

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI

I.A.Nos 7 and 9 of 2021

In

O.A.No. 252 Of 2020

KfW, New Delhi
Rep. by its Director,
46, Paschimi Marg, Vasant Vihar,
New Delhi 110057.
Ph: 011-42534253 Email: kfw.newdelhi@kfw.de.
...Applicant/... Respondent No.6

-Versus-

1. SRI KAPALEESWARAR NAGAR RESIDENTS
WELFARE ASSOCIATION,
(Regn. No. 306/2017), Rep. by its Secretary,
1st North Main Road, Sri Kapaleeswarar Nagar,
Neelankarai, Chennai- 600 115. ...Respondent/--Applicant

2. THE STATE OF TAMIL NADU,
Rep. by its Secretary,
Municipal Administration & Water supply (MAWS),
Secretariat, Fort St. George, Rajaji Salai
Chennai- 600 001. Ph: 044 - 25670491 Email: mawssec@tn.gov.in

3. THE COMMISSIONER,
The Greater Chennai Corporation,
Ripon Building, Chennai- 600 003.
Ph: 044-25381330 Email:
commissioner@chennaicorporation.gov.in

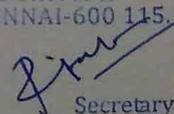
4. CHIEF ENGINEER (General),
Storm Water Drains/ Special Project,
Greater Chennai Corporation, Ripon
Building, Chennai- 600 003.
Ph: 9445190500 Email: chiefengineer.swd.roads@gmail.com

5. THE SUPERINTENDING ENGINEER,
Storm Water Drains/ Special Project,
Greater Chennai Corporation,
Ripon Building, Chennai- 600 003.
Ph: 9445190735 Email: sebr@chennaicorporation.gov.in

6. ASSISTANT EXECUTIVE ENGINEER (Storm Water Drains),
Zone 15, No. 120, Rajiv Gandhi Salai,
Sholinganallur, Chennai- 600 119.
Ph: 044-25619315 E-mail: Not known.

..Respondents/..Respondents

For SRI KAPALEESWARAR NAGAR RESIDENTS
WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600 115.


Secretary

COUNTER AFFIDAVIT OF ROHIT MENON

I, Rohit Menon, Son of G Gopalakrishnan, Hindu, aged about 35 years, residing at Plot No. 50, 1st Main Road, Sri Kapaleeswarar Nagar, Neelankarai, Chennai- 600 115, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Secretary of the 2nd Respondent herein and am well conversant with the facts and circumstances of the case. I am duly authorized to swear to this affidavit on behalf of the 2nd Respondent and am filing this counter on behalf of the Respondents 1, 3 and 4 also.
2. I submit that I have read the application filed by the Applicant herein praying for cost of Rs.25,00,000/- and to pass orders against the Respondents 1 to 4 herein for purported abuse of legal process and for issuance of purportedly false and intimidating notices and for deletion of its name. At the outset, I emphatically deny the allegations made therein and am advised to state that the application as filed is not maintainable in law and not sustainable on facts. The invocation of Section 23 of the National Green tribunal Act, besides being premature, is baseless and an exercise under the assumption that attack is the best form of defense. The current application, where the Applicant Bank has slapped a claim of Rs.25 Lakhs on the Respondents, while carefully avoiding addressing any of the core issues is only to masquerade the transgressions.
3. Before traversing the allegations made in the petition, I find it pertinent to record that an expert Committee appointed by this Hon'ble Tribunal has, after due inspection, reported that the SWD project undertaken by the Greater Corporation of Chennai in the Kovalam Basin is fundamentally unlawful. The transgressions so committed by the Greater Chennai Corporation in the very conception and implementation of the Storm Water Drain network (SWD) was brought to the attention of the Applicant bank several times by the petitioners and their representatives. As the funding agency, the Applicant bank ought to have engaged in any meaningful

For SRI KAPALEESWARAR WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600 115.

Rohit Menon
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study of the project and carried out effective and wholesome due diligence, which apparently does not seem to be the case. Even after receipt of communications complaining of infractions by the GCC, the Applicant Bank had not taken the effort or the interest to scrutinize the issues raised. The key issue that the outfalls have been located on the beach has not even been adverted to by the applicant bank, even after the submission of an interim report by the committee. Even the rest of the localities where the project is proposed are areas that require clearances. The answering respondent also reserves its right to file an additional counter, after the submission of the final report by the Committee appointed by this Tribunal.

4. As the financing arm of the German Government, the Applicant Bank is expected to be responsible and put its funds to good use. To the contrary, the Applicant Bank has only vociferously endorsed the illegalities of the Greater Chennai Corporation by extending financial support to an unlawful and unauthorized project. It may be relevantly pointed out that the issue of the Applicant Bank financing an unlawful project was raised by various Members of the German Bundestag, which has snow balled into a matter of very serious concern in the German government, which has now directed that the funding be suspended. It is further gathered, from media reports, that the German government has ordered a fresh independent assessment over the CRZ violations and the project's alleged impact on turtle nesting grounds. Though such voice of protest had reached the doors of the Applicant Bank consequent to which funding was suspended as early as in January 2021, the Applicant bank has remained reticent on these issues in the current application, which was filed post such events. The Applicant bank
5. I hasten to add that the Greater Chennai Corporation has repeatedly relied on the clearance given by the Applicant bank to proceed with the project and has in its presentation to the

For SRI KAPALEE
WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600 115

P. M. S.
Secretary

citizens as well as in submissions to the Committee appointed by this Court and the Counter filed by it, drawn strength from the fact that the KfW has opined that no approvals/clearances are required for the project. The funding from the German bank has also been a matter of propaganda by the Greater Chennai Corporation, which made it appear that the bank could not be wrong in its study and assessment when financing such project which involves large amounts of monies. Hence it was imperative that the Bank be made party to these proceedings to caution the Applicant bank that rather than aiding development in a third world country, the Bank was actually sponsoring permanent damage that the proposed project would cause to the environment and ecology. In its counter filed in the High Court, the Greater Chennai Corporation has stated that the project has been designed by the KfW, which only demonstrates the depth of their role in the entire project.

6. Now traversing the allegations made in the application, I am advised to state as follows:-

- a. Allegations in paras 1-4 are matters of record/law and do not warrant any response. For the purpose of record, it may suffice to add that Section 15 of the Environment Protection Act provides for penal action in case of contravention of orders and is extracted hereunder for ease of reference

SECTION 15 :- Penalty for contravention of the provisions of the Act and the rules, orders and directions.- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. (2) If the

For SRI KAPALEESWARAR NAGAR RESIDENTS
WELFARE ASSOCIATION
10, LANGARAI, CHENNAI-600 115

[Signature]
Secretary

failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

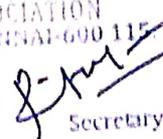
- b. It is admitted that on our instructions a notice dated 10.12.2020 was caused on the Applicant Bank. The Respondents/applicants had filed the OA in November 2020, while other Applicants had filed similar applications even earlier. The Respondents/ Applicants had addressed the bank complaining of transgressions prior to initiating any action but the Applicant bank did not bat its eye lid and continued to encourage the project. Certain that the project is inter alia in violation of CRZ notification, we were compelled to write to the Bank, through our counsel, recording the fact that they were funding an unlawful project. The urgency in writing to them was the very acts of the Corporation, which continued the illegal digging and laying of drains, with more vigor, after the issue was agitated before this Tribunal. The notice so caused was not intimidating as claimed, but only brought to attention the fact that the Environment Protection Act provides for penal action, in the event of violation of the Act/orders. If the Applicant bank and its officers are of the opinion that they have committed no violation, there is no reason for them to fear. To allege that the said notice is a gross misinterpretation of the order of this Tribunal dated 04.12.2020 is incorrect, vague and baseless. In fact, a copy of the said order was enclosed with the said notice, which order speaks for itself. The Respondents/Applicants are only responsible for what they have said through the said notice, which is crystal clear and not for what the Applicant Bank understood of the same. It beggars belief that apprising a party of the order of this Court and the law of the land amounts to abuse as alleged, or otherwise.

For SRI KAPALEESWARAR NAGAR RESIDENTS
WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600 115.

P. M.
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- c. It is rather surprising that the Applicant bank claims that it is baseless and grossly incorrect that it is not funding the project. In fact the Applicant Bank in its reply letter dated 17.12.2020 has not denied this fact and the Greater Chennai Corporation has, in its reply before this Tribunal, as well as before the High Court, refers to the Applicant Bank as the fund provider, as do innumerable media reports. It is rather strange that the Applicant denies the same in the present application, details of which, however, have not been furnished by the Applicant Bank. Harping on semantics, assuming that to be the intention of the Bank, is rather puerile. The Respondents/Applicants had reasons to believe that the first tranche of funds was disbursed and hence stated so. That funds are yet to be disbursed is news and the Respondents/Applicants shall stand corrected to that extent. Again, this is a non-issue and certainly not an abuse of process.
- d. The Respondents/Applicants have not misrepresented the role of KfW in any manner and allegations to the contrary are stoutly denied. That the Bank will not finance an activity that is harmful to the environment has been proved wrong by a Committee appointed by this Tribunal and the SWD project in the area stands suspended for violation of law.
- e. The counter affidavit of the Greater Corporation filed in WP No. 11235 of 2020 where repeated references are made to approvals by the Applicant bank and the consultant appointed by the Bank. Alleged changes to the design are said to have been incorporated by the Greater Corporation of Chennai, basis the consultant appointed by the Bank. The KfW is said to have inspected the site and approved the project and the Greater Chennai Corporation makes repeated reference to the same even in its presentation to the citizens and the Committee appointed by this Tribunal. While so, to

For SRI KAPALEESWARAN NEELANGARAI RESIDENTS
WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600 115

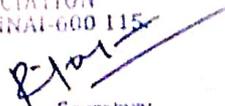

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casually state that there is no conceivable purpose in the Applicant Bank being a party to these proceedings is baseless and unsustainable. As recently as on 19.02.2021, the Applicant Bank has written letters to representatives of the Residents' Associations reiterating its study of the project and its approval of the same. The bank continues to be up-beat about implementing the project and also claims to have reviewed the project based on concerns raised by residents. However, both in the letter and the present application, the Bank conveniently remains silent about the CRZ violation. The stand of the Applicant bank coupled with the reliance placed by Greater Corporation of Chennai on the Bank's approvals and designs, makes the Bank a proper, if not a necessary party to these proceedings.

- f. The allegations in para 9 are denied as being false and baseless. The suspension of the financing of the project only demonstrates that the Respondents/Applicants have only raised genuine issues and the ulterior motives as alleged are non-existent. That the project is unlawful is bare faced truth and there arises no question of any defamation in proclaiming the truth.
- g. Rather than assuming negative impact on other financing activities, the Applicant Bank ought to adopt a positive approach through these proceedings and learn to be more cautious in its future financing activities. The German Government has, as per media reports, ordered a fresh investigation into the lawfulness of the project funded. The Bank ought to take responsibility for the error in judgment, rather than seek to wriggle out of the proceedings, thereby wishing away its fallacies.

7. At the cost of being repetitive, I state that the Applicants have not rushed to this Court arraying all and sundry as parties. The representatives of the Applicants have been raising their concerns regarding the SWD at various levels for well over two

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years. The notice of the Respondents/ Applicants dated 10.12.2020 is innocuous and only brings on record the penal provisions in the Environment Protection Act. The said letter and these proceedings are neither scandalous nor intimidating in nature and the participation of the Applicant Bank in these proceedings is necessitated by the reliance placed on its role by the Greater Chennai Corporation. The demand of Rs.25,00,000/- towards compensation as made is without any basis whatsoever, besides being exorbitant, especially when the Bank has failed to explain or set out the heads of such a demand. Far from demanding any compensation from the Respondents, the Bank ought to be grateful that the Respondents have saved the bank from wasting its resources on an unlawful and illegal project. Besides, if the bank does inspect the locality in the current state after all the shoddy digging and laying by the Greater Chennai Corporation and the permanent impact the same would leave on the citizens and environment, it would only realize that it is the Applicant who need to be compensated rather than the Bank. It is also rather strange that the applicant bank has not adverted to the core issues.

8. It is to be noted that the second prayer is for a direction to us to cease and desist communication with officials of Applicant/KfW Bank or the Government of Federal Republic of Germany. I have been advised that such a prayer is not maintainable before this Hon'ble Tribunal.
9. I have been advised that as per Section 14(1) of the National Green Tribunal Act, 2010, this Hon'ble Tribunal has jurisdiction over all civil cases where a substantial question relating to environment is involved and such question arises from the implementation of the enactments mentioned in Schedule I of the Act. As per Section 2(m), a "substantial question relating to environment" is where there is a direct violation of a specific statutory environmental obligation by a person by which (A) the community at large is likely to be affected by the environmental consequences, (B) gravity of

FOR SRI KAPALEESHWAR NIGAR RESIDENTS
WELFARE ASSOCIATION
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P. J. S.
Secretary

damage to environment or property is substantial or (C) the damage to public health is broadly measurable; the environmental consequences relate to a specific activity or a point of source of pollution. Therefore, a "substantial question relating to environment" relates to the cause and effect of any possible environmental pollution.

10. I have been advised that as per Section 15 of the National Green Tribunal Act, 2010, this Hon'ble Tribunal may order -

- (i) Relief and compensation to victims of pollution and environmental damage.
- (ii) Restitution of property damaged.
- (iii) Restitution of environment

11. I have been advised that even as per Section 19(4), which vests this Hon'ble Tribunal with powers of the Civil Court under Code of Civil Procedure, 1908, this Hon'ble Tribunal has been vested with powers which are incidental to its functions of determining substantial civil questions of the environment. It has not been vested with powers to issue cease and desist orders in the nature of gag orders. Therefore, this prayer is not maintainable.

12. I submit that the applications filed for costs and for gag orders are infact attempts of intimidating us, the local citizens from questioning the government and sovereign bodies. Contrary to their claims, it is their applications which are attempts of having a "chilling effect" on the legitimate voices of ordinary citizens fighting for implementation of the laws by the government institutions.

It is therefore humbly prayed that this Court may be pleased to dismiss the above applications with exemplary costs and thus render justice.

Solemnly affirmed at Chennai this the
15th day of March 2021 and signed her
Name in my presence.

For SRI KAPALEESWARAR NAGAR RESIDENTS
WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600 115.

P. J. S. K.
Secretary

BEFORE ME

S. J. S. K.
Advocate : Chennai

SSB/060/A/C/H/MS.

NATIONAL GREEN TRIBUNAL
SOUTH ZONE, CHENNAI

I.A.Nos. 7 & 9 of 2020
in

O.A.No. 252 of 2020

COUNTER AFFIDAVIT OF
ROHIT MENON

M/s.SP.Arthy
N.S.Tarvi
P.Balaji
Counsel for Applicants

9660747397