

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNALSOUTHERN ZONE, CHENNAI
IN
ORIGINAL APPLICATION NO. 205 of 2021(SZ)**

Applicant : Environmental Protection & Research
CouncilVs

Respondents : The Government of India& Others

VOLUME 1

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Dated this the 9th day of December 2021

Rema Smrithi, Advocate
ADDITIONAL STANDING COUNSEL FOR THE RESPONDENT 3

Report of the 4 Member Joint Committee constituted as per the Hon'ble NGT order dated 22.09.2021 in the matter of O.A. No.205/2021 against the Residential Building "M/s Tuffnel Gardens" at Kakkanad, Ernakulam, Environmental Protection & Research Council Vs Union of India and others

The committee constituted by the Hon'ble NGT as decided in the first committee meeting held on 18.10.2021 conducted a joint inspection at the project site "M/s Tuffnel Gardens" of M/s Jain Housing & Constructions Ltd on 09.11.2021. The meeting was started at 11:30 AM. The following committee members were present.

1. Sri. Vishnu Raj P. IAS, Sub Collector, Fort Kochi
2. Dr. Murali Krishna Chimata, Scientist 'E', MoEF&CC, Integrated Regional Office (Southern Zone)
3. Dr. Jude Emmanuel, Environmental Scientist, State Environment Impact Assessment Authority Kerala.
4. Smt. Sreelakshmy P. B, Environmental Engineer & Nodal officer (O.A 205/21), KSPCB, District office-1, Ernakulam

As per the directions of the Joint Committee, the following representatives of the project authorities and officials from local bodies also attended the meeting:

1. Smt. Suja Kumar S, Assistant Executive Engineer, Thrikkakara Municipality
2. Smt. Shiji K.S, Health Inspector, Thrikkakara Municipality
3. Sri. Sunil E. K, Village Officer, Kakkanad
4. Sri. Muhammed Shafi, Senior Superintend, Revenue District Office, Ernakulam
5. Sri. M. S. Anil Kumar. Junior Superintend, Revenue District Office, Ernakulam
6. Sri. Rahul Krishnan, Agricultural Officer, Krishibhavan, Thrikkakara
7. Sri. M. K, Pramod, Overseer, Thrikkakara Municipality
8. Smt. Colleen Petriz, Branch Manager, Jain Housing & Constructions

The Environmental Engineer KSPCB, the Nodal Officer briefed about the NGT order dated 22.09.2021, constitution of four member committee and about the purpose of joint inspection of the committee in the project site. The Environmental Engineer explained that the four member committee convened its first meeting on 18.10.2021 and based on the deliberations of the meeting, the committee decided to conduct the joint inspection on 09.11.2021. The committee further asked Smt. Colleen Petriz, Branch Manager of Jain Housing & Constructions to explain about the construction of project, details of NOC'S/ Clearances obtained.

Smt. Colleen Petriz, Branch Manager of Jain Housing & Constructions informed that the project obtained NOC for construction from Thrikkakara Grama Panchayath on 31.08.2006. The project not obtained Environmental Clearance (EC) since the construction was started before September 2006 i.e., prior to Notification of Environmental Impact Assessment (EIA), Notification, 2006 and EC was not mandatory for projects which started construction before 14.09.2006. The builder later obtained the EC in 2011 and got expired in 2016- EC obtained for built up area 1,39,885.78 Sqm having total flats 1216 nos (1 BR-456 + 1BR+Study- 456+2BR- 304 Nos) with club area. The EC obtained for total 8 Towers and total project cost was 112.122 Crores. She pointed out that the builder has obtained 2 years of extension of EC. However, no documentary evidences produced to ascertain the same. It was informed that during the year 2016, the NOC was regularized to building permit by the Thrikkakara Municipality. She further pointed out that the builder applied for Consent to Establish (CTE) in Kerala State Pollution Control Board (KSPCB) in the year for constructing 4 towers of built up area 51573.6 Sqm. Even though, CTE application was submitted on 12.09.2012 remitting the consent fee and CTE was not obtained but the construction was progressed. The builder applied for Consent to Operate (CTO) on 14.08.2020 for those building for which construction was completed and the application for CTO is pending before the Board. Smt. Colleen stated that they haven't violated environmental regulations and construction was done as per prevailing rules and regulations. She informed that the construction is presently stopped due to financial crisis. They have obtained occupancy certificate from the municipality for one tower and about 30 flats are

presently occupied in the apartment. The project land is a joint venture of the builder and the land owners.

After the presentation of the builder, a detailed discussion was held with the representatives of builder. The committee asked builder to submit more documents regarding the land ownership and also submit all relevant documents with respect to ownership, EC, Building permit, date of start of the project, Sewage Treatment Plant (STP) commissioning report etc.

The officers from the revenue department and Agriculture department verified the land records and the classification of land. As per the records the survey no of the land is 483/14, 484/7 and 485/1 in which Sy no 485/1 and 484/7 are 'Nilam' and 483/14 is 'dry' land.

The Municipal authorities informed that the Thrikkakara Municipality was Panchayath in the year 2006. The Grama Panchayath had issued NOC for construction of 8 towers of total built up area 1,92,634.80 Sqm. The Kerala Municipal building rules were implemented in the Panchayth on 06.11.2006. Later, the municipality regularized the NOC with the building permit in the year 2016.

In reply to the builder's presentation, Environmental Engineer, KSPCB informed that even though the builder applied for Consent to Establish (CTE), the same was not granted since, the builder failed to submit clarifications sought by KSPCB. Also, the Consent to Operate (CTO) application was returned for submitting explanation on violation of EC and constructing the building without obtaining CTE. The committee asked the builder about the STP of the project. The builder informed that they have constructed single STP for the whole project. The STP is not made fully operational as the sewage generation is very less. The Environmental Engineer pointed out that the Board had received complaint on non-operation of STP and discharge of untreated sewage. The builder representative pointed out that they have installed STP of about 400 KLD capacity which is sufficient to meet the sewage generated, but, since the sewage generation is very less due to less occupancy, STP is not operated.

After detailed discussion, the committee inspected the project site. Two towers and one club house was seen fully completed and occupancy started in completed single tower. Other buildings were seen partially constructed. After the site inspection, the committee had informed the Builder and the Thrikkakkara Municipality to submit all relevant documents with respect to the NOCs/ Permits of the project. The committee informed the Environmental Engineer, Nodal Officer of the committee to issue letter to the Builder and the Thrikkakkara Municipality for submission of documents.

The committee also convened a meeting on 06.12.2021 through video conference and had a detailed discussion based on the Google maps and relevant documents.

The Hon'ble NGT had directed the committee to look into the issues pointed by the applicant in Original Application. The committee verified all the aspects in the Application with the supporting documents. Based on the detailed discussion and Joint inspection, the findings of the committee are as follows.

S. No .	The Issues to be addressed by the committee as per the Hon'ble Tribunal Direction on 22.09.2021	Reply of the Committee
I	Whether the 6 th respondent is having a valid Environmental Clearance and Other Permissions for the purpose of the Construction of the Project	Based on verification of records, it was noted that this Project Proponent (PP) has obtained EC only during the year 2011 and the same got expired in 2016. Further, PP has not produced any documentary evidence to prove that further extension was obtained. In absence of any documentary evidence, the Joint Committee confirms that this project authority has not obtained EC during the construction period of 2006 to 2011 (5 years after Notification of EIA-2006) and has not renewed / obtained any fresh EC after its expiry in 2016. Accordingly, this project does not have a valid EC as of now and prior to start of any additional work, PP is required to obtain a fresh EC from SEIAA, Kerala. The PP had reported that they had obtained NOC for the

		<p>construction from the Thrikkakara Grama Panchayath and started construction after obtaining the NOC. The PP have not obtained consent to Establish/Consent to Operate for the project. The entire construction was done without KSPCB Consent to Establish and started occupancy without Consent to Operate from KSPCB.</p>
ii	<p>Whether the 6th respondent had started their construction, even before obtaining environmental clearance of 2011 as alleged in the application</p>	<p>Based on receipt of a complaint and as per directions of the Ministry, this project was inspected on 17.02.2020 by a Joint Committee consisting of representatives of SEIAA, Kerala and Kerala SPCB and Regional Office of MoEF&CC and it was noted that construction activities started during the year 2010-11 based on Google Images (i.e., before obtaining EC) and the copy of the Joint Inspection Report is enclosed as Annexure-1.</p> <p>Thrikkakara Municipality had informed that the Municipality was Panchayath in the year 2006. The Grama Panchayath had issued NOC for the building for the construction of 8 towers of total built up area 1,92,634.80 Sqm. The Kerala Municipal building rules were implemented in the Panchayth on 06.11.2006. Later, the municipality regularized the NOC with the building permit in the year 2016. The Municipality also informed that MoEF clearance became mandatory in the State as per KMBR/KPBR on 05.02.2013 only. Since, the construction of M/s Tuffnel Gardens was ongoing while regularization of NOC, the construction does not fall under KMBR, hence at the time of regularization prior clearances from Fire, KSPCB and MoEF was not required. The reply submitted by Secretary, Thrikkakara Municipality is enclosed as Annexure-2.</p> <p>The committee directed PP to submit the proof for the date of commencement of the construction, but, they failed to submit the details called by the committee. The Copy of the communication sent by KSPCB and reply furnished by the project Authorities are enclosed as Annexure—3 and 4. Hence, the committee considered the date of construction based on the Google images. As per the Google images</p>

		dated 04 th January, 2011 and 24 th January 2011, it is evident that the builder has started the construction activities before obtaining the EC from the MoEF&CC. The photographs of google images are enclosed as Annexure-5 .
iii	Whether any Environmental damage has been caused, on account of the alleged construction in violations of EIA Notification, 2006	<p><u>The Joint Committee noted that PP has undertaken construction of this building without obtaining Environmental Clearance, without KSPCB Consent, without NOC from Fire Department and have constructed the project in Paddy Fields/ Nilam have also violated the Buffer Area norms of Edachira Canal. Even though, they had provided sewage treatment plant, the plant is not made operational. They have also started occupancy without properly functioning of Sewage Treatment Plant. The occupancy certificate has been issued by the Thrikkakkara Municipality.</u></p> <p>Any type of construction activities invariably causes environmental damages such as land use changes, water, soil and air, noise pollution and solid wastes. In this case, the 2003 – 2006 Google images depicts that the building site was a coconut orchard dispersed with small water channels. The same was completely cleared and land filled in the 2008 images. A stream/ rivulet on the western side of the proposed site is highly infested with aquatic weeds. The conversion of agriculture lands into non-agriculture purpose may also disrupts the ecological setup of the area and affects the biological diversity of the area. Accordingly, the Joint Committee concludes that the construction of M/s Tuffnel Gardens has caused environmental damage.</p>
iv	Whether proper conversion of the permissions have been obtained for converting agricultural land for non-agricultural purposes of such a larger extent.	<p>The entire property of the project is included under the following Re-Survey numbers.</p> <ol style="list-style-type: none"> 1. 483/14 2. 484/7 3. 485/1

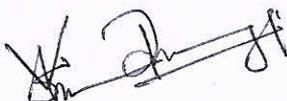
		<p>Among these Re-Survey numbers in 484/7, 485/1 is included in the Data Bank created under Kerala Conservation of Wetland and Paddy Land (KCWPL) Act, 2008 as Paddy Lands. <u>As per this act the lands included in the data bank cannot be used for non-agricultural purposes without any valid permission from relevant authorities. In this case, the land is converted and used for building construction without obtaining any permission from Local Level Monitoring Committee and Revenue Divisional Office. This is a clear violation of rules under the said Act.</u></p> <p>The satellite images of the said plot from the year 2008 to 2015 were scrutinized in the committee meeting on 06.12.2021. It is noted that the land filling and building construction have happened only after the commencement year of this Kerala Conservation of Wetland and Paddy Land (KCWPL) Act i.e. 2008. <u>This point out to the fact that the land was never a dry land prior to 2008 and the PP had illegally filled and converted the land for non-agricultural purposes.</u> It can be seen from the Google images that the entire land could've been suitable for paddy cultivation if it was never converted. It is also noted that an artificial water body created in the nearby land after the construction of the building in the subject plot.</p> <p>Hence, the committee found that the PP had constructed the building without obtaining prior permissions for land conversion for converting agricultural land for non-agricultural purposes.</p>
V	Whether the construction had involved in any other violations of environmental laws either the Water Prevention (Control of Pollution)Act, 1974 and Air Prevention (Control of Pollution)Act 1981 of any	The Builder had applied for Consent to Establish (CTE) only for built up area of 51,573.6 Sqm. But the actual area of the project as per EC is 1,39,885.78 Sqm. The builder submitted application for CTE only on 12.09.2012 i.e, after starting the construction of the project. The Board has not issued CTE since the builder failed to submit the clarification asked by KSPCB. <u>The builder constructed the project without CTE</u>

	other environmental Laws	<p>which is a violation of Section 25 the Water Prevention (Control of Pollution) Act, 1974. Now, the builder had applied for Consent to Operate (CTO) which is pending due to non compliance conditions of their expired EC. Since, the project does not have valid EC and not obtained EC for new constructions, KSPCB cannot consider the consent application of the project. The KSPCB will consider the consent application only after the project regularizes the Environment Clearance and remit the Environment Compensation.</p>
Vi	<p>Is there is any damage caused or any violation found, what is the nature of damage caused and the environmental compensation to be levied for such violations committed and damage caused.</p>	<p>The Joint Committee concludes that PP has violated several statutory requirements and had caused environmental damage for which environmental compensation needs to be recovered from the project authorities. Accordingly, the assessment of Environmental damage is calculated based on the Guidelines issued by CPCB as detailed below:</p> <p>EC= PI x N x R x S x LF whereas EC= Environmental Compensation PI= Pollution Index N= No. of Days R= Rs. Factor S= Size of the Project LF= Location Factor</p> <p>Since, there is no exact date of start of the project provided by PP, the Joint Committee presumes the date of first Google image as starting date of the project (i.e., 01.01.2011 and the date of inspection of the Joint Committee as the last date of construction).</p> <p>Accordingly Environmental Compensation (EC)= 80 (Red) x 3992 days x Rs. 250 x 1.5 (Size) x 1.25 (LF) = Rs. 14,97,00,000/- (Rs. 14.97 Crores)</p>

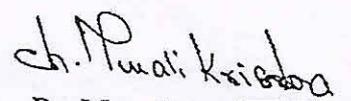
Conclusion of the Committee

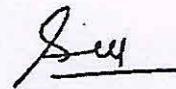
After elaborate discussions and verification of documents the following conclusions were drawn by the Joint Committee

- ✓ The builder has started the construction activities before obtaining the EC from the MoEF&CC. The project does not have a valid EC as of now and prior to start of any additional work, Project Proponent is required to obtain a fresh EC from SEIAA, Kerala
- ✓ The entire construction was done without KSPCB Consent to Establish and started occupancy without Consent to Operate from KSPCB violating the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and Environment Protection Act, 1986.
- ✓ The paddy land is used for building construction without obtaining any permission from Local Level Monitoring Committee and Revenue Divisional Office. The conversion of agriculture lands disrupted the ecological setup of the area and affects the biological diversity of the area. Hence, the construction of M/s Tuffnel Gardens had caused environmental damage.
- ✓ It is recommended to levy an amount of Rs. 14.97 Cr as Environmental Compensation for the illegal construction and environmental damage caused.


Sri. Vishnu Raj P. IAS,
Sub Collector, Fort Kochi


Dr. Jude Emmanuel,
Environmental Scientist, SEIAA Kerala


Dr. Murali Krishna
Scientist 'E', MoEF&CC


Smt. Sreelakshmy P. B,
Environmental Engineer, KSPCB