

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
EXECUTION APPLICATION NO. 9 OF 2022

IN

I.A. NO. 44 OF 2022

IN

APPEAL NO. 76 OF 2017

DILEEP NEVATIA

...APPLICANT

Versus

UNION OF INDIA & ORS.

...RESPONDENTS

| Sr No. | Particulars | Page No |
|--------|--|---------|
| 1. | Affidavit in Reply on behalf of Respondent No. 8 | 1-5 |
| 2. | <u>Exhibit A</u> Copy of the order dated 27 th March 2023 | 6-21 |
| 3. | <u>Exhibit B</u> Copy of the order dated 5 th July 2023 | 22-23 |

For M/s. AVP Partners



Advocates for Respondent No. 8

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
EXECUTION APPLICATION NO. 9 OF 2022



IN

I.A. NO. 44 OF 2022

IN

APPEAL NO. 76 OF 2017

DILEEP NEVATIA

...APPLICANT

Versus

UNION OF INDIA & ORS.

...RESPONDENTS

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 8

I, Raj Mhatre, age 47, the legal Manager of Respondent No. 8 abovenamed, having my office at, Hincan House, Lal Bahadur Shastri Marg Vikhroli West, Mumbai 400083 do hereby solemnly state and affirm as under:

1. I have perused the captioned Execution Application served upon me by the Applicant by email dated 26th December 2023. I am well versed with the facts of the case and am able to depose to the same. I am filing the present affidavit for a limited purpose to oppose the grant of any reliefs in the present Application. I reserve my right to file a further detailed affidavit if the need arises and if so advised.

2. At the outset I say that the present Execution Application is not maintainable on the following grounds which are in the alternative and without prejudice to one another.

A. The Execution Application seeks execution of order dated 10th August 2022 passed by this Hon'ble Tribunal which has already been recalled. I say that after order dated 10th August 2022 was passed, the present Respondent filed Interlocutory Application No. 159 of 2022 seeking recall of the orders dated 5th July 2022 and 10th August 2022. I say that the Application was heard at length when the Applicant was also heard. Eventually by order dated 27th March 2023 Interlocutory Application No. 159 of 2022 was allowed and the orders dated 5th July 2022 and 10th August 2022 were set aside. A copy of the order dated 27th March 2023 is hereto annexed and marked **EXHIBIT A**. I say that therefore the present Application ought to be dismissed outright since the order of which execution has been sought has itself been recalled. There is no order in existence today which can be executed.

B. I say that the Applicant has assailed the order dated 27th March 2023 before the Hon'ble Supreme Court in Civil Appeal No. 3953 of 2023. By an order dated 5th July 2023, the Hon'ble Supreme Court issued notice and tagged the matter with SLP (Civil) Nos. 17471-17476 of 2019 and other related matters. A copy of the order dated 5th July 2023 is hereto annexed and marked as **EXHIBIT B**. I say that therefore since the matter is pending before the Hon'ble Supreme Court, the present



Application cannot proceed. The Applicant himself assails the order dated 27th March 2023 which recalled the order dated 10th August 2022 of which execution is sought.

- C. The Hon'ble Tribunal has in its order dated 27th March 2023 itself stated the present Execution Application cannot be heard till the Interim Application No. 44 of 2022 is heard and decided. Admittedly, Interim Application No. 44 of 2022 is pending adjudication and therefore the present Execution Application is premature and cannot be considered.
- D. By the order dated 27th March 2023, this Hon'ble Tribunal directed the Applicant to implead the present Respondent as a party to the present Execution Application. A bare perusal of the so called amended Application will make it clear that the Applicant has merely filed an amended memo of parties by stating the names of all the Respondents who are party Respondents to Interim Application No. 44 of 2022. There is no amendment to the actual cause title. In fact, the present Application (as can be seen from the cause title) itself is only against the Maharashtra Pollution Control Board and Municipal Corporation of Greater Mumbai and not against the present Respondent.
- E. I say that the present Application has not even a single averment against the present Respondent. I say that in fact even the prayers are not directed against the present Respondent. In such



a scenario, I say that the present Application ought to be dismissed outright.

F. I say that a bare perusal of the Application and the prayers would reveal that the present Application seeks execution of order dated 10th August 2022. I say that by order dated 27th March 2023, the order dated 10th August 2022 has been recalled. Accordingly, there is no order as on date of which execution can be sought. Accordingly, I say that the present Execution Application ought to be dismissed outright.

G. I say that in any event, the entire dispute with regard to the coastal road including with regard to permissions, violation of norms pertaining to environment etc. is the subject matter of adjudication before the Hon'ble Supreme Court of India in SLP (Civil) Nos. 17471-17476 of 2019 and other related matters. I say that pending the same, it is improper for the Applicant to urge the present Execution Application.

3. In view of the above, I have not responded on merits to the present Application, not to mention the fact that no averments against the present Respondent have even been made. In any case, I reserve my right to file a detailed Affidavit in Reply should the same be required at a later date.

4. Under the circumstances, I say that the present Application ought to be dismissed. I say that in the event the present application is

allowed grave irreparable harm, loss and injury will be caused to the present Respondent.

Solemnly affirmed at Mumbai)

This day of January 2024)

FOR HINDUSTAN CONSTRUCTION CO LTD

[Signature]
AUTHORISED SIGNATORY

Before me,

For M/s. AVP Partners

[Signature]

Partner

Advocates for Respondent No. 8

BEFORE ME

[Signature]

Adv. Shivaji N. Dhanage
Notary Govt Of India
Regd. No. 15376 MUMBAI (MS)
404-405, 4th Floor, Deval House
197/199, Near Central Camera Bldg
D.N. Road Fort, Mumbai 400001

NOTED & REGISTERED

Page No. 3/14 Sr. No. 89

Dated. 15 JAN 2024



(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

**INTERLOCUTORY APPLICATION NO.159 OF 2022 (WZ)
IN
APPEAL NO.76 OF 2017 (WZ)**



Hindustan Construction Company Applicant

Versus

Union of Indi and Ors. Respondents

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Siddhant Buxy, representing M/s AVP
Partners, Advocate

Respondents : Mr. Rahul Garg, Advocate for R-1
Ms. Manasi Joshi, Advocate for R-3
Mr. Jimmy Pochkhanwala, Advocate for R-5
Respondent No.8 in person

=====

Reserved on : 21.03.2023

Pronounced on : 27.03.2023

=====

ORDER

1. This application has been moved by the third party - M/s Hindustan Construction Company Limited with the prayer that the orders dated 05.07.2022 and 10.08.2022 passed by this Tribunal in Interlocutory Application (IA) No.44 of 2022 in Appeal No.76 of 2017 be recalled.

2. In our order dated 05.07.2022, we had observed, from the perusal of the order dated 07.10.2020 passed by the Hon'ble Supreme Court in ***Special Leave to Appeal (C) No.17471-17476 of 2019 (Municipal Corporation of Greater Mumbai Vs. Worli Koliwada Nakhwa Matsya***



Vyavasay Sahakari Society Ltd & Ors.), it would appear that in the matter of construction of the Mumbai Coastal Road (South) project, the Hon'ble Apex Court has permitted the construction to go ahead. In the present appeal i.e. Appeal No.76 of 2017, challenge has been made by the appellant to CRZ Clearance dated 11.05.2017 granted by respondent No.1 - MoEF&CC to respondent No.5 - MCGM for construction of Mumbai Coastal Road (South) project from Princess Street flyover to Worli and for sea link to Mumbai. It was also observed in the said order by us that the said Project is now pending consideration before the Hon'ble Apex Court and that the Hon'ble Apex Court has already directed the construction to go ahead. Therefore, it would not be proper for this Tribunal to hear the present matter, till the decision of Hon'ble Apex Court.

3. From the side of the appellant (respondent No.8 in present application), it was stated that the construction is being done beyond the area for which the construction was permitted by the Hon'ble Supreme Court. We had expressed our opinion by saying that it was not possible for this Tribunal to demarcate the area as to whether the construction was going on beyond the area for which permission was granted by the Hon'ble Supreme Court or within the permissible area and therefore, out of the six reliefs, which were prayed by the appellant in I.A. No.44 of 2022 moved in said Appeal No.76 of 2017, we had decided to consider only prayer no. (iii) by which the respondents were prayed to be directed to maintain air quality and noise quality level for the construction of Mumbai Coastal Road (South) project within the limits specified by the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000.



4. Thereafter, we had considered the matter in respect of prayer No.(iii) cited above on the next date i.e. 10.08,2022 and it was held by us that as per the Schedule annexed to the Noise Pollution (Regulation and Control) Rules, 2000, in residential area, in day time noise pollution limit was prescribed to be 55 dB and night time, it was prescribed to be 45 dB and the said level had certainly exceeded in the present case as per the evidence which was placed before us. Hence, we had asked respondent No.3 – MPCB to ensure that the noise pollution was brought within the permissible limit, within three weeks from the date of passing that order, failing which the MPCB was given liberty to proceed against the defaulting agency as per the Rules.

5. It is the above mentioned orders passed by us that the third party i.e. Hindustan Construction Company Limited, which is said to be the contractor for execution of the construction work engaged by respondent No.5 – MCGM, is aggrieved and has prayed those orders to be recalled.

6. In the body of the present application (IA No.159/2022), it is submitted that on 11.05.2017, the Union of India through Ministry of Environment, Forest and Climate Change accorded CRZ Clearance to the project “Coastal Road (South) from Princess Street Flyover to Worli end of Sea Link in Mumbai”, under CRZ Notification, 2011. A Joint Technical Committee (JTC) had recommended on 20.12.2011 that about 35.60 kms of coastal road be constructed involving Rs.5303 Crores approximately to be the total cost, which would lead to following benefits :-

“(xv) Benefits of the project: Improved quality of life by providing easy access to basic services and various products, access to Improved health and education facilities, strengthening of economy by easy transportation of various materials of daily use, etc.

“(xvi) The propose coastal road will reduce commuting time by around 70% and fuel saving per day by bout 34%. It will also reduce carbon footprint by about 1826 T CO2 per annum.”

7. Soon thereafter on 03.07.2017, respondent No.8 (appellant in Appeal No.76/2017) sought quashing of CRZ Clearance dated 11.05.2017 issued by respondent No.1 to respondent No.5. On 28.09.2018, the present applicant (third party) was awarded Letter of Acceptance (LOA) for Package-II of Mumbai Coastal Road (South) Project, where-after on 26.11.2018, the applicant executed requisite contract with respondent No.5, Clause 17 of which provided for "Noise Monitoring", besides regular monitoring of the noise, which is as follows:-

"17.10 In no case shall the Contractor expose the public to construction noise levels exceeding 90 dBA (slow) or to impulsive noise levels with a peak sound pressure level exceeding 140 dB as measured on an impulse sound level meter.

17.11 Limit for construction noise is based on the existing ambient noise levels in areas adjoining the construction sites. If the measured noise levels exceed the noise limits, the noise levels shall be reduced by appropriate abatement measures.

17.12 The noise levels emanating from any source during construction, shall not exceed 10 dB(A) or more above existing ambient pre-construction noise levels when measured at a point outside the premises of the location of source. The same may be varied from time to time by and at the sole discretion of the Engineer.

17.13 The construction activities shall be limited to levels measured at a distance of 200 feet from the construction limits or at the nearest affected building, whichever is closer as given in Table - 4"

8. It is evident from the above conditions that the applicant was provided to stick to the maximum noise level of 75 dB during day time and 65 dB during night time as per the contract, which is annexed at pages 2498 to 2499 of the paper-book. It is further submitted by the applicant that on 14.04.2019 and 15.04.2019, Sky Lab, a NABL accredited testing agency approved by the MoEF&CC and the MPCB, had conducted a noise level test at "Coastal Road, Near VUP Area (Bandra Worli Sea Link)" and prepared a test report dated 18.04.2019 and found



average level during day time as 89.3 dB(A) with main sources of noise being movement of vehicles and sea waves.

9. It is submitted that on 16.04.2019, the Hon'ble Bombay High Court by an interim order in various writ petitions restrained the applicant and respondent No.5 from continuing the work. However, on 06.05.2019, the Hon'ble Supreme Court in SLP (C) No.10916/2019 modified the aforesaid order and allowed the applicant and respondent No.5 to continue with the works which had already commenced, till the final disposal of various writ petitions by the Hon'ble High Court.

10. On 16.07.2019, the Hon'ble High Court set aside the CRZ Clearance dated 11.05.2017 for construction of Mumbai Coastal Road (South) Project, pursuant to which this project was stopped. Even during this period, two noise monitoring tests were conducted, one on 26.08.2019 and the other on 25.10.2019 near construction site, test reports of which were prepared on 07.09.2019 and 06.11.2019. The report dated 07.09.2019 revealed that the average decibel level at the testing site was 66.9 dB(A) during night time and 69.9 dB(A) during day time, with the maximum decibel level even reaching 110.2 dB(A). The report dated 06.11.2019 revealed that the average decibel level at the testing site was 62.2 dB(A) during night time and 68 dB(A) during day time, with a maximum decibel level of 107.9 dB(A). Both these reports make it clear that there was no construction activity taking place at the site at that time and that the noise was from other sources, which included general traffic movement near the site, besides that, because of flow and collision of sea tides also. Therefore, it was evident that the noise level even without any construction activity was well beyond 55 dB(A). All these reports have been annexed by the applicant with the application.



11. On 17.12.2019, the Hon'ble Supreme Court in SLP (C) No.17471-76/2019 permitted the construction work and held as follows :-

"... We are of the considered view that the judgment of the High Court needs to be stayed having regard to the factor of balance of convenience; prima facie case and irreparable damage/injury.

The petitioner are free to reclaim the land, build the road thereon and secure the road...."

12. The aforesaid SLPs are still pending before the Hon'ble Supreme Court wherein the issue of CRZ Clearance dated 11.05.2017 is sub-judice and the construction of the work is allowed to be continued by it.

13. While the situation stood as above, the present respondent No.8 (original appellant) on 25.04.2022 filed I.A. No.44 of 2022 in Appeal no.76 of 2017, alleging that the work being done by the applicant was causing noise pollution beyond permissible levels and also sought impleadment of the applicant with few other respondents and also simultaneously sought a direction for stay of construction of the Mumbai Coastal Road (South) Project and revocation of CRZ Clearance dated 11.05.2017, in teeth of the Hon'ble Sureme Court's order dated 17.12.2019 in SLP (C) No.17471-76/2019.

14. On 21.05.2022, the applicant communicated to the Project Manager (appears to be respondent No.5) that in view of the complaint from the appellant (respondent No.8), it had taken various additional preventive measures against noise pollution, even though it was compliant with the levels prescribed in the RFP (Request For Proposal) and these measurements, which were adopted by the applicant are maintained as (a) to (g), which are as follows:-

- a. *Reduced working hours (Rig machines operating only from 6.30 AM to 10.00 PM, and only concrete activities being done at night within permissible noise limit).*
- b. *Regular maintenance of equipment.*
- c. *Installation of moveable noise barriers.*

- d. *Drilling with roller bit barrels to reduce the noise/vibration and grinding sound while drilling with piling rigs.*
- e. *Additional Muck Removal arrangement at site which reduces rig knocking sound.*
- f. *Moveable & fixed Noise Barriers are installed at Site.*
- g. *Height of noise barriers has been increased to maximum possible limit with due consideration of safety aspects."*

15. In the meantime, Sky Lab prepared regular monitoring reports of the noise at the construction site from April to May, 2022, showing the noise levels being complied with the limits prescribed by respondent No.5 in the contract, reports of which are also annexed.

16. On 05.04.2022, this Tribunal issued notice in I.A. No.44 of 2022 only with respect to the interim relief, prayed by respondent No.8 regarding direction to be issued to the respondents to maintain the air quality and noise quality level for the construction of Mumbai Coastal Road (South) Project, on the ground that the said matter may not be treated pending before the Hon'ble Apex Court, although the Tribunal did not discuss or gave any reasons for not considering the impleadment of the applicant and other respondents. Therefore the Tribunal erred in considering only an interim relief while holding that final reliefs were not maintainable due to pendency of the matter before the Hon'ble Apex Court.

17. The respondent No.3 – MPCB filed its affidavit wherein it is stated that its officials carried out Ambient Air Quality Monitoring and Noise Monitoring in the premises of the residence of the appellant (present respondent No.8), for which no notice was given to the respondents to remain present nor was any explanation was given as to under what circumstance, the said monitoring was carried out. During that monitoring, the air quality was found to be compatible with the standards prescribed by the Central Pollution Control Board (CPCB) ranging from



68.9 dB(A) to 81.4 dB(A). In the said affidavit, it was also recorded by the MPCB that out of three drilling machines, one stopped at 9 PM and other two stopped at 10 PM but there was movement of the vehicles on the road in front of the appellant's house even then, the noise levels were above the prescribed limit throughout and it did not change despite the drilling machines having stopped. The noise levels were recorded as 78.8 dB at 6.01 AM, 78.9 dB at 9.59 PM, 78.6 dB at 2.00 AM and 78.4 dB at 9.58 AM the next day.

18. Respondent No. 5 – MCGM filed reply-affidavit on 21.07.2022 stating therein that even before starting the actual construction activity of Mumbai Coastal Road Project (South), EIA study and a Pre-Construction noise level survey results showed the noise levels to be exceedingly high beyond permissible limits due to general traffic movement throughout the stretch of the project. Regular noise monitoring was being performed at the project which showed that the noise levels were within the contractually stipulated limits. There was construction work going on in a building adjoining the appellant's residence and traffic movement was causing more noise than the specified limit. Therefore, the noise levels could not be attributed solely to the work being carried on by the applicant though precise noise level qua the applicant is not mentioned, yet the applicant has taken additional measures for reducing the noise levels and to substantiate its submissions, respondent No.5 had filed data from 28.05.2022 to 31.05.2022 to show the marginal difference in noise levels recorded before and after the commencement of work on those days on different sites, reports of which are annexed.

19. Further it is submitted that on 10.08.2022, this Tribunal had directed respondent No.3 – MPCB to proceed against defaulting agency by the impugned order if the noise pollution is not brought within the permissible limit within a period of three weeks of the passing of the



order. The applicant being contractor, who is carrying on the work of the project, without being impleaded and without being given an opportunity to represent his side, the above order is going to adversely affect/impact it and onus has been erroneously placed on the applicant to reduce the noise levels though the source of the same is not the applicant only. It is impossible to bring down the noise level within 55 dB(A) , which is established by regular monitoring reports prepared by Sky Lab cited above, as even without any work, the average day-time noise levels were 73.4 dB(A) and 71.2 dB(A). On days when work was performed, the average day-time noise levels recorded were 72.1 dB(A), 70.9 dB(A) and 72.5 dB(A).



20. On 23.08.2022, the officials of the MPCB visited the construction site in compliance with this Tribunal's order dated 10.08.2022 and gave following directions to respondent No.5 – MCGM and the applicant:-

“a. The PP shall take adequate control measures to limit the noise pollution, caused due to construction activities at Mumbai Coastal Road Project.”

b. Noise barriers (acoustic sheets or partitions) of sufficient height shall be provided at construction site to reduce the impact of noise arising out due to various activities of said project”

21. On 05.09.2022 and 06.09.2022, Sky Lab conducted another noise monitoring at Gate NO.5, near Rig machine where Ganpati Visarjan was being done. With the general traffic movement near the site, piling machine working on the site and Ganpati Visarjan, the average noise level (LEQ) was recorded as 73.6 dB(A) during day-time and 66.8 dB(A) during the night time, which reflects that all possible measures for reducing noise emanating from the Mumbai Coastal Road (South) Project work, have been taken by the applicant.

22. Further it is mentioned that the applicant is aggrieved by the impugned orders as pursuant to that, the MPCB has issued directions

from time to time and it is possible that in future, some adverse action may be taken against the applicant wrongly holding it to be responsible for higher noise levels at the appellant's house, above 55 dBA during day-time because of which this application for recall of the impugned orders has been moved. It is also alleged that the impugned orders would amount to violation of natural justice as the same have been passed against the applicant without giving an opportunity of hearing. The impugned orders are passed giving directions beyond the pleadings and reliefs claimed by the applicant.

23. From the side of respondent No.8 (appellant in Appeal No.76/2017), it is submitted opposing the present application that the impugned orders do not require to be recalled as the final order dated 10.08.2022 passed by this Tribunal in I.A. No.44/2022 in Appeal No.76/2017 has been challenged by the answering respondent before the Hon'ble Apex Court in Civil Appeal No.7173 of 2022 and vide order dated 31.10.2022 passed by the Hon'ble Supreme Court in SLP Nos17471-17476 of 2019, it has been directed to issue notice and tag the appeal filed by the answering respondent with SLP(C) Nos.17471-17476 of 2019 which are pending before the Hon'ble Supreme Court.

24. It is submitted by the answering respondent that since the Hon'ble Supreme Court has admitted the appeal filed against order dated 10.08.2022, which is being prayed to be recalled, present prayer cannot be considered by this Tribunal and therefore, I.A. No.44 of 2022 cannot be dismissed as prayed for by the applicant.

25. Because of non-compliance of the order dated 10.08.2022, the answering respondent had to file Execution Application No.9 of 2022. In the said Execution Application, this Tribunal had passed an order on 28.09.2022 whereby the execution applicant was directed to implead all the respondents who were there in Appeal No.76 of 2017 as opposite



parties. Against order dated 28.09.2022, Execution Applicant filed another Civil Appeal No.8998 of 2022 on various grounds, including the ground that this Tribunal ought to have directed respondent No.3 – MPCB to enforce the law and prosecute the offenders when as per their own test results, breach of noise levels and the air pollution were found. The above Civil Appeal No.8998 of 2022 was heard by the Hon'ble Apex Court on 05.12.2022 and by order of the same date, the Hon'ble Supreme Court left it open to the appellant to seek directions from this Tribunal for enforcing its order and to look into the grievances on the next date of listing. This order is annexed at pages 2707 and 2708 of the paper-book.

26. Even after 28.09.2022, when the Execution Application was first heard, extremely high level of noise was caused by the construction of the project in question but no steps were taken by respondent No.3 – MPB to ensure that the noise pollution was brought under permissible limits, nor did it prosecute the agency as per the Rules.

27. On 05.09.2022 to 06.09.2022, the MPCB once again monitored the extremely high noise levels generated by the construction work of Mumbai Coastal Road (South) Project and the copy of the said has been annexed at Annexure A-4, but the MPCB failed to initiate any action against the defaulting agency.

28. The applicant thereafter appointed an accredited agency M/s Mahabal Enviro Engineers Pvt. Ltd. to carry out one more 24-hour Ambient Noise Level Monitoring from the garden and also outside the main gate of his building from 14.9.2022 to 15.9.2022 and the said report re-confirmed that even on those dates i.e. 10 days after MPCB officers carried out the Noise Monitoring, the menace of incessant noise pollution was still continuing. But the MPCB failed to take any action against the defaulting agency. There is no provision under the Environment (Protection) Act, 1986 to provide the offender an opportunity



17

of hearing before initiating the prosecution proceedings. Therefore, it is prayed that the application of the applicant should be rejected wherein prayer is made to recall the impugned orders.

29. After having heard the learned counsel for both the parties and having perused the record and impugned orders and all relevant documents, we are of the view that by the impugned orders, particularly order dated 10.08.2022, which directs that respondent No. 3 – MPCB shall ensure that noise pollution is brought within permissible limits within three weeks from the date of passing of the order failing which it shall proceed against defaulting agency as per the Rules, would certainly impact adversely the applicant, who is yet to be impleaded because of being a contractor engaged by respondent No.5 – MCGM to carry out the construction work of the project in question. The applicant has shown an apprehension that though so far the MPCB has not proceeded against it in coercive manner, the possibility cannot be ruled out in future to proceed against it by initiating the prosecution under law because as per the norms of the Noise Pollution (Regulation and Control) Rules, 2000, during day-time, 55 dB level of noise in residential area should be maintained, which is not possible at all because of the kind of construction activity being done by the applicant at the instance of respondent No.5 – MCGM and also looking to the fact that enough evidence has been placed on record before us to the effect that despite no such construction work being done, there existed much higher dB level of noise at the site in question due to other reasons such as vehicular traffic and sea waves. The applicant has also highlighted that the contract which has been awarded to it by respondent No.5 – MCGM also provides that during day-time, 75 dB and during night-time 65 dB level of noise in residential area should be followed, which is already on much higher side than prescribed under the Rules. Therefore, we have to give adequate



opportunity to the applicant of being heard and this would necessitate recalling of the impugned orders as against the present applicant. Though we mention here that we have not specifically passed the impugned order against the present applicant, but by implication, the said order may be read to be against the applicant, who is at present a third party.

30. We may also note here that I.A. No.44/2022 was moved by present respondent No.8 (the appellant in Appeal No.76/2017) for impleadment of the present applicant as well as some other respondents, the said relief was not touched by us in view of the matter being pending before the Hon'ble Supreme Court, but we find that at this stage, the impleadment of the present applicant is absolutely necessary because respondent No.8 (appellant in Appeal NO.76/2017) is insisting upon the maintenance of noise level and air pollution level within the limits prescribed in the Rules.

31. As regards objection of respondent No.8 (appellant) that he has already moved the Hon'ble Supreme Court by filing Civil Appeal No.7173 of 2022 against our order dated 10.08.2022, wherein the Hon'ble Supreme Court, vide order dated 31.10.2022, directed to issue notice and tag the said Civil Appeal with SLP (C) Nos.17471-17476 of 2019 , would not mean that it has stopped the proceedings before this Tribunal as there is no stay in operation. Therefore, we can certainly provide opportunity to the applicant of being heard by directing its impleadment in the original Appeal as well as in the Execution Application, by recalling the impugned orders as against the applicant.

32. We have also gone through the questions of law which have been raised by the appellant (present respondent No.8) before the Hon'ble Apex Court in Civil Appeal No. 8998/2022, which are as follows:-



“(I) Whether the NGT fell into error by failing to direct any action against the Project Proponent for established breach of noise pollution norms?”

“(II) Whether the noise pollution limits, as prescribed by the statutory rules, being the Noise Pollution Rules can be altered and increased by way of a contract?”

“(III) Whether violation of the conditions of the CRZ Clearance is a ground to seek revocation of the CRZ Clearance dated 11.05.2017?”

“(IV) Whether the NGT was justified in waiting for the decision of this Hon’ble Court in SLP (C) No. 17471-17476 of 2019 when various other grounds of challenge to the CRZ Clearance have been urged by the Appellant which were not urged before the Hon’ble High Court?”

“(V) Whether the NGT has erred by refusing to answer the question of illegal construction which is also the cause of noise and air pollution on the ground that it is not possible for it to demarcate the area beyond which illegal construction is being carried out?”

33. It is apparent from the above questions raised by the appellant that he wants the Hon’ble Supreme Court to decide whether noise pollution limits can be altered by way of contract by which it appears that he wants to assail the stand taken by respondent No. 5 – MCGM who has executed contract in favour of the present applicant wherein he has provided for the applicant to stick to higher level of noise pollution than prescribed under the Rules of 2000.

34. In the result, this application is allowed. The orders dated 05.07.2022 and 10.08.2022 passed by this Tribunal in I.A. No.44 of 2022 in Appeal No.76 of 2017 are recalled as far as the present applicant is concerned.

35. Respondent No.8 (appellant in Appeal No.76 of 2017) is directed to implead the present applicant as respondent in Appeal No.76 of 2017, in I.A. 44 of 2022 and in Execution Application No. 9 of 2022.

36. I.A. No. 44 of 2022 is restored to its original position. The present applicant is permitted to submit its objections in I.A. No.44 of 2022.

37. Since the Execution Application No.9 of 2022 has been filed for execution of the order dated 10.08.2022 passed by us in I.A. No.44 of 2022, it would be appropriate for us to hear the said Execution Application after disposal of I.A. No.44 of 2022, after taking on record the stand taken by newly impleaded respondent/present applicant.

38. The Registry is directed to place I.A. No.44 of 2022 before us on 28.03.2023 for hearing on the stand to be taken by the newly impleaded respondent/applicant herein.

39. Present application (I.A. No.159 of 2022) is disposed of accordingly.

40. This order shall be subject to the decision by the Hon'ble Supreme Court in SLP (C) No.17471-17476/2019.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

41. After pronouncement of above order, Respondent No. 8 (appellant in Appeal No7 of 29117), who is present in person today through video conferencing, submits that since he wants to move the Hon'ble Supreme Court against the above order, he prays for



21

grant of thirty days' time for placing I.A. No.44 of 2022, which is directed to be placed for hearing on 28.03.2023, by our above order. We direct the Registry to place I.A No. 44 of 2022 for hearing before us on 28.04.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

March 27, 2023
I.A. No.159 OF 2022 (WZ)
npj



TRUE COPY
For A V P Partners

A handwritten signature in black ink, appearing to be 'R'.

Partner
Advocates & Solicitors

ITEM NO.22

COURT NO.12

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3953/2023

DILEEP B. NEVATIA

Appellant(s)

VERSUS

HINDUSTAN CONSTRUCTION COMPANY LTD. & ORS.

Respondent(s)

(IA No.110045/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.110050/2023-CLARIFICATION/DIRECTION)

Date : 05-07-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s)

Dr. Surender Singh Hooda, AOR
Mr. Aayushman Aeron, Adv.
Mr. Aditya Hooda, Adv.

For Respondent(s)

Mr. Sajan Poovayya, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. Ankur Saigal, Adv.
Mr. M.s. Ananth, Adv.
Mr. Anirudh Bhatia, Adv.
Ms. Biswabara Dash, Adv.
Mr. E. C. Agrawala, AORMr. Ashish Wad, Adv.
Mrs. Tamali Wad, Adv.
Mr. Sidharth Mahajan, Adv.
Mr. Ajeyo Sharma, Adv.
Ms. Kirti Sharma, Adv.
For M/s. J.S. Wad & Co., AORUPON hearing the counsel the Court made the following
O R D E RApplication for exemption from filing a certified
copy of the impugned judgment is allowed.

Issue notice.

23

Mr. Ashish Wad, learned counsel accepts notice on behalf of the respondent No.6.

To be heard along with SLP(Civil)Nos.17471-17476 of 2019 and batch.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER

TRUE COPY
For A V P Partners


~~Partner~~
Advocates & Solicitors



BEFORE THE NATIONAL GREEN
TRIBUNAL
WESTERN ZONAL BENCH AT
PUNE
EXECUTION APPLICATION NO. 9
OF 2022
IN
IA NO. 44 OF 2022
IN
APPEAL NO. 76 OF 2017

DILEEP NEVATIA ... Petitioner

Versus

UNION OF INDIA & ORS.

... Respondents

AFFIDAVIT IN REPLY ON
BEHALF OF RESPONDENT NO. 8

Dated this 16th day of January 2024

M/s. AVP Partners
Advocates for Respondent No. 8
301, Jehangir Building, 3rd Floor, 133
Mahatma Gandhi Road, Fort, Mumbai
400001
office@avppartners.com