

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Original Application No. 87 of 2021 (SZ)

IN THE MATTER OF

Arvind Kumar Agrawal and others

...Applicant(s)

Versus

The Chief Secretary to Government of Tamil Nadu

Pollution Control Board and Others.

...Respondent(s)

REJOINDER AFFIDAVIT FILED BY THE 1st APPLICANT & OTHERS

AS PER THE DIRECTIONS ISSUED BY HON'BLE TRIBUNAL ON 29.03.2022

CHENNAI

DATED: 31.03.2022



1st Application & Party in Person

(ARVIND KUMAR AGRAWAL)

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I, Arvind Kumar Agrawal, S/o Sri Lakhan Lal Agrawal, aged about 43 years, 1st Applicant of this application, residing at B2-302, Provident Cosmo City Apartment, Pudupakkam, 603103, do hereby solemnly affirm and declare as under: -

- I. I am the 1st petitioner in the present Application, and I am fully conversant with the facts of the present case based on the records obtained through written correspondences with various Government departments, RTI responses, visual evidences collected from this residential site, internal communications from Cosmo City Welfare Associations.
- II. This Hon'ble National Green Tribunal (NGT), Southern Zone (SZ), Chennai, in its order dated 29.03.2022, in Original Application No. 87 of 2021, has directed the following in para 3 that:

"Parties are at liberty to file their written submissions (if any) within a week in support of their case."

The 1st Applicant along with other applicants is hereby filing respectfully submitted, following:

1. It is respectfully submitted that, the Cosmo City Residence Welfare Association, hereafter referred to as CCRWA, is a registered association for this complex and has been maintaining this apartment since November 2017. The applicant had sought certain clarifications on its letter dated 05.10.2021 upon the maintenance handover that took place between CCRWA and project proponent (R5). Applicant had received the response from CCRWA and is here by annexed as ANNEXURE R/1.
2. It is respectfully submitted that, as per the response from CCRWA on item #1 & #3, formal handover process has not taken place till now and no documents like Memorandum of Transfer (MOT) or Memorandum of Understanding (MOU) has been signed between them so far. It is also well evident from this reply from para #3 of page 1 that CCRWA had taken up the maintenance handover from project proponent in a very strained condition and were compelled to take over due to austerity measures that that project proponent had adopted that time. Following is just an excerpt from its response is annexed as ANNEXURE R/1.

Association has informed you that the promoter / builder, PHL is primarily responsible for all the issues in connection with the said STP and that PHL is yet to get the mandatory approvals to establish and operate the STP from the authorities concerned and that CCRWA has been making all efforts to ensure that PHL completely addresses all the said issues and the residents are not affected by the STP in any way or manner.

You are aware of the dire circumstances under which CCRWA was compelled to take up maintenance of the Apartment complex from the builder due to austerity measures adopted by the builder in the name of maintenance recovery. The association has taken over only maintenance of the facility as built by the PHL and transfer of records / documents from PHL to CCRWA is yet to be completed. Hence we are not in a position to provide complete details as required by you. However, a wise reply to your queries is given as under

3. It is respectfully submitted that, in item #4 of its response from CCRWA, it is made clear that condition of both of the STPs (1 and 2) were in breakdown condition. CCRWA had also taken stands that it is the primary responsibility of the project proponent to obtain statutory compliance permission and approvals from various government authorities. No such approvals were made available by the project proponent at the time of handing over the maintenance of this complex in questions.
4. It is respectfully submitted that, in item # 6 and #7, CCRWA has clarified on the expenses incurred upon since they took over the maintenance handover from project proponent. Item #7 clearly shows how our borewells went dried during the summer due to excessive burden upon ground water resources due to meet this additional built 990 apartments. Residents of this complex have to shell out nearly Rs. 47 Lakhs in just two years of time. This is certainly amounting to violation that environment resources like ground water could cater to such large population of this complex in question.

5. It is respectfully submitted that, in the reply submitted by R3 and R4 on dated 03.03.2022, item #16 of para #3 where disposals of excess treated water from STPs in question is raised. As per the guidelines issued under Consent to Established, it is recommended to use CMWSSB dedicated lorries with payment of fees to dispose this treated water. The Additional Chief Environmental Engineer had observed and commented as “**The treated sewage is utilized on land for gardening and the remaining is disposed through private tankers.**” However, it is important to note that, there are no such disposal is happening through external lorry vendors and CCRWA has also confirmed on the same in its reply and is evident from the financial audited report where no such hires have been made specific to disposal of excess treated water.
6. It is respectfully submitted that, in item #11, it is well established fact that handover of the complex has not yet completed and CCRWA had not issued any no dues certificate to project proponent. There are many open items like transfer of corpus funds, approvals and no dues from Chennai Metro water authority, Fire and Safety departments, Completion certificates, Occupancy certificates, Environment Clearance from various state level government authorities and project proponent is duly bound obtaining such approvals before complete handover of the complex maintenance to CCRWA take place.
7. It is respectfully submitted that, acceptance of ToRs application by the 2nd Respondent as per the recommendation of State Environment Appraisal Committee is fundamentally not right in accordance to law and may kindly be perceived as prejudiced. As 1st applicant had pointed out in its petition, this ToRs application in question had already been appraised by Central Ministry Expert Appraisal Committee in its meeting held on 15-16 January 2018. Thereby arriving at negative or non-affirmative collectively, the Central Ministry EAC had rejected this application specifically in question. This application is also marked as **DELISTED** in the Ministry website. It raises a serious concern over the functioning as to how the 2nd Respondent could take up the application which is already appraised with status as **DELISTED**. The conduct of 2nd Respondent may kindly be viewed prejudiced as they not only mislead the conditions provided in Office Memo F.No. Z-11013/22/2017-IA-II(M) published by the Central Ministry on dated 15.03.2018, to provide benefit to 5th Respondent in facilitating in obtaining the EC for additionally illegally constructed 990 apartments, but also violated the specific condition specifically mentioned in sub item # (ii) of Para 4. The application of ToRs from 5th Respondent in question has not been transferred to State EAC online and status of the application is still shown as **DELISTED** until now.
8. It is respectfully submitted that, this complex in question may kindly be perceived as Category B1 project or Category A project. 2nd Respondent in its response had confirmed

that, additionally built up 990 units had increased the total built up area to total 1.91 Lakh Sq. M. And hence, as per EIA Notification 2006, Project Category section 8 (ii), it had crossed the limit of 1.5 Lakh Sq. M and must be perceived as category B1 project which require public consultation. Additionally, this project may also be perceived as category A project as there is a reserve forest "Sonalur" geographically located less than 10 KM in range. As per EIA notification 2006, it is excerpted as below.

Note:-

^{V(xvii)} **“General Condition (GC):**

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

9. It is respectfully submitted that; this project being categorized as B1 or A category project will not further satisfy the condition as stipulated in para #3 and #4 of Office Memo No F.No. Z-11013/22/2017-IA-II(M) published by the Central Ministry on dated 15.03.2018. This specific circular is issued for **category B project** only. The excerpt from this circular is as below.

3. In order to streamline and expedite consideration of proposals, it has now been decided that the projects/activities covered under category 'B', shall be considered by the SEAC/SEIAAs in the respective States/UTs. The Ministry has issued another Notification number S.O.1030 (E) dated 8th March, 2018, amending the Notification dated 14th March, 2017 to that extent.

4. In order to operationalize the Notification number S.O.1030 (E) dated 8th March, 2018, following directions are being issued for compliance with immediate effect: -

- i. The proposals received up to 13th September, 2017 on the Ministry's portal, shall be considered by the EAC or the SEAC/SEIAA in the respective States/UTs, as the case may be, in order of their submission.
- ii. All the proposals of category 'B' projects/activities pertaining to different sectors, received within six months only i.e. up to 13th September, 2017 on the Ministry's portal, but yet not considered by the EAC in the Ministry, shall be transferred online to the SEAC/SEIAAs in the respective States/UTs.

10. It is respectfully submitted that, in the view of consider this project in question as category B1 or A project, it will also not satisfy the conditions stipulated under Office Memorandum F. NO. 22-10/2019-IA.III published by Central Ministry on dated 09.09.2019 as it is intended for dealing the violation of Category B project only.
11. It is respectfully submitted that, as per the para #18 of its reply of 2nd Respondent submitted on 03.03.2022 to this Hon'ble Tribunal, the SEAC had recommended certain specific standards to be included in EIA /EMP report. Sub para xii & xiii of para #18 where OSR and green belt area are recommended for specific development. However, it is worth pointing out that this complex is already in operating state with more than 95% of the units being sold. There is no such space available in this complex for such green belt development in order to meet this specific requirement. Even driveway have been reduced to barely 3.5 M between blocks in order to accommodate car parks. This important aspect has been left out during the screening of this application of ToRs in question and violated the principles of natural justice.
12. It is respectfully submitted that; Environment Clearance is not yet granted to project proponent for the application in question and as per the response submitted by 2nd Respondent to this Hon'ble Tribunal. As per para #18, only ToRs has been accepted with the recommendation to undertake EIA and EMP. As per this response, it is believed that EIA and EMP report yet to be submitted by the 5th Respondent. This important note may kindly be recorded.
13. It is respectfully submitted that, the 1st Applicant and few others have booked their flats in this complex in question much prior to conception and construction of this STP in questions. The applicants were persuaded by 5th respondent to provide a water pond in that area during the sale of these unconstructed apartments. One of such conceptualized plan of water pond is annexed in its petition as ANNEXURE A1. Had this been furnished specifically earmarked for this STP in question, there is no second thought to reject buying such property knowing this ugly fact by any of these applicants. Its nearly after 3 years, that construction of this STP was started coming up to these nearby units. By the time, majority of the cost has already been paid by these applicants and had no choice but to accept it compellingly. Even the approval of these STPs were not received until 12.11.2016 when 5th Respondent submitted application for revised approval to the Directorate of Town and Country Planning, Head office, Chennai. The copy of such approval is also annexed in its petition as ANNEXURE-A8.

Hence, it is earnest prayer that this Hon'ble Tribunal is pleased to record the statements mentioned above and may kindly be pleased to pass such order in the interest of justice.



1st Application & Party in Person
(ARVIND KUMAR AGRAWAL)

VERIFICATION

I, Arvind Kumar Agrawal, S/o Shri Lakhan Lal Agrawal, aged about 43 years do hereby verify that the concerns raised in paras (#1 to #9) to the said report are based on records and information are true to best of my knowledge and belief.

Hence, verified on 31 day of Mar 2022 at Chennai.

OA 87/2021 (SZ)
31.03.2022



Sd/--
1st Application & Party in Person
(..Arvind Kumar Agrawal)

ANNEXURE R/1

Date: 28-01-2022

To

Mr. Arvind Kumar Agrawal,
B2-302, COSMO CITY,
Pudupakam, 603103

Dear Mr. Aravind

Sub - Clarification/information on show cause notice served to Association by
TNPCC, Chennai – sought by you.

This has reference to your letter dated 05-10-2021 vide which you have sought certain information and records from CCRWA. Your concern that life of residents of apartments in Block B1, B2 and B3 situated in close proximity of the Sewage Treatment Plant are adversely impacted due to noise, air pollution, bad odour etc. caused by operation of STP Plant is appreciated by the association.

Association has informed you that the promoter / builder, PHL is primarily responsible for all the issues in connection with the said STP and that PHL is yet to get the mandatory approvals to establish and operate the STP from the authorities concerned and that CCRWA has been making all efforts to ensure that PHL completely addresses all the said issues and the residents are not affected by the STP in any way or manner.

You are aware of the dire circumstances under which CCRWA was compelled to take up maintenance of the Apartment complex from the builder due to austerity measures adopted by the builder in the name of maintenance recovery. The association has taken over only maintenance of the facility as built by the PHL and transfer of records / documents from PHL to CCRWA is yet to be completed. Hence we are not in a position to provide complete details as required by you. However para wise reply to your queries is given as under

1. When did Association takeover the charge of maintenance from PHL?

CCRWA – Formal Transfer of Taking of Charge is yet to be completed. However CCRWA took over maintenance of the apartment complex effective from 01 November 2017 as the builder failed to provide basic minimum service citing arrears of maintenance due from flat owners. The documentation regarding transfer would be done when the transfer is fully complete)

2. What are all the documents signed between Association and PHL at the time of handing over & taking over the complex's maintenance; to provide copy of such documents.

CCRWA – As explained earlier, CCRWA is yet to receive majority of documents / records relating to various departments including STPs, TNPCC , DTCP, Car Parking Allotments details etc. Except certain technical manuals of equipment like Generator and other machinery, most of the handing over is still incomplete. The documentation regarding transfer would be done when the transfer is fully complete

3. Are there any documents like Memorandum of Understanding (MOU) and/or Memorandum of Transfer (MOT) signed at the time of handover & taking over? If yes, provide the copy of it.

CCRWA – There are no such documents as MOU or MOT signed as of now as the transfer has not been complete. The documentation regarding transfer would be done when the transfer is fully complete)

4. Provide the operational condition of STPs (1 and 2) separately at the time of taking over from PHL. Were both of these units functioning as per TNPCB (Consent to Operate) Parameters?

CCRWA – As on 01-11-2017 when CCRWA was compelled to take over maintenance of the complex, both the STPs were in breakdown condition and were not functioning as per PCB norms. PHL had taken a stand that they were unable to maintain the same citing lack of funds on account of huge arrears of maintenance receivable from owners. Even while taking over, CCRWA had made it clear that PHL is primarily responsible for all the issues in connection with both the said STPs and that PHL is legally bound to get the mandatory approvals / renewals of approval to establish and operate the STPs from the authorities concerned and to completely address all the said issues so that the residents are not affected by the STPs in any way or manner

5. As per report, STP near D block is processing nearly 650 KLD sewage water on a daily basis out of which the 273 KLD is used for toilet flushing, 212 KLD is used for land for gardening and 165 KLD is supposed to be for Pudupakkam Avenue Plantation. If we add 2nd STP, the surplus treated water is 330 KLD which is available beyond the capacity that this complex could utilize. How is this surplus 350 KLD water being managed by Association?

CCRWA – Since CCRWA is not in possession of relevant records with respect to STPs we are unable to provide our comment / opinion to this. Disposal of Treated Water is being done in the manner as prescribed by the TNPCB.

6. Provide expenditure details made towards repairing, maintenance, parts replacement, shedding provision, Sludge removal through external vendors etc for these two STPs for the period since Association took over the maintenance of this Complex from PHL.

CCRWA – You may please refer to audited financials of the association for the same.

7. Provide expenditure details (for the period since Association took maintenance of this complex) made towards purchase of water through external Vendors to meet the demand of 2174 Apartments in this complex during summer/ or the time when complex is unable to pump ground water to meet the demand

CCRWA – Amount incurred towards purchase of water through external vendors during 2019 to 2021 is approx Rs.47 lakhs.

8.As per report, there are no complaints made by the residents staying near D block STP. Have you received complaints/issues/concern from the Residents staying near D block STP? If yes, provide such information in detail.

CCRWA – As per records no such complaints have been received.

9.Has Association represented it's stand on the notice served to them by TNPCB board? If so, provide the copy of the reply.

CCRWA – The matter is in progress.

10.Has Association received the corpus fund on the behalf of apartment owners from PHL?

CCRWA – No

11.Has Association given the No dues certificate to PHL? Any contractors / external vendors deployed by PHL in this complex to complete unfinished apartments and keeping them ready for selling to new customers?

CCRWA – CCRWA has not provided NO Objection Certificate to the builder. Since handover is not complete builder and its representatives / vendors do visit and work to complete the unsold apartments.

12.Does PHL has office in this Complex for marketing and selling its unsold apartments? If so, how many such unsold units are there in our complex?

CCRWA – PHL has been using an apartment for its office purpose and CCRWA has raised issue with PHL over such commercial usage. As per information received from PHL / builder as on 30-11-2021 number of unsold apartments were 34 units.

13.Any other information / documents that Association may feel to share in order to substantiate their stand towards the show cause notice.

CCRWA – NIL

We hope you will find the above in order. For more information about the project you may please approach the builder as the CCRWA is yet to get complete handover of records from the builder.

Regards

CCRWA