BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Execution Appl No. 08 of 2023 (SZ)

in

Original Application no. 08 of 2023 (SZ)

BETWEEN

Thiru Selvaraju Duraiswamy
Son of P. Duraiswamy

Applicant

Versus

The State of Tamil Nadu
Rep by the Secretary to Government
Ministry of Environment and Forests
And Others

-Respondents

COUNTER STATEMENT ON BEHALF OF THE 6TH AND 7TH RESPONDENTS

I, K. Kannadasan, son of Mr. Kanniyappan, aged about 41 years, authorised signatory for the 6th Respondent and the 7th Respondent, having their registered office at First Floor, New door No. 111 Old No. 110, 33 Feet Road, Anna Salai, Guindy, Chennai 600 032, do hereby solemnly affirm and sincerely state as follows:

1. I am the authorized signatory of the 6th and 7th Respondents herein and I am well acquainted with the

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facts of this case and I am competent to swear to this affidavit.

2. At the outset, I state that all the allegations, averments and claims made in the complaint as false, frivolous, and baseless. I submit that the claim made by the Applicant before the Hon'ble Tribunal is not tenable in terms of law and not maintainable on facts. The averments and allegations made by the Applicant are denied in its entirety, except the facts that are specifically admitted herein. The Applicant is put to strict proof of the same.

3. I submit that the 6th Respondent is a renowned real estate company involved in the business of civil engineering, property and infrastructure development, primarily in residential real estate projects in and around the city of Chennai and is well-known for their timely hand over of projects and compliances with all regulatory laws. I submit that the 6th Respondent had purchased the larger extent of the land measuring an extent of 48.6 grounds situated at No. 1167, Poonamallee High Road, Koyembedu, Chennai, comprised in the old survey number 169/1 (part), 169/2 (part), 169/3 (part), 169/4 (part), 169/5B (part), now comprised in new survey number 169/1 and 169/2 at block number 37 of Koyembedu village, Egmore, Nungambakkam Taluk, Chennai District and formed the scheme of residential

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development under the name "Radiance Icon" after obtaining necessary sanctions, planning, permission and approvals from the development authority.

4. I submit that the Applicant entered into a Construction Agreement dated 31.05.2019 with the 6th Respondent registered as document number 2481 of 2019, before SRO Anna Nagar for purchasing a residential apartment bearing No. 1701 at Block No. B in Tower No. I, in the Radiance Icon Project, Chennai, having a carpet area of 1008 square feet, (super built-up area of 1529 square feet) along with reserved covered car parking. The 6th Respondent also executed a sale deed dated 31.05.2019 registered vide document number 2482 of 2019 before the SRO, Anna Nagar for 500 square feet of undivided share in the land.

5. I submit that the 7th Respondent was appointed by the 6th Respondent to provide essential maintenance services to common areas/ amenities/ facilities from the date of completion of the Project for one year, for which a maintenance fee was collected from all the residents of Radiance Icon.

6. I state that the Applicant herein had filed a complaint/ application number being O.A. No. 08 of 2023 before this Hon'ble Tribunal alleging certain breaches of conditions

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stipulated in the Environmental Clearance Certificate by the 6th Respondent. I state that this Hon'ble Tribunal vide order dated 20.02.2023 disposed of the application by holding that the Applicant has not approached the competent authority. The Hon'ble Tribunal rightly pointed out that the Applicant may approach the Tamil Nadu Pollution Control Board to resolve the issues pertaining to the functioning of STP. The Hon'ble Tribunal rightly observed that the complaint/application is made by the individual and no steps were taken by the association and directed the authorities to whoever the complaint if is made to consider such complaint and pass appropriate orders. It was also noted by the Hon'ble Tribunal that if no complaint is preferred to the competent authorities, the applicant is at liberty to make an appropriate application within the period of 10 days and directed such authority to pass appropriate orders within 4 weeks.

Preliminary Objections:

7. I state that the 6th and 7th Respondents were not aware of such application being filed and no notice was received by the 6th and 7th Respondents. I state that the said order was passed without affording opportunity to the 6th and 7th Respondents.

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8. I state that the Applicant herein has already agitated the similar issue concerning the working of STP plants in a complaint filed before the Tamil Nadu Real Estates Authority (TNRERA) under complaint no. 58 of 2023 and the same is still pending. I state that the Applicant has approached this Hon'ble Tribunal only to harass the 6th Respondent and cause a multiplicity of proceedings.

9. I state that upon perusal of the order, it is apparent that this Hon'ble Tribunal had noted that it is for the association to come forward and file any complaint regarding the issues cropping up in the building. I state that the Hon'ble Tribunal also directed the applicant or association to make the necessary applications to the authorities concerned and directed the authorities to pass appropriate orders within a period of 4 weeks. I state the Applicant has filed this execution application without giving sufficient time to the authorities to inspect the premises and take necessary actions.

Para- wise Reply

10. With respect to para 1 to para 3, the contents are matter of record and does not warrant reply from the 6th and 7th Respondents. The Applicant is put to strict proof of the same.

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11. With respect to Para 4 sub-para 1 and sub-para 2, the contents do not warrant any reply and the same are matters of record and the Applicant is put to strict proof of the same.

12. With respect to para 4 sub-para 3, the contents, allegations, and averments are denied in seriatim and the Applicant is put to strict proof of the same. It is denied that the EC dated 14.07.2017 was deliberately not circulated by the 6th Respondent and that the purchasers were not aware of the terms and conditions stipulated in the EC issued by the 2nd Respondent. It is denied that the EC was not displayed on the website of the 6th Respondent at the time of marketing. It is submitted that the Respondent being aware of their responsibilities, has published a copy of the environmental clearance certificate on its official website and circulated it to all the residential owners of the apartment. It is submitted that the authorities had issued the EC certificate to the 6th Respondent after completely scrutinizing the building. It is submitted that the EC was uploaded on the website of the 6th Respondent at the time of marketing the residential project and the purchasers were made aware of all the compliances before making the purchase. It is submitted that the 6th Respondent complied with all necessary compliances in accordance with the law. It is

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stated that the statutory authorities have conducted a thorough inspection and upon full satisfaction have issued the compliance and completion certificate to the 6th Respondent. It is submitted that the Applicant is casting unwarranted and baseless allegations on the 6th Respondent.

13. With respect to para 4 sub-para 4 and 5 of the Application, the contents are denied in seriatim and the Applicant is put to strict proof of the same. It is denied that there were rampant violations if the conditions stipulated in the EC. It is denied that 6th Respondent had willfully and deliberately neglected to comply with the conditions imposed in the EC. It is denied that none of the conditions stipulated in the EC have been complied with. It is denied that the undertaking given by the 6th Respondent based on which the 2nd Respondent issued the EC was not adhered to or implemented. It is submitted that there was no misrepresentation by the 6th Respondent and that the Applicant is making false allegations against the 6th Respondent. I state that the 6th Respondent has adhered to the undertaking signed by the 6th Respondent. The 6th Respondent has complied with all the CSR activities as stated in the undertaking. I state that the STP plan as given under the undertaking is duly complied with. The Applicant is making unnecessary and

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false claims against the 6th Respondent only to defame and harass the 6th Respondent.

14. With respect to para 4 sub-para 6 and 7, the contents, averments, allegations, and statements are vehemently denied and the Applicant put to strict proof of the same. It is denied that the 7th Respondent had abandoned the project overnight and that the residents were left stranded for their basic living amenities, safety, and security. It is denied that the STP installed in the project did not adhere to the stipulated standards prescribed by the 3rd Respondent. It is denied that the equipment provided in WTP and STP are sub-standard. It is denied there was any flaw in the design and sub-standard equipment were used in the STP. It is denied that the alleged treated water from the STP does not comply with the EC standard and the STP is not environmentally friendly and is major pollutant of the environment. It is admitted that 6th Respondent along with the 7th Respondent maintained the STP and WTP as per the maintenance agreement entered into between the 6th and 7th Respondent. It is submitted that the 6th Respondent appointed 7th Respondent to provide essential maintenance services to common areas/ amenities/ facilities from the date of completion of the Project for one year, for which a maintenance fee was collected from all the residents of Radiance Icon. It is

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submitted that the 7th Respondent is merely a maintenance agency appointed by the 6th Respondent for a period of 1 year and is not involved in any of the aforesaid alleged violations purported to have been made by the Applicant. There are no specific allegations in respect of any shortcomings in the quality of service rendered by the 7th Respondent. It is stated that there is no obligation on the part of the Respondents to extend the term of maintenance but with good intention and due consideration for the benefit of the residents, the 6th Respondent and the 7th Respondent extended the period of maintenance for a further period of one month. Upon expiry of the extended period, the 8th Respondent engaged a third-party facility management agency for the management of essential services and collected maintenance fees for three months from the residents. It is therefore submitted that the 6th and 7th Respondent had not abandoned the project. In fact, the 8th Respondent has taken over the maintenance of the project and now the onus is upon the 8th Respondent to maintain the residential apartment. It is submitted that STP and WTP were working perfectly during the maintenance of the 7th Respondent. It is submitted that any lapses in the working conditions of STP and WTP is nothing but the result of the 8th Respondent's inability to maintain the same. It is admitted by the Applicant as well that the STP

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stopped working only after one year of taking over the maintenance by the 8th Respondent. Therefore, the third-party expert report is nothing but self-serving and reflects the inefficiency of the 8th Respondent in maintaining the same. It is denied that due to design flaws and sub-standard equipment used in the STP effective sewerage treatment is impossible. It is submitted that the design and the equipment used in the STP and WTP are as per the norms and the Applicant has casted unwarranted and frivolous allegations against the 6th and 7th Respondent.

15. With respect to para 4 sub-para 8, the contents are denied in seriatim and the Applicant is put to strict proof of the same. It is denied that there was any violation of the norms stipulated in the Environmental clearance certificate and that there cannot be a complete handover. It is reiterated the maintenance of the building premises was handed over to the 8th Respondent as per the established procedure ~~RERA Rules~~ and it is now upon the 8th Respondent to maintain the building premises and the 7th Respondent cannot be made liable for the inefficiency of services displayed by the 8th Respondent.

16. With respect to para 4 sub-para 9 of the Application, the contents are denied in~~s~~ seriatim for the reasons stated in para 14 of the counter statement and the Applicant is put

to strict proof of the same. It is further submitted that the Assessment Report of the STP by so-called third-party who had been appointed by the Applicant is nothing but a self-serving report. Further, this Respondent is not responsible for the dumping of polluted water form STP in the nearby water bodies or waste land as this Respondent is not operating the STP and the maintenance is handed over to the 8th Respondent.

17. With respect to para 4 sub-para 10 and 11, the contents, averments, allegations, and statements are vehemently denied and the Applicant put to strict proof of the same. It is denied that the pollution so caused is due to the fact that 8th Respondent is forced to operate sub-standard STP and also because 7th Respondent abandoned the project maintenance. It is denied that 6th Respondent is liable for causing pollution as the STP installed by them does not adhere to the standard norms prescribed by the 3rd Respondent. As stated earlier the alleged pollution is the result of the inability of the 8th Respondent to maintain the STP. Hence, it is the 8th Respondent and its members are responsible for causing the pollution.

18. With respect to Para 4 sub-para 12 to 15, the contents are denied as the 6th and 7th Respondent are not aware of the proceedings as no notice was received by them and the order was passed without affording opportunity to the 6th

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and 7th Respondent and the Applicant is put to strict proof of the same.

19. With respect to grounds (a) to (f), the contents do not pertain to the 6th and 7th Respondent and, hence do not warrant a reply from the 6th and 7th Respondent. The Applicant is put to strict proof of the same. It is however submitted that the Applicant herein is questioning the creditability of the authorities and casting baseless allegation ~~of~~ against them.

20. With respect to grounds (g) to (i), the contents are denied and the Applicant is put to strict proof of the same. It is denied that the 6th Respondent has not taken any steps to provide fresh water supply from CMWSSB. It is denied that the borewell water is unsafe and unfit for consumption. It is submitted that the residents were supplied with water from the borewells directly. In addition to this, two water tankers were provided by CMWSSB on a regular basis for their consumption. I state that the 6th Respondent provided necessary water connections as agreed by them but due to the absence of water pipelines of CMWSSB in and around the project, it has requested the authorities to provide the same after paying the requisite charges and making the due request. It is pertinent to mention here that as per the agreed terms, the 6th Respondent provided necessary water

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connection provisions and pipeline systems at the residential property for which necessary infrastructural development fees were collected by CMWSSB, which is in fact admitted by the Applicant itself. It is submitted that as and when CMWSSB provides the water pipeline, the entire apartment would get the metro water from CMWSSB. It is further submitted that the Applicant herein sent a letter dated 08.03.2023, intimating CMWSSB and requested them to inform the procedure and timelines for getting the water and sewage connection. I state that the CMWSSB through its reply dated 02.05.2023, among other conditions, for the first time stated that to provide water and sewer connection, a dedicated water and sewer main line needs to be constructed through adjoining national highway as the said area does not have water and sewage line. CMWSSB also mentioned that special permission may be obtained from NHAI for granting road-cut permission with payment of restoration charges and taxes as and when required. Needless to state, the acts of any statutory authority cannot be controlled by the Respondents, and such allegations are wholly needless and disregard all bonafide efforts made herein. It is denied that the 6th Respondent had violated any undertaking with respect to untreated wastewater and that the untreated wastewater is dumped in nearby places polluting the soil and groundwater. It is

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submitted that no iota of proof is submitted by the Applicant to substantiate its baseless allegations. It is submitted that maintenance of the apartment was handed over to the 8th Respondent and it is now upon the 8th Respondent to maintain the premises.

21. With respect to grounds (j) to (n), the contents are vehemently denied and the Applicant is put to strict proof of the same. It is denied that there is breach of any conditions stipulated in the statutory approvals. It is denied that there are any non-compliances with the undertaking by way of affidavit before the 2nd Respondent. It is submitted that the 6th Respondent has not given any such undertaking to maintain the STP for 10 years. It is denied that there are any violations of the norms of the Environmental clearance certificate. It is denied that the 7th Respondent while maintaining the STP had dumped sewage slush removed from the condominium and discharged the same in nearby Coovam River. It is submitted that the Applicant has casted serious allegations on the 7th Respondent without any proof and this Hon'ble Tribunal ought not to entertain such Applications.

22. With respect to grounds (o) to (s), the contents are vehemently denied and the Applicant is put to strict proof of the same. It is denied that the STP was not certified by

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the reputed institutions. It is denied that a hybrid solar system was to be provided by the 6th Respondent. It is denied that the 6th Respondent has not implemented solid waste management collection and processing till date. It is denied that the stipulated compliance report has not been submitted by the 6th Respondent. It is submitted that the 6th Respondent has taken the opinion from the expert as stipulated in the Environmental Certificate before commissioning the operation of STP. It is further submitted that the 6th Respondent has provided provisions for solar system as per the norms prescribed by CMDA while approving the project. With respect to allegations of not adhering to solid waste management rules, I humbly submit that the 6th Respondent during the period of maintenance carried out by it through the 7th Respondent has strictly implemented and complied with Solid Waste Management Rules, 2016. Any alleged dumping causing environmental pollution shall be the act of the present maintenance agency appointed by the 8th Respondent Association. It is denied that the stipulated report to be submitted by the 6th Respondent with the 2nd Respondent had not been done. I state that the compliance report has been filed until the project has been handed over to the 8th Respondent Association in the month of April, 2022.

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23. With respect to ground (t), the contents are vehemently denied and the Applicant is put to strict proof of the same. It is denied that there are any blatant violations committed by the 6th Respondent. It is denied that 6th Respondent has violated the conditions stipulated in the Environment Clearance Certificate. It is submitted that the 8th Respondent Association has thoroughly checked and satisfied before taking maintenance. The 6th Respondent is unaware of any such meetings conducted by the 8th Respondent.

24. With respect to grounds (u) to (z), the contents are vehemently denied and the Applicant is put to strict proof of the same. It is denied that 6th Respondent has not provided First Aid Room during the operating space/life of the project. It is submitted that all CSR activities are carried out as per the scheme set by the 6th Respondent. It is in fact submitted that this Respondent duly remitted the stipulated amount of Rs. 15 Lakhs to the conservation authority of Pallikaranai Marsh land as it's part of CSR Activity. It is denied that 6th Respondent has violated the conditions in the EC causing great hardship and loss to the residents and also polluting the environment. It is denied that the entire project has been carried out by the 6th Respondent with an intention to cheat and defraud innocent people like the Applicant. It is denied that failure

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of the Respondents is violative of Article 21, 51, and 14 and all environmental laws and is a health issue for residents and thousands of people living in the locality.

25. With respect to ground (aa), the contents are vehemently denied and the Applicant is put to strict proof of the same. The 6th and 7th Respondent is unaware of any such inspection being carried out and hence cannot warrant any response.

26. It is therefore submitted that the Applicant is not entitled to any interim reliefs as prayed for in para 7 and to any other reliefs as prayed for in para 8 as the present application is not maintainable under the facts and law.

It is therefore humbly prayed that this Hon'ble Tribunal may be please to dismiss the application filed by the Applicant with exemplary cost and/ or pass any further orders as it may deem fit and thus render justice.

Dated at Chennai on this the 6th day of October 2023

For RADIANCE REALTY DEVELOPERS INDIA LTD.

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6th RESPONDENT
Authorised Signatory

COUNSEL FOR RESPONDENTS

For RADIANCE REALTY DEVELOPERS INDIA LTD.

x

7th RESPONDENT
Authorised Signatory

VERIFICATION

I, K. Kannadasan, the authorized signatory of the 6th Respondent company herein do hereby declare that whatsoever stated in the counter affidavit is true and best to my knowledge and belief and the same was also verified by me.

Verified at Chennai on this the 6th day of October 2023

For RADIANCE REALTY DEVELOPERS INDIA LTD.

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6th Respondent
Authorised Signatory

VERIFICATION

I, K. Kannadasan, the authorized signatory of the 7th Respondent company herein do hereby declare that whatsoever stated in the counter affidavit is true and best to my knowledge and belief and the same was also verified by me.

Verified at Chennai on this the 6th day of October 2023

For RADIANCE REALTY DEVELOPERS INDIA LTD.

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7th Respondent
Authorised Signatory

LIST OF DOCUMENTS FILED IN SUPPORT OF THE COUNTER AFFIDAVIT

S.No	Date	Description of the Document	Remarks
1.	29.06.2017	Payment receipts acknowledgment by CMDA	Photocopy
2.	14.07.2017	Environmental Clearance (EC)	Photocopy
3.	31.05.2019	Construction Agreement	Photocopy
4.	31.05.2019	Sale Deed	Photocopy
5.	12.06.2020	Completion certificate	
6.	10.12.2020	Maintenance Agreement signed between Complainant and Respondent No. 2	Photocopy
7.	30.06.2022	Fire and Rescue Service License Renewal Certificate	Photocopy
8.	14.06.2022	Environment Statement for the year 2021-2022	Photocopy
9.	02.03.2023	Judgment passed in C Nos. 88, 90 to 92/2022	Photocopy
10.	08.03.2023	Letter dated 08.03.2023 sent by M/s Radiance Realty Developers Private Limited to CMWSSB	Photocopy

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S.No	Date	Description of the Document	Remarks
11.	02.05.2023	Letter dated 02.05.2023 sent by CMWSSB to M/s Radiance Realty Developers	Photocopy
12.	10.12.2020	Proof of hand over and take over process	Photocopy
13.	07-09-2020	Proof of STP being Environment Friendly	Photocopy
14.	18.07.2017	CSR receipt	Photocopy
15.		Photograph of first aid room	Photocopy

Dated at Chennai on this the 6th day of October 2023

For RADIANCE REALTY DEVELOPERS INDIA LTD.

6th RESPONDENT
Authorised Signatory

COUNSEL FOR RESPONDENTS

For RADIANCE REALTY DEVELOPERS INDIA LTD.

7th RESPONDENT
Authorised Signatory

BEFORE THE NATIONAL GREEN TRIBUNAL
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Selvaraju Duraisamy
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Versus

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... Respondents

COUNTER STATEMENT ON BEHALF OF THE 6TH AND 7TH RESPONDENTS

M/s. **ARUN.C. MOHAN** (MS-168/2010)
BRINDA MOHAN (MS 423/2001),
S. KARTHIK (MS-1666/2014),
KEERTHIKIRAN MURALI (MS 1870/13),
K. VENKATESAN (MS-1663/2005)
CHANDINI PRADEEP (MS-1929/2019)
SWABHHI TYAGI (MS-3022/2019)
SHRUTHI SRINIVASAN (MS-2277/2019)
VANDANA JAIN (MS-509/2021)

Counsel for 6th and 7th Respondents