

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL :: CHENNAI

APPEAL NO. 3 of 2023

IN THE MATTER OF :

M/S. Angala Parameshwari Blue Metals
Proprietor. Mr. P. Subramani,
S/o. Perumal,
Kamandoddi Village,
Hosur Taluk,
Krishnagiri District

...Appellant

Vs

1. The Chairman,
The Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy, Chennai- 600032.
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Hosur Taluk, Krishnagiri District,
3. The Superintending Engineer,
Krishnagiri, TANGEDCO,
4. The Assistant Engineer,
O&M, Shoolagiri, TANGEDCO
5. Kuthavakkam Realtors Private Limited,
Rep. by its Authorised Signatory,
Mr. S. Narasimhan,
Poly Hose Towers, 5th Floor,
SPIC Annexe #88,
Mount Road, Guindy
Chennai - 600 032
6. Muniraj
s/o Duraisamy
Door No. 543, Addaguriki, Dinnur Village,
Shoolagiri Taluk
Krishnagiri District

...Respondents

COUNTER AFFIDAVIT OF THE 5th RESPONDENT

I, S. Narasimhan, S/o. Shankara Narayanan, aged 55, residing at C-27, Sipcot Housing Colony, Dharga, Hosur, Dharmapuri- 635126, temporarily come down to Chennai do hereby solemnly affirm and sincerely state as follows:

For Kuthavakkam Realtors Pvt. Ltd.,


Authorised Signatory

1. I am the authorised representative of the 5th Respondent company and I am well acquainted with the facts and circumstances of the case from records. I submit that I am duly authorised by the 5th Respondent Company to depose hereto.

2. I deny all the averments made in the Appeal and the supporting affidavit unless specifically admitted herein. For the sake of convenience I give below a brief factual and circumstantial background of the matter.
 - 2.1 Kamandoddi / Addaguriki are villages which has long been inhabited.
 - 2.2 The 'A' Register prepared during the 1984 to 1986 UDR Scheme shows that the lands in Sy. No. 22/2 are Natham. Sy No. 22/2 is immediately abutting SY. No. 1236/2 wherein the Appellant later on set up a crusher. The A Register is filed herewith.
 - 2.3 During the year 2016, the Appellant obtained a mining lease for quarrying stones and showed this as the captive quarry for his crushing unit.
 - 2.4 Indeed since the crushing unit was set up only for crushing the stones obtained from his captive quarry the TNPCB saw fit to impose Condition 9.5 in the Consent Order dated 06.06.2018 which reads as under:

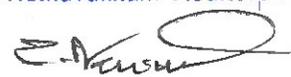
"The unit shall comply with the provisions as laid down in the Tamil Nadu Prevention of illegal mining, transportation and storage of mineral and mineral dealers Rules 2011"
 - 2.5 On 7th January,2021 the quarry was shut down for illegal activities.
 - 2.6 Thereafter the crushing unit could not have had any valid license under MDL Rules. Yet, without captive quarry and without license under MDL Rules, the crusher unit has expanded its capacity from 12TPD to 4000 TPD
 - 2.7 All these facts and documents are suppressed in the present Appeal.
 - 2.8 Therefore the Appeal must first be rejected for the Appellant falsely approaching this Hon'ble Tribunal.

3. The Appellant is running a crusher unit in SY No. 1236/2 Kamandoddi Village, Soolaigneri Taluk, Krishnagiri District. The Appellant had also

established a quarrying unit in order to quarry stones for his crusher unit. I submit that the Appellant was indiscriminately quarrying the surrounding areas and carrying on crushing activities without following any of the Environmental Impact Assessment procedures.

4. Since the pollution was rampant, the surrounding villagers of Addakurkki and Kammandoddi villages also raised their complaints.
5. I submit that in the meanwhile the Appellant had preferred an application to TNPCB Board for renewal of its license to operate the crusher unit. Application made under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act.
6. Taking cognizance of the complaints and also after duly inspecting the premises, TNPCB sought for a report from the jurisdictional Tahsildar. The report revealed the various violations. Further green belt and other protective measures were not observed or complied with. Moreover, the Appellant had also not submitted its renewal application with all the requisite particulars.
7. Accordingly on 22.08.2022 the TN Pollution Control Board issued directions under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 for closure of unit as well as directing stoppage of electricity to the unit.
8. The Appellant preferred Appeal No. 75 of 2022 before the Hon'ble Appellate Authority TN Pollution Control Board under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981.
9. Notably, till date the 5th Respondent is unaware of any challenge to the order of closure issued by TN Pollution Control Board dated 22.08.2022 under the Water (Prevention and Control of Pollution) Act, 1974.
10. After a detailed appreciation of the factual circumstance, the Hon'ble Appellate Authority TN Pollution Control Board vide Order

For Kuthavakkam Realtors Pvt. Ltd.,



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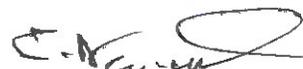
dated 08.02.2023 came to the conclusion that the Appellant is in violation of B.P Ms. No. 4 and upheld the order of TNPCB directing closure of the crusher unit. The Appellant was given liberty to approach the TNPCB with any material from the National Remote Sensing Agency if any.

11. The present Appeal is filed challenging the above Order dated 08.02.2023 of the Hon'ble Appellate Authority TN Pollution Control Board.
12. The Appeal is liable to be dismissed in limine for the following reasons:
 - a) Appeal suffers from Suppression of material facts and documents
 - b) The Appellant has violated B.P 4 norms
 - c) The Appellant has not denied violation of environmental norms
 - d) The Appellant has no vested right to pollute
 - e) The Appellant has no consent to operate under Water (Prevention and Control of Pollution) Act, 1974

SUPPRESSION

13. The Appeal suffers from *suppressio veri suggestio falsi*. The Appellant has not placed before this Hon'ble Court all the documents and evidences that were before the Hon'ble Appellate Authority TN Pollution Control Board at the time of passing of the impugned order.
14. I humbly submit that this Respondent had placed on record the various complaints filed by the 5th Respondent. More importantly, the report of the Tahsildar Shoolagiri recording violations, snapshots of the area showing violation. I had also placed before the Hon'ble Authority the Extract of revenue records of the area evidencing the habitation as well as the Tahsildar's sketch of the area. This was accompanied by newspaper articles of reporting the various issues faced by the local inhabitants.
15. I humbly submit that it was upon a consideration of all the above documents, that the Hon'ble Appellate Authority TN Pollution

For Kuthavakkam Realtors Pvt. Ltd.,


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Control Board made a factual finding that the Appellant is in violation of norms prescribed under B.P 4.

16. The Appellant has approached this Hon'ble Court with unclean hands suppressing material documents and evidence, which forms the basis of the findings of the Hon'ble Appellate Authority TN Pollution Control Board. On this ground alone the present Appeal is bound to be rejected.

VIOLATION OF B.P 4 NORMS

7. The 1st Respondent/Appellant has been operating the crusher in violation of the following: -

- a) No valid locational permit, since the quarry was shut.
- b) Proximity to inhabited sites, less than 300 mts.
- c) Violation of Tamil Nadu Minor Mineral Concession Rules, 1959,
- d) Failure to provide green cover.
- e) Failure to carry out water sprinkling activity to suppress the dust.
- f) Absence of fencing around the mining area along with red flags.
- g) Usage of illegal electronic detonators for blasting

18. The environmental regulations for a quarrying cum crusher unit would be as under:

The *Environmental Regulations* are four fold:-

- i. *Requirement to obtain Consent under the Air Act, 1981:*
(Section 31 A of the Air Act).
- ii. *Requirement to obtain consent under the Water Act, 1974:*
(Section 33A of the water Act)
- iii. *Requirement to obtain the locational clearance:*
(This is regulated by BP.No. 21 dated 31.07.2019 issued by the 2nd Respondent (earlier BP.No. 4).)
- iv. *Requirement to obtain EIA clearance for quarry.*
(The EIA Notification which mandates clearance by the SEIAA.)

The *Quarrying Regulations* are contained in R. 36(1A)(a) of the Tamil Nadu Minor Minerals concession Rules, 1959. This too

or Kuthavakkam Realtors Pvt. Ltd.,


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prohibits a quarry within 300 meters of any inhabited site. This is specified in condition 35 of the Environmental clearance issued by the State Level Environment Impact Assessment Authority. The Appellant is in violation of the same.

19. Additionally, the earlier consent to establish obtained by the Appellant from the TNPCB clearly specifies the following conditions:

"The unit shall develop a green belt all around the premises for 3m width.

The unit shall provide water spray arrangements at all vulnerable places such as jaw crusher, rotary screen and conveyers as proposed.

..."

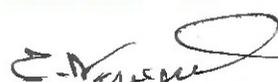
20. It is humbly submitted that even the consent to establish as given to the Appellant was conditional upon following the various norms and regulations issued by TNPCB from time to time.

21. It is necessary to note that B.P 4 dated 02.07.2004 specifically prohibits crushing unit within 500 mts of any inhabited site. It is necessary to note that this circular and the conditions stipulated therein was also re-assessed and confirmed vide BP.No. 21 dated 31.07.2019. Therefore the condition with respect to distance from inhabited site is mandatory and has to be followed.

22. It is well settled law that an industrial unit which is inherently environmentally deleterious has no vested right to operate. Therefore, at each renewal of its consent, it must comply with the law and environmental norms in force at the time of such renewal. There is no vested right of renewal either. Therefore, if over the years human habitation has come into close proximity of the unit, the unit must shift. The polluter cannot demand that the humans must endure the pollution.

23. Condition 35 of the issued by SEIAA and Environmental clearance issued by the State Level Environment Impact Assessment Authority prohibits a quarry within 300 meters of any inhabited site. The Appellant was in violation of the same.

For Kuthavakkam Realtors Pvt. Ltd.,

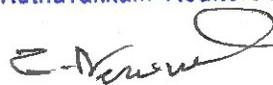

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24. The factum of inhabitation is also not denied by the Appellant in the present Appeal. The only stand taken by the Appellant is that, any subsequent inhabitation does not bar the Appellant from functioning its crusher unit. This stand is legally untenable as set out supra.
25. It is necessary to mention here that all the revenue records show the existence of habitation from 1984. The only document supporting the Appellant is the Tahsildar certificate procured by dubious means. Infact, the Agandal and A Register of the area show "gramanathham lands" indicating settlement from the 1980s. Furthermore, the report of the Tahsildar of Shoolgiri make it abundantly clear that there are settlements and inhabitation within the 500 mt zone and that these settlements have been there for decades.
26. In its Appeal the Appellant is not disputing the settlement or inhabitation. It is necessary to note that the Appellant only attempts to seed a doubt as to when such a settlement took effect, it is not stating with certainty as to when this habitation came to being or that it was after the consent to establish. It is necessary to note that the consent to establish and operate is conditional upon fulfilment of the conditions in force at the time of grant of consent.

APPELLANT DOES NOT HAVE VESTED RIGHT TO POLLUTE

27. Therefore, the only stand of the Appellant is that the inhabitation came to being subsequent to the industry itself. This is unsubstantiated by way of documents or otherwise.
28. The alleged right claimed by the Appellant is based on earlier consents provided by TNPCB. This has been considered by the Hon'ble Appellate Authority TN Pollution Control Board and held as under:
- " 33. The further contention of the appellant that he was running the business for seventeen years without any hindrance does not confer any right on him for continuing his activity and continue to pollute the area. Subsequent developments should also be taken into consideration while renewing the consent given to industries. It is the public interest that prevails over profit."*
29. Moreover, the Supreme Court of India in the case of Mohd. Haroon Ansari v. District Collector (reported in (2004) 1 SCC 491) has specifically extended the application of these conditions to even mining leases granted prior to the condition itself. Therefore holding

For Kuthavakkam Realtors Pvt. Ltd.,


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that there is no vested right on the industry to continue operating on the equities of having already operated.

30. It is therefore just and necessary that the present Appeal be dismissed and specific orders to close down the Appellant's crusher unit be passed.

It is therefore prayed that this Hon'ble Tribunal be pleased to DISMISS the present Appeal and pass necessary orders for closure of the crusher unit and thus render justice.

Solemnly affirmed at Chennai;
on this the 28th day of February,
2023; and signed his name in
my presence .

For Kuthavakkam Realtors Pvt. Ltd.,


Authorised Signatory

BEFORE ME,

S. SARAN PRASAD

S. S. Sathya

M.S. 3120/12019

ADVOCATE: CHENNAI

37, Law chambers, Madras High Court,
Chennai.