For the purpose, schedule of health examination of the workers should be drawn and followed accordingly. The

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workers shall be provided with personnel protective measures such as masks, gloves, boots etc.

- xxvi) The solid waste in the form of excavated earth excluding the top soil generated from the project activity shall be scientifically utilized for construction of approach roads and peripheral roads, as reported.
- xxvii) All the top soil excavated during construction activities should be stored for use in horticulture/ landscape development within the project site.
- xxviii) Disposal of other construction debris during construction phase should not create any adverse effect on the neighboring communities and be disposed off only in approved sites, with the approval of Competent Authority with necessary precautions for general safety and health aspects of the people.
- xxix) Construction spoils, including bituminous materials and other hazardous materials, must not be allowed to contaminate watercourses. The dump sites for such materials must be secured so that they should not leach into the adjacent land/ lake/ stream etc.
- xxx) Low Sulphur Diesel shall be used for operating diesel generator sets to be used during construction phase. The air and noise emission shall conform to the standards prescribed in the Rules under the Environment (Protection) Act, 1986, and the Rules framed thereon.
- xxxi) The diesel required for operating stand by DG sets shall be stored in underground tanks and if required, clearance from Chief Controller of Explosives shall be taken.
- xxxii) Vehicles hired for bringing construction materials to the site should be in good condition and should conform to air and noise emission standards, prescribed by TNPCB/CPCB. The vehicles should be operated only during non-peak hours.
- xxxiii) Ambient air and noise levels should conform to residential standards prescribed by the TNPCB, both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during the construction phase.

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- xxxiv) Fly- Ash bricks should be used as building material in the construction as per the provision of Fly ash Notification of September, 1999 and amended as on 27th August, 2003.
- xxxv) Ready-mix concrete of high quality should be used in building construction and necessary cub-tests should be conducted to ascertain their quality.
- xxxvi) Storm water control and its re-use shall be as per CGWB and BIS standards for various applications.
- xxxvii) Fixtures for showers, toilet flushing and drinking water should be of low flow type by adopting the use of aerators / pressure reducing devises / sensor based control.
- xxxviii) Use of glass shall be reduced up to 40% to reduce the electricity consumption and load on air conditioning. If necessary, high quality double glass with special reflecting coating shall be used in windows.
- xxxix) Roof should meet prescriptive requirement as per Energy Conservation Building Code by using appropriate thermal insulation material, to fulfill the requirement.
- xl) Opaque wall should meet prescribed requirement as per Energy Conservation Building Code which is mandatory for all air conditioned spaces by use of appropriate thermal insulation material to fulfill the requirement.
- xli) Lightning arrester shall be properly designed and installed at the top of the building and wherever is necessary.
- xlii) Adequate fire protection equipments and rescue arrangements should be made as per the prescribed standards.
- xliii) Proper approach road for fire-fighting vehicles and for rescue operations in the event of emergency shall be made.
- xliv) All ECBC norms have to be adopted.

(C) Conditions for Operation Phase/Post Construction Phase

- xiv) STP shall be operated effectively and continuously so as to achieve the discharge standards prescribed by TNPCB. The continuous operation of the STP shall be ensured even in case of power failure by providing DG set.

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- xlvi) Treated sewage discharged from STP shall conform to the discharge standards prescribed by TNPCB and it shall be recycled/reused to the maximum extent possible. Treatment of 100 % grey water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour and mosquito problem in the STP area.
- xlvi) Adequate measures shall be taken to prevent odour emanating from solid waste processing plant and STP.
- xlviii) DG sets proposed as source of back-up power during operation phase shall be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets.
- xlix) The acoustic enclosures shall be installed at all noise generating equipments such as DG sets, air conditioning systems, etc. and the noise level shall be maintained as per MoEF/CPCB/TNPCB guidelines/norms both during day and night time.
 - i) Rain water harvesting for surface run-off, as per plan submitted should be implemented. Before recharging the surface run off, pre-treatment with screens, settlers etc. must be done to remove suspended matter, oil and grease, etc. 25 nos percolation pits shall be provided as committed. The percolation pits for rainwater recharging shall be kept at least 5 mts above the highest ground water table.
 - ii) Application of solar energy should be incorporated for illumination of common areas, lighting for gardens and street lighting in addition to provision for solar water heating. A hybrids system or fully solar system for a portion of the apartments shall be provided.
 - iii) Energy conservation measures like installation of CFLs/TFLs for lighting the areas outside the building should be integral part of the project design and should be in place before project commissioning. Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/rules of the regulatory authority to avoid mercury contamination. Use of solar panels may be done to the extent possible.
 - iii) A report on the energy conservation measures conforming to energy conservation norms prescribed by the Bureau of Energy Efficiency shall be prepared

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incorporating details about building materials & technology, R & U factors etc and submitted to the SEIAA in three month's time.

- liv) The building should have adequate distance between them to allow free movement of fresh air and passage of natural light, air and ventilation. Landscape plan to be revised accordingly.
- lv) Traffic congestion near the entry and exit points from the roads adjoining the proposed project site shall be avoided. Parking shall be fully internalized and no public space should be utilized. Parking plan should be as per MoEF norms.
- lvi) A copy of the Environmental Clearance shall be issued to all the allottees while executing the allotment order/sale deed before handing over of the building to allottees.
- lvii) The Plan prepared showing separate pipelines marked with different colour shall be prepared with the following details shall be given to all the allottees/owners while executing the allotment order/sale deed.
 - i. Location of STP, compost system, underground sewer line.
 - ii. Pipe Line conveying the treated effluent for green belt development.
 - iii. Pipe Line conveying the treated effluent for toilet flushing.
 - iv. Water supply pipeline.
 - v. Gas supply pipeline if proposed.
 - vi. Telephone cable.
 - vii. Power cable.
 - viii. Storm water drain.
 - ix. Rain water harvesting system.
- lviii) A First Aid Room shall be provided during operation of the project, with necessary equipments and life- saving medicines and should be manned all the 24 hours any day.
- lix) The capital budget of Rs 29 lakhs earmarked by the project proponent under CSR activity shall be used only for such activities as committed by the proponent for the purpose for which it was allotted.
- lx) The amount earmarked for Environmental Monitoring Plan [EMP] for operational periods of capital cost Rs. 110 lakhs and operation periods of capital cost Rs. 22.15 lakhs and recurring cost of Rs. 29.85 lakhs per year shall be used as committed by the proponent.

MEMBER SECRETARY
SEIAA-TN

ENVIRONMENTAL CLEARANCE (EC)

- (ixi) Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it is found that construction of the project has been started without obtaining Environmental Clearance, and for any other action resulting in violation of any condition stipulated in the Environmental Clearance

Conditions for Entire life of the Project

- i. The Proponent shall establish all common facilities in connection with the project such as sewage treatment plant, treated sewage disposal arrangements, solid waste management system, green belt development, rain water harvesting facility, environmental monitoring system etc as proposed before handing over the flats to all allottees. After establishment the proponent himself shall maintain all common facilities for the entire life period (or) a viable society or an association among the allottees shall be formed to take responsibility of continuous maintenance of all common facilities with required agreements for compliance of all conditions furnished in Environment Clearance (EC) issued by the SEIAA-TN for the entire life period.
- ii. It shall be ensured that the fresh water requirement of quantity 181 KLD for the project during entire operation period shall be met from CMWSSB the water supply as committed in the Affidavit.
- iii. It shall be ensured that the excess treated sewage/water of quantity 120 KLD shall be disposed through CMWSSB sewer line after using the treated sewage/water for flushing requirement by providing dual plumbing system and using the treated sewage for green belt development within the project premises as committed in the Affidavit.
- iv. It shall be ensured that the 13 KLD of treated sewage water disposed for green belt development should not pollute the soil/ ground water/ adjacent canals/ lakes/ ponds, etc.
- v. It shall be ensured that storm water drain provided at the project site shall be maintained without choking or without causing stagnation and should also ensure

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ENVIRONMENTAL CLEARANCE (EC)

that the storm water shall be properly disposed off in the natural drainage/channels without disrupting the adjacent public. Adequate harvesting of storm water should be ensured.

- vi. It shall be ensured that necessary trenches for openings shall be provided at periodic intervals along the compound wall, so as to let out the storm water during rainy season, without stagnation/ ponding.
- vii. It shall be ensured that roof top run-off collected from the covered roof of the buildings, etc shall be scientifically harvested so as to ensure the maximum beneficiation of rain water harvesting. For this purpose, one collection sump (3x100 cum capacity) shall be provided as proposed for collection of roof-top runoff water.
- viii. There shall be no drawal of ground water.
- ix. The ground water level and its quality should be monitored and recorded regularly in consultation with the Central Ground Water Authority.
- x. The Biodegradable solid waste, Non - Biodegradable solid waste, STP sludge, etc generated from the project activity shall be properly collected, segregated and disposed as committed and as per the provision of Solid Waste (Management and Handling) Rules, 2000.
- xi. The biodegradable organic solid waste & municipal solid waste generated shall be handed over to local body as proposed.
- xii. The Plastic wastes shall be segregated and disposed as per the provisions of Plastic Waste (Management & Handling) Rules 2011.
- xiii. The E-waste generated shall be collected and disposed to the nearby authorized E-waste centre as per E-waste (Management & Handling), Rules 2011.
- xiv. Spent oil collected from DG sets shall be stored in HDPE drums in an isolated covered facility and disposed as per the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules 2008. Spent oil from DG sets shall be disposed off through registered recyclers.
- xv. The green belt dimension and design along the periphery of the plot and shall achieve attenuation factor conforming to the day and night noise standards

MEMBER SECRETARY
SEIAA-TN

ENVIRONMENTAL CLEARANCE (EC)

prescribed for residential land use. It is the responsibility of the proponent to maintain these green belt areas throughout. The open spaces inside the plot shall be suitably landscaped and covered with vegetation of suitable variety.

- xvi. Incremental pollution loads on the ambient air quality, noise and water quality shall be periodically monitored after commissioning of the project.
- xvii. A separate environmental management cell with suitable qualified personnel shall be set-up under the control of a Senior Executive, who will report directly to the Head of the Organization.
- xviii. The funds earmarked for environmental protection measures should be kept in separate account and should not be diverted for other purpose. Year wise expenditure should be reported to the MOEF and its Regional Office located at Chennai. Funds for CSR activity shall be allotted and used for that purpose and separate account shall be maintained.
- xix. The project proponent shall submit six - monthly reports (as on 1st June and 1st December of each calendar year) on the status of compliance of the stipulated environmental clearance conditions including results of monitored data (both in hard copies as well as by e-mail) to the Ministry of Environment and Forests, its Regional Office at Chennai, the Zonal Office of Central Pollution Control Board, SEIAA, TN and the State Pollution Control Board.
- xx. The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, Chennai and TNPCB. The criteria pollutant levels namely; SPM, RSPM, SO₂, NO_x (ambient levels as well as stack emissions) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.
- xxi. The SEIAA, TN reserves the right to add additional safeguard measures subsequently, if non-compliance of any of the EC conditions are found and to take action, including revoking of this EC as the case may be.

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- xxii. The SEIAA, TN may alter/modify the above conditions or stipulate any further condition in the interest of environment protection, even during the subsequent period.
- xxiii. The Regional Office of the MoEF located at Chennai shall monitor compliance of the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data / information / monitoring reports.
- xxiv. Failure to comply with any of the conditions mentioned above may result in withdrawal of this Environmental Clearance and attract action under the provisions of the Environment (Protection) Act, 1986.
- xxv. The above conditions will be enforced inter-alia, under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1986, the Environment (Protection) Act, 1986, the Public Liability Insurance Act, 1991, along with their amendments, draft Minor Mineral Conservation & Development Rules, 2010 framed under MMDR Act 1957, National Commission for protection of Child Right Rules, 2006 and rules made there under and also any other orders passed by the Hon'ble Supreme Court of India/Hon'ble High Court of Madras and any other Courts of Law, including the Hon'ble National Green Tribunal relating to the subject matter.
- xxvi. Environmental clearance is subject to final order of the Hon'ble Supreme Court of India in the matter of Goa foundation Vs. Union of India in Writ petition (Civil) No.460 of 2004 as may be applicable to this project.
- xxvii. This Environmental Clearance does not imply that the other statutory / administrative clearances shall be granted to the project by the concerned authorities. Such authorities would be considering the project on merits and be taking decisions independently of the Environmental Clearance.
- xxviii. The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the TNHCB as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the

MEMBER SECRETARY
SEIAA-TN

State Level Environmental Impact Assessment Authority, TN | 2015

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status of compliance of environmental clearance conditions and shall also be sent to the Regional Office of the MoEF, Chennai by e-mail.

xxix. The SEIAA, TN may cancel the environmental clearance granted to this project under the provisions of EIA Notification, 2006, if, at any stage of the validity of this environmental clearance, if it is found or if it comes to the knowledge of this SEIAA, TN that the project proponent has deliberately concealed and/or submitted false or misleading information or inadequate data for obtaining the environmental clearance.

xxx. It is mandatory for the Project proponent to furnish to the SEIAA, Half yearly compliance report in Hard and Soft copies on 1st June and 1st December of each calendar year in respect of the conditions stipulated in the prior Environmental Clearance.

MEMBER SECRETARY
SEIAA-TN

Copy to:-

1. The Principal Secretary to Government,
Environment & Forests Department,
Govt. of Tamil Nadu, Fort St. George,
Chennai - 600 009.
2. The Chairman,
Central Pollution Control Board,
Parivesh Bhavan, CBD Cum-Office Complex,
East Arjun Nagar, New Delhi 110032.
3. The Member Secretary,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy, Chennai - 600 032.
4. The ACCF(C), Regional Office of MoEF,
34, HBPC Building, 1 & 2 nd Floors,
6. Cathedral Garden Road, Nungampakkam, Chennai - 600 034.
5. Monitoring Cell, IA Division, Ministry of Environment & Forests,
7. Paryavaran Bhavan, CGO Complex, New Delhi 110003.
6. The District Collector, Chennai district.
7. Stock File.

MEMBER SECRETARY
SEIAA-TN

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BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI
MEMORANDUM OF APPLICATION

(Under Section 18(1) read with Section 14 of National Green Tribunal Act 2010)

Application No. 5 of 2018 (SZ)

Between:

Arjunan Muthukrishnan

/o Shri R. Arjunan (late)

aged about 73 years

Flat No. TE/12, Jain Pebble Brook, Sakti Garden Cross Street No. 1,
 Okklampettai, Thuralpakkam, Chennai 600097

.. Applicant --PARTY IN PERSON

AND

1. The State Environment Impact Assessment Authority
 Rep by its Member Secretary
 3rd Floor, Panangal Building, Jeenils Road
 Saldapet, Chennai - 600015

... Respondents

AND 3 OTHERS

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BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI**MEMORANDUM OF APPLICATION**

(Under Section 18(1) read with Sections 14 and 15 of National Green
Tribunal Act 2010)

Application No. 5 of 2018 (SZ)

Between:

Arjunan Muthukrishnan
S/o Shri R. Arjunan (late)
aged about 73 years
Flat No. TE/12, Jain Pebble Brook, Sakti Garden Cross Street No. 1,
Okkiampettai, Thuraipakkam, Chennai 600097

.. Applicant

AND

1. The State Environment Impact Assessment Authority
Rep by Its Member Secretary
3rd Floor, Panangal Building, Jeensis Road
Saidapet, Chennai - 600015

2. The Chennai Metropolitan Development Authority
Rep by Its Member Secretary
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road
Egmore, Chennai

3. The Tamilnadu Pollution Control Board
Rep by Its Member Secretary
76, Mount Road, Guindy, Chennai 600032

4. M/s Jain Housing,
A partnership firm,
Rep by its partner Mr. Sandeep Mehta
No. 98/99 Habibullah Road, T. Nagar,
Chennai 600017

... Respondents

(29)

19.5.02

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TO,

**THE HON'BLE CHAIRMAN AND HIS COMPANION MEMBERS OF THE
NATIONAL GREEN TRIBUNAL.****HUMBLE APPLICATION SUBMITTED BY THE APPLICANT ABOVE
NAMED**

The applicant is Arjunan Muthukrishnan S/o (late) Shri R. Arjunan, aged 73 years Flat No. TE/12, Jain Pebble Brook, Sakti Garden Cross Street, No. 1, Okkiampettai, Thuralpakkam, Chennai.

The address for service on the APPLICANT is as given above.

The address for service on the RESPONDENTS is as given above.

Facts in Brief:

1. The present case is filed by the applicant aggrieved by the illegal constructions put up by the 4th respondent at Jain Pebble Brook, Sakti Garden Cross Street, No. 1, Okkiampettai, Okkiyam Thuralpakkam, Sholinganallur Taluk, Tamilnadu without environmental clearance and by the illegal location of the Sewage Treatment Plant (hereinafter referred to as STP) for the entire housing complex of 1016 flats very near the applicant's flat without any buffer. The applicant paid monies to the 4th respondent partnership firm. It is important to note that the design and construction of the STP for 1016 flats has not been approved and consented either under the Water and Air Acts by the 3rd respondent, nor has it been approved in the environmental clearance process by the 1st respondent. The STP causing serious pollution and nuisance is thus also illegal and without the sanction of law. It is submitted that the environmental footprint of such large complexes are enormous in terms of conversion of the land, impact on hydrology and drainage pattern, impact due to water extraction, discharge of sewage, solid waste, traffic and attendant impacts. It is submitted that the 4th respondents have circumvented the law and has constructed the

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complex without assessment of these impacts. The applicant entered into an agreement for the purchase of his flat in block 12 on 22/06/2011. It was represented by the 4th respondents that the STP was nowhere near the flat of the applicant, who is a senior citizen looking to live peacefully. The applicant was also informed that the 4th respondent had all the requisite permissions and clearances in law. The applicant was recently shocked to find out that the SEIAA had not issued any other clearance and had only issued the clearance in the year 2009 for 412 dwelling units only and was further shocked to learn that no consent was obtained from the Pollution control board. The applicant therefore approaches this Hon'ble Tribunal for the realisation of his rights. He along with other residents has been trying to get the 4th respondent to sort the issues with the STP and to make it functional properly, but to no avail. The STP is located about 40 feet to the south of the applicant's balcony. The STP has not been handed over to the association for maintenance as well by the 4th respondent.

2. The 4th respondents have constructed a total of 1016 flats. However, the 1st respondent has issued two separate environmental clearances to this project and the second clearance is not for expansion of the project, but has been issued as a fresh clearance, which itself is a violation of the law, being contrary to the mandate of the EIA Notification, 2006. Before proceeding to the pollution being faced by the applicant and other residents in the vicinity of the STP, the following table clearly establishes the fact that the 4th respondents do not have necessary environmental clearance for the 1016 flats constructed and that the STP has been illegally installed contrary to the environmental clearance obtained by the 4th respondents for the 412 flats in the name of M/s. Jain Housing and Construction Ltd. - a public limited company which is managed by 4th Respondent. It is submitted that the 4th respondent has also obtained the second clearance in another person's

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name - a separate judicial entity. The permissions issued by the 2nd respondent CMDA were for a different number of dwelling units and no permission whatsoever has been obtained from the 3rd respondent board.

SL No.	DATE, PERMISSION & DETAILS	COMMENTS
1	27/04/2009 , Environmental clearance issued by the 1st respondent for construction of 412 flats on a plot area of 34363 Sq M, with total built up area of 51020.61 Sq M comprising of stilt + 4 floors of 12 blocks. Total water requirement is stated to be 278 KLD and daily fresh water requirement is 185 KLD to be met by CMWSSB supply. STP of 250 KLD is to have been provided for treating the 249 KLD of sewage to be generated from the project. Clearance inter alia mandates that consent for establishment has to be obtained from the 3rd respondent board before taking up construction activity. The clearance also mandates that the STP installation shall be certified by an independent expert and report shall be sent to the 1st respondent before commissioning. Copy annexed as Annexure A1.	It is clear that this environmental clearance only permitted construction of 412 flats and that the STP assessed and approved was only for 250 KLD. The applicant's apartment is in block 12, which is sanctioned by the environmental clearance.
2	07/03/2011, revised plan approval obtained from the 2nd respondent CMDA. This plan approval is for 620 flats in 13 blocks in 36 survey nos. Copy annexed as Annexure A2. (No "as built drawing" given by Respondent 4)	Plan approval not in accordance with the environmental clearance. CMDA ought not to have issued such modification without ensuring that the 4th respondents were not in violation of the environmental clearance granted. 4th respondents thus violated the environmental clearance obtained on 27/04/2009. STP was also to have been located at a different location, away from block 12 i.e on west of block 8.
3	25/09/2013, STP plan is approved by CMDA. STP is for 0.55 MLD capacity Copy annexed as Annexure A3. (no "as built" drawing given by Respondent 4)	Contrary to the environmental clearance which has assessed and approved only STP of 250 KLD

SL No.	DATE, PERMISSION & DETAILS	COMMENTS
4	25/09/2013, revised building plan approved by CMDA for 1016 dwellings in 21 blocks. STP location is shifted next to the petitioner's flat. Copy annexed as Annexure A4. (No "as built drawing" given by Respondent 4)	Contrary to the environment clearance obtained by the 4 th respondents for the project.
5	September, 2013- It is understood that the SEIAA did not approve the proposal of the 4th respondents for clearance for 1016 flats. A copy of the application filed by the 4th respondent dated September 2013 is evidence that an application was made. Extracts of the form I and IA are annexed as Annexure A5.	No disclosure of this fact - fact of denial of Environmental clearance for 1016 flats to the CMDA. CMDA also violated the law by issuing permissions without insisting on environmental clearance.
6	3/12/2014, partial completion certificate issued by CMDA for 396 dwellings out of 620 dwelling units. Copy annexed as Annexure A6.	Issuance of completion certification without valid environmental clearance is contrary to the order of the Hon'ble National Green Tribunal.
7	01/04/2015, another EC issued by the 1st respondent in the name of Mr. Chenaram Senil for 40 survey numbers involved in the present project. This EC is for 396 units in 8 blocks. This clearance also mandates that STP of 250 KLD capacity be installed. Copy annexed as Annexure A7.	Even if this clearance is considered to be valid for the sake of argument, the total number of apartments for which the 4th respondents have permission in law is only $412 + 396 = 808$. However, 1016 apartments as in the revised plan approved by CMDA have been constructed at the site. $(1016 - 808 = 208)$. Why Environment Impact Assessment could not have been got made for total 1016 flats?

3. It is submitted that the 1st respondent had informed that no other environmental clearance has been issued to the subject project. In fact, in letter dated 14/11/2017, the 1st respondent has stated that clearance was issued only for 412 apartments. This being the case, the entire structure now put up by the 4th respondents is illegal since it does not have requisite environmental clearance. A copy of the letter

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dated 14/11/2017 is annexed as ANNEXURE A8. It is submitted that under Section 15 of the Environment (Protection) Act, 1986, violation of the EIA Notification, 2006 and violation of the Environmental clearance are punishable offences and the 4th respondents are liable to be punished for the violations committed.

4. It is further submitted that the 4th respondents do not have requisite consent to establish and operate from the 3rd respondent pollution control board. It is submitted that the Pollution Control board in an RTI reply dated 27/12/2017 has stated that no consent to establish or operate has been issued to the project in question. A copy of the communication from the 3rd respondent is annexed as ANNEXURE A9. It is submitted that a valid and subsisting consent to operate under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 is mandatory and commencing and completing the construction of the project and the STP without the same is a punishable offence.

5. Section 25 of the Water Act, 1974, mandates that no person shall without the previous consent of the State Board shall establish or operate any industrial operations, process or any treatment or disposal system, the violation of which has been made punishable under Section 44 of the Water Act, which reads as follows:

"Section 44: Penalty for contravention of Section 25 or 26"

Whoever contravenes the provisions of Sections 25 or 26 shall be punishable with imprisonment for a term which shall not be less than 1 year 6 months but which may extend to 6 years and with fine."

6. Similarly, Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 also mandates that the prior consent of the board is mandatory to operate the plant and penalty is imposed under Section 38 of the

same Act. The 4th respondents are also in violation of these provisions and ought to be punished for the subject violations.

7. It is submitted that the entire subject of construction of flats and of STP is thus illegal and without the sanction of law. It is submitted that the STP had been constructed contrary to the environmental clearance right next to block 12, alongside the balcony of the applicant's flat. It is submitted that the great noise and extreme foul smell is generated from the STP, which is not even operated properly. It is submitted that partially treated or untreated water is let out into the natural drain, thus contaminating the environment as well. It is submitted that the STP is not designed properly or assessed by environmental authorities before approving of its construction. The 4th respondents have not provided any buffer between the STP and the adjacent residences. It is submitted that the foul stench of sewage generated by the entire complex, the unsanitary conditions created by it, the noise generated by the STP motors and blowers, water pollution caused by overflowing sewage and discharge from the STP are causing serious pollution and the applicant is directly affected by the same. It is submitted that this situation would have been avoided had the 4th respondents, as mandated by law, subjected itself to the clearance process under law, so that the environmental impact of the STP could have been assessed and audited by the statutory authority. Since the 4th respondents have set up the subject STP illegally without following the letter of the law, the STP siting was not according to law, nor was it subjected to scientific examination and nor is the operation of the STP audited by the statutory authorities. It is submitted that even components of the STP as claimed in the design have not been installed or operated. There is no sanction in law to establish a .55 MLD STP at the premises.

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8. It is submitted that the applicant has initiated a case before the consumer forum against the 4th respondent for violations of his rights as a consumer vide CC No. 127 of 2015 which is pending on the file of the State consumer disputes redressal commission, Chennai.

9. The present application is filed on the following among other

GROUND

A. The 4th respondents have violated the EIA Notification, 2006 and the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

B. The 4th respondents have constructed the housing complex without necessary environmental clearance and has not obtained clearance for the entire 1016 apartments constructed in the complex.

C. The 4th respondents have illegally constructed the complex without obtaining consent to establish and operate from the Pollution control board.

D. The 4th respondents have constructed the .55 MLD STP illegally without necessary clearance from the authorities.

E. The STP's operation results in severe pollution of the air, water and the noise created from the STP is also affecting the applicant and other residents.

F. The STP has been constructed without necessary buffer or APC measures and is not being operated properly, with contaminated water released into the environment.

(Clean Copy) ✓

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- G. The 4th respondents are liable to be punished under the EP Act, 1986, Water Act and Air Acts.
- H. The 1st respondent has failed to see that the environmental clearance issued by it has been violated by the 4th respondents. It is surprising that the 1st respondent has not taken cognizance of this violation despite the 6 monthly report that has to be submitted in terms of the environmental clearance.
- I. The 3rd respondent has failed to see that the 4th respondents have violated the Water Act and Air Act.
- J. The 2nd respondent CMDA has failed to insist on environmental clearance before issuing completion certificates to the 4th respondents and as a result has enabled the violation by the 4th respondents.
- K. The 2nd respondent ought not to have issued the revised plans without ensuring that necessary environmental clearance for the same is available.
1. The 4th respondents have thus put up the construction illegally and the illegally established STP is causing severe pollution. The balance of convenience is in favour of the applicant and in the grant of interim orders to protect the applicant and the area from further pollution.

LIMITATION:

The Applicant declares that as per the National Green Tribunal Act 2010 this application is well within the prescribed time. The cause of action is still continuing. On follow up with SEIAA, the Applicant received a letter DT 14/11/17 from them that they had issued EC only for 412 flats at S.No. 384/6B, etc. Further, in reply to an RTI application of the Applicant, TN Pollution Control Board vide its letter DT 27/12/17 confirmed that it had issued neither No Objection Certificate to set up nor consent to operate Sewage Treatment Plant. The 4th respondents have put up the constructions illegally and in violation of the law and severe pollution is being caused by the illegal

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G. The 4th respondents are liable to be punished under the EP Act, 1986, Water Act and Air Acts.

H. The 1st respondent has failed to see that the environmental clearance issued by it has been violated by the 4th respondents. It is surprising that the 1st respondent has not taken cognizance of this violation despite the 6 monthly report that has to be submitted in terms of the environmental clearance.

I. The 3rd respondent has failed to see that the 4th respondents have violated the Water Act and Air Act.

J. The 2nd respondent CMDA has failed to insist on environmental clearance before issuing completion certificates to the 4th respondents and as a result has enabled the violation by the 4th respondents.

K. The 2nd respondent ought not to have issued the revised plans without ensuring that necessary environmental clearance for the same is available.

L. The 4th respondents have thus put up the construction illegally and the illegally established STP is causing severe pollution. The balance of convenience is in favour of the applicant and in the grant of interim orders to protect the applicant and the area from further pollution.

LIMITATION:

The Applicant declares that as per the National Green Tribunal Act 2010 this application is well within the prescribed time. The 4th respondents have put up the constructions illegally and in violation of the law and severe pollution is being caused by the illegal

the cause of action is still continuing ...

construction and the STP. The present application raises a substantial question relating to the environment and is thus maintainable before this Hon'ble Tribunal.

INTERIM RELIEF

For the reasons stated above, pending disposal of the present application, it is humbly prayed that this Hon'ble Tribunal may be pleased to issue:

- A. Issue a direction to the 1st, 2nd and 3rd respondents to inspect the construction of the 4th respondents at Jain Pebble Brook, Sakti Garden Cross Street, No. 1, Okkiampettai, Okkiyam Thuraiyakkam, Sholinganallur Taluk, Tamilnadu and file a report before this Hon'ble Tribunal.
- B. Issue a direction to the 1st and 3rd respondents to inspect the STP established by the 4th respondents at Jain Pebble Brook, Sakti Garden Cross Street, No. 1, Okkiampettai, Okkiyam Thuraiyakkam, Sholinganallur Taluk, Tamilnadu and file a report before this Hon'ble Tribunal.
- C. Issue an order of injunction restraining the 4th respondents from selling or creating encumbrance on the buildings in Jain Pebble Brook, Sakti Garden Cross Street, No. 1, Okkiampettai, Okkiyam Thuraiyakkam, Sholinganallur Taluk, Tamilnadu for which environmental clearance has not been obtained.
- D. And pass such further order or orders as may be deemed fit, proper and necessary in the facts and circumstances of the case and thus render justice.

PRAYER

For the reasons stated above, it is humbly prayed that this Hon'ble Tribunal may be pleased to :

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- A. Direct respondents No. 1 and 3 to initiate prosecution against the 4th respondents for violation of the EIA Notification, 2006, the Environment (protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981.
- B. Direct the 4th respondents to relocate the STP to an appropriate location after obtaining consent to establish from the 3rd respondent and to design the STP scientifically so as to abate the pollution being caused and remediate the area.
- C. And pass such further order or orders as may be deemed fit, proper and necessary in the facts and circumstances of the case and thus render justice.

A. Muthukrishnan

X

Signature of Applicant

VERIFICATION

Arjunan Muthukrishnan S/o Shri R. Arjunan (late), aged about 73 years, Flat No. TE/12, Jain Pebble Brook, Sakti Garden Cross Street, No. 1, Okkiampettai, Thuraiyakkam, Chennai., the applicant herein, do hereby verify that the contents of the above paragraphs are true to the best of my knowledge and grounds are based on legal advice and that I have not suppressed any material fact.

Date : 24/01/2018

Place : Chennai

A. Muthukrishnan

APPLICANT

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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 05/2018 (SZ)

Arjunan Muthukrishnan

Vs.

The State Environment Impact Assessment Authority & Ors.

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present: Applicant: Mr. Arjunan Muthukrishnan, application in person

Date and Remarks	Orders of the Tribunal
Through Video Conferencing Item No. 01 August 06, 2018	This application seeks direction for action against respondent no. 4 - M/s. Jain Housing for violation of the EIA Notification, 2006, the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. According to the applicant, respondent no. 4 has carried out constructions without environmental clearance and located Sewage Treatment Plant (STP) near applicant's flat without any consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. The STP is causing serious pollution. The construction has impact on hydrology and drainage pattern. There has been no impact assessment. Clearance was for 412 units, but 1016 flats have been constructed. Two separate clearances have been given to circumvent the law. The applicant sought information from the Tamil Nadu Pollution Control Board (TNPCB) and received letter dated 27.12.2017 to the effect that no NOC was given for the STP, no declaration for compliance of environmental norms was filed by the

Through
Video
Conferencing
Item No. 01

August 06,
2018

SS & dv

builder and there was no information as to how the treated water was being utilised. Action of respondent no. 4 was in violation of Section 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 which is an offence under Section 44.

In view of the averments in the application noted above, we are of the view that TNPCE must look into the matter and, after ascertaining the facts from the State Level Environmental Impact Assessment Authority and the Chennai Metropolitan Development Authority, take such action as may be called for under the law within one month from the date of receipt of this order.

A copy of this order be sent to TNPCE by mail.

The action taken report of the action taken may be furnished to this Tribunal by mail at filing.ngt@gmail.com on or before 30.09.2018.

It is made clear that in case there is violation of this order, action may be taken for enforcement of this order under Section 25, which may also result in imposition of penalty under Section 26 of the National Green Tribunal Act, 2010.

The application is disposed of.

The report of the TNPCE may be put up for consideration on 14th November, 2018.

..... CP
(Adarsh Kumar Goel)

..... JM
(S.P. Wangdi)

..... EM
(Dr. Nagin Nanda)

06.08.2018



By RPAO

TAMIL NADU POLLUTION CONTROL BOARD**Proc.No.DEE/TNPB/MMN/NA/A/2018 dated 23.08.18**

Sub: - TNPBd - Industries - M/s Jain Housing & Constructions Limited, S.F.No.384/6B,10,11,12,13,18,396/4B,5C,5D,397/1 etc., & S.F.No.386/8 (386/1D2),393/2C,(393/2),3,4,394/1A,1B,1C,1D,1E,1F1,2A,2B1,2B2,2C,2D1,2D2,2E2,2E2,2E3, 3A, 3B1, 3B2, 395/1A2 (395/1A), 2A, 395/3B (3B1,3B2), 4, 5A, 5B, 6, 7, 8, 9, 10A, 10B(395/10), 11, 396/6 (6A, 6B), 7 and 397/2 (397 pt) of Okklam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District - Operating the unit without obtaining consent of the Board under Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 - Show Cause Notice - Issued - Reg.

- Ref. 1.SCN Proc.No.DEE/TNPB/MMN/F-NA/A/2018 dated 05/01/2018.
 2.SEIAA Letter No.SEIAA/TN/EC/8(a)/042/F-15/2009 Date.27.04.2009.
 3.CMDA Revised planning permission letter P.P.No. B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated.23/12/2013.
 4.SEIAA letter No.SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated.01.04.2015.
 5.The Hon'ble NGT Order dated 06.08.2018 in Application No.05 of 2018 (SZ).
 6.Inspection of the unit by the TNPB officials on 18/08/2018 and 20/08/2018.

 The Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 is in force in Tamil Nadu. Tamil Nadu Pollution Control Board enforces the above Act.

Subject to the provisions of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 (hereinafter referred to as the Act), no person shall establish the unit in the Air Pollution Control area without obtaining the consent of TNPB Board. Contravention of Section 21 is an offence under Section 37 of the Act punishable with imprisonment for a term not less than one year and six months but which may extend to six years and with fine.

Whereas a show cause notice had already been issued to the unit of M/s. Jain Housing & Constructions Limited, vide reference 1st cited for the establishment and operation of the residential development without obtaining consent of the Board. But the unit has not furnished any reply for the show cause notice issued and also so far the said unit has not applied for Consent of the Board.

Whereas during inspection of your unit of M/s. Jain Housing & Constructions Limited, S.F.No.384/6B,10,11,12,13,18,396/4B,5C,5D,397/1 etc., & S.F.No.386/8 (386/1D2),393/2C,(393/2),3,4,394/1A,1B,1C,1D,1E,1F1,2A,2B1,2B2,2C,2D1,2D2,2E2,2E2,2E3, 3A, 3B1, 3B2, 395/1A2 (395/1A), 2A, 395/3B (3B1,3B2), 4, 5A, 5B, 6, 7, 8, 9, 10A, 10B(395/10), 11, 396/6 (6A, 6B), 7 and 397/2 (397 pt) of Okklam Thoraipakkam

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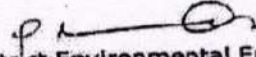
Village, Sholinganallur Taluk, Kancheepuram District on 18/08/2018 and 20/08/2018 by the officials of Tamil Nadu Pollution Control Board, the following violations were observed.

1. The unit has not applied for consent of the Board under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 for the said project and the dwellings were occupied by residents and were in use.
 2. The unit has constructed 13 blocks comprising of 620 Dwelling units as against 412 dwelling units as stipulated in the Environmental Clearance issued vide SEIAA Letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009. The unit has not obtained necessary Environmental Clearance for the additional construction of 208 Dwelling Units.
 3. The unit has obtained revised planning permission vide planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated. 23/12/2013 for the construction of 21 Blocks comprising of 1016 dwelling units in the said location. But the unit has not appraised and not obtained the Environmental Clearance for the entire project based on the revised planning permission dated 23/12/2013. Instead of that the unit has obtained two separate Environmental Clearances vide letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009 (for 412 dwelling units) and Vide letter No. SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated. 01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only. //
 4. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 27.04.2009 under reference 2nd cited.
 - (i) The unit has provided DG set 160 KVA - 4 Nos and 125 KVA - 1 No with acoustic enclosures as against the backup power DG Set 250 KVA - 1 No. Further the unit has not provided adequate stack height for the DG set installed.
 - (ii) The unit has not developed adequate green belt along the periphery of the plot.
 5. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 01.04.2015 under reference 4th cited.
 - (i) The unit has not provided adequate stack height for the DG set 125 KVA - 1 No.
 - (ii) The unit has not developed adequate green belt along the periphery of the plot.
- Thus the unit contravenes the provisions of Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987.

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Hence, you are directed to show cause within 10 days from the date of receipt of this notice as to why penal action for offence under Section 37 of the Act should not be taken against you for contravening the provisions of Section 21 of the Act and also why directions should not be issued under Section 31A of the Act for closure of the unit, stoppage of power supply etc.,

It is informed that non-receipt of any reply within the stipulated time will be construed that you have no satisfactory explanation to offer for the above said contravention and action will be taken against you on merits in accordance with law.


District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalai nagar

23/12

To
The Managing Director,
M/s. Jain Housing & Constructions Limited,
No.98/99, Habibullah Road,
T.Nagar, Chennai-600017.



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BY ROAD

TAMIL NADU POLLUTION CONTROL BOARD

Proc.No.DEE/TNPCB/MMN/NA/W/2018 dated 23.08.18

Sub: - TNPCBd - Industries - M/s Jain Housing & Constructions Limited, S.F.No.384/6B,10,11,12,13,18,396/4B,5C,5D,397/1 etc., & S.F.No.386/8 (386/1D2),393/2C,(393/2),3,4,394/1A,1B,1C,1D,1E,1F1,2A,2B1,2B2,2C,2D1,2D2,2E1,2E2,2E3, 3A, 3B1, 3B2, 395/1A2 (395/1A), 2A, 395/3B (3B1,3B2), 4, 5A, 5B, 6, 7, 8, 9, 10A, 10B(395/10), 11, 396/6 (6A, 6B), 7 and 397/2 (397 pt) of Okkiam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District - Operating the unit without obtaining consent of the Board under the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 - Show Cause notice - Issued - Reg.

- Ref:1.SCN Proc.No.DEE/TNPCB/MMN/F-NA/W/2018 dated 05/01/2018.
 2.SEIAA Letter No.SEIAA/TN/EC/8(a)/042/F-15/2009 Date.27.04.2009;
 3.CMDA Revised planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated.23/12/2013.
 4. SEIAA letter No.SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated.01.04.2015.
 5.The Hon'ble NGT Order dated 06.08.2018 In Application No.05 of 2018 (SZ).
 6.Inspection of the unit by the TNPCB officials on 18/08/2018 and 20/08/2018.

The Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 is in force in Tamil Nadu. Tamil Nadu Pollution Control Board enforces the above Act.

Subject to the provisions of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 (hereinafter referred to as the Act), no person shall without the valid consent of the Board, shall establish or bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or sewer or on land. Contravention of Section 25 is an offence under Section 44 of the Act punishable with imprisonment for a term not less than one year and six months but which may extend to six years and with fine.

Whereas a show cause notice had already been issued to the unit of M/s. Jain Housing & Constructions Limited vide reference 1st cited for the establishment and operation of the residential development without obtaining consent of the Board. But the unit has not furnished any reply for the show cause notice issued and also so far the said unit has not applied for Consent of the Board,

Whereas during inspection of your unit of M/s. Jain Housing & Constructions Limited, S.F.No.384/6B,10, 11, 12, 13, 18, 396/4B, 5C, 5D, 397/1 etc., & S.F.No. 386/8 (386/1D2), 393/2C, (393/2), 3,4, 394/1A, 1B, 1C, 1D,1E, 1F1, 2A, 2B1, 2B2, 2C,2D1, 2D2, 2E2, 2E2, 2E3, 3A, 3B1, 3B2, 395/1A2 (395/1A), 2A, 395/3B (3B1,3B2), 4, 5A,

5B, 6, 7, 8, 9, 10A, 10B(395/10), 11, 396/6 (6A, 6B), 7 and 397/2 (397 pt) of Okkiam Thoralpakkam Village, Sholinganallur Taluk, Kancheepuram District on 18/08/2018 and 20/08/2018 by the officials of Tamil Nadu Pollution Control Board, the following violations were observed.

1. The unit has not applied for consent of the Board under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended for the said project and the dwellings were occupied by residents and were in use generating sewage.
2. The unit has constructed 13 blocks comprising of 620 Dwelling units as against 412 dwelling units as stipulated in the Environmental Clearance issued vide SEIAA Letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009. The unit has not obtained necessary Environmental Clearance for the additional construction of 208 Dwelling Units and consequent increase in sewage and solid waste quantity.
3. The unit has obtained revised planning permission vide planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 In letter No.B2/13682/2011 dated. 23/12/2013 for the construction of 21 Blocks comprising of 1016 dwelling units in the said location. But the unit has not appraised and not obtained the Environmental Clearance for the entire project based on the revised planning permission dated 23/12/2013. Instead of that the unit has obtained two separate Environmental Clearances vide letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009 (for 412 dwelling units) and Vide letter No. SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated. 01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only.
4. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 27.04.2009 under reference 2nd cited.
 - (i) All the 620 Dwelling units were occupied and the sewage generated is treated in the existing STP (below ground level) comprising of Collection Tank, Aeration Tank, Settling Tank, Filter Feed Tank, Sludge Holding Tank, Treated Water Tank, PSF, ACF and the same was not operated effectively. Further the unit has not provided sludge dewatering system and the STP sludge is disposed outside through tanker lorry. The treated sewage was utilized for gardening purpose
 - (ii) The unit has not provided the UV disinfection system for utilizing the treated sewage for toilet flushing.
 - (iii) The unit has not provided necessary arrangement for disposal of treated sewage during monsoon.
 - (iv) The unit has not provided pretreatment system such as screen & settlers before recharging of surface run off.

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- (v) The unit has not provided Flow meters to verify the quantity of sewage generated/ treated and No log books are maintained.
 - (vi) The unit has not provided the Organic Waste Converter for the treatment and disposal of organic kitchen waste.
 - (vii) The unit has not developed adequate green belt along the periphery of the plot.
 - (viii) The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating. The unit has not provided a hybrid system (or) fully solar system for a portion of the apartment.
5. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 01.04.2015 under reference 4th cited.
- (i) The unit has not provided STP for the treatment of Sewage. The sewage generated from the partly occupied dwellings was collected in the Collection Tank located within this unit premises and disposed through tanker lorry without any treatment.
 - (ii) The unit has not provided organic waste converter for the treatment and disposal of organic kitchen waste.
 - (iii) The unit has not provided pretreatment system such as screen & settlers before recharging of surface run off.
 - (iv) The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating. The unit has not provided a hybrid system (or) fully solar system for a portion of the apartment.
 - (v) The unit has not provided common facilities such as Sewage Treatment Plant, Solid waste management system, Scientific rain water harvesting system, green belt development, environment monitoring system as stipulated in the Environmental clearance.
 - (vi) The unit has not provided arrangement for supplying fresh water requirement of 181 KLD through CMWSSB as committed in the affidavit.

Thus the unit contravenes the provisions under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended 1988.

Contravention of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended 1988 shall lead to issue of directions under Section 33A of the Act for closure of the unit, stoppage of power supply etc.,

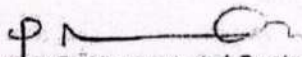
Hence, you are directed to show cause within 15 days from the date of receipt of this notice as to why penal action for offence under Section 44 of the Act should not be taken against you for contravening the provisions of Section 25 of the Act and also why

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directions should not be issued under Section 33A of the Act for closure of the unit, stoppage of power supply etc.,

It is informed that non-receipt of any reply within the stipulated time will be construed that you have no satisfactory explanation to offer for the above said contravention and action will be taken against you on merits in accordance with law.


District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalai nagar

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23/8

To
The Managing Director,
M/s. Jain Housing & Constructions Limited,
No.98/99, Habibullah Road,
T.Nagar, Chennai-600017.

THIRU.A.UDHAYAN, I.F.S.,
DIRECTOR OF ENVIRONMENT



DEPARTMENT OF ENVIRONMENT
GOVERNMENT OF TAMILNADU
Ground Floor, Panagal Maaligai,
No.1 Jeenils Road, Saldapet
Chennai-600015
Telephone No. : 044-24336421

Lr.No. O.A.No.5/ SEIAA-TN/ 2018 dated: 20.09.2018

To

The Member Secretary,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai - 600032.

Sub: SEIAA- TN -Hon'ble NGT, Principle Bench, New Delhi- O.A.No.5 of
2018(SZ)—Facts of the case —Communicated- Regarding.
Ref: Order of the Hon'ble NGT, Principle Bench, New Delhi In O.A.No.5 of
2018(SZ) dated:06.08.2018.

With reference to the subject, it is submitted that the Hon'ble NGT, Principle Bench, New Delhi vide reference cited pronounced that "TNPCB must look into the matter and after ascertaining the facts from the State Level Environmental Impact Assessment Authority and the Chennai Metropolitan Development Authority, take such action as may be called for under the law within one month from the date of receipt of this order". In this regard, the facts of the case are as follows:

- I. The State Environment Impact Assessment Authority (SEIAA) has issued the Environmental Clearance to M/s.Jain Housing and Constructions Ltd for the project of construction of multi-storeyed residential complex 412 Nos at S.No.384/6B, 10,11,12,13,18,396/4B, 5C,5D, 397/1 etc. No 48 Okkian Thoraipakkam Village, Tambaram Taluk, Kancheepuram District, based on the application filed by the proponent on 23.10.2007 vide this office Lr.No.SEIAA/TN/EC(a)/042-15/2009 Date: 24.07.2009 which expired on 23.07.2014 (Copy enclosed as Annexure I). The salient feature of the project is as follows:
 - a. The plot area of the project is 34363 Sq.m and the total build up area is 51020.61 Sq.m comprising of silt + 4 floors of 12 blocks.
 - b. Water requirement of the project is 278 KLD and daily fresh water requirement is 185KLD, which will be met from the supply of CMWSSB as per Lr. No. CMWSSB/ENGG/CCRCP/ITC/spl/2008, dated: 10.11.2008.
 - c. It is proposed to provide Sewage Treatment Plant 250 KLD capacity for the treatment of sewage. The treated sewage of 249 KLD will be used for toilet

(44)

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flushing (93 KLD), gardening & landscaping (12 KLD) and the excess will be discharged into CMWSSB sewer line.

d. Solid Waste generation has been projected as 1236 Kg/day.

e. The power required is 0.8 MW with backup power of 250 KVA DG Set.

f. The total cost of the project is about Rs. 21.46 Crores.

- II. The SEIAA has issued the Environmental Clearance to another project for the proponent of Mr. Chenaram Seni for the project of construction of Residential development of comprising of Residential Blocks -8 Nos. of Stilt+4 Floors at S.F.Nos.386/8 (386/1D2), 393/2C (393/2), 3, 4, 394/1A, 1B, 1C, 1D, 1E, 1F1, 2A, 2B1, 2B2, 2C, 2D1, 2D2, 2E1, 2E2, 2E3, 3A, 3B1, 3B2, 395/1A2, (395/1A), 2A, 395/3B, (3B1,3B2), 4, 5A, 5B, 6, 7, 8, 9, 10A, 10B (395/10), 11, 396/6(6A,6B), 7&397/2(397pt) of Okkiyam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District vide this off Lr.No.SEIAA/TN/F-1696/A/ EC (8a) / 401/2015, Date: 01.04.2015 (Copy enclosed in Annexure II). the salient feature of the project is as follows:

- a. The plot area is 23550.00 m² and the build up area is 48115.17 m². Total No. of Dwellings -396 Units and Expected occupancies -2178
- b. The daily fresh water requirement for the project will be 181 KLD, which will be met from CMWSSB Provisions.
- c. Sewage Treatment Plant 250 KLD capacity is proposed for the treatment of sewage. The sewage generated after treatment will be 225 KLD out of which 92 KLD will be recycled for Flushing, 13 KLD will be utilized for Greenbelt & 120 KLD will be disposed through CMWSSB Sewer Lines.
- d. Solid Waste generation has been projected as 1.31 MT/day out of which 0.79 MT/day of Biodegradable waste will be disposed through Authorized Waste Handlers, the 0.52 MT/day of Non-Biodegradable / recyclable waste will be handed over to the Authorized Recyclers and 26 Kg/day of Organic sludge generation from STP will be used as manure for gardening.
- e. The power required will be of 5750 KVA with backup power for 5 Nos. of 500 KVA with stack height of 18 m from ground level.
- f. The total cost of the project is about Rs. 52 Crores.

In view of the above, it is informed that the above facts may be considered while taking action and preparation of report so as to comply the Hon'ble NGT, Principle Bench, New Delhi order dated: 06.08.2018.

For DIRECTOR OF ENVIRONMENT

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Fromk

28.09.2018

The Managing Director

M/s. Jain Housing & Constructions Limited

No.98/99, Habibullah Road,

T.Nagar, Chennai 600017

To

The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Nagar

Sir

Sub: Reply to your show cause notices under the Water and Air Act common dated
23.08.2018 received on 28.08.2018

1. The subject mentioned notices had called upon the unit to reply within 15 as to why proposed action for alleged offences mentioned in the notice should not be initiated. We had by an earlier communication dated 12/09/2018 sought additional time to submit the response which has been sent on 12/09/2018 and received by yourself on 14/09/2018. Upon perusal of the notice and after obtaining legal advice, we submit the following as a preliminary reply to the notice. We reserve the opportunity to have a personal hearing to explain more elaborately and we also undertake to submit any further/ additional documents that may be required to be produced pursuant to this reply.
2. The whole contents of the notice are denied except for those statements admitted herein. The show cause proceedings are arbitrary and without considering the overall circumstances. The inspections dated 18.08.2018 and 20.08.2018 which formed the basis of the show cause notice were without any proper notice. There was no opportunity to



effectively participate and explain the case of the unit and as such ought not to form the basis for any further action.

3. With regard to the notice issued under the Water Act the following explanation is submitted.

4. The allegation in the preamble of the notice that the unit has not furnished any reply to the earlier show cause dated 05.01.2018 is not correct. In fact, the unit had taken all steps to explain the case before the authorities and only upon such submissions further action was not persuaded. The fact that the Board felt the necessity for another inspection and issuance of a fresh show cause notice by itself would vouch for the fact that all explanations were made to the Board pursuant to the earlier show cause notice. Thus the present notice seems to be issued with prejudice and as such is requested to be not proceeded further. The unit has always abided by law and also undertakes to comply with any conditions that are warranted under the circumstances and it is requested to be viewed that there arises no need for any action as proposed in the present notice. The other allegations in the notice are replied to hereunder on a para-wise basis.

5. With respect to Para (1), it is submitted that consent for the unit had been not insisted upon by the Board earlier. In fact, pursuant to a judgment of the Hon'ble High Court at New Delhi requirement for consent differentiated between residential building and a building constructed for location of industries or shops. Consequently an association of builders also sought clarification from the Board regarding the same and it was based on such discussions and advices, the unit had not applied for Consent from the Board. In any event, the unit had already obtained an Environmental Clearance and as such is willing to submit an application for consent henceforth if insisted upon. We are also advised to state that as per Section 25(5) of the Water Act, if no prior consent has been received as per Section 25(1) of the said Act, the Board shall impose such conditions as would have been imposed earlier. In light of the EC being obtained, we assure that there has been no violation of any environmental norms and we are willing to submit an application for consent if insisted.

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6. With respect to Para (2) the allegations are denied. The change in the number of dwelling units has been due to the EWS scheme newly introduced by the government and has been approved by the planning and approval authorities. The Environmental Clearance is not violated as the construction has not exceeded the previously granted overall total limits. Further the unit is also mandated to be monitored by the concerned regulatory authority as per the EIA Notification, 2010 and has thus caused no violation.
7. With respect to Para (3) the allegations are denied. It is submitted that a phase wise expansion is undertaken relating to the market conditions and also financial constraints. Further, as per Clause 2 of the EIA Notification only a prior environmental clearance is insisted before commencement of any expansion project. Therefore only in that position, a separate application was made for expansion project and was also granted by the appropriate authorities after due process of law. It is pertinent to state that both the Environmental Clearances granted to the unit are valid as on date and have been not appealed against by any person under Section 16 of the National Green Tribunal Act, 2010 as being wrongly granted and thus has become final and binding for all purposes.
8. With respect to Para (4) the allegations are denied. The unit has not made any violations or non-compliance to any conditions wilfully.
9. With respect to Para (4) clause (i) & (ii) it is submitted that adequate STP was provided as per the latest available technology to effectively process the sewage. The same was fully functional and effectively dealt with the sewage. If an opportunity is provided for a personal hearing, the scientific team of the unit would explain about the installations and the machineries. However, the maintenance of the entire building and its facilities was handed over to the residents' association as early as on ---- who have been henceforth maintaining the same. Therefore, it is required to be ascertained from them about the allegations and since the facilities have been provided as per latest and available technology, the same can be made fully operational forthwith.

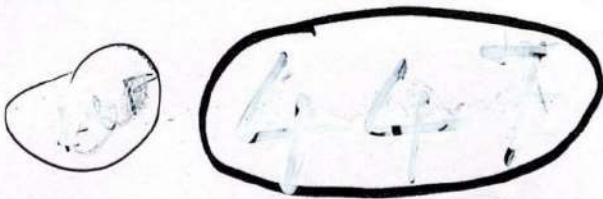
10. With respect to Para (4) clause (iii) & (iv) it is submitted that all necessary facilities have been provided to use the treated sewage during monsoon and against surface runoff which is used for consumption within the garden area and other internal requirements of the building itself. No treated/untreated sewage has been let off by the unit and the same is now maintained by the residents' welfare association. Further the inspection had been carried on a non-monsoon season and no observation has been made to conclude that the existing system would be ineffective during monsoon. On the other hand, even during the previous years of harsh monsoons, the building and the systems of pollution control were effectively managed and maintained.
11. With respect to Para (4) clause (v) and (vii) the allegations are denied and it is submitted that all necessary infrastructure had been provided. Subsequently, as mentioned above, the maintenance of the building had been handed over to the residents' welfare association and sufficient time may be granted to co-ordinate as to the current status of the infrastructure and also to effectively maintain the same.
12. With respect to Para (4) clause (vi) and (viii) it is submitted that the EC has been granted prior to the implementation of the new Solid Waste Management Rules 2016 whereby the new concept of "Source Segregation" has been implemented. The unit has been taking all steps towards the same for effective implementation of such segregation since the new rules also make the generator of waste including the residents liable for action. Thus the new law has been sought to be complied with and therefore it has given rise to a new situation due to the enactment of new law on the subject of Solid waste management to determine if the condition in the EC has to be modified to suit the new rules. The unit undertakes to obtain such clarification from the authorities and submit the same to your good office after the same is granted. With respect to the provisions of the solar system, the same has to be implemented along with the residents as the condition was not stated in the individual sale agreements and thus the condition in the EC becomes binding on all the residents who are equally owners. In any event all measures are taken to implement the same. It is pointed out that the conditions as above, especially of the Organic Waste Converter has been not insisted for any other single building in the entire city and the

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selective enforcement of our unit causes and manifests arbitrariness and selective prejudicial treatment.

13. With respect to Para (5), the allegations are denied.
14. With respect to Para (5) clause (i) to (v) all such facilities have been provided as along with the existing earlier building and thus the conditions have been complied with. The explanations for each of those systems as explained in the prior paragraphs may kindly be referred to as a reply herein for the sake of brevity.
15. With respect to Para (5) clause (vi) it is submitted that no proper infrastructure and facility was provided by the CMWSSB for the compliance of the conditions and the unit is taking steps with the said authority for the same and sufficient time may be granted to submit compliance regarding the same.
16. With regards to the intended and proposed action, it is submitted that the unit has not caused any violation of law as explained and stated above. The explanations may be considered and any further action is requested to be dropped. If an opportunity of personal hearing is granted or if additional details or records are required, the unit is always willing to co-operate and comply with any such conditions as may be imposed.
17. With respect to the allegations contained in the show cause notice issued under the Air Act, the same are denied. It is submitted that the case and reply of the unit for most of the allegations contained therein, more specifically under Clause (4) and (5) and other portions of the notice are identical to those contained in the notice under the Water Act which have been replied hereinabove. The same is requested to be referred as a reply to the notice under the Air Act as well for the sake of brevity and convenience.
18. With respect to the allegations of inadequate stack heights it is submitted that the same is denied. In any event, if the specific height is mentioned and communicated, the unit is also willing to implement any such condition.



Thus it is requested that based on the above explanations and on overall circumstances, the further proceedings pursuant to the show cause notice may be considered to be dropped and not proceeded with. The unit has been fully compliant and is willing to abide by any condition that may be necessary and imposed.

Yours sincerely,

Sandeep Metha
(Sandeep Metha)

4-4-8

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**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI.**

Application No. 05 of 2018 (SZ)

Arjunan Muthukrishnan,
S/O. Shri R. Arjunan (Late)
Aged about 73 years,
Flat No. TE/12, Jain Pebble Brook,
Sakti Garden Cross Street No.1,
Okklampettai, Thuralpakkam,
Chennai-600097.

...Applicant

-Vs-

The State Environment Impact assessment Authority,
Rep. by its Member Secretary,
3rd Floor, Panangal Building, Jennis Road,
Saidapet, Chennai-600015.

2. The Chennai Metropolitan Development Authority
Rep. by its Member Secretary,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road,
Egmore, Chennai.
3. Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
76, Mount Road, Guindy,
Chennai-600032.
4. M/s. Jain Housing,
A Partnership Firm,
Rep. by its partner Mr. Sandeep Mehta,
No.98/99 Habibullah Road,
T. Nagar, Chennai-600017.

...Respondents

REPORT FILED ON BEHALF OF THE 3RD RESPONDENT
TAMIL NADU POLLUTION CONTROL BOARD.

I, A. Krishnamoorthy, Son of Thiru. Ardhanari, Hindu, aged about 57 years
having office at No. 76, Mount Salai, Guindy, Chennai-600032, do solemnly and
sincerely state as follows:

1. I am the Joint Chief Environmental Engineer, Tamil Nadu Pollution
Control Board, Chennai-32 and as such I am well acquainted with the facts and
circumstances of this case, as available in records. I am filing this Report on behalf
of the 3rd Respondent Board.

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2. It is respectfully submitted that the Applicant Arjunan Muthukrishnan filed a this Application No.05 of 2018 before the Hon'ble National Green Tribunal (SZ) Chennai with the prayer to

i. Direct the respondents 1 and 3 to initiate prosecution against the 4th respondent for violation of the EIA Notification, 2006, the Environment (Protection) Act 1986, the Water (P&CP) Act, 1974 and the Air (P&CP) Act, 1981.

ii. Direct the 4th respondent to relocate the STP to an appropriate location after obtaining consent to establish from the 3rd respondent and to design the STP scientifically so as to abate the pollution being caused and remediate the area".

3. It is respectfully submitted that the Hon'ble National Green Tribunal (SZ) Chennai has passed order 06.08.2018 inter alia among other things:-

" In view of the averments in the application noted above, we are of the view that TNPCB must look into the matter and, after ascertaining the facts from the State Level Environmental Impact Assessment Authority and the Chennai Metropolitan Development Authority, take such action as may be called for under the law within one month from the date of receipt of this order.

A copy of this order be sent to TNPCB by e-mail.

The action taken report of the action taken may be furnished to this Tribunal by e-mail at filing.ngt@gmail.com on or before 30.09.2018".

4. It is respectfully submitted that in pursuance to the orders of the Hon'ble Tribunal the officials of the DEE, TNPCB, Maraimalai Nagar, Kancheepuram District has inspected the 4th respondent unit on 18.08.2018 and 20.08.2018 and following observations were made:

Under Water (P&CP) Act, 1974

1. The unit has not applied for consent of the Board under Section 25 of the Water (P&CP) Act, 1974 as amended for the said project and the dwellings were occupied by residents and were in use generating sewage.

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II. The unit has constructed 13 blocks comprising of 620 Dwelling units as against 412 dwelling units as stipulated in the Environmental Clearance issued vide SEIAA Letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009. The unit has not obtained necessary Environmental Clearance for the additional construction of 208 Dwelling Units and consequent increase in sewage and solid waste quantity.

III. The unit has obtained revised planning permission vide planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated. 23/12/2013 for the construction of 21 Blocks comprising of 1016 dwelling units on the said location. But the unit has not appraised and not obtained the Environmental Clearance for the entire project based on the revised planning permission dated 23/12/2013. Instead of that the unit has obtained two separate Environmental Clearances vide letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009 (for 412 dwelling units) and Vide letter No. SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated. 01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only.

IV. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 27.04.2009 :

i. All the 620 Dwelling units were occupied and the sewage generated is treated in the existing STP (below ground level) comprising of Collection Tank, Aeration Tank, Settling Tank, Filter Feed Tank, Sludge Holding Tank, Treated Water Tank, PSF, ACF and the same was not operated effectively. Further the unit has not provided sludge dewatering system and the STP sludge is disposed outside through tanker lorry. The treated sewage was utilized for gardening purpose.

ii. The unit has not provided the UV disinfection system for utilizing the treated sewage for toilet flushing.

iii. The unit has not provided necessary arrangement for disposal of treated sewage during monsoon.

iv. The unit has not provided pretreatment system such as screen & settlers before recharging of surface run off.

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v. The unit has not provided Flow meters to verify the quantity of sewage generated/ treated and No log books are maintained.

vi. The unit has not provided the Organic Waste Converter for the treatment and disposal of organic kitchen waste.

vii. The unit has not developed adequate green belt along the periphery of the plot.

viii. The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating. The unit has not provided a hybrid system (or) fully solar system for a portion of the apartment.

v. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 01.04.2015 under reference 4th cited.

i. The unit has not provided STP for the treatment of Sewage. The sewage generated from the partly occupied dwellings was collected in the Collection Tank located within this unit premises and disposed through tanker lorry without any treatment.

ii. The unit has not provided organic waste converter for the treatment and disposal of organic kitchen waste.

iii. The unit has not provided pretreatment system such as screen & settlers before recharging of surface run off.

iv. The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating. The unit has not provided a hybrid system (or) fully solar system for a portion of the apartment.

v. The unit has not provided common facilities such as Sewage Treatment Plant, Solid waste management system, Scientific rain water harvesting system, green belt development, environment monitoring system as stipulated in the Environmental clearance.

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vi. The unit has not provided arrangement for supplying fresh water requirement of 181 KLD through CMWSSB as committed in the affidavit.

Thus the unit contravenes the provisions under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended 1988.

Under Air (P&CP) Act, 1981:

I. The unit has not applied for consent of the Board under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 for the said project and the dwellings were occupied by residents and were in use.

II. The unit has constructed 13 blocks comprising of 620 Dwelling units as against 412 dwelling units as stipulated in the Environmental Clearance issued vide SEIAA Letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009. The unit has not obtained necessary Environmental Clearance for the additional construction of 208 Dwelling Units.

III. The unit has obtained revised planning permission vide planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated. 23/12/2013 for the construction of 21 Blocks comprising of 1016 dwelling units in the said location. But the unit has not appraised and not obtained the Environmental Clearance for the entire project based on the revised planning permission dated 23/12/2013. Instead of that the unit has obtained two separate Environmental Clearances vide letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009 (for 412 dwelling units) and Vide letter No. SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated. 01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only.

IV. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 27.04.2009 under reference 2nd cited.

i. The unit has provided DG set 180 KVA - 4 Nos and 125 KVA - 1 No with acoustic enclosures as against the backup power DG Set 250 KVA - 1 No Further the unit has not provided adequate stack height for the DG set installed.

ii. The unit has not developed adequate green belt along the periphery of the plot.

iii. The unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 01.04.2015 under reference 4th cited.

iv. The unit has not provided adequate stack height for the DG set 125 KVA-1 No.

v. The unit has not developed adequate green belt along the periphery of the plot.

Thus the unit contravenes the provisions of Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987.

Hence, Show Cause Notice was issued to the 4th respondent unit vide Board's Proceeding dated 23.08.2018 under the provisions of Water (P&CP) Act, 1974 and the Air (P&CP) Act, 1981.

5. It is further submitted that, the TNPC Board has addressed a letter dated 25.09.2018 to the Member Secretary, Chennai Metropolitan Development Authority, Chennai and SEIAA, Tamil Nadu, Chennai to furnish report on ascertaining the facts on violation committed by the unit of the 4th respondent M/s. Jain Housing & Construction Ltd., for taking further action as per the orders of the Hon'ble Tribunal.

6. It is further submitted that, the 4th respondent unit has sent reply to the Show Cause Notice vide its letter dated 11.09.2018 and reported that "we have been complying strictly with all the laws in force. We have already completed the project and third party public are in possession of the property and therefore we request that no further action be taken pursuant to the notice without considering our reply for which we seek a short time".

7. It is further submitted that, the 4th respondent unit has also furnished another reply to the Show Cause Notice vide its letter dated 28.09.2018 and the respondent unit has denied all the allegations mentioned in the show cause notice issued by the respondent TNPC Board.

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8. It is further submitted that, so far the 4th respondent unit has not applied for consent of the Board for the said project under the Water (P&CP) Act, 1974 and the Air (P&CP) Act, 1981. In view of the above the reply furnished by the 4th respondent unit is not satisfactory, the Tamil Nadu Pollution Control Board is preparing to initiate legal action under the provisions of the Water (P&CP) Act, 1974 and the Air (P&CP) Act, 1981 as against the unit of 4th respondent unit and the same is under process.

Under the above circumstances, it is humbly prayed and submitted that in accordance with the Hon'ble National Green Tribunal (SZ) order, this respondent would file the report on the further action taken against the 4th respondent as proposed above by this respondent accordingly.

[Signature]
JOINT CHIEF ENVIRONMENTAL ENGINEER
TAMILNADU POLLUTION CONTROL BOARD
76, MOUNT SALAI, GUINDY,
CHENNAI - 600 032.
BEFORE ME

VERIFICATION

I, A. Krishnamoorthy, Son of Thiru. Ardhanari, working as Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board, Chennai-600,032 do hereby verify that the contents of above report are true to the best of my knowledge through records.

Verified at Chennai on this 27th day of September, 2018.

[Signature]
JOINT CHIEF ENVIRONMENTAL ENGINEER
TAMILNADU POLLUTION CONTROL BOARD
76, MOUNT SALAI, GUINDY,
CHENNAI - 600 032.

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From

05.11.2018

The Managing Director

M/s. Jain Housing & Constructions Limited

No.98/99, Habibullah Road,

T.Nagar, Chennai 600017

To

Shri D. Sekar, M.Tech., (Env.Engg),
Member Secretary,
Tamil Nadu Pollution Control Board,
Chennai 600 032

Sir

Sub: Reply to your Letter No. TNPCB/LAW/LA-III/NGT/22327/2018 dated 02.11.2018

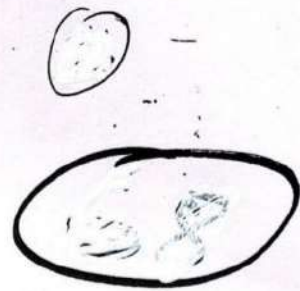
1. We are in receipt of your letter mentioned above and the Report filed by the TNPCB in Application No.05 of 2018 (SZ) before the Hon'ble National Green Tribunal (SZ).
2. In Para (8) of the Report, it is stated as follows :-

" 8. It is further submitted that, so far the 4th Respondent unit has not applied for consent of the Board for the said project under the Water (P&CP) Act, 1974 and the Air (P&CP) Act, 1981. In view of the above the reply furnished by the 4th Respondent unit is not satisfactory, the Tamil Nadu Pollution Control Board is preparing to initiate legal action under the provisions of the Water (P&CP) Act, 1974 and the Air (P&CP) Act, 1981 as against the unit of the 4th Respondent unit and the same is under process."

3. The above decision of the TNPCB is shocking and surprising since all explanations had been furnished by us in our reply dated 28.09.2018 in response to the show cause notice

dated 23.08.2018. The same may be read as a parcel of this communication. In any event, the TNPCB has stated that *"In view of the above the reply furnished by the 4th Respondent unit is not satisfactory,..."* clearly stating that action is proposed to be taken only for the reason that we have allegedly not applied for consent of the Board. In so far as the said issue is concerned, we have already made a specific reply in our earlier communication at Para (5) as follows :-

5. With respect to Para (1), it is submitted that consent for the unit had been not insisted upon by the Board earlier. In fact, pursuant to a judgement of the Hon'ble High Court at New Delhi requirement for consent differentiated between residential building and a building constructed for location of industries or shops. Consequently an association of builders also sought clarification from the Board regarding the same and it was based on such discussions and advices, the unit had not applied for Consent from the Board. In any event, the unit had already obtained an Environmental Clearance and as such is willing to submit an application for consent henceforth if insisted upon. We are also advised to state that as per Section 25(5) of the Water Act, if no prior consent has been received as per Section 25(1) of the said Act, the Board shall impose such conditions as would have been imposed earlier. In light of the EC being obtained, we assure that there has been no violation of any environmental norms and we are willing to submit an application for consent if insisted.
4. Therefore the reasonable explanation given for the said issue has been not considered at all by the Board. Further, it was made clear that we are in any event willing to apply for the consent if insisted upon as we have already obtained Environmental Clearance and as such are complying with all the norms.
5. Thus, we request you to kindly re-consider the decision to initiate action against the unit as stated in your Report and grant a fair opportunity to apply for consent as insisted. The



unit has been fully compliant and is willing to abide by any condition that may be necessary and imposed.

Yours Sincerely,



Jain Housing & Constructions Ltd.

16.11.2018

To

Thiru D. Sekar, M.Tech., (Env.Engg),
Member Secretary,
Tamil Nadu Pollution Control Board,
Chennai 600 032

Sir

Sub: Reply to your Letter No. TNPCB/LAW/LA-III/NGT/22327/2018 dated 02.11.2018

1. We are in receipt of your letter mentioned above and the Report filed by the TNPCB in Application No.05 of 2018 (SZ) before the Hon'ble National Green Tribunal (SZ)

2. In Para (8) of the Report, it is stated as follows :-

8. It is further submitted that, so far the 4th Respondent unit has not applied for consent of the Board for the said project under the Water (P&C) Act, 1974 and the Air (P&C) Act, 1981. In view of the above the reply furnished by the 4th Respondent unit is not satisfactory. The Tamil Nadu Pollution Control Board is preparing to initiate legal action under the provisions of the Water (P&C) Act, 1974 and the Air (P&C) Act, 1981 as against the unit of the 4th Respondent unit and the same is under process."

3. The above decision of the TNPCB is shocking and surprising since all explanations had been furnished by us in our reply dated 28.09.2018 in response to the show cause notice dated 23.08.2018. The same may be read as a parcel of this communication. In any event, the TNPCB has stated that "In view of the above the reply furnished by the

CIN : U45201TN1994PLC029036

Corporate Office : No. 98/99, Habibullah Road, T. Nagar, Chennai - 600 017.

Ph. : 044 - 4679 1111 Fax : 91-44-2461 3077

E mail : enquiry@jainhousing.com Website : <http://www.jainhousing.com>

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4th Respondent unit is not satisfactory. ... clearly stating that action is proposed to be taken only for the reason that we have allegedly not applied for consent of the Board. In so far as the said issue is concerned, we have already made a specific reply in our earlier communication at Para (5) as follows :-

5. With respect to Para (1), it is submitted that consent for the unit had been not insisted upon by the Board earlier. In fact, pursuant to a judgement of the Hon'ble High Court at New Delhi requirement for consent differentiated between residential building and a building constructed for location of industries or shops. Consequently an association of builders also sought clarification from the Board regarding the same and it was based on such discussions and advices, the unit had not applied for Consent from the Board. In any event, the unit had already obtained an Environmental Clearance and as such is willing to submit an application for consent henceforth if insisted upon. We are also advised to state that as per Section 25(5) of the Water Act, if no prior consent has been received as per Section 25(1) of the said Act, the Board shall impose such conditions as would have been imposed earlier. In light of the EC being obtained, we assure that there has been no violation of any environmental norms and we are willing to submit an application for consent if insisted
4. Therefore the reasonable explanation given for the said issue has been not considered at all by the Board. Further, it was made clear that we are in any event willing to apply for the consent if insisted upon as we have already obtained Environmental Clearance and as such are complying with all the norms.
5. I request your good self to find the attachment to this letter, stating that CTE is not essential if we have obtained environmental clearance.

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6. Thus, we request you to kindly re-consider the decision to initiate action against the unit as stated in your Report and grant a fair opportunity to apply for consent as insisted. The unit has been fully compliant and is willing to abide by any condition that may be necessary and imposed.

Yours Sincerely,

Sandeep Mehta

SANDEEP MEHTA

(Managing Director)

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Read in Court
on 10/4/14

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI
APPLICATION NO 5 OF 2018**

Arjunan Muthukrishnan

S/o.Shri.R.Arjunan

Flat No.TE/12, Jain Pebble Brook

SAkti Garden Cross Street No.1,

Okkiampettai, Thuraipakkam

Chennai - 600097

... Applicant

Versus

1. The State Level Environment Assessment Authority- Tamil Nadu

Rep by its Member Secretary

3rd Floor, Panagal Maaligai

Jeenis Road, Saidapet, Chennai- 600 015

... Applicant

**REPORT FILED BY THE FIRST RESPONDENT (STATE LEVEL ENVIRONMENT
IMPACT ASSESSMENT AUTHORITY - TAMIL NADU)**

Tmt.Me.Saraswathy
Counsel for the 1st Respondent

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**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI
APPLICATION NO 5 OF 2018**

Arjunan Muthukrishnan

S/o.Shri.R.Arjunan

Flat No.TE/12, Jain Pebble Brook

Sakti Garden Cross Street No.1,

Okdiampettai, Thuraipakkam

Chennai - 600097

... Applicant

Versus

1. The State Level Environment Assessment Authority- Tamil Nadu
Rep by its Member Secretary
3rd Floor, Panagal Maaligai
Jeenis Road, Saidapet, Chennai- 600 015
2. The Chennai Metropolitan Development Authority
Rep by its Member Secretary
Thalamuthu Natarajan Maligai
Gandhi Irwin Road
Egmore, Chennai
3. The Tamil Nadu Pollution Control Board
Rep by its Member Secretary
76, Mount Road, Guindy, Chennai 600032
4. M/s.Jain Housing
A Partnership firm
Rep by its Partner Mr.Sandeep Mehta
No.88/99 Habibullah Road,
T.Nagar, Chennai - 600017

...Respondent



Member Secretary
State Level Environment Impact Assessment Authority - Tamil Nadu
Third Floor, Panagal Maaligai,
Saidapet, Chennai - 600 015.

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**REPORT FILED BY THE FIRST RESPONDENT (STATE LEVEL ENVIRONMENT
IMPACT ASSESSMENT AUTHORITY - TAMIL NADU)**

I, Thiru.A.Udhayan, I.F.S, Member Secretary, having office at SEIAA-TN, 3rd Floor, Panagal Maaligai, No.1, Jeenis Road, Saidapet, Chennai-600015, do here by solemnly affirm and state an oath as follows;

1. I respectfully submit that I am the 1st Respondent herein and as such I am well acquainted with the facts and the circumstances of the case from the records available in this office.
2. I respectfully submit that at the outset, I deny the averments stated in the application as false except those that are specifically admitted hereunder and put the applicant to strict proof of the same.
3. It is respectfully submitted that the Hon'ble National Green Tribunal Principal Bench, New Delhi has passed order 06.08.2018 has pronounced that

"TNPCB must look into the matter and after ascertaining the facts from the State Level Environmental Impact Assessment Authority and the Chennai Metropolitan Development Authority, take such action as may be called for under the law within one month from the date of receipt of this order".

4. It is respectfully submitted that in pursuance to the orders of the Hon'ble National Green Tribunal, the State Level Environment Impact Assessment


Member Secretary
State Level Environment Impact Assessment Authority - Tamil Nadu
Panagal Maaligai, No.1, Jeenis Road, Saidapet, Chennai-600015

Authority - Tamil Nadu has sent a letter addressed to the Member Secretary, Tamil Nadu Pollution Control Board, Guindy, Chennai vide this office letter dated 20.09.2018 stating that:

I. " The State Environment Impact Assessment Authority (SEIAA) has issued the Environmental Clearance to M/s.Jain Housing and Constructions Ltd for the project of construction of multi-storeyed residential complex 412 Nos at S.No.384/6B, 10,11,12,13,18,396/4B, 5C,5D, 397/1 etc. No 48 Okktan Thoratpakkam Village, Tambaram Taluk, Kancheepuram District, based on the application filed by the proponent on 23.10.2007 vide this office Lr.No.SEIAA/TN/EC(a)/042-15/2009 Date: 24.07.2009 which expired on 23.07.2014 (Copy enclosed as Annexure I). The salient feature of the project is as follows:

- a) The plot area of the project is 34363 Sq.m and the total build up area is 51020.61 Sq.m comprising of silt + 4 floors of 12 blocks.
- b) Water requirement of the project is 278 KLD and daily fresh water requirement is 185KLD, which will be met from the supply of CMWSSB as per Lr.No.CMWSSB/ENGG/CCRCF/TTC/sp/ 2008, dated: 10.11.2008.
- c) It is proposed to provide Sewage Treatment Plant 250 KLD capacity for the treatment of sewage. The treated sewage of 249 KLD will be used for toilet flushing (93 KLD), gardening & landscaping (12 KLD) and the excess will be discharged into CMWSSB sewer line.


Member Secretary
State Level Environment Impact Assessment Authority - Tamil Nadu
Third Floor, Panagal Nagar,
Saidapet, Chennai - 600 015.

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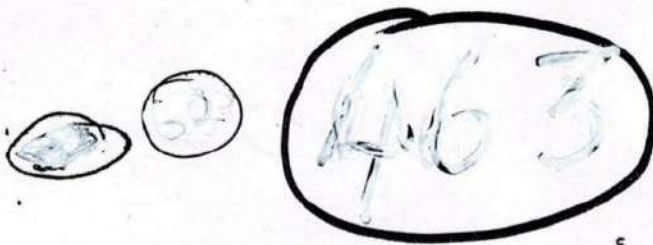
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- d) Solid Waste generation has been projected as 1236 Kg/day.
- e) The power required is 0.8 MW with backup power of 250 KVA DG Set.
- f) The total cost of the project is about Rs. 21.46 Crores.

II. The SEIAA has issued the Environmental Clearance to another project for the proponent of Mr. Chenaram Seni for the project of construction of Residential development of comprising of Residential Blocks -8 Nos. of Stilt+4 Floors at S.F.Nos.386/8 (386/1D2), 393/2C (393/2), 3, 4, 394/1A, 1B, 1C, 1D, 1E, 1F1, 2A, 2B1, 2B2, 2C, 2D1, 2D2, 2E1, 2E2, 2E3, 3A, 3B1, 3B2, 395/1A2, (395/1A), 2A, 395/3B, (3B1,3B2), 4, 5A, 5B, 6, 7, 8, 9, 10A, 10B (395/10), 11, 396/6(6A,6B), 7&397/2(397pt) of Okkiyam Thoratpakkam Village, Sholinganallur Taluk, Kanchēpuram District vide this office Lr.No.SEIAA/TN/F-1696/A/ 2C (8a) / 401/2015, Date: 01.04.2015 (Copy enclosed as Annexure II). the salient feature of the project is as follows:

- a) The plot area is 23550.00 m² and the build up area is 48115.17 m². Total No. of Dwellings - 396 Units and Expected occupancies -2178
- b) The daily fresh water requirement for the project will be 181 KLD, which will be met from CMWSSB Provisions.
- c) Sewage Treatment Plant 250 KLD capacity is proposed for the treatment of sewage. The


 Member Secretary
 State Environment Impact Assessment Authority - Tamil Nadu
 1st Floor, Panagudi Main Road,
 Panagudi, Thanjavur - 605 005.



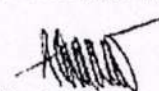
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sewage generated after treatment will be 225 KLD out of which 92 KLD will be recycled for Flushing, 13 KLD will be utilized for Greenbelt & 120 KLD will be disposed through CMWSSB Sewer Lines.

- d) Solid Waste generation has been projected as 1.31 MT/day out of which 0.79 MT/day of Biodegradable waste will be disposed through Authorized Waste Handlers, the 0.52 MT/day of Non-Biodegradable / recyclable waste will be handed over to the Authorized Recyclers and 26 Kg/day of Organic sludge generation from STP will be used as manure for gardening.
- e) The power required will be of 5750 KVA with backup power for 5 Nos. of 500 KVA with stack height of 18 m from ground level.
- f) The total cost of the project is about Rs.52 Crores.

In view of the above, it informed that the above facts may be considered while taking action and preparation of report so as to comply the Hon'ble National Green Tribunal, Principal Bench, New Delhi order dated: 06.06.2018."

- 5. It is respectfully submitted that the Tamil Nadu Pollution Control Board, Chennai vide their office letter dated 25.09.2018 has requested to furnish the report from State Level Environment Impact Assessment Authority, Tamil Nadu ascertaining the facts about the said project. In this regard the reply already sent to Tamil Nadu Pollution Control Board, Chennai vide


Member Secretary

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SEIAA-TN letter dated 20.09.2018 was once again communicated to the Tamil Nadu Pollution Control Board, Chennai vide this office letter dated: 28.09.2018.

6. 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.

Counsel for R1

Solemnly affirmed at Chennai
On this 30th day of November 2018
and signed his name in my presence.

1st Respondent

Member Secretary
State Level Environment Impact Assessment Authority - Tirukade
Third Floor, Panagal Maalgai,
Saidapet, Chennai - 600 015.

Before me

[Signature]
Assistant Environmental Engineer
State Level Environment Impact Assessment Authority
Third Floor, Panagal Maalgai,
Saidapet, Chennai - 600 015.

Item No. 01

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)

Original Application No. 05/2018 (SZ)

Arjun Muthukrishnan

Appellant(s)

Versus

The State Environment Impact Assessment Authority
& Ors

Respondent(s)

Date of hearing: 03.12.2018

CORAM

HON'BLE MR. JUSTICE S.P. WANGDE, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Appellants: Mr. A. Muthukrishnan, Advocate

For Respondent(s): Mr. Sanjay Upadhyay, Mr. Sathyajit Krishna
Krishnan & Ms. Maya Ramesh, Advocates for R-4
ME Mrs. Sarashwathy, Advocate for TN SEIAA

ORDER

1. In terms of the order dated 06.08.2018, the Tamil Nadu Pollution Control Board as well as the State Environment Impact Assessment Authority, Tamil Nadu have filed their reports.
2. On perusal of these, we find that there are observations which prima facie show non-compliance on the part of Respondent No.

3. However, Mr. Sanjay Upadhyay, learned Counsel appearing for the first time today on behalf of Respondent No. 4 pursuant to the notice issued in terms of the order dated 14.11.2018, prays that he may be permitted to file an affidavit placing on record the case in its perspective.

4. Prayer being reasonable, we permit the Respondent No. 4 to file an affidavit to place on record all such matters which would be relevant for disposal of this case.

Original Application No. 05/2018 (SZ)

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4.5.5

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5. List the case on 21st January, 2019.

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

December 03, 2018
DV



Item No. 01

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 05/2018 (SZ)

Arjunan Muthukrishnan

Applicant(s)

Versus

The State Environment Impact
Assessment Authority & Ors.

Respondent(s)

Date of hearing: 21.01.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

Mr. Arjunan Muthukrishnan, in person

For Respondent(s):

ME. Sarashwathy, Advocate for SEIAA
Mr. Abdul Saleem, S. Saravanan, Advocates
for R-3
Mr. S. Sai Sathya Jith, Mr. Sanjay
Upadhyay, Ms. Eisha Krishn, Ms. Maya
Ramesh, Advocates for R-4

ORDER

1. The issue for consideration is violation of environment laws by M/s. Jain Housing, Respondent No. 4.
2. On 06.08.2018, the Tamil Nadu Pollution Control Board (TNPCB) was directed to look into the matter and take appropriate action in accordance with law and furnish a report to the Tribunal.
3. A report was filed with forwarding letter dated 02.11.2018 by the TNPCB stating that the unit has not applied for Consent under the Water (Prevention and Control of Pollution) Act, 1974. It has not obtained Environmental Clearance for the entire project based on the revised planning permission. The unit has not followed the conditions stipulated in the Environmental Clearance dated 27.04.2009 and letter dated 01.04.2015. It has also not made arrangement for

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supplying fresh water, in violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. There is also violation of provisions of the Air (Prevention and Control of Pollution) Act, 1981. Show cause notice dated 23.08.2018 has been issued under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. Letter dated 25.09.2018 has also been written to the Chennai Metropolitan Development Authority (CMDA).

4

It is clear from the stand of the TNPCB that the unit is said to be violating the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 as well as the Environment (Protection) Act, 1986 for which action has been initiated but, has not been finalized. No reason is given why the issue is being kept pending when the Board is satisfied about violations.

5. Let the same be now finalized within one month. On violation being established, the TNPCB may take appropriate action, including recovering compensation for the damage to the environment for violation of the statutory provisions, apart from initiating prosecution and taking other actions in terms of Section 33B of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981. The TNPCB may also consider removing any illegal construction as may be found.

6. Let a report of the final action taken be furnished to this Tribunal by e-mail at ngt.filing@gmail.com.

Put up for consideration of the report on 27.03.2019.

Adarsh Kumar Goel, CP

(68)

4-37

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, FM

January 21, 2019
Original Application No. 05/2018 (SZ)
DV

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI.**

Application No. 05 of 2018 (SZ)

Arjunan Muthukrishnan,
S/o. Shri. R. Arjunan (Late)
Aged about 73 years,
Plot No. TE/12, Jain Pebble Brook,
Sakthi Garden Cross Street No.1,
Okkiampettai, Thuraipakkam
Chennai – 600 097.

...Applicant

-Vs-

1. The State Environment Impact
Assessment Authority,
Rep. by its Member Secretary,
3rd Floor, Panagal Building,
Jennis Road, Saidapet,
Chennai – 600 015 & 3 Others.

...Respondents

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**Filed by
Thiru. ABDUL SALEEM,
Advocate,
Chennai.**



**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI.**

Application No. 05 of 2018 (SZ)

Arjunan Muthukrishnan,
S/o. Shri R. Arjunan (Late)
Aged about 73 years,
Plat No. TE/12, Jain Pebble Brook,
Sakti Garden Cross Street No.1,
Okkiampettai, Thuraipakkam,
Chennai-600097.

...Applicant

-Vs-

1. The State Environment Impact Assessment Authority,
Rep. by its Member Secretary,
3rd Floor, Panangal Building, Jennis Road,
Saidapet, Chennai-600015.
2. The Chennai Metropolitan Development Authority
Rep. by its Member Secretary,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road,
Egmore, Chennai.
3. Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary ,
76, Mount Road, Guindy,
Chennai-600032.
4. M/s. Jain Housing,
A Partnership Firm,
Rep. by its partner Mr. Sandeep Mehta,
No.98/99 Habibullsh Road,
T. Nagar, Chennai-600017.

...Respondents

REPORT FILED ON BEHALF OF THE 3RD RESPONDENT
TAMIL NADU POLLUTION CONTROL BOARD.

I, G. Gopalakrishnan, Son of Thiru. V. Gandhi, Hindu, aged about
55 years, having office at No. 76, Mount Salai, Guindy, Chennai-600032,
do solemnly and sincerely state as follows:

G. Gopalakrishnan
JOINT CHIEF ENVIRONMENTAL ENGINEER
TAMILNADU POLLUTION CONTROL BOARD,
No.76, MOUNT SALAI, CHENNAI-600 032.

1. I am the Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board, Chennai-32 and as such I am well acquainted with the facts and circumstances of this case, as available in records. I am filing this Report on behalf of the 3rd Respondent Board.

2. It is respectfully submitted that the Hon'ble National Green Tribunal (PB), New Delhi (Through Video Conference) Chennai has passed order 21.01.2019 inter alia among other things:-

"On violation being established, the TNPCB may take appropriate action, including recovering compensation for the damage to the environment for violation of the statutory provisions, apart from initiating prosecution and taking other actions in terms of Section 33B of the Water (P&CP) Act, 1974 and Section 31A of the Air (P&CP) Act, 1981. The TNPCB may also consider removing any illegal construction as may be found".

3. It is respectfully submitted that in pursuance to the orders of the Hon'ble Tribunal the respondent TNPCB is being filed a criminal complaint against the 4th respondent unit of M/s. Jain Housing & Construction Ltd., before the Hon'ble Chief Judicial Magistrate Court, Chengalpattu.

4. It is respectfully submitted that, the TNPC Board has addressed a letter dated 20.03.2019 to the 2nd respondent Chennai Metropolitan Development Authority, Chennai to furnish details on illegal construction of the unit directly to the SEIAA, so as to calculate the compensation amount on environmental damage to be claimed from the Unit.

G. S. S. S. S. S.
JOINT CHIEF ENVIRONMENTAL ENGINEER
TAMILNADU POLLUTION CONTROL BOARD.
No.76, MOUNT SALAJ, CHENNAI-600 032.

5. It is further submitted that, the TNPC Board has also addressed a letter dated 20.03.2019 to the 1st Respondent State Environment Impact Assessment Authority, Tamil Nadu, Chennai and requested to assess the ecological damage and to suggest compensation amount to be claimed from the unit.

Under the above circumstances, it is humbly prayed that this Hon'ble National Green Tribunal (Southern Zone) may be pleased to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and thus render justice.

G. Gopalakrishnan
JOINT CHIEF ENVIRONMENTAL ENGINEER
TAMILNADU POLLUTION CONTROL BOARD,
MOUNT SALAI, CHENNAI-600 032.

BEFORE ME

VERIFICATION

I, G. Gopalakrishnan, Son of Thiru. V. Gandhi, working as Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board, Chennai-600 032, do hereby verify that the contents of above report are true to the best of my knowledge through records.

Verified at Chennai on this 26 day of March, 2019.

G. Gopalakrishnan
JOINT CHIEF ENVIRONMENTAL ENGINEER
TAMILNADU POLLUTION CONTROL BOARD,
No.76, MOUNT SALAI, CHENNAI-600 032.

**BEFORE THE NATIONAL GREEN
TRIBUNAL, SOUTHERN ZONE,
CHENNAI.**

Application No. 05 of 2018 (SZ)

Arjunan Muthukrishnan,
S/o. Shri. R. Arjunan (Late)
Aged about 73 years,
Plot No. TE/12, Jain Pebble Brook,
Sakthi Garden Cross Street No.1,
Okkiampettai, Thuraipakkam
Chennai - 600 097.

...Applicant

-Vs-

1. The State Environment Impact
Assessment Authority,
Rep. by its Member Secretary,
3rd Floor, Panagal Building,
Jennis Road, Saidapet,
Chennai - 600 015 & 3 Others.

...Respondents

**REPORT FILED ON BEHALF OF THE
3RD RESPONDENT - TAMIL NADU
POLLUTION CONTROL BOARD.**

**Advocate for Respondents: 2, 3
Tmt/Thiru: ABDUL SALEEM
98410 50440**

Dated: 29.03.2019

Item No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 05/2018 (SZ)

Arjunan Muthukrishnan & Ors.

Applicant(s)

Versus

The State Environment Impact
Assessment Authority & Ors.

Respondent(s)

Date of hearing: 10.04.2019

CORAM: HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. A. Muthukrishnan

For Respondent (s): Mr. ME. Sarashwathy, Advocate for R-1
Mr. Abdul Saleem, Advocate for R-3
Mr. Sai Sathya, Advocate for R-4

ORDER

1. The issue for consideration is violation of environmental laws by the Respondent No. 4 on the basis of the report received by the Pollution Control Board along with letter dated 02.11.2018, this Tribunal vide order 21.01.2019, passed the following order:

It is clear from the stand of the TNPCB that the report is said to be violating the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 as well as the Environment (Protection) Act, 1986 for which action has been initiated but, has not been finalized. No reason is given why the issue is being kept pending when the Board is satisfied about violations. Let the same be now finalized within one month. On violation being established, the TNPCB may take appropriate action, including recovering compensation for the damage to the environment for violation of the statutory provisions, apart from initiating prosecution and taking other actions in terms of Section 33B of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 (A) of the Air (Prevention and Control of Pollution) Act, 1981. TNPCB may also consider removing any illegal construction as may be found."

2. A report has been filed by Tamil Nadu Pollution Control Board dated 26.03.2019 wherein they have stated that they have filed a criminal complaint against the Respondent No. 4 Unit before the Hon'ble Chief

Judicial Magistrate Court, Chengalpattu and also wrote a letter to Respondent No. 2 Chennai Metropolitan Development Authority, Chennai to furnish details on illegal construction of the unit directly to the SEIAA, so as to calculate the compensation amount on environment damage to be claimed from unit. It is also mentioned in the report that they also addressed letter dated 20.03.2019 to SEIAA, Tamil Nadu and requested them to assess the ecological damage and to suggest compensation amount to be claimed from the unit.

3. The SEIAA also filed a report which was received by Email dated 01.12.2018 noting certain violations and also intimating the details to the TNPCB requesting them to assess the Environmental damage etc.

4. When the matter came up for hearing today, the counsel for the project proponent submitted that though proceedings have been initiated by the TNPCB under Section 33(A) Water (Prevention and Control of Pollution) Act, 1974 and under Section 30 (A) of the Air (Prevention and Control of Pollution) Act, 1981 and reply has been submitted by the Project Proponent, the same has not been culminated by them. According to the Learned Counsel, he got objections to the report of the authorities and there is a violation. However, the Tribunal in the earlier order mentioned came to the conclusion that on the basis of report, there is a certain violation. It is for the satisfaction on the basis of objection filed to the show cause notice issued, have to consider and pass appropriate order as required in accordance with law, so that the affected party can seek their remedy in accordance with law. The Pollution Control Board is directed to complete its proceedings without delay.

5. As far as compensation aspect is considered neither SEIAA nor the Pollution Control Board have given any data for assessing the compensation, thought they were directed to assess the compensation, for damages caused to environment on account of violations on the side of the Respondent No. 4-Project Proponent and

also amount required for restoration of damage caused to the environment. Such exercise has not been done even after nearly 3 months have been lapsed, on the basis of order passed by this Tribunal. So, the SEIAA and TNPCB are directed to consider the violation if any established and the damage caused on account of the violation by the Respondent No. 4 and assess the compensation to be recovered from them and submit an action taken report in this regard before the Tribunal within two months from today by Email.

6. Post the case on 10th July, 2019 for consideration of the report.

K. Ramakrishnan, JM

Dr. Jagin Nanda, EM



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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (S.Z)

AT CHENNAI

APPLICATION NO. 5 OF 2018 (S.Z.)

Between

Arjunan Muthukrishnan

S/o Shri R.Arjunan (Late)

Aged about 73 years

Flat No. TE/12, Jain Pebble Brook, Sakti Garden Cross St.No.1

Okkiampettai, Thuraipakkam, Chennai 600 097.

... Applicant

AND

1. The State Environment Impact Assessment Authority
Rep. by its Member Secretary
3rd Floor, Panangal Building, Jeenis Road
Saidapet, Chennai - 600 015.
2. Chennai Metropolitan Development Authority
Represented by its Member Secretary,
Thalamuthu Natarajan Maligai,
No. 1 Gandhi Irwin Road, Egmore
Chennai 600 008
3. Tamil Nadu Pollution Control Board
Represented by its Member Secretary,
76, Mount Road, Guindy,
Chennai 600 032.
4. M/s Jain Housing partnership firm,
Represented by its Partner, Shri Sandeep Mehta,
No. 98/99, Habibullah Road, T. Nagar,
Chennai 600 017.

... Respondents

For JAIN HOUSING

Sandeep Mehta
Partner

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 4, M/S JAIN

HOUSING & CONSTRUCTION LTD.

I, Sandeep Metha, S/o Ashok Metha aged 54 years, having office at 98/99, Habibullah Road Near Pasumpon Devar Kalyana, T. Nagar, Chennai, Tamil Nadu 600017, do solemnly affirm and sincerely state as follows :-

1. That I am Sandeep Metha of the Respondent No. 4, M/s Jain Housing Partnership firm and as such I am well acquainted with the facts and circumstances of the case. I am filing the present reply after perusal of the above application and documents filed along therein. I have also perused the reply filed on behalf of Respondent No. 2, Chennai Metropolitan Development Authority (hereinafter, CMDA) and Respondent No. 3, Tamil Nadu Pollution Control Board (hereinafter, TNPCB). I deny each and every averment contained in the main application and state the same as false & misleading except those that are specifically admitted herein.
2. That it is submitted that the answering respondent is a responsible and compliant undertaking, which has always adhered to the existing laws of the land, especially with regard to the environmental compliances. The residential complex of the answering respondent, i.e. Jain Pebble Brook, Sakti Garden Cross Street No. 1, Okkiampettai, Okkiyam Thuraipakkam, Sholinganallur Taluk, Chennai, has all the requisite clearances under the existing mechanism, such as prior Environmental Clearance under the Environment Impact Assessment Notification issued under the Environment Protection Act, 1986 (hereinafter, EPA) read with its rules and which have also been renewed periodically.
3. It is also pertinent to mention here that the Central Pollution Control Board (CPCB) had issued a letter dated 02.02.2017 to all State Pollution Control Boards, including Respondent No. 3, TNPCB wherein it is clearly stated that while streamlining the modalities of the consent mechanism, which has been discussed

For JAIN HOUSING

Sandeep Metha

with SPCBs in earlier meetings and conferences, and in light of the 175th Meeting of the Board of CPCB held on 21.12.2016, it was decided that a modified mechanism for the grant of consent would be followed. One of the decisions (Decision No. III) clearly stated that there should not be any need to obtain consent to establish for building/construction projects/area development projects and township projects which are mentioned at S. No. 8(a) and 8(b) mentioned in the Schedule of Projects in the EIA Notification, 2006. For such projects, the EC shall suffice subject to the condition that there should be a permanent member of the SPCB in the State Level EIA Authority to represent the views of the SPCB. In the State of Tamil Nadu, the Member Secretary of the SPCB is a part of the State Environment Appraisal Committee (SEAC) as per the Notification dated 05.11.2018 published in the Gazette.

4. That it is pertinent to add that a judgement of the Hon'ble High Court of Delhi dated 23.01.2012 in the matter of Delhi Pollution Control Committee v Splendor Landbase Ltd. (LPA 895/2010) clearly states that that neither consent to establish nor consent to operate is applicable to a residential complex. The above has been the practice in the State of Tamil Nadu as well. It is in light of the above that after obtaining the EC and the fact that Respondent No. 3, TNPCB is already a party in granting such a clearance that the answering Respondent is totally compliant. This is further buttressed by the fact that six monthly reports have been submitted periodically and there has been no violation of the conditions of the EC and neither has there been any complaint by the regulatory authorities whatsoever.
5. That it is pertinent to mention that the Applicant is one of the residents of Respondent No. 4, M/s Jain Housing's building, namely "Jain Pebble Brook". The Applicant had purchased his flat during the year 07/03/2012. and was handed over possession on 1/11/2014 and has been continuously living there so far. The Applicant has never challenged either the EC or any other statutory clearance obtained. This case is also a ploy to challenge the EC when the limitation has far

For JAIN HOUSING

Signature

exceeded its period when it can be challenged. /

6. It is submitted that the said residential complex of the answering respondent is divided into two phases, out of which there are a total of 620 flats constructed in Phase I of the project and another 396 flats being constructed in Phase II of the project. Both the Phases are independent of each other and have been assessed and granted clearances by Respondent No. 1, SEIAA as such. In so far as Phase I is concerned a total of about 570 flats have been sold and out of which there is a total occupation of 570 flats. So far as Phase II is concerned about 7840 flats have been sold there is a total occupation of 66 Respondent No. 4, M/s Jain Housing has maintained the building complex along with all facilities initially after the construction of Phase I and thereafter, handed over maintenance to the owners association on December 2016. The present application is thus only based on personal motives and malafide intentions with a view to harass the answering Respondent for other gains.
7. That it is submitted that the main issue and contention of the Applicant is against the location of the Sewage Treatment Plant (STP), which in the submission of the answering respondent has been sited as per the certified building plan, duly approved by the Respondent No. 2, CMDA,
 This map clearly establishes that even though initially the location of STP was planned to be near Block No. 7, it has now been installed and operated near Block No. 12, where the Applicant resides, and all due care and precaution has been taken by the answering Respondent to ensure that the said location does not cause any problems for the residents.
8. That moreover, it is submitted that such change in the location of the STP has been approved by the competent authorities and was made with due permission. Such a change was also a necessity for the welfare of all the residents since the STP as situated today is in a location which is farthest from the apartments and also there is enough open space wherein an adequate green belt has also been

For JAIN HOUSING
Sandeep G. G. G.
 Partner

developed. Thus the present location of the STP is ideal to the interest and welfare of the entire community of residents and also will have the least disturbance to all. However, the applicant on pure personal reasons has objected to the same and has filed the present application. The contentions of the applicant and relief sought for is against the interest of all the residents and as such the application is purely based on personal interest alone without any larger public or environmental issue.

9. That before replying to the averments contained in the application, Respondent No. 4, M/s Jain Housing contends that the application itself is liable to be dismissed prima facie on the basis of the following preliminary objections, among other, and this Hon'ble Tribunal may impose exemplary costs on the Applicant for this frivolous, malafide and baseless litigation, whose only motive is to show the answering Respondent is a bad light, without any evidence.

Application not Maintainable-

10. That the impugned project of Respondent No. 4, M/s Jain Housing had been commenced after it was granted an environmental clearance dated 27.4.2009 by Respondent No. 1, SEIAA. A copy of the environmental clearance dated 27.04.2009 granted for Phase I has been marked and annexed herein as ANNEXURE A/-. The said clearance was for the construction of multi-storeyed residential complex of 412 Nos. and the total built up area is 51,020.61 sq.mts. However, during the phase of construction, the answering Respondent was mandated to comply with the implementation of EWS scheme by the Government of Tamil Nadu vide Circular/Notification As per the scheme, the answering Respondent had to reserve and allocate the scheme mentioned percentage of flats and built up area for the economically weaker sections (EWS) of the society, and consequently, the answering Respondent had to make changes to the construction of the units to accommodate the newly implemented scheme and also keeping in

For JAIN HOUSING

[Signature]

mind the prevalent market conditions. The answering Respondent obtained the advice of the Respondent No. 1, SEIAA authorities that such modifications and alterations should not exceed the overall total limits which is the total built up area. Therefore, the number of flats was modified from 412 to 620 flats by way of a change in area size in the form of converting 3 bedroom flats into 1 bedroom flats, thereby reducing the total size of the flats and so on. It is submitted that even while doing so, the total built up area had not exceeded the total area of 51,020.61 sq. mts., for which the original clearance was granted. The answering Respondent states, with all authority under his command, that even as on date, the same is permitted as per law. More particularly, such a change without exceeding the overall total limits is permitted as per the Office Memorandum of the Ministry of Environment, Forests and Climate Change (MoEF&CC) dated 14.12.2006 made in F.No.J-11013/41/2006-IA-II (I) and reiterated vide its recent proceedings. The said order clearly states that in cases of changes in the quantities or numbers of products may be allowed without prior EC by the SPCB provided such changes in the quantities of products are in the same category and are within the previously granted overall total limits. The order further states that the projects involving modernisation of the existing unit as long as they do not increase the pollution load, and then there is no requirement of a prior EC. In light of the above, there is no violation whatsoever committed by the respondent herein.

11. That it is submitted that in so far as the Phase II of the project is concerned, the answering Respondent obtained an environmental clearance from Respondent No. 1, SEIAA dated 01.04.2015.

The construction is being done for a total on 396 flats for a total built up area of 4,56,344 sqft Further, Respondent No. 4, M/s Jain Housing also obtained the planning permission and the building approval from Respondent No.

For JAIN HOUSING

Sandeep G. Chandra
Partner

2. CMDA for both the Phase I project and Phase II project on the basis of the valid environmental clearances. It is submitted that the Applicant, without disclosing the above facts, has made allegations in the application to contend that proper environmental clearance has been not obtained, and without verifying the approved and permitted modifications as elaborated above, has made submissions by confusing the Phase I and Phase II project to contend that there is no proper EC, which is a clear attempt to mislead this Hon'ble Tribunal. In any event, the Applicant having grievance against the grant of environmental clearance ought to have filed an appeal against the same which is the proper remedy as per Section 16 of the National Green Tribunal Act, 2010 (NGT Act). On the other hand, the present application has been filed without challenging the EC or any of the other permissions and appears to be in the nature of a personal grievance regarding the location of the STP, which is not a substantial question relating to the environment and as such is not maintainable as per the scope of Section 14 of the NGT Act, 2010.

Application is Infructuous

12. That it is submitted that the reliefs a) and b) sought by the Applicant require proceedings to be initiated by the authorities as per law to verify the facts and ascertain the situation. It is in that perspective that this Hon'ble Tribunal was pleased to pass an order dated 06.08.2018 while disposing of the above main application by directing Respondent No. 3, TNPCB to look into the matter after ascertaining the facts from Respondent No. 1, SEIAA and Respondent No. 2, CMDA and to take action as per law. This Hon'ble Tribunal further directed an action taken report to also be submitted by the said Respondents. Subsequently, the Respondent No. TNPCB, had issued a show-cause notice dated 23.08.2018 under the Water Act and the Air Act, to which the answering Respondent had submitted a reply dated 27.09.2018. The said reply is being processed by the Respondent Board.

13. That thereafter, the Respondent Board also submitted an action taken report dated

For JAIN HOUSING

Sandeep Gehlot
Partner

28.9.2018 as directed by this Hon'ble Tribunal. At the outset, it may be pertinent to note that as per Para (5) of the Report the TNPCB addressed a letter dated 25.09.2018 to Respondent No. 2, CMDA and Respondent No. 1, SEIAA Tamil Nadu to furnish report on violations committed by the answering Respondent, however, Respondent No. 3, TNPCB filed its Action Taken Report without such reports from the other Respondent Authorities, which is in contravention of the order of this Hon'ble Tribunal dated 06.08.2018 and hence, it is submitted that the Action Taken Report is liable to be set aside as such. Be that as it may, it is submitted that in para (8) of the said Report, Respondent No. 3, TNPCB has taken a stand that it is preparing to initiate legal action under the provisions of the Water Act and the Air Act. It is submitted that the answering Respondent also received a letter from the Board dated 02.11.2018 for which a reply has been sent by this Respondent dated 05.11.2018 wherein all proper explanations have been made to the observations in the Action Taken Report. It is only thereafter that this Hon'ble Tribunal was pleased to issue notice to this Respondent vide order dated 14.11.2018. In any event, it is submitted that since inspections have been made and proceedings have been initiated by Respondent No. 3, TNPCB, whereby the answering Respondent has also participated by submitting reply, raising all contentions and making explanations, it is the mandate of Respondent No. 3, TNPCB to conclude such proceedings on the basis on the replies and explanations as per law. It is relevant to submit that any action or order made by the Board after concluding the proceedings provide remedies under law to all parties including the Applicant and the answering Respondent. It is therefore submitted that the present application has become infructuous with the action and proceedings initiated by the Board, that too as per the orders of this Hon'ble Tribunal.

14. That on 21.01.2019, this Hon'ble Tribunal considered the Report filed by Respondent No. 3, TNPCB and observed that since proceedings had already been initiated by the Board through the issuance of show cause notice to the answering

For JAIN HOUSING
Sandip Ghosh

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Respondent, this Hon'ble Tribunal ordered the Board to bring finality to the proceedings and furnish a report of the final action taken within a month. As per the Report filed on behalf of Respondent No. 3, TNPCB on 29.03.2019, it was submitted that in pursuance of the orders of this Hon'ble Tribunal, the Board is proceeding in a criminal complaint against Respondent No. 4, M/s Jain Housing before the Hon'ble Chief Judicial Magistrate Court, Chengalpattu. It is submitted that in light of the said report of Respondent No. 3, TNPCB, action has already been initiated by the Board, rendering the present application of the Application before this Hon'ble Tribunal as infructuous.

Application has no 'substantial question relating to environment' and is beyond the period of limitation //

15. That it is submitted that the reliefs sought for in a) and b) do not disclose any cause of action where a substantial question relating to the environment is raised as per Section 14 of the NGT Act. It is submitted that the reliefs sought for are on the basis of alleged technical and procedural irregularities which are also denied. More particularly the Applicant has not even pleaded substantially on any pollution being caused or of any damage suffered by him. On the other hand, the application has repeatedly only questioned the technical aspects and more particularly compliances in obtaining and implementing various clearances, mostly dealing with the location of the STP of Phase I of the project, which appears to be a personal grievance of the Applicant. Even in the issue of noise pollution, the Applicant himself admits that the decibel level is 55 which is permitted as per the Noise Pollution (Regulation and Control) Rules, 2000. Thus there is no cause of action nor any substantial question of environment raised at all in the present application.
16. That even if such allegations are to be made, the Applicant ought to have filed the application within a period 6 months from the date on which the cause of action first arose. The Applicant in his pleading under the title "Limitation" has merely

For JAIN HOUSING

Sanjeev Gekha
Partner

stated that the cause of action is still continuing since the constructions have been illegally put up. Even in such a case, the Applicant ought to have challenged the same within the prescribed period of 6 months from when the constructions were put up which is during the 2010-11. However, only now the application has been filed after a delay of more than 7 years and as such the application is not maintainable as barred by limitation.

17. That Respondent No. 4, M/s Jain Housing submits that the averments contained in the application are false, misleading and without an iota of proof. The allegations are replied to hereunder on a para wise basis.

PARA WISE REPLY

1. That the contents of the corresponding para are denied as false and wrong, save what are matters of record. It is specifically denied that Respondent No. 4, M/s Jain Housing does not have proper environmental clearance. The modification of the total number of flats from 412 flats to 620 flats is valid and legal as explained hereinabove. With regard to the location of the STP, the initial location was only a proposed location and the change of the same was only for the overall benefit of all the residents. Such a change was also permitted by the competent authorities. The Applicant has not submitted any proof to even show that there is any pollution or otherwise caused by the functioning of the STP. The said averments and the entire case establishes the selfish motive of the Applicant to have the STP located elsewhere. Even other residents in the same block of the Applicant do not have any complaints regards the same. It is specifically denied that the STP has not been handed over to the association for maintenance as it has been done along with all the total maintenance for the entire building.
2. That the contents of the corresponding para are denied as false and wrong, save what are matters of record. It is submitted that the environmental clearances for Phase I and Phase II have been obtained after due process of law. It is submitted that the second clearance has been obtained in the name of Mr. chenaram seni

FOR JAIN HOUSING

Sandeep Gehlot
Partner

No. 4, M/s Jain Housing was advised and was also informed through communications from an association comprising other builders that, for residential purpose projects the installation of STP does not require consent order from the Pollution Control Board. The answering Respondent has also been advised and learnt that such a position is also approved and laid down in various decisions of the Hon'ble High Courts and this Hon'ble Tribunal. The STP has been otherwise been approved by the other planning authorities. In fact, the answering Respondent has explained the same to Respondent No. 3, TNPCB while issuing a reply to a show-cause notice and also submitted that it is willing, without prejudice to its right, to obtain a consent if insisted and this Respondent reiterates the same position and as such undertakes the same before this Hon'ble Tribunal.

7. That the contents of the corresponding para are denied as false and wrong, save what are matters of record. It is specifically denied that any water is let out into the natural drain and that there is any contamination of the environment. The Applicant has not submitted even an iota of proof to show that there is any pollution or any damage caused to him. It is pertinent to submit that in fact the maintenance of the entire building has been handed over to the owner's association long back and the applicant without raising the same allegations with the association has filed the present application. Since the owners association is in complete control of the day to day maintenance the Applicant himself is also liable for any violations and as such the contentions are unsustainable. It is submitted that Respondent No. 4, M/s Jain Housing has provided the STP for adequate and even more capacity. Further, the STP is also designed and installed as per the latest available technology and the Applicant has made averments regarding the same without any particulars or detail. Thus it is clear that the Applicant has filed the present case only irked by the location of STP close to his block even though no hardship or damage is caused to him. Therefore, the present litigation is selfish, personal, mala fide and filed for reasons that are dubious.

8. That the contents of the corresponding para are a matter of record and merit.

For JAIN HOUSING
Sau. S. S. Gekha
 Partner

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who is the power agent of the Respondent No. 4, M/s Jain Housing and as such is duly authorised and competent to obtain the clearances on behalf of the answering Respondent. It is submitted that there was no violation of the EC dated 27.04.2009 and the increase in the number of flats is permitted as per the office memorandum of the MoEF&CC dated 24.12.2006. It is only after the satisfaction that proper environmental clearance has been obtained by the project that Respondent No. 2, CMDA had approved the increased number of 620 flats vide its order dated 07.03.2011 and the averments that the plan approval is violative of the EC condition is thus erroneous and unsustainable. It is submitted that the further approval of the revised building plan dated 25.9.2013 including the shifting of the location of STP is also valid and not violative of the EC conditions. All the other averments are based on the contention that the increase of the number of flats from 412 units to 620 units are without valid EC which is erroneous and as such the contentions are unsustainable. Further, it is submitted that the STP installed is for an adequate and approved capacity of 550. A separate STP has also been installed for Phase II with a capacity of 250 KLD. Presently, the STP caters to only about 50% of its total capacity and even the fats are fully occupied and functional the STP has adequate and more capacity to deal with the same. There is no proof of any pollution or discharge caused by the operation of the STP and allegations are false, imaginary, bald and liable to be dismissed.

3. That the contents of the corresponding para are denied as false and wrong, and do not merit a response. The contentions are the same as answered hereinabove and are not replied to separately for the sake of brevity. It is submitted that there is no reason whatsoever for any proceedings to be initiated against this Respondent under Section 15 of the Environment Protection Act.
4. - 6. That the contents of the corresponding paras are denied as false and wrong, save what are matters of record. It is submitted that since the present project in both Phase I and Phase II is only a residential purpose project, the STP has been installed only to treat domestic sewage and for residential purpose.

For JAIN HOUSING
Handwritten signature

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response. In fact the Applicant has also filed another case as Writ Petition in W.P No. 24147/2018 of before the Hon'ble High Court of Madras on the basis of the very same averments and issues raised herein. The Applicant has not even disclosed the same on record as on date as such has not approached this Hon'ble Tribunal with clean hands. The Applicant is filing various litigations before various forums which amounts to the act of "forum shopping" and thus it is clear that the only intention of the Applicant is to harass this Respondent for personal gains.

9. That with respect to the grounds raised in the Application the same are a repeat of the averments contained and as such are not replied to separately for the sake of brevity of convenience. It is submitted that the grounds are unsustainable and liable to be dismissed.
10. That it is respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the above Application No.05 of 2018 (SZ) as devoid of any merit and pass such further or other orders in the interest of justice.

Solemnly affirmed on this the 20th day
Of August, 2019 and signed his name in
My presence

For JAIN HOUSING
Sandeep Chakha
Partner

(BEFORE ME)

(ADVOCATE : CHENNAI)

Item No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 05/2018 (SZ)

Arjunan Muthukrishnan & Ors.

Applicant(s)

Versus

The State Environment Impact
Assessment Authority & Ors.

Respondent(s)

Date of hearing: 21.08.2019

**CORAM: HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s): Mr. Arjunan Muthukrishnan, in person

For Respondent(s): Mr. Sarashwathy, Adv for R-1
Mr. K. M. Mrithunjayan, Adv and Mr. Saleem, Adv for
TNPCB
Mr. Sanjay Upadhyay a/w Mr. Saisathyajit, Adv and Ms.
Risha Krishn, Adv for R-4

ORDER

1. The above proceedings have been initiated on the basis of the application filed by the applicant alleging violation of environmental laws by Respondent no. 4, M/s. Jain Housing in carrying out the housing project in question. As per order dated 06.08.2018, this Tribunal directed the Tamil Nadu Pollution Control Board (TNPCB) to look into the matter and take appropriate action in accordance with law and furnish a report to the Tribunal. The TNPCB along with the letter dated 2.11.2018 submitted the report wherein they have submitted that the unit has not applied for consent under the Water (Prevention and Control of Pollution) Act, 1974. Further they have not obtained environmental clearance for the entire project based on revised planning permission. The unit has not followed with the condition stipulated in the clearance dated 27.04.2009 and letter dated 01.04.2015. It has also not made arrangement for supplying of fresh water in violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. There were also violation of provision

of Air (Prevention and Control of Pollution) Act, 1981. Show Cause Notice dated 23.08.2018 has been issued under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

2. The matter was considered by this Tribunal on 21.01.2019 and passed an order directing that on violation being established, the TNPCB to finalise the proceedings and submit action taken report including the recovery of compensation for damage to environment for violation of statutory provision, apart from initiating prosecution and taking other action in terms of Section 33 A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 A of the Air (Prevention and Control of Pollution) Act, 1981.
3. On 10.04.2019, this Tribunal has considered the question again and directed the TNPCB to complete the proceedings initiated under section 33 A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 A of the Air (Prevention and Control of Pollution) Act, 1981 and also directed SEIAA to submit a report as to whether any separate action has been taken by them including assessing compensation required for restoration of damage caused to environment and directed the SEIAA as well as TNPCB to submit separate reports as directed above. Time was again extended for filing response as per order dated 22.07.2019.
4. The Project Proponent has filed a written statement stating that there is no violation according to them and they completed the project in compliance with the environmental clearance granted and as per the laws then stood. They also contended that it was on account of personal enmity for the petitioner against the project proponent that the proceedings have been initiated and the application is barred by limitation etc. They also contended that they are not liable to pay

any compensation. They also further contended that the TNPCB has already initiated proceeding and the proceedings can be closed with a liberty for the statutory authority to proceed against them so that they can meet the show cause issued and appraised them and they will be getting the remedy of filing appeal against the order if it goes against them.

5. The TNPCB submitted a report which was received by email dated 20.08.2019 wherein they have stated that criminal prosecution has been initiated against the Project Proponent before the Chief Judicial Magistrate Court, Chengalpattu which was taken on file as C.C. No. 234 of 2019 under section 200 Cr.P.C for the violation of Section 25 read with sections 44, 47 and 49 of the Water (Prevention and Control of Pollution) Act, 1974 as amended and section 21 read with sections 37, 40 and 43 of the Air (Prevention and Control of Pollution) Act, 1981 as amended before that court. They have not mentioned anything about the show cause notice issued and what is further action taken on that aspect. SEIAA has filed the report dated 13.08.2019 received as per email dated 20.08.2019 wherein they have stated that SEIAA has no role in taking action. It is for the Regional Office of the MoEF& CC to take action against the Project Proponent, if there is any violation of the environmental clearance. They also contended that on the basis of the report, the TNPCB is also having authority to take action against the Project Proponent.

6. Heard the petitioner who is appearing in person and learned counsel appearing for the Project Proponent and the TNPCB.

7. According to the petitioner who appeared in person, there is violation of environmental clearance and damage has been caused to the environment. He also submitted that restoration of environment has

to be done for which compensation has to be imposed against the Project Proponent.

8. The Counsel for the Project Proponent submitted the proceeding initiated by the TNCB has not been completed. That is still pending with them.
9. Having considered all these aspects, we feel appropriate that it is not necessary to keep the file on this Tribunal. The Statutory Authority, namely, TNPCB has already initiated proceedings on the basis of the inspection conducted as directed by this Tribunal on the alleged violation said to have been committed by the Project Proponent as found on their inspection. It is also seen from the reports filed and also submissions made by the learned Counsel for the Project Proponent that the TNPCB has already issued notice Section 33 A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 A of the Air (Prevention and Control of Pollution) Act, 1981 and that has not been completed. An explanation has been filed by the Project Proponent to the said notice. It is also stated that prosecution has also been initiated against the Project Proponent. The maintainability or otherwise of prosecution etc., has to be considered by the concerned court on the basis of the merits on the basis of the materials to be submitted before that court. We are not going into that aspect in this application. Since the TNPCB has initiated action, we feel it is appropriate that let them complete the proceedings including the question as to whether any compensation has to be imposed for the alleged violation if any and the quantum of compensation has to be decided by them after giving an opportunity to the Project Proponent, to meet the case so that if the order goes against the Project Proponent they will be getting the statutory remedy for filing the appeal against the same.

10. As regards SEIAA's contentions is concerned, SEIAA also can independently go into the question of violation and recommend action for the violation to the MoEF & CC as the MoEF & CC is having only supervisory jurisdiction over the SEIAA in respect of the environmental clearance granted by the SEIAA and the Regional Office of the MoEF & CC is having authority to consider the question of violation or compliance or non-compliance of the environmental condition by the Project Proponent issued by the MoEF & CC or SEIAA as well. So under such circumstance, we direct the Regional Office, MoEF & CC Chennai to look into the question of any alleged violation if any Committee by the Project Proponent in carrying out the project on the basis of the report submitted before this Tribunal by the TNPCB and also if they want they can conduct an independent enquiry of the same and take appropriate action against the Project Proponent in accordance with law. All this things will have to be done by the respective authority within the period of two months and submit an action taken report before this Tribunal within a period of two months. With the above direction and observation this application is disposed off.

11. Registry is directed to communicate this order to the concerned authorities including the Regional Office of the MoEF & CC, Chennai to whom the Registry is also directed to send a copy of the petition orders passed by this Tribunal as narrated in this order and the report submitted by the TNPCB in the matter for compliance of the direction.

12. Post for consideration of report on 20th November, 2019

K. Ramakrishnan, JM

Dr. S.S. Garbyal, EM

August 21, 2019
O.A No. 05/2019

BEFORE THE HON'BLE CHIEF JUDICIAL MAGISTRATE COURT,
CHENGALPATTU

C.C. No. OF 2018

The Tamil Nadu Pollution Control Board,
Rep. by its District Environmental Engineer,
Thiru.P.Senthur Pandey,
Maraimalai Adigalar Street,
Maraimalai Nagar,
Kancheepuram District.

... Complainant

Versus

1. M/s. Jain Housing & Constructions Ltd,
(Presently M/s.Jain Housing)
rep. by its Managing Director,
Thiru. Sandeep Mehta,
No.98/99, Habibullah Road,
T.Nagar, Chennai-600017.
2. Thiru. Sandeep Mehta,
Managing Director,
M/s. Jain Housing & Constructions Ltd.,
(Presently M/s.Jain Housing)
No.98/99, Habibullah Road,
T.Nagar, Chennai-600017.
3. Thiru.R.Mennan,
Power Agent,
M/s. Jain Housing & Constructions Ltd.,
(Presently M/s.Jain Housing)
No.98/99, Habibullah Road,
T.Nagar, Chennai-600017.
4. Thiru.Chenaram Seni,
Power Agent-Manager,
M/s. Jain Housing & Constructions Ltd.,
(Presently M/s.Jain Housing),
High Gate, No.82, 9th Floor,
Dr.D.G.S. Dinakaran Salai,
M.R.C. Nagar, Chennai - 600 028

... Accused

**COMPLAINT FILED UNDER SECTION 200 OF CRIMINAL
PROCEDURE CODE FOR OFFENCES U/S 25 READ WITH
SECTIONS 44, 47 & 49 OF THE WATER (PREVENTION AND
CONTROL OF POLLUTION) ACT, 1974 AS AMENDED IN 1988,
SECTION 21 READ WITH SECTIONS 37, 40 & 43 OF THE AIR
(PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 AS
AMENDED IN 1987 & SECTIONS 15 AND 16 READ WITH
SECTION 19 (a) OF THE ENVIRONMENT (PROTECTION) ACT,
1986**

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The complaint above named states as follows:-

1. The Complainant is the Tamil Nadu Pollution Control Board represented by its District Environmental Engineer, Thiru.P.Senthur Pandey, M.E., Kancheepuram District having office at Maraimalai Adigalar Street, Maraimalai Nagar, Kancheepuram District.

The address for service on the Complainant is that of their Counsel is M/s. Abdul Saleem, S. Saravanan, R.Suresh & V.Rajkumar Advocates, 74, II Floor, Marshalls Road, Egmore, Chennai-600 008.

2. The 1st Accused is M/s. Jain Housing & Constructions Ltd, (Presently M/s.Jain Housing), rep. by its Managing Director, Thiru. Sandeep Mehta, No.98/99, Habibullah Road, T.Nagar, Chennai-600017.

The 2nd Accused is Thiru. Sandeep Mehta, Managing Director of M/s. Jain Housing & Constructions Ltd., (Presently M/s.Jain Housing), Male, aged not know, having address at No.98/99,Habibullah Road, T.Nagar, Chennai-600017.

The 3rd Accused is Thiru.R.Mennan, Power Agent of M/s. Jain Housing & Constructions Ltd., (Presently M/s.Jain Housing), Male, aged not known, having address at No.98/99,Habibullah Road, T.Nagar, Chennai-600017.

The 4th Accused is Thiru.Chenaram Seni, Power Agent & Manager of M/s. Jain Housing & Constructions Ltd., (Presently M/s.Jain Housing), Male, aged not known, having address at "High Gate", No.82, 9th Floor, Dr.D.G.S. Dinakaran Salai, M.R.C. Nagar, Chennai - 600 028.

The address for service on the above Accused is the same as stated above.

3. The complainant board is represented by Thiru. P.Senthur Pandey, who is a District Environmental Engineer of the Complainant Board and is a Public servant within the meaning of Section 21 of the Indian Penal Code and as per the provisions contained under section 50 of the Water (Prevention and Control of Pollution) Act 1976, Section 44 of Air

(Prevention and Control of Pollution) Act 1981 and under Section 21 of the Environment (Protection) Act 1986.

4. I submit that the Ministry of Environment and Forest has issued a notification in notification S.O. No. 394(E), published in Gazette No. 185, dated 16.04.1987, in which the Chairman/Member Secretary, as well as the Regional officers of the State Pollution Control Board are authorized to take legal action for the indicative violation under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988, Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 & Environment Protection Act, 1986 and as the jurisdictional District Environmental Engineer, the Complainant has been authorized vide proceedings B.P.Ms.No:58, dated 04.09.2013 to launch prosecution under section 19 (a) of the Environment Protection Act, 1986 on behalf of the Tamil Nadu Pollution Control Board, hence this complaint.

5. The Complainant submits that the 1st Accused is running a Partnership Firm under the name and style of M/s. Jain Housing & Constructions Ltd., (Presently M/s.Jain Housing), and is involved in the construction of Multi storeyed residential buildings. The 2nd accused is the Managing Partner, the 3rd accused is the Power Agent and 4th accused is the Power Agent-Manager of the 1st Accused. The 2nd 3rd and 4th accused are directly in charge and responsible to, the 1st accused company for the conduct of its business and the day to day affairs and administration of the 1st accused Company.

6. The complainant submits that the Ministry of Environment and Forest, Government of India vide its Environmental Impact Assessment Notification, 2006 [EIA] dated 14.09.2006 mandates that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to its notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority.

7. The complainant submits that as the Accused project involves construction of residential building area of more than 20,000 Sq.mts, and it requires prior Environmental Clearance, as stipulated in the Environment Impact Assessment Notification, 2006 dated 14.09.2006, which is categorized as Category B Project as per Schedule 8(a) of the said Notification 2006.
8. The complainant submits that the Accused proposed project falls under the Category B Project as per the Environment Impact Notification, 2006, and the accused has to obtain the Environmental Clearance from the Tamil Nadu State Level Environment Impact Assessment Authority (SEIAA). The Accused submitted its application to the Tamil Nadu State Level Environment Impact Assessment Authority (SEIAA) on 23.10.2007 for obtaining Environmental Clearance for the proposed project. The said application for Environmental Clearance was placed before the Environment Assessment Committee and the same was issued by the Tamil Nadu SEIAA on 27.04.2009 for Construction of multi storied residential complex of 412 Nos. of dwelling units with a total built up area of 51,020.61 Sq. mtrs comprising of Stilt + 4 floors of 12 Blocks with certain conditions.
9. The complainant submits that again the Accused submitted separate application to the Tamil Nadu State Level Environment Impact Assessment Authority (SEIAA) on 18.03.2015 for obtaining Environmental Clearance for its another proposed project adjacent to the above existing project. The said application for Environmental Clearance was placed before the Environment Assessment Committee and the same is issued by the Tamil Nadu SEIAA on 01.04.2015 for Construction of residential blocks - 8 Nos. of Stilt + 4 floors, total number of dwellings - 396 units with a total built up area of 48,115.17 Sq.m with various stringent conditions.
10. The complainant submits that in the meantime, one Thiru.Arjunan Muthukrishnan one of the flat owners in the above said project and owning a residential flat bearing Flat No.TE/12, Jain Pebble Brook has filed an application under Section 18 (1) read with Section

14 of the National Green Tribunal Act 2010 before the Hon'ble National Green Tribunal (SZ) Chennai in Application No.05 of 2018 (SZ) against the 1st accused for the following reliefs:-

".... it is humbly prayed that this Hon'ble Tribunal may be pleased to:

A. Direct respondents No. 1 and 3 to initiate prosecution against the 4th Respondents for violation of the EIA Notification, 2006, the Environmental (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

B. Direct the 4th respondents to relocate the STP to an appropriate location after obtaining consent to establish from the 3rd respondent and to design the STP scientifically so as to abate the pollution being caused and remediate the area .

C. And pass such further order or orders as may be deemed fit, proper and necessary in the facts and circumstances of the case and thus render justice".

11. The complainant submits that the Hon'ble Principal Bench of National Green Tribunal, New Delhi through video conference on 06.08.2018 had admitted and disposed the above application and directed as follows:-

"In view of the averments in the application noted above, we are of the view that TNPCB must look into the matter and after ascertaining the facts from State Level Environmental Impact Assessment Authority and Chennai Metropolitan Development Authority, take such action as may be called for under the law within one month from the date of receipt of this order.

A copy of this order be sent to TNPCB by e-mail.

The action taken report of the action taken may be furnished to this Tribunal by e-mail at filing.ngt@ gmail.com on or before 30.09.2018.

It is made clear that in case there is violation of this order, action may be taken for enforcement of this order under Section 25, which may also result in imposition of penalty under Section 26 of the National Green Tribunal Act, 2010.

The application is disposed of.

The report of the TNPCB may be put up for consideration on 14th November 2018".

12. The complainant submits that in compliance of the above order of the Hon'ble Principal Bench of National Green Tribunal, New Delhi, the project site in question of the 1st Accused at S.F.No.384/6B,10, 11, 12, 13, 18, 396/4B, 5C, 5D, 397/1 etc., & S.F.No. 386/8 (386/1D2), 393/2C, (393/2), 3,4, 394/1A, 1B, 1C, 1D,1E, 1F1, 2A, 2B1, 2B2, 2C,2D1, 2D2, 2E1, 2E2, 2E3, 3A, 3B1, 3B2, 395/1A2 (395/1A), 2A, 395/3B (3B1,3B2), 4 , 5A, 5B, 6, 7, 8, 9, 10A, 10B(395/10), 11, 396/6 (6A, 6B), 7 and 397/2 (397 pt) of Okkiam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District, was inspected on 18.08.2018 and 20.08.2018 and found various serious violations of Environmental laws and also the conditions imposed in the aforesaid Environmental Clearances, in which following specific observations were made:-

Under the Water (Prevention and Control of Pollution) Act, 1974

- a. *The unit has not applied for consent of the Board under Section 25 of the Water (P&CP) Act, 1974 as amended for the said project and the dwellings were occupied by residents and are in use generating sewage.*
- b. *The unit has constructed 13 blocks comprising of 620 Dwelling units as against 412 dwelling units as stipulated in the Environmental Clearance issued vide, SEIAA Letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Dated 27.04.2009. The unit has not obtained necessary Environmental Clearance for the*



additional construction of 208 Dwelling Units and consequent increase in sewage and solid waste quantity.

c. The unit has obtained revised planning permission vide planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated 23/12/2013 for the construction of 21 Blocks comprising of 1016 dwelling units in the said location. But the unit has not appraised and not obtained the Environmental Clearance for the entire project based on the revised planning permission dated 23/12/2013. Instead of that the unit has obtained two separate Environmental Clearances vide letter No.SEIAA/TN/EC/8(a)/042/F-15/2009 Dated 27.04.2009 (for 412 dwelling units) and Vide letter No.SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated 01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only.

Thus in view of the above, the unit contravenes the provisions under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended 1988.

Under Air (Prevention and Control of Pollution) Act, 1981:

a. The unit has not applied for consent of the Board under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 for the said project and the dwellings were occupied by residents and were in use.

b. The unit has constructed 13 blocks comprising of 620 Dwelling units as against 412 dwelling units as stipulated in the Environmental Clearance issued vide SEIAA Letter No.SEIAA/TN/EC/8(a)/042/F-15/2009 Dated 27.04.2009. The unit has not obtained necessary Environmental Clearance for the additional construction of 208 Dwelling Units.

c. The unit has obtained revised planning permission vide planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated. 23/12/2013 for the construction of 21 Blocks comprising of 1016 dwelling units in the said location. But the unit has not appraised and not obtained the Environmental Clearance for the entire project based on the

revised planning permission dated 23/12/2013. Instead of that the unit has obtained two separate Environmental Clearances vide letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 dated 27.04.2009 (for 412 dwelling units) and Vide letter No. SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated 01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only.

Thus the unit contravenes the provisions under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987.

13. The complainant submits that the unit has obtained revised planning permission from the Chennai Metropolitan Development Authority vide letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated.23.12.2013 for the construction of 21 Blocks comprising of 1,016 dwelling units in the said location. But the unit has not appraised and obtained the Environmental Clearance for the entire project based on the revised planning permission dated 23.12.2013, Instead of that bypassing the Environmental Impact Assessment Notification, the unit has obtained two separate Environmental Clearances vide letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date.27.04.2009 (for 412 dwelling units) and Vide letter No. SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated.01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only.

14. The complainant submits that the unit has completed the construction activity and the dwellings were occupied by the residents and were in use and without obtaining Consent of the Board under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 (hereinafter referred to as the Act) and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 (hereinafter referred to as the Act).

15. The complainant submits that on inspection the unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 27.04.2009.

(i) All the 620 Dwelling units were occupied and the sewage generated is treated in the existing STP (below ground level)

comprising of Collection Tank, Aeration Tank, Settling Tank, Filter Feed Tank, Sludge Holding Tank, Treated Water Tank, PSF, ACF and the same was not operated effectively. Further the unit has not provided sludge dewatering system and the STP sludge is disposed outside through tanker lorry. The treated sewage was utilized for gardening purpose.

(ii) The unit has not provided the UV disinfection system for utilizing the treated sewage for toilet flushing.

(iii) The unit has not provided necessary arrangement for disposal of treated sewage during monsoon.

(iv) The unit has not provided pretreatment system such as screen & settlers before recharging of surface run off.

(v) The unit has not provided Flow meters to verify the quantity of sewage generated/ treated and No log books are maintained.

(vi) The unit has not provided the Organic Waste Convertor for the treatment and disposal of organic kitchen waste.

(vii) The unit has not developed adequate green belt along the periphery of the plot.

(viii) The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating. The unit has not provided a hybrid system (or) fully solar system for a portion of the apartment.

16. The complainant submits that the unit has not complied the following conditions stipulated in the Environmental Clearance letter dated 01.04.2015.

(i) The unit has not provided STP for the treatment of Sewage. The sewage generated from the partly occupied dwellings was collected in the Collection Tank located within this unit premises and disposed through tanker lorry without any treatment.

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- (ii) *The unit has not provided organic waste convertor for the treatment and disposal of organic kitchen waste.*
 - (iii) *The unit has not provided pretreatment system such as screen & settlers before recharging of surface run off.*
 - (iv) *The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating. The unit has not provided a hybrid system (or) fully solar system for a portion of the apartment.*
 - (v) *The unit has not provided common facilities such as Sewage Treatment Plant, Solid waste management system, Scientific rain water harvesting system, green belt development , environment monitoring system as stipulated in the Environmental clearance.*
 - (vi) *The unit has not provided arrangement for supplying fresh water requirement of 181 KLD through CMWSSB as committed in the affidavit.*

It is apparent from the above that, apart from the violation of the provisions of Water and Air Acts, the accused has also violated the conditions stipulated in the Environmental Clearances and thereby contravenes the provisions of Environmental (Protection) Act, 1986.

17. The complainant submits that thus the Accused is in violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 (hereinafter referred to as the Act) and is guilty of having committed an offence under Section 44, Section 47 & Section 49 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 (hereinafter referred to as the Act). The relevant provisions of Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 (hereinafter referred to as the Act) contemplate as follows:

Section 44 in the Water (Prevention and Control of Pollution) Act, 1974

Penalty for contravention of section 25 or section 26.

Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than 1[one year and six months] but which may extend to six years and with fine.

Section 47 in The Water (Prevention and Control of Pollution) Act, 1974

Offences by companies.—

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge for that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means anybody corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Section 49 in The Water (Prevention and Control of Pollution) Act, 1974

Cognizance of offences.

[(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

- (a) a Board or any officer authorised in this behalf by it; or*
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorised as aforesaid,*

and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.]

[(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.]

[(3) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974)], it shall be lawful for any [Judicial Magistrate of the first class or for any Metropolitan Magistrate] to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

18. The complainant submits that thus the Accused is also in violation of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 (hereinafter referred to as the Act) and is guilty of having committed an offence under Section 37, Section 40 & Section 43 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 (hereinafter referred to as the Act). The relevant provisions of Air (Prevention and Control of Pollution) Act, 1981 as

amended in 1987 (hereinafter referred to as the Act) contemplate as follows:

Section 37 in THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.—

(1) *Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.*

(2) *If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.*

Section 40 in THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

Offences by companies.—

(1) *Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Section 43 in THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

Cognizance of offences.—

(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person: Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

19. The complainant submits that thus the Accused is in violation of the provisions of the EIA Notification 2006 and is guilty of having committed an offence under Section 15 (1) read with Section 16 (1) of

the Environment (Protection) Act, 1986. The relevant provisions of the Environment (Protection) Act, 1986 contemplate as follows:

Section 15 – Penalty for contravention of the provisions of the Act and the Rules, Orders and directions:-

- (1) *Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued there under, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention"*

Section 16 – Offences by companies:-

- (1) *Where any offence under this Act has been committed by a company, every person who, at all time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*

20. The Complainant submits that subsequently on 23.08.2018, the Complainant issued a show cause notice to the accused for violation of aforesaid environmental laws under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988, the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 and Environmental Act 1986. The Accused in its reply dated 11.09.2018 has stated as follows:-

"We deny the allegation contained in the notice and are preparing the reply and also compiling the supporting documents to prove our reply. In this aspect, we have also obtained legal

advice and are in the process of getting our reply finalized. However, due to the voluminous documents that are required to be perused, studied, incorporated in the reply and also submitted, there is a considerable delay in getting the provisions of law under which the notice has been issued and in the absence of any emergent circumstances, clear from the notice itself. We hope our request will be positively considered. Therefore we request you to kindly consider the above stated and grant us a further period of 15 days, even as a last chance to submit our reply. We are at any point of time willing to co-operate and even submit our case orally pending finalization of our reply in a written format as advised to us by our lawyers.

We are well reputed company and we have been complying strictly with all the laws in force. We have already completed the project and third party public are in possession of the property and therefore we request that no further action be taken pursuant to the notice without considering our reply for which we seek a short time as stated above to submit. Your good self has wrongly addressed to Jain Housing Construction Ltd however we consider as we are working in same premises, but we request your good self to address it to Jain Housing Partnership Firm in further communication in regards to above project".

21. It is submitted that the accused ought not to have commenced the construction activity without prior Consent of the Board as stipulated in the Environmental Clearances and the dwellings constructed were occupied by the residents and are in use by its owners and the same is in violation of Section 44 of the Water (Prevention and Control of Pollution) Act, 1974 and shall be punishable with imprisonment for a term which shall not be less than [one year and six months] but which may extend to six years and with fine and under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 and shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand

rupees for every day during which such failure continues after the conviction for the first such failure.

22. The Complainant submits that the accused ought not to have commenced the construction activity than the activity for which Environmental clearance obtained vide SEIAA Letter No.SEIAA/TN/EC/8(a)/042/F-15/2009 Date.27.04.2009.The unit has not obtained necessary Environmental Clearance for the additional construction of 208 Dwelling Units and consequent increase in sewage and solid waste quantity and the unit has obtained revised planning permission vide planning permission letter P.P.No.B/Spl.Bldg/480 (1to34)/2013 in letter No.B2/13682/2011 dated.23/12/2013 for the construction of 21 Blocks comprising of 1016 dwelling units in the said location. But the unit has not appraised and not obtained the Environmental Clearance for the entire project based on the revised planning permission dated23/12/2013. Instead of that the unit has obtained two separate Environmental Clearances vide letter No.SEIAA/TN/EC/8(a)/042/F-15/2009 Date.27.04.2009 (for 412 dwelling units) and Vide letter No.SEIAA-TN/F-1696/A/EC/8(a)/401/2015 Dated.01.04.2015 (for 396 dwelling units) with a total of 808 dwelling units only and the same is in violation of section 15(1) of the Environment (Protection) Act, 1986 which attracts the imprisonment for a term which may extend to five years or with fine which may extent to One Lakh Rupees or with both.

23. The Complainant submits that in term of Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988, the accused 2, 3 & 4 who are directly in charge of the day to day affairs and responsible for the conduct of business of the 1st accused company are liable to be punished for the aforesaid offences.

24. The Complainant submits that in term of Section 40 of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987, the accused 2, 3 & 4 who are directly in charge of the day to day affairs and responsible for the conduct of business of the 1st accused company are liable to be punished for the aforesaid offences.

25. The Complainant submits that in term of Section 16 (1) of the Environment (Protection) Act, 1986, the accused 2, 3 & 4 are directly in charge of the day to day affairs and responsible for the conduct of business of the 1st accused company liable to be punished for the aforesaid offences.

26. The cause of action arose at S.F.No. 384/6B, etc., Okkiam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District; when the Accused constructed its additional dwelling units without any Prior Environmental Clearance as mandated from the concerned authorities; when the accused also violated the conditions of Environmental Clearances; when the accused has not appraised and not obtained the Environmental Clearance for the entire project based on the revised planning permission of the Development authority; when the accused has completed the construction activity and the dwellings were occupied by the residents and are in use without obtaining Consent of the Board; On 23.08.2018, when the complainant inspected the project site and found that the additional dwelling units were constructed and no prior consent of the Complainant Board was obtained, On 23.08.2018 when the Complainant issued a notice for violating the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environmental (Protection) Act, 1986; On 11.09.2018 and 28.09.2018 when the accused denied the allegations in the Show cause notice and as the replies were not satisfactory and the violations are still continues and on all subsequent days when the cause of action continues till date within the jurisdiction of this Hon'ble Court. Further, the complaint is well within limitation.

27. The Complainant submits that the Accused are located and based in Chennai. The offences have been committed by the Accused in Okkiam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District and the complainant is having office at Maraimalainagar, all within the Jurisdiction of this Hon'ble Court. Therefore this Hon'ble Court has jurisdiction to try and entertain the present Complaint.

Under these circumstances, the complainant respectfully prays that this Hon'ble Court may be pleased to take the above complaint on file, issue process to the accused, enquire into the matter and prosecute the accused under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974, Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 19 of the Environment (Protection) Act, 1986 and pass orders by punishing the accused by imposing imprisonment or fine or with both under Sections 44, 47 & 49 of the Water (Prevention and Control of Pollution) Act, 1974, Sections 37, 40 & 43 of the Air (Prevention and Control of Pollution) Act, 1981 and Sections 15 & 16 of the Environment (Protection) Act, 1986 in accordance with law and pass such further or other order as this Hon'ble Court may deem fit proper in the circumstances of the case and render justice.

Dated at Chengalpattu on this day of March, 2019.

COUNSEL FOR COMPLAINANT

COMPLAINANT

LIST OF WITNESSES:

1. Mr. Senthur Pandey,
District Environmental Engineer,
Tamilnadu Pollution Control Board,
Maraimalai Adigal Salai, Maraimalai Nagar,
Kancheepuram District.
2. Mr.K. Udayakumar,
Assistant Environmental Engineer,
O/o the District Environmental Engineer
Tamilnadu Pollution Control Board
Maraimalai Adigal Salai, Maraimalai Nagar,
Kancheepuram District.

LIST OF DOCUMENTS:

Sl. No.	Date	Particulars	Remarks
1.	16.04.1987	S.O. No. 394 (E) issued by the Ministry of Environment and Forest	Xerox Copy
2.	14.09.2006	Environment Impact Assessment Notification, 2006.	Xerox Copy

3.	27.04.2009	1 st Environmental Clearance issued to the Accused	Xerox Copy
4.	04.09.2013	TNPCB Board Proceedings No. 58	Xerox Copy
5.	01.04.2015	2 nd Environmental Clearance issued to the Accused	Xerox Copy
6.	06.08.2018	Order of the Hon'ble National Green Tribunal, New Delhi in O.A. No. 5/2018 (SZ)	Xerox Copy
7.	23.08.2018	Inspection Report of the District Environmental Engineer of the Complainant	Xerox Copy
8.	23.08.2018	Copy of show cause notice issued to the accused company	Xerox Copy
9.	11.09.2018	Copy of reply received from the accused company for the issue of show cause notice.	Xerox Copy
10.	28.09.2018	Copy of reply received from the accused company for the issue of show cause notice	Xerox Copy

Dated at Chengalpattu on this day of March, 2019

COUNSEL FOR COMPLAINANT

COMPLAINANT

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighth day of November Two Thousand Nineteen

PRESENT

The Hon'ble Mr Justice M.S. RAMESH

CRIMINAL ORIGINAL PETITION No.29928 of 2019

AND CRL.M.P.NO.16169 & 16171 of 2019

1 M/S.JAIN HOUSING AND CONSTRUCTIONS LTD, [PETITIONERS / ACCUSED]
(PRESENTLY M/S.JAIN HOUSING)
REP BY ITS MANAGING DIRECTOR,
THIRU.SANDEEP MEHTA,
2 SANDEEP MEHTA
3 R.MENNAN
4 CHENARAMSENI

VS

THE TAMIL NADU POLLUTION CONTROL BOARD,
REP BY ITS DISTRICT ENVIRONMENTAL ENGINEER,
THIRU.F.SENTHUR PANDY, MARAIMALAI ADICALAR STREET,
MARAIMALAI NAGAR, KANCHI PURAM DISTRICT. [RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased to

(i) To call for the records in the complaint filed by the respondent in C.C.No.234/2019 on the file of the Learned Chief Judicial Magistrate, Chengalpattu and quash the same.

(ii) To Interim Stay of all further proceedings in C.C.No.234/2019 on the file of the Learned Chief Judicial Magistrate, Chengalpattu, pending disposal of the above main petition Crl.O.P.No.29928/2019. (CRL.M.P.NO.16169/2019)

(iii) To Dispense with the appearance of the petitioners in C.C.No.234/2019 on the file of the Learned Chief Judicial Magistrate, Chengalpattu, pending disposal of the above main petition Crl.O.P.No.29928/2019. (CRL.M.P.NO.16171/2019)

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.SAI SATHYAJITH, Advocate for the petitioners, the court made the following order:-

Dt 0021600

When the respondent Board had chosen to issue show cause notices both under the Air as well as the Water Act, it is claimed that the petitioners had also given their reply. Without adjudicating such a reply, it is not proper on the part of the respondent Board to have proceeded with the complaint. The very purpose, for which an opportunity has been provided to the petitioner to give a reply to the show cause notices, seems to be defeated and therefore, the complaint could be improper. This aspect requires further deliberation.

2. However, since the petitioners have made out a prima facie case, there shall be an order of interim stay, till 06.12.2019.

3. The personal appearance of the petitioners are dispensed with, till 06.12.2019.

4. Notice to the respondent, returnable by 06.12.2019. Private notice is also permitted. The petitioner is also permitted to serve notice on the counsel appearing for the respondent before the Trial Court.

5. Post the matter on 06.12.2019.

-sd/-

08/11/2019

This order, on being produced, be punctually observed and carried into execution by all concerned.

TRUE COPY

T. R. [Signature] 22/11/2019
Sub-Assistant Registrar (Statistics C.S.)
High Court, Madras - 600 105

TO

1 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU.

2 THE TAMIL NADU POLLUTION CONTROL BOARD,
REP BY ITS DISTRICT ENVIRONMENTAL ENGINEER,
THIRU.P.SENTHUR PANDY, MARAIMALAI ADIGALAR STREET,
MARAIMALAI NAGAR, KANCHEEPURAM DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S. SAI SATHYAJITH Advocate on payment of necessary charges SR.NO.23044

CRL OP.29928/2019
AND CRL.M.P.NO.16163 & 16171 of 2019

Date : 08/11/2019

TA-21/11/2019

Dt 00316:

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Item No.03:**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI****Original Application No. 05 of 2018 (SZ)****(Through Video Conference)****IN THE MATTER OF:**

Arjunan Muthukrishnan

...Applicant(s)

With

The State Environment Impact
Assessment Authority and Ors.

Respondent(s)

Date of hearing: 04.06.2020.**CORAM:****HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER****HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER****For Applicant(s)**

Mr. A. Muthukrishnan

For Respondent(s):

M/s. M.E. Saraswathy for R1.

M/s. Abdul Saleem & S. Saravanan for R3.

M/s. Sai Sathya Jith for R4.

ORDER

1. As per the order dated 07.01.2020, we have directed the Ministry of Environment, Forest & Climate Change (MoEF &CC) as well as Tamil Nadu Pollution Control Board (TNPCB) to submit their reports and posted the case to 19.03.2020. On 19.03.2020 it was again adjourned at the request of the respondents to 07.04.2020. Tamil Nadu Pollution Control Board is also directed to complete the proceedings initiated by them by issuing show cause notice and submit the progress of the proceedings to this Tribunal by this order and the case was adjourned to 07.04.2020.
2. On 07.04.2020 the case was adjourned to 04.05.2020 by notification and thereafter, again the case was adjourned to today by further notification on 04.05.2020.
3. Today we received a request for an adjournment from the applicant who is appearing in person by e-mail dated 04.06.2020.
4. We also received an e-mail dated 04.06.2020 from the counsel appearing for the Ministry of Environment, Forest & Climate Change (MoEF & CC) and State Environment Impact Assessment Authority (SEIAA) enclosing the proceedings of the Government delegating the work of monitoring of the compliance of the

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Environmental Clearance conditions to State Pollution Control Board with respect to the project falling under the Category "B".

5. When the matter came up for hearing today through Video Conference M/s. M.E. Saraswathy represented first respondent, Sri. Abdul Saleem and S. Saravanan represented third respondent and Sri. Sai Sathya Jith represented fourth respondent.

6. First respondent is directed to file a report as directed by this Tribunal as per earlier orders. The Tamil Nadu Pollution Control Board is also directed to file a report of compliance of the directions issued.

7. In view of the present Government Order, learned counsel appearing for the Pollution Control Board wanted two more months time to complete the proceedings and submit the report as directed.

8. So considering the circumstances, we grant two months time to the Tamil Nadu Pollution Control Board to comply with the direction issued by this Tribunal and complete the proceedings in accordance with law.

9. For consideration of report post on 25.08.2020.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

O.A. No.05/2018,
04th June, 2020
Mn.



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Item No.8

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 05 of 2018 (SZ)
(Through Video Conference)

IN THE MATTER OF:

Arjunan Muthukrishnan

...Applicant(s)

Vs.

The State Environment Impact
Assessment Authority, Chennai and Ors.

...Respondent(s)

Date of hearing: 25.8.2020.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s):

Nil

For Respondent(s):

M/s. M.E. Saraswathy for R1

Mr. Kasirajan and

Mr. Ajithkumar for R3.

Mr. Sai Sathya Jith for R4.

ORDER

When the matter came up for hearing today through Video Conference, there is no representation for applicant. Mrs. Me. Saraswathi represented first respondent, Mr. Kasirajan represented through Mr. Ajithkumar for third respondent and Mr. Sai Sathyajith represented fourth respondent.

2. As per the earlier orders, this Tribunal has directed the regulating authorities to initiate proceedings on the basis of the joint committee report and submit a compliance report. For that purpose, the matter has been adjourned from time to time.

3. The original application was disposed of in the year 2018.

4. Learned counsel appearing for Pollution Control Board submitted that they assessed the environmental compensation and sent to the Board for approval and once approval is obtained, they will be able to complete the proceedings after giving opportunity to the project proponent regarding the same.

5. Considering the circumstances, we feel that one more opportunity to be given to the Pollution Control Board to complete proceedings and submit the compliance report to this Tribunal as directed.

For filing compliance report, post on 28.9.2020.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

O.A. No.5/2018
25.8. 2020
Kkr

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TAMILNADU POLLUTION CONTROL BOARD



From

Thiru.A.V.Venkatachalam, I.F.S,
Chairman,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai - 600 032.

To

The Managing Director,
M/s. Jain Housing (formerly known as
M/s. Jain Housing & Constructions
Ltd - 'Jain's Pebble Brook',
No.98/99, Habibullah Road,
T.Nagar, Chennai - 600 017

Letter No. T2/TNPCB/LAW/LAIII/NGT/F.022327/MMN/2020, dated: 25.08.2020

Sub: TNPCB - Building construction of M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd - 'Jain's Pebble Brook', Sakthi Garden, Cross Street, No.1, SF No.384/6B,10A, etc, Okkiyam Thoripakkam Village, Sholinganallur Taluk, Kancheepuram District without obtaining consent of the Board - To remit an Environmental Compensation of Rs. 2,19,00,000 /- (ie., Rupees Two Crores and Nineteen Lakhs only) for the same - Reg.

Ref: 1. IR No. : F.MMN-NA/RL/DEE/MMN/2020/ dated: 04.01.2020
2. Hon'ble NGT(SZ) order dt. 04.06.2020 in O.A.No.05 of 2018

I am to invite your kind attention to the reference first cited above and to inform that the DEE, TNPC Board, Maraimalaiagar has furnished a report to the Board stating that a complaint was received from Thiru. G. Ashok Raj, Flat No.TB6,Jain's Pebble Brook, Okkiyam Thoraipakkam, Chennai - 600097 Dated.16.12.2017 regarding the builder has obtained permission only for construction of 412 Flats and STP was not operated effectively.

Based on the above, the unit of M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd - 'Jain's Pebble Brook', Sakthi Garden, Cross Street, No.1, SF No.384/6B,10A,etc,Okkiyam Thoripakkam Village,Sholinganallur Taluk,Kancheepuram District was inspected by the TNPCB officials on 5.01.2018 and a Show cause notice was also issued to the unit vide DEE office proceedings dated. 05.01.2018.

Subsequently Thiru. Arjunan Muthukrishnan one of the Resident at Flat No.TE/12, Jain Pebble Brook has filed the application before the Hon'ble National Green Tribunal (SZ) Chennai (Application No.05 of 2018 (SZ)) against the unit of M/s. Jain Housing & Constructions Ltd., that it has carried out the construction without obtaining Environmental Clearance and located sewage treatment plant near applicant's flat without obtaining consent from Tamil Nadu Pollution control Board and the STP is causing serious pollution and Environmental clearance was obtained for 412 flats only but 1016 flats have been constructed.

The Hon'ble NGT Principal Bench, New Delhi in application No.05/2018 (SZ) in its order dated 06.08.2018 has passed orders as below.

" TNPCB must look into the matter and after ascertaining the facts from State Level Environmental Impact Assessment Authority and Chennai Metropolitan Development Authority, take such action as may be called for under the law within one month from the date of receipt of this order.

It is made clear that in case there is violation of this order, action may be taken for enforcement of this order under Section 25, which may also result in imposition of penalty under Section 26 of the National Green Tribunal Act, 2010.

The application is disposed of.

In compliance of the Hon'ble NGT order dated 06.08.2018 the unit of M/s. Jain Housing & Constructions Ltd ,at Okkiam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District was inspected on 18.08.2018 and 20.08.2018 by the TNPCB officials and show cause notice was issued to the unit vide DEE office Proc.No.DEETNPCB/MMN/NAW&A/2018 dated 23.08.2018.

The said unit in its reply dated 11.09.2018 for the show cause notice has reported the following

"We deny the allegation contained in the notice and are preparing the reply and also compiling the supporting documents to prove our reply. In this aspect, we have also obtained legal advice and are in the process of getting our reply finalized. However, due to the voluminous documents that are required to be perused, studied, incorporated in the reply and also submitted, there is a considerable delay in getting the provisions of law under which the notice has been issued and in the absence of any emergent circumstances, clear from the notice itself. We hope our request will be positively considered. Therefore we request you to kindly consider the above stated and grant us a further period of 15 days, even as a last chance to submit our reply. We are at any point of time willing to co-operate and even submit our case orally pending finalization of our reply in a written format as advised to us by our lawyers.

We are well reputed company and we have been complying strictly with all the laws in force. We have already completed the project and third party public are in possession of the property and therefore we request that no further action be taken pursuant to the notice without considering our reply for which we seek a short time as stated above to submit. Your good self has wrongly addressed to Jain Housing Construction Ltd however we consider as we are working in same premises, but we request your good self to address it to Jain Housing Partnership Firm in further communication in regards to above project".

TAMILNADU POLLUTION CONTROL BOARD



However, the unit has not applied for consent of the Board for the said project under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended till now.

The reply furnished by the unit is not satisfactory.

In the above circumstances, Phase -I of the unit was inspected on 13.12.2019 by the TNPCB officials, the following observations were made

- All the 620 Dwelling units were occupied and the sewage generated is treated in the existing STP (below ground level) comprising of Collection Tank, Aeration Tank, Settling Tank, Filter Feed Tank, Sludge Holding Tank, Treated Water Tank, PSF, ACF and the same was not operated effectively and the treated sewage was utilized for gardening purpose.
- The unit has not provided the UV disinfection system for utilizing the treated sewage for toilet flushing.
- The unit has not provided Organic Waste Converter for the treatment and disposal of organic Kitchen waste.
- The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating.
- The unit has provided DG set 160 KVA – 4 Nos and 125 KVA – 1 No with acoustic enclosures.

Further more, the unit was in operation without consent of the Board and thereby violating the provisions of Section 25 of the Water (P&CP) Act, 1974 as amended and Section 21 of the Air(P&CP) Act, 1981 as amended.

The Phase-II of the unit was also inspected on 13.12.2019 by the TNPCB officials, the following observations were made

- The unit has constructed 8 blocks comprising of 396 Dwelling units. It was informed that 172 flats were occupied and the rest of the flats were kept vacant.
- The unit has not provided STP for the treatment of Sewage. The sewage generated from the partly occupied dwellings was collected separately in the Collection Tank located within this unit premises and disposed through tanker lorry without any treatment.
- The unit has provided DG set 125 KVA – 1 No with acoustic enclosures.
- The unit has not provided Organic Waste Converter for the treatment and disposal of organic Kitchen waste.

Further to add, the unit was in operation without consent of the Board and thereby violating the provisions of Section 25 of the Water(P&CP) Act, 1974 as amended and Section 21 of the Air(P&CP) Act, 1981 as amended

In view of the above, the DEE, Maraimalainagar has recommended that environmental compensation assessed for the damage caused to the environment on account of the violations stated above by the unit of M/s. Jain Housing (Formerly known as M/s. Jain Housing & Constructions Ltd)– Jain's Pebble Brook located at SF No.384/6B, 10A, etc, Okkiyam Thoripakkam Village, Sholinganallur Taluk, Kancheepuram District shall be levied to the unit as follows:

Calculation of Environmental Compensation based on the CPCB Guidelines

Environmental Compensation Formula

$$EC = PI \times N \times R \times S \times LF$$

where

EC-Environmental compensation

PI-Pollution index of industry sector

N-Number days of violation took place

R-A factor in Rs for EC

S-Factor for scale of operation

LF- Location Factor

Note

i) The industrial sectors have been categorised into Red, Orange and Green based on their pollution index in the range of 60-100, 41-59 and 21-40 respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental compensation for Red, Orange and Green Categories of industries respectively

ii) N, number of days for which violation took is the period between the day of violation observed/ due date of directions compliance and the day of compliance verified by PCB/SPCB/CPCB

iii) R, is a factor in rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of Violation

iv) S could be based on small/medium/large industries categorisation which may be 0.5 for micro or small, 1 for medium and 1.5 for large units

v) LF, could be based on the population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or upto 10 Km distance from the municipal boundary of the city/town, following factors (LF) may be used

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TAMILNADU POLLUTION CONTROL BOARD



S.No	Population (Million)	Location Factor(LF)
1	Less than 1	1.0
2	1 to <5	1.25
3	5 to <10	1.5
4	10 and above	2.0

The Date of violation observed: 05.01.2018

Pollution Index for Red category industries as per CPCB Guidelines – 80

Number of days – 730(from the date of violation noticed to till date)

R as per CPCB Guidelines – 250

S as per CPCB Guidelines – 1.5

LF as per CPCB Guidelines -1.0

Environmental compensation (EC) = $PI \times N \times R \times S \times LF$

$$= 80 \times 730 \times 250 \times 1.5 \times 1.0$$

$$= 21900000$$

Environmental compensation (EC) assessed for the unit : Rs. 2,19,00,000/- (Rupees Two Crores and Nineteen Lakhs only)

Therefore, the building construction project established without obtaining consent of the Board and in due compliance of the Hon'ble NGT order dated: 04-06-2020 passed in O.A. No. 05 of 2018 (SZ) & as per CPCB guidelines, the unit of **M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd – 'Jain's Pebble Brook., Sakthi Garden, Cross Street, No.1, SF No.384/6B,10A,etc,Okkiyam Thoripakkam Village, Sholinganallur Taluk, Kancheepuram District** is requested to remit Environmental Compensation for an amount of **Rs. 2,19,00,000 /-** (ie., Rupees Two Crores and Nineteen Lakhs only) to the Tamil Nadu Pollution Control Board through Demand Draft drawn in favour of 'TNPCB – Environmental Compensation Fund' within a week time.

The receipt of this proceeding shall be acknowledged.

S. Anand
For Chairman
25/1/2018

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Item No.9

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAIOriginal Application No. 05 of 2018 (SZ)
(Through Video Conference)

IN THE MATTER OF:

Arjunan Muthukrishnan

...Applicant(s)

Vs.

The State Environment Impact
Assessment Authority, Chennai and Ors.

...Respondent(s)

Date of hearing: 28.9.2020.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s):

Nil

For Respondent(s):

Mrs. M.E. Saraswathy for R1

Mr. Kasirajan and

Ms. Meena for R3

Mr. Sai Sathya Jith for R4

ORDER

As per order dated 6.8.2018, the Principal Bench of the National Green Tribunal, New Delhi through Video Conference has disposed of the matter, directing the authorities to look into the matter and take appropriate action in accordance with law and retained the case only for the purpose of consideration of the further action taken report. Thereafter, the matter has been considered by this Tribunal on

3.12.2018 and 21.1.2019. As per order dated 10.4.2019, we have directed the Tamil Nadu Pollution Control Board to pass appropriate orders in accordance with law on the basis of the proceedings initiated by them against the project proponent. Again, it was taken up on 21.8.2019 and after considering the submissions made by the parties directed MoEF & CC or SEIAA to look into the question of any alleged violation in carrying out the project on the basis of the report submitted before the Tribunal by the Tamil Nadu Pollution Control Board and also if they want, they can conduct an independent enquiry of the same and take appropriate action against the project proponent in accordance with law and directed them to submit the report to this Tribunal. On 22.11.2019, we have adjourned the matter on the basis of the submission made by Tamil Nadu Pollution Control Board that they were awaiting the report from the Regional Office of MoEF & CC, Chennai for taking further action and on getting the same, necessary further proceedings will be completed. On 7.1.2020, it was again adjourned for that purpose. On 19.3.2020, we have directed the regulating authorities to submit the action taken report before this Tribunal. Thereafter, it was adjourned from time to time and lastly it was taken up on 25.8.2020 and we directed the Tamil Nadu Pollution Control Board to submit the report to this Tribunal and posted the case to today.

2. When the matter came up for hearing today through Video Conference, there is no representation for applicant. Mrs. Me.

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Saraswathi represented first respondent, Mr. C. Kasirajan through Ms. Meena represented third respondent and Mr. Sai Sathyajith represented fourth respondent.

3. We have received action taken report submitted by the third respondent which reads as follows:

ACTION TAKEN REPORT FILED ON BEHALF OF THE 3RD RESPONDENT - TAMIL NADU POLLUTION CONTROL BOARD.

I, G. Gopalakrishnan, Son of Thiru. V. Gandhi, Hindu, aged about 57 years, having office at No. 76, Mount Salai, Guindy, Chennai-600032, do solemnly and sincerely state as follows:

I am the Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board, Chennai-32. I am filing this Report on behalf of the 3rd Respondent Board and as such I am well acquainted with the facts and circumstances of this case, as available in records.

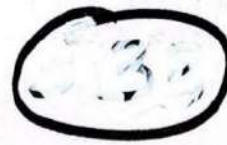
It is respectfully submitted that the Honble Tribunal has passed an order dated 21.08.2019 among other things inter alia as follows:

"Para 9:- Since the TNPCB has initiated action, we feel it is appropriate that let them complete the proceedings including the question as to whether any compensation has to be imposed for the alleged violation if any and the quantum of compensation has to be decided by them after giving an opportunity to the Project Proponent, to meet the case so that if the order goes against the Project Proponent

they will be getting the statutory remedy for filing the appeal against the same".

It is respectfully submitted that, in pursuance to the orders of the Hon'ble National Green Tribunal (SZ), Chennai dated 21.08.2019, the respondent Board has inspected the Phase -I of the unit on 13.12.2019. During inspection the following observations were made

- i. The unit has constructed 13 blocks comprising of 620 Dwelling units as against the Environmental Clearance issued to this location vide SEIAA Letter No. SEIAA/TN/EC/8(a)/042/F-15/2009 Date. 27.04.2009. The unit has not obtained revised Environmental Clearance for additional construction of 208 Dwelling Units and for the increase in sewage quantity and solid waste.
- ii. All the 620 Dwelling units were occupied and the sewage generated is treated in the existing STP (below ground level) comprising of Collection Tank, Aeration Tank, Settling Tank, Filter Feed Tank, Sludge Holding Tank, Treated Water Tank, PSF, ACF and the same was not operated effectively and the treated sewage was utilized for gardening purpose.
- iii. The unit has not provided the UV disinfection system for utilizing the treated sewage for toilet flushing.
- iv. The unit has not provided Organic Waste Converter for the treatment and disposal of organic Kitchen waste.



v. The unit has not provided Solar energy for the illumination of common areas, lighting for garden and street lighting in addition to provision for Solar water heating.

vi. The unit has provided DG set 160 KVA – 4 Nos and 125 KVA – 1 No with acoustic enclosures.

vii. The unit was in operation without consent of the Board and thereby violating the provisions of Section 25 of the Water (P&CP) Act, 1974 as amended and Section 21 of the Air(P&CP) Act, 1981 as amended.

It is further submitted that during inspection of the Phase-II of the unit on 13.12.2019, the following observations were made

i) The unit has constructed 8 blocks comprising of 396 Dwelling units. It was informed that 172 flats were occupied and the rest of the flats were kept vacant.

ii) The unit has not provided STP for the treatment of Sewage. The sewage generated from the partly occupied dwellings was collected separately in the Collection Tank located within this unit premises and disposed through tanker lorry without any treatment.

iii) The unit has provided DG set 125 KVA – 1 No with acoustic enclosures.

iv) The unit has not provided Organic Waste Converter for the treatment and disposal of organic Kitchen waste.

v) The unit was in operation without consent of the Board and thereby violating the provisions of Section 25 of the Water(P&CP) Act, 1974 as amended and Section 21 of the Air(P&CP) Act, 1981 as amended.

5. It is respectfully submitted that, the environmental compensation for the damage caused to the environment on account of the above said violations by the unit of M/s. Jain Housing (Formerly known as M/s. Jain Housing & Constructions Ltd) – Jain's Pebble Brook located at SF No.384/6B, 10A, etc Okkiyam Thoripakkam Village, Sholinganallur Taluk, Kancheepuram District has been levied and Calculation of Environmental Compensation based on the CPCB Guidelines are as follows

Environmental Compensation Formula $EC = PI \times N \times R \times S \times LF$

where

EC-Environmental compensation

PI-Pollution index of industry sector

N-Number days of violation took place

R-A factor in Rs. for EC

S-Factor for scale of operation

LF- Location Factor

Note

i) The industrial sectors have been categorised into Red, Orange and Green based on their pollution index in the range of 60-100, 41-59 and 21-40 respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental

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compensation for Red, Orange and Green Categories of industries respectively

ii) *N*, number of days for which violation took is the period between the day of violation observed/ due date of directions compliance and the day of compliance verified by PCB/SPCB/CPCB

iii) *R*, is a factor in rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider *R* as 250, as the Environmental Compensation in cases of Violation

iv) *S* could be based on small/medium/large industries categorisation which may be 0.5 for micro or small, 1 for medium and 1.5 for large units

v) *LF*, could be based on the population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or upto 10 Km distance from the municipal boundary of the city/town, following factors (*LF*) may be used

S.No	Population (Million)	Location Factor(LF)
1	Less than 1	1.0
2	1 to <5	1.25
3	5 to <10	1.5
4	10 and above	2.0

The Date of violation observed: 05.01.2018

Pollution Index for Red category industries as per CPCB Guidelines – 80

Number of days – 730(from the date of violation noticed to till date)

R as per CPCB Guidelines – 250

S as per CPCB Guidelines – 1.5

LF as per CPCB Guidelines -1.0

Environmental compensation (EC) = PI x N x R x S x LF

= 80x730x250x1.5x1.0

= 21900000

Environmental compensation (EC) for the unit : Rs. 2,19,00,000

(Rupees Two Crores and Nineteen Lakhs only)

It is further submitted that the respondent TNPC Board vide its letter dated 25.08.2020 addressed to the unit of M/s. Jain Housing (formerly known as M/s. Jain Housing & Contractions Ltd.) 'Jain's Pebble Brook, Sakthi Garden, Cross Street, No.1, SF No.384/6B, 10A,etc Okkiyam Thoripakkam Village, Sholinganallur Taluk, Kancheepuram District with a request to remit Environmental Compensation for an amount of Rs.2,19,00,000/- (Rupees Two Crores and Nineteen Lakhs only) to the Tamil Nadu Pollution Control Board. The TNPC Board has also reminded the unit vide its letter dated: 08.09.2020. The unit not replied. As per the Hon'ble NGT Order opportunity given to the unit in the form of Show Cause Notice dated 25.09.2020 (copy enclosed).

Under the above circumstances, it is humbly prayed that this Hon'ble National Green Tribunal (Southern Zone) may be pleased to pass such further or other orders as this Hon'ble Tribunal may deem fit

and proper in the facts and circumstances of this case and thus render justice."

4. It is seen from the report that they are taking action as directed by this Tribunal. They have imposed environmental compensation of Rs.2,19,00,000/- (Rupees Two Crores and Nineteen Lakhs only) against the forth respondent.

5. Learned counsel appearing for the fourth respondent submitted that they have not received any show cause notice and no opportunity was given to them but they have only received a letter from the Tamil Nadu Pollution Control Board stating that they will have to remit the compensation amount within a particular time.

6. The report of the Tamil Nadu Pollution Control Board shows that the show cause was issued on 25.8.2020 and no reply was submitted and they have produced the copy of the show cause notice issued. It shows that they have been given 15 days time to submit their reply as to why an amount of Rs. 2,19,00,000/- (Rupees Two Crores and Nineteen Lakhs only) should not be imposed as environmental compensation and it is further mentioned that if no reply is submitted, they will be satisfied that there was no explanation for the same and further action would be taken in accordance with law.

7. So under these circumstances, we feel that there is nothing survives in the matter and if the project proponent is aggrieved by the

✓ order of the Tamil Nadu Pollution Control Board, they are at liberty to approach the appropriate authority in accordance with law.

No further order need be passed in this matter.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

O.A. No 5/2018
28.9. 2020
Kkr



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Jain Housing

12.10.2020

To

The Chairman

Tamil Nadu Pollution Control Board

No. 76, Mount Salai, Guindy,

Chennai- 600 032.

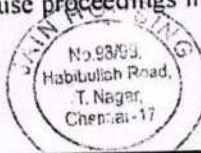
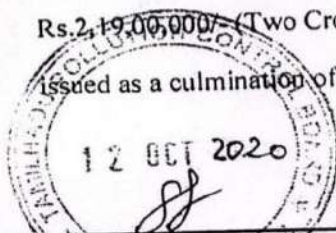
Respected Sir/ madam,

Sub: Representation to reconsider your order dated 25.08.2020 made in Letter No. T2 / TNPCB / LAW / LAIII / NGT / F.022327 / MMN / 2020

I, Mr. Sandeep Mehta S/o. Ashok Kumar Mehta, aged about 53 years, having office at No. 98/99, Habibullah Road, T. Nagar, Chennai- 600 017, the Managing Partner of M/s. Jain Housing, present the representation in response to and as a request for re-consideration

Of your letter dated 25.08.2020 bearing No.T2 /TNPCB /LAW /LAIII /NGT /F.022327 /MMN/2020.

- The present representation is made aggrieved against your order dated 25.08.2020 made in proceedings in Letter No. T2 / TNPCB / LAW / LAIII / NGT / F.022327 / MMN/2020, directing the representator to remit an environmental compensation of Rs.2,19,00,000/- (Two Crore and Nineteen Lakhs only). The said directions were issued as a culmination of show cause proceedings initiated under Section- 31A of the

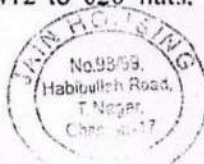


Sandeep Mehta

Corporate Office : No. 98/99, Habibullah Road, T. Nagar, Chennai - 600 017.
Ph : 044 - 4679 1111 Fax : 91-44-2461 3077
E-mail : enquiry@jainhousing.com Website : http://www.jainhousing.com

Air Act and Section- 33A of the Water Act in the nature of directions even though issued as a letter communication by virtue of the powers vested under Section -31A of the Air Act and Section - 33A of the Water Act respectively.

2. M/s. Jain Housing is involved in the business of construction of residential buildings and other real estate activity. The unit is a law-abiding citizen and has always adhered to all the regulatory laws. The present impugned project, Jains Pebble Brook more fully described hereunder, was also undertaken and completed as per law. The unit has obtained all necessary permissions and clearances as required by existing law.
3. The present impugned project is a residential purpose apartment style building project. The impugned project has a total of 620 flats constructed as Phase-I out of which around 570 have been sold. Further a total of 396 flats have been constructed as Phase-2 and about 40 flats have been sold. The maintenance of the impugned project was initially undertaken by the company and subsequently handed over to the residents' association.
4. The unit had also obtained prior Environmental Clearance dated 27.04.2009 for the first phase of the project. It is pertinent to submit that the said Environmental Clearance was for a total built area of 51,020.61 sq.m and 412 units. However, during the phase of construction, the unit was mandated to comply with the EWS scheme by the Government of Tamil Nadu. As per the scheme, the unit had to reserve and allocate a certain percentage of flats and built up area for the benefit of the public eligible under EWS scheme. Consequently, with such compliances and varying market demands, the unit was constrained to modify the design and size of the flats such as converting 3BHK flats into 1BHK or 2BHK flats. Therefore, the total number of units was also modified from 412 to 620 flats, however without exceeding the



Paul Deep Gubha

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overall total limit of 51,060.61 sq.m. The said modification is permitted as per the Office Memorandum of Ministry of Environment and Forest dated 14.12.2006 which is in force even as on date.

5. Further, that for the other 396 flats, the prior Environmental Clearance was obtained on 01.04.2015. Both the Environmental Clearances are valid and existing as on date. The unit had also obtained building permission and sanctioned plans from CMDA and all other allied requisites for the entire impugned project of 620 flats and 396 flats.
6. That from the very beginning, disputes arose with some purchasers of the flats pertaining to the UDS share. The said persons have thus fueled animosity between the management and some of the other member as well. The point of contention between the parties is of a civil nature and accordingly being pursued as per law. In spite of justified and clear explanations, the purchasers, with a view to pressurize and arm twist the company, have been foisting false cases and complaints against us. They have also openly threatened and in fact pursued in successfully using their political influence and bureaucratic contacts to continuously make the unit face one proceeding or another. As a result, the unit had been dragged into disputes such as Writ Petitions, Arbitration Proceeding, Criminal Case etc.,
7. It is only in that background and with such motives one of the purchasers namely Mr. Arjunan Muthukrishnan, at the behest of the association filed an application in O.A. No. 05/2018 before the Hon'ble NGT(SZ) praying for relocation of the STP plant in the apartment complex and to initiate prosecution. The said person without placing on record, the Environmental Clearances dated 01.04.2015, had only on the basis of the Environmental Clearance dated 27.04.2009 mislead the Hon'ble Tribunal as if there is a violation and obtained an ex-parte order dated 06.08.2018. In the said order the



Arjunan Muthukrishnan

Hon'ble NGT(SZ) directed the authorities to look into the matter after ascertaining the facts and take action as may be called for as per law.

8. However, without ascertaining the facts, you issued the impugned show cause notice dated 23.08.2018 and alleged violations of Environmental Clearance conditions, non-obtainment of Consent under Section- 21 of the Air Act and other matters.
9. Further, the unit had issued a response to the show cause notice dated 11.09.2019 wherein we had sought for an extension of 15 days as a last chance to submit a detailed reply. Following the same, I issued a detailed reply dated 28.09.2018 to the show cause notice dated 23.08.2018 which was also received and acknowledged by the District Environmental Engineer, Tamil Nadu Pollution Control Board, Maraimalai Nagar office on 28.09.2018.
10. Further, the Hon'ble NGT(SZ) had also formed a Joint Committee to call for a report and had directed yourself to take note of the findings of the committee as per law, while deciding the issue. However, your office had filed a private complaint under Section-200 of the CrPC before the Chief Judicial Magistrate, Chengalpattu. The said proceedings were challenged by the unit before the Hon'ble High Court at Madras.
11. The unit later filed a detailed reply before the Hon'ble NGT(SZ) and after considering all aspects, the Hon'ble NGT(SZ) disposed the application with a direction to conclude the show cause proceedings.
12. Without an alternative, the present representation is made requesting your office to re-consider the issue.



Sanjay Gupta



Reasons

- a. The impugned order has been made without consideration of the reply to the show cause notice given by the unit dated 28.09.2018.
- b. The impugned order only refers to the communication of the unit dated 11.09.2018 which was only for seeking additional time to issue a reply. The detailed reply dated 28.09.2019 has not been referred to or adjudicated and thus requested to be reconsidered.
- c. The impugned order has concluded the allegations as contained in the show cause notice dated 23.08.2018 and as such has not considered the reply of the unit.
- d. The impugned order has failed to consider that no damage to environment had been caused by the unit and as such there is no cause of action for imposing environmental compensation.
- e. The impugned order in observing that the impugned project has failed to obtain consent under the Water and Air Act, is requested to be re-considered. The Central Pollution Control Board vide proceedings dated 02.02.2017 while stream lining the consent mechanism had clarified that projects under S.No. 8 of the Schedule to the EIA Notification, 2006 need not obtain consent to establish when an environmental clearance is obtained. The proceedings are requested to be relied upon as the impugned project falls within the benefit of exemptions as granted in the referred proceedings.
- f. The impugned order is requested to be re-considered, as the requirement of consent was never insisted to the project earlier. In fact, there have been communications issued by your office earlier which clarified that residential apartment projects do not require the consent under the Water and Air Act.



Sanjeev Gupta

g. The impugned order may be re-considered as the STP has been provided as per the latest available technology and has more than enough capacity to process the sewage. In fact, the maintenance of the entire residential complex had been handed over to the resident association and as such the observations of ineffective operations are attributable to the residents.

h. The impugned order is prayed to be re- considered on the request that all proper arrangements had been made to dispose all the waste generated and as such there is no violation committed.

i. The impugned order is prayed to be re- considered on the request that an opportunity to explain or improve or install any short comings or machinery as may be imposed.

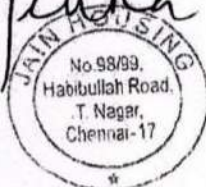
j. Since the project has obtained proper Environmental Clearance, the imposition of Environmental compensation is requested to be withdrawn.

Hence it is most respectfully requested to reconsider the impugned order dated 25.08.2020 made in proceedings in Letter No. T2/TNPCB/LAW/LAIII/NGT/F.022327/MMN 2020.

Yours Sincerely,

Sandeep Mehta,

Managing Partner



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By Speed Post



TAMILNADU POLLUTION CONTROL BOARD



**Proc. No.: T1/TNPCB/LAW/LAIII/NGT/022327/MMN/Show Cause Notice/W&A/
2020 dated: 25.09.2020**

Sub: TNPCB -Industries- M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd - 'Jain's Pebble Brook., Sakthi Garden, Cross Street, No.1, SF No.384/ 6B, 10A, etc, Okkiyam Thoripakkam Village, Sholinganallur Taluk, Kancheepuram District - Operating without obtaining Consent of the Board - Levying of Environmental compensation for non compliance of the Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended for operating without consent of the Board - In due compliance of Hon'ble NGT direction , Show cause notice under Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended - Issued-Regarding.

- Ref:**
1. SCN Proc. No. DEE/TNPCB/MMN/F-NA/W&A/2018 dated 05.01.2018
 2. Proc.No.DEE/TNPCB/MMN/NA/W&A/2018 dated 23.08.2018
 3. Hon'ble National Green Tribunal ,Principal Bench , New Delhi order dt. 21.08.2019 in O.A. No.05 of 2018(SZ)
 4. IR No. : F.MMN-NA/RL/DEE/MMN/2020/ dated: 04.01.2020
 5. Letter No. T2/TNPCB/LAW/LAIII/NGT/F.022327/ MMN/2020,dt: 25.08.2020
 6. Letter No. T2/TNPCB/LAW/LAIII/NGT/F.022327/ 2020,dated 08.09.2020

Whereas the unit of M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd - 'Jain's Pebble Brook., Sakthi Garden, Cross Street, No.1, SF No.384/6B,10A,etc,Okkiyam Thoripakkam Village,Sholinganallur Taluk,Kancheepuram District was Issued with Show Cause notice for Phase I and Phase II under the Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended vide reference first cited since the construction of residential complex was completed and the apartments are occupied by their customers without obtaining Consent for establishment and Consent to Operate from the Tamilnadu Pollution Control Board.

- The unit has not obtained necessary Environmental Clearance for the additional construction of 208 dwelling units
- The unit has not obtained revised Environmental Clearance for the entire project based on the revised planning permission dated 23.12.2013.
- The unit has not complied certain conditions stipulated in the Environmental Clearances dated 27.04.2009 and 01.04.2015.

The Hon'ble NGT, Principal Bench, New Delhi and South Zone Bench in O.A. No.05 of 2018 has passed order dated 21.08.2019, 22.11.2019, 07.01.2020, 19.03.2020 and 04.06.2020 among other things inter alia as follows:

"Para 9:- Since the TNPCB has initiated action, we feel it is appropriate that let them complete the proceedings including the question as to whether any compensation has to be imposed for the alleged violation if any and the quantum of compensation has to be decided by them after giving an opportunity to the Project Proponent, to meet the case so that if the order goes against the Project Proponent they will be getting the statutory remedy for filing the appeal against the same."

Based on DEE, Maraimalainagar report vide reference 4th cited and in due compliance of the Hon'ble NGT order dated 04.06.2020 passed in O.A. No. 05 of 2018 (SZ), the unit was levied with Environmental compensation of Rs. 2,19,00,000 /- (ie., Rupees Two Crores and Nineteen Lakhs only) vide reference 5th cited since the building construction project was established without obtaining consent of the Board. Further the unit was reminded vide reference 6th cited to remit the above said Environmental Compensation to the TNPC Board.

Meanwhile the Hon'ble NGT (SZ) vide order dated 25.08.2020 in O.A. No. 05 of 2018 has passed the following order :

"Para 4 : Learned counsel appearing for Pollution Control Board submitted that they assessed the environmental compensation and sent to the Board for approval and once approval is obtained, they will be able to complete the proceedings after giving opportunity to the project proponent regarding the same."

**TAMILNADU POLLUTION CONTROL BOARD**

Now therefore, you are directed to show cause within fifteen days from the date of receipt of this notice why the Board shall not levy and recover the Environmental Compensation of Rs. 2,19,00,000 /- (ie., Rupees Two Crores and Nineteen Lakhs only) from 05.01.2018 to till date against you for the non compliance of the provisions of the Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended.

It is informed that non-receipt of any reply within the prescribed period will be construed that you have no satisfactory explanation to offer for the above said contraventions and action will be taken on merits in accordance with law.

The receipt of this proceeding shall be acknowledged.

Sd/-
25/09/2018
For Chairman
(Signature)

To

The Managing Director;
M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd -
'Jain's Pebble Brook',
No.98/99, Habibullah Road,
T.Nagar, Chennai - 600 017

Copy to

1. The Joint chief Environmental Engineer,
Tamilnadu Pollution Control Board,
Chennai - For follow up and report.
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalai nagar - For follow up and report.
3. Technical file



Jain Housing

To

23.10.2020

1. The Chairman
Tamil Nadu Pollution Control Board
No.76, Mount Salai, Guindy,
Chennai 600 032.
2. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Maraimalai Nagar

Sirs,

**Sub:- Reply to your show cause notice dated 25.09.2020 made in
Proc.No.T1/TNPCB/LAW/LAIII/NGT/022327/MMN/Show Cause Notice/W&A/2020**

1. The following explanation is submitted as an objection and reply to your subject mentioned show cause notice. This reply is made without prejudice and reserving the right to object to the show cause notice for the reason that the same had not been issued to the unit even till date.
2. The answering unit only received your letter dated 25.08.2020 made in Letter No.T2/TNPCB/LAWIII/NGT/F.022327/MMN/2020 directing us to remit a payment of Rs. 2,19,00,000/- (Rupees Two Crore Nineteen Lakh) as environmental compensation. Thereafter, we had not received any communication from your office till date including

the reminder letter dated 08.09.2020 said to have been issued. When the connected proceedings came up for hearing on 28.09.2020 in O.A.No.05 of 2018, the submission

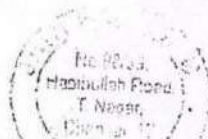


Sandip Ghata

Corporate Office - No. 98/99, Habibullah Road, T. Nagar, Chennai - 600 017.

that the subject mentioned show cause notice had been issued was made on behalf of the TNPCB. A copy of the same was also filed along with a report dated 25.09.2020. However, the same was denied by the unit and specifically pleaded that no such notice was received by the unit. Therefore, recording the same, since the unit had not replied to the proceedings dated 25.08.2020, the Hon'ble Tribunal had disposed the application granting liberty to the unit to seek appropriate legal relief by challenging the order.

3. Thereafter, we had made a thorough search of our files and had confirmed that no show cause notice had been received by us apart from the Letter Communication dated 25.08.2020 straightaway directing payment of compensation without providing any opportunity to reply to the same. The same was informed to our counsel and we had sought legal opinion to proceed for seeking legal remedy as available under law. Under those circumstances, our counsel had informed the Learned Counsel for the TNPCB that the unit had not received the show cause notice. It was further submitted by our counsel that the action taken report along with annexures filed in the Tribunal were also not served. Thus, finally, the Learned Counsel representing the TNPCB had arranged and served via mobile phone a copy of the Action Taken report dated 28.09.2020 along with the subject mentioned show cause notice dated 25.09.2020 to our counsel on 20.10.2020. Thereafter we received the same from our counsel and are thus submitting the present reply to the subject mentioned show cause notice.
4. Therefore, in light of the above circumstances, we request your good office to consider the present reply as objections to the subject mentioned show cause notice and the



Handwritten signature: Sandeep Gupta

imposition of Environmental Compensation on the unit. We request your good office to consider our valid objections and drop further proceedings for imposition and recovery of Environmental Compensation of Rs. 2,19,00,000/- (Rupees Two Crore Nineteen Lakh).

5. It is submitted that the subject mentioned show cause notice relies upon the earlier show cause notice dated 23.08.2018 issued under Section 25 of the Water (P&CP) Act, 1974 and Section 21 of the Air (P&CP) Act, 1981. We submit that we have made detailed reply to the same vide our reply communication dated 28.09.2018 which was received by the TNPCB on the same date. The same may be considered as a part and parcel of this reply as well. Unfortunately, our detailed reply has not been considered while passing the communication dated 25.08.2020 directing payment of Environmental Compensation. Our detailed reply has also been not considered or referred in the subject show cause notice as well. Thus, we request your good office to kindly consider the same which would persuade your good office to drop the proceedings against us. Without prejudice to the objection of non-consideration of our detailed reply dated 28.09.2018, we submit the following.

**NON-OBTAINMENT OF ENVIRONMENTAL CLEARANCE FOR
ADDITIONAL CONSTRUCTION OF 208 DWELLING UNITS**

6. The impugned project is a residential purpose apartment style building project. The impugned project has a total of 620 flats constructed as Phase-1 out of which around 570 have been sold. Further a total of 396 flats have been constructed as Phase-2 and about 40 flats have been sold.



Sanjay Gupta

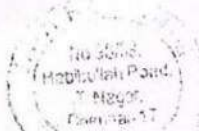
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7. It is submitted that prior Environmental Clearance had been obtained by the unit dated 27.04.2009 for the first phase of the project. It is pertinent to submit that the said E.C was for a total built area of 51,020.61 Sq.m and 412 units. However, during the phase of construction, the unit was mandated to comply with the EWS scheme by the Government of Tamil Nadu. As per the scheme we had to reserve and allocate a percentage of flats and built up area for the benefit of the public eligible under EWS scheme. Consequently, with such compliances and varying market demands, the unit was constrained to modify the design and size of the flats such as converting 3BHK flats into 1BHK or 2BHK flats. Therefore, the total number of units was also modified from 412 to 620 flats, however without exceeding the overall total limit of 51,060.61 Sq.m. The said modification is permitted as per the proceedings of Ministry of Environment and Forest in a Circular dated 14.12.2006 which is in force even as on date.
8. It is submitted that for the other 396 flats, the prior EC was obtained on 01.04.2015. Both the ECs are valid and existing as on date.
9. Therefore, the entire constructions had been made only as per EC norms and existing legal procedures. In particular, the additional constructions are valid and permissible as per the above referred circular of the MOEF.

NON-OBTAINMENT OF CONSENT UNDER THE WATER AND AIR ACT

10. It is submitted that the contention of the unit primarily is that the nature of the project is exempted from obtaining of Consent as the Unit had obtained a valid Environmental Clearance. In this aspect, the Central Pollution Control Board vide proceedings dated

*Sau Sup Eshita*

02.02.2017 while stream-lining the consent mechanism. had clarified that the projects under S.No. 8 of the Schedule to the EIA Notification, 2006 need not obtain consent to establish when an environmental clearance is obtained. In the instant case, the unit satisfies the above norm and as such is exempt from the requirement of Consent.

11. In fact, the requirement of consent was never insisted to the project of the Appellant. We have also learnt that there have been communications issued by the TNPCB which had clarified that residential apartment projects do not require the consent under the Water and Air Act.

12. We are advised to state that the principles of law as laid down by the Hon'ble Courts including in the landmark case of Splendor Landbase Ltd wherein the Hon'ble High Court at Delhi had held that neither CTE nor CTO is applicable to a residential complex. It is in light of all the above, that after obtaining Environmental Clearance wherein the TNPCB is already a party in granting such clearance, no Consent is required as there is total compliance to the Environmental Regulations.

NON-OBTAINMENT OF REVISED ENVIRONMENTAL CLEARANCE

13. It is submitted that the above allegation has made against the unit for the first time only in the subject mentioned show cause notice. No such allegation has been made in the earlier show cause notice dated 23.08.2018 or in any pleading or report submitted before the Hon'ble Tribunal.

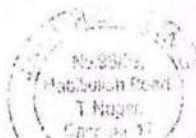


Sandeep Goleta

14. We submit that the revised planning permission had been obtained under the municipal building and planning laws. The same is a record maintained by the CMDA and is for different legal purposes. We are advised to state that as per Clause 2 of the EIA Notification, 2006 the requirement of Environmental Clearance is only prior to the establishment and thus the unit had obtained valid EC. The additional construction of 208 flats for Phase-I were made without requirement for EC and as clarified by the EC authorities to us at that time itself. Thus, there arises no necessity or requirement of a revised EC as the same is even beyond the scheme and scope of the EIA Notification, 2006.

NON-COMPLIANCE OF EC CONDITIONS

15. It is submitted that the unit has been a totally law-abiding unit and has always endeavored to improve all environment mitigation measures. It is submitted that in the instant case, the facilities and measures have been provided as specified under the EC conditions and as per existing legal requirements. The maintenance of the entire buildings including the pollution control measures have been also handed over to the residents' association and as such contributory actions of the residents' association have to be considered while alleging irregularities against the unit.
16. It is submitted that the allegation in the present subject show cause notice is only referring to the observations in the earlier show cause notice dated 23.08.2018. As submitted earlier, we have made a detailed reply to the said notice by reply dated 28.09.2018. Thus, for brevity, we are not reproducing the same and request your good office to kindly refer to and consider our detailed reply.



Sandeep Gupta

17. We undertake and submit that we have always strived to be an eco-friendly unit and we are even willing to make any improvements or take additional measures as may be required.

IMPOSITION OF ENVIRONMENTAL COMPENSATION

18. Therefore, we submit that the imposition of Environmental Compensation on our unit is unwarranted and the above explanations maybe accepted by your good office and it is requested that the proceedings may be dropped in favor of the unit.

19. It is submitted that even in the proceedings before the Hon'ble NGT in O.A.No.5 of 2018, the unit has taken a stand that it is not a violator. It was only on vested interests that the applicant Mr.ArjunanMuthukrishnan had misled the Tribunal and obtained certain findings ex-parte the unit. The said person without placing on record the Environmental Clearance dated 01.04.2015 had only on the basis of the Environmental Clearance dated 27.04.2009 mislead the Hon'ble Tribunal as if there is a violation and obtained an ex-parte order dated 06.08.2018. It is only that basis that the NGT had proceeded and ordered enquiry.

20. In fact, in the detailed reply filed by the unit in the above case and on various hearing orders, a clear stand that the unit is not a violator has been raised. It is based on such contentions and the fact that your good office had initiated action under the Water and Air Act, the Hon'ble NGT has left it for your good office to enquire the matter as per law. Thus, our detailed reply may be considered and the proceedings may be dropped as per

Sandip Ghosh

the directions of the Hon'ble NGT as the enquiry process can be concluded by recording our reply and contentions as well. We hope our explanations would pursue your good office.

21. With respect to the earlier communication dated 25.08.2020 directing payment of Environmental Compensation, the same was made without any opportunity provided and it is only now that we have received a show cause notice which is on a later date i.e., 25.09.2020. We accordingly deny the contents of the notice and the liability fixed on the unit in terms of the above explanations. We also deny the calculations and other particulars relied upon to impose the compensation on the unit.

Therefore, we request you to consider the above reply and all our earlier replies denying, explaining the allegations made against the unit and on that basis request you to drop any further proceedings subsequent to the show cause notice and kindly do the needful.

Yours Sincerely,


Sandeep Menta
Sandeep Menta,

Managing Partner

By Speed Post

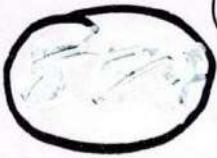
TAMILNADU POLLUTION CONTROL BOARDProceeding No. T2/ TNPCB/LAW/LAIII/NGT/022327/MMN/W&A/ 2020 dt:14.12.2020

Sub: TNPCB – Industries – M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd – 'Jain's Pebble Brook.,) Sakthi Garden, Cross Street, No.1, SF No.384/6B,10A,etc,Okkiyam Thoripakkam Village, Sholinganallur Taluk, Kancheepuram District – To remit Environmental Compensation of Rs. 2,19,00,000/- - Directions under Section 33A of the Water (P&CP) Act, 1974 and under section 31A of the Air (P & CP) Act, 1981 – Issued – Reg.

- Ref:**
1. SCN Proc. No. DEE/TNPCB/MMN/F-NAW&A/2018 dated 05.01.2018
 2. Proc.No.DEE/TNPCB/MMN/NAW&A/2018 dated 23.08.2018
 3. Hon'ble National Green Tribunal ,Principal Bench , New Delhi order dt. 25.08.2019 & 28.09.2020 in O.A. No.05 of 2018(SZ)
 4. IR No. : F.MMN-NA/RL/DEE/MMN/2020/ dated: 04.01.2020
 5. Letter No. T2/TNFCB/LAW/LAIII/NGT/F.022327/ MMN/2020, dt 25.08.2020
 6. Letter No. T2/TNPCB/LAW/LAIII/NGT/F.022327/ 2020,dated 08.09.2020
 7. Proc. No.: T1 /TNPCB/LAW/LAIII/NGT/022327/MMN/ Show Cause Notice/W&A/ 2020 dated:25.09.2020
 8. Unit's letter dated 23.10.2020

Whereas the unit of M/s. Jain Housing (formerly known as M/s. Jain Housing & Constructions Ltd – 'Jain's Pebble Brook.,) Sakthi Garden, Cross Street, No.1, SF No.384/6B,10A,etc,Okkiyam Thoraipakkam Village,Sholinganallur Taluk,Kancheepuram District was issued with Show Cause notice for Phase I and Phase II under the Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended vide reference 1st cited since the construction of residential complex was completed and the apartments are occupied by their customers without obtaining Consent for establishment and Consent to Operate from the Tamilnadu Pollution Control Board.

No. 76, MOUNT SALAI, GUINDY, CHENNAI - 600 032.
 Tel : 22353134, 22353135, 22353136, 22353137, 22353138, 22353139, 22343140, 22353141
 Fax : 044 - 22353068
 Email : tnpcb@md3.vsnl.net.in Web : www.tnpcb.gov.in



Subsequently the unit was again issued with Show Cause notice under the Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended vide reference 2nd cited for the following reasons:

- The unit has not applied for the consent of the Board
- The unit has not obtained necessary Environmental Clearance for the additional construction of 208 dwelling units
- The unit has not obtained revised Environmental Clearance for the entire project based on the revised planning permission dated 23.12.2013.
- The unit has not complied certain conditions stipulated in the Environmental Clearances dated 27.04.2009 and 01.04.2015.

Further, in due compliance of the Hon'ble NGT order dated 04.06.2020 passed in O.A. No. 05 of 2018 (SZ), the unit was levied with Environmental compensation of Rs. 2,19,00,000 /- (ie., Rupees Two Crores and Nineteen Lakhs only) vide reference 5th cited since the building construction project was established without obtaining consent of the Board. Further the unit was reminded vide reference 6th cited to remit the above said Environmental Compensation to the TNPC Board.

Meanwhile the Hon'ble NGT (SZ) vide order dated 25.08.2020 in O.A. No. 05 of 2018 has passed the following order:

"Para 4 : Learned counsel appearing for Pollution Control Board submitted that they assessed the environmental compensation and sent to the Board for approval and once approval is obtained, they will be able to complete the proceedings after giving opportunity to the project proponent regarding the same."

In view of the above Hon'ble NGT order, the TNPCB has issued Show cause notice vide reference 7th cited under Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended, to show cause within fifteen days from the date of receipt of this notice why the Board shall not levy and recover the Environmental Compensation of Rs. 2,19,00,000 /- (ie., Rupees Two Crores and Nineteen Lakhs only) for the non compliance of the provisions of the Section 25 of the Water (P&CP) Act, 1974 as amended & Section 21 of the Air (P&CP) Act, 1981 as amended. Non-receipt of any reply within the prescribed period will be construed that the unit have no satisfactory explanation to offer for the above said contraventions and action will be taken on merits in accordance with law.



TAMILNADU POLLUTION CONTROL BOARD

The unit vide letter dated: 23.10.2020 has furnished reply to Show cause notice dated: 25.09.2020 issued by the Board and has requested to drop any further proceedings subsequent to the show cause notice.

Meanwhile, the Hon'ble NGT in its order dated 28.09.2020 has stated that,
"The report of the Tamilnadu Pollution Control board shows that the show cause was issued on 25.09.2020 and no reply was submitted and they have produced the copy of the show cause notice issued. It shows that they have been given 15 days time to submit their reply as why an amount of Rs.2,19,00,000/- (Rupees Two Crores and Nineteen Lakhs only) should not be imposed as environmental compensation and it is further mentioned that if no reply is submitted, they will be satisfied that there was no explanation for the same and further action would be taken in accordance with law.

So under these circumstances, we feel that there is nothing survives in the matter and if the project proponent is aggrieved by the order of the Tamilnadu Pollution Control Board, they are at liberty to approach the appropriate authority in accordance with law.

No further order need be passed in this matter".

Therefore, in exercise of powers conferred under Section 33 A of the Water (P&CP) Act, 1974 as amended and under section 31A of the Air (P & CP) Act, 1981, the Board issues the following Directions to comply within a period of 15 days

"The unit shall remit Environmental Compensation of Rs. 2,19,00,000/- (Rupees Two Crores and Nineteen Lakhs only) to the Board for the violations mentioned in the show cause notice issued to the unit vide Proc. dated 25.09.2020".

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Failure to comply with the above said directions, will lead to issue of further directions which may include closure and stoppage of power supply to your unit under Section 33A of the Water (P&CP) Act, 1974 as amended and section 31A of the Air (P&CP) Act 1981.

The receipt of this proceeding shall be acknowledged.

Jain Mr
15/12/2020
For Chairman
Mam
15/12/20

To

The Managing Director,
M/s. Jain Housing (formerly known as M/s. Jain Housing &
Constructions Ltd - 'Jain's Pebble Brook..')
No.98/99, Habibullah Road,
T.Nagar, Chennai - 600 017

Copy To

1. The Joint Chief Environmental Engineer,
Tamilnadu Pollution Control Board,
Chennai - For follow up and report.
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalaiagar - For follow up and report.
3. Technical file

2010 SCC OnLine Del 3466 : (2010) 173 DLT 52
Delhi High Court

BEFORE DR. S. MURALIDHAR, J.

Splendor Landbase Ltd. ... Petitioner;
versus

Delhi Pollution Control Committee ... Respondent.

W.P. (C) 543/2008 with 2714/08, 2771/08, 2772/08, 3815/08, 7081/08, 8143/08, 8144/08, 8145/08, 8146/08, 8147/08, 8148/08, 8149/08, 9040/08, 464/09, 465/09, 508/09, 509/09, 510/09, 511/09, 525/09, 794/09, 7575/09, 8208/09, 8751/09, 10860/09, 3095/08, 4319/08, 4321/08, 4322/08, 4323/08, 4330/08, 4333/08, 3905/08, 8789/08, 8901/08, 9128/09 & 1391 of 2010

Decided on September 30, 2010

A. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — S. 33-A — Air (Prevention and Control of Pollution) Act, 1981 — S. 31-A — Delhi Pollution Control Committee — Powers under — On a collective reading of Ss. 25 and 33-A, the legislative scheme appears to be that where there is a failure by a person to comply with either S. 25(1)(a) or S. 25(5) of the Water Act then it would be open to the DPCC to exercise its powers under S. 33-A of the Act — Without giving any show cause notice under S. 25(5) in the instant case and without waiting for the expiry of the time within which the corrective steps have to be taken, it will not be open to the DPCC to straightaway invoke its power under S. 33-A to order closure of the shopping mall or commercial or residential complex concerned — That would make such exercise of power vulnerable to invalidation on the grounds of arbitrariness and unreasonableness — The position as regards S. 31-A of the Air Act is no different — That power too cannot be exercised to straightaway order closure of a building without giving the person concerned a prior show cause notice consistent with the procedure outlined under the Rules under the Air Act

B. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — S. 25 — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21 and 22 — Delhi Pollution Control Committee — Penalties, fines and environment damages in the form of fixed sums of monies or by requiring bank guarantees — Levy of — Although the Chairman of the DPCC may be the Chairman of the CMC, he is but one member in the CMC — There is nothing to indicate that the decision of CMC was unanimous or by majority or that it was the decision only of the Chairman — There is no power under the Water Act or the Air Act given to the Chairman to further sub-delegate his powers in regard to consent to establish or consent to operate to the CMC — Such sub-delegation was obviously bad in law — Unless it is shown, and it is not, that the other members of the CMC apart from the Chairman were performing a mere advisory role and had nothing to do with the actual grant or refusal of the consent to establish or consent to operate, such decision by the CMC is clearly *ultra vires* the Air Act and Water Act — Held no justification for the CMC to itself take decision as regards the grant and refusal of the consent to establish under the Water Act and consent to operate under the Air Act — Secondly, even where it agreed to grant consent to establish, the CMC imposed a pre-condition that the applicant should pay a penalty or fine or furnish a bank guarantee or in some cases all or some of them — There is no statutory basis for such a direction to be issued by the CMC, or for that matter by even the Chairman of the DPCC — The grant of the consent to establish or consent to operate ought not to be made conditional upon payment of some fine or penalty or furnishing of bank guarantee — Given the object of the Water Act and the Air Act, which is the prevention and control of pollution, the mere payment of fine or penalty or furnishing of bank guarantee is unlikely to prevent and control the likely pollution that can be caused — The basic approach adopted by the CMC where such penalty or fine has been levied or bank guarantee secured appears to be faulty — The decision to levy environmental damages and to seek the furnishing of bank



F. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — Air (Prevention and Control of Pollution) Act, 1981 — Delhi Pollution Control Committee — Conclusions

(i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of S. 25(1)(a) of the Water Act and apply to the DPCC for prior consent to establish.

(ii) Where a person has already established a commercial shopping mall or shopping complex or residential complex and has not been issued any show cause notice till the completion of such building then it would be pointless to require such person to thereafter comply with the requirements of S. 25(1) of the Water Act. The available course to the DPCC in such event is to invoke the powers under S. 25(5) of the Water Act and set out a time limit for such person to comply with the requirements of the Water Act. Upon failure to comply with the requirements as specified by the DPCC, it would be open to the DPCC to invoke its powers under S. 33A of the Water Act after complying with the due process outlined under the Water Rules.

(iii) Where a person has made an application for consent to establish and four months have elapsed during which the DPCC has not communicated to him its decision thereon, then in terms of S. 25(7) Water Act consent to establish will be deemed to have been granted. In such event the question of the person being thereafter required to apply for consent to establish does not arise.

(iv) Where the builtup area is more than 20,000 sq.m., the requirement of obtaining an EIA clearance for such activity is mandatory. The mere fact that an EIA clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the DPCC for a consent to establish under the Water Act.

(v) Where an EIA clearance has already been granted by the MoEF, and the DPCC is thereafter approached for grant of prior consent to establish or prior consent to operate, it would be incumbent on the DPCC to avoid re-examining those aspects that have been examined by the MoEF while granting EIA clearance. The DPCC will examine other aspects not covered by the EIA clearance.

(vi) The requirement of obtaining prior consent to operate under S. 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of 'industrial plant' under S. 2(k) of the Air Act. However on the present wording of S. 21(1) Air Act, there is no such requirement as regards a residential complex.

(vii) The requirement of having to obtain the consent to operate under S. 21 of the Air Act does not get obviated only because the person has an EIA clearance under the EPA.

(viii) The DPCC when approached with an application for consent to operate by a person who has already obtained an EIA clearance, will examine only those aspects not covered by the EIA clearance.

(ix) During the phase of construction, and post-construction, the provisions of the Water Act, the Air Act and the EPA and other environmental statutes will apply to all types of buildings and activities.

(x) Without issuing a show cause notice and without giving an opportunity to the alleged violator to rectify the defects detected during an inspection of the premises carried out in accordance with the relevant rules, the power to order a closure under either S. 33A Water Act or 31A Air Act should not generally be straightway invoked.

(xi) There is no power vested in the Chairman of the DPCC, either under the Water Act or under the Air Act to further sub-delegate the powers delegated to him by the DPCC as regards granting or refusing consent to establish or consent to operate under the Water Act and the Air Act respectively. Any Committee established by the Chairman of the DPCC like the CMC has no power to itself decide whether to grant or refuse the consent to establish or consent to operate. Such decision can be taken either by the DPCC itself or by its delegate i.e. the Chairman DPCC and no one else.

(xii) The decisions by the CMC or even by the Chairman, DPCC to levy penalty or environmental damages and insist on furnishing of bank guarantees as a condition for grant of consent to establish or consent to operate are without the authority of law. There is no power under the Air Act or the Water Act which enables the DPCC or its Chairman, much less the CMC, to pass such orders. Absent specific provisions under the Water Act and Air Act which permit the DPCC or its Chairman to levy and collect penalties, environmental damages or to pass orders for furnishing of bank guarantees, the general power to issue directions under S. 31A of the Air Act and S. 33A of the Water Act cannot be invoked for such purpose.

(xiii) Where there are multiple owners in a constructed building, the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such

individual owners or occupiers. If the building has been completed without obtaining prior consent to establish under S. 25(1)(a) of the Water Act it would be incumbent upon the person first receiving a show cause notice from the DPCC in terms of S. 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. The position is more or less similar under the Air Act. Notices can then issue to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be answerable under the Water Act and/or the Air Act.

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The Judgment of the Court was delivered by

Introduction

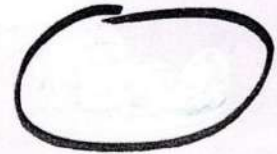
DR. S. MURALIDHAR, J.— These are 38 writ petitions filed by builders of various properties in the National Capital Territory of Delhi (NCT of Delhi) who have been issued show cause notices and also directions by the Respondent Delhi Pollution Control Committee ('DPCC') for alleged violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 [hereafter 'the Water Act'] and Sections 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981 [hereafter 'the Air Act']. Barring two petitions where the buildings constructed are residential complexes, in each of the other petitions the building constructed is a commercial shopping complex or a shopping mall.

2. The show cause notices have been issued on the ground that these Petitioners had not, prior to commencing construction, applied to the DPCC for and obtained from it the "consent to establish" under Section 25 of the Water Act or the DPCC's "consent to operate" under Section 21 of the Air Act.

3. Some of the petitioners have constructed commercial complexes or shopping malls of a builtup area of over 20,000 sq.m. They were therefore required to comply with the environment impact assessment (EIA) notifications in terms of the Environment (Protection) Act, 1986 (EPA). The EIA norms with which they are expected to comply are set out in the EIA. notification dated 27th January 1994 as further amended on 7th July 2004 and 14th September 2006. The issue that arises in

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some of these petitions, where the commercial or residential complex is of a builtup area of over 20,000 sq.m. is whether independent of the EIA clearance obtained by such petitioners from the Government of India in the Ministry of Environment and



Forests ('MoEF'), a separate consent to establish under the Water Act and a consent to operate under the Air Act would nevertheless be required to be obtained from the DPCC.

4. Another issue common to some of these petitions is the validity of the levy by the DPPC of penalties, fines and environment damages in the form of fixed sums of monies or by requiring the Petitioners to furnish bank guarantees as a condition to the grant of consent under the Air Act and the Water Act.

5. The case of the Petitioners broadly stated is that the residential and commercial shopping complexes and shopping malls are not covered under either the Water Act or the Air Act. Therefore there was no need for any of these Petitioners to have obtained from the DPCC either prior consent to establish under Section 25 of Water Act or prior consent to operate under Section 21 of the Air Act. The case of the DPCC is that the activity of construction of commercial complexes, shopping malls and even residential complexes is covered under both the Air Act and the Water Act and the failure to obtain prior consent to establish or prior consent to operate makes the petitioners liable under either or both Acts. For complexes where the builtup area is over 20,000 sq.m. the stand of the DPCC is that the mere obtaining by such builders of EIA clearance from the MoEF will not obviate the need to obtain separate prior consents from the DPCC under the Water Act and Air Act.

Background to the Water Act and amendments

6. The first issue to be considered is the applicability of the Water Act to the complexes in question. Emphasis has been placed by both sides on the background to the enactment of the Water Act. The Statement of Objects and Reasons ('SOR') to the Water Act as it was first enacted on 23rd March 1974 referred to a Committee set up in 1962 to draw up a draft enactment for the prevention of water pollution. The SOR noted that "the problem of pollution of rivers and streams has assumed considerable importable and urgency in recent years as a result of the growth of the industries and the increasing tendency to urbanization". The Report of the Committee was circulated to the State Governments and was also considered by the Central Council of Local Self-Government. Based on the recommendation of the Central Council a draft bill was prepared. The Bill was passed by both the Houses of Parliament and received the assent of the President in 1974.

7. The Water Act underwent further changes in 1978 and thereafter in 1988. Section 25 of the Water Act in its present form was a result of certain extensive amendments made to it in 1988. Para 2 of the SOR of the Amendment Act No. 53 of 1988, which is relevant for the present purposes, reads as under:

"2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies.

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Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties. The State Legislatures of Himachal Pradesh, Manipur and Tripura have passed resolutions under Article 252(2) of the Constitution authorizing the Parliament to amend the provisions of the Water Act to give effect to those amendments."

8. Thereafter in Paras 3(iii) and 3(vi) of the SOR, it was explained that the Bill *inter alia* sought to make the following amendments to the Act, namely:

"(iii) it is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board for establishing or taking any steps to establish any industry, operation or process which is likely to cause pollution of water and also to empower the Boards to limit their consents for suitable periods so as to enable them to monitor observance of the prescribed conditions;

.....
 (vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure on regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity."

9. It is plain, therefore, that the amendments made in 1988 were with a view to making it obligatory on the part of the person taking any steps to establish "any industry, operation or process which is likely to cause pollution of water...." to obtain the prior consent of the State Pollution Control Committee (PCC).

Position under the Water Act

10. To recapitulate, one of the central issues in these petitions is whether there is statutory requirement in terms of Section 25(1)(a) of the Water Act for persons establishing a commercial shopping complex or shopping mall or a residential complex to obtain prior consent to establish from the DPCC. Section 25 of the Water Act which mandates such requirement reads as under:

"25. *Restrictions on new outlets and new discharges*—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board—

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this Section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution)

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Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under Sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in Sub-section (1), subject to such conditions as



it may impose, being—

- (i) in cases referred to in Clauses (a) and (b) of Sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;
 - (ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and
 - (iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or
- (b) refuse such consent for reasons to be recorded in writing.
- (5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.
- (6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be

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open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorized by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

- (7) The consent referred to in Sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.
- (8) For the purposes of this Section and Sections 27 and 30—
 - (a) the expression 'new or altered outlet' means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;
 - (b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any

reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge."

11. For further understanding the scope of the expressions used in Section 25(1) of the Water Act, the definitions therein of the terms "outlet" occurring in Section 2(d) (d), "sewage effluent" under Section 2(g) and "trade effluent" under Section 2(k) are relevant. They read as under:

"2(dd) 'outlet' includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;

....
 2(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

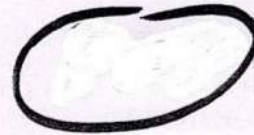
....
 2(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage."

12. One of the submissions made by Mr. Sorabjee, learned Senior Counsel on behalf of the Petitioners is that the requirement of obtaining prior consent to establish in terms of Section 25(1)(a) of the Water Act arises only where the activity in question is to establish an "industry, operation or process" which in turn discharges "trade effluent". The argument is that a residential complex cannot produce "trade effluent". It can only produce domestic sewage which the legislature

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has consciously excluded from the expression "trade effluent". It is further urged that what takes place in a commercial shopping complex or shopping mall is mere retail sale of goods and services. There is no "industry, operation or process" that goes on inside a commercial shopping complex or mall that discharges "trade effluent". On behalf of the Petitioners, it is sought to be contended that the above provision was never intended to cover shopping complexes, malls or the residential complexes. Mr. Sorabjee submitted that the words "operation or process or any treatment and disposal system or any system of extension or addition thereto" following the word "industry" have to be read *ejusdem generis* the word "industry" and therefore was not meant to cover an activity which is not an industrial activity. It is contended that there is no industrial activity that takes place in a shopping complex or mall or a commercial complex. In other words, only industries such as chemical industries, metallurgical industry, engineering industry and so on are meant to be covered by the Water Act. Consequently, it is argued that Section 25(1) of the Water Act is not attracted in any of the present cases.

13. It must be noticed that the definition of "trade effluent" under Section 2(k) underwent a change with the Amendment Act No. 53 of 1988. The definition of "trade effluent" in the unamended Section 2(k) contained the words "carrying on any trade or industry" following the words "...any premises used for...." This was replaced by the words "...from any premises carrying on any industry, operation or process, or treatment and disposal system". The idea was to expand the use of the premises and not limit it to an industry but also any process or treatment and disposal system. What stood excluded from the definition of "trade effluent" was "domestic sewage". The word "sewage, itself has been defined under Section 2(g) to mean effluent from any sewerage system or sewage disposal works and includes sullage produced from open



drains. The word 'sewage, when qualified by the word 'domestic, should necessarily mean sewage produced from premises used for domestic purposes. The word "domestic" when contra-distinguished from the expression "trade" could mean a place used for residence rather than for business or trade.

14. However, the above definition of "trade effluent" does not take a residential complex or even a commercial shopping complex or shopping mall out of the purview of Section 25(1) of the Water Act. A careful reading of Section 25(1) of the Water Act would show that it is intended to cover not just "industry" which discharges "trade effluent" but any "process or operation" that results in a discharge of "sewage" not limited to trade effluent. The expression "sewage or trade effluent" in Section 25(1)(a) Water Act which follows the words "operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge..." is wide enough to cover all kinds of sewage and not just "trade effluent". Likewise, the expressions "process" and "operation" is not meant to be confined to "industry" but to all kinds of processes and operations including those that take place in kitchens and bathrooms of residential complexes and retail sales in shops and restaurants and activities in the rest rooms of commercial shopping complexes and malls.

15. The definition of the words "operation" and "process" as occurring in the New Shorter Oxford English Dictionary (Leslie Brown Ed.) are as follows:

operation: An action, deed; exertion of force or influence; working,

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activity; an act of a practical or technical nature, esp one forming a step in a process

process: The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end.

16. Under Section 25(1)(b), Water Act if the operation, process or the process that is proposed to be established brings into use "any new or altered outlet for the discharge of sewage" then Section 25(1) will stand attracted. The proviso to Section 25(1) states that where the steps to establish an industry, operation or process have already commenced before the commencement of the 1988 Amendment Act, such steps may continue for a period of three months and if, the person who has taken such steps makes an application for consent within that period, till the disposal of such application. The proviso underscores the mandatory nature of the requirement of even an ongoing construction to obtain prior consent to establish from the State PCC.

17. When the Water Act Was first enacted in 1974, the scale of both commercial and residential shopping complexes as a result of urbanization was perhaps not anticipated. There has been a dramatic increase in the number of residential and commercial shopping complexes that have come up in urban metropolises in the recent past. More significant is the size of such commercial/shopping complexes. Having huge shopping malls having a builtup area of 20,000 sq. m. is not an unusual feature as is evident in seven cases in the present batch of writ petitions. The volume of sewage that such residential and commercial complexes and shopping malls are likely to discharge into the sewage system would indeed be enormous. The recognition of the need to have the regulatory authority, in these cases the DPCC, to be approached by the builders of such complexes and malls for prior consent to establish under the Water Act is consistent with the object of the Water Act as amended in 1988. The ultimate object is to ensure that there is effective prevention and control of pollution.

Purposive construction

18. In the considered view of this Court, it is not possible to place a narrow construction on the words "operation" and "process" occurring in Section 25(1) of the Water Act. The words "operation or process" occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context. On the other hand the principle of purposive construction commends itself for application. In *Anderton v. Ryan*, (1985) 2 All ER 355, it was explained that: "Statutes should be given what has become known as the purposive construction, that is to say the Courts should identify the 'mischief' that existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified." In *Pepper v. Hart*, (1993) 1 All ER 42, it was held: "The Courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted." This has been consistently



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followed by our Supreme Court in *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279; *Tanna and Modi v. CIT*, (2007) 7 SCC 434 : AIR 2007 SC 2301 and recently in a decision dated 31st August 2010 in Civil Appeal No. 5842 of 1998, *Grid Corporation of Orissa Ltd. v. Eastern Metals and Ferro Alloys*, VI (2010) SLT 581.

Position of residential complexes under the Water Act

19. While it is clear that commercial shopping complexes and shopping malls would stand covered under Section 25(1)(a) of the Water Act, the position *vis-a-vis* residential complexes is examined next. The DPCC is right in its contention that residential complexes where there are a large number of residential apartments would also be within the purview of Section 25(1)(a) of the Water Act. The residential complexes are likely to discharge large volumes of "sewage" as distinguished from "trade effluent". Section 25(1)(a) of the Water Act envisages any "operation or process" which is likely to discharge "sewage". The collective operation or processes that take place within a residential complex is likely to discharge large volumes of sewage into the municipal sewerage system. To repeat, these processes or operations may take place within the toilets and bathrooms and kitchens of a residential complex. They could also take place as a result of any treatment of such sewage collected in some effluent treatment plant within a residential complex. Then there is the watering of the lawns and plants in such residential complexes. Large volumes of water may be used for central air-conditioning or cooling. There can be many activities in a residential complex which result in the use of water, generation and discharge of sewage and the carrying of such sewage into main sewerage system for further treatment. In the circumstances, it is difficult to accept the contention of the Petitioners that residential complexes would fall outside the purview of Section 25(1)(a) of the Water Act.

20. The question whether the construction of a single-storeyed residential building of insubstantial dimensions would attract Section 25(1)(a) of the Water Act need not be answered in these petitions since none of them concerns such a situation. As far as the present cases are concerned, the two residential complexes which have been constructed have a builtup area of 23,281 sq.m. and 10,733 sq.m respectively. It is not possible therefore to underestimate the impact that the discharge from such



residential complexes of large volumes of sewage would have on water pollution in general particularly when such sewage joins the main sewerage system.

21. It was urged that as long as the municipal sewage system is being treated in effluent treatment plants, and the discharged sewage from these complexes joins such systems, there is no need for each of these complexes to obtain a prior consent to establish from the DPCC under the Water Act. This argument although attractive does not account for the mandatory nature of the requirement to obtain consent to establish under the Water Act. It also does not account for the fact that at the stages of pre-construction, during construction and post-construction these complexes would continue to attract the provisions of the Water Act. The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

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Water pollution during the construction phase

22. At this juncture it is important to understand the impact that the activity of construction of a commercial shopping or residential complex or a shopping mall is likely to have on water pollution. This Court wishes to draw a distinction between the pre-construction stage when Section 25(1), Water Act is attracted and a prior consent to establish is mandated and the construction phase itself which can also result in pollution being caused. For instance during construction, water is drawn from bore wells dug in the property itself or water is brought in through water tanks. Large quantities of water are used during construction and used water is also discharged. If unregulated, this could have an adverse impact on the neighbourhood, the ground water and generally on the municipal sewerage system.

23. The pollution that can possibly be caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase would attract the various provisions of the Water Act. Even after completion of construction a functional residential or commercial complex will have to abide by the water pollution norms stipulated by the Water Act. The DPCC has been constituted under Section 4(4) of the Water Act. Section 9 of the Water Act permits the constitution of committees by the DPCC. Under Section 11A the DPCC can delegate its powers to its Chairman. Section 16 of the Water Act sets out the functions of the Central Pollution Control Board ('CPCB'). Section 21 of the Water Act empowers the DPCC or any of its officials to take samples of water "from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well" for the purposes of analysis. The word 'sewage' in this context would include "domestic sewage" as well. Section 23 gives the DPCC power of entry at any time any place for the purposes of performing any of the functions entrusted by the DPCC to such officer for the purposes of determining "whether and if so in what manner, any such functions are to be performed or whether any direction or authorization served, made, given, or granted under this Act is being or has been complied with". Section 24 of the Water Act prohibits the use of a stream or well for disposal of polluting matters. Consequently, all of the above provisions of the Water Act get attracted when an activity, including an industrial, trade, commercial or domestic activity, causes pollution. This power can be exercised by the DPCC at any time during the construction phase and after the

completion of construction when the complex in question becomes functional.

Applicability of Section 25 (5) Water Act to the cases on hand

24. While this Court accepts the contention of the DPCC that Section 25(1)(a) stood attracted in these cases, the DPCC for some reason did not act at a time when the construction of these residential and commercial complexes had either not commenced or having commenced, had not been completed. In other words, in most cases, as will be seen in the discussion of the individual petitions, the DPCC did not issue a show cause notice at a time when the constructions had either not begun or were in progress. The show cause notice was invariably issued by the DPCC after the construction had been completed and in many cases after the completion certificate was issued. In such a situation, to require the builder of such

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complex to obtain "prior consent to establish" under Section 25(1)(a) of the Water Act was a direction that was not capable of being complied with. Unfortunately, this was the only provision invoked by the DPCC in each of the cases to pass consequential orders of either imposition of fine or damages or order closure.

25. It appears to this Court that with the buildings in question having already been constructed without obtaining prior consent to establish, the DPCC ought to have fallen back on the legislatively envisioned 'Plan B'. What ought to have been done by the DPCC was to invoke Section 25(5) of the Water Act. Section 25(5) talks of a situation where an industry operation or process has already been established or the steps for establishment have already been taken without obtaining the prior consent of the State PCC. In such an event the State PCC has to serve, on the person who has established or taken steps to establish, a notice imposing any such conditions as it might have imposed if an application had been made for its consent "in respect of such establishment, such outlet or discharge".

26. The DPCC ought to have proceeded on the premise that each of the buildings of the petitioners were constructed without its prior consent to establish and then should have invoked its powers under Section 25(5) of the Water Act. What the DPCC has however done in each of the cases is invoke Section 25(1) and therefore require the petitioners to apply at that stage to it for consent to establish. While the DPCC was armed with sufficient powers under Section 33A of the Water Act to issue directions, such directions must be such as are capable of being complied with.

27. It was urged by Mr. Sudhir Chandra, learned Senior Counsel for the DPCC that by letting off the petitioners who had admittedly acted in violation of Section 25(1)(a) of the Water Act a wrong message would be sent and a premium placed, as it were, on brazen violations of the Water Act. Such submission, in the considered view of this Court, does not reflect the correct legal position. If for some reason the DPCC has failed to take action against those who have established commercial or residential complexes without obtaining prior consent to establish, then it is not as if no action can at all be taken against the builders, owners or occupiers of such complexes. Section 25(5) has been enacted precisely for such a contingency. Section 26 of the Water Act further arms the DPCC with review and monitoring powers and to change the conditions imposed if they are found to be not effective. The DPCC can even after the construction is complete, proceed to act in exercise of its powers under Section 25 (5) of the Water Act. In other words, the Legislature expects that the DPCC will act vigilantly at all times to ensure that no violator escapes legal liability under the Water Act.



28. There is another aspect to the matter. There was no clarity about the correct legal position till now even as far as the DPCC was concerned. These cases were for the DPCC, in a sense, test cases. Section 25 of the Water Act was perhaps not invoked by the DPCC earlier and in any event not on this scale against commercial or residential complexes. Not having acted at a time when it should have under Section 25(1) of the Water Act and having allowed the construction of the complexes to be completed, it would not be reasonable for the DPCC to insist that these petitioners must go back to the stage of obtaining 'prior consent to establish'. If after a show cause notice is issued under Section 25(5) of the Water Act and within the

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time stipulated, the corrective measures are not put in place by the person who has established the shopping mall or residential complex, then it would be open to the DPCC to take further steps in accordance with Section 33A of the Water Act. As long as the power to take action under Section 25(5) of the Water Act remains, there need not be any apprehension of any wrong message being given to those who failed to obtain consent of the DPCC prior to establishing the complexes.

Multiplicity of authorities does not render exercise of powers under the Water Act illegal

29. It was argued on behalf of the Petitioners that under Schedule XII to the Constitution of India, read with Article 243W thereof, the powers, authority and responsibility in relation to water and water treatment is exclusively vested in the municipalities, i.e., in this case the Municipal Corporation of Delhi ('MCD'). It was further submitted that under the Delhi Municipal Corporation Act, 1957 ('DMC Act') the powers to grant permission and regulate constructions of buildings in Delhi are exclusively vested with the MCD. Reference is also made to the provisions of the Delhi Jal Board Act (Delhi Water Board Act). The submission is that there cannot be a multiplicity of authorities over the same subject matter and that if the control and regulation of water and sewage is within the exclusive domain of the MCD then the DPCC cannot also exercise such powers' in relation to the same subject matter under the Water Act.

30. This Court is unable to agree with the above submission. The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water. For instance, the MCD may have the power to levy tariffs for the use of water. That does not mean that the DPCC cannot issue directions in regard to the prevention and control of pollution of water. They operate in separate fields and both sets of regulations and norms will have to be complied with. Incidentally Entry 5 in Schedule XII reads: "water supply for domestic, industrial and commercial purposes". It obviously does not cover the entire field of the use of water and treatment and discharge of sewage.

Deemed consent in terms of Section 25(7) Water Act

31. The Court would like to observe that when an application is made by a project proponent for consent to establish under the Water Act, the DPCC has to process and decide such application within four months in terms of Section 25(7) of the Water Act. As will be presently seen while discussing the individual cases, there has been no answer by the DPCC to the factual assertion in some of these cases that despite applying twice for the consent to establish under Section 25(1) of the Water Act, no response was received from the DPCC for well over four months after the making of

such application. Consequently, where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. If thereafter DPCC finds that any activity in the building which has already been constructed attracts the provisions of the Water Act then it will have to proceed in accordance with other provisions of the Act to prevent or control such polluting activity. Section 25(1) of the Water Act cannot obviously be enforced if the DPCC has allowed the four



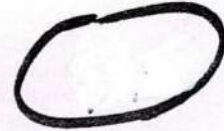
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months period after the making of an application for consent to establish, as envisaged under Section 25(7) of the Water Act, to elapse.

Summary of the position under the Water Act

32. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

- (i) Section 25(1) of the Water Act is intended to cover not just 'industry' which discharges "trade effluent" but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.
- (ii) The words "operation or process" occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.
- (iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.
- (iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.
- (v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.
- (vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a timeframe and upon failure to do so, invoke the powers to issue directions under Section 33A, Water Act.
- (vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.
- (viii) Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced.



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Position under the Air Act

33. Next for consideration are the provisions of the Air Act and the validity of the action taken thereunder by the DPCC. It requires to be first noticed that the definitions of the different terms under the Air Act are not identical to the corresponding terms in the Water Act. The words "air pollutant" or "air pollution", "emission", "industrial plant" occurring in Sections 2(a), 2(b), 2(j) and 2(k) respectively of the Air Act read as under:

"(a) "air pollutant" means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant."

.....
 (j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere."

34. The requirement of obtaining from the DPCC a prior consent to operate flows from Section 21(1) of the Air Act which reads as under:

"21. *Restrictions on use of certain industrial plants.*—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, operate any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application."

35. After its amendment in 1988, the essential definitions remained unchanged. The consent to establish or operate had to be obtained only where it was concerning "any industrial plant in an air pollution control area". It appears to this Court that as far as the Air Act is concerned, the emphasis was only on consent to operate having to be obtained for establishment of an industrial plant. Section 2(k) defines industrial plant to mean "any plant used for any industrial or trade purpose and made any area pollutant into the atmosphere". In the instant case, the expression "trade purposes" therefore have to be distinguished from the industrial purposes. The word "trade" could have a wide meaning. It could include the transaction that takes place within a Commercial shopping complex or a shopping mall. The word "air pollutant", as defined in Section 2(a), means the presence in the atmosphere "in such concentration as may be or tend, to be injurious to the atmosphere or the other breeding creatures or plants or property or environment".

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Therefore the activity has to be such that it results in the establishment of an industrial plant in an air pollution control area. Air pollution, in terms of Section 2(b) is "presence in the atmosphere of any air pollutant".

36. A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act. Mr. B.B. Gupta, learned Counsel for some of the Petitioners drew the attention of the Court to the Air (Prevention and Control of Pollution) Union Territory Rules, 1983 (UT Rules). He submitted that Rule 2(h) of the UT Rules is the only provision which defines the word "premises" which has been defined to mean "any building constructed or already used for industrial or commercial purposes". Far from supporting the submission of Mr. Gupta, this definition suggests that even a building used for commercial purposes would be covered by Section 21(1) of the Air Act. Likewise, Rules 9 and 10 of the UT Rules and the forms thereunder do not exclude a commercial/shopping complex from the applicability of the Section 21 of the Air Act.

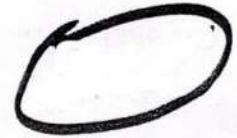
37. One of the submissions on behalf of the DPCC was that in most of these buildings, whether it was a commercial shopping complex or a residential complex, there would be a 24-hour power back-up diesel generator set (DG set) that was likely to cause air pollution and attract the provisions of the Air Act. This submission was sought to be countered by the Petitioners by pointing out that only such DG sets that satisfy the pollution control norms would be used by the Petitioners and that this is an event that was likely to take place after the building was commissioned and not at the stage of consent to operate.

38. Here the Court would like to make two observations. The position of the applicability of Section 21(1) of the Air Act to commercial shopping complexes and shopping malls is different from its applicability, to residential complexes. This will be discussed in some detail shortly hereafter. Secondly, these cases are concerned with the applicability of Section 21(1) of the Air Act at a stage when construction of the building in question has not commenced. The position of the applicability of the Air Act to any on-going construction and to any building complex which is functional is again different.

39. As far as commercial shopping complexes or shopping malls are concerned, it might be difficult to anticipate, even before the start of construction, what would be the extent of use of DG sets. In any event this need not be the only factor that will determine whether Section 21(1), Air Act applies to commercial shopping complexes or shopping malls. Given the definition of "air pollutant" under Section 2(a) read with Section 21 (1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade or commercial activity, is sufficient to attract the provisions of Section 21(1) of the Air Act. Whether or not the use of a DG set will attract the provisions of the Air Act is a separate matter. It is obvious as and when the building begins to get used for a trade or commercial purpose and DG sets are used therein, if such DG sets do not comply with the pollution control norms, a separate cause of action arises for the DPCC to take action.

40. Next the position vis-a-vis residential complexes may be examined. Since

Section 21(1) of the Air Act only talks of obtaining prior consent to operate where the air pollution is likely to be caused as a result of the operation of any "industrial plant for the purpose of any industry specified in the Schedule", there is no possibility of



expanding the meaning of the word "industrial plant", even on a purposive construction, to include a residential complex. Reliance was placed by learned Senior Counsel for the DPCC on the judgment of the Karnataka High Court in *Nitin Majumdar v. State of Karnataka*, 2007 (4) Kar LJ 569. That case concerned a place used for storage, which was held to be covered under the definition of 'plant'. It is not possible to stretch the meaning of the word 'plant' to include a residential complex. The ratio of the said decision is therefore inapplicable to a complex used only for residential purposes. The contrast with the corresponding words in Section 25(1)(a) of the Water Act is indeed striking when one examines Section 21(1) of the Air Act. The crucial words "operation or process" inserted into Section 25(1)(a) of the Water Act after the 1988 amendment do not find place in Section 21(1) of the Air Act. The resultant position is that as far as a purely residential complex is concerned, on the present wording of Section 21 (1) of the Air Act, there is no requirement of obtaining the prior consent of DPCC to operate.

41. It was further contended on behalf of the DPCC that the construction activity itself could cause both air and water pollution. One of the purposes of requiring the obtaining of prior consents, as noticed by the Supreme Court in *T.N. Godavarman Tirumulpad v. Union of India*, 2006 (10) SCALE 246 (the Vasant Kunj Ridge matters) is the inevitable use of reinforced cement concrete (RCC) mix during construction. There is a likelihood of air pollution being caused due to use of loose cement during construction activity. Clearly, therefore, it is anticipated that the very activity of construction is likely to cause both air and water pollution. This can be appreciated in more than one context. Where what is being constructed is a building that has to be used for the purposes of a commercial complex or shopping complex or shopping mall, then apart from obtaining the consent to establish under the Water Act and consent to operate under the Air Act, after the construction activity commences such activity will have to nevertheless comply with the pollution control norms that would give rise to a separate cause of action to the DPCC for the applicability of the provisions of the Water Act and the Air Act.

42. Where it is a residential complex, while there may be no need to obtain prior consent to operate under Section 21(1) of the Air Act, once the construction activity commences, that activity has to be in consonance with the provisions of both the Air Act as well as the Water Act. Needless to mention, once the complex, whether commercial or residential or a shopping mall, is functional, the norms under both the Air Act and the Water Act, or for that matter the EPA or any other environmental law will have to be complied with.

43. The position where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate is examined next. In such event, unlike the fall back plan of action under Section 25(5) of the Water Act, the course of action available to the DPCC would be to inspect the building in exercise of its powers under the Air Act and the Rules thereunder and then issue a show cause notice requiring the builder or the owners or occupiers as the case may be to comply with the conditionalities imposed by it

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under the Air Act within a specified timeframe, failing which the DPCC can issue further directions under Section 31A Air Act.

Summary of the position under the Air Act

44. The position under the Air Act may be summarized:

- (i) A collective reading of Section 21(1) of the Air Act with Sections 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.
- (ii) The definition of "air pollutant" under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21(1) of the Air Act
- (iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.
- (iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.
- (v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act.

The position under the EPA

45. The EIA Notification dated 14th September 2006 requires the obtaining of a prior EIA clearance for "new projects or activities listed in the schedule to this notification". The schedule includes, *inter alia*, building/construction projects/area development projects and townships. Serial 8(A) concerns building and construction projects. In column 4 it is stated that where the extent is of equal to or more than 20,000 sq.m. and less than 50,000 sq.m. of builtup area, the EIA clearance is mandatory.

46. The appendix to the above EIA Notification sets out the format in which an application has to be made for an EIA clearance. The second part of the format concerns "use of natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply)". Serial No. 2.2 asks for details about "Water (expected sources & competing users)". Appendix 2 sets out the exclusive requirement for construction projects. In para 2 there is a detailed check-list concerning 'Water Environment'. Para 2.1 requires the applicant to "give the total quantity of

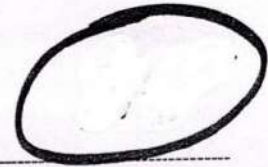


water requirement for the proposed project with the breakup of requirements for various users". In particular, the following questions are asked:

"2.9. What the impacts of the proposal on the ground water? (Will there be tapping of ground water give the details of ground water table, recharging capacity, and approvals obtained from competent authority, if any)

2.10. What precaution/measures are taken to the prevent the run-off from construction activities polluting land & aquifers? (Give details of quantities and the measures taken to avoid the adverse impacts)

2.11. How is the storm water from within the site managed? (Since the provisions made to avoid flooding of the area, details of the drainage facilities provided along with a site layout indication contour levels)



2.12. With the deployment of construction labourers particularly in the peak period lead to unsanitary conditions around the project site (Justify with proper explanation)

2.13. What on-site facilities are provided for the collection, treatment and safe disposal of sewage? (Give details of the quantities of wastewater generation, treatment capacities with technology and facilities for recycling and disposal)

2.14. Give details of dual plumbing system if treated waste used is used for flushing of toilets or any other use."

47. As regards 'Air Environment' para 5 of the form lists out the various questions that have to be answered by the applicant. The questions read as under:

"5.1. Will the project increase atmospheric concentration of gas and result in heat islands? (Give details of background air quality levels with.....based for dispersion models taking into account the increased traffic generation as a result of the proposed constructions)

5.2. What are the impacts on generation of dust, smoke, odours, fumes or other hazardous gases? Give details in relation to all the metrological parameters.

5.3. Will the proposal create shortage of parking space for vehicles? Furnish details of the present level of transport infrastructure and measures proposed for improvement including the traffic management at the entry and exit to the project site.

5.4. Provide details of the movement patterns with internal roads, bicycle tracks, pedestrian pathways, footpaths, etc., with areas under each category.

5.5. Will there be significant increase in traffic noise and vibrations? Give details of the sources and the measures proposed for mitigation of the above.

5.6. What will be the impact of DG sets and other equipment on noise levels and vibration in and ambient air quality around the project site? Provide details."

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48. The contention of those Petitioners who have obtained EIA clearance for their projects is that by requiring them to again approach the DPCC for consent to establish under the Water Act and consent to operate under the Air Act, the same exercise is being unnecessarily asked to be repeated by the DPCC. It is further submitted that once the MoEF has already given clearance, it would not be open to the DPCC to again examine those very issues and refuse either the consent to establish under the Water Act or the consent to operate under the Air Act.

49. In reply it is pointed out by the DPCC that under most of the EIA clearances, one of the conditionalities imposed is that the applicant has to obtain consent to establish under the Water Act and consent to operate under the Air Act respectively from the DPCC. Additionally, reference is made to a Circular dated 21st November 2006 issued by the MoEF clarifying that an NOC from the State Pollution Control Board ("SPCB") and its consent to establish are "separate legal requirements, any project proponent has to fulfil". It is clarified that "NOCs are required under Water and Air Acts are mandatory requirement under those Acts and will have to be taken as required and do not require to be intended as environmental clearance". The DPCC has also pointed out that there is no question of repugnancy between the Air and Water Acts on the one hand and the EPA on the other. To be fair to the Petitioners, it was not their case that there is any repugnancy between the statutes in question. Their

submission is that once they have obtained EIA clearance under the EIA Notification dated 14th September 2006, they do not have to again go before the DPCC for a separate consent to establish and consent to operate.

50. This Court finds that there is indeed an element of overlap between some of the aspects examined by the MoEF while granting EIA clearance, and those aspects on which the DPCC grants either consent to establish or consent to operate or both. At the same time, the need to separately obtain consent to establish under the Water Act and consent to operate under the Air Act from the DPCC is mandatory as clarified by the MoEF in its Circular dated 21st November 2006. As explained by the Supreme Court in *State of Bihar v. Kedar Sao*, (2004) 9 SCC 344, it is possible that more than one enactment applies to the same facts and circumstances and it is possible that the applicant may have to get clearances from different agencies for the same activities. The mere fact that an EIA clearance has been obtained from the MoEF cannot be a ground to seek exemption from obtaining consent to establish under the Water Act and consent to operate under the Air Act.

51. A possible balance that can be struck with a view to avoiding duplication is to hold that when a holder of an EIA clearance applies to the DPCC for either consent to establish under the Water Act or consent to operate under the Air Act, it would be incumbent on the DPCC to ascertain the aspects that have already been examined by the MoEF in granting the EIA clearance. Those aspects need not be again examined by the DPCC. There is usually a role assigned to the SPCB under the EIA notifications. Even assuming that the position in Delhi is different and the DPCC does not come into the picture when an EIA clearance is granted by the MoEF, it would nevertheless be necessary for the DPCC to avoid repeating the same exercise which has been performed by the MoEF in granting the EIA clearance. Therefore, to the extent that certain aspects have not been covered by the EIA



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clearance, it would certainly be open for the DPCC to examine those aspects and decide whether or not to grant consent to establish under the Water Act and consent to operate under the Air Act.

Who should apply for consent?

52. It was submitted on behalf of the Petitioners that after the completion of the construction in terms of validly sanctioned plans the ownership of the property, or portions thereof, usually changes hands. The question posed is, in such event, who should apply for consent to establish or to operate and who should be called upon to comply with the environmental norms?

53. It is not as if the person who originally applied for EIA clearance or the consent to establish or consent to operate would have nothing to do with the property in question once the construction is complete. There may indeed be multiple owners in a constructed building. In such event, if the builder already knows who they are, even before construction commences, then the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners. If the building has been completed without obtaining prior consent to establish under Section 25(1)(a) of the Water Act it would be incumbent upon the person receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. Notices can then be issued to such persons as well. Till such time the person first receiving a show cause notice



furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be liable to answer the show cause notice and to explain why he should not be proceeded against for the violations of the Water Act. The position would be more or less similar under the Air Act. In any event, since under the Rules under both the Water Act and the Air Act there is a requirement that the DPCC should conduct an enquiry or investigation before issuing a show cause notice, that might reveal the names of the persons to whom the notices should be issued.

The ambit of DPCC's powers under Section 33A, Water Act and Section 31A Air Act

54. This brings up the next question as to the scope of the powers of the DPCC under Section 33A of the Water Act and Section 31A of the Air Act which are more or less identically worded. Section 33A of the Water Act reads as under:

"33A. **Power to give directions**—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation—For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

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(b) the stoppage or regulation of supply of electricity, water or any other service."

55. The above provision opens with a non obstante clause. However, it is subject to the other provisions of the Water Act. It gives the DPCC the power to issue directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. The directions would include the power to order closure prohibition or regulation of any "industry, operation or process" or the "stoppage or regulation of supply of electricity, water or any other service". The power of the DPCC under Section 33A Water Act is indeed wide. It implies within it the requirement of following the principles of natural justice before the exercise of such power. On a collective reading of Sections 25 and 33A, the legislative scheme appears to be that where there is a failure by a person to comply with either Section 25(1)(a) or Section 25(5) of the Water Act then it would be open to the DPCC to exercise its powers under Section 33A of the Act. Without giving any show cause notice under Section 25(5) in the instant case and without waiting for the expiry of the time within which the corrective steps have to be taken, it will not be open to the DPCC to straightaway invoke its power under Section 33A to order closure of the shopping mall or commercial or residential complex concerned. That would make such exercise of power vulnerable to invalidation on the grounds of arbitrariness and unreasonableness. The position as regards Section 31A of the Air Act is no different. That power too cannot be exercised to straightaway order closure of a building without giving the person concerned a prior show cause notice consistent with the procedure outlined under the Rules under the Air Act.

Validity of the levy of penalties and environmental damages

56. The powers of the DPCC to levy environmental damages and seek the furnishing of bank guarantees as a pre-condition to the grant of consents are examined next. Connected with this issue is the question whether the Chairman of the DPCC had the

power to constitute a Consent Management Committee ('CMC') which proceeded to levy environmental damages, penalties, fines and require the furnishing of bank guarantees in some of these cases.

57. Section 15 of the Air Act provides for delegation of powers stating that a State Board may, by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board, its powers. Under Section 12(3B) of the Water Act, a similar power has been conferred on the State Board to delegate its powers.

58. It is pointed out by the Petitioners that the DPCC has, contrary to the relevant provisions of the Water Act and Air Act, delegated its powers with regard to granting prior consent to establish or consent to operate and to issue directions under Section 31A of the Air Act and Section 33A of the Water Act to the Chairman and Member-Secretary. It is stated that the Chairman DPCC is also the Chairman of the CMC which deals with the aspect concerning consent. It is accordingly sought to be contended that there can be no sub-delegation by the Chairman of his powers to the CMC and the decision taken by the Chairman with the assistance of the Members of the CMC is invalid.

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59. If indeed it was the Chairman alone who was acting in exercise of the powers delegated to him under Section 31A of the Air Act and Section 33A of the Water Act, then the final decision to either agree to or to refuse the consent to establish or consent to operate should have been taken independently by the Chairman. The minutes of the meetings, however, show that this was the decision of the CMC. Although the Chairman of the DPCC may be the Chairman of the CMC, he is but one member in the CMC. There is nothing to indicate that the decision of CMC was unanimous or by majority or that it was the decision only of the Chairman. There is no power under the Water Act or the Air Act given to the Chairman to further sub-delegate his powers in regard to consent to establish or consent to operate to the CMC. Such sub-delegation was obviously bad in law. Unless it is shown, and it is not, that the other members of the CMC apart from the Chairman were performing a mere advisory role and had nothing to do with the actual grant or refusal of the consent to establish or consent to operate, such decision by the CMC is clearly *ultra vires* the Air Act and Water Act.

60. In the instant case, this Court is unable to find any justification for the CMC to itself take decision as regards the grant and refusal of the consent to establish under the Water Act and consent to operate under the Air Act. Secondly, even where it agreed to grant consent to establish, the CMC imposed a pre-condition that the applicant should pay a penalty or fine or furnish a bank guarantee or in some cases all or some of them. There is no statutory basis for such a direction to be issued by the CMC, or for that matter by even the Chairman of the DPCC. The grant of the consent to establish or consent to operate ought not to be made conditional upon payment of some fine or penalty or furnishing of bank guarantee. Given the object of the Water Act and the Air Act, which is the prevention and control of pollution, the mere payment of fine or penalty or furnishing of bank guarantee is unlikely to prevent and control the likely pollution that can be caused. The basic approach adopted by the CMC where such penalty or fine has been levied or bank guarantee secured appears to be faulty.



61. The decision to levy environmental damages and to seek the furnishing of bank guarantees has been sought to be justified by the DPCC with reference to Section 31A of the Air Act and Section 33A of the Water Act. As already noticed, Section 31A of the Air Act is more or less similarly worded as Section 33A of the Water Act and both provisions have been inserted by the 1988 Amendments. A reference has already been made to Section 33A of the Water Act. The power under the said provision includes the power of the DPCC to issue "any directions in writing to any person". The 'Explanation' to the provision clarifies that the power to issue directions includes the power to direct "closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service". Yet, this power has to be one coupled with a duty to act reasonably and fairly. It cannot be stretched to include a power to levy a penalty.

62. In the considered view of this Court, the power to levy a penalty on any party is in the nature of a penal power. It is settled law that unless there is a specific power in the statute enabling the authority to do so, it cannot levy penalties or damages with reference to the general power under Section 31A of the Air Act or

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Section 33A of the Water Act. The decisions in *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra*, (1975) 2 SCC 22; *J.K. Synthetics Limited & Birla Cement Works v. Commercial Taxes Officer*, (1994) 4 SCC 276 and *India Carbon Ltd. v. State of Assam*, (1997) 6 SCC 479 are relevant in this regard. In *Khemka & Co.*, the question was whether an assessee under the Central Sales Tax Act, 1956 could be made liable for penalty under the provisions of the Mysore Sales Tax, 1957 when there was no provision in the Central Act for imposition of penalty for default in payment of tax. Answering the question in the negative, the opinion of Ray CJ, writing for the majority explained (SCC, p. 31):

"25. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to Section 28 of the Indian Income-tax Act, 1922 where penalty is provided for concealment of income. Penalty is in addition to the amount of income-tax. This Court in *Jain Brothers v. Union of India*, [1970] 77 ITR 107 (SC) said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax."

63. In his concurring opinion Beg, J. (as His Lordship then was) observed (SCC @ p. 35):

"39. On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the law. The machinery or procedure for its realization comes into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. It is a well settled canon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability. But, I do not think that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realization of tax. It is more than that. Such liabilities must be created by clear, unambiguous, and

express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good government of laws. It is implied in the Constitutional mandate found in Section 265 of our Constitution: 'No tax shall be levied or collected except by authority of law'."

64. Later in *India Carbon Ltd.*, the question arose whether sales tax authorities in the States could charge interest when collecting and enforcing payment of central sales tax. Following the decision in *Khemka* it was held that absent a substantive provision in the central Act requiring the payment of interest on central sales tax, the authorities in the states could not charge interest thereon. The resultant position is that there being no specific provision in the Water Act or Air Act empowering the



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DPCC to levy penalties, fines or environmental damages, or to require the furnishing of bank guarantees, no such order or direction can be issued by the DPCC, much less the CMC, in exercise of the general powers to issue directions under Section 33A Water Act and Section 31A, Air Act.

65. The DPCC has placed reliance upon the decision of the learned Single Judge of this Court dated 16th January 2009 in Writ Petition (C) No. 7516 of 2007 (*Regent Automobiles Pvt. Ltd. v. GNCTD*). The Court in *Regent Automobiles* was interpreting the provisions of the Delhi Common Effluent Treatment Plants Act, 2000 (DCETP Act). Section 11 of the DCETP Act which contains a specific provision for penalty reads as under:

"11. Penalty for non-payment within the specified time. If any amount payable by any person is not paid within the date specified in the order it shall be deemed to be in arrears and the appropriate authority may after such inquiry as it deems fit, impose on such person a penalty not exceeding the amount in arrears."

66. Section 16 of the DCETP Act reads as under:

"16. *Power to give directions*—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, the appropriate authority may, in exercise of its powers and performance of its functions under this Act, issue any directions in writing to any occupier, society, person, officer or authority, and such occupiers, society, person, officer or authority shall be bound to comply with directions.

Explanation—For the avoidance of doubts, it is hereby declared that the power to issue directions under this clause includes the power to direct—

(a) the closure, prohibition or regulation of any industry, establishment, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

67. Further Section 17, DCETP Act spells out the consequences of failing to comply with the direction issued by the authority. It enables the authority to levy a further penalty in the event of such failure. In addition, Section 18, DCETP Act talks of penalty for certain kinds of acts. Section 19, DCETP Act provides for residual penalty for contravention of certain provisions of the Act. It was noticed by learned Single Judge that, "but for Section 16 it can be argued that the entire range of sanctions including penalties have been specifically provided by various provisions such as Section 11, 18, 19 and 20". It was in the above context that the question posed by the learned Single Judge was 'whether the general power to issue directions comprehends the power to require bank guarantees to be furnished'? After referring to certain decisions which

explained that 'everything necessary to carry out the purposes of the grant can be done by the authority entrusted with the power', the learned Single Judge came to the conclusion that the "Court cannot limit the options available to statutory authorities to meet emerging challenges, towards ensuring compliance with the provisions". Yet, even in that case the Court accepted the contention of the Petitioners that in the show cause notices, preceding the impugned orders, there was no mention about the possibility of issuance of orders

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requiring bank guarantees to be furnished. Further the orders did not indicate the application of mind to what existed on site, and what was the standard required to be complied with. Therefore while the challenge on account of lack of power failed, the impugned orders were held not sustainable in law and set aside.

68. In the considered view of this Court, the above decision in Regent Automobiles is of no assistance to the DPCC in the present case. The provisions of the DCETP Act are different from the provisions of the Air Act and Water Act particularly with reference to the penalty provisions. In the DCETP Act, Sections 11, 17, 18 and 19 talk of penalties and it is in that context it was held that the power under Section 16 of that Act includes power to require furnishing of bank guarantee. Neither in the Water Act nor in the Air Act is there any provision that permits DPCC to levy a penalty. That power is with the Courts and that too after returning a conviction. Chapter VI of the Air Act and Chapter VII of the Water Act talks of penalties which result from a conviction for violation of the provisions. Clearly, the penalties envisaged under the Air Act and the Water Act can be levied only at the end of judicial proceedings before a criminal Court. That power cannot be exercised by the DPCC. There is no provision either under the Water Act or under the Air Act that empowers a State Board to levy penalties or environmental damages, much less require the furnishing of a bank guarantee.

69. This Court has, therefore, no hesitation in coming to the conclusion that orders issued by the CMC or even the DPCC in the instant case levying penalty and requiring furnishing of bank guarantees and making the grant of consent to establish under the Water Act and consent to operate under the Air Act conditional upon payment of such penalties and furnishing of such bank guarantees are entirely without the authority of law and require to be set aside. Procedural violations by the DPCC

70. This Court finds that the procedure adopted in the instant case by the DPCC in levying the damages and requiring the Petitioners to furnish bank guarantees was not consistent with the requirements of the Rules under the Air Act and Water Act. Under Rule 20A(3) of the UT Rules the requirement is of serving a copy on the alleged violator of the proposed directions and being given an opportunity of not less than 15 days from the date of service of a notice to file objections to the proposed directions. Where the direction is for the stoppage or regulation of electricity or water or any other service then under Rule 20A(4) copy of the proposed direction should be endorsed to the occupier of the industry, operation or process. After the receipt of the objection and within 45 days from that day, the DPCC should give an opportunity to the person to file objections and after considering the objections and for reasons to be recorded in writing, either confirm, modify or decide not to issue such directions. Where the DPCC decides that it is not expedient to provide such an opportunity on account of a likelihood of grave injury to the environment, it should record an opinion to that effect.

71. Rule 33 of the Water (Prevention and Control of Pollution) Rules, 1975 ('Water Rules') spells out the procedure for making an inquiry into application for consent. The

said Rule reads as under:

"33. Procedure for making inquiry into application for consent—(1) On receipt of an application for consent under Section 25 or Section 26, the Central

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Board may depute any of its Officers, accompanied by as many assistants as may be necessary, to visit the premises of the applicant, to which such application relates, for the purpose of verifying the correctness or otherwise of the particulars furnished in the application or for obtaining such further particulars or information as such officer may consider necessary. Such officer may, for that purpose, inspect any place where water or sewage or trade effluent is discharged by the applicant, or treatment plants, purification works or disposal systems of the applicant and may required the applicant to furnish to him any plans, specifications and other data relating to such treatment plants, purification works or disposal systems or any part thereof, that he considers necessary.

- (2) Such officer shall before visiting any premises of the applicant for the purpose of inspection under Sub-rule (1) above, give notice to the applicant of his intention to do so in Form XIV. The applicant shall furnish to such officer all facilities that such officer may legitimately require for the purpose.
- (3) An officer of the Central Board may, before or after carrying out an inspection under Sub-rule (1) above, required the applicant to furnish to him, orally or in writing such additional information or clarification, or to produce before him such documents, as he may consider necessary for the purpose of investigation of the application and may, for that purpose, summon the applicant or his authorised agent to the office of the Central Board."

72. This Court finds that in none of the cases the above procedure has been followed by the DPCC. This would be discussed in greater detail while dealing with the individual cases. This Court would like to emphasise the power of the DPCC under Section 31A of the Air Act and 33A of the Water Act, which is indeed a coercive power, has to be exercised with caution and after complying with the due process requirements. The Rules under both statutes have to be mandatorily followed while exercising such powers.

Conclusions

73. The summary of the conclusions of this Court are set out hereunder. It is clarified that these summary conclusions have to be read with the specific conclusions under different sub-topics already set out hereinbefore:

- (i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of Section 25(1)(a) of the Water Act and apply to the DPCC for prior consent to establish.
- (ii) Where a person has already established a commercial shopping mall or shopping complex or residential complex and has not been issued any show cause notice till the completion of such building then it would be pointless to require such person to thereafter comply with the requirements of Section 25(1) of the Water Act. The available course to the DPCC in such event is to invoke the powers under

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Section 25(5) of the Water Act and set out a time limit for such person to comply with the requirements of the Water Act. Upon failure to comply with the requirements as specified by the DPCC, it would be open to the DPCC to invoke its powers under Section 33A of the Water Act after complying with the due process outlined under the Water Rules.

- (iii) Where a person has made an application for consent to establish and four months have elapsed during which the DPCC has not communicated to him its decision thereon, then in terms of Section 25(7) Water Act consent to establish will be deemed to have been granted. In such event the question of the person being thereafter required to apply for consent to establish does not arise.
- (iv) Where the buildup area is more than 20,000 sq.m., the requirement of obtaining an EIA clearance for such activity is mandatory. The mere fact that an EIA clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the DPCC for a consent to establish under the Water Act.
- (v) Where an EIA clearance has already been granted by the MoEF, and the DPCC is thereafter approached for grant of prior consent to establish or prior consent to operate, it would be incumbent on the DPCC to avoid re-examining those aspects that have been examined by the MoEF while granting EIA clearance. The DPCC will examine other aspects not covered by the EIA clearance.
- (vi) The requirement of obtaining prior consent to operate under Section 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of 'industrial plant' under Section 2(k) of the Air Act. However on the present wording of Section 21(1) Air Act, there is no such requirement as regards a residential complex.
- (vii) The requirement of having to obtain the consent to operate under Section 21 of the Air Act does not get obviated only because the person has an EIA clearance under the EPA.
- (viii) The DPCC when approached with an application for consent to operate by a person who has already obtained an EIA clearance, will examine only those aspects not covered by the EIA clearance.
- (ix) During the phase of construction, and post-construction, the provisions of the Water Act, the Air Act and the EPA and other environmental statutes will apply to all types of buildings and activities.
- (x) Without issuing a show cause notice and without giving an opportunity to the alleged violator to rectify the defects detected during an inspection of the premises carried out in accordance with the relevant rules, the power to order a closure under either Section 33A

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Water Act or 31A Air Act should not generally be straightway invoked.

- (xi) There is no power vested in the Chairman of the DPCC, either under the Water Act or under the Air Act to further sub-delegate the powers delegated to him by the DPCC as regards granting or refusing consent to establish or consent to operate under the Water Act and the Air Act respectively. Any Committee established by the Chairman of the DPCC like the CMC has no power to itself

decide whether to grant or refuse the consent to establish or consent to operate. Such decision can be taken either by the DPCC itself or by its delegate i.e. the Chairman DPCC and no one else.

- (xii) The decisions by the CMC or even by the Chairman, DPCC to levy penalty or environmental damages and insist on furnishing of bank guarantees as a condition for grant of consent to establish or consent to operate are without the authority of law. There is no power under the Air Act or the Water Act which enables the DPCC or its Chairman, much less the CMC, to pass such orders. Absent specific provisions under the Water Act and Air Act which permit the DPCC or its Chairman to levy and collect penalties, environmental damages or to pass orders for furnishing of bank guarantees, the general power to issue directions under Section 31A of the Air Act and Section 33A of the Water Act cannot be invoked for such purpose.
- (xiii) Where there are multiple owners in a constructed building, the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners or occupiers. If the building has been completed without obtaining prior consent to establish under Section 25(1)(a) of the Water Act it would be incumbent upon the person first receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. The position is more or less similar under the Air Act. Notices can then issue to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be answerable under the Water Act and/or the Air Act.

74. This Court would like to end this part of the judgment, before commencing to examine the individual petitions, with the observation that the DPCC should take proactive steps to make the correct legal position publicly known not only through its website, but act in coordination with the governmental and municipal agencies, the planning authorities, the construction industry, consumer associations as well as civil society groups involved in issues of environmental protection. Not only should DPCC reorganize itself as a vigilant regulator but seek the active cooperation of all of the above interested parties. Also, to avoid any criticism of selective application of law, the DPCC should ensure that the law applies and is

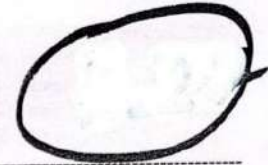
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enforced in a uniform, predictable and certain way, while ensuring that action taken is within the four corners of the law.

Consideration of individual petitions

75. The individual petitions are now taken up for consideration W.P. (C) No. 2714 of 2008 (Vardhman Properties Ltd.)

76. The building in this case is a shopping-cum-office complex built on a commercial plot. The total builtup area is 7700 sq.m. The show cause notice was issued by the DPCC on 13th February 2008 asking the Petitioner to explain why it should not be proceeded against for its failure to apply for a consent to establish under Section 25 of the Water Act and consent to operate under Section 21 of the Air Act. The show cause notice further stated with reference "you are proposing to construct/have started construction activities without obtaining prior 'Consent to Establish' under Air and Water Acts from DPCC". The Petitioner was asked to show



cause why "prosecution proceedings should not be initiated against you and/or your establishment should not be closed under the appropriate provisions of the Acts for contravention of the provisions of the aforesaid Acts".

77. By the time the above show cause notice was issued, the building had already been constructed. In fact, construction commenced on 7th June 2005 in terms of the sanctioned building plan and was completed on 25th June 2007. The Petitioner replied to the above notice on 18th February 2008. *Inter alia*, it was pointed out that an application was made on 3rd September 2007 under the Right to Information Act, 2005 ('RTI Act') on the exact criteria adopted by the DPCC for identifying commercial complexes for the purposes of consent under the Air Act and the Water Act. The DPCC had replied that commercial/residential buildings not generating trade effluent are required to discharge their sewage into sewage system maintained by Delhi Jal Board/MCD/DDA which in turn was responsible for treating the sewage in the sewage treatment plant as per the norms prescribed under the pollution control laws and in such event consent was not required for the said commercial/residential buildings.

78. On 18th March 2008, an order was passed by the DPCC noting that a reply had been filed by the Petitioner to the show cause notice on 18th February 2008 that "no application has been made till date". The case was then placed before the CMC (Orange). It was decided by the CMC to direct the Petitioner to apply for consent to establish and submit "Environmental Clearance obtained from MoEF, Govt. of India" and an "affidavit indicating date of start of construction and completion of construction, approved architectural drawing and completion certificate within 15 days from the issue of this letter".

79. The challenge in the present petition is to the aforementioned order dated 18th March 2008.

80. As already held by this Court hereinbefore that there was no question of the Petitioner having to apply for environmental clearance from the MoEF in terms of the EIA Notification dated 14th September 2006 since the builtup area was not above 20,000 sq.m. In the present case the builtup area was 7700 sq.m. The categorization of an industry as Orange, Red or Blue appears to that of the DPCC. It is not found either under the Air Act or under the Water Act. Nevertheless, a

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commercial shopping complex required prior consent to establish prior to commencement of construction. But once the construction was already complete, then it was pointless to require the Petitioner to apply thereafter for consent to establish.

81. Thirdly, the Petitioner's reply dated 18th February 2008 has been noticed but not discussed by the DPCC in the impugned order. In particular, the Petitioner's response to the reply received by it under the RTI Act has not been adverted to at all. Although it is possible that the sewage generated by the shopping complex will join the main sewage system which is being taken to the effluent treatment plant of the DJB, that by itself will not obviate the need to obtain consent to establish from the DPCC.

82. It appears that DPCC itself was not very clear about the legal position and, therefore, the above reply was given under the RTI Act. It cannot be said that the DPCC estopped from rectifying its position or correcting its understanding of the law.

83. Inasmuch as the building already was constructed on 25th June 2007, by the time the show cause notice dated 13th February 2008 was issued, the direction issued by the DPCC requiring the Petitioner to thereafter apply for a consent to establish

under the Water Act and consent to operate under the Air Act was a direction which was incapable of being complied with.

84. This is, however, not the end of the matter. The DPCC can still proceed under Section 25(5) of the Water Act requiring the Petitioner to comply with the pollution control norms under the Water Act. This it can do after following the procedure under Section 25(5).

85. As far as Air Act is concerned, the DPCC can inspect the premises to ascertain what is the extent of the air pollution caused, if any, and then issue notice to the Petitioner.

86. The direction issued in the impugned order dated 18th March 2008, requiring the Petitioner to apply for consent to establish and consent to operate, is for the aforementioned reasons not sustainable in law. While setting aside the impugned order dated 18th March 2008 for the aforementioned reasons, this Court leaves it open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. If it finds after an inquiry or investigation that the use of the premises is causing either water or air pollution, and corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act.

87. The writ petition is disposed of with the above directions.
W.P. (C) No. 2771 of 2008 (Vardhman Properties Ltd.)

88. The total builtup area in the present case is to an extent of 6131.22 sq.m. The building has been constructed on a commercial plot. The building is a shopping complex. Like in Writ Petition (C) No. 2714 of 2008, a show cause notice was issued by the DPCC on 13th February 2008 requiring the Petitioner to apply for prior consent to establish and consent to operate under the Air Act and the Water Act respectively. A similar response was received from the Petitioner on 18th February



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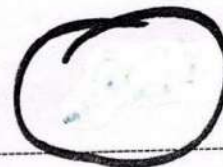
2008 and a similar order as in Writ Petition (C) No. 2714 of 2008 was passed by the DPCC on 18th March 2008.

89. Here again the construction commenced on 15th February 2005 and was completed on 4th December 2006 i.e. much prior to the issuance of the show cause notice. For the reasons already explained in Writ Petition (C) No. 2714 of 2008, the impugned order cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter, it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No., 2772 of 2008 (Vardhman Properties Ltd.)

90. The building in this case is a shopping complex built on a commercial plot. The total builtup area is 5907.25 sq.m. The facts are identical to the facts in Writ Petition (C) Nos. 2714 and 2721 of 2008. The date of completion of the building is 14th December 2006.

91. For the reasons already stated hereinbefore, the impugned order dated 18th March 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It



would nevertheless be open to the DPCC to now proceed in accordance with Section 25 (5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 7081 of 2008 (Pankaj Buildwell Ltd.)

92. The total builtup area in this case is 1593 sq.m. The building is a shopping complex and is builtup on a commercial plot. The completion certificate was obtained on 2nd June 2008 itself. It is only thereafter on 14th February 2008 that the standard show cause notice was issued by the DPCC which was identically worded as the show cause notice dated 13th February 2008 in the cases of Writ Petition (C) Nos. 2714, 2771 and 2772 of 2008. The impugned order is dated 9th September 2008 which is again identically worded.

93. The decision taken by the CMC on 3rd September 2008 has been placed on record. It shows that apart from the Chairman, DPCC there were three other members along with the Executive Engineer, Assistant Executive Engineer and Joint Executive Engineer of the CMC. As regards the Petitioner, its contention that it had no DG set and no bore well and there was no effluent were noted. The decision was to let the unit file its application to the DPCC and its case would be considered by the CMC on 30th September 2008. The above decision of the CMC was communicated to the Petitioner on 9th September 2008 asking it to file an application

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for consent to establish. This is the decision which has been challenged in the writ petition.

94. For the reasons already stated hereinbefore, the impugned order dated 9th September 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 3815 of 2008 (Vardhman Properties Ltd.)

95. The building in question has a total builtup area 4735.62 sq.m. and is on a commercial plot. The construction of the building commenced on 27th November 2003 and was completed on 2nd December 2004. A show cause notice was issued on 24th April 2008 requiring Petitioner to apply for consent to establish. It was at this stage that the present writ petition was filed challenging the said show cause notice. An interim order was passed by this Court on 19th May 2008 directing the Respondent not to take coercive action pursuant to the abovementioned notice dated 24th April 2008.

96. In the reply filed to the petition, a reference is made by the DPCC to the Petitioner's response dated 6th May 2008 to the show cause notice in which it was

mentioned that the DDA has already issued a completion certificate. It appears that the DPCC undertook an inspection of the site on 1st July 2008 and confirmed that the builtup area was 4735.62 sq.m., and that the completion of the construction took place on 2nd December 2004. The inspection team was also informed that the building was under occupation since 1st April 2005 and the occupancy was to the extent of 50 to 60 persons. There was one DG set of 140 KVA along with two more DG sets located at the terrace, there was no information about their KVA. Sewage connection was available and the estimated waste water generation was 11.2 KLD. It was informed that the CMC was yet to take any decision on the said report.

97. This Court finds that the builtup area being 4735.62 sq.m., there was no question of the Petitioner having to obtain an EIA clearance in terms of the EIA Notification dated 14th September 2006. The construction having already been completed on 2nd December 2004, the direction to the Petitioner to apply for consent to establish which had to happen prior to commencement of construction was incapable of being complied with.

98. The impugned orders dated 24th April 2008 of the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can

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proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8143 of 2008 (Manish Buildwell Pvt. Ltd).

99. The total builtup area of the commercial complex in the present petition is 2160 sq.m. Construction of the building commenced some time in May 2007 and was completed in May 2008. A show cause notice was thereafter issued on 6th June 2008. On 16th October 2008, a direction was issued by the DPCC requiring the Petitioner to apply for consent to establish. This is identically worded as the direction issued by the DPCC on 10th September 2008 in Writ Petition (C) No. 7081 of 2008.

100. For the reasons already explained hereinbefore, the directions contained in the order dated 10th September 2008 and 16th October 2008 passed by the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8144 of 2008 (Vardhman Properties Ltd.)

101. The total builtup area of the commercial complex constructed on a commercial plot in the present petition is 18,250 sq.m. Construction of the building was completed on 14th September 2007. An order was passed on 24th October 2008 by the DPCC in terms of the decision of the CMC at its meeting on 7th October 2008 asking the Petitioner to apply for consent to establish and also give parawise reply to

the observation made by the special inspecting team on the inspection that was carried out on 3rd September 2008.

102. For reasons already mentioned, the direction to the Petitioner to apply for consent to establish is now incapable of being complied with inasmuch as construction was already completed on 14th September 2007. It is not clear if the due process requirement of a prior show cause notice was complied with by the DPCC before issuance of the above direction. While setting aside the impugned order dated 24th October 2008, this Court leaves it open to the DPCC to initiate appropriate proceedings in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8145 of 2008 (Sachdeva Buildcon Pvt. Ltd.)

103. The total buildup area of the commercial shopping complex constructed on a commercial plot in the present petition is 2407.7 sq.m. Construction of the building

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commenced some time in January 2005 and was completed in May 2006. It appears that on 28th April 2008 and 29th May 2008 the DPCC passed orders directing the Petitioner to apply for consent to establish.

104. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8146 of 2008 (Rajesh Projects India Pvt. Ltd.)

105. The total buildup area of the building constructed on a commercial plot in the present petition is 5000 sq.m.(approx). Construction of the building commenced on 5th July 2005 and completed in April 2007. A show cause notice was issued on 24th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

106. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8147 of 2008 (Rajesh Projects India Pvt. Ltd.)

107. The total builtup area of the shopping mall constructed on a commercial plot in the present petition is 3990 sq.m. Construction of the building commenced on 27th February 2003 and was completed on 27th July 2006. A show cause notice was issued on 24th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

108. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

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W.P. (C) No. 8148 of 2008 (Manish Buildwell Pvt. Ltd.)

109. The total builtup area of the building constructed on a commercial plot in the present petition is 8485.75 sq.m. Construction of the building commenced on 15th June 2005 and was completed on 22nd May 2007. A show cause notice was issued on 13th February 2008 and a direction was issued asking the Petitioner to apply for consent to establish.

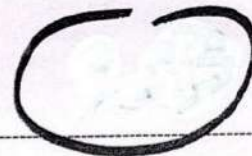
110. For the reasons already explained hereinbefore, this Court finds that the impugned directions dated 18th March 2008 and 29th May 2008 are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8149 of 2008 (Fargo Estates Pvt. Ltd.)

111. The total builtup area of the building constructed on a commercial plot in the present petition is 10,100 sq.m. Construction of the building commenced on 2nd May 2004 and was completed some time in May 2006. A show cause notice was issued on 21st May 2007 and an order was passed on 31st October 2008 requiring the Petitioner to pay environmental damages of Rs. 40 lakh and furnish bank guarantee of Rs. 95 lakhs.

112. The above directions were stayed by this Court by an order dated 17th November 2008.

113. For the reasons already explained hereinbefore, the impugned order dated 31st October 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own



inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

114. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 9040 of 1008 (Home Linkers Pvt. Ltd.)

115. The total builtup area of the building constructed on a commercial plot in the present petition is 3,526.83 sq.m. Construction of the building commenced on 11th November 2004 and was completed on 7th June 2006. A show cause notice was issued on 14th February 2008 and orders were passed on 18th March 2008 and 19th September 2008 requiring the Petitioner to apply for consent to establish.

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116. For the reasons already explained hereinbefore, the impugned orders dated 18th March 2008 and 19th September 2008 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 464 of 2009 (Vardhman Land Developers Pvt. Ltd.)

117. The Petitioner purchased a commercial plot measuring 5112 sq.m. in Raja Garden, New Delhi in an open auction held by the MCD on 6th May 2002 and a perpetual lease deed was executed and building plans were sanctioned by the DDA on 24th March 2004. A completion certificate was issued on 31st January 2005.

118. The Petitioners pointed out that although they did not consider it necessary to apply for consent to establish, they nevertheless did apply on 22nd November 2007 with the DPCC. A show cause notice was issued on 5th December 2007 which was replied to on 13th December 2007 informing the DPCC that the application seeking "consent to establish, was already pending. No reply was received from the DPCC. The DPCC again sent a notice dated 14th March 2008 requiring the Petitioner to submit environmental clearance, approved architectural drawings and the completion certificate. Thereafter the DPCC sent a letter dated 26th May 2008 informing the Petitioner that its case was being placed before the CMC.

119. At its meeting on 21st August 2008, the CMC took note of the fact that the total project cost is Rs. 44.14 crores and that in similar cases the CMC has levied damages of 1% of the project cost and 2% of the project cost for bank guarantee which in the present case worked out to damages as cash penalty of Rs. 44 lakh and bank guarantee of Rs. 88 lakhs. The aforesaid damages as cash penalty and bank guarantee valid for three years was asked to be furnished by 17th September 2008. The Petitioner then made a representation which was again considered by the CMC in its meeting held on 7th October 2008. The CMC now reduced the penalty amount to

Rs. 40 lakh and bank guarantee amount to Rs. 85 lakh and asked the unit to comply with the directions of 6th July 2008.

120. It was at that stage that the Petitioner filed the present writ petition in which by an order dated 27th January 2009 an interim order was passed restraining the Respondents from taking any coercive action against the Petitioner.

121. As explained hereinbefore, the DPCC had no power to require the Petitioner to pay environmental damages or to furnish bank guarantee and, therefore, the impugned direction is wholly unsustainable in law and is hereby set aside. If indeed the Petitioner had already filed an application for consent to establish on 22nd November 2007, then in the absence of any reply thereto by the DPCC in terms of Section 25(7) of the Water Act such consent is deemed to have been granted.

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122. This will, in any event, not preclude the DPCC from taking action against the Petitioner after an inspection undertaken by it of the premises hereafter. If the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act, the DPCC can proceed to take action but only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 543 of 2008 (Splendor Landbase Ltd.)

123. The property in question is an office complex-cum-shopping mall on Plot No. 3, District Centre, Jasola, New Delhi known as Splendor Forum. The area of the plot is about 5704 sq. m. It was purchased from the Delhi Development Authority for commercial purposes in an open auction. The Petitioner states that all the necessary permissions from all authorities concerned including the municipalities, electricity department, Chief Fire Officer, Delhi Urban Art Commission, and Airport Authority of India were taken. The construction of the building started in March 2004 and the construction up to the plinth level was completed in December 2005. The EIA Notification dated 7th July 2004 brought within its fold construction activity. The Petitioner states that in terms of the said EIA Notification where construction was complete till the plinth level, no environmental clearance was necessary. However, since DDA insisted on the Petitioner producing the EIA clearance certificate in order to process its case for additions, alterations and modifications, the Petitioner applied and was granted EIA clearance by the MoEF on 2nd November 2007.

124. In response to a notice dated 20th/21st August 2007 from the DPCC, the Petitioner applied for consent to establish under Section 25(1)(a) of the Water Act on 5th September 2007. A reply to the notice dated 20th/21st August 2007 was also sent to the DPCC by the Petitioner. The aforesaid application for consent dated 5th September 2007 was never formally rejected by the DPCC. However, an order dated 31st December 2007 was passed by the DPCC issuing directions under Section 31A of the Air Act and Section 33A of the Water Act primarily on the ground that the construction was started and completed without first obtaining consent to establish. It was also alleged that there were certain violations of the conditions of the EIA clearance although according to the Petitioner this was outside the scope of the powers of the DPCC. By the impugned order dated 31st December 2007, the Petitioner was asked to pay fine and furnish a bank guarantee. The Petitioner submits that said order was passed without complying with the principles of natural justice and was contrary to the procedure under the Rules. The premises was inspected by MoEF. It is stated



that in its report dated 5th May 2008 the MoEF recorded that there has been satisfactory compliance of most of the conditions laid down in the EIA clearance. It was concluded that the commencement of construction by the Petitioner in March 2004 could not be treated as a violation of the EPA. Hence no legal action was recommended by the MoEF against the Petitioner under the EPA.

125. The directions issued by the DPCC on 31st December 2007 have been assailed as being *ultra vires* the powers of the DPCC under the Air Act and the Water Act. The said order is also challenged on the ground of non-compliance with the applicable Rules and further that DPCC cannot take action for alleged non-compliance with the conditions forming part of the EIA clearance.

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126. In its counter affidavit dated 31st January 2008 the DPCC contended that the Petitioner initially did not apply to the DPCC for prior consents under either the Water Act or the Air Act. It was only after a formal notice was issued to the Petitioner in August 2005 that on 5th September 2007, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act. According to the DPCC the Standing Counsel of the GNCTD advised it that it could not initiate actions under Sections 15, 16 and 19 of the EPA. An inspection was carried out in the premises on 23rd December 2007 and the deficiencies noted at that time have been listed out in the counter affidavit. The conditions imposed by the amended clearance dated 10th February 2007 and the status of compliance was also set out in detail in the counter affidavit. It is stated that the CMC at its meeting on 26th December 2007 and 28th December 2007 deliberated upon the matter considering the facts and circumstances including the representation dated 27th December 2007 made by the Petitioner. Thereafter the impugned order dated 31st December 2007 was passed under Section 31A of the Air Act and Section 33A of the Water Act asking the Petitioner to pay 0.5% of the project cost of Rs. 65 crores as fine, which was required to be deposited in the DPCC's account within 30 days. The DPCC's stand is that "any smaller amount of fine will only mean that a non-deserving Petitioner with no *bona fides* of commitment to preserving clean air and water in his environment, would not work towards a correction. Surely environment deserves ½% of his total project cost to make him realize the degree of his callousness". A detailed parawise reply to the writ petition has also been given by the DPCC.

127. In its rejoinder filed on 6th February 2008, the Petitioner pointed out that it had in fact obtained EIA clearance. A reference was made to the website of the DPCC where under the caption 'frequently asked questions' under the sub-heading "consent procedure" the following questions and answers appear:

"Q. I am involved in trading activity, Do I need to apply for consent?

Ans. At present, consents are not required for enterprises engaged only in trading activities.

Q. I have an office and have installed a D.G. Set. Do I need to take consent from DPCC?

Ans. DPCC does not issue consent for offices. For D.G. Sets you are required to install acoustic enclosure meeting the prescribed norms/standards for noise for D.G. Sets."

128. It is pointed out that it is only by the amendment with effect from 7th July 2004 that construction activity came to be added to the EIA Notification and again it

was clarified that such amendment would not apply to "any construction project falling under Entry 31 of Schedule-1 including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs. 50,00,000/- (Rupees Fifty lakhs) or below." The Petitioner proceeded on the assumption that the term "investment" in the said Notification would include the amount invested in construction and raising the superstructure and since that was



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around Rs. 34 crores, no EIA clearance was required. Thereafter when a further modified EIA Notification was issued on 14th September 2006, the Petitioner applied to the MoEF for EIA clearance on 12th March 2007. Time was granted by a Circular dated 21st November 2006 of the Central Government up to 30th June 2007 for applying for EIA clearance.

129. It is not the submission of learned Counsel for the Petitioner that there is any repugnancy between the EPA and the Air Act and the Water Act. On the other hand, it is not denied that the EPA would apply and that in the Petitioner's case, the EIA clearance would have to be obtained. What is contended is that once EIA clearance has been obtained, there is no occasion to again apply to the DPCC under the Air Act and the Water Act for consent to operate and consent to establish respectively. Further, it is submitted that there are many aspects of the EIA clearance which include water and air pollution and, therefore, the exercise would become repetitive and cumbersome. Thirdly, it is sought to be contended that the jurisdiction as regards the EIA clearance is of the Central Government and not of the DPCC particularly with reference to the National Capital Territory of Delhi.

130. The stand of the Respondents, on the other hand, is that consent under the Air Act and the Water Act are independent of the EIA clearance and that although the DPCC may have no jurisdiction as regards the EIA clearance, to the extent that such EIA clearance itself mandates that the person in whose favour such clearance has been granted has to obtain consent under the Air Act and the Water Act, the DPCC's jurisdiction will stand attracted. It is further submitted that the parameters that would weigh with the DPCC in processing an application for consent under the Air Act and the Water Act might be different from those which would weigh with the MoEF in granting EIA clearance.

131. This Court has considered the above submissions. In view of the builtup area of the building being over 20,000 sq.m., an EIA clearance is mandatory. For the reasons already discussed, it must be held that the requirement of obtaining consent to establish under the Water Act and consent to operate under the Air Act is independent of the EIA clearance obtained in respect of the Petitioner's shopping complex or shopping mall. But this requirement would have applied at the stage when construction had not commenced.

132. However, in this case at the time when the Petitioner applied for and obtained the EIA clearance, the construction of the building was complete. There was no show cause notice issued to it by the DPCC from the time it commenced construction sometime in March 2004 till it completed its construction in December 2005. Clearly, the DPCC woke up very late. The first show cause notice was issued some time in August 2007. Even then the show cause notice was issued to M/s. G.S. Developers and Contractors Pvt. Ltd. who were only contractors whereas the whole shopping complex was built by the Petitioner. Be that as it may, for the reasons already discussed the



course open to the DPCC was to invoke Section 25(5) of the Water Act to require the Petitioner to rectify any deficiency that must have been noticed on the inspection of the premises. Even under the Air Act, there is no question of now requiring the Petitioner to apply for "prior consent to operate" since the construction of the building is already complete.

133. There are enough provisions in both the Air Act and the Water Act to deal

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with a situation where without obtaining prior consent a building been constructed and has become functional. As already pointed out the action under Section 31A of the Air Act and Section 33A of the Water Act will have to be exercised reasonably after complying with the rules envisaged under both these Acts. The exercise should not be a mechanical one. Since this is a building which has been granted EIA clearance, the DPCC should find out first whether there are other aspects, not covered by the EIA clearance that require to be rectified by the Petitioner both under the Water as well as the Air Acts. In other words, the exercise to be undertaken by the DPCC ought not to be repetitive of the exercise undertaken by the MoEF while granting EIA clearance.

134. Thirdly, there is no legal basis for the DPCC to impose penalty and environmental damages on the Petitioner or require it to furnish a bank guarantee. For the reasons already discussed, such orders are plainly outside the powers of the DPCC under the Water Act and the Air Act and cannot be sustained in law.

135. The DPCC has relied upon an order dated 14th October 2003 passed by the Supreme Court in Writ Petition (C) No. 657 of 1995 (*Research Foundation for Science Technology and National Resource Policy v. Union of India*) where in para 70.6 an observation was made to the following effect:

"MoEF should consider making a provision for bank guarantee being given by importer while seeking permission to import used oil, furnace oil and zinc wastes to be released only on the imported consignment being found to be in conformity with the declared item of import. After taking a decision, affidavit shall be filed within four weeks."

136. The above observation of the Supreme Court does not by any means imply that an SPCB like the DPCC can begin to levy penalties and fines and environmental damages or require bank guarantees to be furnished in exercise of its powers under Section 31A of the Air Act and Section 33A of the Water Act. The above contention is accordingly rejected.

137. Reliance has been placed by the DPCC on an order dated 17th October 2006 passed by the Supreme Court in the Vasant Kunj Ridge matters. The above order was passed in an application filed seeking acceptance of the report of the Expert Committee relating to violation of environmental norms by certain parties who had constructed shopping malls or hotel complexes in the Vasant Kunj Ridge area. After referring to the earlier orders dated 19th August 1997 and 8th March 2004, the Supreme Court observed that the parties were not aware that they had to take EIA clearance in terms of the amended EIA Notification dated 7th July 2004. It was then observed as under:

"The confusion arose because DDA all through all through gave an impression to the parties participating in auction that all requisite clearances had been obtained. Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot

apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have

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made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. Some of the allottees are the National Book Trust, School of Planning or Architecture, Shri Ram Vithala Sikha Seva Samiti, International Centre for Alternate Dispute Resolution and Institute for Studies and Industrial Development. In most of these cases the constructions are already complete and have become functional."

138. Consequently, the following directions were issued:

"10. In view of what has been stated above, the MoEF has now to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the stands projected by the Respondents. We are *prima facie* satisfied about the *bona fides* of the Respondents but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site for auction where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken".

139. The position as far as the present set of cases is concerned, is not very different. The DPCC appears to have woken up after the construction of the shopping-cum-commercial complexes/malls was completed. Therefore as far as the present cases are concerned, the above orders do not come to the aid of the DPCC for seeking to proceed against the Petitioner for failing to obtain prior consent to operate under the Air Act and prior consent to operate under the Water Act. As already clarified, this would not preclude the DPCC from proceeding under the Air Act and Water Act in the manner already discussed hereinbefore.

140. The understanding of the law by the DPCC as reflected on its website should not be taken to be determinative. There is no estoppel against law. The position depicted by the DPCC on its website will be obviously subject to and in consonance with the correct legal position. There has been a lack of clarity even within the DPCC on whether the provisions of the Water Act and the Air Act apply to construction activity. Hopefully that confusion should not remain any longer.

141. For the aforementioned reasons, this Court while setting aside the order dated 31st December 2007 passed by the DPCC permits it to proceed in accordance with law against the Petitioner in terms of Section 25(5) of the Water Act and the relevant provisions of the Air Act.

142. A point has been urged by the Petitioner that substantial portions of the complex have been sold/leased out to different persons and, therefore, the complex is no longer in the control of the Petitioner. As and when a fresh show cause notice is issued to the Petitioner by the DPCC, it will be open to the Petitioner to furnish to the DPCC the name's of the individual owners of the different portions who might be liable to the extent of their respective portions. This by no means will absolve the Petitioner of its liability which is joint and several with such individual owners/

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lessees. It will be for the DPCC to decide who should be made liable for complying with the various provisions under the Water Act and the Air Act.

143. The writ petition is accordingly disposed of with the above directions.
W.P. (C) No. 3095 of 2008 (DLF Ltd.).

144. The case of the Petitioner is that a plot of land admeasuring 15659.50 sq.m. situated at District Centre, Saket, New Delhi with an attached general parking plot admeasuring 14072.48 sq. m. was purchased in an auction from DDA to be used as retail/office/multiplex/service apartment purposes. Although according to the Petitioner no formal consent was required, to avoid any hyper-technical objection and impediment at a later stage and without prejudice to its rights, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act on 3rd June 2005. The first of the Applications has not till date been formally rejected and thus shall be deemed to have been granted on 2nd October 2005 in terms of Section 25(7), Water Act.

145. The Petitioner applied on 2nd December 2005 seeking EIA clearance under the EIA Notification as amended on 7th July 2004. As per the requirement of the said Notification, a no objection certificate and public hearing was to be afforded by the public hearing panel of which the representative of the DPCC was a member.

146. The Petitioner states that all necessary permissions for commencement of construction including those from the MCD, Fire Department, Electricity Department, Airport Authority of India and Delhi Urban Arts Commission were taken. The MoEF granted EIA clearance to the Petitioner on 15th January 2007. DPCC wrote to the Petitioner on 20th and 30th August, 2007 that the earlier application filed by it for consent on 3rd June 2005 has been forwarded to the Government of India and that it should file a fresh application.

147. A fresh application for consent to establish was filed by the Petitioner with the DPCC on 25th/26th September, 2007. The said application was not disposed of or rejected within a period of four months thereafter. Thus consent was deemed to have been granted on 25th January 2008 in terms of Section 25(7), Water Act. Nevertheless, the DPCC issued the impugned order dated 4th April 2008 and directed the Petitioner to pay fine and furnish a bank guarantee. This has been challenged in the present writ petition.

148. The stand of the DPCC is no different from its stand in W.P.(C) No. 543 of 2008 (Splendor Landbase).

149. For the reasons already discussed, the need for the Petitioner to apply under the Air Act and the Water Act did not get obviated on account of the fact that it had an environmental clearance. However, here the construction was already complete. 50% of the construction was complete by end of 2006 and no show cause notice was issued to the Petitioner. An order was straightaway passed requiring the Petitioner to pay penalty and furnish a bank guarantee. Such a direction is, for reasons already stated, *ultra vires* the powers of the DPCC under the Water Act and the Air Act and is unsustainable in law.

150. For the aforementioned reasons, the impugned order dated 4th April

2008 is set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air

Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter, it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 4319 of 2008. (DLF Ltd.).

151. The Petitioner is the owner of a residential plot at W-Block, Greater Kailash-II, New Delhi. It purchased the property from a private individual in terms of Sale Deed dated 31st March 1959. The Petitioner proposed to construct a residential housing complex. The Petitioner filed an application on 23rd February 2007 with the MoEF for EIA clearance, which was granted on 26th December 2007. Without prejudice to its rights, the Petitioner applied to DPCC for consent to establish on 8th March 2007. The application remained pending and was not rejected for over four months thereafter. Consequently consent to establish was deemed to have been granted on 7th July 2007 in terms of Section 25(7) Water Act.

152. The Petitioner had not started the construction till the filing of this petition. Reminders dated 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 were sent to DPCC but to no effect. DPCC wrote to the Petitioner on 3rd April 2008 seeking to take action against the Petitioner for not taking the prior consent before commencement of construction. By letters dated 20th and 30th August 2007, the DPCC wrote to the Petitioner asking him to apply afresh as the earlier application had been forwarded to Central Government. During the course of hearing in other cases of group companies, it was explained that the project is for residential group housing and not for trade, commercial or industrial purposes; environment clearance had been granted and there was a deemed consent in view of the fact that their application dated 8th March 2007 was not rejected for over four months thereafter.

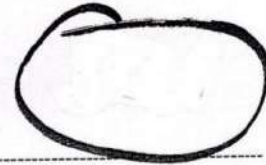
153. Feeling aggrieved by the threatened action of the Respondent, *inter alia*, of closure, imposition of penalty and bank guarantee, the Petitioner filed the present petition. It is further pointed out that during the present petition the DPCC has granted consent to establish. There is no denial by the DPCC of the above assertions by the Petitioner.

154. Even if the building had an EIA clearance, the provisions of the Water Act would continue to apply for the reasons already explained by this Court hereinbefore. However, considering that it is a residential complex the Petitioner was not required to obtain consent under the Air Act. The Petitioner has already been granted EIA clearance on 26th September 2007. The order passed by the DPCC directing the Petitioner to apply for consent to establish does not survive since consent to establish has been granted to the Petitioner. Any violations of either the Water Act or Air Act detected hereafter by the DPCC will obviously be actionable but only after the DPCC follow the due process requirements of the law.

155. The writ petition is disposed of.

W.P. (C) No. 4321 of 2008 (Paliwal Developers Ltd.)

156. The Petitioner purchased a plot of land admeasuring about 5495 sq.m. situated at Mayur Vihar Phase-I Extension, Delhi in an open auction from the DDA for



constructing a shopping complex. According to the Petitioner, since the builtup area proposed was 12325 sq.m. no environment clearance was considered necessary. All the necessary permissions for construction were granted by the MCD and other authorities. On 5th September 2006, an application for consent to establish was filed with the DPCC. The application remained pending and was not rejected for over four months thereafter. The Petitioner's case is that consent to establish should be deemed to have been granted on 4th January 2007. Reminders were sent on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 to avoid any difficulty at a later stage but to no effect. DPCC wrote to the Petitioner on 2nd November 2007, 14th March 2008 and 21st April 2008 for taking action for not taking prior consent to establish and prior environment clearances. The Petitioner replied to these letters. The DPCC by letters dated 20th and 30th August 2007 asked the Petitioner to apply afresh as its earlier application dated 5th September 2006 had been sent to the Central Government. Another application for consent to establish was filed by the Petitioner with the DPCC on 8th February 2007. This was also not disposed of within four months. Consequently the Petitioner contends that for a second time consent to establish should be deemed to have been granted on 7th June 2007. After about one year of the filing of the second application, the DPCC asked the Petitioner to file an affidavit of compliance, which was complied with. It was explained that no environment clearance was necessary as the builtup area was less than 20,000 sq.m. In any event consent to establish should be deemed to have been granted. Yet, the DPCC insisted and threatened to take legal action including levying a penalty, asking for a bank guarantee and ordering closure. In the circumstances, the present writ petition was filed.

157. The DPCC has not denied the above contentions of the Petitioner. In particular there is no denial of the assertion that the application for consent to establish filed by the Petitioner on 5th September 2006 should be deemed to have been granted on 4th January 2007. Therefore, in this case even the proceedings under Section 25(5) of the Water Act cannot be initiated by the DPCC. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules.

158. The impugned orders passed by the DPCC on 2nd November 2007, 14th March 2008 and 21st April 2008 directing the Petitioner to apply for consent to establish are hereby set aside. The writ petition is disposed of with the above directions.
 W.P. (C) No. 4322 of 2008 (DLF Ltd.)

159. The Petitioner states that it is the owner of a residential plot at E-Block, Greater Kailash-II, New Delhi having purchased the same from a private individual in terms of Sale Deed for the purpose of construction of a residential complex. According to the inspection report dated 2nd June 2008, the total builtup area is

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14,246.918 sq.m. As such, no environment clearance was necessary under EIA Notification. All necessary permissions to construct a residential housing complex were granted on 22nd August 2007. Before commencement of construction, the Petitioner filed an application dated 14th May 2007 with the DPCC, complete in all respects, seeking consent to establish. The said application was not rejected for over four months thereafter. The Petitioner submits that in the circumstances, in terms of Section 25(7), Water Act, consent to establish shall be deemed to have been granted

on 13th September 2007. However, to avoid any difficulty at a later stage, reminders were sent to the DPCC by the Petitioner on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008. The DPCC threatened to take action against the Petitioner by its letters dated 3rd March 2008 and 2nd May 2008 for not taking prior consent and prior environment clearance. The Petitioner explained the entire position to the Respondent. By letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh as its earlier applications had been forwarded to the Central Government. During the course of hearing before the CMC, it was explained that the project was for residential group housing and not for trade, commercial or industrial purposes; no environment clearance was necessary and consent to establish should be deemed to have been granted since the Petitioners application dated 14th May 2007 for consent to establish had not been rejected even four months thereafter. Feeling aggrieved by the threatened action of the DPCC of directing closure, imposition of penalty and requiring the furnishing of bank guarantee, the present petition was filed.

160. The facts of this case are no different from the facts in W.P.(C) No. 4319 of 2008 except that the construction commenced on 5th March 2008 and the construction was proposed to be completed in 3 years from the date of its commencement. Further, the total builtup area is 14,246.918 sq.m. and, therefore, there was no requirement for obtaining EIA clearance. The DPCC is not disputing that the Petitioner had filed an application on 14th May 2007 which was not disposed of within four months thereafter. In terms of Section 25(7) of the Water Act, therefore, the consent to establish must be deemed to have been granted. This being a residential complex, there was no need to obtain consent to operate under the Air Act.

161. Consequently, the impugned orders dated 2nd November 2007, 3rd March 2008 and 2nd May 2008 passed by the DPCC directing the Petitioner to apply to the DPCC for consent to establish are hereby set aside. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 4323 of 2008 (DLF Retailer Developers Ltd.)

162. The Petitioner purchased two plots of land bearing Nos. A-1 and P-2B Saket Place, New Delhi admeasuring about 9492 sq.m. and 8775.92 sq.m. respectively from the DDA in an open auction for the purpose of shopping-cum-commercial complex. EIA clearance was granted on 15th January 2007. According to the Petitioner, all necessary permissions from the MCD and other authorities

were granted in November 2006. On 1st June 2006, the Petitioner applied to DPCC for consent to establish. The application remained pending and was not rejected for over four months thereafter. The Petitioner's case is that consent to establish is deemed to have been granted on 30th September 2006. However, to avoid any difficulty at a later stage, reminders were sent by the Petitioner to the DPCC in March/April 2008 but to no avail. During the course of hearing concerning other projects of the group companies, it was explained to the CMC that EIA clearance had been granted and that consent to establish should be deemed to have been granted. By its letters dated 20th and 30th August 2007 DPCC asked the Petitioner to apply afresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner with the DPCC on



25th September 2007. This too was not rejected for over four months thereafter. According to the Petitioner, for a second time consent to establish should be deemed to have been granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file the affidavit of compliance. This was done by the Petitioner. Nevertheless, the DPCC threatened to take action against the Petitioner by ordering closure, imposing a penalty and/or requiring the furnishing of a bank guarantee on the ground that the Petitioner had commenced construction without prior consent to establish and without prior EIA clearance. In the circumstances, the present petition was filed.

163. The construction commenced in February 2007 and was completed in December 2008. The Petitioner obtained EIA clearance on 15th January 2007. The Petitioner applied to the DPCC for consent to establish on 1st June 2006 and there was no decision thereon for over four months thereafter. The consent to establish should be deemed to have been granted under Section 25(7) of the Water Act on 13th September 2006. The subsequent letters dated 20th and 30th August 2007 written by the DPCC requiring the Petitioner to apply afresh were without the authority of law. Nevertheless, even the fresh application filed on 25th September 2007 for consent was not rejected within four months thereafter. Therefore the Petitioner should be deemed to have been granted consent to establish on 24th January 2008 as well.

164. With the DPCC having failed to act upon the Petitioner's application for consent to establish, there was no legal basis for its orders dated 20th and 30th August 2007. They are accordingly set aside. This will not preclude the DPCC in any event from taking any action against the Petitioner upon any inspection undertaken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 4330 of 2008 (DLF Commercial Developers Ltd.)

165. The Petitioner purchased a plot of land bearing Nos. 10-11 at Jasola, New Delhi, admeasuring 12,880 sq.m. in an open auction held by DDA. The land was to be used for construction of a commercial and retail centre. The total builtup area of the proposed building was 47603.461 sq.m. The Petitioner was granted EIA clearance on 16th May 2007. The Petitioner states that all necessary permissions to construct from the municipal and other authorities were granted. On 6th September

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2006/14th October 2006, the Petitioner applied to the DPCC for consent to establish. The application was not rejected for over four months thereafter and in terms of Section 25 (7) of the Water Act it was deemed to have been granted on 13th February 2007. Reminders were sent by the Petitioner to the DPCC in March and April 2008 to avoid any difficulty at a later stage but to no avail. DPCC sent notices dated 18th March 2008 and 30th April 2008 and threatened to take action against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that environment clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC, this was reiterated. Nevertheless by its letters dated 20th and 30th August 2007, the DPCC required the Petitioner to apply afresh as the earlier application had been forwarded to the Central Government. A fresh application was filed on 8th February 2007. This too was not rejected for over four months thereafter.

The Petitioner contends that for a second time, the consent to establish should be deemed to have been granted on 7th June 2007. On one of the visits to the office of the DPCC, the Petitioner was directed to file the affidavit of compliance. This was done. Nevertheless, the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had commenced construction without obtaining prior consent to establish and without prior environment clearance. In the circumstances, the present writ petition was filed.

166. The total builtup area here is 47603.46 sq.m. The EIA clearance was obtained on 16th May 2007. The Petitioner commenced construction sometime in December 2006/January 2007 and completed it in August 2008. The letters received by the Petitioner on 20th August 2007 and 30th August 2007 asking it to apply for consent to establish were, in fact, to no effect since application had been filed earlier on 6th September 2006 and 14th December 2006 which were not rejected within four months thereafter. Again on 8th February 2007 a fresh application was filed. Therefore these two show cause notices were to no effect. The subsequent letters dated 18th March 2008 and 30th April 2008 asking the Petitioner again to apply were also to no effect. The said two letters are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking action against the Petitioner if upon any inspection undertaken hereinafter, the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions. *W.P. (C) No. 4333 of 2008 (Galleria Property Management Services Pvt. Ltd.)*

167. The Petitioner purchased a plot of land at Shalimar Bagh, New Delhi admeasuring 14145.040 sq.m. in an open auction held by the DDA. The plot of land was to be used for construction of a shopping centre. The Petitioner was granted EIA clearance on 15th January 2007. All necessary permissions to construct from the municipal and other authorities were granted. On 5th April 2005, the Petitioner applied to the DPCC for consent to establish. The application was not disposed of over four months thereafter. According to the Petitioner, consent to establish should be deemed to have been granted in terms of Section 25(7), Water Act on 4th

August 2005. The DPCC sent notices dated 14th March 2008 and 9th May 2008 and threatened to take action against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that EIA clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC this was reiterated. By its letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application was filed on 25th September 2007. This too was not rejected for over four months. According to the Petitioner for a second time consent to establish should be deemed to have been granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file an affidavit of compliance, which it did. Nevertheless the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had not obtained consent to establish prior to commencement of construction. In the circumstances, the present writ petition was filed.



168. This shopping complex has a total builtup area of 34895.55 sq.m. The Petitioner obtained EIA clearance on 15th January 2007. The letters received by the Petitioner from the DPCC on 14th March 2008 and 9th May 2008 asking him to apply for prior consent is to no effect since the Petitioner had applied as early as 5th April 2005 to DPCC which was not rejected within four months thereafter. A fresh application was filed on 25th September 2007 and that too was not rejected for over four months thereafter. Thus, for the second time, consent should be deemed to have been granted under the Water Act on 24th January 2008.

169. The orders dated 14th March 2008 and 9th May 2008 of the DPCC are accordingly set aside. It is made clear that this will not preclude the DPCC from taking action against the Petitioner upon any inspection undertaken hereinafter and if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 3905 of 2008 (Regency Park Property Management Services Pvt. Ltd.)

170. The Petitioner states that in an auction held on 15th December 2003, the Petitioner purchased a commercial Plot No. 4 in the layout plan of Shopping Mall, Vasant Kunj, New Delhi admeasuring about 15300 sq. m. The necessary permissions from municipal authorities, Electricity, Airport Authority of India, Fire Services and Delhi Urban Art Commission were obtained. On 27th April 2005, an application for consent to establish was filed by the Petitioner with the DPCC. The DPCC was a party to the proceedings before the Supreme Court of India in W.P. (C) No. 202 of 1995 titled as *T.N. Godavarman Thirumulpad v. Union of India*. The Supreme Court, by an order dated 20th March 2006, took note of the ongoing construction and directed that as a special case, all permissions and clearances in the present case would be dealt with by the Central Government. The DPCC was directed to forward all the papers to the Central Government. The DPCC did so. A public hearing was organized to which a Member, DPCC was a party. One of the requirements of the public hearing was the grant of a No Objection Certificate by

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the DPCC, which apparently was granted or was deemed to have been granted by the DPCC before conducting the public hearing. The EIA Notification 1994 as amended on 7th July 2004 was replaced by a Notification dated 14th September 2006. Certain clarificatory Circulars dated 13th October 2006 and 21st November 2006 were issued by the Central Government permitting the existing projects to continue. EIA clearance was granted by the MoEF on 24th November 2006. The application for consent to establish filed by the Petitioner with DPCC on 27th April 2005 remained pending. A reminder was sent by the Petitioner on 16th July 2007 to know the fate of their application. By letters dated 20th and 30th August 2007, the DPCC directed the Petitioner to file a fresh application for consent as the earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner on 21st/25th September 2007 but this too was not rejected within four months. For a second time, the consent to establish was deemed to have been granted on 24th January 2008. It was for the first time on 18th March 2008 that the DPCC asked for certain documents. These were supplied. The CMC insisted on levying a penalty on the Petitioner apart from requiring the furnishing of a bank guarantee.

171. The total builtup area is 59731.67 sq.m. The construction commenced in

September 2005 and was completed on 17th August 2008. EIA clearance was granted on 24th November 2006. On 27th April 2005, application for consent was filed. Fresh applications were filed on 21st/25th September 2007 and no rejection order was passed for at least four months thereafter. The Petitioner is right in its contention that consent under the Water Act must have been deemed to be granted on 24th January 2008. On 18th March 2008, DPCC asked for documents and these were supplied.

172. The order dated 18th March 2008 of the DPCC imposing environmental damages and requiring the Petitioner to furnish a bank guarantee are, for the reasons already explained, unsustainable in law. The said order is hereby set aside. It is made clear that this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.
W.P. (C) No. 8789 of 2008 (Laxmi Buildtech Pvt. Ltd.)

173. The Petitioner states that EIA clearance had been granted to the Petitioner by the MoEF under the EPA on an application filed by it on 28th March 2007 i.e. much before it commenced construction. The very basis on which penalties are sought to be imposed on the Petitioner under the Airland Water Acts do not per se amount to acts of pollution much less industrial pollution or air pollution or water pollution as contemplated by the said acts. This fact is not denied by Respondent No. 1 in its pleadings.

174. The case of the Petitioner is that the CMC or the DPCC has no power to impose environmental damages and/or seek bank guarantee under either the Water Act or the Air Act. It is submitted by the Petitioner that the "precautionary principle" and/or the polluter pays principle are being misconstrued and misused

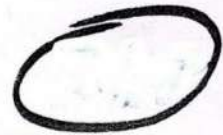


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by Respondent No. 1. Fee and fines/penalties are two totally different concepts in law. While a fee or a levy can be collected under an appropriate statute by way of a statutory interdict and used for the purpose for which it has been imposed, a fine or penalty cannot be collected and used for discharging governmental obligations or meeting expenses of the government. It is submitted that the actions of the Respondent in imposing and collecting penalties are ultra vires their powers under the Air Act and Water Act and beyond the powers vested in the said Respondent under the said Acts.

175. This is a commercial plot over a total builtup area of 27,667.288 sq.m. EIA clearance has been granted on 31st January 2008. The date of commencement of construction was sometime in March 2007 and it was proposed to be completed in June 2009. It appears, that by a letter dated 7th December 2007, the Petitioner was asked to apply for consent to establish which it disputed. The impugned order dated 15th October 2008 was passed imposing environmental damages and requiring the furnishing of bank guarantee and also directing the Petitioner to obtain consent to establish.

176. For the reasons already discussed, the order imposing environmental damages to the extent of Rs. 40 lakh and requiring the Petitioner to furnish a bank guarantee are unsustainable in law and hereby set aside. The direction that the Petitioner should now apply afresh for consent to establish is also not capable of being complied with. The said order is hereby set aside. It is made clear that this will, in any event, not



preclude the DPCC from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.
W.P. (C) No. 8901 of 2008 (Brightways Housing and Development Ltd.)

177. A commercial plot No. 7, Non-Hierarchical Commercial Centre, Jasola, New Delhi, measuring 5198 sq.m. was purchased by the Petitioner in an open auction of the DDA on 7th July 2004 for a total consideration of Rs. 33,07,50,000/-. A perpetual Lease Deed was executed in favour of the Petitioner on 29th September 2005 and the actual, physical possession of the said plot was also handed over on the same date. Building plans for raising construction on the said plot were sanctioned by the DDA on 7th February 2006. The Petitioner states that although no EIA clearance was required for raising construction on the said plot, either prior or subsequent to the raising of construction, but to avoid precipitate action, the Petitioner filed an application dated 1st September 2007 with Respondent No. 3 for EIA clearance and also submitted the requisite documents.

178. The Petitioner filed an application dated 25th October 2007 with the DPCC for consent to establish. A notice dated 18th March 2008 was received by the Petitioner from the DPCC alleging that the Petitioner had commenced construction without obtaining prior consent to establish. A reply dated 27th March 2008 was sent by the Petitioner informing that its application seeking consent to establish was already pending with the DPCC. The DPCC sent a notice dated 30th April 2008 requiring the Petitioner to submit an EIA clearance, approved architectural drawing

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and completion certificate. Thereafter the DPCC sent a letter dated 1st July 2008 informing the Petitioner that its case was being placed before the CMC. The Petitioner submits that after exchange of correspondence and certain meetings held, the CMC in its meeting held on 28th August 2008, without appreciating the case of the Petitioner and without any authority imposed a penalty of Rs. 1 crore and further called upon the Petitioner to furnish a bank guarantee of Rs. 2 crores.

179. The MoEF intimated the Petitioner of the creation of a States Committee for obtaining environmental clearance. As a result the Petitioner applied afresh to the State Committee of the MoEF for an EIA Clearance by way of application dated 2nd September 2008. No decision was however taken on the said application. On a representation made by the Petitioner to the DPCC on 16th September 2008, the CMC of the DPCC in a meeting held on 24th November 2008 reduced the penalty to Rs. 72 lakh and required the Petitioner to furnish a bank guarantee in the sum of Rs. 1.5 crores considering an amount of Rs. 28 lakh had been earlier paid by the Petitioner to the DDA.

180. This Court finds that the impugned order imposing the penalty has not been issued by DPCC but by the CMC, which is a Committee constituted by the Chairman, DPCC by an office order dated 28th December 2006. First, no power vests with the Chairman, DPCC under the Water Act or the Air Act to further delegate his powers to the CMC. Therefore CMC had no authority to conduct any proceedings for imposing penalty on the Petitioner. In any event, even the constitution of the CMC was solely for the purpose of granting/refusing/revoking of consent to establish. It had no power delegated to it to impose any penalty or seek bank guarantee or order closure of the

premises or recommend prosecution. For the aforesaid reasons, the impugned order dated 24th November 2008 of the CMC imposing environmental damages to the tune of Rs. 72 lakh and requiring the Petitioner to furnish a bank guarantee in the sum of Rs. 1.5 crore is unsustainable in law and is hereby set aside.

181. The construction commenced in June 2005 and was completed in June 2007. It is only thereafter that an impugned notice dated 18th March 2008 was issued by the DPCC asking the Petitioner to apply afresh for consent to establish. For the reasons already mentioned, such a direction was not capable of being complied with. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and relevant provisions of the Air Act but only after following the due process of law. If, after making its inquiry/investigations into the matter, the DPCC finds that the use of the premises is causing either water or air pollution, then it can proceed thereafter in accordance with law. It may be observed that EIA clearance was required for the project of the Petitioner since the total builtup area is 21096.513 sq.m. It is not clear whether the MoEF has taken a decision on the Petitioner's application dated 2nd September 2005.

182. The writ petition is disposed of with the above directions.

W.P. (C) No. 1391 of 2010 (R.C. Sood and Co. Pvt. Ltd.)

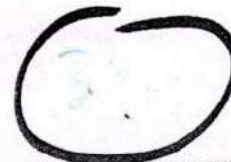
183. The Petitioner is stated to be the owner of Plot No. 10, Shivaji Palace District Center, Shivaji Palace, Raja Garden, New Delhi. The size of the plot is 5,832 sq.m. The plot was purchased from the MCD through a tender process on 30th July

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2004. The Petitioner was granted the requisite permission to construct a shopping-cum-residential complex by the DDA. The Petitioner, on 7th September 2006, applied to the MoEF for EIA clearance. The Petitioner resumed the construction of the shopping complex in accordance with the notifications and circulars.

184. The Petitioner states that it proceeded on the basis that it was not required to obtain consent to establish or consent to operate under the Water Act and Air Act respectively. However, since the Petitioner did not want any impediment in its project, it made an application dated 11th September 2006 to the DPCC seeking consent to establish along with requisite documents. The Petitioner alleges that the DPCC erroneously forwarded the said application of the Petitioner to the MoEF for issuance of a 'No Objection Certificate' under the 2006 Notification. The Petitioner claims to have been surprised to receive a notice dated 15th January 2007 from the DPCC to show cause why prosecution proceedings should not be initiated against it and why the establishment should not be closed down as the Petitioner had started construction without obtaining prior consent to establish under the Water Act and prior consent to operate under the Air Act. The Petitioner replied to the show cause notice on 28th February 2007 stating that it was the DPCC itself which had forwarded the application of the Petitioner to the MoEF. Nevertheless, as a measure of caution, the Petitioner re-submitted the application along with all requisite documents to the Respondent on 27th February 2007.

185. The Petitioner states that after an inordinate delay, DPCC replied to the Petitioner on 5th December 2007 by directing the Petitioner to first pursue its application for obtaining EIA clearance from the MoEF and thereafter forward a copy of the said EIA clearance to the DPCC for consideration of its application. The Petitioner was granted the EIA clearance by the MoEF on 26th March 2008 which the Petitioner forwarded to the DPCC on 27th March 2008. Thereafter the DPCC by letter dated 28th



April 2008 directed the Petitioner to submit an affidavit giving item-wise compliance of all the conditions laid down in the EIA clearance. It is submitted that although the DPCC had no role in the matter of EIA clearance, the Petitioner, with a view to avoiding controversy, submitted the said affidavit under cover of its letter dated 10th June 2008.

186. The Petitioner was called for a hearing before the CMC of the DPCC on 17th September 2008. During the course of the hearing, it appeared that the Petitioner had been called for the purposes of deciding on the imposition of penalty and requiring the furnishing of a bank guarantee for the purported violation of the Water Act and Air Act on part of the Petitioner. Ultimately, the CMC imposed a penalty of Rs. 59 lakh and directed the Petitioner to furnish a bank guarantee for Rs. 1.18 Crores for a period of three years.

187. On 28th November 2008, the Petitioner received a letter from the DPCC alleging that the Petitioner had commenced construction activities without obtaining prior consent under the aforesaid Acts and therefore had violated the provisions of the aforesaid Acts. It was further alleged that certain deficiencies were noted in the project/building of the Petitioner. On 3rd December 2008, in another meeting called by the DPCC, the Petitioner tried to explain to the DPCC that it had not committed any violation of any of the laws, rules, regulations. On this, the DPCC made a marginal reduction of the penalty from Rs. 59 lakh to Rs. 50 lakh and

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of the bank guarantee from Rs. 1.18 crores to Rs. 1 crore. In response to the letter dated 28th November 2008 of the Respondent, the Petitioner filed an affidavit on 30th January 2009 claiming that the deficiencies pointed out by the DPCC in its letter dated 28th November 2008 had been duly rectified.

188. The Petitioner states that after the completion of construction it let out the building to M/s. Shoppers Stop Ltd. and executed a sub-lease dated 11th May 2007 for running a shopping mall in the said building. Shopper's Stop took possession of the building in June 2007. The DPCC in its meeting held on 23rd December 2008 directed Shoppers Stop Ltd. to apply for consent to operate.

189. The Petitioner states that it received another letter from the DPCC on 3rd March 2009 referring to the inspection conducted by "Special Inspection Team" of the DPCC on 16th January 2009 wherein certain deficiencies were noted by SIT in the premises of the Petitioner. On 23rd May 2009, the Petitioner clarified to the Respondent that it had already rectified the deficiencies pointed out by the SIT. The Petitioner states that it was given a hearing on 21st January 2010. According to the Petitioner, the DPCC at this meeting took a decision to launch prosecution against the Petitioner. The Petitioner received a letter dated 11th February 2010 from the DPCC stating that its earlier application of 11th September 2006 had become infructuous. With the Petitioner's representation dated 26th February 2010 to the DPCC eliciting no response, the present writ petition was filed challenging the minutes of the CMC's meetings dated 17th September 2008, 3rd December 2008 and 21st January 2010.

190. The decision dated 17th September 2008 of the CMC of the DPCC imposing environmental damages to the tune of Rs. 59 lakh and requiring the Petitioner to furnish bank guarantee in the sum of Rs. 1.18 crores is for reasons already discussed unsustainable in law and is hereby set aside. The subsequent decisions dated 3rd December 2008 and 21st January 2010 are also without the authority of law and are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC

from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.
W.P. (C) No. 9128 of 2009 (Ridge View Construction Pvt. Ltd.)

191. A commercial plot measuring 2500 sq.m. being Plot No. D-2, District Centre, Saket, New Delhi was purchased by the Petitioner in an open auction conducted by DDA on 29th September 2003 for a total consideration of Rs. 43,41,00,000/- and the possession of the said plot was handed over to the Petitioner soon thereafter. A perpetual lease deed dated 1st July 2004 was subsequently executed by the DDA in favour of the Petitioner. The DDA handed over to the Petitioner the architectural conditions and controls which enabled the Petitioner to raise construction as per the control drawings. Construction was thus raised by the Petitioner on the plot till the plinth level much before 7th July 2004.

192. The Petitioner filed an application with the MoEF seeking EIA clearance

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on 2nd September 2008. The Petitioner also filed an application dated 2nd September 2008 with DPCC for consent to establish. The Petitioner states that it was surprised to receive a notice dated 9th August 2008 issued by the DPCC to M/s. Taneja Developers and Infrastructure Limited ('TDIL') wherein it was alleged that the construction of a retail-cum-office complex was being carried out by TDIL. The Petitioner states that on various occasions it clarified to the DPCC that the said commercial complex was being developed by the Petitioner. However the show cause notices continued to be issued to TDIL. Subsequently, the CMC by an order dated 15th October 2008 issued directions for closure of the Petitioners retail-cum-office complex immediately and further asked the electricity distribution companies to disconnect the electricity supply and the DJB to disconnect the water supply.

193. Aggrieved by the impugned order dated 15th October 2008, the Petitioner filed W.P.(C) No. 7850 of 2008. This Court stayed the operation of the impugned order. Another show cause notice dated 10th November 2008 was issued by the DPCC. This Court at the next hearing held that on account of issuance of the fresh show cause notice nothing survived in the said writ petition.

194. The Petitioner replied to the fresh show cause notice on 21st November 2008. Thereafter, the DPCC issued a letter dated 8th May 2009 directing the Petitioner to close its commercial building immediately and further directing the NDPL/BSES to disconnect the electricity supply and the DJB to disconnect the water connection to the said building. The said directions were purportedly as a result of a decision taken by the CMC on 23rd April 2009 and an inspection carried out at the site on 8th April 2009.

195. The Petitioner submitted that no EIA clearance was required since the builtup area of the premises (19,227.15 sq.m.) was less than 20,000 sq.m. The Petitioner had installed a Sewage Treatment Plant (STP) of 56 KLD capacity which was fully operational prior to 8th April 2009 and for which an adequacy report/certificate had also been granted by a recognised institute nominated by the DPCC itself. Regarding no permission having been obtained from the DJB for extraction of ground water from bore well, it is submitted that the Petitioner has already obtained permission from the concerned authorities. The Petitioner states that it is not utilizing the water from the



bore well and it has deployed tankers for fulfilling its requirements of water in the complex. The Petitioner alleges that when its representative went to the DPCC to submit an application for consent to operate, the application was refused.

196. In the above circumstances, the present writ petition was filed challenging the closure order dated 23rd April 2009 communicated to the Petitioner on 8th May 2009.

197. For the detailed reasons already discussed, the question of the DPCC taking action for the Petitioner not having obtained EIA clearance does not arise. In any event, the Petitioner with the builtup area being less than 20,000 sq.m., there was perhaps no requirement to obtain such EIA clearance. If this was one of the reasons for the closure order then such closure order is unsustainable in law. As regards the other deficiencies pointed out, and the Petitioner's claim to have cured them, they involve disputed questions which this Court cannot possible go into. Nevertheless, it appears to this Court that the procedural requirement to be

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followed by the DPCC prior to passing such closure order was not complied with by the DPCC in the instant case.

198. For the aforementioned reasons, this Court sets aside the closure order dated 23rd April 2009 communicated to the Petitioner on 8th May 2009. However, this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 465 of 2009 (Prosperous Estates Pvt. Ltd.)

199. The total builtup area of the building constructed on a commercial plot in the present petition is 14,850.227 sq.m. Completion certificate was granted on 12th October 2006. No show cause notice was issued. On 5th December 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 23rd December 2008. On 23rd December 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish.

200. For the reasons already explained hereinbefore, the impugned order dated 23rd December 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 508 of 2009 (Best Realtors India Pvt. Ltd.)

201. The total builtup area of the building constructed on a commercial plot in the present petition is 9171.63 sq.m. The construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner

on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

202. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring



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the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 509 of 2009 (Nirvan Hire Purchase Ltd.)

203. The total builtup area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

204. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 510 of 2009 (Maitri Mutual Benefits Ltd.)

205. The total builtup area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced some time in January 2007 and was completed in November 2008. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

206. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds



that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 511 of 2009 (A.S. Buildwell Pvt. Ltd.)

207. The total builtup area of the building constructed on a commercial plot in the present petition is 989.548 sq. m. Construction of the building commenced

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sometime in January 2006 and was completed in October 2007. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

208. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 525 of 2009 (ESS CEE CEE and Associates (India) Pvt. Ltd.)

209. The total builtup area of the building constructed on a commercial plot in the present petition is 15883.097 sq. m. Construction of the building commenced on 10th January 2005 and was completed on 23rd February 2007. A show cause notice was issued on 5th December 2007 and an order was passed on 12th August 2008 requiring the Petitioner to pay environmental damages of Rs. 20 lakh and furnish a bank guarantee of Rs. 1 crore.

210. For the reasons already explained hereinbefore, the impugned order dated 12th August 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 794 of 2009 (Nipun Builders and Developers Pvt. Ltd.)

211. The total builtup area of the building constructed on a commercial plot in the present petition is 2802 sq. m. Construction of the building commenced on 10th September 2004 and was completed on 24th March 2005. A show cause notice was issued on 28th April 2008 and an order was passed on 6th November 2008 requiring

the Petitioner to pay environmental damages of Rs. 2 lakh and furnish a bank guarantee of Rs. 4 lakhs.

212. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The

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DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 7575 of 2009 (Jindal Biochem Pvt. Ltd.)

213. The total builtup area of the building constructed on a commercial plot in the present petition is 3290 sq. m. Construction of the building commenced on 2nd February 2005 and was completed on 31st May 2006. A show cause notice was issued on 27th June 2008 and an order was passed on 6th November 2008 requiring the Petitioner to pay environmental damages of Rs. 2 lakh and furnish a bank guarantee of Rs. 4 lakh.

214. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 8208 of 2009 (Best City Developers (India) Pvt. Ltd.)

215. The total builtup area of the building constructed on a commercial plot in the present petition is 1066 sq. m. No show cause notice was issued. On 7th January 2009, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 21st January 2009 an order was passed requiring the Petitioner to pay environmental damages of Rs. 1 lakh and furnish a bank guarantee of Rs. 1 lakh. This order was communicated to the Petitioner on 27th March 2009 and the Petitioner was asked to take necessary action to comply with the said order.

216. For the reasons already explained hereinbefore, the impugned order dated 21st January 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.



W.P. (C) No. 8751 of 2009 (Vardhman Properties Ltd.)

217. The total builtup area of the building constructed on a commercial plot in the present petition is 5461 sq. m. Construction of the building commenced on

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10th September 2007 and was completed in April 2009. An order was received by the Petitioner on 3rd January 2009 directing the Petitioner to obtain consent to establish. Another show cause notice was issued on 9th March 2009 to apply for consent to establish. On 30th April 2009, an order was passed directing closure of the Petitioner's building.

218. For the reasons already explained hereinbefore, the impugned orders dated 3rd January 2009 and 30th April 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 10860 of 2009 (Manish Buildwell Pvt. Ltd.)

219. The total builtup area of the building constructed on a commercial plot in the present petition is 8478.27 sq. m. A show cause notice was received by the Petitioner on 13th February 2008 alleging that he had completed construction without obtaining the consent to establish. An order dated 18th March 2008 was passed directing the Petitioner to obtain consent to establish. On 24th July 2009 an order was passed directing the closure of the Petitioner's building.

220. For the reasons already explained hereinbefore, the impugned orders dated 13th February 2008, 18th March 2008 and 24th July 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

Writ Petition disposed of.

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LPA 895/2010

Delhi Pollution Control Committee v. Splendor Landbase Ltd.

2012 SCC OnLine Del 400

(BEFORE PRADEEP NANDRAJOG AND PRATIBHA RANI, JJ.)

LPA 895/2010

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Splendor Landbase Ltd. Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates
With

LPA 1/2011 & CM No. 6781/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Sachdeva Buildon Pvt. Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 6/2011 & CM No. 6779/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Vardhman Properties Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 7/2011 & CM No. 6780/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Vardhman Properties Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 8/2011 & CM No. 6782/2011 (Cross Objections)

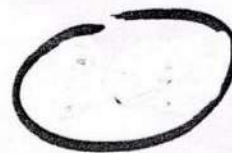
Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Vardhman Properties Ltd. & Ors. Respondents

Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay
Goswami, Advocates

With



Advocates for UOI

With

LPA 25/2011 & CM No. 6828/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Best City Developers (India) Pvt. Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 26/2011 & CM No. 6831/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Home Linkers Pvt. Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 27/2011 & CM No. 6833/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Rajesh Projects India Pvt. Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 28/2011 & CM No. 6826/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 45/2011

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Jindal Biochem Pvt. Ltd. & Ors. Respondents

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,

Advocates for UOI

With

LPA 46/2011 & CM No. 8164/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

As Buildwell Pvt. Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 47/2011 & CM No. 6825/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Maitri Mutual Benefits Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 48/2011 & CM No. 6823/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Nirvan Hire Purchase Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 50/2011 & CM No. 6827/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Nipun Builders & Developers Pvt. Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 51/2011 & CM No. 6829/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. Respondents

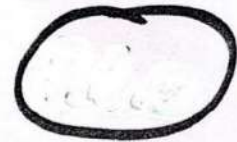
Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
Advocates for UOI

With

LPA 53/2011

Delhi Pollution Control Committee Appellant



Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
 v.

ESS CEE CEE & Associates (India) Pvt. Ltd. Respondent

Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay Goswami, Advocates

With

LPA 54/2011 & CM No. 6004/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Fargo Estates Pvt. Ltd. Respondent

Mr. Ankit Jain, Advocate

With

LPA 58/2011 & CM No. 6830/2011 (Cross Objections)

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 94/2011

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

DLF Retailer Developers Ltd. Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With

LPA 95/2011

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Laxmi Buildtech Pvt. Ltd. & Anr. Respondents

Mr. Kailash Vasdev, Sr. Advocate with Ms. Neoma Vasdev Gupta, Ms. Ekta Mehta and Ms. Joanne Pudussery, Advocates for respondent No. 1.

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 96/2011

Delhi Pollution Control Committee Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Manish Buildwell Pvt. Ltd. & Ors. Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With
 LPA 97/2011

 Delhi Pollution Control Committee Appellant
 Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
 v.

 Brightways Housing & Development Ltd. & Anr. Respondents
 Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala and Ms. Praneeta Vir, Advocates
 for R-1.

 Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,
 Advocates for UOI

 With
 LPA 98/2011

 Delhi Pollution Control Committee Appellant
 Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
 v.

 DLF Commercial Developers Ltd. Respondent
 Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

 With
 LPA 99/2011

 Delhi Pollution Control Committee Appellant
 Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
 v.

 Galleria Property Management Services Pvt. Ltd. Respondent
 Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

 With
 LPA 100/2011

 Delhi Pollution Control Committee Appellant
 Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
 v.

 Prosperous Estates Pvt. Ltd. Respondent
 None

 With
 LPA 101/2011

 Delhi Pollution Control Committee Appellant
 Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
 v.

 Regency Park Property Management Services Pvt. Ltd.
 Respondent

 Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates
 With

LPA 102/2011

 Delhi Pollution Control Committee Appellant
 Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
 v.

 Paliwal Developers Ltd. Respondent
 Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates



With
LPA 103/2011

Delhi Pollution Control Committee Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Ridge View Construction Pvt. Ltd. Respondent
Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala and Ms. Praneeta Vir, Advocates.
With

LPA 104/2011

Delhi Pollution Control Committee Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

R.C. Sood & Co. Pvt. Ltd. Respondent
Mr. Shobhit Chandra, Advocate

With
LPA 709/2011

Delhi Pollution Control Committee Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Lodhi Property Co. Ltd. Respondent
Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates
With

LPA 710/2011

Delhi Pollution Control Committee Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Bharti Realty Ltd. Respondent
Mr. Dushyant Manocha and Ms. Tarunima Vijra, Advocates
With

LPA 866/2011

Delhi Pollution Control Committee Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Anush Finlease & Construction Pvt. Ltd. Respondent
Mr. Ajay Kumar and Mr. Naveen Tayal, Advocates
And

LPA 867/2011

Delhi Pollution Control Committee Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.
v.

Tirupati Infraprojects Pvt. Ltd. Respondent
Mr. Ajay Kumar and Mr. Naveen Tayal, Advocates
LPA 895/2010; LPA 1/2011; CM No. 6781/2011 (Cross Objections); LPA 6/2011;
CM No. 6779/2011 (Cross Objections); LPA 7/2011; CM No. 6780/2011 (Cross
Objections); LPA 8/2011; CM No. 6782/2011 (Cross Objections); LPA 9/2011; LPA
10/2011; LPA 11/2011; LPA 22/2011; CM No. 6824/2011 (Cross Objections); LPA

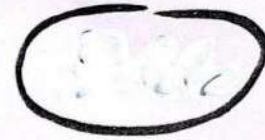
23/2011; CM No. 6832/2011 (Cross Objections); LPA 24/2011; CM No. 8168/2011 (Cross Objections); LPA 25/2011; CM No. 6828/2011 (Cross Objections); LPA 26/2011; CM No. 6831/2011 (Cross Objections); LPA 27/2011; CM No. 6833/2011 (Cross Objections); LPA 28/2011; CM No. 6826/2011 (Cross Objections); LPA 45/2011; LPA 46/2011; CM No. 8164/2011 (Cross Objections); LPA 47/2011; CM No. 6825/2011 (Cross Objections); LPA 48/2011; CM No. 6823/2011 (Cross Objections); LPA 50/2011; CM No. 6827/2011 (Cross Objections); LPA 51/2011; CM No. 6829/2011 (Cross Objections); LPA 53/2011; LPA 54/2011; CM No. 6004/2011 (Cross Objections); LPA 58/2011; CM No. 6830/2011 (Cross Objections); LPA 94/2011; LPA 95/2011; LPA 96/2011; LPA 97/2011; LPA 98/2011; LPA 99/2011; LPA 100/2011; LPA 101/2011; LPA 102/2011; LPA 103/2011; LPA 104/2011; LPA 709/2011; LPA 710/2011; LPA 866/2011; and LPA 867/2011
Decided on January 23, 2012

PRADEEP NANDRAJOG, J.

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal (s).
2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take action afresh and guided by the decision of the learned Single Judge.
3. The buildings with respect where to action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a 'consent to establish' as required under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Water Act') and 'consent to operate' as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act').
4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.
5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under:-

"2. Definitions.- In this Act, unless the context otherwise requires,-

- (a)
- (b)



(c)

(d)

(e)

(f)

(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h)

(i)

(j)

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.

25. Restrictions on new outlets and new discharges.-

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b)

(c)

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2)

(3)

(4)

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to

establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6)

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8)

33A. Power to give directions.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service."

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under:-

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) 'air pollutant' means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b)

(c)

(d)

(e)

(f)

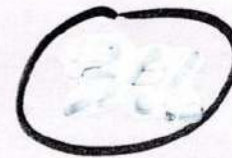
(g)

(h)

(i)

(j) 'emission' means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) 'industrial plant' means any plant used for any industrial or trade purposes and



emitting any air pollutant into the atmosphere;

21. Restrictions on use of certain industrial plants.- (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the **Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987)**, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2)

(3)

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5)

(6)

(7)

31A. Power to give directions.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, office or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and with reference to the Statement of Objects and Reasons of the Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression

'establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent' in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent being discharged but would also encompass if 'sewage effluent' was discharged and with reference to the definition of 'sewage effluent' as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of 'trade effluent' as per Section 2(k) of the Water Act. Noting the definition of the words 'operation' and 'process' in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that *collective operation or process of bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes*. This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of 'trade effluent' as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.

9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.

10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided in Sub-Section 5 of Section 25 of the Water Act.

11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge, with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under:-

"29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

(i) Section 25(1) of the Water Act is intended to cover not just 'industry' which discharges 'trade effluent' but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.

(ii) The words 'operation or process' occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *eiusdem generis* is therefore inapposite in the context.

(iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.

(iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

(v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.

(vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.

(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced."

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre-amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.

14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word 'establish' and had only the word 'operate' in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.

15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under:-

"41. The position under the Air Act may be summarized:

(i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.

(ii) The definition of 'air pollution' under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21 (1) of the Air Act.

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act."

16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, 'no person could establish or take any steps to establish any industry, operation or process..... which is likely to discharge sewage or trade effluent'. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.

17. But, what would encompass 'any industry, operation or process'?

18. The Water Act does not define, 'industry', 'operation' or 'process'. As held in the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa v. N.C. Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. v. Commissioner of Income Tax*, the ordinary dictionary meaning of 'industry' or an 'industrial undertaking' would not include the activity of construction. The word 'operation' is defined, as noted by the learned Single Judge, in the New Shorter Oxford English Dictionary (Lesie Brown Ed.) as follows:

"**operation:** An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, esp one forming a step in a process."

19. The same dictionary defines 'process', as noted by the learned Single Judge, as under:-

"**process:** The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end."

20. As noted herein above, applying purposive construction, the learned Single Judge



has held, in para 15, that the two words 'operation' and 'process' have to be given their widest amplitude and meaning. The purposive construction applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.

21. The error committed by the learned Single Judge is to mechanically note the definition of 'operation' and 'process', and ignore the sweep of the span of the two words. We do so. Operation is defined as an *activity or an act of a practical or technical nature, with emphasis of the acts forming 'a step in a process'*. The word 'process' is a going on action or a continuous series of actions *'directed at a particular end'*. Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression *'establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent'* would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.

23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.

24. With respect to the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa v. N.C. Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. v. Commissioner of Income Tax*, where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.

25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of 'environment' therein being defined to include water, air and land and the inter

relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.

27. To summarize the position under the Water Act the position may be summarized thus: 'Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.

29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any industrial plant in an Air Pollution Control Area. Section 2(k) defines an 'industrial plant' to mean any plant used for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words 'establish or' have been inserted prior to the word 'operate', we need to re-look into the issue.

31. Highlighting the definition of the words 'industrial plant' as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words 'industrial plant' to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.



32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression 'industrial plant', which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression 'industrial plant'. But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of 'to operate' is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.

36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra*, 1994 (4) SCC 276 *J.K. Synthetics Ltd. & Birla Cement Works v. Commercial Taxes Officer* 1997 (6) SCC 479 *India Carbon Ltd. v. State of Assam* to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.

38. We would be failing not to note that on the issue of a delegatee not being

empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.

39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to



be got sanctioned under the Air Act.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned **Single Judge** is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 *Mafatlal Industries Ltd. v. UOI*, under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.

43. The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.

44. We leave the parties to bear their own costs.

45. All interim orders stand vacated.

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Dpcc vs M/S Raj Plastic India & Anr. on 19 December, 2013

Delhi District Court

Dpcc vs M/S Raj Plastic India & Anr. on 19 December, 2013

Author: Sh. Devendra Sharma

DPCC vs M/s Raj Plastic India & Anr.
CC No.

ORDER ON CHARGE

19.12.2013

1.

The complainant i.e Delhi Pollution Control Committee (in short DPCC) filed the present complaint against the accused M/s Raj Plastic India & Anr. through Sh. V.K. Jain, Assistant Environmental Engineer for violation of notification issued on 07.01.2009 for use, sale and storage of plastic bags by the accused in contravention of provision U/s 15/16 r/w section 19 of the Environment (Protection) Act, 1986 (hereinafter referred to as "E. P. Act") with the allegation that a raid was conducted on 09.09.09 on business premises of the accused and it was found that accused were using/storing/trading polythene/plastic carry bags and therefore, the case property i.e polythene bags were seized vide seizure memo and an inspection report was prepared. Thus, it was found that there was willful contravention of the notification dated 07.01.09 and violation of the EP Act, hence the present complaint.

2. The accused was summoned. After appearance, the accused was supplied copy of the complaint and of documents and matter was posted for pre-chargé evidence.

3. To support its case, the complainant examined himself as CW1, Sh. NK Joshi the then Environmental Engineer as CW2 and one public witness Sh. Mukesh Kumar as CW3 and pre-chargé evidence was closed.

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4. I have given my thoughtful consideration to the submissions advanced on behalf of the parties and gone through the records. I have also gone through the written submissions filed on behalf of the parties, case laws and relevant provision of law as the complainant and the accused adopted the same arguments advanced in CC No.212/6, titled as DPCC vs Kumar Hardware.

5. The accused advanced the arguments regarding maintainability of the present complaint stating that as the complainant has no authority to file present complaint in view of provision u/s 19 of the E P. Act and therefore, no case is made out against the accused and he is entitled for discharge. It was further argued that notification dated 07.01.09 is only applicable to the main market of Delhi and the business place of the accused does not fall within main market of Delhi and therefore, accused is entitled for discharge on this ground also.

6. On the other hand, it is argued on behalf of complainant that the complainant DPCC is an incorporeal person and incorporeal person can only prosecute or defend legal proceedings through a

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corporeal person. It is further argued that the present complaint has been filed by the authorized officer of the complainant in accordance with the authority conferred upon him by DPCC Board and in pursuance of decision taken in the DPCC Board Meeting held on 09.12.2009 / 30.12.2009 and with the prior approval of the Member Secretary and to support its contentions, a copy of the minutes alongwith the noting have also been relied upon. It is further argued that Member Secretary is one of the authorized officer to initiate the proceedings u/s 19 of EP Act as per notification DPCC vs Raj Plastic India 2 of 14 dt. 03.09.1996 / 07.01.2009. It is further argued that once filing of the complaint has been approved by the Member Secretary, DPCC, the complaint is maintainable.

7. Previously, similar arguments were advanced on behalf of the accused as well as complainant in a case titled as DPCC vs Titan Industries Limited decided on 9th September, 2013 and accused had placed reliance upon judgments reported as under: i. AIR 2009 SC 2282 (Ajay Kumar Ghosh v. State of Jharkhand & anr.) ii. AIR 1968 SC 822 (Mangu Lal Chunni Lal v. Mani Lal Magan Lal) iii. AIR 1960 SC 576 (Ballabh Das Aggarwal v. J. C. Chakraborty) iv. (1994) 5SCC 246 (Shani Silk Mills Pvt. Ltd. v. ESI Corporation). v. (1996) CrLJ 2136 (S. N. Dubas v. V. V. M. Bhosale).

On the other hand, complainant had placed reliance on judgments reported as under : i. (1984) Cr. L.J 513 (Luis De Piedade Lobo v. Mahadev Vishwanath Parulekar). ii. (1977) CrLJ 1370 (Hukum Chand Dev Kishan Sharda & Ors v. Ratan Lal Roop Chand Heda & Ors).

iii. (2001) DCR 580 M/s MMTTC Ltd. & anr. V/s M/s Medicil Chemicals & Pharma Pct. Ltd.

iv. AIR 2009 SC (Supp.) 511 (Kashmir Singh vs. Union of India & Anr.) v. AIR 1994 SC 664 (Food Inspector, Health Dept. U. T. Chandigarh vs. Krishna Gauba.

vi. (2009) 2SCC 147 (U. P. Pollution Control Board v. B. K. Modi & Ors)

8. In addition to aforesaid judgments, the complainant has placed reliance upon the judgments reported in "2012 (2) JCC 1012 titled as Yahoo India Pvt. Ltd vs. State and Another, AIR 1997 SC 3 case titled as United Bank of India vs Naresh Kumar and Others, Order passed in WP (C) No.6456/2004 dated DPCC vs Raj Plastic India 3 of 14 07.08.2008 in case titled as Vinod Kr. Jain vs Union of India and Other by the Hon'ble High Court of Delhi and case titled as Union of India & Ors. vs Gurnam Singh decided on 23rd March, 2004 bearing Appeal (Civil No. 1883/2004) by the Hon'ble Supreme Court with the arguments that the complainant does not warrant rejection on mere technical objection causing no prejudice to the accused nor there is any failure of injustice caused to the accused. Further, it was argued that in cases under the Prevention of Corruption Act, 1988, sanction is required before prosecution but in case there is any irregularities in the sanction, prosecution can not be held to be bad in law. It is further argued that Article 48A of the Constitution of India as well as Objective and Preamble of EP Act makes it clear that these provisions were made to prevent and check all the acts which are detrimental to the environment and public health and therefore, any action initiated under the Environmental Legislation deserves to be dealt with and looked into in a manner which would advance and achieve the objectives of such Legislations and not like other matters which do not involve the elements of public interest.



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9. For proper appreciation of the issue raised on behalf of the parties, it will be relevant to reproduce the relevant extract of the Board Meeting dated 09.12.2009 / 30.12.2009 authorizing the present complainant to file the complaint.

"....Authorization to file prosecution u/s 19 of the EPA, 1986 in the Court: Looking at the heavy workload of MS, DPCC and preoccupation in his/her office work, Committee was informed DPCC vs Raj Plastic India 4 of 14 that it is not possible to attend the court, wherein complaints have been filed by the MS, DPCC. It was informed that in one of the district Courts, Hon'ble Court allowed to represent MS through the authorized officer subject to condition, it is approved by the DPCC. Committee authorized ALO/ concerned counsel to be present in the Court on behalf of MS, DPCC from now onwards. Apart from this, in future the Committee authorized concerned area AEE to file complaint before the Court under Environment (Protection) Act, 1986..."

10. The relevant extract of the Gazette Notification dt. 07.01.2009 are as under: ☐ "....Member Secretary, Delhi Pollution Control Committee shall act as the co-ordinator to implement the above orders. The Chairman and Member Secretary of the Delhi Pollution Control Committee are authorised to lodge the complaint under Section 19 of the E. P. Act, 1986 vide notification No. S. O. 394(E) dated 16.04.1987 as further amended vide notification No. S. O. 624 (E) dated 03.09.1996..."

Section 19 & 24 of the EP Act runs as under: ☐ Section 19 refers to : Cognizance of offences ☐ No Court shall take cognizance of any offence under this Act except on a complaint made by ☐

(a) The Central Government or any authority or officer authorized in this behalf by that Government; or

(b) Any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

Section 24 of the Act refers to: Effect of other laws ☐ (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules of orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

DPCC vs Raj Plastic India 5 of 14 (2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act, then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

11. The relevant extract of the judgment reported in AIR 1994 SC 664 is as under: ☐ Para 3: Section 20(1) of the Prevention of Food Adulteration Act reads as under:

" 20. Cognizance and trial of offences ☐ No prosecution for an offence under this Act, not being an offence under S. 14 or S. 14A shall be instituted except by, or with the written consent (emphasis

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added) of the Central Government or the State Government or a person authorised in this behalf by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in S. 12, if he produces in Court a copy of the report of the public analyst alongwith the complaint."

It came up for interpretation in A. K. Roy v. State of Punjab, AIR 1986 SC 2160. It was held. (Para 10).

" A careful analysis of the language of S. 20 (1) of the Act clearly shows that it inhibits institution of prosecution for an offence under the Act except on fulfillment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for an offence under the Act. The provision contained in S. 20(1) of the Act does not contemplate the institution of a prosecution may be instituted with the written consent of the Central Government or the person authorised.

A complaint under S. 20 thus could be instituted apart from DPCC vs Raj Plastic India 6 of 14 Central or State Government, by a person authorized in that behalf. Such a person who is authorized to institute complaint could, "give his written consent for the prosecution by the Food Inspector", A. K. Roy (Supra). Chief Medical Officer Chandigarh undisputedly, and as is clear from Notification No. 5210-UTF-467/9461 issued on 29th April, 1967 by the Chandigarh Administration in exercise of powers conferred by sub-sec (1) of S. 20 of the Act, was a person authorized to institute a complaint. Therefore, he could give his consent as well for launching of prosecution. In doing so he was neither delegating his power nor acting contrary to S. 20. He was acting within the scope of authority as a person authorized to institute complaint under S. 20 (1) of the Act and has been placed at par with other authorities designated in the sub-section for purposes of granting consent.

12. Relevant extracts of the decision reported in AIR 1968 SC 822 (Mangu Lal Chunni Lal Vs Mani Lal Mangal Lal & Others) are as under:

Para 2: The relevant facts are not now in dispute and are as follows: On October 10, 1963 Mangu Lal Chunilal, licence inspector, filed a complaint against Mani Lal Maganlal, hereinafter referred to as the accused, alleging that the accused had carried on the work of blacksmith by manufacturing machinery, spare parts and safe cupboards, without obtaining licence. At the end of the complaint it was stated:

" I have obtained permission for filing this complaint from the Medical Officer of Health by order No. dated 1.10.63." Para 3: The licence Inspector had applied to the Deputy Health Officer, Ahmedabad Municipal Corporation, to accord permission to file the complaint as offence under s. 392 (1) (a) of the Act had been committed. The Deputy Health Officer noted :

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" Permission is granted under section 481 (1) (a) of Chapter 30 of the Bombay Provincial Municipal Corporation DPCC vs Raj Plastic India 7 of 14 Act of 1949 to file complaint for the offence committed in breach of the provisions of law as shown in the above report." Para 4: The Deputy Health Officer (including Deputy Health Officer, Food and Licence Branch) had been delegated certain powers under s. 69 (1) of the Act by the Municipal Commissioner. The powers delegated to the Deputy Health officer include:

" Power to take proceedings against Section 481 (1) (a) (i)(iii) any person who charged with * * * Para 5: It was contended before the High Court that the complaint had been filed by the Licence Inspector whereas the delegation under s. 69 of the Act was to the Deputy Health Officer to take proceedings as provided in s. 481 of the Act. It was contended that the expression "take proceedings" in s. 481 means instituting a complaint and does not mean causing a complaint to be filed. Raju, J., who heard the revision, accepted this contention. He declined to follow the judgment of the Bombay High Court in The State v. Manilal Jethalal (1953) 55 B.L.R 377 in which it had been held that the words " take proceedings" meant order proceedings to be taken." Para 6:.....

Para 7:.....

Para 8: "S. 69(1) Subject to the provisions of sub-sections (2) and (3), any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner or the Transport Manager by or under any of the provisions of this Act may be exercised, performed or discharged, under the control of the Commissioner or the Transport Manager, as the case may be and subject to his revision and to such conditions and limitations, if any, as may be prescribed by rules, or as he shall think fit to prescribe in a manner not inconsistent with the provisions of this Act or rules, by any municipal officer whom the Commissioner or the Transport Manager generally or specially empowers by order in writing in this behalf; and to the DPCC vs Raj Plastic India 8 of 14 extent to which any municipal officer is so empowered the word " Commissioner" and the words "Transport Manager" occurring in any provision in this Act, shall be deemed to include such officer.

S.481.(1) The Commissioner may ☐

(a)

(i). With the like approval, institute and prosecute any suit or withdraw from or compromise any suit or any claim other than a claim of the description specified in clause (f), which has been instituted or made in the name of the Corporation or the Commissioner," Para 9: It is not disputed that s. 69 enables the Commissioner to delegate powers duties or functions conferred or imposed upon him or vested in him to a municipal officer. The Commissioner having delegated his powers to the Deputy Health Officer, the question arises whether it is the Deputy Health Officer or the Licence Inspector who should take proceedings against the accused within the meaning of s. 481 (1) (a). It is not disputed that under sub-sections (b), (c),(d), (f),(g),(h) and (i) of s. 481 (1) the various actions

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contemplated in these sub-clauses would have to be taken by the delegate himself. In other words, he would have to institute a suit within sub clause (i) and admit or compromise any claim, suit or legal proceeding within sub clause (h), but it is said that the word "take" has been deliberately used in sub-clauses (a) and (e) to enable the delegate to entrust initiation of proceedings to another person because otherwise it would be impossible to carry on the administration of the municipality. It is said that thousands of complaints have to be filed and it would be casting undue burden on the Deputy Health Officer to sign all the complaints. We are not impressed by this argument. It is true that the word "take" has various meanings but no dictionary or authority has been placed before us to show that the word can mean "cause to be taken". It seems to us that the word "take" was used because if the word "institute" had been used it may not have been appropriate to DPCC vs Raj Plastic India 9 of 14 cover all proceedings that can be taken under s. 481 (1) (a). Para 10:.....

Para 11:

Para 12:.....

Para 13: The learned counsel for the appellant says that since the decision of the Bombay High Court in the State v, Manilal Jethalal (1953) 55 B. L.R 377 no other decision has taken any other view and we should not disturb the view which has prevailed since that decision. We are unable to accept this contention. This is not a case where a series of decisions have taken a particular view and that view has been widely accepted and various rights have accrued to parties acting on that view. A person who files a complaint under the Act must show that he has the authority to file that complaint and that authority cannot be conferred upon him by erroneous interpretation long acquiesced in. This court held in Ballavdas Agarwala v. J.C. Chakrawarty MANU/SC/0082/1960 : 1960 Cri.LJ 752 that a complaint under the Calcutta Municipal Act, 1923, could only be filed by the authorities mentioned therein and not by an ordinary citizen. Similarly, here it seems to us that only the authorities mentioned in s. 481, read with sec. 69, can launch proceedings against persons charged with offences under the Act or the rules, regulations or bye laws made under it. This court noticed the decision of the Bombay High Court in Manilal Jethalal's case (1953) 55 B.L.R 377 in Ballavdas Agarwala v. J.C. Chakravarty MANU/SC/0082/1960 : 1960 Cri.LJ 752 and observed :

"The decision proceeded, however, on a somewhat wide meaning given to the words 'take proceedings' that part of the decision, as to the correctness of which we say nothing, does not concern us here, because the words used in s. 537 of the Calcutta Municipal Act are different." Para 14: "An officer of the municipality must himself perform his duties created by statute or bye-law. He cannot delegate them to others, unless expressly authorised in this behalf. The Act DPCC vs Raj Plastic India 10 of 14 does not so empower the officers to delegate their functions in their turn, and thus an officer to whom the power is delegated by the Chairman must perform them himself."

13. Thus, from the aforesaid decisions, it is clear that provision under section 19 of the EP Act is somewhat akin to the provision referred to in the judgment reported in AIR 1968 SC 822. In both the cases, no power has been given to the authorized person to sub delegate his power to any other person for filing complaint with the written consent of the person authorized to file a complaint.



Dpcc vs M/S Raj Plastic India & Anr. on 19 December, 2013

However in the **judgment relied upon** by the complainant i.e AIR 1994 SC 664, the person authorized to file a **complaint has also power** to authorize another person to file a complaint with the written consent of the authorized person by general or special order. Thus, it is clear that the complaint under EP Act can not be filed by any person who is not authorized specifically under the Act or by notification.

14. The arguments **advanced on behalf** of complainant that the **technicalities** pertaining to non filing of complaint by the authorized person which can be cured at any stage of litigation is of no help. Firstly, till date no such **step has been taken** to cure the defects in filing the complaint despite specific objections raised **on behalf** of accused of the competency of the complainant to file present complaint. Otherwise **also in a case reported** in (1983) 4 SSC 701 (Vishwamitter Vs O. P Podhar), it was held that no doubt the criminal law can be set into motion by filing a complaint of facts constituting an offence and **no court can decline** to take cognizance. However, in the same judgment it DPCC vs Raj Plastic India 11 of 14 was further observed that if in any special provision for taking cognizance of such offence provision is there under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criteria prescribed by the statute. Admittedly, in the present case, the present complaint was not filed by a person authorized under the EP Act. A resolution/extract of board meeting dated 30.12.2009 and the noting by the Member Secretary authorizing the present complainant has been filed on record. The perusal of the said authorization reveals that in board meeting of DPCC, the committee authorized the concerned area AEE to file the complaint before the Court under the Environment (Protection) Act 1986. However no such power was vested with the DPCC in view of gazette notification dated 07.01.2009 wherein it was specifically mentioned that either the Chairman or Member Secretary of DPCC will be authorized to lodge the complaint under section 19 of the EP Act. Admittedly, present complaint was not filed by either of them. Further, it appears that they exceeded the power vested with them to file a complaint by passing the resolution in the board meeting of DPCC to sub delegate their power to the area AEE though there was no such power with them. Further, the noting itself makes it clear that the note was put up for the purposes of signature of the Member Secretary on vakalatnama for the filing of the complaint, but instead of doing so, present complaint has been filed through the area AEE which is not permissible under the law.

15. It is further contended on behalf of complainant that the violation of EP Act DPCC vs Raj Plastic India 12 of 14 detrimentally **affect public health** at large and therefore should be dealt with strictly de hors technical objections. No doubt the competency of the complainant to maintain the present complaint is a technical objection.

However, complainant is **duty bound** to remove it at the **first available** opportunity. Till date no steps has been taken to **remove the defect** in filing the complaint. Moreover, the objections pertaining to **maintainability of the complaint** was raised for the **first time** in the complaint titled as DPCC vs Titan Industries Limited (supra). But, no step was taken to remove the defect nor any such prayer has been made **either during the course** of arguments or in the written submissions. It is worthy to note here that **though the complaint** is filed under EP Act and these cases are no doubt of serious nature but if the paper reporting filed on record that is news paper 'Dainik Jagraj' dated 2nd December, 2012, in case titled as DPCC vs Bansal Uniforms, is assumed be correct, it is the

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complainant department who let the accused escaped from criminal liability by giving warning after the raid which shows the seriousness on the part of the complainant.

16. Further, in the judgment reported in "AIR 1960 SC 576 (V47 C 90), it was held as under: □ "That the conviction of the accused on the basis of a complaint filed by the Health Officer of the Howrah Municipality who was not duly empowered as the delegated authority to institute criminal proceedings under the Act on the date on which he made the complaint could not be sustained. The absence of proper complaint was not a mere defect or irregularity curable under S. 537 Cr.P.C; it affected jurisdiction and initiation of proceedings."

DPCC vs Raj Plastic India 13 of 14 In the judgment reported in V (2008) SLT 246 titled as P.D. Lakhani & Anr. vs. State of Punjab, it was held as under: □ "..... Section 195 contains a bar on the Magistrate to take cognizance of any offence when a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction....."

Thus, the said contention raised on behalf of the complainant that technicalities should not be taken into consideration, is without any merit.

12. In view of the aforesaid discussions and facts and circumstances of the case, it is held that present complaint is not maintainable and since complaint itself is not maintainable, therefore, no charge can be framed in view of judgment reported in "2012 (2) C.C. Cases (S.C.) 252 as nothing can be explained to the accused. Accordingly, accused stands discharged. Bail bond stands cancelled. Surety stands discharged. Original documents, if any, be returned to the rightful applicant after endorsement cancelled thereupon. File be consigned to record room.

(D.K. SHARMA) ACMM(SPL ACTS), CENTRAL TIS HAZARI DELHI Announced in open court on 19th December, 2013.

DPCC vs Raj Plastic India

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No.103 of 2016 (SZ)

In the matter of

Puducherry Environment Protection Association

Rep. by its Secretary K. Irisappan

Koodapakkam

.. Applicant

Vs.

1.Union of India

Rep. by its Secretary, The Ministry of Environment,

Forests and Climate Change

New Delhi

2. State Environment Impact Assessment Authority

Rep. by it Member Secretary, Chennai

3.The Tamil Nadu Pollution Control Board

Rep by its Member Secretary, Chennai

4. The District Environmental Engineer

Tamilnadu Pollution Control Board

Cuddalore

5. M/s. Shasun Pharmaceuticals Ltd

Rep. by its Managing Director

Kudikadu Village, Cuddalore Taluk

.. Respondents

Counsel appearing for the applicant

M/s. A. Yogeshwaran & Neha Miria Kurian

Counsel appearing for the respondents

For respondent No.1 : Mr. M.R. Gokul Krishnan

For respondent No.2 : Mrs. Me. Saraswathy

For respondent No.3 & 4 : Mrs. H. Yasmeen Ali

For Respondent No.5 : M/s. Dr.Sdhir Ravindran

Lakshmi Narayanan &

Sai Sathya Jith

O R D E R

Quoram: Hon ble Shri Justice Dr. P.Jyothimani, Judicial Member

Hon ble Shri P.S. Rao, Expert Member

Delivered by Hon ble Justice Dr.P. Jyothimani

18th October, 2016

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

The applicant has challenged the Environmental Clearance (EC) dated 24.6.2014 granted by the second respondent State Environment Impact Assessment Authority (SEIAA) in favour of the fifth respondent project proponent for the proposed expansion of Pharmaceutical Multi-Product Facility with change in production capacity from 3384.74 TPA (25 products) to 3376.40 TPA (53 products) at Plot No.A1/A, A1/B, A1/C, A2/B, A2/D, SIPCOT Industrial Estate, Kudikadu Village, Cuddalore District as well as the amendment order issued by the second respondent dated 24.11.2015, amending plot numbers and survey numbers and also for a direction against the third respondent Tamil Nadu Pollution Control Board to close the fifth respondent unit for wilful violation of EIA Notification, 2006, Environment (Protection) Act, 1986 (EP Act), Water (Prevention and Control of Pollution) Act, 1974 (Water Act), Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Hazardous Waste Management Rules, 1989 by illegally expanding production, direct the first respondent MoEF & CC to initiate prosecution against the fifth respondent under Section 15 of the EP Act, apart from directing the fifth respondent to pay compensation for the environmental harm caused by the illegal activities.

2. It is the case of the applicant that the fifth respondent has originally obtained Environmental Clearance (EC) from the first respondent MoEF & CC on 24.10.2000

for expansion of Bulk Drug Unit at Cuddalore and even before Consent has been obtained from the Tamil Nadu Pollution Control Board (Board), started manufacture of different items of drug. However, in the EC granted by the first respondent MoEF & CC on 24.10.2000, the fifth respondent was permitted for expansion of 13 products, subject to specific and general conditions. After obtaining the said EC, the fifth respondent has applied to the Board for Consent to produce larger number of products and the Board has also granted Consent for manufacturing larger number of products than the number of products stated in the EC. Therefore, the fifth respondent has violated the EIA Notification, 1994 and the conditions of EC granted in the year 2000 with the active participation and connivance of the Board. According to the applicant, Consent can be granted by the Board only in respect of the products for which EC was granted.

3. The applicant has given various dates in the application to show that originally the fifth respondent has obtained Consent to Operate by the Board on 8.7.1991 both under the Air Act and Water Act for the purpose of manufacturing of the products viz., Ranitidine HCL 5 T/M, N. Methyl, S. Methyl 2 Nitro Ethane = 7 T/M. Subsequently, the fifth respondent has obtained another Consent order from the Board on 27.11.1991 both under the Air Act and Water Act for manufacture of Renitidine HCL = 5 TPM, Atenolol = 2 MTPM, Analgin = 100 MTPM, Dichlofenac Sodium = 3 MTPM, N-Methyl S Methyl - 2 Nitro Ethane = 7 MTPM, P Hydroxy Acetophenone = 5 MTPM, and P Hydroxyaceto Phenyl Acetamide = 5 MTPM. The fifth respondent has obtained EC from the first respondent as per the EIA Notification 1994 on 24.10.2000 for manufacture of 13 products viz, Ranitidine HCL 20 TPM, Ibuprofen 100 TPM, Atenolal 5 TPM, Dichlofenac Sodium 3 TPM, Salmeterol 0.25 TPM, Niztidine 2 TPM, S- Ibuprofen 10 TPM, D-Napraxen 5 TPM, 3.5 Dihydroxy Benzoic Acid 1 TPM, Ciproflaxin 10 TPM, Phenatoxypyline 10 TPM, Hydrolazine HCL 2 TPM and Alphotocophenyl acetate 25 TPM for total 193.25 TPM.

4. The fifth respondent has obtained Consent to Operate from the Board on 20.3.2002 both under Air Act and Water Act based on its application dated 7.1.1994 for 18 products viz., Ranitidine Hydrochloride 20 T/M, Ibuprofen 100 T/M Atenolol 5 T/M, Dichlofenac Sodium 3 T/M, Salmeterol 0.25 T/M, Niztidine 2 T/M, S (S)

Ibuprofen 10 T/M, D Napraxen 5 TPM 3,5 Dihydrozybenzonic Acid 1 T/M, Ciproflaxin 10 T/M, Phenatoxypyline 10 T/M, Hydrolazine Hydrochloride 2 T/M, Alpha Tocophenyl Acetate 25 T/M, Analgin 100 TPM, N-Methyl, S - Methyl 1-2, Nitro Ethane 35 T/M, P-Hydro Xyaceto Phenone 5 T/M, RI II Cystofur 10 T/M and P-Hydroxyaceto Phenyl acetamide 5 T/M.

5. Therefore, according to the applicant, when EC was granted by the first respondent on 24.10.2000 in respect of 13 products, obtaining Consent by the fifth respondent from the Board on 20.3.2002 for 18 products, is totally illegal and the same has been done with the connivance of the Board. Again the applicant has stated that the fifth respondent has applied for Consent to the Board on 19.5.2009 both under Air Act and Water Act and Consent was granted on 13.7.2011 in respect of 25 products viz., Ranitidine Hcl 240 TPM, Nizatidine 24 TPM Ketoprofen 24 T/M, Aldehyde 1500 T/M, Isredipine 0.54 TPM, Chlorophenesin 144 T/M, CKE 36 TPM, Lortadine 25 TPM, Sevalamer Hydrochloride 20 T/M, Hydroxypropyl Methyl Cellulose Phthalate (HPMCP) 130 T/M, Clopidogrel Bisulphite = 1.2 T/M, Clopidogrel Napsylate 1.2 T/M, Venlafaxine Hydrochloride 60 T/M, Olanzapine 3 T/M, Indapamide 10 T/M, VX 950 24 T/M, Sumatriptan Succinate 2 T/M, Phexphynadine 25 T/M, Meprobamate 2 T/M, Cycloserine 2 T/M, Colesevelam HCL 1 T/M, Sevelorner Carbonate 4 T/M, Tenofovir DF 0.8 T/M, Doxycycline 25 T/M, Gaba Pentine 1080 TPM. Therefore, it is the further case of the applicant that when the EC granted by the first respondent dated 24.10.2000 was only for 13 products by illegally obtaining Consent from the Board both under Air and Water Act, the fifth respondent has been increasing the production capacity at the first instance at 18 and thereafter as 25, as enumerated above. It is the case of the applicant that the fifth respondent has made application on 20.7.2012 to the Board both under Air Act Water Act seeking for Consent to Establish for the construction of new building at Location B and modification in the existing building at location C which was said to have been granted by the Board on 17.9.2012.

6. The applicant has raised a question as to how the Board is entitled to give Consent for new building and modification of existing building without obtaining EC for

such expansion activities. Therefore, according to the applicant, all the above Consent orders granted by the Board are illegal.

7. It is applicant's further case that the impugned EC granted by the second respondent SEIAA dated 24.6.2014 is based on a proposal for expansion with change in production capacity of the fifth respondent dated 16.5.2013 permitting manufacturing of 53 products viz., Ranitidine CL 50 TPM, Ketoprofen 24 TPM, Aldehyde 1700 TPM, Isredipine 1 TPM, Chlorophenesin 144 TPM, CKE 36 TPM, Nizatidine 6 TPM, Lortadine 2 TPM, Sevalamer Hcl 40 TPM, Rosigiltazone 1 TPM, Clopidogrel Bisulphite 1.2 TPM, Clopidogrel Napsylate 1.2 TPM, Venlafaxine Hcl 60 TPM, Olanzapine 1 TPM, Indapamide 10 TPM, VX 950 24 TPM, Sumatriptan Succinate 2 TPM, Phexphynadine 25 TPM, Meprobamate 2 TPM, Cycloserine 2 TPM, Colesevaem Hcl 50 TPM, Sevelomer Carbonate 50 TPM, Tenofovir DF 10 TPM, Doxycycline 2 TPM, Gabapentine 150 TPM, Aloigiptone 1 TPM, Nabumutone 10 TPM, Moxifloxacin 5 TPM, CD-6051 (A-49) 10 TPM, Cinacalcet 1 TPM, Leviteractam 50 TPM, Dextromethorphan 10 TPM, Loxoprofen 50 TPM, Celecoxib 20 TPM, Pantaprazole 10- TPM, Pitavastatin 1 TPM, Pregabalin 50 TPM, Dexlanzaprazole 1 TPM, Benzarone 2 TPM, Montelukas sodium 1 TPM, Rosuvastatin 1 TPM, Ibuprofen 400 TPM, Lanthanum Carbonate 10 TPM, Lurasidone 1 TPM, Dabigatran 3 TPM, Sapropterine 1 TPM, Roflumilast 1 TPM, Riveroxaban 1 TPM, Apreptant 1 TPM, Olmestartat 1 TPM, Ibuprofen sodium 50 TPM, Methyl thionium chloride 250- TPM and Carisoprodol 40 TPM.

8. Therefore, the fifth respondent has violated the EC granted by the first respondent dated 24.10.2000. Manufacturing of additional products by the fifth respondent based on the Consent by the Board is not permissible and the same is illegal. In fact, for such expansion activities, public hearing has not been conducted.

9. It is the further case of the applicant that the second respondent SEIAA has no jurisdiction even to consider the application of the fifth respondent for expansion of their activities, since SIPCOT, Cuddalore has been categorised by the CPCB as Critically Polluted Area (CPA) along with large number of such cluster in the entire country. It was based on Comprehensive Environmental Pollution Index (CEPI), the MoEF & CC

has imposed a moratorium on 13.1.2010 identifying 43 cluster units in India as CPA and Cuddalore was at Serial No.13. The said moratorium was lifted on 15.2.2011. The Government of India has clarified that as the general condition to EIA Notification, 2006 stipulates that any project or activity specified in Category B will be treated as Category

A if it is located within 10 km from the boundary of (i) protected areas notified under the Wild Life (Protection) Act 1972; (ii) Critically Polluted Area as notified by CPCB from time to time; (iii) notified eco-sensitive area; and (iv) inter-state and international boundaries. According to the applicant, by virtue of the categorisation of Cuddalore as CPA, even though in normal circumstance manufacturing may be covered under B category, it has to be treated as A category with the result it is only the first respondent - MoEF & CC which is the authority competent to issue EC and therefore EC granted by the second respondent - SEIAA under the impugned order is null and void. According to the applicant, Cuddalore has always been in the list of CPA.

10. To substantiate his case, the applicant has stated that in respect of one Asian Paints Penta Division which is also situated in CPA, Cuddalore it was only MoEF & CC which has granted EC on 24.2.2014. Likewise, it is also stated that in respect of another unit viz., All Synthetic Organic Chemicals Industry which is also within 10 km of CPA, Cuddalore, the proposal was treated as A category and appraisal was done by EAC and EC was granted on 30.1.2015.

11. While so, in respect of the fifth respondent, the impugned EC has been granted by the second respondent SEIAA especially when the unit is situated in CPA, Cuddalore and therefore the EC is null and void and the same is without jurisdiction. The applicant has also stated about the order of the Tribunal in V. SRINIVASAN VS. UNION OF INDIA wherein SEIAA granted EC for MSW facility in Pallikaranai situated within 10 km of Guindy National Park which came to be set aside with a direction to MoEF & CC to consider.

12. The applicant has also highlighted apart from the jurisdictional issue that when once EC granted on 24.10.2000 was in respect of 13 products, with combined production capacity of 193.25 TPM, the Board has chosen to grant under Air and Water Act for 25 products with production capacity of 3384.74 TPM and subsequently 53

products with the total capacity of 3376.40 TPM. A reference to the Consent given by the Board in the impugned EC itself makes it clear that the fifth respondent unit has illegally expanded its industry and violated conditions of EC as contemplated under the EIA Notification, 2006. The applicant has also relied upon a data report of the fifth respondent unit relating to the years 2010-2015 to show huge investment made by the fifth respondent project proponent on the building, plant and machineries. He has also relied upon statistical information relating to the production capacity of the fifth respondent, which according to the applicant, is a clear deviation, as it is shown in the audited statement relating to the years 2007-2010 and its illegal expansion without prior EC is not permissible in law. It is also stated that the quantum of waste which has been generated by the unit has not been accounted with the mass balance. The accredited Consultant should have conducted EIA. However, EIA has not been furnished to the applicant when he raised the same under RTI Act.

13. With the above factual matrix, the applicant, while challenging the impugned EC has raised various legal points which includes that as long as Cuddalore is a CPA, as per the Notification of the Government of India, even if the proposed unit is covered under B category, appraisal must be done only by EAC by treating it as A category project and therefore the impugned EC is null and void. Further, even SEIAA has not applied its mind apart from SEAC and there was no public hearing conducted and on that score also the impugned EC becomes invalid. On the basis of invalid EC and Consent given by the Board in connivance, the fifth respondent has no legal authority to proceed with its activities. When EIA and the further clarification make it clear that EC must be given by MoEF & CC, by no stretch of imagination the second respondent SEIAA will acquire competency to grant EC. The applicant has also stated that one, Mr. Selvavinayagam has filed Appeal Nos.67 and 68 of 2015 before the learned Appellate Authority against the Consent granted by the Board and the applicant has also filed an application to implead in the said appeal on 19.1.2016. It is stated that thereafter the applicant association visited the District Environmental Engineer, Cuddalore on 10.2.2016 to file RTI and requested information about Consent orders issued by the Board to the industry. It is the applicant's case that it was during this meeting the applicant association came to know that the industry has obtained EC from the second

respondent under EIA Notification, 2006. Immediately thereafter the applicant tried to source from public domain and according to the applicant, the entire EC was not available in the website and the website of SEIAA was found defunct. Thereafter, he made an application under RTI on 16.2.2016 which was received by SEIAA by its letter dated 29.2.2016 but despatched on 9.3.2016 and received by the applicant on 10.3.2016. The applicant has sent another letter on 15.3.2016 and there was no reply within 30 days. It was on 15.3.2015 a representation was made to MoEF & CC and other officers regarding refusal of information by SEIAA and on 16.3.2016 a mail was sent to Member Secretary and Chairman, SEIAA asking for a copy of EC. On 21.3.2016 a reply was received from the Chairman, SEIAA that steps have been taken to bring the website on line. The applicant has made a complaint on 21.3.2016 followed by a reminder on 27.3.2016 that the SEIAA website was defunct. It was on 31.3.2016 a letter of SEIAA dated 28.3.2016 was received by the applicant, directing to pay a sum of Rs.1096/- for furnishing the documents asked for on 16.2.2016 and fee was paid on 31.3.2016 and after reminders on 28.3.2016, 30.3.2016, 4.4.2016 and 7.4.2016, it was ultimately on 16.4.2016 the applicant was granted copy of EC as well as Form I even though other documents like EIA has not been provided. It is because of the delay caused by SEIAA, as reflected under RTI communication, the application has been ultimately filed before this Tribunal on 25.4.2016 and according to the applicant association, due to the above reason the application is filed within the time stipulated under EIA Notification, 2006.

14. The fifth respondent project proponent in its reply has raised a preliminary objection regarding maintainability of the application. According to the said respondent, the impugned order of EC is appealable as per Section 16(h) of the National Green Tribunal Act, 2010 (NGT Act). Therefore, the present application filed under Section 14 of the NGT Act is contrary to law. The EC granted by the second respondent SEIAA is in accordance with EIA Notification, 2006 as notified by the Government of India as per the powers conferred under the Environment (Protection) Act, 1986 and therefore the EC assumes a statutory significance and such orders are presumed to be valid unless the contrary is proved and there is no substantial question of environment involved in this case. Mere contention that the second respondent has no competency to pass

the impugned order will not take away the procedure laid down under Section 16 of the NGT Act, 2010 in filing appeal. It is also stated that only realising the same the applicant has filed Appeal No.123 of 2016 against the subsequent EC granted by the second respondent SEIAA in favour of the fifth respondent wherein exactly the same averments which have been made in this application, are made and therefore the applicant is aware of the provisions of the NGT Act, 2010 and the filing of this application is an abuse of process of law.

15. It is the further case of the fifth respondent that even on the ground of limitation, the application is liable to be rejected. By virtue of granting clearance a right has been accrued on the fifth respondent and anybody who seeks to challenge in order to take away that right is expected to move the Tribunal within the time prescribed under the NGT Act. The impugned orders of EC are dated 24.6.2014 and 24.11.2015 and the application is filed in April 2016 and therefore the same is against Section 14(3) and proviso to Section 16 of the NGT Act, 2010. That apart, the fifth respondent has also raised the issue of locus standi of the applicant association. The applicant has not shown any proof of his residency in and around the fifth respondent unit. Even otherwise, the fifth respondent unit has been in existence for decades, without any complaint from any one. The applicant, who challenges the procedural violation in granting EC, has no vested right without any proof of violation of any substantial right relating to environment. The applicant, which is Puducherry Environment Protection Association, concerning about Puducherry territory, has failed to establish its interest in Cuddalore and therefore the application is filed only with an ill-motive and to harass the fifth respondent. The applicant having filed an impleading petition before the Appellate Authority in respect of the appeal against the same issue cannot file this application.

16. While dealing with the merits of the case, it is stated by the fifth respondent that the said industry has been functioning from 1991, complying with all environmental requirements with adequate safeguards and it is a ZLD unit, causing no pollution whatsoever. The industry is functioning with prior approval from the Government of India, including EC and Consent from the Board. It is also stated that the fifth respondent has been involved in the manufacture of bulk drugs for pharma company and also actively involved in Research and Development agenda for the larger interest

of the society. The products prepared by the fifth respondent are crucial and are the drugs and medicines required for important health problems such as tuberculosis and severe other ailments. It is also stated that the fifth respondent is the only manufacturer of bulk drug for treatment of tuberculosis. The fifth respondent industry is highly reputed and its credit have been acknowledged by the Government of India by providing Certificate of Appreciation. The fifth respondent industry has also been certified as ZLD unit following environmental norms. The attitude of the applicant in attempting to close down the fifth respondent is without realising important requirement of drug to treat several patients from severe ailments. There are large number of workers employed in the unit which is around 800. By attempting to close down the unit, the concept of sustainable development can not be achieved.

17. It is stated by the fifth respondent that the industry was in existence before EIA Notification, 2006 and in fact under the provisions of the EIA Notification, 1994 EC was obtained on 24.10.2000 and after EIA Notification, 2006, EC was obtained under the said Notification also for which the second respondent SEIAA has jurisdiction to issue EC for change in product mix along with change in quantity of number of products. Considering the necessity, in the year 2009 the fifth respondent has applied for Consent to manufacture additional products as product mix assuring that the same would not affect the trade effluents generated and air emissions would be maintained within the consented quality and quantity and the same was apprised by the Expert Body of the Board on the basis of the EC dated 24.10.2000 and the circular of MoEF & CC dated 14.12.2006 and Consent was granted in 2011 on the assurance that the fifth respondent will maintain the quantity of trade effluents generated and air emission within the consented quality and quantity. Such Consent granted by the Board is an appealable order. It is also stated by the fifth respondent that the applicant has chosen to state certain quantity erroneously stating as TPM (Tonne per month) instead of TPA (Tonnes per annum) and the fifth respondent has never raised the quantum of 193.52 TPM from the date of EC from the year 2000. The comments made by the applicant is denied as false. The fifth respondent has made application to SEIAA for expansion of its activities and such unit is situated in the notified industrial estate and it is the B category project as per EIA Notification, 2006. It was referred to SEIAA for

recommendation and finally after several meetings SEIAA has granted Consent . It is also stated that the first respondent MoEF & CC has also inspected the fifth respondent unit and gave compliance report in 2014 stating that the unit is in compliance of the EC. In the said report the first respondent has clearly acknowledged that the fifth respondent has applied before the first respondent for clearance. If really the project falls under category A any application sent to SEIAA will be forwarded to MoEF & CC. However, in this case, the SEIAA has granted clearance which is statutory in nature and deemed to be legal until set aside in accordance with law and cannot be held as void ab initio. It is also stated that in the event of this Tribunal coming to a conclusion that the first respondent is the competent authority, the fifth respondent would always obey the order and apply to MoEF & CC for EC. The fifth respondent has also referred about the order passed by this Tribunal on 24.2.2014 in Appeal No.64 of 2013 wherein having found that the project proponent has complied with all environmental norms, the Tribunal held in public interest and social needs that EC originally granted by SEIAA based on adhoc guidelines can be continued for a period of six months with a direction to the project proponent to make application to obtain EC based on the guidelines issued by MoEF & CC. The other allegations raised by the applicant are denied.

18. In the additional reply filed by the fifth respondent it is stated that the role of the fifth respondent in manufacturing the said drug is critical and even internationally the fifth respondent is one of the few manufacturers to manufacture cycloserine which is used for treatment of tuberculosis. The fifth respondent unit has been inspected and certified by the World Health Organisation (WHO) with Good Manufacturing Practices. The fifth respondent's Cuddalore unit manufacturing practices have been found acceptable and approved by the United States Food and Drug Administration Department, Health Products Regulatory Authority of Ireland, the European Directorate for the quality of medicines and healthcare. It is also stated that the fifth respondent has been connected with on-line monitoring system of the Board and monthly compliance is being reported and as on date it has installed sophisticated and modern effluent and sewage treatment system by investing huge sums of money and attained ZLD. The impugned ECs are only for the expansion activities in furtherance of the original EC

granted on 24.10.2000. It is also stated that as per the terms of general conditions of the impugned EC issued under EIA Notification, 2006, the fifth respondent immediately communicated EC to various authorities as required, apart from issuing public notice about the grant of EC by SEIAA stating that the copies of EC will be available with Board and in the website of SEIAA by public notice advertisement dated 29.6.2014 in The Hindu as well as Dinakaran newspaper and therefore the conditions contemplated under the EC have been complied with and by virtue of the paper publication the entire public have been put to notice about the issuance of EC by SEIAA. The explanation stated by the applicant as if he has visited DEE's office on 10.2.2016 is only to get over the period of limitation, apart from reiterating that the application as such is not maintainable. The reasons given for the purpose of getting over the period of limitation are not at all acceptable. Even though the applicant has chosen to state that several members of the applicant are living in and around the industry, there are no particulars or proof. The applicant has not explained the reason for delay from the public notice issued on 29.6.2014 till filing of RTI on 16.2.2016 and it is after nearly two years period the applicant states that he has been wandering here and there for getting information. It is also stated that the copy of EC was available with the Board apart from the Block Development Office and the applicant could have access to the same from the said office. The applicant has chosen to state that the SEIAA website was not functional for the past four or five months which means that till November, 2015, the SEIAA website was not available. The averment of the applicant that the website of SEIAA was found to be defunct is not sustainable as it is not the case of the applicant that the same was not functional after issuance of EC for a period of one year. The fifth respondent has also stated that under Section 14 (3) of the NGT Act, 2010 the application is clearly barred by limitation taking note of the cause of action first arose

19. Even though the other respondents have not filed reply, the learned counsel appearing for SEIAA Mrs. E. Saraswathy has produced the website particulars of SEIAA during the relevant point of time.

20. Mr.T. Mohan, learned counsel appearing for the applicant, while meeting the claim of the project proponent in respect of maintainability of the application on the point

of limitation and want of cause of action, has focussed upon the issue that when EC was granted to the project proponent on 24.10.2000 for 13 products, it is not known as to how, while granting the impugned EC on 24.6.2014 on the basis of the claim of expansion the product has increased to 53, taking the originally permitted product as 25 and therefore, according to him, there is *prima facie* illegality in the impugned EC and that will be violation of EIA Notification, 2006. He would insist that when Cuddalore has been categorised as CPA by the Central Pollution Control Board, by virtue of the EIA Notification, 2006, even if in normal course of time such product will be covered as B category, it should be treated as A category and MoEF & CC alone is the authority competent to grant EC and in the present case, the second respondent SEIAA has no jurisdiction to grant the impugned EC. Therefore, according to him, the impugned EC is void ab initio. When it is void ab initio and is a nullity in the eye of law, there is no question of limitation. He has also relied upon the contents of Form I submitted by the project proponent for expansion wherein it has deliberately suppressed the fact that Cuddalore is in CPA and therefore it amounts to fraud having been committed by the project proponent and fraud vitiates other follow up action and in that way the impugned EC is to be set aside as nullity and vitiated by fraud. It is his further submission that there is no communication of the impugned EC by putting the EC in public domain by SEIAA, as narrated, while dealing with the facts of the case. It was only after the enormous efforts taken by the applicant they were able to get the copy of the impugned EC and therefore there is no delay. He also submits that when the stakeholders have failed to perform their duty of placing the impugned EC in public domain, such failure cannot be thrust on the applicant for the purpose of throwing out the application without going into the merits and on the technicality of limitation.

21. To substantiate his contention that Cuddalore continues to be a CPA, he would rely upon various official memorandums issued by MoEF & CC and he has also stated that as early as 2015 there has been a communication that Cuddalore continues to be CPA and therefore the proposal of the project proponent dated 16.5.2013 for expansion made by way of application in Form I is vitiated by the deliberate concealment of material fact and EIA Notification, 2006 makes it very clear in Para 8 (vi) that any deliberate concealment will not give any right on the parties. He has also compared

that during the relevant point of time two other units viz., M/s. Asian Paints. Cuddalore, has applied for EC, by making such application to MoEF & CC. Similarly, in respect of another unit viz., Ms. Clariant Chemicals Ltd., Cuddalore, when application was made to SEIAA, the same was forwarded to EAC for making the impact study and ultimately it was MoEF & CC which has issued EC in those cases. Therefore, according to him, there are instances to show that Cuddalore continues to be a CPA as known to SEIAA as well as MoEF & CC and in such circumstances SEIAA ought not have usurped the powers of MoEF & C which is illegal. He would submit that EC to be granted by MoEF & CC is different from that of SEIAA. In cases where MoEF & CC is the authority to grant EC, it is the Expert Appraisal Committee (EAC) which studies the impact assessment consisting of various committees specialised in separate fields. On the other hand, in respect of SEIAA, there is only one consolidated committee called SEAC and the rigourness of scrutiny by EAC will be lacking in SEAC especially in respect of the CPA like that of Cuddalore.

22. To substantiate his contention that order passed by an authority who has no jurisdiction for passing such order are to be tainted as void and such order has no legs to stand and is ultra vires, he has relied upon the judgment of the Supreme Court in DLF UNIVERSAL LTD VS. COUNTRY PLANNING DEPT (2010) 14 SCC 1. Even judicial orders which are passed by the court which are incompetent are nullity, as held by the Supreme Court in SARUP SINGH VS. UNION OF INDIA (2011) 11 SCC 198. Any void order cannot create any legal right or obligation as it was held in SHIVSHANKAR GURGAR VS. DILIP reported in AIR 2014 SC 1182. He has also relied upon various judgments in respect of jurisdictional issues including DWARKA PRASAD AGARWAL (DIED) BY LRS VS. B.D. AGARWAL, AIR 2003 SC 2686 and SUSHIL KUMAR MEHTA VS. GOBIND RAM BOHRA (DEAD) THROUGH HIS LRS, (1990) 1 SCC 193. As far as the locus standi is concerned, he has also relied upon the judgment of the Rajasthan High Court in PROF. K.P. SHARMA VS. STATE OF RAJASTHAN to substantiate the above said contention. While meeting the allegation of the respondent, particularly the project proponent that the applicant association has no locus standi, the learned counsel would submit that apart from the fact that Cuddalore and Puducherry are within the primary area, law is well settled in that in cases of public

interest the issue of locus can supercede any decision on merit affecting larger interest of the people. He has relied upon the judgment in VIMAL BHAI VS. MOEF by a decision of this Tribunal dated 14.12.2011 apart from another decision in M.C. MEHTA VS. UNIVERSITY GRANTS COMMISSION (Original Application No.12 of 2014 dated 17.7.2014). To substantiate his contention that suppression of material facts amounts to fraud he has relied upon various judgments including BHURAO DAGDU PARALKAR VS. STATE OF MAHARASHTRA, 2005 (7) SCC 605. He has also taken us to various documents to show that the project proponent has played fraud on SEIAA and SEIAA has actually passed the impugned EC in collusion. He would correlate that when originally there was only 13 products for which EC was granted in 2000, it is not known as to how the Board has given consent for 18 products. Likewise, the number of products have consistently increased in various consent orders given by the Board which are totally opposed to the original EC granted by MoEF & CC in the year 2000 and therefore according to him even the consent orders are illegal and by taking advantage of the consent order, the project proponent has started manufacturing different products which is against the very concept of EIA Notification, 2006 and according to him, it is significant to note that under the impugned EC, the SEIAA has mentioned about the consent orders issued by the Board which have no legs to stand and on that score also the impugned EC has to be nullified. He would submit that by virtue of the consistent fraud committed by the fifth respondent project proponent the operation of its unit becomes illegal and because of that illegality there was a recent accident in the unit in 2015 where solvents leak resulted in explosion in the newly expanded facility. That apart, the unit has been operating without valid consent for a long period and even when the leak of gas has occurred in 2011 there was no valid consent with the project proponent. Therefore, he has submitted that locus standi issue cannot be raised in public interest litigation and that by virtue of fraud the EC is to be treated as nullity. In any event, the applicant has prayed for a declaration that EC is a nullity since nullity is to be declared by a competent court.

23. Per contra, it is the contention of Mr V. Prakash, learned Senior Counsel appearing for the fifth respondent project proponent that the unit was established in SIPCOT area in 1984 and came into existence in 1991 and at that time neither EIA

Notification 1994 nor EIA Notification 2006 were in existence. EC was granted originally on 24.10.2000 to the project proponent under EIA Notification, 1994. While it is true that there was a consent order issued by the Board on 20.3.2002, according to the learned Senior Counsel, when the validity or otherwise of the consent order, which has to be challenged before the Appellate Authority, has not been questioned anywhere, the Tribunal cannot go into that. His contention is that in 2014 when there was an expansion by way of the impugned EC granted, there is nothing on record to show that the project proponent had any intention to disobey the EIA Notification, 2006. He would submit that whether the project proponent approaches SEIAA or MoEF & CC, it is of no significance since before any of the authorities, the project proponent has to undergo the ordeal as per law. Simply because one authority is rigorous in scrutiny he would submit that there is no distinction between MoEF & CC and SEIAA in making appraisal, as long as the concept of appraisal is well defined in EIA Notification, 2006. He has taken us to various provisions of NGT Act and in the light of the object of the Act fairly contended that while the status of locus is not a very important issue in this case and therefore in effect the act of the applicant in questioning the EC on the ground of public interest cannot be denied, he has explained as per the provisions of the NGT Act, 2010 the basic distinction between Section 14 and Section 15. While dealing with Section 14 of the NGT Act which deals with the settlement of disputes, locus may not be a relevant factor and it remains the fact that under the said provision the applicant is expected to be diligent in prosecuting the issue and that is the reason why the makers of law have specifically used significant words cause of action for such dispute first arose. Therefore, according to him, even though the object articulated as per Section 14 of the NGT Act imposing broad jurisdiction, that is with the specific purpose that such right must be exercised within the period of limitation from the date of cause of action first arose. He has also stated that on the facts of the present case, when the impugned EC is dated 24.6.2014 and the same has been published in the newspaper by the project proponent, giving website address so as to make any person to have easy access to the EC, the filing of the present application on 25.4.2016 is totally against Section 14(3) of the NGT Act which has to be scrupulously followed. He has also compared the words under Sections 14 and 15 of the NGT Act to show that on

harmonious construction of both the provisions one can find that while Section 14 is restrictive in respect of limitation, Section 15 is extended to a larger period of time probably due to the reason that the effect of environmental pollution may be realised only in course of time. Under Section 15 of the NGT Act even though it has to be liberally interpreted, it is more of tortuous liability in which event the person claiming damages must show injury caused to any person or anybody's property. In the present case, there is no specific plea of injury to any person or damage to property by the conduct of the project proponent and therefore even under Section 15 of the Act, the applicant cannot insist this Tribunal to grant compensation. He has also referred to Section 16 of the NGT Act wherein the above section uses the word 'person aggrieved' and therefore any person challenges the order by way of appeal must prove that he is an aggrieved person which is not available under Section 14 or Section 15 of the Act and therefore under Section 16 of the Act appeal can be filed by only a person who is a party to the proceeding who receives the communication and therefore for the parties to the proceedings the appeal remedy is available under Section 16 of the Act, provided the person is aggrieved and if he is not the party in the proceeding, he will have a right under Section 15 of the Act provided he proves cause of action first arose and from the said date which is the time prescribed under Section 14(3) of the Act he invokes jurisdiction of the Tribunal. In any event, a person coming under Section 14 of the Act must prove that there is a breach of civil right and on the facts of the present case, there is no whisper of any breach of any civil right of any person and therefore even on that ground the application under Section 14 of the NGT Act is not maintainable. When different periods of limitation is prescribed under Sections 14, 15 and 16 of the NGT Act, jurisdiction based on limitation is a relevant fact to be considered. The present application having been filed especially under Section 18(1) of the NGT Act, 2010 there is no question of any compensation. He would also submit that 'fraud' is a question of fact and it has to be pleaded and proved and even when 'fraud' is alleged a person has to pass through the period of limitation. He has also questioned the *bona fide* of the applicant who is already having the post of Secretary and he himself has stated that he has visited the District Environmental Engineer but it is not known as to why he has not chosen to file the application strictly in accordance with Section 14(3) of the NGT Act,

2010 and therefore the plea made by the applicant about the so called earnest steps taken has to be rejected as bogus. When the applicant seeks to invoke the jurisdiction of this Tribunal, it is his duty to prove that he has come within the period of limitation. Simply saying that he has visited various offices is not a sufficient reason under Section 14(3) of the NGT Act, 2010. He also submits that whether the area is declared as CPA or not is not by any legal implication or statutory notification and therefore there cannot be any presumption that every project proponent must know whether the area is a Critically Polluted Area or not and therefore there is no question of any suppression on the part of the project proponent.

24. He has also controverted the arguments of the learned counsel appearing for the applicant that void order has no limitation. He wondered as to why the applicant still wants to challenge the order if it has to be ignored. Therefore, according to the learned Senior Counsel, when any person seeks the indulgence of this Tribunal to declare an order as null and void especially in a specialised Tribunal like that of NGT, he has to prove that he has strictly adhered to the period of limitation contemplated under the Act. In fact in Form No. I the project proponent has specially stated the area of Cuddalore. If really Cuddalore is a CPA, as declared by the Central Pollution Control Board, it was the duty of SEIAA not to entertain the application or direct the project proponent to approach MoEF & CC and for such fault, the project proponent cannot be penalised. There is absolutely nothing to show that there has been any collusion between the project proponent and the SEIAA. Any order passed by the statutory authority is presumed to be valid, unless and until it is set aside by a competent court of law and there is no negative presumption or presumption against the validity of the order passed by a statutory authority. It is not as if SEIAA is a total stranger to show that it is without any jurisdiction. EIA Notification, 2006 specifically confers jurisdiction to SEIAA in respect of B category units and when admittedly the unit of the project proponent is of B category, one cannot say that SEIAA is a stranger based on communication issued by the Central Pollution Control Board about which people are not expected to know. Though ignorance of law is no excuse, it is not automatic in respect of every communication. Therefore, there is no deliberate misrepresentation or fraud on the part of the project proponent. He has also submitted that the project proponent has been

declared ZLD unit and the monitoring is being done online throughout and the unit of the project proponent is the manufacturer of medicines for tuberculosis and one of the very few manufacturers in the entire world and at the instance of the applicant if the unit of the project proponent is going to be disturbed, the same cannot be termed at any stretch of imagination as sustainable development . To substantiate his contention that there is no presumption that every communication to be known to everybody, he has relied upon the judgment of the Supreme Court in AIR (1979) SC 21. He has also relied upon another judgment of the Supreme Court in M. MEENAKSHI V. METADIN AGARWAL (2006) 7 SCC 470 regarding the void order to the effect that even void order has to be declared so by the competent court. He has also contended that at no place in the pleading the applicant has made any averment about pollution or defiance of environmental norms or standards by the project proponent. He has also submitted that the moratorium imposed by the Government of India was subsequently lifted on 15.2.2011 and the Office Memorandum issued by the Government of India dated 17.9.2013 is in respect of moratorium regarding Cuddalore. Whereas the application was made by the project proponent on 16.5.2013 and therefore in the absence of any evidence to show that there has been deliberate suppression on the part of the project proponent, it cannot be said to be vitiated by fraud and therefore on the factual matrix, the applicant having filed application beyond the period of limitation prescribed under Section 14(3) of the NGT Act, 2010, is liable to be dismissed.

25. The learned counsel appearing for SEIAA has produced a communication slip to show the website of SEIAA which was opened and the EC was in fact put in public domain. According to her, even otherwise when the project proponent has given a public notice, giving the website particulars, the applicant has not chosen to state anywhere as to what steps he has taken immediately on seeing the publication in the newspaper for the purpose of opening the website. Any EC will not be kept open in the website for ever and even EIA Notification, 2006 prescribed a time limit within which the EC is to be kept in public domain and therefore according to her there is absolutely no fault on the part of the second respondent SEIAA in passing the impugned order and the applicant has to necessarily prove that he has approached the Tribunal within the time stipulated under Section 14(3) of the NGT Act, 2010.

26. After hearing the learned counsel appearing for the parties, referring to the pleadings and voluminous documents filed by both the parties, particularly the applicant as well as project proponent, the following points arise for consideration by this Tribunal:

(1) Whether the impugned EC issued by the second respondent dated 24.6.2014 and the consequential amendment dated 24.11.2015 are to be declared as null and void on the point of jurisdiction and on fraud stated to have been committed by the project proponent.

(2) Whether the application is maintainable on the ground of limitation?

27. Even though both the respective counsel have also argued on the merits of the case, as the main focus is on the approval of SEIAA in passing the impugned order and the period of limitation, we have focussed on the above said issue of maintainability alone.

28. Issue Nos.1 and 2: Issue No.2 is consequential to our decision on Issue No.1 and therefore we have taken both the issues 1 and 2 together for our consideration.

DISCUSSION AND DECISION: 29. The main focus of contention as raised by the learned counsel appearing for the applicant in this case is that the project of the fifth respondent project proponent is situated within 10 km of the boundary of CPA notified by the Central Pollution Control Board from time to time. If the project is situated within the Critically Polluted Area, as per the EIA Notification, 2006, in its general condition as incorporated from 1.12.2009, any such project which is situated within 10 km from CPA even if it is specified in category B, will be appraised at the Central level treating it as category A project. The said General Condition which is incorporated below the Schedule to EIA Notification, 2006 reads as follows:

General Condition (GC):

Any project or activity specified in Category 'B' will be appraised at the Central Level as Category 'A', if located in whole or in part within 5km from the boundary of : (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (53 of 1972); (ii) Critically Polluted areas as notified by the Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) Eco-sensitive areas as notified under sub-section(2) of Section 3 of the

Environment (Protection) Act, 1986 and (iv) inter State Boundaries and international boundaries; provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial Estates /parks/complexes/ areas, Export Processing Zones (EPZ), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7 (c) and common hazardous waste treatment, storage and disposal facilities(TSDFs) specified in item 7(d), the appraisal shall be made at Central level even if located within 10km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5 km or 10 km, as the case may be of the areas mentioned at item (i), (ii), and (iii) above.

This is also clarified by an Official Memorandum issued by the MoEF & CC dated 28.4.2011 which is as follows:

No.J.11013/5/2010-IA-II(I)

Government of India

Ministry of Environment and Forests

Paryavaran Bhavan

CGO Complex, Lodi Road

New Delhi – 110 003

Dated 28th April, 2011

Office Memorandum

Sub: Consideration of projects in respect of critically polluted areas.

Ministry of Environment and Forests had imposed a moratorium on consideration of projects for environment clearance to be located in critically polluted areas/industrial clusters identified by the Central Pollution Control Board. Based on the review of the Action Plans for the 43 identified critically polluted areas, moratorium has now been lifted in 20 clusters vide Ministry's Office Memorandums of even No. dated 26th October, 2010, 15th February, 2011 and 31st March, 2011. In the remaining 23 identified critically polluted areas/clusters, it has been decided to extend the moratorium further upto 30th September, 2011.

Ministry has been receiving queries regarding consideration of projects for environmental clearance in terms of the EIA Notification, 2006 particularly on the applicability of general condition in respect of projects to be located in

these clusters from which moratorium on consideration of projects has been lifted.

It may be noted that the EIA Notification, 2006, the General Condition stipulates that "any project or activity specified in Category 'B' will be treated as Category 'A' if it is located in whole or in part within 10 kms. From the boundary of : (i) protected areas notified under the Wildlife (Protection) Act, 1972, (ii) critically polluted areas as notified by the Central Pollution Control Board from time to time, (iii) notified eco-sensitive areas, (iv) inter-State boundaries and International boundaries".

In view of the above, this is to clarify that the projects to be located within 10 kms. from the latest list of the critically polluted areas as identified by the Central Pollution Control Board would attract the General condition of EIA Notification, 2006 and therefore, such projects would need to be treated as category 'A' projects.

This issues with the approval of the Competent Authority."

30. On the facts of this case, it is clear that the project proponent has applied for the proposed expansion of its Pharmaceutical Multi Product Facility in Form I as per EIA Notification, 2006 on 31.1.2013 from 3360.74 TPM of bulk drugs and intermediates in the existing area of 6.52 ha to 3345.5 TPM of bulk drugs and intermediates with the total number of products after expansion of 53 in the expanded area of 7.29 ha and this being a project covered under 5(f) of the schedule to the EIA Notification, 2006 is a B category unit since it is located in an industrial area viz., SIPCOT Industrial Complex, Kudikadu, Cuddalore. If it is situated within 10 km of CPA, the expansion proposal itself has to be appraised as A category with the result it is the MoEF & CC which is the authority and not SEIAA which is the normal authority for granting the EC in respect of B category projects.

31. Now we have to see as to what is Critically Polluted Area and who is authorised to declare the area as CPA. The Central Pollution Control Board (CPCB) was established as per the provisions of the Water (Prevention and Control of Pollution) Act, 1974 with the main objective of maintaining the wholesomeness of water (surface and ground water) in India. Likewise, the CPCB was empowered under the provisions of Air (Prevention and Control of Pollution) Act, 1981 also. The purview of the CPCB was widened further by the provisions of other Acts and Rules to cover compliance of other

environmental components. Under Section 16 of the Water Act, the CPCB has a specific function to advise the Central Government of any matter concerning the prevention and control of water pollution. As per Section 16(2) of the Water Act, the CPCB has the following functions:

16. Functions of Central Board. – (1)

(2) In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely: -

(a) advise the Central Government or any matter concerning the prevention and control of water pollution;

(b) co-ordinate the activities of the State Boards and resolve disputes among them;

(c) provide technical assistance and guidance to the State Boards, carryout and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

(d) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;

(e) organise through mass media a comprehensive programme regarding the prevention and control of water pollution;

(ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of Section 18;

(f) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

(g) lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well;

Provided that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;

(h) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water pollution;

(i) perform such other functions as may be prescribed."

Therefore, it is clear that under Section 16(2)(a) the CPCB has a function to advise the Central Government of any matter concerning the prevention and control of water pollution.

32. Likewise, such advisory power is available under the Air Act also to the CPCB. Anthropogenic activities are major sources of environmental pollution. In recent times, the problem of pollution and its adverse ecological impacts have been aggravated by an increase in the scale of residential, industrial and other development activities. This has led to a realisation that there is a need to formulate an objective method to quantify the environmental conditions of such polluted areas. The criteria for comprehensive environmental assessment of industrial clusters was formulated by the CPCB working under MoEF & CC in December, 2009. Taking note of various ecological risk assessment and environmental impact assessment used to determine the impact of developmental projects and various techniques of Geographic Information System (GIS) it was felt that there is a need for adopting spatially explicit modelling approaches to handle the dynamics imposed by the environment. Various hazardous instances happened throughout the world due to industrial pollution and several measures have been developed for the assessment of environment consequences. Towards the said process, a Comprehensive Environmental Pollution Index (CEPI) came to be evolved as a focus in environmental system analysis based on aggregated measurement of environment performance of sustainability. CEPI offers decision makers, in this case - MoEF & CC, the condensed environmental information for performance monitoring policy progress evaluation, benchmarking comparisons and decision making. CEPI reduces the number of indicators by aggregating them to make the information easily accessible. Hence it is otherwise difficult to evaluate the environmental performance on the ground of so many environmental indicators. Therefore, CEPI which is found out by the CPCB based on study made of theoretical level, operational level and that is the indicator to the decision makers for having a performance comparison decision making and policy making. The criteria found out by the CPCB for arriving at CEPI and the methodology have been formulated in detail in the year 2009. The CPCB, in collaboration with the IIT Delhi carried out comprehensive environmental assessment of 88 permanent industrial clusters in India during 2009- 2010 based on CEPI criteria. The CEPI criteria is having a rationale number between 0 - 100 and based on the quality of environment the following algorithm of source pathway and receptor the CPCB gave mark in the form of code to the said 88 industrial clusters. It was found that out of 88

prominent industrial clusters, 43 industrial clusters in 16 States in India were having CEPI score 70 and above and that was identified as Critically Polluted Industrial Clusters. Those clusters numbering 32 having CEPI score of 60 to 70 were categorised as severely polluted area. This comprehensive environmental assessment in respect of 88 prominent industrial clusters made by

CPCB in the year 2009-2010 was handed over to Government of India by the

CPCB as advisory to the Central Government, based on which the MoEF & CC had imposed a temporary moratorium by the Official Memorandum dated 13.1.2010 and in the said moratorium Serial Nos.1 to 43 viz., 43 industrial clusters were declared as Critically Polluted Area. Cuddalore (Tamil Nadu) which had CEPI Score 77.45 which is above 70, was also categorised as CPA. Under the moratorium dated 13.1.2010 by virtue of the powers conferred under the Environment (Protection) Act, 1986, the Central Government, for the purpose of protecting and improving the quality of environment, including the restriction of area in which any industry, operation or process shall not be carried out or shall be carried out subject to certain safeguards, has imposed temporary restriction to developmental projects in such clusters/area by imposing the procedure to be followed which is as follows:

"4.1.1 The developmental projects from industrial clusters with CEPI score above 70 (as listed at Serial No.1 to 43 of the Annexure) received for grant of environmental clearance in terms of the provisions of EIA Notification, 2006 (including projects for Stage -I clearance i.e. scoping (TORs), which are presently in pipeline for environmental clearance of which would be received hereafter shall be returned to the project proponents.

4.1.2 This restriction on consideration of projects from critically polluted clusters/areas above will apply for a period of 8 months upto August, 2010 during which time the Central Pollution Control Board along with the respective State Pollution Control Board/UT Pollution Control Committees will finalise a time bound action plan for improving the environmental quality in these identified clusters/areas. The situation will be reviewed thereafter and further instructions issued accordingly; provided that projects relating to renewal of mining lease without any increase in production and/or lease area which are already in operation in these clusters will continue to be appraised in accordance with the procedure prescribed under EIA Notification, 2006 and decision taken on merits; and provided further that the

projects of public interest, such as projects of national importance, pollution control, defence and security, with prior approval of the Competent Authority, MEF/SEIAA for category 'A' & 'B' respectively, on a case to case basis, will continue to be appraised in accordance with the procedure prescribed under EIA Notification, 2006 and decision taken on merits.

4.2 *The developmental projects from industrial clusters with CEPI score between 60 – 70 (as listed at Serial No.44 to 75 of the Annexure), which are in the pipeline or are received for grant of environmental clearance in terms of the provisions of EIA Notification, 2006 (including projects for stage-I clearance i.e. scoping (TORs) will be considered following the procedure outlined in this Ministry's earlier circular No.J -11013/18/2009-IA.II (I) dated 25th August 2009 relating to 'proposals for environment clearance for the projects located in the critically polluted areas as identified by the Central Pollution Control Board' which is available on the website of the Ministry www.envfor.nic.in.*

5. *In the eventuality of any dispute regarding the location of any project within the critically polluted area or otherwise, a reference will be made to CPCB and based on their advice a view will be taken on such projects.*

33. Cuddalore was at Serial No 16. The above said moratorium was imposed upto 31.8.2010. During the period of moratorium, the State Pollution Control Board/Pollution Control Committee have prepared time bound action plan for finalisation by the CPCB. However, the action plans were not finalised within the prescribed period of moratorium viz., 31.8.2010 and therefore the Government of India has extended the period of moratorium upto 31.10.2010. On finalisation of the action plans, the Government of India has decided to lift the moratorium in respect of five industrial clusters viz., (1) Tarapur (Maharashtra) (2) Pattancherru Bollaram (Andhra Pradesh), (3) Coimbatore (Tamil Nadu), (4) Vapi (Gujarat) (5) Mandi-Govindgarh (Punjab) based on the recommendations of the CPCB and in respect of the remaining 38 industrial clusters which includes Cuddalore, the moratorium was further extended upto 31.3.2011 by the Official Memorandum dated 26.10.2010 as it is seen in the Official Memorandum dated 15.2.2011 of the MoEF & CC. The CPCB in the communication dated 15.2.2011 has informed the Ministry that the revised action plans submitted by the State Pollution Control Boards have been reviewed and approved by the CPCB and action plan has been initiated in respect of the industrial area viz., (1) Agra (Uttar Pradesh), (2)

Aurangabad (Maharashtra), (3) Bhavnagar (Gujarat), (4) Cuddalore (Tamil Nadu), (5) Dombivalli (Maharashtra), (6) Ludhiana (Punjab), (7) Navi Mumbai (Maharashtra) and (8) Varanasi Mirzapur (Uttar Pradesh). Based on the said recommendation, the Government of India has lifted moratorium in respect of the above said industrial area subject to various conditions. For the proper appreciation of the above said fact, it is relevant to extract the following paragraph of the Official Memorandum of MoEF & CC dated 15.2.2011:

"1. Now the Central Pollution Control Board (CPCB) vide their communication dated 15.02.2011 have informed this Ministry that the relevant revised action plans submitted by the respective SPCBs/ UTPCCs have been reviewed and approved by CPCB and that the implementation of action plans has been initiated in respect of the industrial areas of (i) Agra (Uttar Pradesh), (ii) Aurangabad (Maharashtra) (iii) Bhavnagar (Gujarat) (iv) Cuddalore (Tamil Nadu) (v) Dombivalli (Maharashtra) (vi) Ludhiana (Punjab) (vii) Navi Mumbai (Maharashtra) and (viii) Varanasi-Mirzapur (Uttar Pradesh)

2. In view of the recommendation of the CPCB, it has been decided to lift the moratorium on consideration of projects for environmental clearance in respect of projects to be located in the above mentioned eight clusters /areas namely; (i) Agra (Uttar Pradesh), (ii) Aurangabad (Maharashtra) (iii) Bhavnagar (Gujarat) (iv) Cuddalore (Tamil Nadu) (v) Dombivalli (Maharashtra) (vi) Ludhiana (Punjab) (vii) Navi Mumbai (Maharashtra) and (viii) Varanasi-Mirzapur (Uttar Pradesh) subject to the following conditions:

- (i) CPCB and the respective SPCBs will immediately put the approved action plans on their respective websites.*
- (ii) SPCBs will monitor the implementation of the action plans as per their schedule and ensure that there is no slippage either in terms of timeframe or the activities to be completed relating to the action plan. The report will be submitted to CPCB.*
- (iii) CPCB will also develop a monitoring mechanism and put it in place within 30 days and monitor the implementation of these action plans, area-wise and also carryout random checks on the environmental parameters for their quality. The results will be put on their website.*
- (iv) The respective SPCBs/UTPCCs will monitor the pollution levels in these areas on regular basis and if at any stage it is observed that the levels are*

increasing, it will be immediately brought to the notice of CPCB as well as MoEF and in such a situation the moratorium will be re-imposed.

- (v) Independent third party periodic monitoring on the implementation of action plan will be supported. The results of the monitoring so carried out will be hosted on the website and also communicated to CPCB.*
- (vi) Industrial cluster/area wise Committee comprising various stakeholders inter-alia representatives of locals and experts in the relevant field will be set up to oversee the implementation of the action plans.*
- (vii) The EACs/ SEACs will take extra precaution during appraisal of projects to be located in these areas and prescribe the requisite stringent safeguard measures, so that the environmental quality is not deteriorated further in these areas”.*

34. Therefore, it is clear that it is based on the CEPI index which is being monitored in accordance with the action plan of the State Pollution Control Board, the CPCB approved for lifting of moratorium in respect of the industrial clusters which have been declared in 2009 – 2010 as CPA. It is abundantly clear by the Official Memorandum dated 15.2.2011 that CEPI is not a permanent entity but it will vary from time to time based on the recommendation of the CPCB and in our considered view, one cannot assume that because in the year 2009 – 2010 CEPI score was above 70 in respect of Cuddalore that should continue to be a CPA for ever. As it is elicited above, in the document of the CPCB, the CEPI Index as well as recommendation are ever changing process. The reason which is abundantly available in the record is that the areas identified as CPA are to be closely monitored by the State Pollution Control Board - specialised action for the purpose of abating pollution and when once such actions are implemented with the approval of the

CPCB, the CPCB can recommend the Government of India by virtue of the powers under Section 16(2)(a) of the Water Act and corresponding provisions of Air Act based on which the Government of India takes a policy decision of lifting the moratorium. Therefore, by Official Memorandum dated 15.2.2011, the moratorium imposed on Cuddalore (Tamil Nadu) has been lifted by the Government of India with a direction to the CPCB and State Pollution Control Board to approve the action plan in the website and make a continuous monitoring mechanism, including the monitoring of pollution

level and EAC and SEAC to take extra precaution during the appraisal of the projects to be located in these areas and prescribe the requisite stringent safeguard measure so that environmental quality is not deteriorated further.

35. The question then arose is as to whether in respect of the industrial clusters for which moratorium has been lifted, the general condition will continue to apply to them. It was in those circumstances, the MoEF & CC in the Official Memorandum dated 26.4.2011 has clarified that even in respect of the industrial clusters wherein the moratorium has been lifted the project would continue to be treated as category A. However, there appears to have been a reassessment of CEPI score by the

CPCB during February – April 2013 and in that re-assessment it was found that 8 CPAs which were out of 25 CPAs in respect of which moratorium was lifted by the Government of India from time to time based on the recommendations of the CPCB, it was found that even after the period of two and half years of implementation of action plan there was no improvement in the environmental quality and therefore as per the recommendations of the CPCB, the Government of India has reimposed moratorium with immediate effect. The Official Memorandum issued by the MoEF & CC dated 17.9.2013 makes it clear that in respect of the CPA wherein moratorium was lifted and revised CEPI score in February, 2013 made wherein the CPCB has found CEPI Score was above 70 in respect of 8 units out of 26 units and in respect the remaining 18 units the moratorium was lifted. The following is the relevant paragraph of the Office Memorandum dated 17.9.2013:

"2. The status of preparation of action plans was reviewed in the Ministry of Environment & Forests from time to time, based on the inputs received from Central Pollution Control Board (CPCB). In accordance with the information received from the Central Pollution Control Board that the respective SPCBs and the local stakeholders had initiated work on implementation of the submitted action plans in respect of the industrial areas/ clusters namely (i) Tarapur (Maharashtra) (ii) Pattencherru-Bollaram (Andhra Pradesh), (iii) Coimbatore (Tamil Nadu), (iv) Vapi (Gujarat) (v) Mandi Govindgarh (Punjab) (vi) Agra (Uttar Pradesh) (vii) Aurangabad (Maharashtra) (viii) Bhavnagar (Gujarat) (ix) Cuddalore (Tamil Nadu) (x) Dombivalli (Maharashtra), (xi) Ludhiana (Punjab) (xii) Navi Mumbai (Maharashtra) (xiii) Varanasi –Mirzapur (Uttarpradesh) (xiv) Angul Talchar (Orissa) (xv) Faridabad (Haryana) (xvi) Ghaziabad (Uttar Pradesh), (xvii) Indore (Madhya Pradesh), (xviii) Junagadh (Gujarat), (xix) Noida (Uttar Pradesh) (xx) Panipat (Haryana) (xxi) Bhadravati (Karnataka) (xxii) Mangalore (Karnataka), (xxiii) Greater Kochi (Kerala) (xxiv) Singrauli

(Madhya Pradesh part and Uttar Pradesh Part) (xxv) Ib Vally (Orissa) and (xxvi) Jharsuguda (Orissa) the Ministry of Environment & Forests lifted the moratorium on consideration of projects for environmental clearance in the above mentioned 26 industrial clusters/areas vide OM.s of even no. dated 26th October, 2010, 15th February, 2011, 31st March, 2011, 23rd May, 2011 and 5th July, 2011. In the remaining 17 identified industrial clusters, the moratorium was extended upto 31st March, 2012 and thereafter it was extended till further orders vide OM of even No. dated 30.03.2012.

3. The CPCB conducted monitoring in respect of all 43 Critically Polluted Areas (CPAs) during February-April, 2013 and re-assessed in the CEPI score. The CPCB, vide its communication, dated July 24, 2013 have informed MoEF about the revised CEPI score based on the monitoring conducted during February-April, 2013. The revised CEPI scores based on the Environmental Quality Monitoring conducted during 2013 indicates that CEPI values are either still above 80 or are above 70 alongwith increasing trend as compared to CEPI values assessed earlier by CPCB in 2011 in respect of eight critically polluted areas namely Ghaziabad (UP), Indore (M.P), Jharsuguda (Orissa), Ludhiana (Punjab), Panipat (Haryana), Patancheru – Bollaram (A.P.), Singrauli (UP & MP) and Vapi (Gujarat) from where, the moratorium was lifted earlier vide O.M. of even no. dated 26.10.2010, 15.02.2011, 31.03.2011 and 05.07.2011

4. The revised CEPI scores assessed during 2013 in respect of these eight critically polluted areas, from where moratorium was lifted earlier, are as below:

S.No.	C.P.A	CEPI score during 2013.
(i)	Ghaziabad (UP)	84.13
(ii)	Indore (M.P.)	78.75
(iii)	Jharsuguda (Orissa)	73.31
(iv)	Ludhiana (Punjab)	75.72
(v)	Panipat (Haryana)	81.27
(vi)	Patancheru –Bollaram (A.P)	76.05
(vii)	Singrauli (UP & MP)	83.24
(viii)	Vapi (Gujarat)	85.31

The CEPI scores indicates that even after a period of 2 ½ years of implementation of action plans, there is no improvement in the environmental quality as is evident from the observed values of CEPI in 2013. CEPI score in Ghaziabad (U.P., Panipat (Haryana), Singrauli (U.P. & M.P.) and Vapi(Gujarat) is still above 80. In respect of Indore, (MP), Jharsuguda (Orissa), Ludhiana (Punjab) and Pattancheru-Ballaram (A.P), the CEPI score has shown an increasing tend as compared to 2011. In view of this situation, the moratorium

is hereby re-imposed with immediate effect in respect of these eight areas till further orders."

36. A reading of the said Official Memorandum issued by the Government of India shows that the CEPI score which was revised in the year 2013 has increased above 70 only in respect of eight clusters mentioned in paragraph 4 of the Official Memorandum dated 17.9.2013 which means that regarding the remaining areas in respect of which moratorium was lifted, the CEPI score is not above 70. As stated above, it is solely based on the CEPI score given by the CPCB, the area has been categorised as CPA and therefore from the date when Cuddalore (Tamil Nadu) in respect of which moratorium has been lifted on 15.2.2011, the necessary corollary can be that at least after 17.9.2013 the CEPI score in respect of Cuddalore (Tamil Nadu) is not above 70. It is true that the CPCB has to monitor continuously in respect of 43 original CPA to find out whether CEPI score increases or decreases, depending on which the Government of India takes a policy decision regarding lifting of moratorium. It is only in that regard in the communication dated 23.10.2015 the

CPCB has asked for nomination of a responsible officer for the purpose of undertaking assessment and periodical review and monitoring implementation of action plan formulated in respect of 43 CPAs. By communication dated 9.10.2015 the MoEF & CC has nominated officer for assessment and review of CEPI score. That does not mean that any assessment made in February, 2013 becomes invalid. It is true that there can be another assessment based on monitoring and review by the CPCB and if CEPI score increases in respect of any area, including Cuddalore, on the recommendation by the CPCB, the Government of India can always reimpose moratorium. As long as the CEPI score regarding Cuddalore (Tamil Nadu) in respect of which moratorium has been lifted, appears to have not exceeded 70 score in the reassessment done regarding CEPI score in February-April, 2013, one cannot presume that Cuddalore continues to be a CPA. When the moratorium is lifted and the reassessment of CEPI score in respect of Cuddalore is not found to be above 70 score, we are of the considered view that there is no purpose in contending still that the area should continue to be CPA and the general conditions should prevail.

37. On the facts of the present case, it is clear that EC dated 24.6.2014 was granted during the period when moratorium was lifted in respect of Cuddalore (Tamil Nadu), since as per the Office Memorandum dated 17.9.2013 in respect of Cuddalore (Tamil Nadu), the CEPI score reassessed in 2013 is not above 70.

38. It is seen that the fifth respondent- project proponent which has been in existence even before 1994 EIA Notification was in force viz., in 1991 itself has applied for extension of its project on 31.1.2013, by increasing the number of products but reducing the capacity. In Column No.7 of annexure in Form I given for the expansion proposal the project proponent has stated No for the question whether it attracts general condition. As seen above, the moratorium in respect of Cuddalore was lifted and CEPI score itself, as stated above, has not gone beyond 70 and there is nothing for us to conclude that there has been any suppression much less deliberate suppression in Form I filed by the fifth respondent project proponent. At the time when the impugned EC was granted by SEIAA, there is evidence to show that in respect of Cuddalore CEPI score was not above 70 and therefore the moratorium was lifted and there was no bar on the part of SEIAA in having considered the application of the fifth respondent project proponent.

39. In view of our findings, we have to consider as to whether the present application filed under Section 14 and 15 of the NGT Act is within the period of limitation prescribed under the said Sections. Section 14(3) of the Act is as follows:

" (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

The Act contemplates filing of application in respect of resolving civil disputes relating to environment covered under any one of the statutes in Schedule I within a period of six months from the date when the cause of action for the dispute first arose and another 60 days delay which can be condoned by the Tribunal on showing sufficient cause and beyond that period the Tribunal will not have any jurisdiction. It is seen on

record that the present application has been filed on 25.4.2016 challenging the EC dated 24.6.2014 as amended on 24.11.2015. The amendment made in 2015 was only in respect of survey numbers and practically the EC dated 24.6.2014 is substantial in issue. One of the conditions in the impugned EC is that the project proponent shall advertise in at least two local newspapers widely circulated in the region around the project one of which shall in the vernacular language of the locality concerned within seven days of the clearance letter informing that the project has been accorded EC and copies of clearance letters are available with the Tamil Nadu Pollution Control Board and may also be seen at the website of SEIAA. In accordance with that the project proponent has given a public notice in The Hindu dated 29.6.2014 informing about the EC granted and also stating that the website of SEIAA is containing the EC. However, the applicant association which has stated that it has been following various environmental issues by approaching the Tribunal, has not stated as to whether the applicant had access to the website of SEIAA based on the publication given in the newspaper, The Hindu dated 29.6.2014 by the project proponent. He has only stated about certain efforts taken from 16.2.2016 but has not stated the exact knowledge when the applicant has come to know about the impugned EC. He has not explained the extraordinary delay from June, 2014 to February, 2016, even though the applicant has stated in paragraph 21 which is as follows:

Thereafter the honorary president of the applicant association visited the office of the District Environmental Engineer, Cuddalore on 10.02.2016 to file RTIs and also request information about the consent orders issued by the TNPCB to the industry. During this meeting, it was also learnt that the industry had also obtained environmental clearance under the EIA Notification, 2006 from the SEIAA. Immediately thereafter, the applicant tried to source the environmental clearance from public domain since the clearance by law is mandated to be made available on the website of the SEIAA, the industry and ought to have been published in its entirety in two leading dailies. However, the applicant was not able to find the entire clearance in the newspapers and the website of the industry also did not have a copy of the clearance uploaded for easy access. The website of the SEIAA was found defunct and the order granting clearance was not to be found.

He has not given any particulars as to when he had access to the website of SEIAA and what was the result. In the circumstances, it is evident on record produced by SEIAA

that EC has been uploaded on the website on 10.10.2014 and many other particulars regarding ToR, SEAC minutes etc which are before the date of the impugned EC. However, it is unfortunate that the project proponent has not stated in its reply as to when the project proponent has uploaded the EC in its website. But taking note of the fact that SEIAA website shows about uploading of EC on 10.10.2014 as per the settled law, the period of limitation triggers from the said date onwards when the EC is available in public domain. In as much as one of the stakeholders viz., SEIAA has displayed the EC on the website on 10.10.2014, it is incumbent on the part of the applicant to explain the delay from 10.10.2014 till the date of filing of the application which he has failed. Simply because the project proponent has not stated anything about the display of the EC on the website, it does not mean that till all these stakeholders displayed the EC on website the limitation will not start triggering.

40. The contention of the learned counsel appearing for the applicant by placing reliance on the judgment of the Hon ble Apex Court in *SATTI PARADESI SAMADHI V. M. SANKUNTALA* (Civil Appeal No.5954 of 2014 dated 3.7.2014), in our view, is not applicable to the facts of the present case. First of all, the issue involved in that case was in respect of a suit for declaration regarding three settlement deeds whether they are barred by limitation, apart from other issues. The learned Single Judge of the High Court, by referring to Section 27 of the Limitation Act, 1963 ruled that the defendants in the suit and their regal representatives have acquired right, title and interest by adverse possession and held that the suit was barred by limitation. On appeal, while dismissing the same, the Division Bench of the High Court, considered the only grievance of the appellant as relating to the question of limitation as a preliminary issue and the question of limitation is the mixed question of law and facts and the appellant ought to have been given an opportunity to establish that the suit property is a trust property. It was against the dismissal of the said appeal, the Hon ble Apex Court has decided the Civil Appeal; wherein the issue was taken as to whether the limitation would at all have been taken as a preliminary issue. On the facts of the said case, which is civil in nature, by relying upon Order 14 Rule 2(2) of the Code of Civil Procedure which lays down that where issues both of law and of facts arising in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may try

that issue relating to the jurisdiction of the court or a bar to the suit created by any law for the time being in force.

41. By relying upon an earlier judgment in MAJOR S.S. KHANNA V. BRIG. F.J. DILLON wherein it was held that normally all the issues in a suit should be tried by the court especially when the decision on issues even of law depend upon the decision of issues of fact, since it would result in lopsided trial of the suit. It is based on the same and also relying upon Section 10 of the Limitation Act, the Apex Court held that unless there is a determination of the fact which would not protect the plaintiff, the suit cannot be dismissed on the ground of limitation.

42. Section 19 of the National Green Tribunal Act, 2010 makes it clear that the Tribunal is not bound by the procedure laid down by the Code of Civil Procedure; but shall be guided by the principles of natural justice, even though Section 19(4) provides certain circumstances wherein for discharging the functions under the Act, the Tribunal is vested with the same powers as that of civil court under the Code of Civil Procedure which reads as follows:

"19. Procedure and powers of Tribunal.—

(1)

(2)

(3)

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding its ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed”

43. The learned counsel appearing for the applicant has also relied upon a judgment of the Hon ble Apex Court rendered in RAMESH B. DESAI VS. BIPI VADILAL MEHTA (Civil Appeal No.4766 of 2001 dated 11.7.2006). It again relates to various provisions of the Limitation Act, Code of Civil Procedure and the issue having been raised under the Companies Act. Though it relates to the effect of fraud or mistake as contemplated under Section 17 of the Limitation Act and ultimately it was held that in respect of the transfer of shares effected under the provisions of the Companies Act which is vitiated by fraud Section 22 of the Limitation Act will apply and the company petition cannot be held to be barred by limitation.

44 On the factual matrix of the case on hand, as we have arrived at a conclusion that it was at the time when moratorium was lifted in respect of Cuddalore, based on the recommendations of the CPCB and CEPI score, while it was less than 70, the proposal for expansion was made by the project proponent and therefore there is no question of any suppression or fraudulent conduct on the part of the project proponent in the filing of Form No.I especially when it is admitted that the project proponent has stated about the place viz., Cuddalore. Therefore, the above said judgments relied upon by the learned counsel has no application to the facts of the present case.

45. It was in SUNIL KUMAR SAMANTA V. WEST BENGAL POLLUTION CONTROL BOARD (M.A.No.573 of 2013 in Appeal No.67 of 2013 dated 24.7.2014), the Principal Bench of the National Tribunal, while holding that the appeal was barred by limitation, held that the Tribunal has no jurisdiction to condone delay of 104 days as prayed for. It was held in no uncertain terms that by virtue of the specific provisions under the NGT Act stipulating the period of limitation, it excludes the provisions of the Limitation Act. The relevant portion of the judgment in the above said case is as follows:

“9. A bare reading of the above provision shows that appeal as contemplated under Section 16 against an order or decision or direction

or determination, has to be filed within 30 days from the date on which the order is communicated to the aggrieved persons. Proviso to Section 16 of the NGT Act provides for a special limitation i.e. the appeal could be filed beyond the period of 30 days within a further period not exceeding 60 days, upon showing 'sufficient cause'. This means the tribunal cannot allow an appeal to be filed under Section 16 beyond a total period of 90 days. The NGT Act is a self-contained code as it provides for the forum, procedure, limitation, functions and powers of the tribunal. Furthermore, the scheme of the NGT Act, particularly, with reference to the language of Section 16 of the NGT Act, provides special limitation period. Thus, it necessarily excludes the operation of the general law of limitation. The provisions of the Limitation Act cannot be harmoniously construed with the provisions prescribing special limitation under the NGT Act as in that event it would defeat the very purpose of the NGT Act. A limitation provided under special law must prevail over the general law of limitation; particularly in face of the overriding effect given to the NGT Act by the framers of the law in terms of Section 33 of the NGT Act. In terms of Section 33, the provisions of the NGT Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. The cumulative effect of all these factors would be that the special limitation prescribed under the NGT Act does not admit any exception to attract the applicability of the provisions of the Limitation Act. Section 16 of the NGT Act controls the very institution of an appeal in the Registry of the Tribunal. In terms of Section 16, the appeal can be filed 'within a further period not exceeding 60 days' but thereafter the Tribunal is not vested with the power to allow the appeal to be filed beyond the total period of 90 days. Thus, the tribunal loses its jurisdiction to entertain an appeal after the expiry of the special period of limitation provided under proviso to Section 16 of the NGT Act.

(Emphasis supplied)

The Tribunal, in the above said case, has narrated the entire gamut of the case law on the issue relating to limitation extensively. It is useful to refer to the said paragraphs for the better appreciation of the entire limitation issue which reads as follows:

10. A bench of five members of the National Green Tribunal, in the case of *Nikunj Developers v. State of Maharashtra*, 2013 All India NGT Reporter (Delhi) (1) 40, after discussing various judgments of the Supreme Court had taken the view that the Tribunal has no jurisdiction to condone the delay beyond a period of 90 days, even if a sufficient cause is shown and the provisions of the Limitation Act including Section 5 are excluded. The tribunal held as under:

"19. From language of the above provision it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

20. As stated in the cases *Hiralal Ratan Lal and India Houses (supra)* the period of limitation statutorily prescribed, has to be strictly adhered to and cannot be relaxed and or departed from, on equitable consideration. Further, in construing a statutory provision, the first and the foremost rule of construction is that of literary construction. We do not see any reason to expand the scope of the provision and interpret the proviso to Section 16 in the manner that Tribunal can be vested with the power of condoning the delay beyond 90 days. Such interpretation would be contrary to the specific language of the Section and would defeat the very legislative intent and object behind this provision.

21. This controversy need not detain us any further as it is no more *res integra* and stands answered by the judgment of the Supreme Court in the case of *Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and others* (2010) 5 SCC 23 where the court held as under:

"29. Section 34(3) of the Arbitration and Conciliation Act, 1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in *Union of India v. Popular Construction Company* : (2001) 8 SCC 470. The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in *Mangu Ram v. Municipal Corporation of Delhi*: (1976) 1 SCC 392, *Vidyacharan Shukla v. Khubchand Baghel* AIR 1964 SC 1099, *Hukumdev Narain Yadav v. L.N.Mishra (supra)*, *Patel Naranbhai Marghabhai v. Dhulabhai Galbabbhai* : (1992) 4 SCC 264 and held:

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" Sub-section (2) and Sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, Subsection (3) would not be an application "in accordance with" that Sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that:

"Where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set

aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

(emphasis supplied)

30. In *Singh Enterprises v. C.C.E., Jamshedpur and Ors.* (supra), the Court interpreted Section 35 of Central Excise Act, 1944, which is *pari materia* to Section 125 of the Electricity Act and observed:

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for Condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to Sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.

(emphasis supplied)"

22. The same view was reiterated in *Commissioner of Customs, Central Excise v. Punjab Fibres Ltd* : (2008) 3 SCC 73

"31. In *Commissioner of Customs and Central Excise v. Hongo India Private Limited and Anr.* (2009) 5 SCC 791, a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that High Court has no power to condone delay beyond the period specified in Section 35H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed:

"30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30

days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35G and reference application to the High Court under Section 35H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only upto 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

33.

XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

(emphasis supplied)

32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an

appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

23. Section 34 of the Arbitration and Conciliation Act, 1996 uses the expression 'not thereafter' while the provision under our consideration uses the terms 'not exceeding'. Both these expressions use negative language. The intention is to divest the Courts/Tribunals from power to condone the delay beyond the prescribed period of limitation. Once such negative language is used, the application of provisions of Section 5 of the Limitation Act or such analogous provisions would not be applicable.

24. The use of negative words has an inbuilt element of 'mandatory'. The intent of legislation would be to necessarily implement those provisions as stated.

25. Introduction or alteration of words which would convert the mandatory into directory may not be permissible. Affirmative words stand at a weaker footing than negative words for reading the provisions as 'mandatory'. It is possible that in some provision, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of total period of 90 days. At this stage, we may also refer to Principle of Statutory Interpretation by Justice G.P. Singh, 13th Edition, where it is stated as under:

"(c) Use of negative words

Another mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. As stated by CRAWFORD: "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience." As observed by SUBBARAO, J.: "Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative". Section 80 and Section 87-B of the Code of Civil Procedure, 1908; section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; section 213 of the Succession Act, 1925; section 5-A of the Prevention of Corruption Act, 1947; section 7 of the Stamp Act, 1899; section 108 of the Companies Act, 1965; section 20(1) of the Prevention of Food Adulteration Act, 1954; section 55 of the Wild Life Protection Act, 1972 (as amended in 1956); section 10A of Medical Council Act, 1965 (as amended in 1993) and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory. But the principle is not without exception. Section 256 of the Government of India, 1953, was construed by the Federal Court as directory though worded in the negative form. Directions related to solemnization of marriages though using negative words have been construed as directory in cases where the enactments in question did not provide for the consequence that the marriage in breach of those directions shall be invalid. Considerations of general inconvenience, which would have resulted in holding these enactments mandatory, appear to have outweighed the effect of the negative words in reaching the conclusion that they were in their true meaning merely director. An interesting example, where negative words have been held to be directory, is furnished in the construction of section 25-F of the Industrial Dispute Act, 1947, where compliance of clause (c) has been held to be directory;

although compliance of clauses (a) and (b) which are connected by the same negative words is understood as mandatory. These cases illustrate that the rule, that negative words are usually mandatory, is like any other rule subordinate to the context, and the object intended to be achieved by the particular requirement."

26. *The provision of Section 16 of the NGT Act is somewhat similar to Section 34 of Arbitration and Conciliation Act, 1996. Thus, adopting an analogous reasoning, as was adopted in Chhattisgarh State Electricity Board (supra), we would have no hesitation in coming to the conclusion that we have no jurisdiction to condone the delay when the same is in excess of 90 days from the date of communication of the order to any person aggrieved.*

27. *Thus, the application must fail on this ground alone. We are of the considered view that the Tribunal has no jurisdiction to condone the delay of 19 days in filing the present appeal, the same being in excess of 90 days computed from the admitted date of communication of order, that is 2nd June, 2012."*

11. *The above view of the tribunal was followed by different Benches of this tribunal in the case of M/s. Krishna Stone Crushers v. Haryana State Pollution Control Board, 2014 (1) All India NGT Reporter (1) (Delhi) 42. In the case of Aradhana Bhargav v. Ministry of Environment and Forests, 2013 All India NGT Reporter (2) (Bhopal) 1, besides following the law stated in Nikunj Developers (supra), the bench also clearly held that a special enactment, which specifically provides period of limitation would exclude the general law of limitation. Similar view was also expressed by another Bench of the Tribunal in the case of Ms. Medha Patkar v. MoEF & Ors., 2013 All India NGT reporter (Delhi) 285.*

12. *In all the above cases, the consistent view of the tribunal has been that the tribunal has no jurisdiction to condone the delay beyond the period of 90 days and it is in fact the very filing of the appeal that is impermissible in terms of proviso to Section 16 of the NGT Act. Admittedly, in the present case, the delay in filing the appeal is beyond 90 days i.e. the total delay being 125 days. Thus, this tribunal has no jurisdiction to entertain the appeal after the expiry of the special limitation period provided under the relevant provisions. We are unable to find any substance in the submissions of the learned counsel appearing for the appellant, that the judgments of the tribunal do not state the correct law and/or are not applicable to the facts of the present case. We have no hesitation in rejecting the said contention raised on behalf of the appellant.*

13. *Having said so, we would still proceed to discuss the other contentions raised on behalf of the appellant before the tribunal. It is argued that the language of Section 16 of the NGT Act does not expressly or by necessary implication exclude the provisions of Sections 4 to 24 (inclusive) of the Limitation Act and thus, squarely fall within the ambit of Section 29(2) of the Limitation Act. A limitation period is the period of time prescribed by law within which a person has to approach the prescribed forum/court. The period of limitation is imposed by statutes. There are different limitation periods for different types of cause of action. The period of limitation controls the right of a party to approach the court or tribunal. It also places an obligation upon the court to examine if the claim arising before it, is barred by law of limitation. For instance, the court can reject a plaint inter alia on the ground that it is barred by any law in terms of Order VII Rule 11 of the Code of Civil Procedure, 1908.*

14. *The policies underlying the law of limitation are ultimately based on justice and convenience and an individual should not live under the threat of a possible action for an indeterminate period since it would be unjust. Prescription of limitation takes in its ambit fairness and expeditious trial. Indefinite uncertainty in relation to bringing an action would be opposed to public policy. This concept is applicable with great emphasis to the environmental jurisprudence where the project proponent may*

invest large amount for making its project operational. Challenge to such project on the ground that it does not have any Environmental Clearance or otherwise, has to be within a specified time, as otherwise it would not only be unfair but also be seriously prejudicial to the interest of a party. Vigilance in the pursuit of rightful claims should be encouraged so that these are ethical or rational justifications for the law of limitation.

15. We have already noticed that NGT Act is a self-contained code in itself. It provides the forum/procedure that has to be adopted, the limitation period within which the jurisdiction of the tribunal gets invoked, and the power and functions of the tribunal in explicit terms. As a self-contained code, it does not admit of any ambiguity with regard to application of other laws in the adjudicatory process of the tribunal. The legislature in its wisdom has worded provisions of Section 16 of the NGT Act so as to prohibit even filing of an appeal beyond a total period of 90 days. The language of these provisions clearly demonstrates the legislative intentment on excluding application of general law of limitation to this special statute. Such a view would also find clear support from the language of Section 29 (2) of the Limitation Act which postulates that when a special law prescribes for any period of limitation different from the period prescribed in the Schedule to the Limitation Act and the language of the provisions of such special law is indicative of express or implied exclusion, then Sections 4 to 24 (inclusive) of the Limitation Act shall apply only and to the extent they are not excluded by the Special Law. The cumulative reading of Section 16, particularly, the proviso and Section 29 of the Limitation Act leaves no doubt in mind that legislature had clearly intended to exclude the application of the general law of limitation provided under the Limitation Act from the NGT Act. Proviso to Section 16 of the NGT Act uses the expression 'allow it to be filed under this Section within a further period not exceeding 60 days'. The use of the negative language 'not' in the proviso makes it mandatory that appeals cannot be filed after the expiry of total period of 90 days and thus, there is lack of jurisdiction of the tribunal to condone the delay beyond a total period of 90 days. The framers of law, where, in their wisdom wanted to give a benefit and/or restrict or place embargo on exercise of a right, have done so by using specific language in Section 16 of the NGT Act. A special concession is made available to an appellant to file an appeal beyond 30 days, the initial period of limitation prescribed under that provision. The framers there put a specific embargo on the power of the Tribunal not to entertain an appeal after the expiry of a further period of 60 days. Thus the legislature, by necessary implication excluded the application of general law of limitation from the provisions of the NGT Act. At this stage we may refer to the judgment of the Supreme Court in the case of *Hukumdev Narain Yadav v. Lalit Narain Mishra*, (1974) 2 SCC 133, where the Supreme Court was dealing with the provisions of the Representation of the Peoples' Act, 1951 and the applicability of the provisions of the Limitation Act. The Court in relation to the interpretation of the language of Section 29(2) of the Limitation Act held as:

"17. What we have to determine is whether the provisions of this section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Section 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

46. That was also the view of the Principal Bench of the National Green Tribunal in the case of NIKUNJ JDEVELOPERS VS. STATE OF MAHARASHTRA (M.A.No.247 of 2012 dated 14.3.2013) in which one of us (Justice Dr. P. Jyothimani) was a party, held as follows:

“19. From language of the above provision it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

23. Section 34 of the Arbitration and Conciliation Act, 1996 uses the expression ‘not thereafter’ while the provision under our consideration uses the terms ‘not exceeding’. Both these expressions use negative language. The intention is to divest the Courts/Tribunals from power to condone the delay beyond the prescribed period of limitation. Once such negative language is used, the application of provisions of Section 5 of the Limitation Act or such analogous provisions would not be applicable.

25 Introduction or alteration of words which would convert the mandatory into directory may not be permissible. Affirmative words stand at a weaker footing than negative words for reading the provisions as ‘mandatory’. It is possible that in some provision, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of total period of 90 days. At this stage, we may also refer to Principle of Statutory Interpretation by Justice G.P. Singh, 13th Edition, where it is stated as under:

“(c) Use of negative words

Another mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. As stated by CRAWFORD: “Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience.” As observed by SUBBARAO, J.: “Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative”. Section 80 and Section 87-B of the Code of Civil Procedure, 1908; section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; section 213 of the Succession Act, 1925; section 5-A of the Prevention of Corruption Act, 1947; section 7 of the Stamp Act, 1899; section 108 of the Companies Act, 1965; section 20(1) of the Prevention of Food Adulteration Act, 1954; section 55 of the Wild Life Protection Act, 1972 (as amended in 1956); section 10A of Medical Council Act, 1965 (as amended in 1993) and similar other

provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory. But the principle is not without exception. Section 256 of the Government of India, 1953, was construed by the Federal Court as directory though worded in the negative form. Directions related to solemnization of marriages though using negative words have been construed as directory in cases where the enactments in question did not provide for the consequence that the marriage in breach of those directions shall be invalid. Considerations of general inconvenience, which would have resulted in holding these enactments mandatory, appear to have outweighed the effect of the negative words in reaching the conclusion that they were in their true meaning merely director. An interesting example, where negative words have been held to be directory, is furnished in the construction of section 25-F of the Industrial Dispute Act, 1947, where compliance of clause (c) has been held to be directory; although compliance of clauses (a) and (b) which are connected by the same negative words is understood as mandatory. These cases illustrate that the rule, that negative words are usually mandatory, is like any other rule subordinate to the context, and the object intended to be achieved by the particular requirement."

47. In *HIRANLAL RATANLAL V. STO* (1973) 2 SCR 502 the Hon'ble Apex Court held that the period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed on equitable consideration.

48. Therefore, we are not satisfied on the facts of the present case and the reasons assigned nearly for a period of two years for filing the application are not satisfactorily explained by the applicant and we are of the considered view that the application has not been filed within the period of limitation prescribed specifically under Section 14(3) of the National Green Tribunal Act.

49. In so far as it relates to the allegation of fraud against the project proponent relating to some of the replies given in Form I, it is relevant to note that such fact of fraud has not been pleaded and proved. Fraud being a factual circumstance, in the absence of pleading and proof cannot be presumed. Even otherwise, we have held that on the facts of the present case, on the basis of recommendations of CPCB

during the relevant point of time when the proposal was made by the project proponent for expansion, the Government of India has dropped Cuddalore from moratorium, based on the CEPI score which was stated to be below 70 and in the absence of any other record to show that during the relevant point of time, Cuddalore continued to be under moratorium and therefore as CPA, there is no reason for us to come to a conclusion that everything followed by such statement has become nullity. Whether SEIAA on the facts of the present case is competent to pass orders or not can be gone into only when

the Tribunal is satisfied that the application has been filed within the statutory period of limitation prescribed under Section 14(3) or under Section 16 of the NGT Act.

50. Even in cases of void orders, it was held by the Hon ble Apex Court in M. MEENAKSHI V. METADIN AGARWAL (2006) 7 SCC 470) that it has to be set aside by a competent court and need not necessarily be a non-est held as follows:

'18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. ;The orders passed by the authorities were not found to be wholly without jurisdiction. They were not thus, nullities.'

Accordingly, the application stands dismissed on the preliminary issue of maintainability. There shall be no order as to cost.

Justice Dr. P. Jyothimani

Judicial Member

Shri P.S. Rao

Expert Member

NGT



38. We are not satisfied with the reasons assigned for the delay of nearly two years in filing the application and accordingly we are of the considered view that the application has not been filed within the time specified under Section 14(3) of the Act.

39. There is one another factor which is relevant viz, the applicant alleges fraud against the fifth respondent the same should have been pleaded and proved. Fraud being a factual circumstance, in the absence of such pleadings and proof, one cannot presume fraud. Even otherwise, declaration of CPA is as per the recommendations of CPCB apart from the fact that during the relevant point of time when the impugned EC

was granted there is nothing on record to show that Cuddalore continues to be CPA. For the reasons stated above, it is true that one cannot expect to know about the various notifications issued by the authorities concerned. The Official Memorandums issued are not the statutory amendments or orders carried out in the EIA Notification, 2006 the impugned EC ignorance of law is no excuse. Even in respect of the jurisdiction of the authority to pass order, whether the SEIAA is competent or not Even otherwise SEIAA is not cannot be decided if the applicant fails to convince the Tribunal that the application has been filed within the period of limitation prescribed under the NGT Act.

40. While deciding about the maxim ignorance regarding presumption of knowledge of law the Supreme Court has extracted various decisions of the appeal court and observed as follows:

Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement; there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., Pointed out in **Martindale vs.Falkner**’

There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so.

Scrutton,L.J. also once said:

It is impossible to know all the statutory law, and not very possible to know all the common law.

But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in **Evans V.Bartlam**

.....the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.

In MK. MEENAKSHI KV. METADIN AGARWAL reported in (2006) 7 SCC 470 while holding even void is regulated to be set aside the Supreme Court has observed as follows:

18. It is well settled principle of law that even a void order is required to be set aside by a competent court of law in as much as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.

Accordingly, the application stands dismissed on the preliminary issue of maintainability. There shall be no order as to cost.

Justice Dr.P. Jyothimani
Judicial Member

Shri P.S. Rao
Expert Member

NGT

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No.66 of 2016 (SZ)

In the matter of

Santhiyagu
Devakottai Rastha
Karaikudi, Sivagangai Dist.

Vs

.. Applicant

1. The Union of India
Rep by its Secretary to the Government
Ministry of Environment, Forest and
Climate Change, New Delhi
2. Karaikudi Municipality
Rep. by its Commissioner
Karaikudi
3. Tamil Nadu Water Supply and Drainage Board
Rep. by its Managing Director
TWAD Board, Chennai
4. Tamil Nadu Water Supply and Drainage Board
Rep. by its Chief Engineer, Madurai
5. The Chairman
Tamil Nadu Pollution Control Board
Chennai
6. The Environmental Engineer
Tamil Nadu Pollution Control Board
Sivagangai
7. M/s. Subaya Constructions Co. Ltd
Ashok Nagar, Chennai.

Counsel appearing for the applicant

Mr.T. Mohan for

M/s.A. Yogeshwaran

Neha Miriam Kurian

Counsel appearing for the respondents

For respondent No.1 .. Mrs. M.E. Sarashwathy

For respondent No.2 .. Mr. Abdul Saleem

For respondents.3 & 4 .. Mr. V. S. Sethuraman,

Addl. Advocate General, Tamil Nadu
for Mr.Arokiyaraj

For respondents .. Mr. S. Azhagam Perumal

For respondent No.7 .. M/s. C. Kasisrajan, S. Bageerathan
Muthiah Kannan

ORDER

Present

Hon'ble Shri Justice Dr.P.Jyothimani, Judicial Member

Hon'ble Shri P.S.Rao, Expert Member

Delivered by Justice Dr. P. Jyothimani

5th May, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

The application is directed against the proposal of respondents 2 and 4 to set up a Sewage Treatment Plant (STP) at Town Survey Nos.545/2, 552/8, 552/9 and 561, Ward No.16 of Karaikudi Town, Sivagangai District on the ground that the said respondents have not obtained Environmental Clearance (EC) under the EIA Notification, 2006. The prayer is also for direction against the Tamil Nadu Pollution Control Board (Board) to consider the proposal strictly in accordance with the siting criteria prescribed by the Board.

2. Karaikudi Municipality is a Special Grade Municipality situated in an area of 13.75 sq.km with a population of 1,67,014 as per 2011 census. According to the applicant, the Municipality does not have defined residential or commercial zones with the result, small industries,

commercial establishments and residences are interspersed throughout the town. According to the applicant, when once the Municipality has proposed to launch STP it is necessarily to mix with other effluents and will not be a domestic sewage simplicitor. At present the Municipality is dumping garbage at T.S.No.468 and 469/1 for the last 30 years at Devakottai Rastha, Karaikudi without obtaining authorisation under the Municipal Solid Waste Rules, 2000 (MSW Rules), consent under the Water (Prevention and Control of Pollution) Act, 1974, (Water Act) Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and EC under the EIA Notification, 2006.

3. There was no scientific manner in dumping waste which was objected to by the residents of the area. According to the applicant, the Municipality, instead of abating pollution, has decided to establish STP in this land which is in violation of Articles 14 and 21 of the Constitution of India and the STP is proposed to be set up in the midst of thickly populated residential area. The siting criteria for STP prepared by the Board has also been violated. There are 100 residential houses surrounding the STP site where 600 people are living. The land is only in the extent of 0.46 ha which is insufficient for the creation of 100 m buffer zone and other mandatory safeguards. The proposed STP is not 500 m away from the nearest house and nor a No Development Zone (NDZ) has been declared. There are places of worship located within 500 m. By virtue of the proposed STP noxious gases and Methane and other pollutants and bio aerosols are going to cause environmental hazard. According to the applicant, STP is declared as 'red' category by the State Pollution Control Board and Central Pollution Control Board.

4. The applicant also states that the Principal Bench of the National Green Tribunal in KEHAR SINGH VS. STATE OF HARYANA & OTHERS (Application No.124 of 2013 dated 12.9.2013) held that for establishment of STP, EC is required and in as much as EC has not been obtained, the proposed STP cannot be allowed. The applicant also referred to another judgment of the National Green Tribunal (South Zone Bench in A. GOTHANDARAMAN VS. THE COMMISSIONER, NAGERCOIL MUNICIPALITY & OTHERS (Application Nos.173 and 175 of 2013 dated 17.3.2015) wherein by following the judgment in Kehar Singh's case, the South Zone Bench held that EC is required for STP. The applicant has stated that by Notification dated 27.2.2015 the Municipality has given work order to TWAD Board to implement the process. The floating of tender without following mandatory permission required is not permissible in law. With various legal grounds in consonance with the above said facts, the applicant has filed the above application for the reliefs stated above.

5. The 1st respondent – MoEF & CC in its reply dated 17.10.2016 has stated that as per the EIA Notification dated 14.9.2006 prior EC is required for Common Effluent Treatment Plant (CETP) and Common Municipal Solid Waste Management Facility (CMSWMF) under Item 7(h) and 7(i) of the schedule to the notification, respectively. The reply specifically states that installation of STP is not covered under the schedule to EIA Notification, 2006 and therefore no EC is required for the said activity. However, it requires "Consent to Establish" and "Consent to Operate" from the State Pollution Control Board.

6. The 2nd respondent – Municipality for whose benefit the STP is proposed to launch, in the reply of July, 2016 has stated that in order to

make a pollution free and healthy environment around the habitat of the people of Karaikudi Municipality, it was decided by the Government of Tamil Nadu to provide a full fledged underground sewage system for Karaikudi Municipality in Sivagangai District and accordingly administrative sanction was accorded for Rs.112.53 Crores on 24.12.2014. In so far as it relates to STP, whose main purpose is for treatment of domestic sewage, it neither falls under A or B category of the schedule to the EIA Notification, 2006 and therefore no EC is required.

7. TWAD Board viz., the 4th respondent is the executing agency for the Underground Sewerage Scheme (UGSS) for Karaikudi Municipality. The STP has been designed adopting latest and modern technology of Activated Sludge Process (ASP) with Extended Aeration (EASP) considering the parameters of domestic sewage only. The industrial premises are not within the scope of the project and it is only the residential households, business establishments such as hotels, educational institutions will be provided with House Service Connections (HSC) strictly in accordance with rules and therefore there is no possibility of mixing of any industrial effluent in the proposed UGSS. Further, it is the case of the 2nd respondent that within the limits of Karaikudi Municipality there are no heavy, medium or small scale industries.

8. It is stated that the proposed site for construction of STP belongs to the Government and by the proceedings of the District Collector, Sivagangai District dated 12.6.2014, an extent of 1 ha and 6632 sq.m of land in Survey No.552/8 has been allotted for STP and the same has been carried over in the government records. In addition to that an extent of 1 ha and 1960 sq.m of land comprised in Survey No.561 has also been

classified for STP. The land in Survey No.545/2 having an extent of 0.4604 ha also belongs to the Commissioner of Karaikudi Municipality. Therefore, the extent stated by the applicant is totally false and the site selected for the construction of STP in Survey Nos.545/2, 552/8, 552/9, 561 was inspected by the Board and NOC was issued on 21.8.2014.

9. It is further stated that there are no residential houses within a radius of 500 m from the proposed STP project and it is located about 1.5 km away from the residential area of Karaikudi Municipality and there are no households in the vicinity of the selected site for about 150 m from the boundary of the site. It was in fact based on the said inspection the Board has issued NOC. Therefore, the total extent of land allotted for the proposed STP project is 2.3531 ha (5.81 acres) and not 0.46 ha as stated by the applicant.

10. It is reiterated that the technology adopted for the construction of the STP is the latest one and eco-friendly without causing any harm to the surroundings and therefore there is no violation of Articles 14 and 21 of the Constitution of India. It is further stated that Chlorine gas will be used in the STP to disinfect the treated effluent by killing harmful bacteria. Utmost care and precautionary measures will be taken in the Chlorinating system as per the rules. Steps will be taken for providing land around the STP site for developing vegetation. NOC was granted by the Board much before the sanction of the scheme on 21.8.2014 and thereafter some unauthorised buildings would have come around the proposed site. The selection of site itself was transparent and it was only after consultation process and considering all alternatives.

11. It is the case of the 2nd respondent – Municipality that the raw sewage to be received in the STP will not be in anaerobic or septic form but in a dynamic form suitable for ASP with extended aeration technology. The entire collection of sewage from the individual households will reach STP without any stagnation and within the prescribed time and in case of blockage the same will be cleared by the latest technology. There is no possibility of release of any noxious gases like H₂S, Methane, bio-aerosols and pollutants beyond the prescribed limit. While stating that the application has been filed with all imagination, it is stated that the TWAD Board itself has successfully maintained STP based on aeration technology from 1.2.2013 at Chinnamanur Municipality in Theni District without causing any hazard to the households situated nearby.

12. The classification of STP as 'Red Large' by the Board is only for the purpose of effectively monitoring the function of the STP after commissioning. However, the STP has not been so far categorised as red in any of the Government of India Notification. In continuation of the NOC already obtained from the Board, the application for consent to establish is under process. It is stated that the EIA Notification, 2006 applies only in respect of trade and industrial effluents and in so far as it relates to the STP different standards are prescribed by the Board and it was at a preliminary stage the Board has issued NOC. It is reiterated that the household connection in the sewage system will be strictly given for the households only and the same will not be used for industry and there are no other industries in existence within the Karaikudi Municipal limits. It is reiterated that industries either small or large scale, will never be given any connection into the system and open drains or gutters will not certainly be

linked with the system and therefore there is absolutely no chance of mixing of industrial or trade effluents with the domestic sewage.

13. Sewage collected will be treated properly in the STP as per the rules laid down by the authorities like Tamil Nadu Pollution Control Board, Central Pollution Control Board and MoEF & CC. The treated effluents released from the STP will be as per the Board norms having BOD less than 20 and COD less than 30. There will be no pathogenic organisms like *E.Coli* etc., and there will not be any health hazard. Therefore, the proposed STP for Karaikudi Municipality is environmentally safe and it cannot be treated as CETP as enlisted in Sl.No.7(h) of the schedule to the EIA Notification, 2006 which require prior EC from SEIAA. In this case it is the Board which has the authority to give consent and the construction of STP will be commenced after the consent to establish is obtained and the operation will be followed after consent to operate is granted by the Board.

14. The treated effluent from the STP can be used for agricultural purpose and in fact the treated effluent released from Chinnamanur STP is used for farming without any hazard and also giving more yield. While it is true that the discharge of untreated sewage will cause injury to the environment, it is the household sewage which would satisfy the conditions of the regulatory authority which is going to be released from the STP will not be harmful to any one. It is reiterated that no trade or industrial effluents will be linked with the domestic sewage collection system. The environmental effects of the STP are well known and the remedial measures as recommended by the Board are incorporated as EMP in the project report and therefore there is no separate EIA required for STP. It is also stated that all the procedures required for establishing STP in Tamil

Nadu are being followed for this STP also. The work order was issued only after obtaining NOC from the Board and consent to establish from the Board is under process. The project involves both the execution of collection system work viz., laying of sewer main in all streets including construction of manholes. The STP project, on completion, will result in improving the health conditions and standard of living of the people in the area.

15. The 3rd and 4th respondents viz., TWAD Board which is the executing agency of the STP project by the Karaikudi Municipality, in its reply dated 24.5.2016, while reiterating that the proposed project is environmental friendly, stated that the administrative sanction has been obtained from the Government of Tamil Nadu for a sum of Rs.112.53 Crores. It is also the case of the said respondents that as per the EIA Notification, 2006, STP does not fall either under A or B category and therefore no prior EC is required. It is also reiterated by the TWAD Board that the proposed STP is designed based on the latest and modern technology of Activated Sludge Process (ASP) with Extended Aeration (EASP) considering the parameters of domestic sewage only and the industrial premises will not come under the scope of the project. While reiterating that the Board has inspected the place concerned and issued with NOC on 21.8.2014 even before finalisation of the project, it is stated that the proposed STP is located about 1.5 km away from the residential area and the total extent is 2.3531 ha (5.81 acres) as stated by the 2nd respondent. It is also stated that while executing the work Chlorine leak detection and warning system will be installed and there will be no disastrous consequences. Apart from the fact that no bio-aerosols will be

let out to harm the children, women or any other and the technology to be adopted is far more superior and advance.

16. While reiterating the averments made by the 2nd respondent – Municipality and stating that alternatives have been considered before choosing the present site, it is reiterated by the TWAD Board that the Board itself has executed the said advanced system in Chinnamanur Municipality, Theni District and the same is being appreciated by the people to a large extent without causing any harm to any one. It is also stated by the TWAD Board that categorisation of the STP by the Board as 'Red Large' is only for close monitoring purpose and the Government of India has not categorised the project as red category. It is also reiterated that house service connection in this sewerage system will be strictly given for households only and there is absolutely no chance of mixing of industrial or trade effluents with the domestic sewage. The effluents released from the STP will be as per the Board norms having BOD less than 20 and COD less than 30. The TWAD Board also reiterates the statement made by the Karaikudi Municipality that there is no trade effluents linkage with the domestic sewerage system and therefore prior EC is not a mandatory requirement for STP. It is also stated that the work of STP will be started only after 'consent to establish' obtained from the Pollution Control Board. It is also stated that blowers with advanced technology will be installed to avoid any noise pollution. It is also stated that the proposed site for STP has not been contaminated by the solid waste dumped by the Municipality.

17. In addition to the reply, the TWAD Board has also given the brief details of UGSS to Karaikudi Municipality which are as follows:

"Brief salient details of UGSS to Karaikudi Municipality Collection System

Total length sewer : 144.653 Kms

(Size 150 mm dia to 300 mm Stoneware pipe and size 200 mm to 900 mm RCC pipe)

Total No. of Manhole : 5559 Nos.

House Service Connection : 31725 Nos. (30225 – Domestic and 1500 – commercial)

Main pumping station (MPS)

Screen well : 1 No. of 9.90 m dia x 4.67 m depth below GL
Grit well : 1 No. of 7.40 m dia x 6.01 m depth below GL
Suction well : 1 no. of 10 m dia x 10.93 m depth Below GL
*Pumpsets : 11113 lpm x 19 m head (2 nos.)
 - 1 DWF
 22226 lpm x 19 m head (1 No.)
 2 DWF*
Pumping main : 500 mm dia CI LA Class pipes for 100 M length
Pump room : 9.0 m x 5.0 m x 4.54 m

Sewage Treatment Plant (STP)

Method : Extended Activated Sludge Process (EASP)
Design quantity (2031) : 16.00 mld capacity

Summary of Units

1	Receiving chamber : 4.0 x 4.0 x 2.5 (TD)	1 No.
2	Coarse screen chamber 7.0 x 1.0 x 1.25 (TD)	1 set
3	Fine screen chamber: 7.0 x 1.0 x 1.25 (TD)	1 set
4	Grit chamber : 6.0 x 6.0 x 1.5 (TD)	1 set
5	Flow measuring channel : 6.0 x 1.0 x 0.95 (TD)	1 No.
6	Distribution chamber in pre-treatment unit : 4.0 x 4.0 x 2.50 (TD)	1 No.

7	Distribution chamber : 4.0 x 4.0 x 2.50 (TD)	2 Nos.
8	Dechlorination tank : 3.50 x 3.50 x 40 (TD)	1 No.
9	Aeration tank 35 x 24 x 5 (TD)	2 Nos.
10	Secondary Clarifier : 26.0 m dia x 4.5 m (TD)	2 Nos.
11	Chlorine contact tank : 27.0 x 7.0 x 4.0 m (TD)	2 Nos.
12	Return sludge pump : 4.0 m dia 7.25 m TD	1 No.
13	Centrifugal feed sump : 3.5- m dia 2.50 m (TD)	1 No.
14	Admin cum Lab Building 2 floors 12.00 m x 7.00 m x 4.00 m	1 No.

Effluent Disposal

Effluent Disposal the treated effluent will be disposed into the river Thenar after treatment

Land Details

Sl.No	Details	Location	SF.No	Extended of land available	Land ownership
1	STP/MPS	Devakottai Road Opposite to solid waste disposal yard of Karaikudi Municipality Total	545/2	0.4604 ha	Municipal Land Govt Land (Alienation order issued on GO Ms.No.0 Revenue Dept. Dt.10.01.14
			552/8	0.4664 ha	
			561	1.1968 ha	
			552/9	0.2295 ha	Municipal land
			Total	2.3531 ha (5.81 acres)	

Installation cost : Rs.112.53 Crores

AM Cost : Rs.83.18 Lakhs

18. The 5th and 6th respondent – Board in its reply dated 29.8.2016 has also stated that the proposed underground sewerage scheme in the form of STP by the 2nd respondent – Karaikudi Municipality at Survey Nos.545/2, 552/8, 552/9, and 561 of Karaikudi Town does not attract EIA Notification, 2006. However, the municipal authorities are liable to obtain consent under Water Act and Air Act for establishing and operating of the STP. While reiterating that the site was chosen after alternatives were considered and area located near the existing municipal solid wastes dumping yard. It is stated by the Board that the estimated sewage generation is 12.45 MLD and the proposed STP is having the capacity of 15.75 MLD considering the future increase in the population. The proposed STP is under Extended Activated Sludge Process Technology and the treated sewage was proposed to be discharged through Thenar river, running near the site.

19. The application for NOC by the Karaikudi Municipality for setting up of the STP was placed to the Zonal Level Consent Clearance Committee on 14.8.2014 with the following conditions:

i. This No Objection Certificate shall be used only to acquire/possess the site by the local body.

ii. The No Objection Certificate issued shall not be construed as consent of the Board.

iii. The Municipality shall obtain proper land use classification certificate from the competent Authority.

iv. The Commissioner, Karaikudi Municipality, Sivagangai District shall acquire the above said land proposed for the construction of sewage treatment plant and shall obtain 'Consent to Establish' under the Water (Prevention and Control of Pollution) Act, 1981 as amended and the Air (Prevention and Control of Pollution) Act, 1981 as amended after submitting land allotment and detailed treatment process along with the design criteria before execution of the project.

v. The Municipality shall adopt advance technology for the sewage treatment and the components of the sewage treatment plant sufficiently above the ground level so as to ensure that the sewage

shall not be mixed with storm water during monsoon or to avoid carryover of sediments from the site.

vi. The Municipality shall treat and dispose the treated sewage into the Amaravathi Ayakat Canal of Thenar River with obtaining proper approval from the competent authority.

vii. The Municipality shall establish options to dispose the treated sewage for irrigation as well.

viii. The Municipality shall dispose the solid wastes to the outside agencies for further beneficial use without any accumulation inside the premises.

ix. The Municipality shall take all necessary actions to control the odour and flies problem due to the operation of the treatment plant so that no complaints are received from the nearby public.

x. The Municipality shall maintain buffer zone of atleast 100 meters all around the site and no permission for construction shall be given in the said buffer zone for residential purposes, commercial purposes etc.

xi. The Municipality shall maintain green belt with tall trees having thick canopy cover for a width of atleast 25 m around the boundary of the proposed site.

xii. Compound wall shall be constructed all around the site so as to avoid entry of stray animals or unauthorized persons and vehicles.

xiii. The Municipality shall satisfy the Ambient Air Quality Standard and Ambient Noise Level Standards prescribed by the Board."

20. It is stated by the Board that the site for the proposed STP is presently vacant and surrounded by Devakottai Rastha Railway Station on Eastern side, MSW dump site on Western side, few houses, St. Arulanandar Church on Northern side and road on Southern and Western sides. The proposal does not contain use of Chlorine and the Board will also recommend non-Chlorine based disinfection methods only. It is stated that the Municipality has not so far obtained consent for establishment. Further it is stated that the site was inspected by the District Environmental Engineer, Sivagangai on 27.4.2016 and found that no construction activities were started.

21. The 7th respondent who is a successful bidder selected to execute the project of the proposed STP in its reply dated 30.6.2016, while

reiterating the statements made by the other respondents, stated that the proposed project is designed with latest scientific technology and it is an underground sewerage system which is being implemented by many of the Corporations and Municipalities in the State of Tamil Nadu and also other States and that the method is acknowledged internationally and it is an accepted system. The 7th respondent submits that the application is filed with vested interest and the interim order of *status quo* passed will be detrimental to the interest of the 7th respondent as the materials and equipments purchased for this project are being damaged.

22. Mr. T. Mohan, learned counsel appearing for the applicant would submit that the selection of the site for the proposed STP is against the guidelines framed by the Board itself and the residential areas are situated within the prohibited distance of the siting criteria. According to him, there is a Church situated within 15 m and the existence of the said Church is not denied and therefore it is against the siting criteria proposed by the Board itself. He would submit that the Municipality cannot disown its responsibility by saying that the Church is unauthorised and that the residences which have come up are at a later point of time after the NOC was issued and the buildings have been put up in an unauthorised manner. The concept of NOC is not permissible under EIA Notification, 2006 and the NOC is not a binding document as per the Notification and therefore according to the learned counsel mere obtaining of NOC will not entitle the Municipality to proceed with the project. He has also relied upon the Google imagery which shows that there is an existence of some of the dwelling units as well as place of worship within the prohibited distance. The learned counsel would submit that the STP is covered under the red category and the authority contemplated in respect of this category is only Member

Secretary of the Board and not the District Environmental Engineer. When MSW site is already there, STP cannot be proposed in the said area which cannot be said to be environmental friendly. He has also referred to various clauses in Form – I contemplated under EIA Notification, 2006 to show that there are clauses indicating about the place of worship etc. The learned counsel has taken us through the elaborate judgment of the Principal Bench of the NGT in *Kehar Singh's* case wherein it was held that any proposed STP cannot be believed to be a domestic sewerage treatment system alone and there is a possibility of mixing of other effluents and therefore it should be treated as ETP which requires EC from SEIAA. He has also placed reliance of another judgment of the Southern Zone Bench of NGT in *A. Gothandaranan's* case wherein it has been held that even in respect of STP where there is possibility of mixture of other effluents EC is a mandatory requirement. Therefore, according to the learned counsel, the proposal of the 2nd respondent for the establishment of STP without EC is not permissible in law and the Tribunal should interfere and set aside the same.

23. Mr.V.S. Sethuraman, learned Additional Advocate General appearing for the TWAD Board would submit that what is proposed by the Municipality is only a domestic sewage treatment system simpliciter with latest technology to be adopted and therefore the question of obtaining prior EC does not arise. According to the learned Additional Advocate General there are different standards of treatment for STP and ETP propounded by the Board. When once the Municipality makes it very clear that under the project, domestic sewage alone will be carried to the STP site for treatment and no other effluent will be allowed to mix, there is no reason for the applicant to presume as if trade and industrial effluents are

going to be mixed and therefore it will be an Effluent Treatment Plant (ETP). The learned Additional Advocate General would submit that while ETP would require prior EC under Clause 7(h) of the schedule to EIA Notification, 2006, STP simplicitor does not require any such prior EC. However, it is true that the Board should strictly monitor and see that other effluents does not mix. It is his assertion that when once it is a transport of household effluent through closed underground pipeline, it is not only environmental friendly but also there are no chances of mixing up of household sewage with any other effluent. He would also submit that the TWAD Board will strictly follow the Manual of Sewage Treatment System issued by the Ministry of Urban Development, Government of India. Even for ETP there are guidelines given separately and that will be followed. The learned Additional Advocate General would also submit that the judgment of the Principal Bench of the NGT in *Kehar Singh's* case has no application since that case is factually different wherein the Tribunal found that it is open sewerage system and therefore there was every possibility of the other effluents being mixed up with the household effluents and in such event the method of treatment should be more severe and it should be treated as ETP. It was in those circumstances, the Principal Bench has held that the ETP requires EC. He has also differentiated the facts in *A. Gothandaraman's* case to contend that the facts of the said case does not apply to the present scenario wherein it is the specific case of the Municipality that there is absolutely no possibility of any trade effluent being mixed with the domestic effluent which are to be exclusively carried from each of the household and that within the limit of Karaikudi Municipality there are no small scale, medium or large scale industries in existence.

24. Mr. Abdul Saleem, learned counsel appearing for the 2nd respondent - Municipality would submit that while it is true that NOC given by the Board itself is not sufficient, the Municipality can carry on the activity only after consent to establish is granted and the project can be implemented only after consent to operate is granted by the Board. The obtaining of NOC even in 2014 shows that the Municipality is honest in its approach. The learned counsel would further submit that on record it is clear that there are no small, medium or large scale industrial units in existence in the limits of Karaikudi Municipality and in any event under the proposed STP separate underground pipelines are drawn from each and every one of the households which will never be connected with any other effluents and therefore there is no necessity for any apprehension in the mind of the applicant and others that trade and industrial effluents will also be taken through the closed pipeline. He also submits that there are nine petrol bunks and 12 service stations within Karaikudi Municipality as stated in the affidavit filed by the Commissioner of the Municipality. That apart, there are marriage halls and hotels and there are no small scale industries. In so far as it relates to petrol bunks and service stations are concerned, the Municipality has taken all steps to see that those effluents from the said units does not mix up with the household effluents to be taken through the closed underground pipeline. The siting of the present place is near the dumping site which was in existence from 1972 onwards and there was no residential house and Church nearby at that time and subsequently few houses have come up which are unauthorised and it is his submission that as per the project after the treatment in the proposed STP, the treated water will be let out in Thenar river. He also submits that the TWAD Board which is executing the said project in Chinnamanur, Theni District has been

successfully carrying on the same which are the residential area and the present application is an environmental friendly project. He would also submit that the Municipality has a regular and constitutional duty to see that treatment plants are properly maintained for the environmental protection and there is absolutely no justification for the applicant to raise objection to such environmental friendly process. He would also submit that the judgment of the Principal Bench in *Kehar Singh's* case as well as the judgment of the Southern Bench in *A. Gothandaraman's* case has no application to the facts of the present case for the reason that there has been finding in those cases that in one case it is a open drainage system with the possibility of mixing of other effluents and therefore even if it is called STP it should be treated as ETP which require prior EC. In so far as it relates to the other case, there has been a finding that there is a possibility of mixing up of domestic and industrial waste and therefore the judgment relied upon in those cases have no application at all. He would also submit that any other stringent condition which may be imposed for the purpose of close monitoring of STP project and that no other effluent is allowed to be mixed at any point of time, can also be imposed and the Municipality is willing to follow the same.

25. Mrs. M. E. Saraswathy, the learned counsel appearing for the MoEF & CC would also submit that as per the EIA Notification, 2006, STP does not require prior EC. The judgment in *Kehar Singh's* case is factually different in the sense that in cases of open drainage system which is intended mainly for transport of household sewage, there is possibility on the way for mixing of any other effluents, in which event it can no more be called as STP since the treatment required is more stringent as that of Effluent Treatment Plant (ETP). Therefore, in those circumstances, the

STP should be treated as ETP and only in those cases prior EC is required. On the facts of the present case, it is purely the household sewage which is being transported underground in closed pipeline for the purpose of treatment in the proposed site and there is absolutely no possibility of arriving at any conclusion that it requires prior EC.

26. Mr. Azhagamperumal, learned counsel appearing for the State Pollution Control Board would also submit that the project as such is only for transporting the household sewage in the clear undertaking given by the Municipality and that no other effluent will be permitted to be mixed up. He would submit that while prior EC is not required, certainly the project is to be initiated only after consent to establish is obtained from the Board and the project should be started only after the consent to operate is granted. He made it very clear that while granting consent to establish and consent to operate the Board will explicitly make it very clear that it should be the domestic sewage which alone should be carried through the closed underground pipeline and no other effluents should be allowed. He would also submit that the Board will closely monitor and oversee and find out as to whether the Municipality keeps up its declaration that the stringent conditions imposed while granting consent will be implemented in its true sense and that only the domestic sewage will be treated in the STP and no other effluents are allowed to be mixed.

DISCUSSION & CONCLUSION:

27. We have heard the learned counsel appearing for the applicant as well as the respondents, referred to the pleadings and various documents filed by the parties and given our anxious thought to the issues involved in this case. The issues to be decided in this case are:

(1) As to whether the proposed STP by the 2nd respondent Karaikudi Municipality to be implemented through the 3rd and 4th respondent – TWAD Board requires prior EC.

(2) As to whether the siting criteria framed by the Tamil Nadu Pollution Control Board has been followed in choosing the site and the legal effects of such siting criteria.

28. Before adverting to the first issue as to whether the proposed STP by the 2nd respondent – Karaikudi Municipality to be implemented through respondents 3 and 4 requires prior EC, it is relevant to note that the proposed STP is an underground sewerage scheme, adopting latest Activated Sludge Process (ASP) with Extended Aeration Technology, considering the parameters of domestic sewage only. It is the specific case of the 2nd respondent – Municipality that the industrial premises will not come under the scope of the project and House Service Connection (HSC) will be strictly followed and there is no chance of mixing industrial effluents under the proposal. It is also the specific case of the Municipality that there are no residential houses within the radius of 500 m from the proposed project and the site is located about 1.50 km away from the residential area of Karaikudi Municipality and there are no households in the vicinity of the selected site for about 150 m. Therefore, it is clear that the proposed STP is not an open sewerage system.

29. It is the further specific case of the Municipality that raw sewage to be received in the STP will not be in an anaerobic or septic form but in dynamic form suitable for the ASP with Extended Aeration Technology. It is the further case that the entire collection system of sewage from individual households will reach the STP within a specified

time without any stagnation during its travel. Further, it is stated that the industries, either small scale or large scale, will never be given connection into this system and open drain or gutter will not be linked with the system. The treated effluents from the STP can be used for agricultural purposes, since it is agricultural friendly and the 2nd respondent Municipality has also a similar STP in Chinnamanur in Theni District which is functioning and the treated effluent is being used for farming.

30. EIA Notification, 2006 was framed by the Central Government in accordance with the powers conferred under Section 3(2)(v) and sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Section 3(2)(v) of the Environment (Protection) Act, 1986 enables the Central Government to notify measures regarding restriction of area in which any industrial operation or process or class of industries or operation or process shall not be carried out or shall be carried out subject to certain safeguards. In the EIA Notification, 2006 which is a statutory measure notified by the Central Government, prior EC is required for the project or activity from the MoEF & CC in respect of 'A' category project and State Level Environment Impact Assessment Authority (SEIAA) in respect of 'B' category project, as per the schedule to the notification. In the said EIA notification, STP is not included either in 'A' or 'B' category. However, under Clause (h) of the schedule Common Effluent Treatment Plant (CETP) is categorised as 'B' category project for which general conditions apply.

31. Admittedly, the Board prescribes different norms for STP and CETP, the reason being that STP relates to domestic sewage, while ETP deals with trade and industrial effluents which require different standard and different kind of treatment. Therefore, STP cannot be compared with ETP in the light of different standard of treatment prescribed. There are cases viz, treatment facility under the control of Municipality or Corporation for treating the sewage from household or other residential buildings only, as in the present case.

32. In so far as it relates to the trade effluents, the Board prescribes strict standard by rigorous process with the installation of separate treatment plant. In cases where number of industrial units join together for the purpose of creating Common Effluent Treatment Plant (CETP) for treatment of effluents discharged during the industrial activity by various units, a Common Effluent Treatment Plant (CETP) formed itself is treated as a separate unit and under Clause 7(h) of the schedule of the EIA Notification, 2006, the said activity requires prior EC from SEIAA.

33. There may be cases where Sewage Treatment Plant system of a Corporation or Municipality is in the form of open drainage where there is possibility of trade and industrial and other effluents getting mixed up and in such event STP is not the answer for treatment. In such cases the mixture of sewage and trade effluents are to be certainly treated as ETP/CETP and cannot be treated as mere STP. It is in those circumstance where by virtue of open drainage system there is a possibility of trade and industrial effluents to be mixed with the sewage collected from the household, the system requires prior EC from SEIAA.

34. It was the factual circumstance which was dealt with by the Principal Bench of the NGT in *Kehar Singh's* case in which one of us (Expert Member) is a party to the judgment, on which strong reliance is placed by the learned counsel appearing for the applicant. In the said case, the site chosen for STP was natural flow/slope gradient and the sewage water was flowing through open drains. That was made clear in paragraph 35 of the judgment that in cases of open drain large amount of industrial waste or domestic wastes are discharged directly or indirectly into the drain. In such cases, it cannot be stated as a mere sewage treatment. It is stated in the said paragraph as follows:

"35. It is an acknowledged fact that the sewage in any town travels through open drains where large amounts of industrial waste, domestic discharge and trade effluents are directly or indirectly discharged into such drains. Before these drains reach the STPs, they undoubtedly contain sewage and other trade effluents, including chemical effluents. In other words, it is mixed effluent and not a sewage waste simplicitor."

35. This was made further clear in paragraph 44 of the judgment as follows:

"44. Effluent means discharge of any liquid gaseous or other substances into water bodies etc., and would take within its ambit even discharge of sewage coupled with other industrial and trade effluents. Such effluent would be required to be treated at a CETP of which STP itself may be an integral part. As we have already noticed and even anticipated, the drains which carry the sewage also contain other domestic discharge. Industrial and Trade effluents get discharged directly into the drains by the industries or other activities which generate polluted effluents. Thus STP would have to treat effluents which contain even other pollutants than sewage simplicitor".

36. It is abundantly clear that discharge of any liquid or any other substance into the waterbody etc., the open drainage system would take within its ambit discharge of sewage mixed with other industrial and trade effluents. Therefore, what was decided by the Principal Bench in *Kehar*

Singh's case was in respect of an instance where residential sewage mixed up with trade and industrial effluents which is always possible in the open drainage system and therefore it was held on the factual matrix of the said case that it requires treatment at ETP and STP will be treated as an integral part of CETP which will treat both sewage and trade and industrial effluents. Paragraph 46 of the judgment reads as follows:

46. "The bare reading of the above shows that establishment, expansion and even modernisation of CETPs require EC, being a category B project. Any treatment plant that deals with such effluents having more than 10% of industrial contributions by volume has to be treated as a combined treatment plant. On the strength of this guide, it becomes clear that the material consideration for determining the nature of the project or activity is the kind of effluent that it receives for the purpose of treatment. There is nothing on record before us to show that the STP in question is so established as to treat exclusively sewage and nothing else. On the contrary, the sketch filed by the respondent (Annexure R.3) shows that the sewage is carried by an open drain and would be so carried to the site of STP (for treatment). It is just by the side of a metal road and travels through the abadi and the sludge is carried through an open drain from the entire city. This is demonstrable of the fact that it is not sewage per se that is taken by the open drain to the site but is a mixture of various distinct effluents. Thus, such an STP would even fall under the entry 7 (h) because this plant would be treating the effluents in the semi-solid form and even sludge and would contain more than 10% of industrial or other contaminated chemical effluents."

(Emphasis is ours)

37. The other judgment relied upon by the learned counsel appearing for the applicant rendered by the NGT (SZ) in *A. Gothandaraman's* case is no doubt a case of establishing an underground sewage pumping station (SPS) in Vadiveeswaram, Nagercoil in Survey No.420/51 and construction of STP at Sy.No.M7/9-2, Nagercoil Village but the ground of challenge was that for the said SPS the 1st respondent Commissioner, Nagercoil Municipality has granted permission without

alienating the land which is stated to belong to Kottar Bazaar Government Primary School established by the erstwhile Raja of Travancore. In paragraph 6 of the judgment it is stated as follows:

"6. The STP will store Chlorine gas and in the event of any accident the consequences will be disastrous. There is not enough area around the STP for creation of buffer zone or green belt and the gases and bio aerosols released from the site will harm the children, pregnant women and aged citizens in the area besides causing sufferings to the inpatients in the hospitals."

Subsequently in paragraph 39 the Tribunal has made the following observation:

"39. From the reading of the above decision, it would be quite clear that obtaining EC under EIA Notification, 2006 is necessary in the instant case. No doubt, the project in question would bring through conveyance of sewage in the closed pipe network the entire sewage for treatment to the plant along with trade, industrial and other discharges containing high level of pollutants generated from the non domestic establishments. If so, the end product namely, the treated wastewater discharged from the plant may remain contaminated, acidic or unusable for any purpose."

38. It is made very clear that the Tribunal having gone through the issue in detail came to the conclusion that not only the domestic sewage but trade and industrial effluents containing high level of pollutants from non domestic establishments are also allowed to mix up with domestic sewage and therefore the STP proposed by the respondent is not enough to handle the treatment and ultimately it is not a simple STP for handling domestic sewage but it requires EIA study similar to CETP which requires EC. In paragraph 40 of the judgment, the Tribunal made it very clear that mixing of trade effluents and other waste waters from non domestic sources would compound the problem implying that the Tribunal is not satisfied with the contention of the respondent that the project involves

treatment of only domestic sewage. The judgment also made it very clear in paragraph 41 that there is no need to change the site selected for the purpose of establishing SPS and STP and only directed to seek EC from SEIAA on similar lines of the establishment of CETP.

39. Therefore, it is clear that when once it is concluded that the treatment involves not just domestic sewage but also industrial and trade effluents, it no longer involves setting up of STP simplicitor but it is more or less a CETP which requires prior EC. There are different parameters and inlet and outlet standards for STP and CETPs and there is a change in design, type of machinery and equipment also taking into account the toxicity and obnoxious nature of the effluent to be treated.

40. Considering the nature of effluents to be treated, the EIA Notification, 2006 prescribes EIA study and obtaining EC for setting up of CETP for treating industrial and trade effluents since such effluents which are highly toxic require careful handling lest there will be environmental and health hazards. But there is no provision of EC for STPs predominantly handling domestic sewage and this goes to show that the framers of law have consciously excluded STPs from EIA Notification, 2006.

41. On the factual matrix of this case, as elicited, it is the specific case of the 1st respondent – Municipality that the domestic sewage will be collected by house service connections in a closed underground pipeline and will be carried to the STP site. It is also the specific case of the Municipality, as it is seen in the affidavit filed by the Karaikudi Municipality that within the limits of Karaikudi Municipality there are 9 fuel retail stations and 12 automobile water service stations and each of the fuel stations and service stations is required to establish a separate ETP of their own and

therefore there is no chance of any trade effluent being mixed up with the domestic sewage. The 1st respondent MoEF & CC is also categorical in its affidavit that installation of STP is not covered under the schedule of EIA Notification, 2006 and therefore no prior EC is required for the said activity.

42. In view of the above said clear factual background and taking into consideration the EIA Notification, 2006 as a whole we have no hesitation to arrive at a conclusion that the present proposal of STP by the 2nd respondent cannot be compared anywhere near the factual matrix of the case in which decision was rendered by the Principal Bench in *Kehar Singh's* case and this Southern Zone Bench in *A. Gothadaraman's* case so as to warrant direction for obtaining prior EC treating it as ETP.

43. We have also taken such a decision in our judgment under similar circumstances in respect of a proposal of the Coimbatore Corporation regarding STP at Nanjundapuram in Appeal Nos.66 and 67 of 2015 etc., dated 24th April, 2017. Therefore, we are of the considered view that the present STP simplicitor proposed by the 2nd respondent Municipality does not require prior EC. However, we make it very clear that the 2nd respondent – Municipality shall not allow at any cost mixing of any other effluent into the STP pipeline either by breaking of pipelines on the way by any persons or by any other means of tampering. The State Board shall keep a close watch not only on the functioning of STP in accordance with the environmental norms but also throughout the passage where the pipeline runs from the households leading to the STP site. As and when such pilferage is found and any complaint is received, both the 2nd respondent as well as the Board shall take immediate step to rectify and it is always open to any of the public who are affected including the applicant

herein to make such representation. Such representation shall be given utmost importance and action taken immediately. Needless to state that we have arrived at the above decision only on the categorical stand of the 2nd respondent and hoping that the same is true and will be continued. With the above direction, we answer the 1st issue that the proposed STP by the 2nd respondent does not require prior EC.

44. In so far as it relates to the 2nd issue of the siting criteria which was also dealt with by us in the above said judgment regarding the STP at Nanjundapuram proposed by the Corporation of Coimbatore, it is true that the Board has framed Sewage Treatment Plant siting criteria –Guidelines which are as follows:

1. *The STP site should be at least 250 meters away from any lake or pond preferably in the down stream side of lake or pond so that the sewage shall not reach the water bodies.*
2. *The STP site should be located more than at least 250 meters away from river or stream and shall ensure that the treated / untreated sewage should not reach the above water sources.*
3. *The STP site should be located at least 500 meters away from a notified habituated area and zone of 100 meters around STP site boundary should be declared as no-development zone so that green belt can be developed in that area.*
4. *The STP site should be at least 500 meters away from a public utility area such as park, temple, educational institution etc.*
5. *The site of STP should be selected on dry lands and the treated sewage shall be utilised on land for irrigation*
6. *The local body shall also ensure that the land availability and consent from the land owners for the disposal of treated sewage, which should be mentioned at the time of application for NOC itself.*

7. *In case of disposal of treated sewage into marine water bodies, the local body shall obtain CRZ clearance and this should be submitted along with NOC application.*
8. *The local body shall obtain appropriate land use certificate from DTCP for STP site.*
9. *The local body shall consider the treatment technology while selecting the site in respect of extent of land. Advanced treatment technology will require less footprint area in order to meet the inland surface water standards prescribed by the TNPCB.*
10. *A preliminary assessment of public /nearby residents opinion neighbouring the location of STP site is essential.*

45. The said guidelines framed by the Board are executive in nature and cannot be said to have the effect of law to be enforced or having authority of law as it has been pointed by the Hon'ble Supreme Court in GULF GOANS HOTELS CO. LTD VS. UNION OF INDIA (2014) 10 SCC 673. While dealing with the environmental guidelines issued for development of beaches, apart from the direction issued to the State Government by the then Prime Minister, the Notification issued by the Governor for setting up of the Ecological Development Council for Goa *inter alia* for scrutiny of beach constitution within 500 m of HTL and the order of the Under Secretary, Ministry of Tourism dated 11.6.1986 addressed to the Chief Secretary, Government of Goa, constituting an Inter-Ministerial Committee for considering tourist projects within 500 m. the Hon'ble Supreme Court has rejected the contention that in respect of ecology and environment strict view of environmental degradation should be adopted in the light of Article 21 of the Constitution of India and held that if the guidelines are not statutorily enacted the same cannot be enforced. The guidelines were at the most held to be expression of opinion and observed as follows:

"19. Article 77 of the Constitution provides the form in which the Executive must make and authenticate its orders and decisions. Clause (1) of Article 77 provides that all executive action of the Government must be expressed to be taken in the name of the President. The celebrated author H.M. Seervai in *Constitutional Law of India*, 4th Edn. Vol. 2, 1999 describes the consequences of government orders or instructions not being in accordance with clauses (1) or (2) of Article 77 by opining that the same would deprive the orders of the immunity conferred by the aforesaid clauses and they may be open to challenge on the ground that they have not been made by or under the authority of the President in which case the burden would be on the Government to show that they were, in fact, so made. In the present case, the said burden has not been discharged in any manner whatsoever. The decision in *Air India Cabin Crew Assn. V. Yeshaswinee Merchant* (2003) 6 SCC 277, taking a somewhat different view can, perhaps, be explained by the fact that in the said case the impugned directions contained in the government letter (not expressed in the name of the President) was in exercise of the statutory power under Section 34 of the *Air Corporations Act, 1953*. In the present case, the impugned guidelines have not been issued under any existing statute.

20. Clause (2) of Article 77 also provides for the authentication of orders and instructions in a manner as may be prescribed by the Rules. In this regard, vide S.O.No.2297 dated 3.11.1958 published in the *Gazette of India*, the President has issued the *Authentication (Orders and Other Instruments) Rules, 1958*. The said Rules have been superseded subsequently in 2002. Admittedly, the provisions of the said 1958 Rules had not been followed in the present case insofar as the promulgation of the guidelines is concerned.

21. In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent as expression of opinion. In law, the said guidelines and then binding effect would be no more than what was expressed by this Court in *State of Uttaranchal v. Sunil Kumar Vaish* (2011) 8 SCC 670 in the following paragraph of the report : (CC P.678, paras 23, 24)

"23. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be (Articles 77(1) and 166(1)). Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in the manner specified in the rules made by the President or the Governor, as the case may be (Articles 77(2) and 166(2)). In other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.

24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the

particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166 (1) and (2). The noting in the file alone is a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overrules or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."

46. In any event, these guidelines issued by the Board cannot be considered to be rigid and have to be relaxed based on the technological advancement and scientific improvements in respect of various projects. As and when new scientific and technological process are introduced, the siting criteria even in the form of guidelines are to be changed to suit the scientific advancements. In fact, in the case stated supra regarding Nanjundapuram STP at Coimbatore Corporation, we have clearly referred to such STP with a modern technology installed in places like Mumbai and Pune which are situated adjacent to the residential apartments and found that considering the rapid strides that are made in Science and Technology and new methods are propounded for better ecological and environment protection, it is high time that these guidelines issued by the Board in 2008 may be revised from time to time based on the revised standards for STPs and CETPs notified under the Environment (Protection) Act, 1986 and the rules made thereunder.

47. In so far as it relates to the siting guidelines of the Board to the factual matrix of the case, it is not even the case of the applicant herein that the proposed STP is adjacent to any residential area even though it is the case of the Municipality that few houses have come up in the vicinity which

are by way of encroachment and unauthorised, it is certainly not the case of STP situated either adjacent to a notified housing site or religious place.

48. It is incidentally relevant to note that the 2nd respondent – Municipal Council has passed a resolution as early as on 30.6.1972 wherein it was resolved that compost depot shall be shifted near the place of Devakkottai Rastha Residential School. Further it is stated that the Municipality has passed a resolution on 11.8.1970 approving the proposed place for STP to be the land for the use of the Municipality and few houses have come later which are unauthorised constructions. In these circumstances, while answering the 2nd issue, we hold that in so far as it relates to the proposed STP by the 2nd respondent which is based on modern technology the siting criteria is susceptible for change based on the technological advancement and shall not stand in the way of development projects like the present one which in our considered view is not only most eco-friendly but also intended for the purpose of treatment of sewage which is being generated by the people the quantum of which increases day by day in alarming proportion posing serious damage to the environment. If the more scientifically advanced and technologically improved methods are followed by such STP, which is absolutely necessary, raising of such objection in the guise of public interest, is certainly a hindrance to the environmental friendly project like the present one. In effect, such hindrance would result in serious environmental damage. The Hon'ble Supreme Court is categorical in its judgment in CHARIMAN, INDORE VIKAS PRADHIKARAN VS. PURE INDUSTRIAL COKE & CHEMICALS LTD & OTHERS (2007) 8 SCC 705 that while compared to the individual right of privacy, it is the larger interest of the society which has to be given utmost importance by observing as follows:

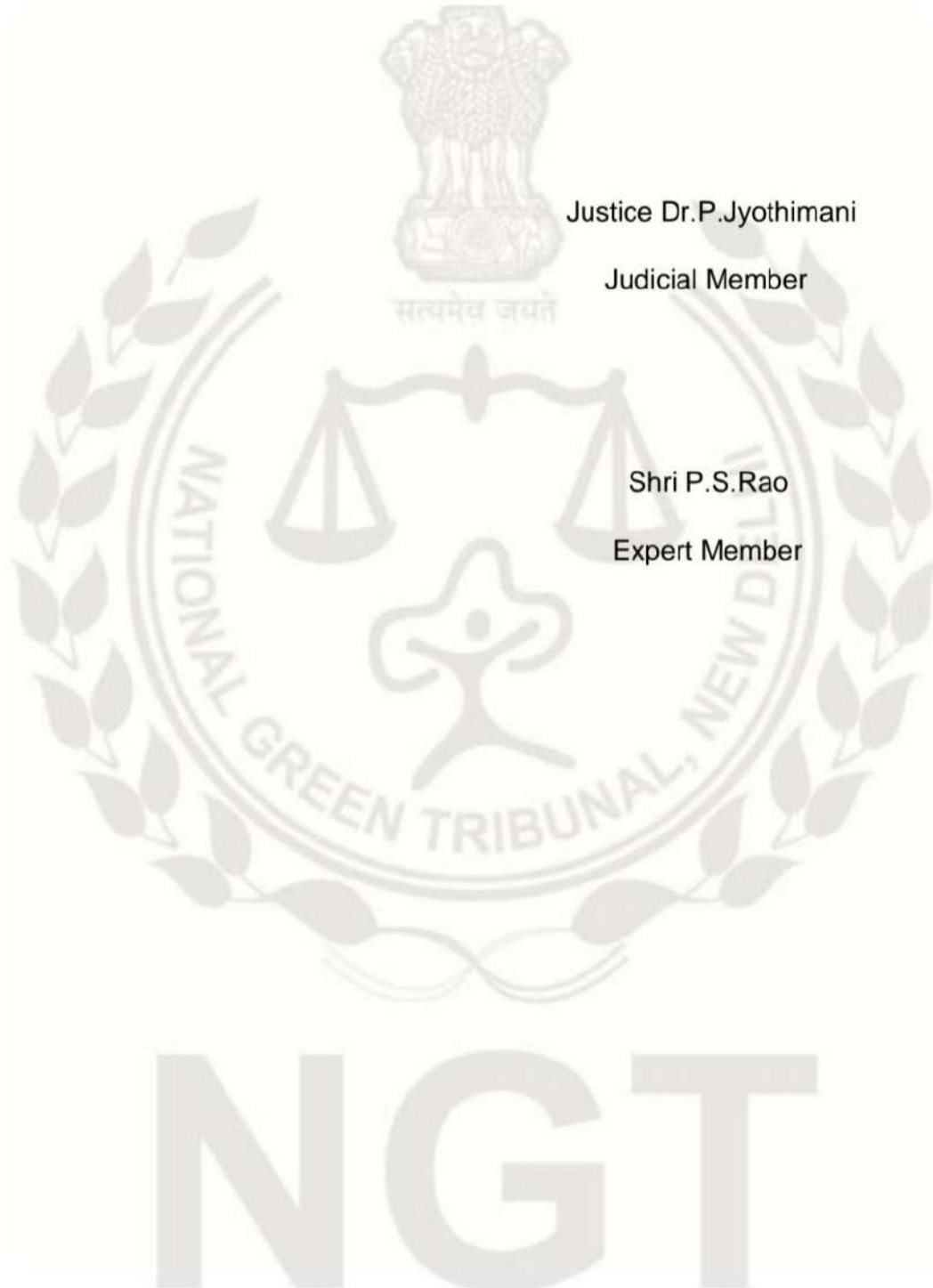
"46. Where, however, a scheme comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged thereunder, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. Whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation thereof. Implementation of such land development as also building laws should be in consonance with public welfare and convenience. In United States of America zoning ordinances are enacted pursuant to the police power delegated by the State. Although in India the source of such power is not police power but if a zoning classification imposes unreasonable restriction, it cannot be sustained. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, as thereby statutory rights of a party cannot be taken away. The courts must make an endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property, on the other."

49. Issue No.2 is answered accordingly holding that the siting criteria is no bar for the proposed project of STP by the 2nd respondent, however subject to the condition that the Municipality shall ensure that the unit is maintained perfectly and should not give any scope for complaint. In case of any leakage of pipeline carrying domestic sewage to the treatment plant, it is the primary responsibility of the 2nd respondent – Municipality to immediately rectify the same to avoid causing any public inconvenience. It is always open to any person in those circumstances to approach appropriate authority for redressal.

50. Looking at any angle, we are of the considered view that the applicant is not entitled for any relief, as claimed in the application and

accordingly the application fails and the same is dismissed, however, without any order as to cost.

Interim order passed, pending the above application is vacated.



REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 2435 OF 2019

Keystone Realtors Pvt. Ltd.

...Appellant

Versus

Shri Anil V Tharthare & Ors.

...Respondents

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1. The present Civil Appeal arises from an order dated 11 February 2019 of the Principal Bench of the National Green Tribunal¹. In its order, the NGT held that the increase in the total construction area of the appellant's project was an "expansion" under a notification (bearing number S.O. 1533) dated 14 September 2006² of the Ministry of Environment and Forests. The NGT found that the appellant had undertaken an "expansion" as set out in Paragraph 2 of the EIA

¹ NGT

² EIA Notification

Notification without complying with the regulatory procedure prescribed. The appellant was directed to deposit an amount of Rupees one crore with the Central Pollution Control Board³. Noting that the construction at the project site had been completed, the NGT appointed a five-member expert committee to study the impact of the appellant's expanded project and to suggest remedial measures.

The facts

2. The appellant is the project proponent of a residential redevelopment, called 'Oriana Residential Project' situated at CTS no 646, 646 (Pt) Gandhinagar, Bandra (East), Mumbai 400050. On 8 June 2010 the appellant received a Commencement Certificate to carry out the development and erect a building situated at the project property. The appellant began construction. When the construction commenced, the total construction area was 8,720.32 square metres. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 square metres. Under the EIA Notification, an Environmental Clearance⁴ was necessary if the total construction area exceeded 20,000 square metres. Hence, the appellant applied for an EC under the EIA Notification.

3. The fourth respondent, the State Level Expert Appraisal Committee for Maharashtra⁵ recommended the grant of an EC for the project. On 2 May 2013 the third respondent, the State Level Environment Impact Assessment Authority

³ CPCB

⁴ EC

⁵ SEAC

for Maharashtra⁶, based on the recommendations of the SEAC granted an EC. It is not in dispute that at the time when the EC dated 2 May 2013 was granted, the total construction area of the project was 32,395.17 square metres. The grant of the EC was conditional on the appellant obtaining a 'consent for establishment' from the Maharashtra Pollution Control Board under the Air (Prevention and Control of Pollution) Act 1981 and the Water (Prevention and Control of Pollution) Act 1974.

4. By a letter dated 24 September 2013, the appellant informed the Environment Department of the Government of Maharashtra, the second respondent, that the construction area was being further increased by 8,085.71 square metres, as a result of which the total construction area of the project would stand enhanced to 40,480.88 square metres. In its letter, the appellant sought an 'amendment' to the EC dated 2 May 2013 by the third respondent to reflect the increase in the total construction area. On 13 March 2014, the third respondent granted an 'amendment' to the EC dated 2 May 2013 on the ground that there was only a "marginal increase in built up and construction area". The third respondent noted the changes in the specification of the project as follows:

Description	As per EC dated 2 May 2013		Amendment	
FSI area	16,346.32 sq mts		21,365.54 sq mts	
Non FSI area	16,048.85 sq mts		19,115.34 sq mts	
Total Construction area	32,395.17 sq mts		40,480.88 sq mts	
Nos of tenements	Members 64	Sale 61	Members 64	Sale 77

⁶ SEIAA

Building Configuration	Member	2 Basement	Member	2 Basement
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5. The first respondent, claiming to be a resident of MIG Colony, Gandhinagar, Bandra East, Mumbai, challenged the grant of the amended EC dated 13 March 2014 before the Pune Bench of the NGT. In response, the appellant filed two applications, challenging the standing of the first respondent and contending that the challenge was barred by limitation. By an order dated 4 May 2016, the Pune Bench of the NGT rejected the applications questioning the maintainability of the proceedings and setting up the bar of limitation. The appellant filed a writ petition before the High Court of Judicature at Bombay to challenge the decision of the Pune Bench of the NGT. The Bombay High Court, allowing the writ petition held by an order dated 12 August 2016, that the appeal was not maintainable at the behest of the first respondent, and the challenge against the grant of the amended EC dated 13 March 2014 was barred by limitation. By an administrative order dated 31 July 2018, the dispute was transferred from the Pune Bench of the NGT to the Principal Bench which heard the parties and delivered the impugned order.

Relevant clauses of the EIA Notification

6. The present dispute raises important questions regarding the interpretation the EIA Notification. The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernisation of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their

potential environmental impact has been assessed and approved by the grant of an EC. Paragraph 2 of the EIA Notification reads thus:

“2. Requirement for prior Environmental Clearance (EC): -

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernisation of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation;

(iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”

(Emphasis supplied)

The Schedule to the EIA Notification classifies potential projects into Category ‘A’ and Category ‘B’ based on their size and potential environmental impact. Category ‘A’ projects require project proponents to secure an EC from the Ministry of Environment, Forests and Climate Change. Category ‘B’ projects require project proponents to secure an EC from the SEIAA, based on the recommendations of the SEAC. Where a project falls within the parameters stipulated in the Schedule, paragraph 2 of the EIA Notification provides that no construction work shall begin unless an EC is granted in regard to three types of activity: (i) new projects or activities provided in the Schedule, (ii) expansion or

modernisation of existing projects or activities provided in the Schedule, and (iii) changes in the product mix in existing manufacturing units provided in the Schedule beyond the specified range. The present dispute raises questions as to how the second type of activity, the “expansion” of existing projects, should be construed under the EIA Notification.

7. In order to secure an EC, the project proponent must submit an application in the manner set out in Form 1 and Supplementary Form 1A (if applicable) of the EIA Notification. Under paragraph 7(i) of the EIA Notification, the project proponent must also submit a pre-feasibility report. However, in the case of projects under item 8 of the Schedule, only a conceptual plan is required to be submitted. Paragraph 7(ii) of the EIA Notification states that:

“7(ii) Prior Environmental Clearance (EC) process for Expansion or Modernisation of Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernisation of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product mix shall be made in Form 1 and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultation and the application shall be appraised accordingly for grant of environmental clearance.”

(Emphasis supplied)

Clause (ii) of paragraph 2 of the EIA Notification requires the project proponent to secure an EC from the relevant regulatory authority prior to undertaking any “expansion” of an existing project. Paragraph 7(ii) further stipulates that all applications for an EC in cases of “expansion” resulting in the increase of production capacity or lease area beyond the capacity/area stipulated in the previous EC shall be made in the manner set out in Form 1 or 1A (as applicable).

8. The appellant’s application in Form 1 acknowledges that the project fell under entry 8(a) of Schedule 1 of the EIA Notification. Entry 8 deals with ‘Building and Construction projects having a built-up area of or greater than 20,000 square metres but less than 1,50,000 square metres.’ Entry 8 of the Schedule to the EIA Notification is as follows:

8 – Building / Construction projects / Area Development projects and Townships			
8(a)	Building and Construction projects	≥20,000 sq mts and <1,50,000 sq mts of built-up area	Built-up area for covered construction: in the case of facilities open to the sky, it will be the activity area
8(b)	Townships and Area Development projects	Covering an area ≥ 50 ha and or built up area ≥1,50,000 sq mts	All projects under item 8(b) shall be appraised as Category B1

Issue

9. In applying for the original EC, the appellant submitted an application in Form 1 as required under the provisions of the EIA Notification. The total construction area identified in the appellant's Form 1 was 32,395.17 square metres. However, in September 2013 the appellant informed the second respondent of an increase by 8,085.71 square metres as a result of which the total construction area of the project would be 40,480.88 square metres. In seeking an 'amendment' to the EC dated 2 May 2013 the appellant did not submit an updated Form 1. Further, the 'amendment' to the EC was granted by the SEIAA without the recommendations of the SEAC. The issue before this Court is whether the 'amended' EC dated 13 March 2014 granted by the SEIAA without following the procedure stipulated in paragraph 7(ii) of the EIA Notification is valid.

Submissions

10. Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant submitted that:

- (i) When construction began, the total construction area of the appellant's project was 8,720.32 square metres. As the EIA Notification requires projects with a total built up area of or more than 20,000 square metres to procure an EC prior to the start of construction, no EC was required before construction of the appellant's project commenced;

- (ii) Pursuant to the first increase, when the appellant's project crossed the 20,000 square metre threshold provided for in the EIA Notification, the appellant submitted a Form 1 and was granted a valid EC dated 2 May 2013 by the third respondent;
- (iii) Pursuant to the second increase, the built up area of the appellant's project only marginally increased by 8,085.71 square metres to a total construction area of 40,480.88 square metres, which is within the upper limit of 1,50,000 square metres prescribed by entry 8(a) of the Schedule to the EIA Notification. Therefore, the second increase was not an "expansion" within the meaning of clause (ii) of paragraph 2 of the EIA Notification and no fresh Form 1 or EC was required at the time of the second increase;
- (iv) Clause (ii) of paragraph 2 only applies to situations where the project crosses the lower or upper threshold limits stipulated in the Schedule. Any increase in production capacity or construction area within the limits set out in the Schedule would not constitute an "expansion" within the meaning of Clause (ii) of paragraph 2 and does not require compliance with the procedure under paragraph 7(ii) of the EIA Notification;
- (v) The increase in the appellant's project is only marginal and does not have an adverse impact on the environment;
- (vi) The SEIAA applied its mind to the appellant's request for an 'amendment'; noted that the increase in construction area was only

marginal and issued an amendment to the original EC dated 2 May 2013; and

- (vii) The NGT had no basis to impose the fine of Rupees one crore on the appellant.

11. Joining issue with the above submissions, Mr Aditya Pratap, learned counsel appearing on behalf of the first respondent submitted that:

- (i) Under clause (ii) of paragraph 2 read with paragraph 7(ii) of the EIA Notification, any expansion beyond the “threshold limit” requires a fresh EC. The appellant’s project had crossed the threshold limit of 20,000 square metres and the second increase of 8,085.71 square metres constituted an ‘expansion beyond the threshold limit’ and hence required a fresh EC;
- (ii) Once a project breaches the lower threshold limit set out in the Schedule to the EIA Notification, any expansion or modernisation, even within the upper threshold set out in the Schedule, will require the submission of a fresh Form 1 and the matter to be placed before the Expert Appraisal Committee or the SEAC, as applicable in accordance with paragraph 7(ii) of the EIA Notification;
- (iii) Adopting the appellant’s interpretation of clause (ii) of paragraph 2 would defeat the object and purpose of the EIA Notification as a whole. It would allow project proponents to incrementally increase

the construction area and over time significantly impinge on the environmental impact of the project without seeking a fresh EC;

- (iv) If the law prescribes an act to be done in a particular manner, it must be done only in that manner and no other. Under paragraph 7(ii) of the EIA Notification, it was incumbent on the SEIAA to place the matter before the SEAC for appraisal and recommendations; and
- (v) The EIA Notification is an operationalisation of the precautionary principle, which forms a part of the environmental law of India. The EIA Notification must be read in a manner which gives effect to the precautionary principle.

Interpreting paragraphs 2 and 7

12. The central controversy between the parties to the present dispute is the manner in which paragraphs 2 and 7 of the EIA Notification should be interpreted. Clause (ii) of paragraph 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an “expansion”. Clause (ii) uses the phrase “expansion...beyond the limits specified for the concerned sector”. The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under paragraph 2. However, the above language in clause (ii) is further qualified by the phrase “that is, projects or activities which cross the threshold limits given in the Schedule

after expansion or modernisation.” A plain reading of the second half of clause (ii) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (ii) of paragraph 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.

13. However, clause (ii) of paragraph 2 must be read with paragraph 7(ii) of the EIA Notification. Paragraph 7(ii) lays down the exact procedure to be followed by a project proponent in the case of an expansion. Two crucial points must be noted with respect to paragraph 7(ii). First, it uses the phrase, “expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted”. Second, the qualifying language referring to breaching the threshold limits “after expansion” is absent. An “expansion” can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of paragraph 7(ii) would support the interpretation put forth by the first respondent – that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within upper the limit prescribed in the Schedule.

14. The dangers effectively articulated by the learned counsel for the first respondent are real. If clause (ii) of paragraph 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(a) of the Schedule is a built up area of 20,000 square metres and the upper limit is 1,50,000 square metres. It cannot be doubted that the environmental impact of a construction of 1,50,000 square metres is drastically more than construction of 20,000 square metres. If the appellant's argument is accepted in totality, a project proponent could potentially secure an EC for constructing 20,000 square metres and by 'amendment' steadily increase the area of construction up to 1,50,000 square metres without submitting an updated Form 1 or any substantive review by the SEAC.

15. We note that subsequent to the EIA Notification being published in 2006, a draft notification was issued on 19 January 2009.⁷ The draft notification proposed the following amendment:

"in para 2 [of the EIA Notification], after sub-para (iii), the following shall be inserted; namely:-

⁷ Notification S.O. 195 (E) dated 19 January 2009.

However modernisation or expansion proposals without any increase in pollution load, and, or without any additional water and or land requirement are exempted from the provisions of this Notification:

Provided that, a self certification, stating that the proposals shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent."

Prior to adopting the draft notification, hearings were conducted and written comments were solicited from various stakeholders including: (i) Central Ministries and Departments, (ii) State Governments and their Agencies, (ii) Industries and their Associations and (iv) Civil Society including NGOs. A committee was constituted by the Ministry of Environment and Forests, Government of India which published a report in October 2009. The committee specifically recommended against the adoption of the above amendment, noting:

"The amendments propose to exempt modernisation and expansion of projects based on a self certification by project authorities that there is no increase in pollution load. **It is totally unacceptable that the modernisation and expansion of projects be removed from the environmental clearance regime, with or without the requirement of self certification.** There are several industries operating in critically polluted areas or are in violation of their environmental clearance conditions, which need to be considered before the expansion of a project is considered. What is to be considered is not just whether there is an increase in pollution load but also the current impact of the project and its compliance with environmental clearance conditions. We can provide clear examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion which includes adding new components to the existing industrial operations etc. This has allowed several projects to continue their activities and expand despite blatant non compliance. Finally, it is only with industrial, thermal power and other such related operations that one can decide on parameters of pollution. **Development projects like highways, airports and other infrastructure projects which seek to expand might have a detrimental impact due to factors such as**

change in land use (i.e. construction over a wetland, grassland or agricultural land etc). Despite this, the project proponent can certify that there is no change in pollution load and hence expansion is to be allowed. **The current process seeks a detailed EIA report to determine whether impacts can be mitigated. If the amendment is brought into force, it will simply do away with this critical and necessary step in the environmental clearance process.** Therefore, this amendment should not be allowed.

...

The draft notification takes a myopic view of environmental and social impact of modernisation and expansion. **Any modernisation/expansion projects will necessarily entail increase in production, increase in transportation, increase in pressure on the local infrastructure and local natural resources and increase in the pollution load during the construction phase.** So, even if a modernisation/expansion does not lead to an increase in the pollution load or water or land requirement within the factory premises during the operation phase, it will lead to an increase in environmental and social impact outside the premise."

(Emphasis supplied)

The draft amendment was not adopted in subsequent amendments to the EIA Notification. We find considerable merit in the observations of the committee that the requirement of an EC at the time of expansion forms a critical step in the environmental clearance regime. According to the committee, it assists officials not just in evaluating and mitigating any adverse impact caused by the expansion but also in assessing whether the project proponent is in compliance with their existing obligations. Crucially, any form of expansion necessarily puts a strain on the local environment and infrastructure and needs to be carefully evaluated in a holistic manner.

16. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or the SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a 'marginal' increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the government in its wisdom were to prescribe that a one-time 'marginal' increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of their being a violation of the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in paragraph 7(ii).

17. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 square metres to 40,480.88 square metres. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under paragraph 7(ii) of the EIA Notification but rather sought an 'amendment' to the EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The 'amendment' to the EC dated 13 March 2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 square metres. The procedure set out under paragraph 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an 'amendment' to the EC without following the procedure set out in paragraph 7(ii) of the EIA Notification.

18. We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project,

the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken. The NGT has already directed the appellant to deposit Rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the directions of the NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in the EC dated 2 May 2013 and also suggest the compensatory exaction to be imposed on the appellant.

19. The appeal is dismissed. There shall be no order as to costs.

20. Pending application(s), if any, shall stands disposed of.

.....J
[Dr Dhananjaya Y Chandrachud]

.....J
[Ajay Rastogi]

**New Delhi;
December 3, 2019.**



**BEFORE THE APPELLATE AUTHORITY
TAMIL NADU POLLUTION CONTROL BOARD**

(Wednesday, Twenty ninth day of September, Two thousand and twenty one)

**HON'BLE JUSTICE K.B.K. VASUKI
CHAIRMAN
and
Thiru Dr. B. Jeyaraman
Member**

APPEAL 58 / 2020

and

APPLICATION 54 / 2020

M/s Jain Housing & Construction Ltd.,
(Presently M/s. Jain Housing),
Rep. by its Managing Director,
Thiru Sandeep Mehta,
No. 98/99, Habibullah Road,
T. Nagar, Chennai – 600 017.

- Appellant

Vs.

1) The Chairman,
Tamilnadu Pollution Control Board,
No: 76, Mount Salai,
Guindy, Chennai – 600 032.

2) The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Maraimalai Nagar

- Respondents.

Mr. Sai Sathyajith - Counsel for the appellant

Mr. S Muralidharan - Representing respondents 1&2.

COMMON ORDER:

1. The appeal is filed against the impugned order of the 1st respondent in his Letter No: T2 / TNPCB / LAW / LAIII / NGT / F.022327 / MMN / 2020 Dated: 25.8.2020 thereby ordering payment of environmental compensation of Rs.2,19,00,000/- to the 1st respondent-TNPCB by the appellant.

2. The brief facts which are relevant for consideration herein are as follows:

The Appellant company is involved in the business of construction of residential buildings and other real estate activities. The subject project of the impugned notice is the construction of residential housing complex namely Jain's Pebble Brook situated at Okkiyam, Thoraipakkam, Chennai and the same was constructed in two phases. The first phase was originally for the construction of 412 dwelling units for the total built up area of 51,020.61 Sq.mts. The appellant after having obtained prior environmental clearance on 27.4.2009 under the relevant provision of Environment Protection Act and under EIA Notification of 2006 for the construction of dwelling units covering the built up area as above mentioned also obtained statutory approval, permission and license from other competent authorities for the same. Whereas the appellant constructed 620 dwelling units in the total area of 48614.44 Sq.mts., thereby the appellant constructed additional 208 dwelling units by utilizing lesser built up area for which environmental clearance and other permissions were obtained.

3. So far of the 2nd phase is concerned, the Appellant obtained environmental clearance and other statutory approval, permission and license for the construction of 396 dwelling units in total built up area of 48,115.17 Sq.mts. and the Appellant completed the construction of 396 dwelling units by utilizing lesser built up area of 36623.19 Sq.mts. in terms of the prior environmental compensation obtained on 1.4.2015. The appellant also obtained revised permission, approval and license from other statutory authorities for the modifications in Phase I and Phase II. After the completion of the construction of entire residential complex in two phases, the Appellant handed over the maintenance of the housing

complex to the residents' Association and the same has been presently maintained by the residents' Association.

4. While so, the purchaser and occupier of one of the flats in the same housing complex by name Mr. Arjun Muthukrishnan approached Hon'ble National Green Tribunal by way of Application 5 / 2018 alleging act of violations of EIA Notification and the relevant provisions of Water (P&CP) Act and Air (P&CP) Act by the appellant and for directing the official respondents 1 to 3 therein, two among whom are the respondents 2 and 3 herein to initiate prosecution against the 4th respondent-builder therein who is the appellant herein for the alleged violations and for issuing further direction to the 4th respondent-builder to relocate the Sewage Treatment Plant (STP) to an appropriate location after obtaining necessary consent from the respondent-Tamilnadu Pollution Control Board. The Hon'ble National Green Tribunal on entertaining the application passed an order on 14.11.2018 in which the 1st respondent-TNPCB was directed to look into the matter and to ascertain the facts from SEIAA and CMDA and to take appropriate action as per law. In compliance with the same, the 1st respondent-TNPCB inspected the subject housing complex through their officials. on 18.8.2018 and 20.8.2018 and the same was followed by two show cause notices dated 23.8.2018 issued under Water (P&CP) Act and Air (P&CP) Act alleging certain violations including failure to obtain consent of the Board for the construction of housing complex and failure to obtain necessary revised environmental clearance for additional construction of 208 dwelling units in the first phase etc. The 1st respondent-TNPCB also called for certain details from SEIAA and CMDA. The appellant sent detailed replies on 11.9.2018 and 28.9.2018 to the show cause notices explaining as to how

and what manner there is no violation of EIA Notification and any of the provisions of Environmental Protection Act, Air and Water Acts etc.

5. The 1st respondent-TNPCB filed a report before the Hon'ble National Green Tribunal stating that the reply issued by the appellant was not satisfactory. In the same report, the 1st respondent-TNPCB reiterated the same violations alleged against the appellant in the show cause notices dated 23.8.2020 regarding want of environmental clearance for the construction of additional dwelling units and for want of consent from the Board for the construction of the housing complex. The 1st respondent-TNPCB following their report dated 28.9.2018 submitted to the Hon'ble National Green Tribunal also issued another letter dated 2.11.2018 to the appellant repeating the same allegations of violations as stated above.

6. The appellant on receipt of the report dated 28.9.2018 and notice dated 2.11.2018 sent their reply on 16.11.2018 to the 1st respondent-TNPCB reiterating the reasons for not obtaining revised prior environmental clearance for additional construction and for not obtaining prior environmental clearance for the construction of additional dwelling units and for not obtaining consent of the Board for the construction of the housing project and reiterating that the earlier environmental clearance obtained is sufficient and that there is no violation of any of the statutory requirements under any of the laws or any environmental norms. They also in the same letter stated that they are also willing to submit application for consent if insisted. The appellant has also expressed their willingness to abide by any conditions that may be necessary and statutorily required to be satisfied. The appellant in the same reply requested the 1st respondent-TNPCB to reconsider the allegations in the light of the explanation furnished by the appellant.

7. In the meanwhile SEIAA also filed report before the Hon'ble National Green Tribunal furnishing the details regarding the environmental clearances issued to the appellant and details of the salient features of the project in Phase I and Phase II. The appellant also obtained permission from the Hon'ble National Green Tribunal to file an affidavit to place on record all such matters which are relevant for disposal of the case. The Hon'ble National Green Tribunal on receipt of further report from the 1st respondent-TNPCB and reply from the appellant passed more than one orders between 3.12.2018 and 28.9.2020 thereby referring to the nature of the allegations raised against the appellant, nature of the action taken by the 1st respondent-TNPCB in levying environmental compensation to the appellant and in filing criminal complaint against the appellant for the violations entailing penal action and directed the 1st respondent-TNPCB to give opportunity to the project proponent i.e., the appellant herein to meet out their case and on the violations being established, to complete the action initiated against the appellant with further liberty given to the appellant to approach appropriate authority in accordance with law in the event of any order is passed against the appellant by the 1st respondent-TNPCB. The last such order passed by Hon'ble National Green Tribunal was on 28.9.2020.

8. In the meanwhile the 1st respondent-TNPCB passed an order on 25.8.2020 imposing environmental compensation of Rs.2,19,00,000/- against the appellant for their failure to obtain consent for the construction of the subject housing project and ordered the same to be remitted by the appellant within a week time. On receipt of such order, the appellant sent a representation dated 12.10.2020 to the 1st respondent Board explaining in detail as to how there is no violation of any of the provisions of any Acts by the appellant and how they have complied with all the statutory

requirements by obtaining necessary prior environmental clearance, building licenses, approvals and permissions for the construction of both Phase I and Phase II and by installing necessary pollution measures and by making all statutorily required arrangements and about their willingness to comply with any other conditions that is required to be satisfied under any statute. The appellant in the same reply requested the 1st respondent-TNPCB to reconsider their order levying environmental compensation passed on 25.8.2020.

9. In the meanwhile, the 1st respondent-TNPCB issued another show cause notice to the appellant on 25.9.2020 levying environmental compensation of Rs.2,19,00,000/- for the period from 5.1.2018 till date for non compliance of the provisions of Section 25 of the Water (P&CP) Act and Section 21 of the Air (P&CP) Act. The last order passed by Hon'ble National Green Tribunal on 28.9.2020 is subsequent to the show cause notice dated 25.9.2020 as above mentioned levying compensation. The Hon'ble National Green Tribunal observed in their order dated 28.9.2020 that in view of the show cause notice issued on 25.9.2020 to the appellant by the 1st respondent-TNPCB nothing remained to be decided in the application O.A. 5/2018 filed by the 3rd party and no further order need to be passed in the matter. In the same order the appellant was given liberty to approach the appropriate authority as per law against any order passed against the appellant by the Tamilnadu Pollution Control Board.

10. The appellant issued detailed reply on 23.10.2020 to the 1st respondent-TNPCB to the show cause notice dated 25.9.2020. The appellant in their reply notice denied all the allegations of violation raised against the appellant with detailed explanation for each of the allegation and requested the 1st respondent-TNPCB to consider their earlier decision regarding alleged violations and to drop further proceedings against the

appellant. The 1st respondent-TNPCB after the receipt of reply dated 23.10.2020 issued the impugned order dated 14.12.2020 thereby imposing environmental compensation of Rs.2,19,00,000/- against the appellant for the violations mentioned in the show cause notice dated 25.9.2020. Aggrieved against the same the appellant has come forward with the present appeal.

11. In this appeal the appellant has seriously challenged the impugned order dated 14.12.2020 levying environmental compensation of Rs.2,19,00,000/- on various grounds. The appellant has, at the first instance, denied all the violations alleged against them. It is their specific contention that the alleged violation regarding failure to obtain revised environmental clearance for the construction of additional dwelling units and the failure to obtain necessary consent under Water and Air Acts from the 1st respondent-TNPCB for the construction of the subject housing project and other permission for putting up STP etc. are not applicable to the fully residential project of the appellant. It is their contention that the prior environmental clearance having been obtained for Phase-I for specified number of dwelling units i.e., 412 units covering specified total built up area i.e., 51,020.61 Sq.mts. is sufficient enough for the construction of additional dwelling units covering lesser built up area as per the amended EIA Notification, clarification issued by MoEF and the proceedings issued by CPCB. It is also their case that Phase-II of the project having been put up with necessary prior environmental clearance and other building licenses, approval, permission from other statutory authorities for the exact number of dwelling units covering specified built up area and in terms of the orders as above mentioned does not suffer from any violation at all.

12. It is also their contention that the project concerned having been fully residential in nature and the total built up area of construction having been above 20,000 Sq.mts. and upto 1,50,000 Sq.mts. prior environmental clearance is sufficient and no separate consent order under both Water and Air Acts from State Pollution Control Board is required for the same as per the EIA Notification issued by MoEF and clarification issued by CPCB and as per the prevailing legal position.

13. With regard to installation of STP, the same is, according to the appellant, so modernized and is appropriately set up and no commercial effluent is generated and no permission is required for setting up the same and organic waste convertor involving huge expenditure which is not insisted for other housing projects cannot be demanded to be complied with for this single residential housing project. It is also their contention that they have made all arrangements in compliance with all statutory requirements and the impugned order is passed in biased manner with predetermined mind and without duly considering their detailed explanation and without giving the appellant an opportunity of defending their case and without duly rendering any decision, after detailed enquiry, on the allegations so raised in one way or other and without ascertaining whether the violations alleged are such leading to any environmental damage and if so, without assessing the nature and extent of environmental damages allegedly caused and without explaining as to how the mode of determining such huge environmental compensation is in proportion to the nature of the violations alleged against the appellant. It is also their contention that the impugned order levying huge environmental compensation by rejecting their detailed explanation at one stroke as "not satisfactory" without any supporting reasoning and without giving the appellant an opportunity of personal hearing is against law,

contrary to the direction issued by Hon'ble National Green Tribunal and is in gross violation of the principles of natural justice. The appellant has also specifically represented in this Appeal that they are ready and willing to comply with any statutorily required conditions imposed by the 1st respondent-TNPCB after their duly considering the detailed explanation offered by the appellant and after their giving the appellant an opportunity to explain in person and after their inspecting the entire project including installation of STP and its mode of functioning and the mode of compliance of all other statutory requirements etc by the appellant.

14. Per contra, the 1st respondent-TNPCB and their 2nd respondent official have reiterated the same stand regarding all violations alleged against the appellant in their reply affidavit as well as in their submissions made before the Appellate Authority. They have in their reply and in their submission extracted the same reasoning as mentioned in the earlier show cause notices and in the impugned order.

15. Heard both sides.

16. On the basis of the pleadings raised and the oral and written submissions submitted on both sides the point arises for the consideration of the Appellate Authority is as follows:

Whether the impugned order levying environmental compensation against the appellant by the 1st respondent-TNPCB is liable to be set aside or confirmed?

17. The impugned order and the show cause notices issued by the 1st respondent-TNPCB and the proceeding initiated by the individual party before the Hon'ble National Green Tribunal and the reports filed before the Hon'ble National Green Tribunal by both the appellant and the 1st respondent-TNPCB and the orders passed by the Hon'ble National Green

Tribunal preceding the impugned order are all in respect of the construction of residential housing project namely Jain's Pebble Brooke at Okkiyam, Thoraipakkam, Chennai by the appellant. The facts admitted herein are that the project was completed in two phases as Phase-I and Phase-II with the following details.

Total Description of the Project

<u>S.No.</u>	<u>Description</u>	<u>Area</u>
<u>PHASE - I</u>		
1.	Area for construction as per EC	51,020.61 Sq.mts.
2.	Actual area utilized	48,614.44 Sq.mts.
3.	No. of dwelling units as per EC	412 dwelling units
4.	No. of actual dwelling units constructed	620 dwelling units
<u>PHASE - II</u>		
5.	Area for construction as per EC	48,115.17 Sq.mts.
6.	Actual area utilized	36,623.19 Sq.mts.
7.	No. of dwelling units as per EC	396 dwelling units
8.	No. of actual dwelling units constructed	396 dwelling units

The details above mentioned would reveal that while under Phase-I the prior environmental clearance and other license, permission, approval etc. from other statutory authorities were obtained for 412 dwelling units for the total built area of 51,020.61 Sq.mts. the actual dwelling units constructed were 620 (with additional 208 units) for the lesser extent of built up area of 48,614.44 Sq.mts. While the appellant admittedly obtained revised building plan, licence, approval, permission etc. from other statutory authorities for the modified construction of extra dwelling units no such revised environmental clearance was obtained for the construction of additional 208 dwelling units in Phase-I.

18. With regard to Phase-II while the dwelling units for which prior environmental clearance and other approval, license, permission etc. obtained and actual number of dwelling units constructed were 396 in number, the total built up area utilized for 396 units was 36,623.19 Sq.mts. as against 48.115.17 Sq.mts. for which environmental clearance and other statutory permission, plan and approval etc. were obtained from the statutory authorities. The appellant has not admittedly obtained any consent for the construction of the housing project for both Phase I and II under Air and Water Acts from the 1st respondent-TNPCB.

19. The first two show cause notices issued under Water and Air Acts on 23.8.2018 by the 1st respondent-TNPCB were in pursuance of the order of the Hon'ble National Green Tribunal passed on 6.8.2018 in the Application in O.A. 5/2018 filed by one Mr. Arjun Muthukrishnan who is one of the flat owners and occupiers in the impugned housing project. As already stated, the individual applicant, in his application, raised allegations regarding violation of EIA Notification and relevant provisions of Water and Air Acts by the appellant in the construction of the subject housing project. The Hon'ble National Green Tribunal in the order dated 6.8.2018 passed ex-parte before issuing notice to the appellant-builder directed the 1st respondent-TNPCB to look into the matter and to take appropriate action after ascertaining the facts from State Level Environmental Impact Assessment Authority (SEIAA) and Chennai Metropolitan Development Authority (CMDA). The 1st respondent-TNPCB in addition to issuing show cause notices to the appellant herein obtained details from SEIAA etc. The SEIAA in their report dated 29.9.2018 furnished to the 1st respondent-TNPCB except explaining the details of plot area, proposed built up area, fresh water requirement, proposed sewage treatment plant and its capacity and the amount of solid waste

generation and the power required and total cost of the project and the environmental clearance obtained etc. has not referred to any sort of act of violations by the appellant. The same details was furnished by SEIAA by way of report dated 30.11.2018 in O.A. 5/2018 before the Hon'ble National Green Tribunal.

20. The 1st respondent-TNPCB in their show cause notices issued to the appellant and in the report filed before Hon'ble National Green Tribunal and in the complaint report filed before the concerned Judicial Magistrate Court, Chengalpet have repeatedly alleged same nature of violations in respect of the impugned housing project against the appellant. The appellant has in their reply issued to the show cause notices and in their reply filed before the Hon'ble National Green Tribunal to the report of the 1st respondent-TNPCB have explained in detail as to how their project is free from any violation particularly in respect of the allegations regarding want of revised environmental clearance and want of consent order of the Board under Air and Water Acts etc.

21. The Hon'ble National Green Tribunal referred to the same nature of allegations of violations raised in respect of the subject housing project against the appellant and the action taken by the 1st respondent-TNPCB in issuing show cause notices and in filing compliant and in imposing environmental compensation etc. in their orders periodically passed in O.A. 5/2018. But the Hon'ble National Green Tribunal has not rendered, in any of the orders, any final finding accepting the allegations of violation raised by the 1st respondent-TNPCB against the appellant. The Hon'ble National Green Tribunal has in their order dated 21.1.2019 specifically directed TNPC Board that only on violations being established the 1st respondent-TNPCB to take appropriate action including recovery of compensation for the environmental damages caused by reason of such

violations that too after giving the appellant proper opportunity to meet out their case. The direction issued by Hon'ble National Green Tribunal in their order dated 21.8.2019 is extracted below:

"Since the TNPCB has initiated action, we feel it is appropriate that let them complete the proceedings including the question as to whether any compensation has to be imposed for the alleged violation if any and the quantum of compensation has to be decided by them after giving an opportunity to the Project proponent, to meet the case so that if the order goes against the project Proponent they will be getting the statutory remedy for filing the appeal against the same".

The Hon'ble National Green Tribunal in their latest order dated 28.9.2020 directed the 1st respondent-TNPCB to complete the proceedings and the appellant was also given liberty to approach the appropriate authority in accordance with law, if aggrieved against the respondent's order.

22. However, the 1st respondent-TNPCB, as rightly argued by the on the appellant side, has not given the appellant an opportunity to meet out their case and has not adjudicated upon and decided the violations alleged against the appellant after duly considering the same in the light of the explanation given by the appellant and thereafter on the violations being established, proceeded with further action in accordance with law. The 1st respondent-TNPCB, except repeatedly saying that the appellant's reply is not satisfactory, has not dealt with each of the alleged violations on merits in the light of the amended EIA notification dated 9.12.2016, clarification dated 14.12.2016 issued regarding EIA clearance both by MoEF and in the light of the clarificatory proceedings dated 2.12.2017 issued by CPCB etc.

23. Both in the show cause notice dated 25.9.2020 and in the impugned order dated 14.12.2020 following the show cause notice, the 1st respondent-TNPCB has imposed environmental compensation of Rs.2,19,00,000/- to the appellant for the non compliance of provisions of Section 25 of the Water (P&CP) Act and Section 21 of the Air (P&CP) Act. The 1st respondent-TNPCB has, in both the documents above mentioned, referred to the appellant's failure to obtain environmental clearance for the additional construction of 208 dwelling units and their failure to obtain revised environmental clearance for the entire project based on the revised planning permission dated 23.12.2013 and about their non compliance of certain conditions stipulated in the environmental clearance dated 27.4.2009 and 1.4.2015. However, the last part of both the show cause notice and the impugned order specifically reads that the levy of the compensation is for the non compliance of the provisions of Section 25 of Water (P&CP) Act and Section 21 of Air (P&CP) Act. It is stated at Page 3 of the Show cause notice that the levy of environmental compensation is for establishing the building project without obtaining consent of the Board. The same is also referred to in the Hon'ble National Green Tribunal order dated 25.8.2020 as if the compensation levied is for non compliance of relevant sections of Water and Air Acts.

24. While Section 25 of Water (P&CP) Act requires to obtain the consent of the State Pollution Control Board to establish any industry, operation of or process or any treatment and disposal system likely to discharge sewage or trade effluent, Section 21 of Air (P&CP) Act requires to obtain the prior consent of the State Pollution Control Board to establish or operation of any industry in an air pollution control area. However, the Appellate Authority is, for the purpose of effective disposal of all points

urged herein, inclined to go into all the allegations of violations raised against the appellant.

25. Regarding the failure to obtain prior environmental clearance, according to the 1st respondent-TNPCB, it is for the construction of additional 208 dwelling units i.e., total number of 620 as against 412 dwelling units for which prior environmental clearance was obtained. Though the 1st respondent-TNPCB has in all their show cause notices, reports etc. mentioned about Phase I and Phase II construction, the Phase-II construction does not suffer from any environmental clearance violation. Regarding Phase-I, though additional dwelling units numbering 208 were admittedly put up by the appellant there is admittedly no increase in the total built up area covered by entire 620 dwelling units. As a matter of fact, the total built up area for the entire 620 dwelling units is only 48614.44 Sq.mts. which is lesser than 51020.61 Sq.mts. which is the total built up area for which the environmental clearance was originally obtained. In this regard the specific contention of the appellant is that the requirement of obtaining prior environmental clearance is determined on the basis of total extent of built up area and when prior environmental clearance is obtained, any change adopted in the process of operation in the number of products or quality of products in the same category within the previously permitted total limit i.e., without any change or increase in the overall limit would not require fresh revised environmental clearance. The appellant side has in support of such contention relied upon the following three important documents (1) amended Notification issued by Ministry of Environment & Forests dated 9.12.2016. (2) clarification regarding EIA clearance dated 14.12.2006 issued by MoEF and (3) proceedings of Central Pollution Control Board dated 2.2.2017.

26. The amended Notification issued by MoEF dated 9.12.2016 referred to as 1st document above requires prior environmental clearance to be obtained for the construction of any new project or activity listed in the schedule of the said notification. The inner page 3 of the notification contains the schedule of building / construction project for which prior environmental clearance is required. As per which prior environmental clearance is required for the building and construction project covering built up area of above 20,000 Sq.mts. and upto 1,50,0000 Sq.mts., that means the total built up area is the main criteria for determining the question of obtaining prior environmental clearance. The reading of the Notification further reveals that prior to amendment, environmental clearance is required from Central Government or SEIAA for construction of new project or activities entailing the capacity addition with change in process or technology and / or product mix.

27. The clarification dated 14.12.2006 referred to above as 2nd document is issued by MoEF regarding EIA Clearance as above referred to. The clarificatory circular contains two clauses and as per Clause-I in case of such change in Product-Mix, change in the quantities or numbers of products, the same may be allowed without prior environmental clearance by the concerned SPCB provided such changes in the quantities of products are in the same category and are within the previously granted overall total limit.

28. The combined reading and appreciation of the documents referred to above as 1 and 2 would support the contention of the appellant that in the present case there is increase in the construction of number of dwelling units i.e., 208 additional dwelling units, the total built up area covered is only 48,614.44 Sq.mts. which is lesser than the total built up area of construction of 51,020.61 Sq.mts. for which environmental

clearance was obtained and as getting of prior environmental clearance is based on total built area and as the total built up area for which prior environmental clearance is obtained is higher than the actual built up area the question of obtaining any revised environmental clearance does not at all arise in the present case and there is no violation of any EIA Notification or environmental clearance dated 27.4.2009 and 1.4.2015.

29. Regarding the failure of the appellant to obtain the consent order from the 1st respondent-TNPCB as required under Section 25 of Water (P&CP) Act and Section 21 of Air (P&CP) Act the same is clarified by the appellant in the light of the proceedings dated 2.2.2017 issued by CPCB and in the light of the EIA notification of MoEF referred to above as documents 1 & 3. The inner page 3 of notification reads that no Consent of Establish and Operate under Water (P&CP) Act and Air (P&CP) Act will be required from the State Pollution Control Board for residential buildings upto 1,50,000 Sq.mts. that means residential buildings covering built up area of less than 1,50,000 Sq.mts. does not require consent of the Board. The clause 3 of the proceedings of CPCB dated 2.2.2017 reads that there should not be any need to obtain Consent to Establish for building / construction projects / area development projects and township projects which are mentioned at S. No: 8(a) and 8(b) of schedule of projects in EIA Notification 2006 and for such project environmental clearance shall suffice. As the concerned housing project falls under 8(a) building and construction projects covering projects with total built up area of above 20,000 and below 1,50,000 Sq.mts. and as the same is fully residential in nature, no consent from the Board is required to be obtained for the construction of the same as per the above MoEF notification and CPCB proceedings. In that event, the failure to obtain any consent from the Board does not amount to any violation warranting levy of any penalty.

30. The respondents side has attempted to put forth an argument that as the entire project, though put up in two phases as Phase I and Phase II, the same when combined is to be treated as one single project as such the same requires revised prior environmental clearance and consent from the Board for the entire housing complex. In our opinion such argument is not tenable in view of the fact that the construction was put up in two Phases as Phase I and II was at different point of time and a separate valid prior environmental clearance were obtained for the construction under both the phases. Even otherwise as the total built up area covered under both is admittedly less than 1,50,000 Sq.mts. no revised environmental clearance is required for the same. Regarding the consent from the Board, as the total built up area of the subject residential housing project of the appellant in respect of both the phases both independently and jointly is 48,614.44 Sq.mts. and 36,623.19 Sq.mts. (independently) and 85,237.63 Sq.mts. (jointly) and is less than 1,50,000 Sq.mts. the housing complex, whether as Phase I and Phase II or as single project, requires no consent to establish or operate from the SPCB.

31. The appellant side has also brought to the notice of the Appellate Authority, the judicial order passed by Hon'ble Division Bench of Delhi High Court in batch of cases between Delhi Pollution Control Committee and Splendor Landbase Limited and others wherein the Hon'ble High Court, while deciding an identical issue as to whether consent from SPCB is required under Water and Air Acts for the construction of fully residential housing project, is pleased to lay down that Water and Air Acts could not be applicable to fully residential projects.

32. In the said case, similar issue against levy of penalty for alleged violation of Section 25 of Water (P&CP) Act and Section 21 of Air (P&CP) Act was raised and the learned Single Judge decided the same against

the builder and in favour of Delhi Pollution Control Committee and the order of the learned Single Judge was reversed by the Hon'ble Division Bench of Delhi High Court in respect of residential buildings. The Hon'ble Division Bench has clearly held that the provisions of Water (P&CP) Act and Air (P&CP) Act are not applicable to residential housing complexes and no prior consent is necessary to establish any industry, operation or process discharging sewage in respect of residential housing complexes and there is no such requirement at all under Section 21 Air (P&CP) Act. The Hon'ble Division Bench has gone to the extent of saying that the Delhi Pollution Control Committee has no jurisdiction to levy any penalty by way of environmental compensation for the alleged violation and no such power is vested on Delhi Pollution Control Committee under Water (P&CP) Act, and under Air (P&CP) Act. As SPCB are governed by such findings of Hon'ble Division Bench of Delhi High court, the allegations raised against the appellant with regard to failure to obtain consent of the Board under both Acts and failure to provide proper sewage treatment plant for treatment of sewage or with regard to installation of sewage treatment plant without prior consent of the Board and other allegations of non compliance cannot be allowed to stand. Thus the objection raised on the side of the appellant against the violations alleged to the effect that no revised environmental clearance is required when there is change in the number of products in the same category but within pre approved overall limit and no consent to establish and operate is required to be obtained from SPCB for the construction of residential buildings covering total built up area of 1,50,000 Sq.mts. and the Water and Air Acts are not applicable to fully residential projects is supported by amended notification and clarification issued by MoEF and clarificatory proceedings issued by CPCB and is supported by judicial pronouncement arising out of the same issue.

33. Though the appellant side has repeatedly in their reply and reports reiterated their stand as stated above by relying on the above notification, clarification, proceedings and judicial pronouncement, the 1st respondent-TNPCB has without duly considering the same, proceeded with their action as if there is violation when there is actually no violation on the part of the appellant. All the show cause notices and the impugned order passed and the report filed before the Hon'ble National Green Tribunal by the 1st respondent-TNPCB against the appellant in this regard are without reference to the above documents and judicial pronouncement and without allowing the appellant to have his say in person and without rendering specific finding on each of the violation as being established. The impugned order dated 14.12.2020 which is the outcome of such process adopted by the respondent-Board which is contrary to the direction issued by Hon'ble National Green Tribunal and contrary to Government notification and clarification and contrary to judicial pronouncement and in violation of principles of natural justice is legally and factually not maintainable. While the Hon'ble National Green Tribunal has clearly directed TNPCB to proceed with their action initiated against the appellant after duly considering the question of violation and after giving the appellant an opportunity to meet out their case and on the violation being established, mere issuing of show cause notices, calling for reply and rejecting the detailed explanation submitted with supporting factual and legal materials by the appellant in single line as "not satisfactory" will not amount to sufficient compliance of such direction of the Hon'ble National Green Tribunal. The 1st respondent-TNPCB has miserably failed to comply with the direction of Hon'ble National Green Tribunal by duly adjudicating on each of the alleged violation in the light of the reply given by the appellant and by giving the appellant an opportunity of being heard and the impugned order which is the outcome of such

failure is serious violation of procedure laid down under law and also in violation of principles of natural justice.

34. The other allegations raised in the show cause notices dated 23.8.2018 relate to alleged non compliance of certain conditions stipulated in the environmental clearances dated 27.4.2009 and 1.4.2015. It is relevant to point out at this juncture that as the levy of environmental compensation of Rs.2,19,00,000/- is as per the show cause notice dated 25.9.2020 and as per the impugned order dated 14.12.2020 stated to be for the non compliance of provisions of Section 25 of the Water (P&CP) Act and Section 21 of Air (P&CP) Act, the other allegations regarding alleged non compliance of environmental clearance orders need not be gone into.

35. Even otherwise regarding other allegations with regard to non compliance of certain conditions mentioned in environmental clearance, neither the show cause notices nor the impugned order do mention the specific conditions which are allegedly not complied with by the appellant. However, the 1st respondent-TNPCB, in the earlier notices, has referred to various aspects as violations allegedly committed by the appellant such as non installation of sewage treatment plant, solid waste management system, scientific rain water harvesting system, green belt development, environmental monitoring system, arrangement for supplying fresh water, solar energy hybrid system, organic waste convertor, pre treatment system such as screen and settlers etc.

36. The appellant side has reiterated the same stand, as applicable to the other alleged violations, also in respect of the allegations as stated above. It is their contention that they have explained in detail in their reply and reports the manner in which all the statutory and other conditions are complied with. They also repeatedly requested and demanded the 1st

respondent-TNPCB to come and inspect the STP which is, according to the appellant, provided with latest technology and has more than enough capacity to process the sewage. It is their specific case that all proper arrangements have been made to dispose all the waste generated and there is no violation much less substantial violation committed by the appellant. However, the detailed explanation offered by the appellant in their reply are negated as not satisfactory by the 1st respondent-Board without proper reasoning and the respondent-Board proceeded with their action by giving a go by to the direction of Hon'ble National Green Tribunal and other government notification and clarification. As rightly argued on the appellant side, the alleged non compliance of environmental clearance conditions regarding STP etc. is also not applicable to the appellant in view of the judgment of the Hon'ble Division Bench regarding non applicability of Water and Air Acts for fully residential buildings.

37. Above all, as rightly argued by the appellant side, the levy of environmental compensation at such huge cost and the mode of calculation of the same are without any proper guidelines and based on no proper details or materials. The same is also contrary to the directions issued by the Hon'ble National Green Tribunal and is in violation of principles of natural justice for want of proper opportunity given to the appellant to meet out their case and for want of due adjudication and specific decision on the alleged violation. The process of completing the action initiated against the appellant by the respondent-Board and levy of compensation by the Board as per the direction of the Hon'ble National Green Tribunal, requires specific finding regarding each of the alleged violations preceding such action which is not the case herein. There is absolutely no adjudication based on supporting materials as to whether the violations are made out and the violations are such which result in

environmental damages and the nature and extent of environmental damages caused is such to sustain the action of the respondent in levying such huge amount as environmental compensation.

38. Viewing from any angle the impugned order of the 1st respondent-TNPCB levying environmental compensation and directing remittance of the same by the appellant is for the discussion held above, legally and factually unsustainable and is liable to be set aside and stands set aside.

39. In the result the appeal is allowed by setting aside the impugned order passed in the Proceedings No: T2 / TNPCB / LAW / LAIII / NGT / F.022327 / MMN / 2020 dated 25.8.2020 by the 1st respondent. No order as to costs.

40. The connected application is also closed as no longer necessary.

Sd/-xxx
MEMBER

Sd/-xxx
CHAIRMAN.

To

M/s Jain Housing & Construction Ltd.,
(Presently M/s. Jain Housing),
Rep. by its Managing Director,
Thiru Sandeep Mehta,
No. 98/99, Habibullah Road,
T. Nagar, Chennai – 600 017.

- ✓ Copy to: Member Secretary, TNPCB, Chennai
Copy to: DEE, TNPCB, M.M. Nagar.
Copy to: Counsel for appellant
Copy to: Standing counsel of TNPCB
Copy to: Law Section

// TRUE COPY //

Sd/-xxx 6/10/2021
DEPUTY MANAGER,
APPELLATE AUTHORITY.