

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL AT CHENNAI (SZ)

Application No. 234/2017

MeenavaThanthai K.R. Selvaraj Kumar
Meenavar Nala Sangam
Represented by its President,
M.R. Thiyagarajan,
Son of Late C. Rajalingam,
Office at No. 15/8, A.J. Colony,
Royapuram, Chennai – 600 013

...Applicant

-vs-

1. The Director,
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhavan,
Jor Bagh Road, Aliganj,
New Delhi – 110 003
2. The Chairman,
National Coastal Zone Management Authority,
Government of India,
Ministry of Environment, Forest & Climate Change,
Agni Wings, 5th Floor, Indira Paryavaran Bhavan,
Jor Bagh Road, Aliganj,
New Delhi – 110 003
3. The Member Secretary,
Central Pollution Control Board,
Parivesh Bhavan, CBD cum Office Complex,
East Arjun Nagar, New Delhi – 110 032
4. The Principal Secretary,
Government of Tamil Nadu,
Environmental Department,
St. George Fort, Chennai – 600 009
5. The Director,
Department of Environment,
Panagal Building, Saidapet,
Chennai – 600 015
6. The Member Secretary,
Tamil Nadu State Coastal Zone Management Authority,
Panagal Building, Saidapet,
Chennai – 600 015
7. The Member Secretary,
Tamil Nadu Pollution Control Board,
No. 76, Anna Salai, Guindy,
Chennai – 600 032

For ST. PETER & PAUL SEA FOOD EXPORTS PVT. LTD.

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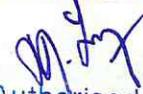
8. The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Salai, Egmore, Chennai -600 008
 9. The Director,
Directorate of Industrial Safety and Health,
T.S. No. 47/1, Sidco Industrial Estate,
Near Metro Water Roundana,
Guindy, Chennai - 600 032
 10. The District Collector,
Collectorate of Chennai District,
Chennai District
 11. The Commissioner,
Corporation of Greater Chennai,
Ripon Buildings, Chennai - 600 003
 12. M/s. St. Peter and Paul Sea Food Export Pvt. Ltd.,
Represented by its Managing Director,
No. 11A, New Thiruvallur Nagar,
Royapuram, Chennai - 600 013
- ...Respondents

COUNTER AFFIDAVIT OF M. JOSEPH JAGAN

I, M. Joseph Jagan, son of Morrais, Christian, aged about 45 years, Managing Director, M/s. St. Peter and Paul Sea Food Export Pvt. Ltd., having office at No. 11A, New Thiruvallur Nagar, Royapuram, Chennai - 600 013, do hereby solemnly affirm and sincerely state as follows:

1. I state that I represent the 12th respondent in the capacity of its Managing Director and I am well acquainted with the facts and circumstances of the case. I have been in the capacity as the managing director of the 12th respondent since its inception. I am fully competent to swear this affidavit on behalf of the 12th respondent.

For ST. PETER & PAUL SEA FOOD EXPORTS PVT. LTD.


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BRIEF FACTS OF THE CASE

2. I state that the 12th respondent is involved in the business of grading, packing and loading of sea food. This essentially involves arranging the fishes by size and variety and transporting the same to the processing unit of the entity, which is located in Periyapalayam.
3. Initially, the business was run by one Mr. Rathinaraj, who had started the business in the year 1970 in the name and style of 'Little Marine'. On perusal of the records on the website of the Greater Chennai Corporation – Property Tax, it could be inferred that property tax is being paid since 1980 for the building situated at No. 11A, New Thiruvallur Nagar, Royapuram, Chennai – 600 013. Ever since the purchase of the aforementioned building, he had been running the unit in the same premises for grading and loading of sea food. At this juncture, it is pertinent to note that the said Rathinaraj had purchased the said building with the ground floor and no modifications whatsoever had been made to the said floor ever since its purchase. The property is located 350 meters away from the sea. It is trite to point out that the state highway SH-114 is situated in between the sea and the place of business.
4. I state that my father had purchased the said property vide a sale deed dated 12.07.2002. Ever since, my father had been running the same business in the said premises. In and around the year 2008, I had stepped foot in my father's business and decided to undertake and oversee the day to day management and administrative affairs of the firm. Even at that time, we were involved only in the process of grading, packing, and loading of sea foods. At no point of time was the firm

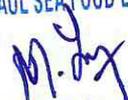
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carrying on business at Royapuram which involved the processing of sea foods in the said unit.

5. In and around 2011, the idea of starting a private limited company popped up my mind and accordingly, I had registered the 12th respondent company with the Registrar of Companies and procured a certificate of incorporation on 30.04.2011. The registration No. of the 12th respondent with Registrar of Companies is 80387 and was allocated CIN No. U05000TN2011PTC080387.
6. I state that after the inception of the company, the applicant herein had demanded a sum of Rs.12,00,000/- (Twelve lakh only) for the welfare of the association. I refused to pay the same and subsequently the applicant had further demanded a sum of Rs. 2,00,00,000/- (Two crores only) and threatened that they would file a case against the company if we do not budge in to their unreasonable demands. All these demands were made through phone calls only. When we refused to pay the same, the applicant started filing multiple cases against this respondent and its sister concern and started incessantly harassing the company and its employees. The constant harassment of the applicant has caused irreparable loss and hardship to the 12th respondent and its sister concern.

For ST. PETER & PAUL SEA FOOD EXPORTS PVT. LTD.


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STATURE OF THIS RESPONDENT

7. I state that there are two sister concerns namely, St. Peter & Paul, a partnership firm and St. Peter & Paul Sea Food Exports Pvt. Ltd., a registered company under the Companies Act, 1956. The activities performed and other particulars of both these concerns are tabulated as follows:

NATURE OF ACTIVITY	ST. PETER & PAUL (PARTNERSHIP FIRM)	ST. PETER & PAUL SEA FOOD EXPORTS PVT. LTD.
Present Members	1. Mohan 2. Byju 3. Anees 4. Joseph Jagan	1. Joseph Jagan (MD) 2. Mohan (Director)
Date of Establishment	06.10.2003	30.04.2011
Registered Office	No. 11A, New Thiruvallur Nagar, Royapuram, Chennai - 600 013	No. 11A, New Thiruvallur Nagar, Royapuram, Chennai - 600 013
Place of business	No. 11A, New Thiruvallur Nagar, Royapuram, Chennai - 600 013	No. 90, Periyapalayam Main Road, Kanigaipair Village, Tiruvallur - 601 102
'Nature of Business	Grading, packing and selling fishes in the local markets	Grading, processing, packing, and exporting fishes in the international market

It is pertinent to note that the applicant has filed this case against St. Peter & Paul Sea Food Exports Pvt. Ltd., which carries out business in Periyapalayam. It is contemptible on the applicant to even file such an application without backing it with the relevant documents and proofs.

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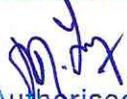
8. I state that the 12th respondent is in the business of export of fishes to over 12 countries and has garnered turnover of over 100 crores in the last 2 financial years. The 12th respondent has been excelling in its business in a highly competitive environment and through sheer hardwork and putting in hours of work has it achieved such status. The application preferred by this applicant is bogus and deserves to be dismissed.

PRELIMINARY OBJECTIONS ON MAINTAINABILITY

9. This application filed under Section 18(1) read with Section 14 of the National Green Tribunal Act, 2010, accusing the 12th respondent of violating the CRZ Regulations, Section 21 of the Air Act, 1981 and section 25 of the Water Act, 1974 is not maintainable and is liable to be dismissed *in limine*. The applicant has suppressed material facts and concealed vital documents that are extremely vital. The applicant has approached this Hon'ble with unclean hands.

10. At the outset, it is submitted that the said property was purchased by my father with the existing structure that was built by our predecessor in title, in and around 1970. The said building was constructed prior to the CRZ Notification, 2011 and thus the said building is saved under the CRZ, 2011, as the regulations itself expressly states that '**except as respects things done or omitted to be done before such supersession**'. It is pertinent to take note of the fact that

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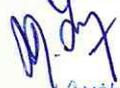

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the sea is far away from the building (Approx. 350mts away) and there exists multiple roads between the premises and the Sea. There is a highway adjoining the sea and the provisions of the CRZ has no application whatsoever. Thus, the CRZ Regulations do not apply for the structure in which the 12th respondent's sister concern is having the building solely for the purpose of segregating the fishes on the basis of quality and for resting of the employees of the concern.

11. To buttress the submission that CRZ Regulations would not apply, it is important to take note of the fact that the existence of a state highway SH-114 connecting Chennai – Manali – Ennore. The said SH-114 is located in between the sea and the 12th respondent. I state that reliance is placed on Institute of Social Welfare vs. State of Kerala and Others., 1997 (2) K.L.J. 153, Citizens Interest Agency vs. Lakeshore Hospital & Research Centre Pvt. Ltd., 2003 (3) KLT 424 and Citizen, Consumer and Civil Action Group vs. Union of India and Others., 2002 (3) L.W. 393. The mere existence of a State Highway is a major factor owing to which the CRZ regulations would have no application whatsoever.

12. I state that the applicant failed to understand the basic principles with respect to application of CMDA Rules as well. It is submitted that the construction of the building, in the present case was prior 1970. The building is over 50 years old. The Division bench of the Madras High Court has held the need to produce the planning permission for 50 year old building need not be insisted upon taking into consideration the near impossibility of retaining it. Therefore to direct the demolition of the

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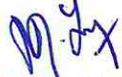
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structure is far beyond the powers of the Corporation or the CMDA and consequently no directions could be issued. Thus, there is no mandatory requirement whatsoever to procure permission from CMDA for a building constructed in the 1970s. Moreover, the said building can be regularized even at a later point of time as the law permits ex-post facto regularization.

PARA WISE REBUTTAL TO THE APPLICATION FILED BY THE APPLICANT

13. The averments in paragraph 1 - 3 needs no traverse. The averments in paragraph 4 are denied as self-serving. The applicant herein is nothing but an organization that has been indulging itself in cheap tricks by demanding money to the units nearby. In fact, the president of the applicant is an advocate, who is at the least expected to know the basic principles of law before filing an application. The applicant is only indulging in 'puffing up' its image to non-existent levels and is put to strict proof of the same.
14. The averments in paragraph 5 - 10 are nothing but a matter of general knowledge. The averments in paragraph 11 are false and contrary to the actuality. This respondent is not indulged in processing the sea food in the said unit. As stated supra, this respondent runs a grading, packing and loading unit in Royapuram. The processing unit of this respondent is situated at Periyapalayam. Further, it is pertinent to note that even before the inception of this respondent in 2011, the same

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business was run by my father and his predecessor in title in the name and style of 'Little Marine'. Further, it is reiterated that the said building does not come within the scope and ambit of the CRZ Regulations since there exists a state highway between the sea and the building. The permission from CMDA could not have been sought for while constructing the building in the 1970s. CMDA permission does not apply for old buildings as stated supra.

15. The averments in paragraphs 12- 14 are denied as misleading. I state that ever since the inception of the 12th respondent, we have been regularly maintaining all the records and paying all the necessary taxes including the drainage tax, property tax. There is absolutely no record to show that the sewerage is mixed with the sea water by this respondent. The applicant has not backed its claim with the relevant documents. It is trite to point out that the 12th respondent has been paying the tax amount towards the Chennai Metropolitan Water Supply and Sewerage Board until 2021. While so, making allegations such as the existence of a big pond with stagnated drainage is infuriating. The applicant is put to strict proof of the same.

REPLY TO THE REPORT FILED BY THE RESPONDENT

16. I state that the report filed by the respondents is ex facie illegal and incompetent. It is derisory to even come up with a compensation amount by applying the environmental compensation formula without even proving the allegations against this respondent. This respondent has been put through irreparable loss and hardship due to the closure of the unit. By virtue of the closure of this unit, over 25 people have lost their jobs and livelihood.

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17. I state that it is highly incorrigible on the part of the respondents to file such a report with absolutely no backing whatsoever to the same. It is not for the respondents to suggest whether the structure raised has a planning permission or not. They have not been called upon to secure a report as to when the construction was made. When a report is called upon from the authorities on a particular issue, they cannot transgress the limits and offer suggestion far beyond the scope of their station. Processing of fish involves a procedure that demands the requirement of machineries. It cannot be done manually. Segregating the fish on the basis of size attract does not attract the provisions of the Air Act, Water Act and the Environmental Protection Act. Earlier in point of time, we were not in a position to place our objections due to the concerned official suffering from covid and we were kept in dark. As soon as he had recuperated, I am moving the application to dismiss the original application as mischievous.

18. I state that there are over 500 centers having their premises for the very same purpose. Identifying this respondent alone shows the oblique motive. I am filing all the records to show that no process had taken place in the premises. The respondents should be aware the term 'process' involves a manufacture or subjecting a good to a treatment.

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In *Chambers Twentieth Century Dictionary*, 'process' as a noun has been defined as "a State of being in progress or being carried on, a sequence of operations or changes undergone." Segregating the fishes based on the variety and size does not amount to process or processing. Nothing is being done in the premises except to segregate and remove it for processing in the registered factory at Periyapalayam.

19. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the O.A. 234/2017 with exemplary costs and thereby render justice.

For ST. PETER & PAUL SEA FOOD EXPORTS PVT. LTD.

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Solemnly affirmed at Madras

On this the 15th day of February 2022

And signed his name in my presence

Before Me
 *Amman*
15th April 2022
13th Law Chambers
Madras HC.

Advocate: Madras

