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

Application No. 234/2017

Meenava Thanthai K.R. Selvaraj Kumar
Meenavar Nala Sangam ...Applicant

-vs-

The Director, Ministry of Environment,
Forest & Climate Change & 11 Ors. ...Respondents

INDEX TO ADDITIONAL TYPEDSET OF PAPERS

S.No.	PARTICULARS	PAGE
1.	Photographs	1
2.	Property Tax Receipt	45
3.	Pahwa Plastics Pvt. Ltd. v. Dastak NGO & Ors., Civil Appeal No. 4795/2021, Order dated 25.03.2022	46
4.	Citizen, Consumer & Civil Action Group v. Union of India & Ors., 2002 (3) LW 393	77
5.	Citizens Interest Agency vs. Lakeshore Hospital & Research Centre Pvt. Ltd., 2003 (3) KLT 424	99
6.	Institute of Social Welfare vs. State of Kerala and Others., 1997 (2) K.L.J. 153	106

All documents are certified to be the true copies of the original

Dated at Madras on this the 6th day of April 2022

Counsel for 12th Respondent


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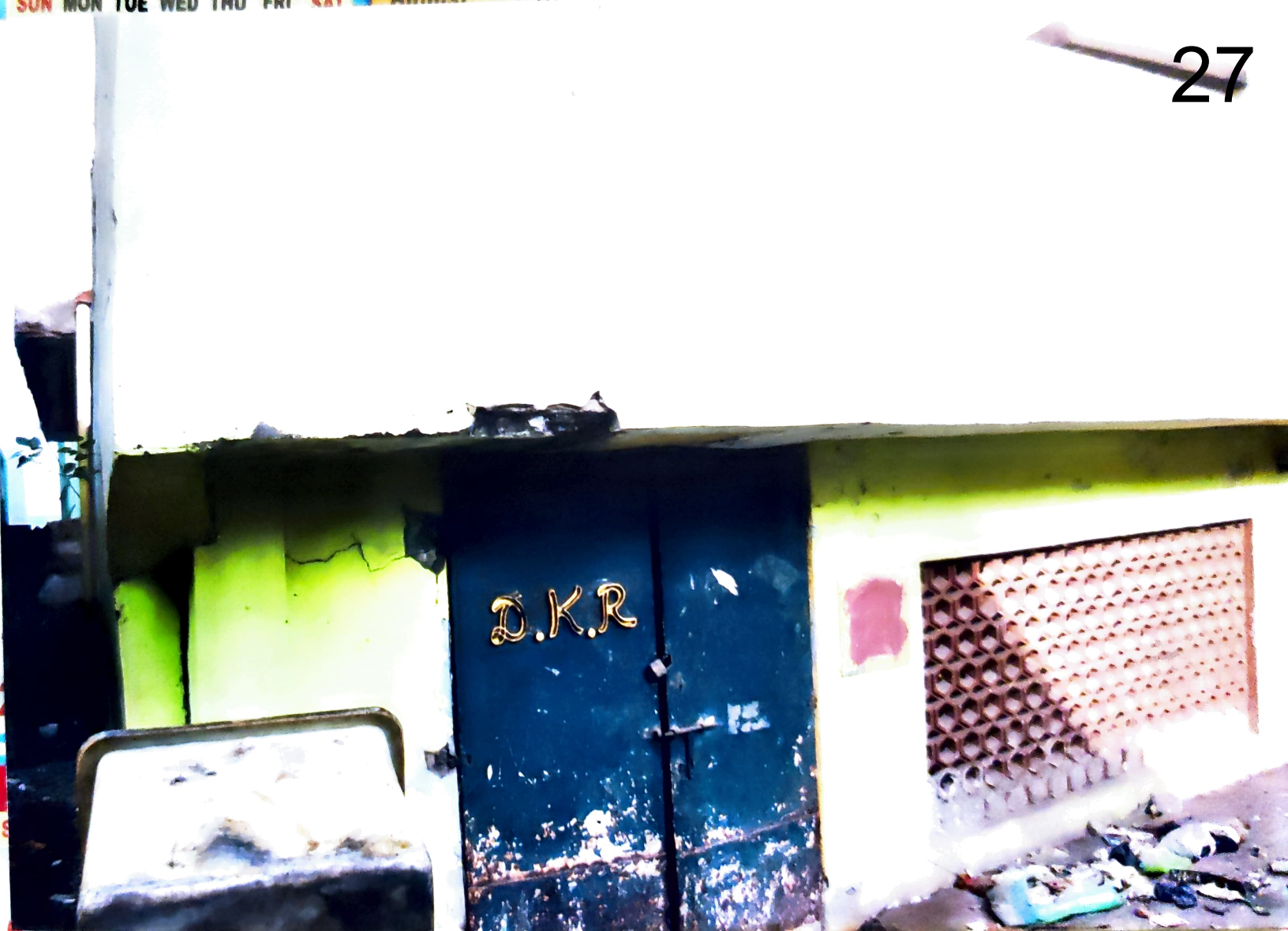
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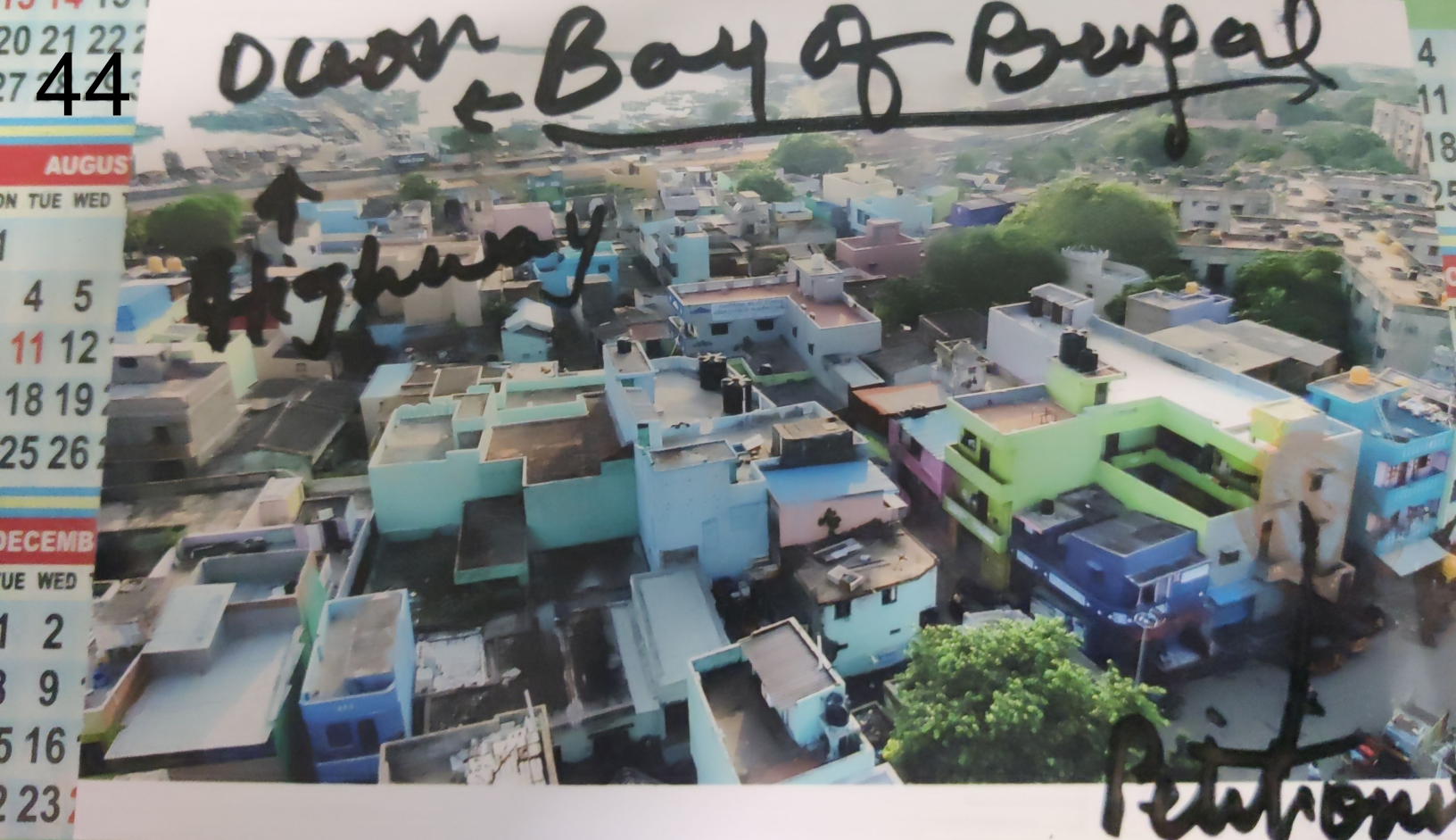
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PROPERTY TAX RECEIPT

Receipt No:	**2019-20/N04/0691272**	**Receipt Date:**	**18-10-2019 12:33:18**
Name:	M JOSEPH JAGAN		
Address:	11/A(11/A), Thiruvalluvar Nagar First Street , Thiruvalluvar Nagar, Royapuram, CHENNAI - 600013		
Payment Details:	Description: Property Tax Bill Number: 04-043-00640-000/02-014-0846-003 Paid By: M JOSEPH JAGAN		

Description Head of A/C	Amount (in Rupees)
II/19-20	35904.92
I/20-21	0.08
Total:	**35,905.00**

Amount (in words): Rupees Thirty Five Thousands Nine Hundred Five Only

Cheque # 819428 Drawn on AXIS BANK LTD., CHENNAI Dated 15-10-2019

This is computer generated receipt. Signature is not neccessary.Except Online payment the receipt is subject to realisation of cheque.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4795 OF 2021

M/S PAHWA PLASTICS PVT. LTD. AND ANR. ..... Appellants

Versus

DASTAK NGO AND ORS. ..... Respondents

J U D G M E N T

INDIRA BANERJEE, J.

This appeal under Section 22 of the National Green Tribunal Act, 2010, is against an order dated 3rd June 2021 passed by the Principal Bench of the National Green Tribunal (NGT) in O.A No.287/2020 at New Delhi, *inter alia,* holding that establishments such as the manufacturing units of the Appellants, which did not have prior Environmental Clearance (EC) could not be allowed to operate.

2. The question of law involved in this appeal is, whether an establishment employing about 8000 workers, which has been set up pursuant to Consent to Establish (CTE) and Consent to Operate (CTO) from the concerned statutory authority and has applied for *ex post facto* EC can be closed down pending issuance of EC, even though it

may not cause pollution and/or may be found to comply with the required pollution norms.

3. With increasing industrialization and the establishment of factories which emitted smoke and other pollutants, there was worldwide concern for protection of environment. In June 1972, the United Nations Conference on the Human Environment was held in Stockholm, where decisions were taken to take appropriate steps for preservation of the natural resources of the earth, which, among other things, included preservation of the quality of air and water by controlling pollution.

4. In 1974, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, with a view to prevent and control water pollution and to maintain and restore wholesomeness of water.

5. In furtherance of the decisions taken at Stockholm, Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as “the Air Pollution Act”, to provide for prevention, control and abatement of air pollution.

6. The Air Pollution Act provides for the constitution of a Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB) to deal with the problem of air pollution. Section 16 of the Air Pollution Act enables the Central Pollution Control Board to take steps to improve the quality of air and to prevent, control or abate air pollution in the country. Section 17 of the Air Pollution Act enables the State Pollution Control Boards to plan comprehensive programmes for

the prevention, control or abatement of air pollution*, inter alia*, by laying down standards for emission of air pollutants.

7. Section 18 of the Air Pollution Act enables the Central Government to give directions by which the CPCB is to be bound. Similarly, every SPCB is to be bound by directions in writing as might be given by the CPCB or the State Government.

8. Where a notification is issued under the Air Pollution Act, placing an area within the control area of air pollution, permission is necessary to set up and operate any factory or plant thereat. No person operating any factory or plant in any air pollution control area is to discharge or cause or permit to be discharged the emission of any air pollutants, in excess of the standards laid down by the SPCB under Clause (g) of sub-Section (1) of Section 17.

9. The Environment (Protection) Act, 1986, hereinafter referred to as “the EP Act” was also enacted pursuant to the decisions taken at the United Nations Conference on the Human Environment, held in Stockholm in June, 1972. As per the Statement of Objects and Reasons for enactment of the EP Act, the said Act has been prompted by concern over the environment, that has grown all over the world since the 60s.

10. Sub-section (1) of Section 3 of the EP Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of

the environment and preventing, controlling and reducing environmental pollution.

11. Sub-section (2) of Section 3 of the EP Act enables the Central Government to take, *inter alia*, the following measures:

> *"(i) co-ordination of actions by the State Governments, officers and other authorities—*
>
> *(a) under this Act, or the rules made thereunder; or*
>
> *(b) under any other law for the time being in force which is relatable to the objects of this Act;*
>
> *(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*
>
> *(iii) laying down standards for the quality of environment in its various aspects;*
>
> *(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*
>
> *Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*
>
> *(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*
>
> *(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*
>
> *(vii) laying down procedures and safeguards for the handling of hazardous substances;*
>
> *(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;*
>
> *(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*
>
> *(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or*

persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."

12. Sub-section (3) of Section 3 of the EP Act provides as follows:

"3. Power of Central Government to take measures to protect and improve environment.—

...

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

13. Subject to the provisions of the EP Act, the Central Government has power under sub-Section (1) of Section 3, to take all such measures, as it deems necessary or expedient, for the purpose of

protecting and improving the quality of environment and preventing, controlling or reducing environmental pollution.

14. Section 5 of the EP Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the EP Act, the Central Government may, in exercise of its powers and performance of its functions under the EP Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

15. In exercise of powers conferred by Sections 6 and 25 of the EP Act, the Central Government has made the Environment (Protection) Rules, 1986, hereinafter referred to as “the EP Rules”.

16. The Central Government issued an Environmental Impact Assessment Notification dated 27th January 1994 in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules, directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernization of any activity or a new project listed in Schedule I to the said notification shall not be undertaken in any part of India, unless it has been accorded EC by the Central Government in accordance with the procedures specified in the said notification.

17. In exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules and in supersession of notification

number S.O. 60 (E) dated 27th January 1994, except in respect of things done or omitted to be done before such supersession, the Central Government issued a notification dated 14th September 2006, being Notification S.O. 1533 (E) requiring prior environmental clearance from the Central Government or as the case may be, by the State-Level Environment Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the EP Act.

18. In terms of the said notification dated 14th September 2006, the process of environmental clearance for new projects was to comprise of a maximum of four stages, all of which might not apply to particular cases. The stages were (1) Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal.

19. In the meanwhile, by a notification being S.O. 327 (E) dated 10th April 2001, published in the Gazette of India on 12th April 2001, the Central Government has delegated the powers vested in it under the EP Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority to prevent violation of the Rules.

20. The Appellants carry on business, *inter alia*, of manufacture and sale of basic organic chemicals, namely, Formaldehyde. The Appellant No.1, M/s Pahwa Plastics Private Limited has two manufacturing units, one at village Kharawar in Rohtak, hereinafter referred to as the "Rohtak Unit" and the other at village Jathlana, Jagadhri in Yamuna Nagar in Haryana, hereinafter referred to as the "Yamuna Nagar Unit".

The Appellant No.2 has a manufacturing unit at village Ghespur in Yamuna Nagar, Haryana which is hereinafter referred to as the "Yamuna Nagar Unit". The manufacturing units established, run and operated by the respective Appellants fall in the category of Micro, Small and Medium Enterprise (MSME) as defined under the Micro, Small and Medium Enterprises Development Act, 2006, hereinafter referred to as "the MSME Act".

21. On or about 31st March 2014, the Appellant No.1, M/s Pahwa Plastics Ltd. applied for Consent to Establish (CTE) its Yamuna Nagar unit for manufacture of Formaldehyde.

22. By a communication No. HSPCB/Consent/:2846616YAMCTE 3087415 dated 2nd June 2016, the Haryana State Pollution Control Board (HSPCB) granted Consent to Establish (CTE) to the Appellant No.1 M/s Pahwa Plastics Private Limited in respect of its Yamuna Nagar Unit. The CTE was to remain valid for 60 months from the date of its issue, to be extended for another year at the discretion of the Board or till the time the unit started its trial production, whichever was earlier.

23. Some of the terms and conditions on which CTE was granted are set out hereinbelow:-

> *"3. The officer/official of the Board shall have the right to access and inspection of the industry in connection with the various processes and the treatment facilities being provided simultaneously with the construction of building/machinery. The effluent should conform the effluent standards as applicable.*
>
> *4. That necessary arrangement shall be made by the industry for the control of Air Pollution before commissioning the plant. The*

emitted pollutants will meet the emission and other standards as laid/will be prescribed by the Board from time to time.

5. The applicant will obtain consent under section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 as amended to-date-even before starting trial production.

6. The above Consent to Establish is further subject to the conditions that the unit complies with all the laws/rules/decisions and competent directions of the Board/Government and its functionaries in all respect before commissioning of the operation and during its actual working strictly.

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8. The Electricity Department will give only temporary connection and permanent connection to the unit will be given after verifying the consent granted by the Board, both under Water Act and Air Act.

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12. That there is no discharge directly or indirectly from the unit or the process into any interstate river or Yamuna River or River Ghaggar.

13. That the industry or the unit concerned is not sited within any prohibited distances according to the Environmental Laws and Rules, Notification, Orders and Policies of Central Pollution Control Board and Haryana State Pollution Control Board.

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17. In case of change of name from previous Consent to Establish granted, fresh Consent to Establish fee shall be levied.

18. Industry should adopt water conservation measures to ensure minimum consumption of water in their Process. Ground water based proposals of new industries should get clearance from Central Ground Water Authority for scientific development of previous resources.

19. That the unit will take all other clearances from concerned agencies, whenever required.

20. That the unit will not change its process without the prior permission of the Board.

21. That the Consent to Establish so granted will be invalid, if the unit falls in Aravali Area or non conforming area.

22. That the unit will comply with the Hazardous Waste Management Rules and will also make the non-leachate pit for storage of Hazardous waste and will undertake not to dispose off the same except for pit in their own premises or with the authorized disposal authority.

23. That the unit will submit an undertaking that it will comply with all the specific and general conditions as imposed in the above

Consent to Establish within 30 days failing which Consent to Establish will be revoked."

24. By another communication No.HSPCB/Consent/: 2846618YAMCTO3098246 dated 26th March 2018, HSPCB granted consent to the Appellant No.1 to operate its Yamuna Nagar Unit from 8th February 2018 to 31st March 2022.

25. By an order No.HSPCB/YMN/2242, dated 31st March 2010, the Appellant No.2, M/s Apcolite Polymer Private Limited was granted CTE to establish its Yamuna Nagar Unit for manufacture of Formaldehyde with the manufacturing capacity of 80 tonnes per day.

26. By another communication Nos. HSPCB/Consent/: HSPCB/YMN/DLC/2011/4027 & HSPCB/YMN/DLC/2011/4029 dated 16th January 2012, HSPCB granted the Appellant No.2, M/s Apcolite Polymers Private Limited, Consent to Operate (CTO) its Yamuna Nagar Unit. The CTO has been extended from 1st April 2016 till 31st March 2026, by a letter dated 13th March 2016. The CTO is valid till March 2026.

27. By a communication No. HSPCB/Consent/: 2846616YAMCT OHWM2630357 dated 13th March 2016, HSPCB granted consent for emission of AIR to Appellant No.2, M/s Apcolite Polymers Private Limited in respect of its Yamuna Nagar Unit on, *inter alia,* the terms and conditions specified in the said letter, some of which are extracted hereinbelow:-

"10. The air pollution control equipment of such specification which shall keep the emissions within the emission standard as approved by the State Board from time to time shall be installed and operated in the premises where the industry is carrying on/proposed to carry on its business.

11. The existing air pollution control equipment if required shall be alerted or replaced in accordance with the direction on the Board.

12. All solid wastes arising in the factory premises shall be properly graded and disposed of by:-

(i) In case of Land fill material, care should be taken to ensure that the material does not give rise to leachate which may percolate in ground water of carried away with storm run off.

(ii) Composting in case of bio degradable materials.

(iii) If the method of incineration is used for the disposal of solid waste the consent application should be processed separately and it should be taken up which consent is granted.

13. The industry shall submit an undertaking to the effect that the above conditions shall be complied with by them.

14. The applicant shall submit its undertaking to the effect that the above conditions shall be complied with by them.

15. The applicant shall make an application for grant of fresh consent at least 90 days before the date of expiry of this consent.

*****

18. There should not be any fugitive emission from the premises.

19. The liquid effluent arising out of the operation of the air pollution control equipment shall also be treated in a manner and to the standards stipulated in the consent granted under Water (Prevention & Control of Pollution) Act, 1974 by this Board.

*****

21. If the industry fails to adhere to any of the condition of this consent order the consent so granted shall automatically lapse.

*****

33. The industry shall submit Environment Audit report once in a year.

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38. In case of by passing the emissions, the consent shall be deemed revoked."

28. It is the case of the Appellants that at the time when CTE was granted to the Appellants, it was thought that EC was not required for units which manufactured Formaldehyde. Even HSPCB itself was not sure of whether EC was required for such units.

29. Mr. Gupta argued that the Appellants were *bona fide* under the impression that the Appellants were not required to obtain prior EC for setting up this establishment to manufacture Formaldehyde. On the basis of CTE granted by HSPCB, the Appellants set up their units taking huge loans from banks for which repayments have to be paid in installments.

30. In exercise of power under Section 3(1) and Section 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules, the Central Government issued a notification being S.O. 804(E) dated 14th March 2017 which provides for grant of *ex post facto* EC for project proponents who had commenced, continued or completed a project without obtaining EC under the EP Act/ EP Rules or the Environmental Impact Notification issued thereunder. Paragraphs 3, 4 and 5 of the said notification, read as hereunder:

> *"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.*
>
> *(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under*

prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."

31. The Notification of 2017 is a valid statutory notification issued by the Central Government in exercise of power under Sections 3(1) and 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules in the same manner as the EIA Notification dated 27th January 1994 and the Notification dated 14th September 2006.

32. Section 21 of the General Clauses Act, 1897 provides that where any Central Act or Regulations confer a power to issue notifications, orders, rules or bye-laws, that power includes the power, exercisable in

like manner, and subject to like sanction and conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law so issued. The authority, which had the power to issue Notifications dated 27th January 1994 and 14th September 2006 undoubtedly had, and still has the power to rescind or modify or amend those notifications in like manner. As held by this Court in ***Shree Sidhbali Steels Ltd. & Others v. State of Uttar Pradesh & Others***[1], power under Section 21 to amend, vary or rescind notifications, orders, rules or bye-laws can be exercised from time to time having regard to the exigency.

33. Puducherry Environment Protection Association filed a Writ Petition being W.P. No.11189 of 2017 in the High Court of Madras assailing the said notification dated 14th March 2017. By a judgment and order dated 13th October 2017, a Division Bench of the High Court refused to interfere with the said notification, holding that the impugned notification did not compromise with the need to preserve environmental purity.

34. The Ministry of Environment, Forest and Climate Change (MoEF &CC) issued a draft notification dated 23rd March 2020 which was duly published in the Gazette of India Extraordinary Part II. The Notification was proposed to be issued in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act for dealing with cases of violation of the notification with regard to EC.

1 (2011) 3 SCC 193

It was proposed that cases of violation would be appraised by the Appraisal Committee with a view to assess whether the project had been constructed or operated at a site which was permissible under prevailing laws and could be run sustainably on compliance of environmental norms with adequate environmental safeguards. Closure was to be recommended if the findings of the Appraisal Committee were in the negative. If the Appraisal Committee found that such unit had been running sustainably upon compliance of environmental norms with adequate environment safeguards, the unit would be prescribed appropriate Terms of Reference (TOR) after which the procedure for grant of EC would follow.

35. On 10th November 2020, the Department of Environment and Climate Change of the Government of Haryana issued an order which is extracted hereinbelow for convenience:

> "*Whereas the process of manufacturing of Formaldehyde is covered under the provisions of 5(f) of Schedule of Environment Impact Assessment Notification (EIA), 2006 of Government of India, and requires the prior Environmental Clearance (EC) from the competent authority State Environment Impact Assessment Authority (SEIAA)/Ministry of Environment, Forest and Climate Change, Government of India, before establishment and operation of such units, besides other mandatory clearance, as applicable;*
>
> *Whereas, it has come to the notice of Government that around 15 such units have been permitted to establish/operate in the State of Haryana, without obtaining the necessary Prior Environmental Clearances, but with the Consent of the Haryana State Pollution Control Bureau (HSPCB), which misinterpreted the category of such units and on realising the requirement of EC in these cases, has revoked its consents issued earlier to these units recently;*
>
> *Whereas, some of these units approached the Government explaining their hardship due to such sudden revocation of their consents and have sought time for obtaining the necessary EC from the competent authority as the process is likely to take a minimum of 6 months to one year period, and to allow them to operate with*

all pollution control measures, following the pollution control norms applicable, and,

Whereas, the Government has carefully considered their request and the competent authority has decided that these units shall be allowed to continue their operations for a period of six months, without prejudice to any legal action taken against the violations committed by them, by the competent authorities, with the conditions that they will immediately apply for Environmental Clearance from the competent authority and provide the proof of such application within 60 days from the issuance of this communication to Environment and Climate Change Department and to Haryana State Pollution Control Board.

Therefore, it is ordered accordingly."

36. Referring to the Counter Affidavit filed by HSPCB before the NGT, Mr. Gupta pointed out that, since HSPCB itself was under the misconception that prior EC was not necessary for units such as the Yamunanagar units of the Appellants Nos. 1 and 2 respectively. HSPCB took a policy decision to allow the units which did not have prior EC to operate for six months, on condition that they would apply for EC within sixty days.

37. The Appellants duly applied for EC in respect of their manufacturing units. After scrutinizing their applications and after finding the units suitable for grant of EC in terms of the prevailing guidelines, the Expert Appraisal Committee constituted by the MoEF&CC conducted a public hearing to finalize the cases of the Appellants for issuance of Terms of Reference (TOR).

38. By an Office Memorandum, being F.No. 22-21/2020-1A III, dated 7th July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for identification and handling of violation cases under EIA Notification 2006.

39. The said Office Memorandum, *inter alia,* reads:

> *"The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.*
>
> *2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.*
>
> *3. Hon'ble NGT in Original Application No.287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. & Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar vs. Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".*
>
> *4. Further, the Hon'ble National Green Tribunal in O.A. No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and Ors., vide order dated 24.05.2021 has directed that'**.... a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country"**.*
>
> *5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.*
>
> *6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."*

40. The SOP formulated by the said Office Memorandum dated 7th July 2021 refers to and gives effect to various judicial pronouncements

including the judgment of this Court in ***Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Others***[2].

41. In terms of the SOP, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

42. By an order dated 9th July 2021, the MoEF&CC confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of terms of reference to the Appellant No.1, M/s Pahwa Plastics Private Limited for expansion of its Formaldehyde Manufacturing unit from 60 TPD to 150 TPD.

43. In the meanwhile, on or about 26th November 2020, the Respondent No.1, a Non-Governmental Organisation (NGO) hereinafter referred to as “Dastak” filed an application being O.A. No./287/2020 before the NGT praying that the order dated 10th November 2020 passed by the State of Haryana be quashed and units which were operating without EC be closed. The NGT disposed of the said application of Dastak by the impugned order dated 3rd June 2021.

44. A Public Interest Litigation being W.P. (MD) No. 11757 of 2021 (***Fatima v. Union of India***) was filed before the Madurai Bench of the Madras High Court challenging the said Memorandum dated 7th July 2021. By an interim order dated 15th July 2021 a Division Bench of the

2 2020 SCC Online SC 347

Madras High Court admitted the Writ Petition and stayed the said memorandum.

45. The Madurai Bench of the Madras High Court observed and held:-

> *"This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.*
>
> *2. We have heard Mr.A.Yogeshwaran, learned counsel appearing for the writ petitioner and Mr.L.Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.*
>
> *3. The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, ultra vires the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme Court, while interpreting Article 21 and Article 48-A of the Constitution of India.*
>
> *4. Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P.No.11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of ex-post facto approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.*
>
> *5. Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of **Alembic Pharmaceuticals Ltd. vs Rohit Prajapati**, 2020 SCC Online SC 347 and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of **S.P.Muthuraman vs. Union of India & Another**, 2015 SCC Online NGT 169.*
>
> *6 .Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting post facto clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said writ petition in W.P(MD).No.8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.*
>
> *7. The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory*

condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd*** *(cited supra), and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:*

"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."

8. Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.

9. Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed of the writ petition.

10. Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a prima facie case for entertaining the writ petition. Accordingly, the writ petition is ***admitted*** *and there shall be an order of interim stay."*

46. It is true that in the case of ***Puducherry Environment Protection Association v. Union of India***[3], the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible.

47. It is, however, well settled that words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as a finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification and/or order exists, the notification and/or order may be amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law.

48. The Division Bench of Madras High Court fell in error in staying the said office memorandum, by relying on observations made by this Court in ***Alembic Pharmaceuticals Ltd.*** (supra), in the context of a circular which was contrary to the statutory Environment Impact Notification of 1994. The attention of the High Court was perhaps not drawn to the fact that the notification of 7th July 2021 was in pursuance of the statutory notification of 2017 which was valid. The judgment of

3 2017 SCC OnLine Mad 7056

this Court in ***Alembic Pharmaceuticals Ltd.*** *(supra)*, was clearly distinguishable and could have no application to the office memorandum dated 7th July 2021 which was issued pursuant to the notification dated 14th March 2017.

49. The Appellants have already applied for EC. The Expert Appraisal Committee of the MoEF&CC has, after scrutinizing the application of the Appellants and finding them eligible for grant of EC, recommended their cases for grant of Terms of Reference (ToR). ToR was granted to the Appellants and a public hearing had also been conducted. Only last procedural step of issuance of EC is left.

50. It is claimed that the units of the Appellants are totally non-polluting units having "Zero Trade discharge". They have been in operation for many years. In the reply affidavit filed by the State before the NGT, it was mentioned that the units were operating in good faith with valid CTOs granted by the HSPCB. It was stated that the units were not causing pollution hazards. The only thing against the units was the procedural lapse of not obtaining EC.

51. By a communication No. F. No. IA-J-110011/185/2020-IA-II(I) dated 20th July 2021 issued to the Appellant No.1, the MoEF&CC rejected the proposal for terms of reference on the purported ground that the activity of the Appellant No.1 was covered under category "A" of item 5(f) "Synthetic Organic Chemicals" of the Schedule to the EIA Notification, 2006. A similar communication was issued in respect of M/s Apcolite Polymers Pvt. Ltd. Significantly, by an order dated 9th July 2021, the MoEF&CC had confirmed the minutes of an earlier meeting of the Expert

Appraisal Committee and recommended issuance of ToR to the Appellant No.1, as observed above. The proposal for Terms of Reference has obviously been rejected at the final stage after the public hearing, by reason of the impugned order dated 3rd June 2021 passed by the NGT on the application of Dastak, which is under appeal.

52. This appeal was listed for admission on 30th September 2021, along with an application for interim relief being I.A. No.110064 of 2021 praying for orders permitting the Appellants to operate their units during the pendency of the appeal. The appeal was heard at length at the admission stage and reserved for judgment along with the interim application by an order dated 30th September 2021.

53. After receiving the communication dated 20th July 2021 rejecting the proposal for Terms of Reference, the Appellants requested HSPCB to forward to the Appellants the proceedings of public hearing in respect of the manufacturing units of the Appellants. By a communication No. HSPCB/YR/2021/2830 dated 15th February 2022, HSPCB forwarded proceedings of the public hearing in respect of the Yamuna Nagar unit of the Appellant No.1. By another Communication No. HSPCB/YR/29021/2829 dated 15th February 2022 the HSPCB forwarded to the Appellant No.2 the proceedings of the public hearing held on 3rd February 2022 in connection with the Yamuna Nagar Unit of the Appellant No.2.

54. The manufacturing units of the Appellants appoint about 8,000 employees and have a huge annual turnover. An establishment contributing to the economy of the country and providing livelihood ought

not to be closed down only on the ground of the technical irregularity of not obtaining prior Environmental Clearance irrespective of whether or not the unit actually causes pollution.

55. In ***Electrosteel Steels Limited v. Union of India[4],*** this Court held:-

> ***"82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.***
>
> ***83.*** *The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking.* ***At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.***
>
> ***84. The 1986 Act does not prohibit ex post facto Environmental Clearance.*** *Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.*
>
> *****
>
> ***88.*** *The Notification being SO 804(E) dated 14th March, 2017 was not an issue in Alembic Pharmaceuticals (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto*

4 2021 SCC online SC 1247

> *environmental clearance should not however be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications.* ***Ex post facto approval should not be withheld only as a penal measure.*** *The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.*
>
> *****
>
> ***96.*** *The appeals are allowed. The impugned order is set aside. The* ***Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO."***

56. As held by this Court in ***Electrosteel Steels Limited*** (supra) *ex post facto* Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

57. The 1986 Act does not prohibit *ex post facto* Environmental Clearance. Grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or

the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

58. As held by a three Judge Bench of this Court in ***Lafarge Umiam Mining Private Limited v. Union of India***[5]***:-***

> *"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."*

59. In ***Alembic Pharmaceuticals Ltd.***(supra), this Court observed:-

> *"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-*

5 (2011) 7 SCC 338

> *making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."*

60. Even though this Court deprecated *ex post facto* clearances, in ***Alembic Pharmaceuticals Ltd.*** *(supra)*, this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:-

> "*However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court."*

61. The Notification being SO. 804(E) dated 14th March 2017 was not in issue in ***Alembic Pharmaceuticals Ltd.*** (supra). In ***Alembic Pharmaceuticals Ltd.*** *(supra)* this Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January 1994, which was statutory. The EIA Notification dated 27th January 1994 has, as stated above, been superseded by the Notification dated 14th September 2006.

62. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite

environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

63. *Ex post facto* environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of *ex post facto* approval, and the establishment concerned otherwise conforms to the requisite pollution norms, *ex post facto* approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has applied for *ex post facto* EC, should be closed down for the technical irregularity of want of prior

environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the concerned authorities on the misconception that no EC was required.

65. It is reiterated that the 1986 Act does not prohibit *ex post facto* EC. Some relaxations and even grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in ***Electrosteel Steels Limited*** (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.

66. *Ex post facto* EC should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view

that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.

67. Accordingly, the appeal is allowed. The impugned order is set aside in so far as the same is applicable to the units of the Appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for *ex post facto* EC have been filed. The Respondent shall take a decision on the applications of the Appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with.

68. The Appellants will be allowed to operate the units. Electricity, if disconnected, shall be restored subject to payment of charges, if any. If the application for EC is rejected on the ground of any contravention on the part of the Appellants, it will be open to the Respondents to disconnect the supply of electricity.

69. The Union of India had proceeded with the application for EC and even public hearing had been held. Counsel appearing on behalf of the Union of India contended that the Appellant had not submitted its final application for EC, after public hearing. It is not clear what more was required of the Appellants. Be that as it may, the Union of India shall, within three working days from the date of receipt of a copy of this judgment and order, inform the Appellants in writing of whether

anything further is required to be done by the Appellants, and if so what is required to be done. The Appellants shall, within a week thereafter do the needful. The final decision on the application of the Appellants for EC shall be taken within three weeks thereafter.

70. The application being I.A. No.110064/2021 and other pending applications, if any, in this appeal are disposed of accordingly.

.....J.
[INDIRA BANERJEE]

.....J.
[J.K. MAHESHWARI]

NEW DELHI
MARCH 25, 2022

4. It is well settled that the right to claim indemnity is dependent on the terms of the policy and the payment of the premium. In this case, the policy was issued pursuant to the proposal and the proposal itself made it abundantly clear that neither the sub contractor or the sub contractor's workmen were being insured under this policy. The premium paid was only for the workmen directly employed by the insured and not by the sub contractor of the insured. Casual employees either of the employer or of the sub contractors were not included in the proposal pursuant to which the policy was issued.

5. Having regard to these facts, particularly having regard to the fact that no premium had been paid by the insured for insuring any one other than those of its own employees, the right of the insured to indemnity is limited to the persons for whom the insurance proposal had been given and pursuant to which the policy had been issued.

6. So far as the family of the deceased workmen are concerned they, however, are entitled to look to the terms of the policy and claim the amount from the insurer. That will not preclude the insurer from reimbursing itself by making a claim against the insured. In this case, the insurer had deposited the amount which was ordered to be paid over to the family of the deceased. The family of the deceased the claimants before the Workmen's Compensation Commissioner, are entitled to draw the money so deposited in full.

7. So far as the insurer is concerned it is entitled to reimbursement of the amount paid by the insurer to the claimants. If any amount has been deposited by the insured in the Court that amount may be drawn by the insurer who may thereafter claim the balance if any that may be due to it from the insured. The appeal is accordingly disposed of.

VCJ/VCS

2002 – 3 – L.W. 393

MADRAS HIGH COURT

2nd November, 2001/ [1]W.A.Nos.1291 and 1663 of 1997 and W.P.No.8030 of 2000. and C.M.P.Nos.15015& 15016 of 1997 and 10381 of 2002 and W.M.P.Nos.11746 and 12162 of 2000 and 25836 of 2001.

[We are printing at the end of the Head note, the judgment of the single Judge from which the above Writ Appeals arose, and it is followed by the judgment of this Division Bench dismissing the above Writ Appeals. The Headnote is written for the judgment of the Division Bench in the Appeals.]

K.Narayana Kurup, J. and

A.Ramamurthi, J.

[1]W.A.No.1291 of 1997:-*Citizen, Consumer and Civil Action Group, rep. by its Trustee Lawrence Surendra.*

v.

1.*Union of India, rep. by its Secy. to Govt., Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110 003.* **2.** *The State of T.N. rep. by its Secy. to Govt., Housing & Urban Development, Chennai - 9.* **3.** *The State of T.N. rep. by its Secy. to Govt., Dept. of Environment & Forests, Fort St. George, Chennai – 9.* **4.** *The Chennai Metropolitan Development Authority, rep. by its Member Secretary, 8 Gandhi Irwin Road, Egmore, Chennai - 8.* **5.** *The Corporation of Madras,*

1. Special Leave to Appeal (Civil) No. 5042-5044/2005 (*Citizen, Consumer & Civil Action Group v. Union of India & others*, from the judgment in this case was dismissed by B.N.Kirpal, J. and Arijit Pasayat, J. stating " The Special Leave Petitions are dismissed ", dt. 15.03.2002.

rep. by its Commissioner, Ripon Buildings, Chennai - 3. **6.** *M.A.M. Ramasamy. 7.The T.N. State Coastal Zone Management Authority (R7 impleaded suo motu as additional 7th respondent as per order of Court dt. 20.4.2001 in W.A.No.1291 of 1997)*

W.A.No.1663 of 1997:- Citizen Consumer and Civil Action Group, rep. by its Trustee Lawrence Surendra

v.

Dr.M.A.M.Ramasamy 2. Corporation of Chennai, rep. by its Commissioner, Ripon Buildings, Chennai - 3.

W.P.No.8030 of 2000:- Citizen, Consumer and Civil Action Group, rep. by its Trustee N.L.Rajah

v.

1.*Union of India, rep. by its Secy. to Govt., Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110 003.* **2.** *The T.N. State Coastal Zone Authority, rep. by its Member Secretary, T.N.Housing Hoard Shopping Complex, Ashok Pillar Ashok Nagar, Chennai - 83.* **3.** *The State of T.N. rep. by its Secy. to Govt., Dept. of Environment & Forests, Fort St. George, Chennai-9.* **4.** *The Chennai Metropolitan Development Authority, rep. by its Member Secretary, 8 Gandhi Irwin Road, Egmore, Chennai - 8.* **5.** *The Corporation of Madras, rep. by its Commissioner, Ripon Buildings, Chennai - 3.* **6.** *M.A.M. Ramasamy.*

Environment (Protection) Act (1986), Ss.3(1) and 3(2)(v), Tamil Nadu Town and Country Planning Act (1971), Ss.49, 50, 111 (3)(a), 114, Constitution of India, Articles 226, 14 — Writ petition filed by a builder praying for a direction to the Corporation of Chennai to forthwith grant building permit to the petitioner in the light of Planning Permission granted by the CMDA and for directions etc., was allowed by single Judge — Writ Appeals were preferred by Citizen, Consumer and Civil Action Group against the said judgment, with leave of the Court — Separate writ petition was also filed by the appellant herein seeking a mandamus to demolish the construction put up by the builder adjoining the Adyar Estuary, and to acquire the land etc., and was heard with the other writ petition and was dismissed — A separate writ appeal was filed against the said order.

Question raised was whether the builder is entitled to grant of building permit after he has obtained NOC from all authorities concerned and whether the construction activity is hit by 1986 Act — Corporation of Chennai being party to the grant of permission by C.M.D.A. and having accepted a vast extent of land gifted by the builder in consideration of the grant of Planning Permission which was to be utilised as "Open Space Reservation Area" cannot go behind its own decision, and it is bound to grant building permit — Action of the Corporation in denying building permit is arbitrary and ultra vires the provisions of Town and Country Planning Act.

Expert Committee's report, not liable to be casually interfered by Court under Article 226 — Court will not give a finding under Article 226 as to the non-existence of a road which will have serious Civil consequences when no statutory authority has chosen to question it.

Proper balance has to be maintained by the Court in the matter of Social accountability between protection of the Environment and the Development activities.

Tamil Nadu Town and Country Planning Act (1971), — Ss.49, 50, 113(3)(a) and 114 — See Environment (Protection) Act, (1986) Ss.3(1) and 3(2)(v) and Constitution of India, Articles 226 and 14.

Constitution of India, Articles 226 and 14 — See Environment (Protection) Act (1986) Ss.3(1)and 3(2)(v), and Tamil Nadu Town and Country Planning Act (1971), Ss.49,50, 111(3)(a) and 114.

W.P.No.14823 of 1997 was filed by Dr.M.A.M. Ramaswamy and his family (described in the judgment in this writ appeal as builder) praying for the issue of appropriate writ, order or direction in the nature of a writ of mandamus, directing the respondent to forthwith grant building permit to the petitioner in respect of the construction undertaken in S.No.4288/2 and 4288/14 in Santhome Village, Chennai 600 028, in the light of the Planning Permission granted by the Chennai Metropolitan Development Authority in its Planning Permission No.C3/14876/96, dated 20.7.1996, etc.etc. Learned single Judge, (S.S.Subramani, J.) by order dated 14.10.1997, allowed the writ petition directing the Corporation of Chennai to consider the builder's application for Building Permit and pass final order on the same within ten days from the date of the order. While allowing the writ petition as above, the learned single Judge found that since the builder has satisfied all the statutory requirements and the Planning Permission has also been granted by the C.M.D.A. only after inspection, it must be presumed that the permission granted by it is in accordance with law. Based on the aforesaid order of the learned single judge in W.P.No.14823 of 1997, the Corporation of Chennai proceeded to grant Building permit as well on 17.10.1997. However, aggrieved by the order in the said writ petition, the appellant, (herein namely) "Citizen, Consumer and Civic Action Group" had sought leave of a Division Bench of this Court to file a writ appeal in public interest against the aforesaid order of the learned single Judge and the said appeal was numbered as W.A.No.1663 of 1997 after grant of leave. Para 2

After the conclusion of arguments before the single Judge in W.P.No.14823 of 1997, the appeallant herein namely, Citizen, Consumer and Civil Action Group, also filed W.P.No.15471 of 1997 before this Court seeking issuance of a writ of mandamus, directing the respondents (Government of India, Government of Tamil Nadu, C.M.D.A., Corporation of Chennai, etc.,) to demolish the construction put up by the builder adjoining the Adyar estuary and restoring the lands to their original character, acquiring them under the provisions of the Land Acquisition Act, 1894 and the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 with a view to develop the Adyar creek and estuary as a sanctuary or as a national park and consequently direct the respondents herein to forbear from permitting any development or construction on the said area. Learned single Judge having regard to the fact that W.P.No.14823 of 1997 was disposed of by giving necessary directions to the Corporation of Chennai, felt that nothing survived for consideration in W.P.No.154714 of 1997 and in that view dismissed the same by order dated 14.10.1997. W.A.No.1291 of 1997 is directed against that order of the learned single Judge in W.P.No.15471 of 1997. Para 3

In sum and substance, the point that arises for consideration in these writ appeals and the writ petition in W.P.No.8030 of 2000 is whether the builder is entitled to the grant of Building permit by the Corporation of Chennai as prayed for. Para 6

Held: The fact that the builder obtained N.O.C. from all the authorities concerned is not in dispute. Hence, that is not a point in issue to be decided here. Accordingly, all that we have to see is whether the construction activity in question is hit by the provisions of the Notification issued under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 and the Rules framed thereunder, declaring the coastal stretches as Coastal Regulation Zone (C.R.Z.) and regulating activities in the C.R.Z. being within the prohibited distance of Adyar river. Para 6

The Corporation of Chennai having been very much party to the grant of Planning Permission by the C.M.D.A. and after having insisted and accepted the vast extent of land to be gifted from the builder and taking possession of the said land so gifted for the public purpose in consideration of the grant of Planning Permission by the C.M.D.A., cannot go behind its own decision and put the builder

to prejudice by withholding Building Permit notwithstanding the grant of Planning Permission by the C.M.D.A. In such a case, we are of opinion that the Corporation of Chennai is bound to grant Building Permit simultaneously or immediately after the C.M.D.A. grants Planning Permission under the provisions of the Tamil Nadu Town and Country Planning Act and the Development Control Rules. In this view of the matter, the action of the Corporation of Chennai in denying the Building Permit to the builder is patently unreasonable and arbitrary and would be ultra-vires of the provisions of the Tamil Nadu Town and Country Planning Act and the Development Control Rules, militating against the very scheme of the said Act, besides being discriminatory and violative of Article 14 of the Constitution of India. When the authority concerned, namely the C.M.D.A. has granted the Planning Permission and when several labyrinthine formalities have been completed, we wonder how Building Permit can be declined by the Corporation of Chennai in the case of this builder, unless there are compelling reasons justifying the denial of building permit. Para 7

The fact that the construction activity is beyond 500 metres from the H.T.L. has also been conclusively reaffirmed by the Tamil Nadu State Coastal Zone Management Authority (constituted under Section 3 of the Environment (Protection) Act which was suo motu impleaded by us as additional 7th respondent. Para 7

W.A.No.1287 of 1995 (D.B.–M.Srinivasan, and S.S.Subramani, JJ.); – Referred to.

We are told that already the Government have granted an extent of 45.45 acres of land situate in Adyar creek area to be converted as Ambedkar Memorial. The position of the builder is better in so far as it does not form part of the creek, as borne out by the records, but is an independent patta land situate at a high level beyond the prohibited distance and separated by a road, as already noticed. The challenge against the aforesaid judgment, namely, judgment in W.A.No.1287 of 1995 was unsuccessful before the Apex Court. That apart, the said Division Bench Judgment has been confirmed subsequently by another Division Bench of this Court comprising M.S.Liberhan, C.J., and D.Raju, J, in W.P. No.1569 of 1997 dated 4.9.1997. Para 8

We have to take note of the fact that the entire question has been examined by two expert bodies including the Expert Committee constituted under the Environmental (Protection) Act, 1986, namely, the Tamil Nadu State Coastal Zone Management Authority, who have categorically stated that the construction in question is beyond 500 metres from the H.T.L., in which case the construction will be perfectly legal. Being an expert body, it can be presumed to know the nature and character of the problem it has to tackle and the decision arrived at by such a body is not liable to be casually interfered with by this Court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India, unless a patent error was point out. No such error could be suggested by the appellant. Besides, in matters of this nature, it may not be a proper exercise of jurisdiction for this Court to substitute its own judgment to that of an expert body, particularly, in the highly technical field, demanding scientific skill and expertise. Para 9

In a writ petition under Article 226 of the Constitution, it will be preposterous for this Court to give a finding as to the non-existence of a road, which will have serious civil consequences, particularly, when no statutory authority has chosen to question the grant of Planning Permission on the ground of non-existence of the road by disbelieving the letter of the Tahsildar. Para 10

We find that the Planning Permission granted by the C.M.D.A. was to be effective for a period of three years under the provisions of Sections 49 and 50 of the Tamil Nadu Town and Country Planning Act. Further, the Corporation itself had been a party to the decision making process of the C.M.D.A. in the grant of Planning Permission with its Chief Engineer having been a member of the Multi-storey Building Panel constituted under the Development Control Rules framed under the Tamil Nadu Town and Country Planning Act. It was the Chief Engineer of the Corporation of

Chennai who had found that the plan could be approved and the Planning Permission was accordingly granted finally by the C.M.D.A., that too, after confirming that the land to an extent of 2,321 sq. M. have been gifted to the Corporation of Chennai to be utilised as "Open space reservation area" and the Corporation confirming the taking possession of the lands in January 1996. Therefore, we find no substance in the contention of the learned counsel for the appellant in this regard and reject the same as has been rightly done by the learned single Judge. Para 12

On mere assumptions, the appellant cannot, at this belated stage, seek to raise wholly irrelevant issues and question the existence of the road through these proceedings. Para 13

Goa Foundation, Goa v. Diksha Holdings Pvt Ltd. (AIR 2001 SC 184) (Paragraph 11); – Referred to.

Before parting with this judgment, we may observe that while the Courts have social accountability in the matter of protection of environment, there should be a proper balance between the protection of environment and development activities, which are essential for progress. There can be no dispute that the society has to prosper, but it shall not be at the expense of environment. In the like vein, the environment shall have to be protected, but not at the cost of the development of the society. Both the development and environment shall co-exist and go hand-in-hand. Therefore, a balance has to be struck and administrative actions ought to proceed in accordance therewith, and not de-hors the same. Para 14

Writ Appeals dismissed.

Mr.Sriram Panchu, Senior Counsel for Mr.T.Mohan for appellant in both the writ appeals and petitioner in W.P.No.8030 of 2000.

Mr.N.Kannadasan, Senior Central Govt. Stg. Counsel for R1 in W.A.Nos.1291 of 1997 and W.P.No.8030 of 2000.

Mr.M.C.Swamy, Spl.G.P. for R2 in W.A.No.1291 of 1997.

Mr.Titus Jesudoos, Spl. G.P. (Forests) for R.3 in W.A.1291 of 1997 and W.P.No.8030 of 2000.

Mr.V.Perumal 9C.M.D.A.) for R4 in W.P.No.8030 of 2000 and W.A.No.1291 of 1997.

Ms.Bhagyalakshmi (for Corporation) for Respondent 5 in W.P.No.8030 of 2000, and W.A.No.1291 of 1997 and R.2 in W.A. No.1663 of 1997.

Mr.Mohan Parasaran for R.6 in W.A. No.1291 of 1997 and W.P.No. 8030/2000 and R.1 in W.A. No.1663 of 1997.

xxxx xxxxxx xxxxx xxxxxx xxxx

MADRAS HIGH COURT

14th October, 1997/W.P.No.14823 of 1997.

S.S.Subramani, J.

Dr.M.A.M.Ramaswamy, "Chettinad House" Raja Annamalaipuram, Chennai - 600 020.

v.

Corporation of Chennai, rep. by its Commissioner Ripon Building, Chennai - 3.

Mr.K.Parasaran Senior Counsel for M/s.Mohan Parasaran & Satish Parasaran for Petitioner.

Mr.T.Chandrasekaran for Respondent.

Order

Petitioner seeks the issuance of a Writ of Mandamus, directing the Respondent to forthwith grant building permit to the Petitioner in respect of the construction undertaken in Survey Nos.4288/2 and 4288/14, in Santhome Village, Chennai - 600 028, in the light of the Planning Permission granted by the Chennai Metropolitan Development Authority in its Planning Permission No.C.3/14876/96 dated 20.7.1996 and pursuant to the gift deed executed in favour of the Corporation of Chennai by the Petitioner as condition precedent for the grant of planning permission which was duly accepted and acted upon by the respondent and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and in the interest of Justice.

2. In the affidavit filed in support of the Writ Petition, it is said that the Petitioner, his brother's wife Mrs.Meena Muthiah and her

adopted son have proposed to put up construction of a multistoreyed building for residential purposes in the lands owned by them in Survey Nos.4288/2 and 4288/14, situate in Santhome Village, Chennai -28. The total extent of the said lands where the proposed constructions are to be put up are 88 grounds. In view of the vast extent of the property, petitioner thought of putting up basement, ground plus nine floors, after complying with all the requirements prescribed by the Chennai Metropolitan Development Authority under the Tamil Nadu Town and Country Planning Act and the Development Control Rules framed thereunder. Petitioner filed his application before the Chennai Metropolitan Development Authority on 27.04.1995. On receipt of the Application, the Authority required the other bodies, namely, Director of Fire Services, Deputy Commissioner of Police (Traffic), Madras Metropolitan Water Supply and Sewerage Board and Chief Engineer, Corporation of Madras, to give their No Objection for further processing the Planning Permission application after considering the permissibility of the building from the point of view and guideliness prescribed by those Authorities. It is further stated that the Director of Fire Services, by his communication dated 26.5.1995, informed the Petitioner that an inspection would be conducted for consideration of the grant of NOC by the officials of the Fire Service Department on 31.05.1995. After inspection, by communication dated 29.06.1995, the Director of Fire Services informed the Petitioner that he has no objection for according planning permission. The Chennai Metropolitan Water Supply and Sewarage Board also informed the Petitioner asking him to remit nearly a sum of Rs.7,28,000/- towards infrastructural development charges so that it would be in a position to provide water and sewerage facilities by creating necessary infrastructure. It is further stated therein that the Chief Engineer of the Corporation of Chennai, who is also a member of the Committee constituted by the CMDA for scrutinising the planning permission application in respect of construction of multi-storeyed building also informed the Madras Metropolitan Development Authority that the Petitioner's plan has been scrutinised and he has recommended the proposal to be placed in the Panel Meeting. In that letter, Petitioner was asked to submit certain foundation details suggested by soil test and load calculation. As the construction was for the purpose of putting up multi-storeyed building in accordance with the prescription of CMDA., an applicant for planning permission should either pay a compensatory amount called as Open Space Reservation Charges or in the alternative agree to gift a proportionate extent of land equivalent to the value of open space reservation chares in favour of the Corporation of Chennai. Petitioner furnished all the details that were sought for and the Expert Panel of the CMDA addressed a letter on 6.10.1995 to the Government that the proposal of the Petitioner had been examined and placed before the Panel Meeting of the CMDA on 27.09.1995, and, after due consideration, the Expert Panel recommended issuance of planning permission on certain terms and conditions. The Government, on receipt of the said recommendation letter, was inclined to grant its approval subject to the condition that the Petitioner obtains No Objection Certificate from the Madras Regional Advisory Committee and Civil Aviation Department as pre-condition for issue of planning permission and subject to fulfilment of the conditions imposed by the Director of Fire Services and Metro Water. In view of the conditional approval of the Panel's recommendation by the Government, the CMDA., by letter dated ??.11.1995, wanted the Petitioner to remit a sum of Rs.2,02,000/- towards development charges and a sum of Rs.71,40,000/- towards security deposit. The said condition was also complied with. On receipt of the amount, the CMDA informed the Respondent that in accordance with the Development Control Rules, the areas earmarked as Open Space Reservation Area has to be handed over to the Corporation and requested the Corporation to advise the Petitioner to hand over the OSR Area through a registered gift deed. Pursuant to the same, a registered gift deed was also executed and the Corporation has also taken possession of the said area. The Respondent, as per letter dated 15.11.1995, informed the Petitioner to furnish particulars for

consideration of the building application by the Corporation of Chennai, and wanted two clarifications, namely, (1) attested xerox copy of the ownership document / patta and non encumbrance certificate for a period of 18 years in respect of the land which was to be the subject matter of the gift and (2) to furnish a draft, copy of the gift deed for approval. The Petitioner complied with the same. In the meanwihile, the Department of Tele communication, by its letter dated 27.11.1995, informed the Petitioner that it has no objection for construction of the proposed building. The Government of India, Ministry of Communication, Monitoring Organisation also proceeded to give its no objection for the proposed communication received from the Directorate General, by All India Radio on 30.5.1996. In spite of having satisfied all the legal requirement, the planning permission was not received, and therefore, the petitioner wrote to CMDA and requested for sanction of the plan and also sent a copy of the sketch and original letter and requested the sanction to the Corporation under advice to the petitioner, for necessary action. On 20.7.1996, the CMDA proceeded to grant its planning permission only after satisfying that all the legal requirements have been complied with. The planning permission granted by CMDA was for a period of three years ending with 18.9.97. The grievance of the petitioner is that in spite of the fact that the CMDA had granted the Planning Permission after taking note of clearance from all other Authorities, the respondent corporation has not granted the building permit to him, and there was nothing else required by the respondent corporation as it was very much a party at all relevant point of time, and it was actively consulted in the matter of grant of planning permission by CMDA. It is the case of the petitioner that the petitioner has to necessarily proceed with the construction of the building because of the permission granted by the CMDA that the grant of building permit by the respondent corporation, particularly after the acceptance of the Gift of the land for open space reservation charges, the Corporation has no right to withhold the building permit, or interfere with the petitioner's right to put up the construction. The respondent is not granting permission on some irrelevant consideration. It is seen that the Corporation has informed the CMDA that prima facie the petitioner's site may be affected by the Coastal Regulation Zone as the side in the quesiton is very close to Adyar River. It is the case of the petitioner that the said objection is without any substance, because, there are several residential buildings which have came up in the vicinity and also several other buildings are in the process of construction after obtaining necessary approval. It is further said that on 2.4.1997, petitioner himself has given the necessary clarification and the proposed construction was 720 metres from the high tide line of the Bay of Bengal for which sufficient proof had been submitted and this distance was measured and certified by the Indian Institute of Technology, Madras. It is also stated that the petitioner also invited the attention of this respondent to the norms for regulation of activities under the Coastal Regulation Zones and particularly to Regulation 6(2) CRZ II which states that the building shall be permitted neither and the seaward side if the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of the existing authorised structures - Building permitted on the landward side of the existing and prposed roads existing authorised structures shall be subject the existing local town and country planning Regulations, including the existing name of FSI/FAR."

It is stated that there was an existing road between the Adyar River and the site and that since prohibition was only on the Seaward side and the proposed development was only on the landlord side, there could be absolutely no prohibition for construction of the building provided the petitioner complies with the requirements if the local Town and Country Planning Act. It is further stated that even between Adyar Creek / river and the Petitioner's proposed construction, there was a public road proposed as per Master Plan and it was well recognised that whenever there was a public road between creeks and the building, there cannot be any objection for any construction activity. It is said that these aspects had been examined by the appropriate authorities, and it was only thereafter the gift was accepted by the respondent, and there is no

reason why at this stage, the respondent should delay the grant of permission. Even after 2.4.1997, petitioner met the respondent's authorities and requested them for granting permit. As an alternate case, it is further said that since the building proposed to be constructed is a special type of building over an extent of 3000 Sq.ft or constructions having ground plus First Floor, permission of the respondent Corporation is not required. It is said that the Town and Country Planning Act was amended, and, any planning permission granted by the CMDA will be binding the Corporation also. It is further said that once the respondent has accepted the gift, fully knowing the location and the ---- of the road, it is estopped from raising doubt regarding the granting of planning permission. The act of the respondent, according to the petitioner, not only arbitrary and is / violative of Art. 14 of the Constitution, but is also in the teeth of the spirit behind the Tamil Nadu Town and Country Planning Act and the Development Control Rules. It is therefore said that until 1974 the Corporation of Chennai was the exclusive planning authority in respect of any type of construction in the City of Madras. But, however, the Tamil Nadu Town and Country Planning Act was amended by introduction of Chapter II-A by which the CMDA was constituted with the object of taking care of development activities in the City of Chennai, the preparation of Master Plan, detailed development plans and new development plans, preparing existing land use, etc. When the Panel Committee of which the Chief Engineer of the Corporation of Madras is also a Member has recommended for the approval of the Plan and the Government has also acted since, the Corporation cannot delay the same for no reason, at any rate, the Government has also sent sanctioned / the proposed construction. The delay caused by the Respondent Corporation, according to the petitioner, is causing great prejudice to his building activities, and, for the above reason, he seeks the assistance of a writ as stated above.

3. At the time when the matter came for admission, learned standing counsel for the respondent Corporation also took notice, and thereafter he filed a Counter Affidavit. Since the learned counsel on both sides agreed that the matter could be heard on 30.9.1997, and respondent also agreed to file in court on or before that date, and accordingly filed the same, the matter was heard to final disposal on that date.

4. A detailed counter affidavit has been filed by the respondent sworn to by the Commissioner of the Corporation. It is said that only after getting permission from the respondent, petitioner could put up a contruction. It is the case of the respondent that the Supreme Court in their Order in W.P. (Civil No.664/93 dated 9.3.1995, has directed that all the restrictions, prohibitions regarding construction and setting up of Industries or for any other purpose contained in the Notification dated 19.2.2001 issued by the Ministry of Environment and Forest, Government of India under clauses (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules 1986, shall be meticulously followed by all the states; the activities which have been declared as prohibited within the Coastal Regulation Zone shall not be undertaken by any of the States; and the regulations of permissible activities shall also be meticulously followed. In paragraph 5 of the counter affidavit, respondent has extracted Letter No.16342/EC.111/31-70 dated 12.11.1996, of the Environment and Forest Department, Government of India, wherein it has been stated thus -

"While approving the Coastal Zone Management Plant of the State with some modification has specified a condition that the Tamil Nadu Govt. shall ensure that all development activities in the Coastal Regulation Zone areas take place within the framework of the Coastal Zone Managment Plan and violation shall be subject to be provisions of Environmental (Protection) Act, 1986, and other relevant laws. The High Tide Line is yet to be fixed in consultation with the Chief Hydrographer. Other particulars have to be collected and modified and have to be prepared as desired by the Government of India. Till such time, it is considered that planning permission shall not be issued within 500 m. from the High Tide Line and the backwater, creeks and estuaries."

It is further submitted by the respondent that while processing the building application given by the petition, it was noticed that the site is closely situated of the backwaters of Adyar river and it was found necessary to examine whether the site is indeed affected by the Coastal Regulation issued by the Ministry of Environment and Forest Department, Government of India. Therefore, the respondent by letter dated 6.9.1996, requested the CMDA to clarify whether the proposal has been examined in the light of Coastal Regulations, since the CMDA is the appropriate authority for sanctioning the planning permit. It is said that the Corporation (Respondent) has not received any reply from CMDA. In the later portion of the counter affidavit, it is said that it has accepted the gift as per the instructions of the CMDA and has also taken possession of the property on 11.1.1996. It is further said that on receipt of reply from the CMDA necessary building permit will be given to the Petitioner.

5. I heard Learned counsel on both sides.

6. Certain admitted facts are:–

(1) Petitioner applied for a planning permission before the CMDA and the CMDA sent copies of the Application to various authorities including the respondent herein. (2)The petitioner obtained NOC from Fire Service Department as per their letter dated 29.6.1996. (3) Clearance from Telecom Department as per their letter dated 27.11.1995. (4) Clearance from the Ministry of Communications as per their letter dated 19.1.1996. (5) No objection certificate from All India Radio dated 30.5.1996, and (6) Necessary No objection Certificate from Madras Metropolitan Water Supply and Sewerage Board.

It is also not disputed that the petitioner also obtained clearance from the Airport Authority as per letter dated 12.1.1996.

7. Planning Permission application was placed before the Panel Committee which consisted of the Chief Engineer of the Corporation Respondent, and they also recommended for approval by the Government. The Government, as per their letter dated 17.10.1995, has also grant and sanction subject only to two condition, namely, (1) that No Objection Certificates should be obtained from M.R.A.C. and Civil Aviation Department and produced by the applicant before the issue of Planning Permission, and (2) the conditions imposed by the Director of Fire Service and Metrowater should be fulfilled. It is not a matter in dispute that the conditions stipulated in the Government Letter dated 17.10.1995 have been fulfilled.

8. After getting No Objection Certificate from various Authorities. Petitioner wrote to CMDA for planning permission. At that time, petitioner was informed to deposit certain amount and also to execute a gift deed, and is also bound to gift the property to the City Corporation. Thereafter, the CMDA addressed a letter to the Corporation to take possession of the gifted property copy of which was also sent to the Petitioner. The same is evidenced by a letter dated 14.11.1995. Immediately thereafter, the Corporation itself wrote to the Petitioner that a copy of the gift Deed may be sent to it so as to act on the application for Planning permission. In the meanwhile, as mentioned above, the petitioner also obtained clearance from the Telecom Department on 2.1.96, the Petitioner wrote to the Corporation with a draft of the Gift Deed and requested it to accept the Gift Deed. On 6.1.1996, the Corporation sent a letter of acceptance, and on 11.1.1996 the property was also handed over to it. So, the petitioner complied with all the requirements demanded by the various Authorities. Before accepting the Gift Deed, the Corporation only wanted two clarifications, namely (1) Title of the Petitioner to the property, and (2) a Patta in respect of the Gift Deed. The Petitioner immediately sent a xerox copy of the Patta in respect of the property, and also a copy of the Gift Deed which was subsequently accepted. It was further noted that before acceptaing the Gift, Respondent Corporation Council also passed a Resolution to accept the gift executed by the Petitioner and before accepting it, it also put a conditions that the area will have to be fenced and a gate will have to be installed. The same was also complied with by the Petitioner. Thereafter, the Respondent Corporation through the Assistant Executive

Engineer, wanted the Petitioner to give further details as per their letter dated 7.8.1996. Within a few days, those conditions were also complied with, as evidenced by a reply letter of the Petitioner dated 16.8.1996. Whileso, the Development Authority itself wrote a letter to the Petitioner on 20.7.1996, informing the Petitioner that the Planning Permission has been approved subject to certain conditions i.e., Petitioner are requested to remit certain charges by way of development charges and security deposit and also that the Planning permit was valid for the period from 20.7.1996 to 10.7.1999. The amounts requried to be deposited were also admitted. Of course, in that letter, it was stated by the Development Authority that the approval is not final, and the applicant has to approach the Corporation for the issue of building permit and only thereafter construction should be commenced.

It was thereafter, the Corporation wrote to the Petitioner on 7.8.1996, requested for certain clarifications. The clarification sought for were also explained, and necessary documents were also filed by the Petitioner as per their letter dated 16.8.1996, referred to above.

Thereafter, an inspection was also made by the CMDA and it was found that in the plan admitted, there were certain deviations and they were sought to be rectified, petitioner immediately rectified the same and admitted a revised plan to CMDA. When, in spite of submission of revised plan, the Corporation did not issue building permit, petitioner made an enquiry and then it was found that the Corporation entertained a doubt whether it violates the Coastal Regulation Notification. Though that letter was not communicated to the Petitioner, petitioner came to know the contents, and a detailed reply was sent by him on 2.4.1997. The receipt of the said letter is not disputed by the respondent. In that letter, the petitioner has said that the proposed construction is 720 metres away from the high tide line of the Bay of Bengal, and the same was measured and certified by the Indian Institute of Technology, Madras. It was further stated in that letter that there was a road in between the proposed construction and Adyar River, and in such a case, there is no question of any violation of the Coastal Regulation Zone Notification. It was further brought to the notice of the Corporation that when the construction is on the landward side of the existing road, there cannot be any question of violation of Coastal Regulation Notification. In such case, only the local Authority has to decide about the Planning Permission. It is also brought to the notice of the Corporation that as per Special Conditions in the Modifications Classifications clauses 2(iii) of the Notification,Along the rivers, creeks and backwaters which are influenced by tidal action, the CBZ will extend upto 500 m. However, the CBZ will extend only upto 100 m. along rivers, creeks and backwaters within areas which are categorised as CBZ II', and , in view of the specific permission, permitting construction activities on the landward side, petitioner sought for the grant of building permit on the basis of the said Regulation. Respondent has not so far replied, nor has it denied the correctness of the statement made in that letter. Even in the counter affidavit, it is admitted that CMDA is the appropriate authority for sanctioning the planning permit, and the respondent has written letter on 20.7.96 regarding the applicability of Coastal Zone Regulations, and on getting reply from CMDA, it shall issue necessary building permit to the Petitioner. In para 5 of the Counter affidavit, the respondent has also extracted the letter of the Environment and Forest Department, Government of India, dated 12.11.1996, wherein it is said that the planning permit shall not be issued within 500 m. from the High Tide Line and backwater, creeks and estuaries. When the Petitioner has specifically stated that the proposed building is 720 m. away from the high tide line, and it is based on the measurement taken by the Indian Institute of Technology Madras, and when this fact is not disputed anywhere in the counter affidavit, I do not think that the respondent is justified in delaying the grant of permit. It is after the letter dated G.12.1996 by the Respondent to CMDA, the site was inspected by the CMDA and wanted a revised plan, after rectifying the violations noted therein. Petitioner has complied with that Direction also. In this connection, the Petitioner has also brought to the notice of the Court Certificate of the

Tahasildar, dated 7.5.97 to the effect that in between the petitioner's property and Adyar River, there is public road having a distance of not less than 2000 feet, having a width of not less than 25 feet, and the road is the existance for not less than 20 years.

It is also seen from the Regulations that the prohibition is only for construction on the Seaward area and not for constructions, on the landward area. Regarding the proposed construction, a plan has also been filed by the Petitioner, which was issued by the Tahsildar. The proposed construction is on the land situated in the petitioner's property towards the landward area close to the public road referred to in the Certificate. Petitioner has also asserted that the other persons close to the site in question, where building have been completed, or construction activities are going on. This fact is also not disputed by the respondent, and all those constructions are on the landward area for which the local Authority is the only sanctioning Authority. When the respondent is not disputed the basic facts alleged by the Petitioner, and is expressing only a doubt, I do not think that the respondent is justified in delaying the matter of passing orders on the application for building permit.

10. Learned counsel for petitioner also brought to my notice sub-section (3) (a) of Section 111 and also section 114 of the Tamil Nadu Town and Country Planning Act, 1971, and contended that if permission is accorded by the Development Authority, that will be deemed to be a permission for all purposes, even if permission is not obtained from the local authority. It is also contended that when the Government has granted permit on certain conditions which have been subsequently satisfied, under Section 114 of the said Act, its decision shall be final. In this case, there is no dispute between the local Authority and the CMDA. The Government has granted permisson on the recommendation of the CMDA. The contention that Section 111 (3)(a) of the Act applies to the facts of this case has force.

11. Since the petitioner has satisfied the statutory requirements, and the building permit has also been granted by the CMDA only after inspection, it must be presumed that the permission granted by it is the accordance with law. The respondent is also bound to issue necessary clearance certificate without any dealy.

12. In the result, there will be a direction against the respondent to consider the petitioner's application for building permission and pass final order on the same within ten days from the date of this Order. The Writ Petitoner is allowed as indicated above, without any order as to costs. W.M.P.23725 of 1997 for direction is dismissed consquently.

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Order:- W.P.No.15471 of 1997 (dt.14.10.1997)

Mr.S.Govind Swaminathan Senior Counsel for Mr.T.Mohan for Petitioner.

1. Sixth Respondent herein filed W.P. 14823/97 against the Corporation of Chennai. Fifth Respondent herein, and the same has been disposed of to-day. In that case, the Sixth Respondent had filed all the correspondence between the Union of India, State of Tamil Nadu, Chennai Metropolitan Development Authority and also the Corporation of Chennai, and has proved before this Court that he has complied with all the formalities, and a gift of certain extent of property has been made in favour of the Government, and the Corporation has also taken possession of the same. I have also found in that case that the objection regarding environmental aspect was only raised by the Corporation only as a doubt, and in fact, that was also without any basis, and I have directed the Corporation to issue the licence without any further delay, holding that the Sixth Respondent herein has complied with all the legal formalities and has also produced No Objection Certificates from various Authorities. That Writ Petition, namely, W.P.14823/97 was heard on 30.09.1997, and it was posted for Orders to-day.

2. On 01.10.1997, a representation was made by the Writ Petitioner in this case even before the filing of the present Writ Petition that he is interested in representing the matter. But since he was not a party to W.P.No.14823/97, he was not heard. To-day, when the Writ Petition (W.P.No.14823/97)

filed by the Sixth Respondent herein came up for Orders, this Writ Petition came for admission. The objection raised by the Corporation has been met by the Sixth Respondent by giving necessary details. Since I have disposed of the other Writ Petition by giving necessary direction to the Corporation of Chennai, the Respondent therein, I do not think anything survives in this Writ Petition. Hence this Writ Petition is dismissed. Copy of my Order in W.P.No.14823/97 passed to-day, shall form part of this Order. W.M.P. No.24584/97 for interim injunction is also dismissed consequently.

2.11.2001/W.A.Nos.1291 & 1663 of 1997 etc.

Judgment: K.Narayana Kurup, J.

Dr. M.A.M.Ramasamy, his brother's wife Mrs.Meena Muthiah and her adopted son Mr.Annamalai Muthiah (hereinafter referred to as 'the builder') had submitted an application to the Chennai Metropolitan Development Authority (hereinafter referred to as 'C.M.D.A.") on 27.4.1995 to put up a construction of seven blocks of multi-storeyed buildings, consisting of basement, ground floor and nine floors upon the lands owned by them, comprised in S.Nos.4288/2 and 4288/14, situate in Santhome Village, Chennai 600 028. The total extent of the said lands where proposed construction was to be put up comes to 88 grounds. The construction had to be completed after complying with all the requirements prescribed by the C.M.D.A. under the Tamil Nadu Town and Country Planning Act and the Development Control Rules framed thereunder, besides scrupulously adhering to the provisions of the Environment (Protection) Act, 1986 and the Notifications issued under it. On receipt of the aforesaid application, the C.M.D.A. in turn, as the construction was of a multi-storeyed residential complex, required other authorities, namely, the Director of Fire Services, Deputy Commissioner of Police (Traffic), Chennai Metropolitan Water Supply and Sewerage Board (hereinafter referred to as 'C.M.W.S.S.B.) and Chief Engineer, Corporation of Chennai to give their no objection (N.O.C.) for further processing the Planning Permission application after considering the permissibility of the building from the point of view and guidelines prescribed by the said authorities. Few months after the receipt of the aforesaid application the C.M.D.A., by its letter dated 1.11.1995, informed the builder that the Planning Permission application is being scrutinised and that the builder should remit a sum of Rs.2,02,000/- towards development charges and a further a sum of Rs.71,40,000/- towards security deposit, securing the interests of C.M.D.A. and ensuring that no deviations are made to the sanctioned plan. Thereafter, the C.M.W.S.S.B., in its turn, has requested the builder to remit a sum of Rs.7,27,270/- towards infrastructural development charges, so that, it would be in a position to provide water and sewerage facilities by creating necessary infrastructure for the proposed construction, as borne out by the letter dated 15.6.1996. Since the construction was for the purpose of putting up multi-storeyed building in accordance with the regulations of C.M.D.A., the applicant for Planning Permission should either pay a compensatory payment called as "open space reservation charges" or in the alternative, agree to gift a proportionate extent of land equivalent to the value of "open space reservation charges" in favour of the Corporation of Chennai. The builder complied with all the demands made by the C.M.D.A., and other authorities, by remitting the development charges, security deposit, etc., as borne out by the letter dated 2.11.1995. The builder also executed gift deed dated 14.12.1995 in favour of the Corporation of Chennai of an extent of 2,321

sq.m. of land in lieu of compensatory payment called as "open space reservation charges" for the purpose of grant of Planning Permission as stipulated by the C.M.D.A. and also the Building Permit by the Corporation of Chennai. By letter dated 6.1.1996, the Corporation of Chennai informed the builder that the registered gift deed (vide Doc.No.3175/95, dated 29.12.1995) has been accepted by the Special Officer (Council) (vide Resolution No.1/96, dated 5.1.1996) and it was requested that the builder should fence the open space reserved area and provide a gate from the public road for safety and further maintenance and inform the office for the purpose of physical take over. The builder complied with the same and physically handed over possession of the land to the Corporation of Chennai on 11.1.1996, duly obtaining acknowledgement. Earlier, the Director of Fire Services, by his communication dated 26.5.1995, informed the builder that an inspection would be conducted for consideration of the grant of N.O.C. by the officials of the Fire Service Department on 31.5.1995. After the inspection was carried out, by communication dated 29.6.1995, the Director of Fire Services granted N.O.C. from his side for according Planning Permission to the proposal submitted by the builder. The builder also received N.O.C. from the Department of Telecom, as borne out by the letter issued by the Divisional Engineer (Telecom). Dated 27.11.1995. The Airport Authority of India also granted its N.O.C. to the builder for the proposed construction, by its communication dated 12.1.1996. The Ministry of Communications of the Government of India. Monitoring Organisation also gave its N.O.C. for the proposed construction on 19.1.1996, which was followed by a communication from the Director General of All India Radio (A.I.R.) on 30.5.1996. On the basis of the materials thus furnished by the builder, the Expert Panel of the C.M.D.A. considered the case of the builder, which also included the report of the Corporation of Chennai and the Government of Tamil Nadu was accordingly addressed by the C.M.D.A. that the proposal of the builder had been examined and placed before the Panel Meeting of the C.M.D.A., which after due deliberations, had recommended issuance of Planning Permission on certain terms and conditions. The C.M.D.A. had made it clear that the builder had complied with all the conditions imposed and requested the Government of Tamil Nadu to consider all the relevant facts and for approval of the decision of the Panel and its recommendations. The Government of Tamil Nadu, granted its approval, subject to the condition that the builder obtained N.O.C. from the Madras Regional Advisory Committee and the Civil Aviation Department as a pre-condition for issue of Planning Permission and also subject to fulfillment of the conditions imposed by the Director of Fire Services and Metro Water, all of which have already been fulfilled by the builder. Since the Planning Permission was still not received, the builder wrote to the C.M.D.A. on 27.6.1996 and requested sanction of the plan and also sent a copy of the sketch and original letter, and requested the sanction to be sent to the Corporation of Chennai under advice to the builder for necessary action. The C.M.D.A. responded the builder by granting its Planning Permission, as per its letter dated 20.7.1996. The Planning Permission granted by the C.M.D.A. was for a period of three years from 20.7.1996 to 19.7.1999.

2. In the light of the above facts and when the C.M.D.A. has granted the Planning Permission after taking note of clearance from all authorities, the Corporation of

Chennai was bound to grant the Building permit to the builder and there was nothing else required by the Corporation as it is very much party at all relevant point of time and it was effectively consulted in the matter of grant of Planning Permission by the C.M.D.A. The Corporation of Chennai informed the builder by its communication dated 7.8.1996 to furnish certain particulars for consideration of the grant of Building Permit by them. The builder complied with all the request made by the Corporation and furnished necessary clarifications. However, it transpired that immediately after the C.M.D.A. had granted Planning Permission, the Corporation of Chennai informed the C.M.D.A. that it appeared prima facie that the builder's site may be affected by Coastal Regulation Zone prescription (hereinwater referred to as "C.R.Z.") as the site was very close to Adyar river. According to the builder, the aforesaid objection was without any substance, because there are several residential buildings, which have come up in the vicinity and several other buildings are in the process of construction after obtaining necessary Planning Permission and permit. In any case, the builder provided necessary clarifications to the Corporation by letter dated 2.4.1997, by which, the Corporation was informed that the site where the construction to be put up was 720 meters away from the High Tide Line (hereinafter referred to as "H.T.L.") of the Bay of Bengal, for which, sufficient proof had been submitted and this distance was measured and surveyed by the Indian Institute of Technology (hereinafter referred to as 'I.I.T.'), Madras. The builder also invited the attention of the Corporation to the norms for regulation of activities under the C.R.Z. and particularly inviting the attention to Regulation 6(2) of C.R.Z.-II, which prohibits the construction on the seaward side only while permitting construction on the landward side of the existing and proposed roads, subject to the existing local Town and Country Planning Regulations. The builder also specifically pointed out that there was an existing road between Adyar river and the construction site and that since the prohibition was only on the seaward side and the proposed construction was admittedly on the landward side, there could be absolutely no prohibition for the construction of the building, provided the builder complied with the requirements, of the local Town and Country Planning Act, namely the Tamil Nadu Town and Country Planning Act. The builder further pointed out that as per the C.R.Z. Regulations, the construction cannot be objected to at all, because, even between Adyar Creek/river and the proposed construction, there was a public road proposed as per the master plan and it was well recognised that whenever there was a public road between creek and the building, there cannot be any objection for any construction activity. In any event, the construction activity in question was situate beyond 720 meters from the H.T.L. and as such, not hit by the prohibited distance. All these aspects had been examined by the appropriate authorities and much water had flown with the builder having even executed the gift deed in favour of the Corporation, and such being the position, there was no reason why the Corporation should withhold the grant of permit when the appropriate planning authority, namely, C.M.D.A. had granted Planning Permission to the builder in consultation with all expert bodies as mentioned above, with the active participation of the Corporation through its senior officials, and which itself was benefited by the donation of a substantial chunk of land for public purpose, which was acted upon by the Corporation. The builder

sent several letters to the Corporation, requesting to forthwith grant Building Permit in the light of the facts mentioned above. Since the Corporation has not come forward to grant the permission, the builder was driven to this Court in W.P.No.14823 of 1997 with the following prayer, namely:-

"to issue appropriate writ, order or direction in the nature of a writ of mandamus, directing the respondent to forthwith grant building permit to the petitioner in respect of the construction undertaken in S.No.4288/2 and 4288/14 in Santhome Village, Chennai 600 028, in the light of the Planning Permission granted by the Chennai Metropolitan Development Authority in its Planning Permission No.C3/14876/96, dated 20.7.1996 and pursuant to the gift deed executed in favour of the Corporation of Chennai by the petitioner as condition precedent for the grant of Planning Permission which was duly accepted and acted upon by the respondent and pass such further or other orders as this Honourable Court may fit and proper in the circumstances of the case and thus render justice."

In the said writ petition, the Corporation filed a counter affidavit submitting that "on receipt of the reply from C.M.D.A., this respondent will issue necessary Building Permit immediately, after satisfying with the provisions of Coastal Regulation Rules." On a consideration of the rival contentions and pleadings, learned single Judge, by order dated 14.10.1997, allowed the writ petition directing the Corporation of Chennai to consider the builder's application for Building Permit and pass final order on the same within ten days from the date of the order. While allowing the writ petition as above, the learned single Judge has found that since the builder has satisfied all the statutory requirements and the Planning Permission has also been granted by the C.M.D.A. only after inspection, it must be presumed that the permission granted by it is in accordance with law. Based on the aforesaid order of the learned single Judge in W.P.No.14823 of 1997, the Corporation of Chennai proceeded to grant Building permit as well on 17.10.1997. However, aggrieved by the order in the said writ petition, the appellant, viz., "Citizen, Consumer and Civic Action Group" had sought leave of a Division Bench of this Court to file a writ appeal in public interest against the aforesaid order of the learned single Judge and the said appeal was numbered as W.A.No.1663 of 1997 after grant of leave.

3. The appeallant in W.A.No.1663 of 1997, namely, Citizen, Consumer and Civil Action Group, after the conclusion of arguments in W.P.No.14823 of 1997, had also filed W.P.No.15471 of 1997 before this Court seeking issuance of a writ of mandamus, directing the respondents (Government of India, Government of Tamil Nadu, C.M.D.A., Corporation of Chennai, etc.,) to demolish the construction put up by the builder adjoining the Adyar estuary and restoring the lands to their original character. acquiring them under the provisions of the Land Acquisition Act, 1894 and the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 with a view to develop the Adyar creek and estuary as a sanctuary or as a national park and consequently direct the respondents herein to forbear from permitting any development or construction on the said area (?). W.P.No.15417 of 1997 came up for admission on 14.10.1997 on which date W.P.No.14823 of 1997 filed by the builders for orders before this Court. Learned single Judge having regard to the fact that W.P.No.14823 of 1997 was disposed of by giving necessary directions to the Corporation of Chennai, felt that nothing survives for consideration in W.P.No.154714 of 1997 and in that view dismissed the same by order dated 14.10.1997. W.A.No.1291 of 1997 is directed against that order of the

learned single Judge in W.P.No.15471 of 1997.

4. During the pendency of the writ appeals, namely, W.A.Nos.1291 and 1663 of 1997, the appeallant, namely, "Citizen, Consumer and Civil Action Group" further filed W.P.No.8030 of 2000 (which being a public interest litigation matter, came up before the Division Bench) seeking the issuance of a writ of mandamus directing the respondents therein, viz., Union of India, State of Tamil Nadu, Corporation of Chennai, etc., "to stop road construction and the land reclamation activities in the areas adjoining Adyar creek and restore the land to its original character."

5. Both the writ appeals, namely W.A.No.1291 and 1663 of 1997 and W.P.No.8030 of 2000 are heard and disposed of by this common judgment.

6. In sum and substance, the point that arises for consideration in these writ appeals and the writ petition in W.P.No.8030 of 2000 is whether the builder is entitled to the grant of Building permit by the Corporation of Chennai as prayed for. The fact that the builder obtained N.O.C. from all the authorities concerned is not in dispute. Hence, that is not a point in issue to be decided here. Accordingly, all that we have to see is whether the construction activity in question is hit by the provisions of the Notification issued under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 and the Rules framed thereunder, declaring the coastal stretches as Coastal Regulation Zone (C.R.Z.) and regulating activities in the C.R.Z. being within the prohibited distance of Adyar river. Any doubt on this score stands dispelled by the survey conducted by I.I.T., Madras based on aerial survey and maps available. The summary and conclusion of the report of the Ocean Engineering Centre of the I.I.T., Madras touching on this aspect of the matter is as follows:

"The distance from the High Tide Line (taking maximum tidal range of 1.0 m off Madras) upto the existing road between Adyar river and Rani Meyyammai tower is 720 m. The distances from the High Tide Line to the other selected areas adjoining RM towers are indicated in the drawing enclosed.

As stated earlier, the measurements have indicated clearly that the site (Rani Meyyammai Towers) is found to be about 720 m from the High Tide Line which is more than the prescribed 500 m from High Tide Line as cited by Ministry of Environment and Forest."

The aforesaid report of the I.I.T. establishes beyond doubt that the construction activity is beyond the prohibited distance as envisaged under the C.R.Z. Notification. In this context, we may observe that the H.T.L. itself had been demarcated only long after grant of Planning Permission to the builder by the C.M.D.A. and long after the filing of the writ appeals. Even the Coastal Zone Management Plan for the State of Tamil Nadu was approved, subject to certain conditions only in September, 1996, after the grant of Planning Permission. It was also brought to our notice that several individuals have been granted Planning Permission by the V and Building Permit by the Corporation of Chennai to construct buildings in the area and it is also evident from the pleadings that even in the very same area, planning Permissions and Building Permits have been granted prior to the finalisation of the Coastal Zone management Plan. When the authority concerned, namely the C.M.D.A. has granted the Planning Permission and when several labyrinthine formalities have been completed, we wonder how Building Permit can be declined by the Corporation of Chennai in the case of this builder, unless

there are compelling reasons justifying the denial of building permit. We find no such reason, much less compelling reason justifying the denial of building Permit in the instant case. It is not open for the Corporation of Chennai to turn round and contend that the proceedings for grant of Planning permission were finalised behind their back. In respect of grant of approval for multi-storeyed buildings, a panel has been constituted by the C.M.D.A., which also includes the representatives of the Corporation of Chennai and it was that panel which recommended and approved the builder's proposal and it was based on that recommendation, the builder complied with various conditions by obtaining necessary approval from various authorities and also agreeing to the gift of the portion of the land to the Corporation of Chennai. The Corporation of Chennai having been very much party to the grant of Planning Permission by the C.M.D.A. and after having insisted and accepted the vast extent of land to be gifted from the builder and taking possession of the said land so gifted for the public purpose in consideration of the grant of Planning Permission by the C.M.D.A., cannot go behind its own decision and put the builder to prejudice by withholding Building Permit notwithstanding the grant of Planning Permission by the C.M.D.A. In such a case, we are of opinion that the Corporation of Chennai is bound to grant Building Permit simultaneously or immediately after the C.M.D.A. grants Planning Permission under the provisions of the Tamil Nadu Town and Country Planning Act and the Development Control Rules. In this view of the matter, the action of the Corporation of Chennai in denying the Building Permit to the builder is patently unreasonable and arbitrary and would be ultra-vires of the provisions of the Tamil Nadu Town and Country Planning Act and the Development Control Rules, militating against the very scheme of the said Act, besides being discriminatory and violative of Article 14 of the Constitution of India.

7. The fact that the construction activity is beyond 500 metres from the H.T.L. has also been conclusively reaffirmed by the Tamil Nadu State Coastal Zone Management Authority (constituted under Section 3 of the Environment (Protection) Act which was suo motu impleaded by us as additional 7th respondent as per order dated 20.4.2001 in W.A.No.1291 of 1997, wherein, we have made the following reference to the said additional 7th respondent:-

"(i) to determine and verify whether the construction site in question falls within the Coastal Regulation Zone (tidal action).

(ii) If the answer to (i) is yes, the distance at which the construction site is situated from the High Tide Line (H.T.L.) of the Bay of Bengal.

(iii) The distance of which the construction site is situated from the Adyar river (H.T.L.)."

8. In response to our reference, the additional 7th respondent, namely, the Tamil Nadu State Coastal Zone Management Authority along with the officials of C.M.D.A. and Corporation of Chennai, inspected the area adjoining the construction site in S.Nos.4288/2 and 4288/14 of Mylapore Division in Mylapore-Triplicane Taluk, Chennai on 22.6.2001 and submitted the following reply to the queries referred to by us in W.A. No.1291 of 1997:-

"(i) Construction site in question falls within the Coastal Regulation Zone (C.R.Z.) as it is located adjacent to tidal influenced water body, viz. Adyar creek. As the area falls in Chennai city, it is categorised as C.R.Z.-II.

(ii) The distance from the H.T.L. of Bay of Bengal to the building is more than 500 m as below:-

(a) The distance from the H.T.L. mark C. N.21 (farthest from construction site) is 589.0 m.

(b) The distance from H.T.L. mark C.N. 20 (nearer to the construction site) is 509.0 m.

(iii) The distance from the H.T.L. of Adyar river to the construction is 9.6 m."

With regard to the third query, it is further mentioned that the multi-storeyed building under construction falls under C.R.Z. as it is located 9.6 m distance (i.e. well within 100 m) from the Adyar creek. It is also stated that there is an earthen road to the width of 5.60 metres, separating the compound wall of the building and the Adyar creek. As per the C.R.Z. Notification 1991, in C.R.Z.-II areas, construction of building is permissible only on the landward side of the road/authorised structures. It was also informed that the said road between Adyar river and the construction site is the subject matter in W.P.No.8030 of 2000 before this Court. Therefore, the report of the expert body like I.I.T. and the Tamil Nadu State Coastal Zonal Management Authority demolishes the substratum of the case set up by the appellant that the construction activity is being carried on within the prohibited distance of Adyar river. The report of the expert body establishes beyond doubt the fact that the construction site is located well beyond 500 metres of H.T.L., namely, 589 metres from the construction site to H.T.L., namely upto Bay of Bengal, and the distance from the H.T.L. mark C.N.20 (nearer to the construction site is 509 metres. It has also been found that the construction has been put in C.R.Z.-II area where the construction is permissible on the landward side of the road/authorised construction and that it was found that there is earthen road to a width of 5.60 metres separating the compound wall of the building in question and the Adyar creek, as already noticed. The existence of the road is also certified by the competent authority, namely, the Tahsildar of Mylapore-Triplicane Taluk, as per his letter dated 7.5.1997 (vide page 57 of the typed set of papers in W.A.No.1291 of 1997). The existence of the road having been confirmed by the competent authorities, it is not for this Court to make a roving enquiry on the same in the present proceedings. In our considered opinion, there is no reason to doubt the bona fides of the report of the competent authorities including that of the Tahsildar regarding the existence of the road. None of the respondents including the State of Tamil Nadu nor the C.M.D.A. nor the Corporation of Chennai have disputed the existence of the road in question. The letter of the Tahsildar dated 7.5.1997 establishes the fact that the said road has been used as a public passage for several year prior to the coming into force of C.R.Z. Notification of the year 1991. Therefore, we have no hestitation in holding unequivocally that there is a road in existence separating the compound wall of the building in question and the Adyar creek. In this connection, our attention was drawn to a Division Bench decision of this Court in W.A.No.1287 of 1995 rendered by M.Srinivasan, and S.S.Subramani, JJ. (as their Lordships then were), in which, it has been categorically held that the construction of the building can be permitted on the landward side of an existing road and of an existing structure. Further, this Court held that it has necessarily to look into the intent behind the C.R.Z. Notification, whether the area is a developed one with all infrastructural facilities and when already buildings have sprung up, the interference of the Court is not called for. As a matter of fact, it is pointed out that the area where the

construction activity has taken place, is booming with developmental activities and several constructions have taken place therein in the form of construction of residential quarters for Ministers and other Government officials, including the construction of residential quarters for the members of the Legislative Assembly, etc. We are told that already the Government have granted an extent of 45.45 acres of land situate in Adyar creek area to be converted as Ambedkar Memorial. The position of the builder is better insofar as it does not form part of the creek, as borne out by the records, but is an independent patta land situate at a high level beyond the prohibited distance and separated by a road, as already noticed. The challenge against the aforesaid judgment, namely, judgment in W.A.No.1287 of 1995 was unsuccessful before the Apex Court. That apart, the said Division Bench Judgement has been confirmed subsequently by another Division Bench of this Court comprising M.S.Liberhan, C.J., and D.Raju, J, in W.P. No.1569 of 1997 dated 4.9.1997. In the later judgment, this Court found that under the Coastal Zone Management Plan for Chennai Metropolitan area, which was approved on 27.9.1996, the entire coastal stretch from Ennore to Thiruvanmiyur has been classified as C.R.Z.-II, which bring within its fold even areas on the outskirts of Chennai. This Court again emphasised that construction could be permitted in developed area as per C.R.Z. prescriptions. There could be no controversy that the area in question is a developed area. Since it belongs to C.R.Z.-II classification and since the activity is beyond the prohibited distance and is separated by a road, as already noticed, we have no doubt in our mind that the construction activity is permissible in the eye of law and none of the objections raised by the appellant against the aforesaid construction is liable to be countenanced.

9. Of course, learned counsel for the appellant would contend that the proposed building is within the prohibited distance and as such, the construction is illegal and objectionable. He also questions the very existence of the road. Having bestowed our anxious consideration to the aforesaid contention, we are afraid, we cannot give our stamp of approval to the same. In this connection, we have to take note of the fact that the entire question has been examined by two expert bodies including the Expert Committee constituted under the Environmental (Protection) Act, 1986, namely, the Tamil Nadu State Coastal Zone Management Authority, who have categorically stated that the construction in question is beyond 500 metres from the H.T.L., in which case the construction will be perfectly legal. Being an expert body, it can be presumed to know the nature and character of the problem it has to tackle and the decision arrived at by such a body is not liable to be casually interfered with by this Court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India, unless a patent error was point out. No such error could be suggested by the appellant. Besides, in matters of this nature, it may not be a proper exercise of jurisdiction for this Court to substitute its own judgment to that of an expert body, particularly, in the highly technical field, demanding scientific skill and expertise. The scope of enquiry by this Court is extremely limited. At this juncture, we may hasten to add that the findings arrived at by the expert body are not liable to be impeached by this Court at the drop of the hat, since this Court is not expected to sit in judgment over the reports of the expert

bodies, particularly in the light of the fact that those are all facts which are not within the realm of judicially manageable standards. Accordingly, we repel the contention raised by learned counsel for the appellant and accept the report of the expert bodies and hold that the construction in question is beyond 500 metres from H.T.L. and not hit by C.R.Z. Regulations or Notification. The same analogy will apply to the argument of learned counsel for the appellant against the existence of the road, which has been duly found to be in existence by the letter of the Tahsildar, as already noticed, which also is not liable to be impeached in these proceedings.

10. That apart, in a writ petition under Article 226 of the Constitution, it will be preposterous for this Court to give a finding as to the non-existence of a road, which will have serious civil consequences, particularly, when no statutory authority has chosen to question the grant of Planning Permission on the ground of non-existence of the road by disbelieving the letter of the Tahsildar.

11. Yet another fact which militates against any relief being granted to the appellant is the inordinate delay and laches on the part of the appellant in invoking the extraordinary jurisdiction of this Court. In W.A.No.1287 of 1995 (noted supra), it is pertinent to note that even though only a minimum extent of construction was completed, the Division Bench of this Court has rendered a finding that the appellants therein are guilty of laches. When Special Leave Petition (S.L.P.) was filed before the Supreme Court, the same was also dismissed. As regards the present case, it is not disputed that the construction has reached a considerable extent even on the date on which the appellant has chosen to approach this Court. The appellant is aware of the construction activities taking place during September 1995 and the appellant had chosen to move this Court by way of filing a writ petition more than a year after the construction had commenced. As such, we have no hesitation in holding that the appellant is guilty of laches.

12. Of course, learned counsel for the appellant would contend that the construction was commenced by the builder notwithstanding the condition in the Planning Permission that it should be commenced only after obtaining the Building permit from the Corporation of Chennai. The said contention was rejected even by the learned Single Judge in W.P.No.14823 of 1997. In this context, we find that the Planning Permission granted by the C.M.D.A. was to be effective for a period of three years under the provisions of Sections 49 and 50 of the Tamil Nadu Town and Country Planning Act. Further, the Corporation itself had been a party to the decision making process of the C.M.D.A. in the grant of Planning Permission with its Chief Engineer having been a member of the Multi-storey Building Panel constituted under the Development Control Rules framed under the Tamil Nadu Town and Country Planning Act. It was the Chief Engineer of the Corporation of Chennai who had found that the plan could be approved and the Planning Permission was accordingly granted finally by the C.M.D.A., that too, after confirming that the land to an extent of 2,321 sq. M. have been gifted to the Corporation of Chennai to be utilised as "Open space reservation area" and the Corporation confirming the taking possession of the lands in January 1996. Therefore, we find no substance in the contention of the learned counsel for the appellant in this regard and reject the same as

has been rightly done by the learned single Judge.

13. Towards the fag end of the hearing, the appellant filed W.M.P.No.25836 of 2001 for a direction to the Director, National Remote Sensing Agency, Balan Nagar, Hyderabad to submit a report of the existence of road/path prior to 1991 with reference to the maps produced by the appellant. For the said purpose, the appellant simply obtained a satellite map dated 7.9.1991 and also a map dated 21.4.1994 in addition to a spot map of the year 1989. The said direction petition was opposed by the builder, and in our opinion, rightly so, stating that the attempt of the appellant is only to have a roving enquiry in the matter. Once the existence of the road is categorically established by the letter of the Tahsildar and the same is not disputed by the various authorities, where is the question of the matter being reagitated over again by the aid of a satellite photograph? In the light of the various facts with regard to the existence of the road, which is on record, and which has not been impeached or questioned by any of the statutory authorities, the attempt of the appellant to establish the non-existence of the road at this belated stage is highly misconceived and is an abuse of process of Court. We had occasion to see the satellite map produced by the appellant and on a perusal of the map, even the major roads in the City of Chennai are not visible in the said map. On mere assumptions, the appellant cannot, at this belated stage, seek to raise wholly irrelevant issues and question the existence of the road through these proceedings. A similar belated attempt was also turned down by the Supreme Court in the decision reported in *Goa Foundation, Goa v. Diksha Holdings Pvt Ltd.* (AIR 2001 SC 184) (Paragraph 11), wherein, the Apex Court had held that the appellants therein had utterly failed to establish by referring to any authenticated material that there was any infraction of any of the provisions of C.R.Z. in granting environmental clearance to the project in question in Goa. The position is no less different here. Admittedly, the Planning Permission has already been granted and the construction is nearing completion. Therefore, the appellant without producing any authenticated material, cannot seek the indulgence of this Court in this direction petition based on certain bare assumptions. Accordingly, we reject the prayer of the appellant for the direction in W.M.P. No.25836 of 2001 and the same is accordingly dismissed.

14. Before parting with this judgment, we may observe that while the Courts have social accountability in the matter of protection of environment, there should be a proper balance between the protection of environment and development activities, which are essential for progress. There can be no dispute that the society has to prosper, but it shall not be at the expense of environment. In the like vein, the environment shall have to be protected, but not at the cost of the development of the society. Both the development and environment shall co-exist and go hand-in-hand. Therefore, a balance has to be struck and administrative actions ought to proceed in accordance therewith, and not de-hors the same.

15. In the light of the foregoing discussion, we find no scope for interference in these writ appeals and the same are accordingly dismissed. In view of the dismissal of the writ appeals based on our findings that the construction activity is perfectly legal and is not hit by the C.R.Z. Regulations, etc., the various reliefs sought for by the petitioner in W.P.No.8030 of

20000 are not liable to be granted. Accordingly, we dismiss W.P.No.8030 of 2000.

16. In the result, we confirm the orders of the learned single Judge in W.P.No.14823 of 1987 and W.P. No.15471 of 1997 and dismiss both the writ appeals, namely, W.A. No.1663 of 1997 and W.A. No.1291 of 1997, and the writ petition, namely, W.P. No.8030 of 2000. No costs. Consequently, C.M.P. No.15015 and 15016 of 1997 and 10381 of 2001 and W.M.P. No.11746 and 12162 of 2000 are closed. VCJ G.JS/VCS

2002-3-L.W. 414

SUPREME COURT OF INDIA

Civil Appellate Jurisdiction

13th December 2001/Civil Appeal No.8503 of 2001 (From the Judgment and Order dated 3.1.2000 of the Punjab and Haryana High Court in C.R.No.397 of 1998)

M.B. Shah, J. B.N. Agrawal, J.

Davinder Pal Sehgal and another

v.

M/s.Partap Steel Rolling Mills Pvt. Ltd. and others

Limitation Act (1963), Section 5, C.P.C., Order 9, Rule 9 and S.115 — Order was passed by trial court holding that sufficient cause was shown for restoration, and that all the relevant facts were stated in that application, and allowing the application and restoring suit to file — In revision High Court set aside that order holding that there was no consideration by trial court separately on the point of limitation — Held, by Supreme Court that the trial court had not acted in exercise of its jurisdiction illegally or with material irregularity and High Court was not justified in interfering with its order in exercise of revisional jurisdiction.

C.P.C., Order 9, Rule 9 and S.115 — See Limitation Act (1963), S.5

By the impugned order passed by Punjab & Haryana High Court in C.R. No, 397 of 1998 the order passed by trial court restoring the suit which was dismissed for default, was set aside and application under Order 9 Rule 9 of the Code of Civil Procedure has been dismissed. The trial court had found that sufficient cause was shown for restoration, allowed the application and restored the suit to its original file. When the said order was challenged before the High Court in revision, the same has been allowed, the order of the trial court restoring the suit set aside and application for restoration dismissed on the ground that there was no consideration by the trial court on the point of limitation. Hence, this appeal by way of special leave.

Paras 1,5

Held: We have perused the restoration application as well as petition filed under Section 5 of the Limitation Act for condonation of delay in filing the same. It appears that in the application for restoration, all relevant facts have been stated not only to show that the plaintiffs had sufficient cause for non appearance on 24th August, 1988 but also to show sufficient cause for condonation of delay in filing the restoration application. This is the reason why in the petition for condonation of delay, it has been simply stated that facts stated in the restoration application may be taken into consideration for condonation of delay in filing the restoration application. Therefore, merely because in the order of trial court, specifically, there is no reference to petition for condonation of delay, it cannot be said that it did not consider the same. We are of the opinion that trial court had not acted in the exercise of its jurisdiction illegally or with material irregularity and accordingly the High Court was not jus-

2003 SCC OnLine Ker 85 : (2003) 3 KLT 424

Kerala High Court
(BEFORE JAWAHAR LAL GUPTA, C.J. AND M. RAMACHANDRAN, J.)

Citizens Interest Agency
Versus
Lakeshore Hospital & Research Centre Pvt. Ltd.
O.P. Nos. 34936 and 33089 of 2001 and 22314,32025, 38036 and 38219 of 2002
Decided on February 19, 2003

The Judgment of the Court was delivered by

JAWAHAR LAL GUPTA, C.J.:— Should the buildings - A 350 bed hospital and the show room, be ordered to be demolished? Have respondent No. 7 and 8 raised construction in violation of the notification, dated February 19, 1991 issued by the Central Government under S. 3 of

the Environment (Protection) Act, 1986? This is the primary issue that arises for consideration in the three petitions, viz., O.P. 34936 and 38089 of 2001 and 22314 of 2002. The other three petitions have been filed by respondent Nos. 7 to 9 apparently as a counter-blast. They challenge the validity of National Coastal Zone Management Plan issued by the State of Kerala. Counsel for the parties have referred to the facts as averred in O.P. No. 38089 of 2001. These may be briefly noticed.

2. The petitioner claims to be a resident of Village Nettoor in District Ernakulam. He claims to be interested in the environment and its protection. He asserts that the ecological balance in the coastal area has to be maintained. The authorities are not performing their duties. The building have been constructed in violation of law. Thus, he has approached this Court in public interest and in the discharge of his duties under Art. 48A of the Constitution of India.

3. The petitioner alleges that respondent Nos. 7 and 8 have illegally raised construction in Kundannoor area, which falls in the jurisdiction of the Maradu Grama Panchayat. He points out that “the Coastal Regulation Zone Notification was issued in exercise of powers conferred under the Environment (Protection) Rules, 1986”. By this notification, the Central Government had declared that the coastal stretches of sea, bays, estuaries creeks, rivers and backwaters” which are influenced by tidal action up to 500 meters from the High Tide Line (H.T.L.) shall fall within the Coastal Regulation Zone. Even the land between Low Tide Line (L.T.L.) and High Tide Line was also included in the prohibited area. Thus, with effect from February 19, 1991, restrictions were imposed on the setting up or expansion of industries, operations or process in the Coastal Regulation Zone. According to the petitioner, Kundannoor area is included in C.R.Z. I category. It is described in the Coastal Zone Management Plan of Kerala as

Map No. 33 A. Relevant extracts have been produced as Exts. P-1 and P-2. In Ext. P2, the construction raised by respondent No. 7 has been shown in blue and that by the 8th respondent in red colours. The land reclaimed by the 9th respondent has been identified in green. The petitioner further alleges that in the C.R.Z. I, no construction is permitted within 500 meters of the High Tide Line. Despite that the two respondents have raised construction. Respondent Nos. 1 to 6 have failed to check it. The petitioner points out that in response to a complaint, the 4th respondent had issued directions to the 5th respondent, vide letter dated October 22, 2001. A copy of the letter has been produced as Ext. P-3. Despite that, no action has been taken. On these premises, the petitioner prays that the construction raised by respondent Nos. 7 and 8 be declared illegal and respondent Nos. 1 to 6 be directed to demolish it. The Counsel are agreed that the pleas raised in the two other petitions, viz., O.P. Nos. 34936/2001 and 22314/2002 are identical. Thus, these need not be separately noticed.

4. Counter affidavits have been filed on behalf of some of the respondents.

5. In the counter-affidavit filed on behalf of the first respondent, viz., the Union of India, it has been *inter alia* averred that the Coastal Regulation Zone Notification, 1991 “prohibits certain activities and regulates those activities which require water front and foreshore facilities within the Coastal Regulation Zone (C.R.Z.) area. This ministry is not aware of the averments made with regard to illegal reclamation and construction activities being carried out in violation of C.R.Z. Notification, 1991”. The permissible developmental activities can be undertaken after obtaining necessary permission from the authorities. The Kerala State Coastal Zone Management Authority “has been empowered to take necessary action against the violators of C.R.Z. Notification under the E.P.A., 1986”. Violation of the notification attracts punitive action.

6. In the reply filed by the 4th respondent, it has been *inter alia* pointed out that a meeting of the Coastal Zone Management Authority was held on 15th July, 2002. The Principal Secretary was directed to get the relevant documents from the 7th respondent. The requisite information was supplied by the 7th respondent. It had submitted “all the clearances obtained along with the certificate from the Water Resources Department (erstwhile Irrigation Department)….”. The authority had forwarded the application of the 7th respondent “as a special case for C.R.Z. clearance” to the National Coastal Zone Management Authority. It has been further submitted that the Coastal Zone Management Plan of the State “is prepared in 1:12,500 on a base map enlarged from Survey of India top sheets of 1:50,000 scale with the use aerial photograph and satellite imageries. Hence, it will be difficult to arrive at exact conclusions on the CRZ status of the disputed area”. Vide letter dated 4th January 1999, the Ministry of Environment and Forest has directed the State Government to prepare local level C.R.Z. maps in cadastral scale (1:3960 or the nearest scale) to ascertain the Coastal Regulation Zone. The actual status of the disputed construction can be “ascertained only with the help of such large scale map which has not been prepared for this purpose”. The decision of the National Coastal Zone Management Authority has not been received.

7. Separate counter-affidavits have been filed by respondent Nos. 7, 8 and 9. The affidavit on behalf of the 7th respondent was filed by Dr. Philip Augustine, the Managing Director of the respondent-Company. It has been *inter alia* averred that the

Company was established for the setting up of a modem, well equipped, multispeciality Hospital and Research Centre. It had acquired 1.03 hectares of land in June/July 1996. It had started constructions after obtaining all the required permission and sanction by about April, 1997. The construction was completed by October 2000. The "Panchayat door number" was granted by the 5th respondent on 1st October 2000.Property tax for the building is being paid from that date. A License to run the Hospital was issued vide Order dated 14th November 2002. An amount of Rs. 50 crores was spent.

Page: 428

8. On merits, it has been pointed out that the petition has been filed "only in private interest instigated by the parties who are against the project initiated by the 7th respondent". The petitioner does not come to the Court with clean hands. He has claimed to be a resident of Nettoor. However, in the affidavit filed in support of the petition, he has given his address of Ernakulam. The respondent further states that it has not violated any of the provisions of the Coastal Regulation Zone Notification. The building does not fall within the prohibited area. In fact, Map No. 33A is wholly wrong. Its validity has been challenged by the said respondent in O.R No. 32025 of 2002. Still further, the respondent has given the details of the properties, which exist, in the area. Particular reference has been made to the Club House, which had been constructed by Yousef in the year 1983. Thus, the claim on behalf of the petitioner that the building has been raised by reclamation of any coastal area is wrong. In fact, the 7th respondent maintains that the land was 'garden' area. Part of it was covered by paddy fields. Thus, the very basis on which the petition has been filed is nonexistent On these premises, the 7th respondent prays that the Writ Petition is dismissed.

9. The averments in the affidavits filed on behalf of respondent Nos. 8 and 9 are on the same lines. Thus, it is not necessary to notice these in detail.

10. These are the pleadings of the parties.

11. Mr. Ramakumar, learned counsel for the petitioner, has contended that the construction raised by respondent Nos. 7 and 8 does not conform to the Notification dated 19th February 1991. This fact is borne out from the communication dated 22nd October 2001 sent by the 4th respondent to the Panchayat. Despite that, no action has been taken by the competent authority. Thus, the buildings have to be demolished. Similarly, Mr. Tojan, learned Counsel for the petitioner in O.P. No. 22314/2002 has submitted that originally, they were filtration ponds. They were reclaimed. Thereafter, construction was made. Mr. Jaya Prasad, learned Counsel for the petitioner in O.P. No. 34936/2001 has submitted that the action of respondent No. 7 and 8 is in violation of the Notification issued on 19th February 1991. Thus, the Court may direct the authorities to the demolish the structures.

12. On the other hand, Mr. Rajan Joseph, learned Additional Advocate General appearing for respondent Nos. 2, 3 and 4 has submitted that the buildings are located near a man-made canal. They are not proved to be within the prohibited area. This information was received from the said respondents. It was forwarded to the concerned authorities. No decision has been received from the Central authority. Thus no action is being taken against the respondents.

13. Learned Counsel for respondent Nos. 7 to 9 have questioned the *bonafides* of the petitioners in the three cases. They have contended that there is nothing on record

to support the plea that the construction has been raised in a prohibited area.

In fact, requisite permission was obtained from the competent authority before commencing the construction. The Writ Petitions have been filed after the respondent Nos. 7 and 8 had invested substantial amounts of money and completed the construction. These are not *bonafide* The petitions are not in public interest. Thus, these deserve to be dismissed. The 9th respondent owns the land.

14. The short question that arises for consideration is- Have respondent Nos. 7 to 9 acted in violation of the Notification dated 19th February 1991?

15. A copy of the notification dated 19th February 1991 has been produced as Ext. P-1 with O.P. No. 22314 of 2002. This notification was issued under S. 3 of the Environment (Protection) Act, 1986 read with the Environment (Protection) Rules, 1986. A perusal of this notification shows that the Central Government had declared "coastal stretches of seas, bays estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone ". Still further, with effect from the date of the issue of the notification, restrictions were placed on the setting up of industries etc. Prohibited activities were specified in clause 2. Learned Counsel for the petitioners have referred to the prohibition contained in sub-clause (xii). It reads as under:

"(xii) Any construction activity between the Low Tide Line and High Tide Line except facilities for treated effluents and waste water discharges into the sea facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this notification."

16. On a perusal of the above, it is clear that no construction activity can be undertaken on the land between the Low Tide Line and the High Tide Line after the 19th of February, 1991.

17. Counsel for the petitioners in these three cases have contended that the land on which the construction has been raised by respondent Nos. 7 and 8 was actually a filtration pond. It was reclaimed. Thereafter, it has been used for the purpose of raising the buildings. Is it so?

18. Learned Counsel were repeatedly asked as to when was the land reclaimed. There is no material on the record to indicate any time. Mr. Tojan, learned Counsel for the petitioner in O.P. No. 22314 of 2002 has vaguely submitted that it was sometime in the year 1996. However, learned Counsel was unable to specify as to who had done it. Even in the Writ Petitions, no specific allegation regarding the time of reclamation has been given. No other evidence regarding any fish culture has been produced or pointed out. In this situation, it is clear that there is no evidence on the record to show that there was any filtration pond at the site. In fact, the evidence on

record as produced on behalf of the respondents shows that construction has existed at the site since the year 1983. The Club House building has been charged to property tax by the Village Panchayat for the year 1983-84. A copy from the Panchayat record has been produced as Ext. R7(a) with the counter-affidavit filed by the 7th respondent In fact in the counter petition filed by the respondents, there is an indication of the

existence of other buildings even prior to 1983. In view of the evidence produced by the respondents, the contention as sought to be raised on behalf of the petitioner that there was a filtration pond at the site and it has been reclaimed, cannot be sustained.

19. Mr. Ramakumar has, however, contended that the land falls within 500 metres of the High Tide Line. Is it so?

20. Despite being repeatedly asked, none of the Counsel for the petitioners was able to indicate from the plan produced by them that the land in question falls within 500 metres of the High Tide Line. In fact, Counsel are not even able to point out as to where the High Tide Line or Low Tide Line can be said to start. There is nothing on the record, which may even remotely suggest that the land falls within the tide (low or high). In this situation, it cannot be said that the construction has been raised by the respondents within the prohibited zone.

21. Learned Counsel for the petitioners have submitted that the canal is very close to the buildings. This is the tidal zone and thus the construction is within the prohibited zone. Is it so?

22. A copy of the plan has been produced as Ext. P2. A perusal of this plan shows that Nettoor River runs at a considerable distance from the buildings. However, there is a canal passing by the side of the buildings. This canal, according to the counter-affidavit filed by the 4th respondent, is a man-made canal. This position seems to be factually correct. A perusal of the plan as well as the photograph produced by the petitioners shows that the canal is totally straight. It is lined with heavy pieces of stone uniformly cut. It has cemented walls on both sides. If it was a natural canal, it would not have been lined with cement on both sides and the line would not normally have been straight. Still further, the respondents have produced a certificate from the Executive Engineer as Ext. R7(c) in which it has been *inter alia* averred that on local enquiry, he had found that it is a man-made canal and had been constructed many years back. Even in the counter-affidavit filed by the 8th respondent, there is a categoric averment that it is an irrigation canal maintained by the Irrigation Department of the Government of Kerala. It forms part of the Nettoor River. A copy of the contract for maintenance executed by the Executive Engineer has also been produced as Ext. R-8(a). This evidence gives a clear indication of the fact that the canal on the basis of which the whole edifice has been raised by the petitioners is actually not a part of the restricted zone. Thus, the land does not fall within the prohibited area.

23. Consequently, it cannot be said that the construction has been raised in violation of the Notification dated 19th February 1991.

24. 23.Learned Counsel for the petitioners have submitted that the prohibited Zone is not confined to the area affected by the tide. It is undoubtedly true that according to the notification, even the bays, estuaries, and backwaters are included. However, it is clear that the canals are outside the purview of the notification. Thus, we find that the construction raised by the respondents does not fall within the mischief of the notification dated 19th February, 1991.

25. 24.There is another aspect of the matter. Admittedly, the respondents had started construction many years back. The 7th respondent had commenced construction in the year 1997. The building was contemplated in the year 2000. The

respondent claims to have spent more than Rs. SO crores approximately. Similarly, the 8th respondent had started and completed the construction well before the filing of the petitions. So far a respondent No. 9 is concerned, it had raised no construction. Considerable effort and expenses have gone into the buildings. The photographs produced on record indicate that the 7th respondent has constructed a big hospital. It has raised a 10 storeyed building. It is a 350 bed hospital with facilities of 30 clinical departments. In the circumstances of the case, we find that the petitioners had approached the Court after a long and avoidable delay.

26. Mr. Ramakumar submits that the petitioner was waiting for the decision in O.R No. 3243 of 1997, which had been filed to challenge the notification of 19th February 1991. We are not satisfied with the explanation. The petitioner has not even produced a copy of the notification dated 19th February 1991. Obviously, he did not have it. He has also not disclosed as to when he had actually become aware of the fact that the notification was under challenge. The source of information has not also been disclosed. Still further, it is his own case that he is a resident of Village Nettoor. He lives in the close by area. Construction had admittedly commenced in the year 1997. If the construction was being wrongly undertaken by the 7th or the 8th respondent, he could have easily moved for restraining the said respondents from proceeding further with the construction. He chose not to. Why? There is no satisfactory explanation. In these circumstances, we find that all the three petitions suffer from the vice of latches. Still further, we are not satisfied that it would be in public interest to order the demolition of the buildings, which have already been completed.

27. Faced with the factual position, the Counsel for the petitioners have raised a curious contention. They complain that the hospital would cater to the needs of the rich only. It is of no use to the common man. The cars would be purchased from the 8th respondent by the rich and not by the poor. Thus, there would be no harm in ordering the demolition of the buildings.

28. The contention is misconceived. Today, it is difficult to build. Any fool can destroy. We think the submission does not deserve any further consideration.

29. No other point has been raised.

30. In view of the above, we find that there is no illegality in the action of respondent Nos. 7 and 8 in raising the construction. No ground for ordering the demolition is made out. As far as the 9th respondent is concerned, it has only sold the area to the respondents for the construction of the buildings. It has no building at the site. Thus, the question of ordering any demolition does not arise.

31. In view of the above, O.P. Nos. 34936 and 38089 of 2001 and 22314 of 2002 are dismissed.

32. While the petitioners in the above-mentioned three cases claim to have approached this Court in public interest, the petitioners in O.P. Nos. 32025, 38036 and 38209 of 2002 have come to this Court for protecting their personal interest. They complain that the plans contained in Map 33A issued by the Coastal Zone Management plan of Kerala, is totally contrary to the facts. It is, thus, illegal and should be quashed.

33. Mr. Rajan Joseph, learned Additional Advocate General appearing for the official respondents, states that the original plan was prepared on the basis of the plan given by the Survey of India and the Satellite imageries. These plans are prepared in

1:12,500 and 1:50,000 scale. He points out that depicting an area of 12 1/2 thousand sq. kms. in one inch is a difficult job. Similarly, in the case of the scale prepared in the ratio 1:50,000, it is still more difficult. In view of this situation, the Government is preparing cadastral plans. Thereafter, a fresh plan and map shall be issued. In view of the factual position, learned Counsel states that the three petitions are premature.

34. In view of the statement made on behalf of the respondents, learned Counsel for the petitioners pray that they may be permitted to withdraw these petitions with liberty to approach the Court again in case an occasion arises.

35. Leave and liberty granted. The petitions are dismissed as withdrawn. It is clarified that since we have expressed no opinion on the merits of the case, it shall be open to the petitioners in these three cases to raise such pleas as may be available to them including those which had been raised in these three petitions.

36. As a result of the above, O.P. Nos. 34936 and 38089 of 2001 and 22314 of 2002 are dismissed on merits. O.P. Nos. 32025, 38036 and 38209 of 2002 are dismissed as withdrawn. The parties are left to bear their own costs.

1997 SCC OnLine Ker 285 : (1997) 2 KLJ 153

In the High Court of Kerala
(BEFORE K.G. BALAKRISHNAN AND B.N. PATNAIK, JJ.)

Institute of Social Welfare
Versus
State of Kerala & Ors.

O.P. No. 18097 of 1995
Decided on July 16, 1997

JUDGMENT

1. This is a public interest litigation. Institute of Social Welfare, represented by its Secretary, Mahakavi Bharathiyar Road, Cochin-682016 is the petitioner herein. It is a registered Society. It is stated that the petitioner is interested in the welfare of the general public of Kerala, especially Emakulam District. He has prayed for issue of a writ of mandamus commanding respondents 1 to 3 to take immediate measures for prohibiting all construction activities in the Cochin Marine Drive Area. He has also prayed for issue of a direction to respondents 1 to 3 to demolish the buildings which have been constructed in excess of the Floor Area Ratio (FAR) prescribed by the Kerala Building Rules, 1984 in the Cochin Marine Drive Area. Other prayers relate to issue of directions to the authorities to prevent the harvesting of ground water and construction of mechanisms therefor within 200 metres of High Tide Line in the Cochin Marine Drive Area and to prevent from discharging the waste by respondents 4, 5, 6 and 9 into the backwaters. The second respondent — Greater Cochin Development Authority — (for short, 'GCDA') has reclaimed the southern portion of the existing Shanmugham Road in the city of Cochin and the same was brought under Cochin Marine Drive Scheme. Under section 3 of the Environment (Protection) Act, 1986, Ministry of Environment and Forests (Department of Environment and Forests) issued a notification dated 19th February, 1991 imposing restrictions on construction of buildings, establishing industries, their operations and processes in the Coastal Regulation Zone (for short, 'CRZ'). Coastal stretches of seas, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL are defined as Coastal Regulation Zone. The Marine Drive area of Cochin is classified as CRZ II. The petitioner's grievance is that in gross violation of the above notification, the G.C.D.A. and other private agencies have already constructed multi-storied buildings in the Marine Drive Area. Several companies have purchased portions of this area and commenced construction of buildings. As per the interim order dated 12-12-1994 in Writ Petition No. 664/93, the Supreme Court directed the State Government not to permit the setting up of any industry or the construction of any type in the area upto 500 meters from the sea water (Ext. P3). Inspite of such a direction by the Supreme Court, respondents 1 to 3 have allowed the other respondents to construct buildings and structures contrary to the notification. The buildings proposed to be constructed and those already constructed by

respondents 4 to 9 are in violation of the FAR prescribed by the Kerala Buildings Rules, 1984. Respondents 3 and 4 have not taken any steps to prevent the disposal of wastes from the Cochin Marine Drive into the sea. Respondents 4 and 5 and others are allowed to draw ground water from the Cochin Marine Drive Area by installing machineries. There is no road on the western extremity of the Cochin Marine Drive Scheme adjacent to the sea wall, though there is only a walkway and a pedestrian foot overbridge.

2. Respondents 1, 2, 3, 5, 7 and 9 have filed counter affidavits. It is stated by all of them that there is a road of 12 meters in width in between the sea wall and constructions which are already there or proposed to be raised. All necessary measures have been taken for disposal of wastes in constructing sewage system. Buildings have been permitted to be constructed on the eastern side of the road, thus leaving the road portion running from north to south on the eastern side of the sea wall. Under the Coastal Regulation Zone notification, there is no prohibition in using the land as has been done in the Cochin Marine Drive. The State Government has power to exempt a builder from observing the Floor Area Ratio while constructing buildings there. The builders have constructed the structures after obtaining such exemptions whereever it was necessary. Hence, the allegations of the petitioner, that the buildings are being constructed in violation of the CRZ notification, is without any basis.

3. We heard counsel for the petitioner as also counsel for the respondents. Elaborate arguments were addressed by counsel on both sides and the State has produced the Coastal Zone Management Plan of Kerala prepared by the Centre for Earth Science Studies, Thiruvananthapuram on behalf of the Government of Kerala.

4. We do not consider it appropriate, at this stage, to give any declaration or directions to respondents 1 to 3 to follow the law and rules. If, any law or rule has been violated by any of the respondents, namely respondents 4, 5, 6, 7 and 9, the State Government shall be at liberty to take appropriate action according to law.

5. The only point for consideration in this case is whether respondents 1 to 3 have allowed the other respondents to construct buildings in violation of the restrictions imposed in the relevant notifications relating to the CRZ-II.

6. Under Annexure-I of Ext. P1 notification, CRZ-II has been defined as follows:

"Category-II (CRZ-II):

The areas that have already been developed upto or close to the shoreline. For this purpose, "Developed area" is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply an & sewerage mains."

7. The set of "Norms for Regulation of Activities" so far as CRZ-II is concerned, is as follows:

"(i) Buildings shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor

on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms or FSI/FAR.

(ii) Reconstruction of the authorised buildings to be permitted subject with the existing FSI/Far norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style."

8. Some of the activities are declared as prohibited within the Coastal Regulation Zone. The relevant prohibited activities are as follows:

"(i) setting up and expansion of units/mechanisms for disposal of waste and effluents, except facilities required for discharging treated effluents, into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974, and except for storm water drains;

(ii) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements Schemes shall be implemented by the concerned authorities for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this Notification;

(iii) dumping of city of town waste for the purpose of land-filling or otherwise; the existing practice, if any, shall be phased out within a reasonable time not exceeding three years from the date of this Notification;

(iv) harvesting of drawal of ground water and construction of mechanisms therefore within 200m of HTL in the 200m to 500m zone it shall be permitted only when done manually through ordinary well for drinking, horticulture, agriculture and fisheries;

(v) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification;"

9. It is admitted by the petitioner that there is a pathway in between the sea wall side and the area where constructions have been made or proposed to be made. But, it is contended by him that this is not a road in the true sense of the term and as such it should be deemed that the constructions are being put up on the sea water side without leaving any space between the water front and the buildings. But, it appears from the Coastal Zone Management Plan produced by the State Government and from the counter-affidavits filed by respondents 1 to 3, that there is a road of 12 meters in width between the sea wall and the buildings. It is used as a public road, though for the sake of convenience of the general public vehicular traffic is forbidden on that road. The dispute with regard to the width of the road or pathway, whatever is called, cannot be enquired into in this proceeding. At any rate, the statements made by the State Government and the GCDA about the road cannot be rejected merely because the petitioner disputes with regard to the width of it. However, the fact remains that admittedly there is a road in between the sea and the buildings in the Cochin Marine Drive area.

10. Rule 17 of Chapter III of the Kerala Building Rules, 1984 lays down the permissible maximum percentage coverage and floor area ratio. Rule 5 empowers the

Government to exempt any building from the operation of all or any of the provisions of the Kerala Building Rules.

11. The validity of this rule was considered by a Division Bench of this Court in *Raman* v. *State of Kerala* (1994 (1) KLT 1029). It is held that the power to exempt is a part and parcel of the Building Rules and the same is valid. It is laid down as follows:

Page: 158

> "Rule 5 is fitted by the rule-making authority into the integrated scheme of the Building Rules which specify all the details of the manner in which sites are to be used for building construction and as to how the buildings are to be constructed. This view of the rule making authority is obviously based upon the realisation that in various congested cities or towns etc., while, no doubt, the buildings and sites are generally to conform to certain specification, it may be necessary in some genuine cases to permit construction of buildings even though the owner or builder is not able to fully conform to the specifications in the building Rules. As long as the owner or builder is not offending any known right to neighbours, is conforming to general requirements of public health and sanitation, and as long as the deviations inside the building or site are not likely to affect the general requirements of light and air for the inmates, there must be some method of putting best use of building site for residential, commercial or industrial or other lawful purposes.
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> While regulation are restriction of land use is necessary in a Welfare State, it should be consistent with the right of the owners/building to put their property to the best use they can. The power to grant exemption as incorporated in Rule 5 is to be viewed as part and parcel of an integrated scheme of regulation and restrictions imposed on land owners/builders consistent with the latter's right to property. We do not find anything obnoxious if a Statute give sufficient guidance for the rule-making authority to make a set of rules, say, building rules in order to provide for various detailed specifications for purposes of construction of buildings and if as a part and parcel of the said rules, the rule making authority makes a rule empowering the Government to grant exemptions subject to such conditions as the Government may deem fit. As long as there is enough guidance in the Act, the Building Rules which go into the minutes details regarding construction will be valid and if a power of relaxation is part of the said rules, the same will also be valid, for the legislature must be deemed to have noticed, that in Municipalities or Corporations today, it may be difficult to comply with every bit of the Building Rules, if the owner is to make best out of his property or provide for accommodation for others on rental basis. It is part of the policy on housing and accommodation that the power to exempt must be part and parcel of the scheme of the Building Rules. Rule 5 requires the Government to 'consult' the Chief Town Planner

Page: 159

before granting exemption from main provisions of the Building Rules. It is also to be noticed that Rule 5 provides for the imposition of such 'conditions', if any which the government might stipulate for grant of the exemption. The first proviso requires that the application for exemption is not to be processed till the Chief Town Planner has

given his recommendations. These considerations are also a check on arbitrariness on the part of the Government. Rule 5 of the Building Rules is perfectly valid and is not bad either on account on excessive delegation of legislative power or on the ground that it confers arbitrary or unguided power on the Government."

12. Learned counsel for the petitioner then contended that as per the notification, the FAR is distinct from town and country planning regulations and as such the provisions contained in the Kerala Building Rules, 1984 regarding the norms of FAR are not applicable to Environment. Protection Act and Rules. It is, therefore, contended that the exemption, if any, given by the State Government under the Kerala Building Rules, 1984 is invalid. This contention cannot be accepted. Except rule 17 of the Kerala Building Rules, 1984 there is no other rule prescribing FAR in Kerala. The petitioner has failed to show as to whether in any town or country planning regulation meant for Kerala contains any norms of FAR other than those contained in the Kerala Building Rules. Neither the notification nor any rule under the Environment Protection Act, FSI/FAR has been prescribed. That matter is left to be governed by the Statutory rules of the States. Rule 17 of the Kerala Building Rules being the only provision relating to this aspect of the matter, it cannot be said that the reference to FSI/FAR in the notification is independent of or separate from the building rules. Under rule 5 of the Kerala Building Rules, the State Government has the power to exempt the buildings from the operation of this rule. It is presumed that the government would exercise such power by keeping in view the provisions of the Environment Protection Act and Rules and the notifications made thereunder.

13. For the reasons stated above, we find no merit in this Original Petition. It is dismissed. No costs.

DISTRICT:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

NO. / 20

M/S. V. RAGHAVACHARI, 397/86

V. SRIMATHI, 1266/90

V. LAKSHMINARAYANAN, 635/95

COUNSEL FOR