

## BEFORE THE NATIONAL GREEN TRIBUNAL

### WESTERN ZONE, PUNE

#### ORIGINAL APPLICATION NO. 30 OF 2020

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&CC & Ors.

....Respondent(s)

#### COMPILATION ON BEHALF OF THE RESPONDENT NO.12

S.No.	Date	Particulars	Pg.No.
1.	01.12.2022	Order on Limitation in Original Application No. 63/2019(WZ) (I.A. No. 100/2019 & I.A. No. 86/2021) between Mr. Ajay Jayvantrao Bhosale Vs. Union of India through MoEF&CC & Ors.	1-10
2.	21.03.2023	Order in Civil Appeal No. 456 of 2023 between Ajay Jayvantrao Bhosale vs. Union Of India & Ors. challenging the aforesaid order dated 01.12.2022.	11-12
3.	03.04.2023	Order in Appeal No. 26/2020 (WZ) between Mr. Ajay Jayvantrao Bhosale vs. Union of India & Ors. on construction below 20,000 sq mtrs.	13-37
4.	05.04.2023	Order in Original Application No.71/2016 (WZ) dated 06/12/2022) between Shri Ramdas Vasantao Aanerao, vs State of Maharashtra & Ors. on construction below 20,000 sq mtrs.	39-44

Item No. 4

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 63/2019(WZ)  
(I.A. No. 100/2019 & I.A. No. 86/2021)

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&amp;CC &amp; Ors.

....Respondent(s)

Date of hearing: 01.12.2022

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

Applicant : Mr. Nitin Lonkar, Advocate

Respondent(s) : Ms. Manasi Joshi, Advocate for R-1, 6 & 7  
Mr. Aniruddha Kulkarni, Advocate for R-3 to 5  
Mr. S. Swaminathan, Advocate for R-8 & 9/PCMC  
Mr. Saket Mone along-with Mr. Abhishek Salian,  
Advocates for R-11/PP

**ORDER**

1. Today this matter is listed on the issue of limitation against which objection has been filed by the learned Counsel for the Applicant.
2. Heard the arguments of learned Counsel for the Applicant Mr. Nitin Lonkar and learned Counsel for Respondent No. 11/Project Proponent-Mr. Saket Mone along-with learned Counsel Mr. Abhishek Salian.

**I.A. No. 86/2021(WZ)**

3. This I.A. has been filed by the Respondent No. 11/Project Proponent (PP), praying for dismissal of the Original Application No. 63/2019(WZ). The main ground which has been set up in this application is that Original Application is time barred, therefore, it requires to be dismissed at the threshold itself. The core issue raised by the Applicant is

that the Respondent No. 11 did not obtain prior Environmental Clearance (EC) with respect to the project in question.

4. As per the Project Proponent (PP), he commenced the construction and excavation in the year, 2012, therefore, the cause of action in respect of the alleged construction first arose in the year, 2012 which is well over 07 years from the date of the filing of the present Original Application.

5. The Sections 14 and 15 of the National Green Tribunal Act, 2010 provide for 06 months from the date when the cause of action first arose within which the Original Application ought to have filed. Therefore, if the 06 months period is calculated from the year 2012, it would expire in the year 2013 and as regards Section 15, it provides for 05 years period from the date of cause of action first arose, which too would expire in the year, 2017, while the Original Application has been filed on 14.08.2019.

6. The learned Counsel for the Respondent No. 11 has drawn our attention to para no. 40 of the main petition, where-in it is stated by the Applicant that the Project Proponent carried out illegal construction on 0 sq. mtrs. to 18500 sq. mtrs. vide sanction dated 24.11.2016.

7. As per the Applicant in O.A., the Project Proponent had intention to go on beyond 36,500 sq. mtrs. vide sanction dated 31.03.2018. The civil construction activity is recurring process. The Project Proponent/Respondent No. 11 has increased the project capacity from 0 sq. mtrs to 18500 sq. mtrs. from 2011 to 19.05.2018, therefore, it is nothing but a recurring cause of action for building construction activity.

8. The Applicant in Original Application had obtained information through online search and under RTI Act from 2017 to 18.05.2018 and thereafter had sent legal notice through Counsel to the Respondents inviting their attention towards the violations committed by the Project

Proponent. Therefore, the cause of action first arose on 15.06.2019 when SEIAA issued a Show Cause Notice to the Project Proponent.

9. Therefore, 06 months period from 15.06.2019 should be counted, which would end on 14.12.2019, while the present application has been filed on 14.08.2019, therefore, it is within time.

10. As per Respondent No. 11/Project Proponent (PP), the above contention of the Applicant in Original Application is absolutely false because the Applicant is trying to establish the date 19.05.2019 as the date, when the first cause of action arose on the basis of his having obtained information under RTI. It is further argued by the learned Counsel for the Respondent No. 11 that any person may move an RTI application on a particular date of his choice in order to create cause of action so as to bring it within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of law.

11. The learned Counsel for the Respondent No. 11 has placed reliance of the Judgment *Jai Javan Jai Kisan and ors. v. Vidarbha Cricket Association and Ors.* [MANU/GT/0006/2017], where-in relevant para no. 11 is as follows:-

*“11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and*

*Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open spaces, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.”*

12. Thereafter, the learned Counsel for the Respondent No. 11 has placed reliance on *Graminee Environment Development Foundation v. Balaji Infrastructure Ltd. & Ors.* [(2017) SCC Online NGT 1098], where-in relevant para nos. 11 to 13 are as follows:-

*“11. Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for ‘sufficient cause’ if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure ‘I to the Application (Pg.81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd, and Balaji Infrastructure Ltd.*

*12. In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as ‘cause of action’ but the actual act or its consequence constitutes ‘cause of action’ in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.*

**13.** *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.”*

13. Based on the above provisions of law, it is vehemently argued by the learned Counsel for the Respondent No. 11/Project Proponent that the present application is time barred and needs to be dismissed on that ground alone.

14. During argument, the learned Counsel for the Applicant in Original Application has pointed out that he is relying on para no. 18.25 & 18.26 of the reply affidavit dated 26.10.2021, mentioned at page nos. 981 to 986 of the paper book, which are as follows:-

**“18.25.** *I state that, this Hon-ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgment dated*

7<sup>th</sup> May, 2015”, reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

“24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

**18.26** Further I state that, the **Forward Foundation** Judgment was challenged before the Hon'ble Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494** has specifically held vide judgment dated 5<sup>th</sup> March, 2019 and has confirmed the said judgment

of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

*"In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal"*

*The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment"*

*"The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment."*

*"Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."*

15. The Applicant in Original Application has also placed reliance upon the important dates and events, which have been quoted by him in para

14 of the reply affidavit, mentioned at page nos. 926 to 928 of the paper book, which are as follows:-

**“14. IMPORTANT DATES AND EVENTS:**

*I state that, the following events and dates are very important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;*

Sr. No.	Events	Date
1.	<u>1<sup>st</sup> Application for EC</u>	<u>07.09.2013</u>
2.	<u>1<sup>st</sup> Show Cause Notice by SEIAA &amp; PS- DoE</u>	<u>30.08.2014</u>
3.	<u>1<sup>st</sup> Withdrawal Communication for SCN</u>	<u>10.03.2015</u>
4.	<u>1<sup>st</sup> Consent to Establish</u>	<u>10.03.2015</u>
5.	<u>2<sup>nd</sup> Application for EC</u>	<u>30.06.2016</u>
6.	<u>2<sup>nd</sup> Consent to Establish</u>	<u>12.10.2017</u>
7.	<u>3<sup>rd</sup> Application for EC</u>	<u>06.10.2018</u>
8.	<u>Notice/ Complaint of Original Applicant</u>	<u>19.05.2019</u>
9.	<u>MPCB 1<sup>st</sup> Site Visit by Field Officer</u>	<u>10.06.2019</u>
10.	<u>2<sup>nd</sup> Show Cause Notice by SEIAA &amp; PS- DoE</u>	<u>15.06.2019</u>
11.	<u>MPCB 2<sup>nd</sup> Site Visit by SRO-2</u>	<u>27.06.2019</u>
12.	<u>Filing of OA</u>	<u>14.08.2019</u>
13.	<u>First Order of NGT</u>	<u>22.10.2019</u>
14.	<u>Service to Joint Committee of SEIAA &amp; MPCB</u>	<u>02.11.2019</u>
15.	<u>Personal hearing given to PP by PS-DoE</u>	<u>11.11.2019</u>
16.	<u>2<sup>nd</sup> Withdrawal Communication for SCN</u>	<u>16.11.2019</u>
17.	<u>Second Order of NGT</u>	<u>10.12.2019</u>
18.	<u>Joint Committee Visit to project site</u>	<u>15.12.2019</u>
19.	<u>Architect Certificates prepared on</u>	<u>20.12.2019</u>
20.	<u>Joint Committee Report filed to NGT</u>	<u>07.01.2020</u>
21.	<u>Third Order of NGT issuing Notice 86 Show cause to PP</u>	<u>05.02.2020</u>
22.	<u>Service to the Respondent No. 11-PP</u>	<u>15.02.2020</u>
23.	<u>Grant of ex-post facto EC</u>	<u>18.02.2020</u>
24.	<u>Appeal No. 26/2020 filed on</u>	<u>19.03.2020</u>
25.	<u>Fourth Order of NGT</u>	<u>13.07.2020</u>
26.	<u>Respondent No. 11-PP Reply Affidavit Sworn on</u>	<u>24.09.2020</u>
27.	<u>Respondent No. 11-PP filed</u>	<u>24.09.2020</u>
28.	<u>Fifth Order of NGT</u>	<u>03.09.2021</u>
29.	<u>Respondent No. 11-PP filed 86/2020 filed on</u>	<u>06.10.2021</u>
30.	<u>Respondent No. 11-PP Corrected Reply Affidavit served on Original</u>	<u>09.10.2021</u>

	<u>Applicant</u>		"
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16. He has argued that in this case, there is recurring cause of action and therefore, the date which has stated in his application i.e. 15.06.2019, when the SEIAA issued a Show Cause Notice to the Project Proponent, should be treated to be the date of cause of action.

17. We have heard the arguments of the parties and perused the record and also have gone through the Judgments, which have been relied upon by both the parties, we find that as far as legal position is concerned, Sections 14 & 15 of the National Green Tribunal Act, 2010 provide as follows:-

*“Section 14:- Tribunal to settle disputes.-*

- (1) .....*
- (2) .....*
- (3) No application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:  
  
Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”*

*Section 15:- Relief, compensation and restitution –*

- (1) .....*
- (2) .....*
- (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:  
  
Provided that the Tribunal, may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”*

18. According to the Applicant in Original Application, as per his own pleadings which are stated in para no. 40, it is clear that construction of the project by the Project Proponent was started in the year 2011 and continued till 19.05.2018. He states that he had obtained information

through online search and under RTI from 2017 to 18.05.2018. Thereafter, he had sent legal notice through Counsel on 19.05.2019. According to him, the SEIAA had issued first Show Cause Notice on 15.06.2019. Therefore, that date should be taken to be the date of cause of action, which first arose.

19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred.

20. All connected I.A.s also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

December 01, 2022  
Original Application No. 63/2019(WZ)  
(I.A. No. 100/2019 & I.A. No. 86/2021)  
P.Kr

**1507****IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 456 OF 2023****AJAY JAYVANTRAO BHOSALE . . . . . APPELLANT(S)****VERSUS****UNION OF INDIA & ORS. . . . . RESPONDENT(S)****O R D E R**

We have been informed that the respondents had applied and were given Environment clearance in the year 2020. The Environment Clearance certificate has been challenged by the appellant in separate proceedings.

In view of the aforesaid position, we are not inclined to issue notice in the present appeal and hence, the same is dismissed.

We, however, clarify that the dismissal of the present appeal will have no bearing on the challenge made by the appellant to the grant of Environment Clearance Certificate.

Pending application(s), if any, shall stand disposed of.

.....J.  
(SANJIV KHANNA)

.....J.  
(M.M. SUNDRESH)

Signature Not Verified

Digitally signed by  
BABITA PANDEY  
Date: 2023.03.23  
16:52:30 IST  
Reason:

**NEW DELHI;  
MARCH 21, 2023.**

**1508**

ITEM NO.10

COURT NO.7

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). 456/2023

AJAY JAYVANTRAO BHOSALE

Appellant(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(IA No.15239/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.15243/2023-STAY APPLICATION and IA  
No.15242/2023-EXEMPTION FROM FILING O.T. )

Date : 21-03-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. Pulkit Agarwal, AOR  
Mr. Prashant Bhushan, Sr. Adv.  
Mr. Shailesh Mandiyal, Adv.  
Mr. Tanaji Gambhire, Adv.  
Mr. Nitin Lonkar, Adv.  
Ms. Sonali Suryavanshi, Adv.  
Ms. Pradnya Bheke, Adv.  
Mr. Sudhanshu Kaushesh, Adv.  
Mr. Palav Agarwal, Adv.

For Respondent(s) Mr. Saket Mone, Adv.  
Ms. Anshula Vijay Kumar Grover, AOR  
Mr. Abhishek Salian, Adv.  
Ms. Nitika Grover, Adv.  
Mr. Devansh Shah, Adv.

UPON hearing the counsel, the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)  
COURT MASTER (SH)

(R.S. NARAYANAN)  
COURT MASTER (NSH)

(Signed order is placed on the file)

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

(By Video Conferencing)

**Appeal No. 26/2020 (WZ)**

**IN THE MATTER OF :**

**1. Mr. Ajay Jayvantrao Bhosale**

Age: Adult, Occupation: Self employed,  
R/o-25B, Cycle Society, Nana Peth,  
Near Y. M. C. Club, Pune-411011,  
Mob. No. 9673902727  
E-mail: [ajaybhosale2772@gmail.com](mailto:ajaybhosale2772@gmail.com)

**.....Appellant**

**Versus**

**1. Union of India,**

Through Secretary,  
Ministry of Environment and Forest,  
Paryavaran Bhawan, CGO complex,  
Lodhi Road, New Delhi-110001  
Email: [secy-moef@nic.in](mailto:secy-moef@nic.in)

**2. Chief Secretary,**

Government of Maharashtra,  
Annex Building, Mantralaya, Mumbai 400032  
E-mail: [chiefsecretary@maharashtra.gov.in](mailto:chiefsecretary@maharashtra.gov.in)

**3. The Principle Secretary, Environment Department,**

Government of Maharashtra,  
Room No. 217, 2<sup>nd</sup> Floor, Annex Building  
Mantralaya Mumbai-400032, Maharashtra  
Email Address: [psec.env@maharashtra.gov.in](mailto:psec.env@maharashtra.gov.in)

**4. State Level Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**

Through Member Secretary,  
15<sup>th</sup> Floor, New Administrative Building,  
Mantralaya, Mumbai-400032, Maharashtra  
Email: [psec.env@maharashtra.gov.in](mailto:psec.env@maharashtra.gov.in)

**5. State Expert Appraisal Committee (III)- Maharashtra (SEAC-III)**

Through Member Secretary,  
15<sup>th</sup> Floor, New Administrative Building,  
Mantralaya, Mumbai-40032, Maharashtra

**6. Mr. Anil U. Diggikar**

Principle Secretary of DoE and Member Secretary- SEIAA,

Government of Maharashtra,  
Room No. 217, 2<sup>nd</sup> Floor, Annex building,  
Madam Kama Road, Mantralaya,  
Mumbai-400032, Maharashtra  
Email: [psec.env@maharashtra.gov.in](mailto:psec.env@maharashtra.gov.in)

**7. Maharashtra Pollution Control Board,**

Through Member Secretary,  
Kalptaru Point, 3<sup>rd</sup> Floor, Near Sion Circle,  
Opp. Cine Planet Cinema, Sion(E)  
Mumbai-400022, Maharashtra  
Email: [ms@mpcb.gov.in](mailto:ms@mpcb.gov.in)

**8. Municipal Commissioner-PCMC**

Pimpri-chinchwad Municipal Corporation,  
PCMC Building, Old Mumbai- Pune Highway,  
Pimpri, Pune-411018  
Email: [commissioner@pcmcindia.gov.in](mailto:commissioner@pcmcindia.gov.in)

**9. City Engineer- PCMC**

Pimpri- Chinchwad Municipal Corporation,  
PCMC Building, Old Mumbai- Pune Highway,  
Pimpri, Pune-411018,  
Email: [bldp@pcmcindia.gov.in](mailto:bldp@pcmcindia.gov.in)

**10. Collector of Pune,**

As Collector and President of District Environment,  
Protection Committee-Pune,  
Collector Office, Bund Garden,  
Pune-411001  
Email: [rdc.pune-mh@gov.in](mailto:rdc.pune-mh@gov.in)

**11. M/s Bramha Leisures Private Limited,**

A limited Company registered under Indian Company  
Act-1952 with (CIN) U 55101PN2009PTC134096,  
**Having Registered Office At-**"Bramha House", 250/251  
M. G. Road, Camp Pune-411001.  
Email: [vishal574@yahoo.co.in](mailto:vishal574@yahoo.co.in)  
Through its Directors  
11A Surendrakumar Bramhadutta Agrawal  
11B Vishal Sreन्द्रakumar Agrawal

....Respondent(s)

**Counsel for Appellant(s):**

Mr. Tanaji Gambhire, Advocate

**Counsel for Respondent(s):**

Ms. Manasi Joshi, Advocate for R-1 /MoEF&CC & R-7 MPCB  
Mr. Aniruddha Kulkarni, Standing Advocate for R-4/SEIAA & R-5 /SEAC-III  
Mr. S. Swaminathan, Advocate for R- 8 & 9/PCMC  
Mr. Saket Mone along with Mr. Abhishek Salian, Advocate for R-11/PP

**PRESENT:**

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

**Reserved on : 23.03.2023**

**Pronounced on : 03.04.2023**

**JUDGMENT**

1. This Appeal has been preferred for quashing Environmental Clearance dated 18.02.2020 granted by the Respondent No.4 /SEIAA Maharashtra to Respondent No.11-M/s Bramha Lesure's Private Limited/ Project Proponent; also it is prayed that the direction be issued to Respondent No.2/ Chief Secretary Government of Maharashtra to take action against the Respondent No.6/Anil U. Diggikar, Principal Secretary and Member Secretary SEIAA for indulging into granting Environmental Clearance (EC) illegally.

**2. The brief facts of this cases as submitted by the Appellant are as follows:**

The Respondent No.11/Project Proponent has procured ex-post facto Environmental Clearance dated 18.02.2020 to regularize illegal commercial buildings project 'Bramha Uzuri' situated at Survey No. 209/A/2 CTS No. 4702, at Pimpri Chowk Taluka- Haveli, District- Pune. The Appellant had earlier filed Original Application No. 63/2019 against the Project Proponent (PP) for not obtaining Environmental Clearance and for violation of terms and conditions of Consent to Establish dated 10.03.2015. This Tribunal had appointed Joint Committee of State Level Environment Impact Assessment Authority-Maharashtra (SEIAA) and Maharashtra Pollution Control Board (MPCB) vide order dated 22.10.2019 which submitted its report dated 07.01.2020 disclosing therein that the Project Proponent (PP) had carried out construction of 13806.52sq.m without obtaining prior EC, for which the National Green

Tribunal(NGT) issued show cause notice to Project Proponent for stoppage of further construction activity and also notices to all other Respondent vide order dated 05.02.2020. A notice was served upon all the Respondents on or before 17.02.2020, but in spite of service of notice and having advance knowledge of ongoing proceedings of Original Application No. 63/2019, Respondent No.4/ SEIAA, Maharashtra and Respondent No.6- Mr. Anil U. Diggikar in personal capacity granted EC on 18.02.2020. It is further submitted that the as per the EIA Notification 2006 dated 14.09.2006, it is mandatory on the part of the Project Proponent (PP) to obtain the prior Environmental Clearance (EC) from SEIAA and Consent to Establish from MPCB before commencement of any construction work, yet the Project Proponent (PP) has started and completed substantial part of the project, details of which are given below:

Description	EC Permission	Completed Construction as per Joint Committee Report prior to EC	Total Proposal
Built -Up Area (M <sup>2</sup> )	0	13806.52	54600
13. Note on the initiated work (if Applicable)		Work initiated below 20000 sq. M. Withdrawal of Violation Letter from Government of Maharashtra vide letter No. SEAC-2013/ CR-449 / TC-2DT. 10.03.2015	

The concept of ex-post facto Environmental Clearance (EC) is not permissible under Environmental jurisprudence in our country. The EC

in question is ex-post facto. Respondent No.4/SEIAA had full knowledge of the fact that the construction of 13806.52 sq.m. against the total potential BUA of 54600M<sup>2</sup> had already been carried out without Environmental Clearance (EC) and that matter was *subjudice* before this Tribunal, yet it proceeded to grant Environmental Clearance (EC) ex post facto. If the EC is allowed ex-post facto, any Project Proponent (PP) would complete its project by causing irreversible damages to the Environment and thereafter would seek Environment Clearance, ex-post facto, making the provisions of EIA Notification infructuous, which would defeat the very purpose of Environmental Protection Law. The SEIAA had failed to take any action against the Project Proponent for violation of EIA Notification 2006. SEIAA as well as Expert Committee- SEAC is equally liable for allowing the illegal structures of expansion and granting Environmental Clearance (EC) to the project in gross violation of EIA Notification, 2006. Reliance is placed on several judgments of Hon'ble Apex Court such as ***Common Cause vs. Union of India (2017) 9 SCC 499 to 578, Civil Appeal No. 10854/2016***. The Project Proponent (PP) has carried out construction of residential as well as commercial structures in industrial zone reserved in development plan and undertook excavation activity in 2012 and construction activity in December-2017. The Project Proponent (PP) has not preserved the top layer of the fertile soil nor did it conduct ground water test. Under ground water was used from bore well at project site without appropriate clearance. Hence, the above prayers have been made.

3. This matter was first considered on 13.07.2020 with Original Application No. 63/2019, Original Application No. 64/2019 and Original Application No. 65/2019 mentioning therein that all said Applications were connected matters arising out of the same cause of action and the next date was fixed to be 29.09.2020. On the next date Original Application No. 63/2019 along with the present Appeal were heard together and

direction was given for issuance of notices to the Respondents 1,3,4,5,7,8,9,10 and 11 as other respondents had already appeared. Thereafter, on the next date 10.12.2021, no material order was passed. On 10.12.2021, for the first time, this Bench had taken up this matter for consideration and recorded that the pleadings were not complete in this case and directed the Respondents to file reply affidavits and posted the matter for final hearing on 23.03.2023. This matter was finally heard on 23.03.2023.

4. The stand of **Respondent No.11/Project Proponent (PP)** is as follows:

Denying the allegation made by the Appellant, it is submitted that the Appellant has no *locus standi* being not an aggrieved party. Appellant resides about 10 Kilometres away from the location of the project, therefore he, in no way could be affected by the execution of the said project. For instant project, which has been classified as the category 8 (a) B(2) under EIA Notification 2006, as per said provision the same is exempted from scoping and public consultation. Environmental Clearance (EC) was required to be obtained from SEIAA. All the necessary steps were scrupulously followed by the Respondent No.3/SEIAA as well as other authorities after taking into consideration all relevant aspects concerning the environment and found this case to be a fit one to grant of Environmental Clearance (EC). The object of the EIA process is to ensure that all the environmental aspects were examined prior to granting EC and that environment as well as development concerns were appropriately balanced on the basis of accurate information and following a detailed and exhaustive procedure laid down for the purpose. When the experts apply their mind and follow the detailed procedure as mandated by law before granting Environmental Clearance (EC), the same would be treated to be valid unless there are allegations of procedural impropriety, non-application of mind or malafide. The Appellant should invoke its Appellate jurisdiction

under Section 16 (h), only in those cases where the Appellant proves or alleges that an Environment Clearance (EC) is granted arbitrarily, or capriciously or perversely or where the authority has ignored settled principles of law or procedure, but none of these grounds stands fulfilled here. This Tribunal ought not to rely on the material and information provided by the Appellant in order to reach different conclusion from the one reached by the Authority, when the Authority had considered them following due process. In view of the above, Appeal deserves to be dismissed at the very threshold.

Further, it is mentioned that the Commencement Certificate (CC) was obtained on 28<sup>th</sup> March 2008, for a Total Built up Area (BUA) of 17595 sq. m (FSI 8535.48 + Non FSI 9059.56 sq.m), in furtherance of which excavation activity was commenced. As the total permissible built up area in the Commencement Certificate (CC) was below the threshold limit of 20000 sq. m., the Answering Respondent did not apply for grant of prior EC. Thereafter, on 9<sup>th</sup> April, 2013, Answering Respondent obtained a Commencement Certificate (CC) for construction of 21368.3 sq. m. (FSI 9285.51 sq. m + Non FSI 12082.77 sq. m). On 7<sup>th</sup> September, 2013, the Answering Respondent applied for EC in order to commence construction. On 24<sup>th</sup> March, 2014, the Hon'ble Bombay High Court in Writ Petition No. (L) 655 of 2014, **Glomore Construction and Ors. Vs. the Union of India & ors** ruled that EC was not required to be obtained by the Project Proponent as long as the Project Proponent had not carried out construction beyond the threshold limit of 20,000 sq. m. On 4<sup>th</sup> July, 2014, the Answering Respondents had applied for Consent to Establish. In meetings held by the SEAC between 15<sup>th</sup> to 18<sup>th</sup> July 2014, the Answering Respondent's proposal was considered for grant of EC by the SEAC, wherein the proposal was declared as a violation case and show cause notice was issued to the Answering Respondent under Section 5 of the Environment Protection Act, 1986 (EP Act) read with EIA Notification

2006 mentioning therein that the Answering Respondent had violated the environmental mandate by commencing construction without prior EC. A detailed reply was submitted by the Answering Respondent on 28<sup>th</sup> September, 2014. Thereafter on 10<sup>th</sup> March, 2015, the Environment Department, Government of Maharashtra withdrew the show cause notice and declared that the Answering Respondent's proposal would not fall in violation category. Such conclusion was arrived at after carefully considering and verifying the reply. The basis for withdrawal of the said notice was that Answering Respondent had commenced excavation/ construction activity in furtherance of Commencement Certificate (CC), whereby permission was granted for construction upto 17595 sq. m., same being below 20,000 sq. m., which did not require prior EC to be obtained. On 10<sup>th</sup> March 2015, the MPCB granted Consent to Establish (CTE) for five (5) years or up to commissioning of the proposed hotel. On 21<sup>st</sup> April, 2015, a circular was issued by Environmental Department, Government of Maharashtra categorically observing that EC would not be required to carry out construction as long as the actual construction remained below threshold limit on 20,000 sq. m, which has not been challenged and is still subsisting. On 30<sup>th</sup> September, 2015, the answering Respondent had obtained another Commencement Certificate for carrying out construction upto 22010.3 sq. m. (FSI 9260.12 sq. m. + Non FSI 12750.16 sq. m). On 30<sup>th</sup> June, 2016, the Answering Respondent had applied for EC with respect to the said project because of proposed construction exceeding threshold limit of 20,000 sq. m. On 24<sup>th</sup> November, 2016, the answering Respondent had obtained commencement certificate for carrying out construction upto 21213.9 sq. m (FSI 8835.93 sq. m. + Non FSI 12377.95 sq. m. ). In or around the year 2016 to 2017, the answering Respondent carried out construction of the present project relying on the judgment of Hon'ble Bombay High Court in Writ Petition No. (L) 655 of 2014, **Glomore Construction and**

**Ors. Vs. the Union of India & ors** and circular dated 21<sup>st</sup> April, 2015 and has not, till date exceeded the construction beyond the threshold limit of 20,000 sq. m. On 28<sup>th</sup> April, 2017, the answering Respondent had applied for Consent to Establish which was granted on 12<sup>th</sup> November, 2017 for a period of five years pursuant to which construction is being carried out upto 51358.46 sq. m. On 31<sup>st</sup> March, 2018, the answering Respondent had obtained commencement certificate for carrying out construction upto 19991.4 sq.m (FSI 6998.59 sq. m. + Non FSI 12992.76 sq. m.). On 4<sup>th</sup> October, 2018, a Layout Plan was sanctioned by PCMC/Respondent No.8-Municipal Commissioner and Respondent No.9-City Engineer. On 5<sup>th</sup> December, 2018, in it's 77<sup>th</sup> meeting, the SEAC considered the Answering Respondent's application for grant of EC which was deferred because of non-presence of Answering Respondent. In the meeting of SEAC dated 24<sup>th</sup> April, 2019, the proposal for EC was considered and SEAC appraised the proposal of the answering Respondent and certain queries were raised. On 19<sup>th</sup> May 2019, the Appellant made a complaint with various authorities including the MPCB raising identical issues which are sought to be raised in the present Appeal as well as were raised in Original Application No. 63 of 2019. On 22<sup>nd</sup> May, 2019, MPCB conducted site visit of the said project. Thereafter, on 10<sup>th</sup> June, 2019, another site visit was conducted by the MPCB. On 25<sup>th</sup> July, 2019, the Environment Department, Government of Maharashtra, issued a show cause notice to the answering Respondent and called upon to show why coercive action be not initiated against it in furtherance of the complaint of the Appellant. In the meeting of SEAC held on 26<sup>th</sup> July, 2019 Answering Respondent's proposal was considered and it was observed that the Environment Department, Government of Maharashtra had issued the answering Respondent a show cause notice. Therefore, SEAC postponed the hearing for 26<sup>th</sup> July, 2019 and kept the proposal of the answering Respondent in abeyance till

any decision was taken on the show cause notice. On 29<sup>th</sup> June, 2019, the MPCB issued a show cause notice to the answering respondent as to why legal action be not initiated under the Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981 and Hazardous & Waste Rules, 2016, which was responded by the Answering Respondent on 29<sup>th</sup> June 2019, 16<sup>th</sup> July, 2019 and 20<sup>th</sup> August 2019. The Responses are contained in sub para a) to d) of paragraph 6.31 of the Affidavit of Answering Respondent/ Project Proponent, which are as follows:

- a) *"The Respondent No.11 has not violated any provisions of the Environment law.*
- b) *The Respondent No.11 commenced construction/ excavation in pursuance of the commencement certificate issued in the year 2008. Wherein the permissible built up area was 17595 sq. m. which is much below the threshold limit, therefore, the Respondent No.11 was not required to obtain EC prior to commencing construction.*
- c) *The Respondent No.11 subsequently changed the plans with regards the said property and obtained various commencement certificate. As the construction exceeded the threshold limit to 20,000 m. after amendment in the construction plan, the Respondent No.11 made an application for grant of EC in the year 2013. However, such EC was not granted.*
- d) *The Respondent No.11 relying on the circular issued by the Environment Department, State of Maharashtra on 21<sup>st</sup> April 2015 commenced construction. It is worth mentioning at this juncture that till date the Respondent No.11 has not exceeds the threshold limit of 20,000 sq. m."*

The main thrust in the response has been laid on the fact that the Project Proponent did not exceed construction beyond 20,000 sq. m., hence did not require prior EC. on 16<sup>th</sup> November, 2019, the Environment Department withdrew the proposed directions dated 15<sup>th</sup> June, 2019, issued under Section 5 of the Environment Protection Act, 1986 (EP Act) read with the EIA Notification 2006 after due consideration and verification of the submission of the Project Proponent. The reasons

why the notice was withdrawn have been recorded in sub para a) to d) of Paragraph 6.33 of the Affidavit of Answering Respondent/ Project Proponent, which are as follows:

- a) *The Respondent No.11 commenced construction as per commencement certificate issued in the year 2008.*
- b) *As the plans were revised and the total built up area exceeds 20,000 sq. m, the Respondent No.11 applied for grant of EC on 7<sup>th</sup> September, 2013 and 30 June, 2016.*
- c) *Relying on the circular issued by Environment Department, Government of Maharashtra dated 21<sup>st</sup> April, 2015, the Respondent No.11 has carried out construction upto 8467.69 sq. m.*
- d) *It is clear that construction is below 20,000 sq. Mtrs, and thus, is excluded from getting environment clearance as per provision of the EIA notification. Further, if the Respondent No.11 exceeds construction over 20,000 sq. m, it is required to obtain an EC.*

The main thrust in withdrawing the notice was on the fact that the threshold level of 20,000 sq.m was to exceed pursuant to the revised plan/commencement certificate dated 9<sup>th</sup> April, 2013, therefore, the answering Respondent had applied for EC on 7<sup>th</sup> September, 2013 and 30<sup>th</sup> June, 2016 but till then, construction was below 20,000 sq. m. The SEIAA in its meeting held on 10<sup>th</sup> December, 2019 again considered the proposal of answering Respondent and took notice of the fact that the notice issued to the Answering Respondent under Section 5 of the Environment Protection Act, 1986 (EP Act) had been withdrawn on 16<sup>th</sup> November, 2019 and that SEAC also observed that the answering Respondent had complied with all the points raised in 91<sup>st</sup> meeting, therefore, it recommended the grant of EC to the answering Respondent. After 6<sup>th</sup> February 2020, SEIAA granted EC to the answering respondent subject to complying with certain conditions, pursuant to the same on 18<sup>th</sup> February, 2020, the final grant of EC was made in favour of the answering Respondent which has been impugned herein. Having cited the above course of proceedings, it is mentioned that the entire

procedure has been followed in accordance with law. Therefore, the appeal deserves to be rejected.

5. The stand of **Respondent No.4/SEIAA** is as follows:

Through its affidavit dated 21.02.2023 at page No. 1053 to 1059 of the paper book, the facts narrated by it are almost identical to the facts which have already been mentioned by us above in the affidavit of the Project Proponent. We find it to have been said by the SEIAA that in its 99<sup>th</sup> Meeting held on 10.12.2019, it was noted that the earlier issued show cause notice under Section 5 of the Environment (Protection) Act, 1986 had been withdrawn by the Environment Department vide letter dated 16.11.2019 and that all issues relating to the Environment including air, water, land, soil, ecology, biodiversity and social aspects were examined and after being satisfied in regard to the fact that the Project Proponent had satisfactorily complied all the points raised in the 91<sup>st</sup> Meeting of the SEAC-III, recommendation was made to it by SEAC for grant of EC. The said recommendation was considered by the SEIAA in its 186<sup>th</sup> meeting dated 06.02.2020 which included conditions that the Project Proponent would ensure that the CER (Corporate Environmental Responsibility) plan is got approved from Municipal Commissioner/ District Collector and Standard EC conditions would be complied with by the Project Proponent as mentioned in Office Memorandum issued by the MOEF&CC dated 04.01.2019, and accordingly it granted EC in its meeting held on 06.02.2019.

6. The stand of **Respondent No.7/MPCB** is as follows:

The Project Proponent had obtained first consent to Establish on 10.03.2015 for TPA-9337.66 sq. m. & BUA 36611.49 sq. m subject to certain terms and conditions stipulated therein, where-in Bank Guarantees of Rs. 10 lakh & Rs. 5.0 lakh & Rs. 2.0 Lakh were to be furnished but the Bank guarantee demanded had not been submitted. The answering Respondent granted revised Consent to Establish to

Project Proponent on 12.10.2017 for Total Built up Area (BUA) 51358.46 sq. m. including utilities and services as per Commencement Certificate issued by Local Bodies. It is further submitted that the Project Proponent submitted Bank Guarantee of Rs. 10 Lakh as per Consent Condition. The said Bank Guarantee is valid up to 11.10.2022. The answering Respondent has granted amendment in Consent to Establish for construction of Commercial development Project on 13.11.2020 which is valid up to 31.10.2022, which is granted for Total Built up Area 5466789 sq.m. as per the Environmental Clearance dated 18.02.2020.

7. We have heard the learned counsel for the parties and perused the record.
8. From the side of the Appellant following arguments have been made.

There is no provision for ex-post facto EC in EIA Notification 2006, therefore, the Environmental Clearance (EC) in question deserves to be set aside. Thereafter, the appellant drew our attention to Page No. 934 of the paper book which gives chronology in respect of the Environmental Clearance (EC), Consent to Establish and Consent to Operate. Thereafter, he drew our attention to Page No. 949 of the paper book which shows that initially commencement certificate was issued to the Project Proponent on 28.03.2008 for the Total Built up Area (BUA) 17995.00 sq. m. for which no Environmental Clearance (EC) was required. On 09.04.2013, the Project Proponent enhanced the Total Built up Area to 21368.30sq.m.,thereafter, the Project Proponent had applied for Environmental Clearance (EC) on 09.05.2013 because the Total Built up Area (BUA) of construction exceeded threshold limit of 20,000 sq. m. Subsequent Commencement Certificates dated 30.09.2015, 24.11.2016, 31.03.2018, 04.10.2018, 16.05.2019 and 08.01.2020 have been shown to have been granted for different Total Built up Areas (BUA) with the conditions imposed while granting these commencement certificate, that EC would be obtained prior to initiating

the construction beyond the 20,000 sq. m. Attention is also drawn by the learned counsel for the Appellant to Page No. 950 of the paper book which contains Maharashtra Pollution Control Board's (MPCB) consents and conditions for obtaining Environmental Clearance, where-in it is recorded that Consent to Establish granted on 10.03.2015 for Total Built up Area (BUA) 36611.49 sq. m., stipulates consent condition No.12 mandating obtaining prior Environmental Clearance. Similarly, Consent to Establish granted on 12.10.2017 for Total Built up Area 51358.46 sq. m. stipulates condition No.12 related to the same that is the Project Proponent would obtain prior Environmental Clearance (EC). The main thrust of the Appellant's argument appeared to be that when the Project Proponent had in mind the larger construction to be made i.e. beyond the 20,000 sq. m., in that condition he was required to obtain prior Environmental Clearance even if construction had not exceeded 20,000 sq. m. In view of this it was emphasized by him that the impugned EC which has been granted, should be treated to have been granted *ex-post facto*. There is no provision for ex post facto Environmental Clearance, therefore the construction made by the Project proponent prior to obtaining EC needs to be treated to have been made in violation and for that Environmental Compensation should be assessed / levied from it.

9. On the other hand, from the side of the Respondent No.11/ Project Proponent mainly it has been hammered that the judgment of Hon'ble Bombay High Court in Writ Petition No. (L) 655 of 2014, **Glomore Construction and Ors. Vs. the Union of India & ors.** says that there was no requirement for prior Environmental Clearance (EC) to be obtained for the present project as long as the Project Proponent did not exceed actual construction beyond 20,000 sq. m. and he has also placed reliance on judgment of Hon'ble Bombay High court in Writ Petition Lodging No. 470 of 2013, M/s Saumya Buildcon Pvt. Ltd. Vs. Union of India &Ors. delivered on 6<sup>th</sup> March, 2013, where-in emphasis has been

laid on Para- 17 which is quoted herein-below for the sake of convenience :

*“17. We do, however, find some substance in the last submission made by the learned counsel for the petitioner that even if the petitioner is required to obtain CRZ clearance from MCZMA again on the basis that the built up area of the project will exceed 20,000 sq. m., the petitioner is entitled to get the same reliefs which this court has been granting in case of many other parties where similar prayer was made. In Writ Petition No. 1916 of 2012 (Vardhman Developers Limited Vs. Union of India &Ors.) and Writ Petition No. 2809 of 2012 (Nahur Vivekanad Co-operative Housing Society Ltd. &Anr. Vs. Union of India &Ors.). We have rejected a similar contention urged on behalf of the respondent authorities that when the project proponent cannot undertake construction project for more than 20,000 sq. m of built up area without obtaining prior environmental clearance, the project proponent cannot be allowed to commence the construction within the limits of 20,000 sq. m of built up area without obtaining prior environmental clearance. This court has held that when clearance are required only for projects with built up area exceeding 20,000 sq. meters, redevelopment projects for residential buildings should not be unnecessarily delayed even to the extent of construction upto 20,000 sq. meters when the developer is ready to give undertaking not to exceed the construction beyond 20,000 sq. meters without first obtaining environmental clearance. This court has noted that the Authorities take considerable time for taking a decision on the application for environmental clearance or for CRZ clearance. In the meantime the redevelopment projects are being delayed. This court has granting relief in such cases on the basis that even if ultimately the authorities were to reject the applications for clearance, there will be no illegality in so far as the developer has made construction upto 20,000 sq. meters.”*

10. The relevant portion of the judgment of Hon'ble Bombay High Court in Writ Petition No. (L) 655 of 2014, **Glomere Construction and**

**Ors. Vs. the Union of India &ors.,** delivered on 24<sup>th</sup> March, 2014 is as follows:

*“2. The grievance of the Petitioners is that though the Petitioners propose to construct the buildings, which are less than 20000 sq. m. and though this court, in number of cases, has held that for construction of buildings, which are below 20000 sq. m., environmental clearance is not required, even then, Respondents State have issued a stop work notice, directing the Petitioners to stop the construction work of the building which are in project and are admittedly below 20000 sq. m. It is submitted that the petitioners have given an undertaking that they shall not carry out construction work of the buildings beyond 20000 sq. m. It is submitted that in view of this, the impugned notice which has been issued by the Respondent No.3 may be stayed.”*

*“3. This court in several petitioners, has already held that Environmental Clearance for the purpose of construction of building below 20000 sq. m. is not required and the said orders have not been challenged by the Government of Apex Court. A Notification, accordingly, has been issued by the State government recently, taking into consideration, the law laid down by this court. In spite of that, the impugned notice has been issued by Respondent No.2 Prima facie, therefore, case is made out for grant of ad-interim relief.”*

Based on the above, learned counsel vehemently argued that it is absolutely clear that the above judgment of the Hon'ble Bombay High Court, which has jurisdiction over this Tribunal, have to be respected and based on that position of law only, the judgment in the present case should be delivered.

11. From the side of the Applicant, in rebuttal, the reliance is placed on the judgment passed by this Tribunal in Appeal No. 66 of 2014, **Sunil Kumar Chugh & Anr. Vs. Secretary, Environment Department Government of Maharashtra 5 others**, delivered on 3<sup>rd</sup> September, 2015, wherein reliance has been placed on Para 22, which is quoted herein-below for the sake of convenience:

*"22. Several judgments of the Hon'ble High Court of Judicature at Bombay namely, copy of order dated 29.03.2012 in Naresh Janardhan Mali Vs. The State of Maharashtra and Ors., copy of order dated 24.09.2012 in Vardhaman Developers ltd. Vs. Union of India, copy order dated 16.01.2013 in Nahur Vivekanad CHS Vs. Union of India, Copy order dated 06.03.2013 in Saumiya Buildcon Pvt. Ltd. Vs. Union of India, Copy of order dated 09.05.2013 in Tridhatu Ventures LLP Vs. State of Maharashtra, copy of order dated 21.06.2013 in vision Developers Vs. Union of India, Copy of order dated 18.12.2013 in vardhaman Developers Ltd. Vs. Union of India, copy of order dated 24.03.2014 in Glomore Construction Vs. Union of India were cited to buttress the claim that the construction without prior Environment Clearance was legally permissible. In answer, Learned Counsel appearing on behalf of the appellants submitted that these judgments cannot be regarded as a law declared and will not be binding upon this Tribunal, more particularly so because the Hon'ble High Court gave permission to construct up to 20,000 sq. meters without Environment Clearance only on a case to case basis and did not expound law with reference to EIA Notification, 2006. It is true that the said judgments cannot be regarded as a law declared and binding all courts within the territory of India as is the law declared by the Supreme Court under Article 141 of the Constitution. However, if the expounding of the law has been made by the Hon'ble High Court, such exposition of law will certainly have persuasive effect on us. On perusal of these judgments one finds merit in the submission made by the appellants that the Hon'ble High Court dealt with the exigencies of the fact situation on case to case basis and granted permissions to*

*construct up to 20,000 sq. meters without Environmental Clearance. Nowhere we find that the Hon'ble High Court considered the scope and scheme of the EIA Notification, 2006 and expounded the law concerning need to have prior EC for the construction as specified in Entry 8 (a) of EC Regulation, 2006. Significantly, in Vardhaman Developers case the Hon'ble High Court, directed the petitioners not to claim any equity on the basis of the order made and further clarified that no equity shall be created in favour of the petitioner when its application for Environment Clearance is considered by the Authority and the authority was to consider such proposals for Environment Clearance on its merits without being influenced by the order. The judgments, therefore, need not persuade us to hold that the Respondent No.5 is without any blame of violating EIA Notification, 2006 by undertaking construction and continuing with it before the Environmental Clearance was granted."*

12. Having relied upon the above judgment the learned counsel for the appellant has distinguished the facts of **Glomore Construction and Ors. Vs. the Union of India &ors**, from the facts of the case in hand and pointed out that the view taken by the Hon'ble Bombay High Court in that case would have only persuasive effect on the Tribunal and that the Tribunal found that nowhere the Hon'ble High Court considered the scope and scheme of EIA Notification 2006 concerning the need to have prior EC for construction as specified in Entry 8 (a) of EC Regulation 2006, therefore, this Tribunal should rely on the law laid down by the Tribunal in above judgment, where-in it is said in Para 3 that the EIA Notification 2006 dated 14<sup>th</sup> September, 2006 requires prior EC for building and construction projects having Built up Area of more than 20,000 sq. m., which is issued by MoEF&CC, Government of India in exercising of powers under Section 3 of the EP Act and rules framed there-under. Further, in para 4, it is recorded that according to the appellant, in the said case, Slum Rehabilitation Authority had recorded

in clear terms that proposed Built Up Area of the project exceeded 20,000 sq.m. and, thus required EC from MoEF&CC, Government of India and same will be insisted upon before approval of further EC/ Commencement Certificate to first Rehabilitation building. Notwithstanding the fact that Notification of 2006 clearly stated that no construction of any nature shall commence without obtaining prior EC, yet the construction of the project had started in full swing and the authorities including the Environment Department, Government of Maharashtra, failed to take any effective action against the construction despite various complaints made by the Appellant.

13. In para – 43 of the said judgment, it is recorded that the Project Proponent violated the EC Regulations, 2006 by undertaking construction before the EC was granted and thereby denied the realistic environmental safeguard to be in place. Further, it is mentioned in that paragraph, this begs a pertinent question as to whether EC in question needs to be set aside and the construction which includes rehabilitation component/ building comprising of 263 flats, 61 shops, 4 tenements of welfare centre, 4 tenements of Balwadi, Society office and Municipal Office, should be exposed to its logical consequence. In the opinion of the Tribunal it was held that when there is some space left for providing certain safeguards and seek compensation for the violation of EC regulations, it would be rather harsh to set aside the EC and instead the Project Proponent needs to be saddled with appropriate measure of compensation and directed to make certain amendments in the construction of sale component building, the construction of which has been stopped vide order dated 30<sup>th</sup> April, 2014 to maintain *status quo* so as to provide adequate parking spaces as required, to avoid spilling over of the vehicles on the public streets and cause congestion of traffic leading to adverse impact on the environment.

14. Having cited this judgment learned counsel for the appellant urged that in this judgment the Tribunal had considered the judgment delivered by the Hon'ble Bombay High Court in Writ Petition No. (L) 655 of 2014, **Glomore Construction and Ors. Vs. the Union of India & ors.**, which has been cited above and yet the opinion expressed in it was that if the Total Built up Area (BUA) exceeded 20,000 sq. m. it would require prior EC and that the view taken by the Hon'ble Bombay High Court that if the construction was not exceeding 20,000 sq. m., the same would not be treated to be violation even if the prior EC was not obtained, as the same would be required only when the construction exceeded 20,000 sq. m., the said view was discarded by the Tribunal distinguishing the facts of the said two cases.
15. On the other hand, from the side of the learned counsel for the Project Proponent it has been vehemently argued that the opinion given by the Tribunal that the judgment of Hon'ble Bombay High Court would have only persuasive effect on it and that nowhere the Hon'ble Bombay High Court considered the scope and scheme of EIA Notification 2006 and expounded the law concerning need to have EC for construction as specified in Entry 8 (a) of EC Regulation 2006, is wrong appreciation of the judgment by the Tribunal and insisted that the view of Hon'ble Bombay High Court should be adhered to.
16. On the basis of the respective arguments of the parties concerned, we find that following questions need to be answered by us in this case
- I) Whether it would be treated to be violation on the part of the Project Proponent not to obtain prior EC, though the project which it had undertaken to build up, was ultimately going to exceed 20,000 sq. m. Area, even if actual construction remained below 20,000 sq.m., in the light of the judgments of Hon'ble Bombay High Court delivered in **M/s Saumya Buildcon Pvt. Ltd.**

***Vs. Union of India and Glomore Construction and Ors. Vs. the Union of India &ors.?***

- II) Whether the act of the Project Proponent, in not obtaining prior Environmental Clearance, despite the fact that it had in mind to construct the Project beyond the 20,000 sq. m. and had obtained commencement certificates also, though construction remained below 20,000 sq.m., would be treated to be a violation on its part, in view of the position of law laid down by this Tribunal in ***Sunil Kumar Chugh & Anr. Vs. Secretary, Environment Department Government of Maharashtra 5 others?***
- III) Whether, if Tribunal comes to the conclusion that the Project Proponent has committed violation in not obtaining prior EC and proceeded with the construction, the EC would be required to be set aside ? if yes, its consequence.?
- IV) What relief appellant is entitled to granted ?

**17. FINDINGS:**

**Findings on question No.1 & 2 :**

In respect of question No.1 and 2, we have gone through the judgment of Hon'ble Bombay High Court in ***M/s Saumya Buildcon Pvt. Ltd. Vs. Union of India*** case which in para-17 clearly says that if the Project Proponent does not exceed 20,000 sq. m. construction for residential buildings, without obtaining Environmental Clearance the same would not be treated to be violation of EIA Notification 2006, but as soon as it exceeds the said threshold level, it would require prior EC. This very position of law is reiterated by the Hon'ble Bombay High Court in the ***Glomore Construction and Ors. Vs. the Union of India &ors.***

which is evident from the paragraph cited above. Against this judgment, there is a judgment of this Tribunal, in ***Sunil Kumar Chugh & Anr. Vs. Secretary, Environment Department Government of Maharashtra 5 others*** case, which says that whether construction exceed 20,000 sq. m. or not, if the project is likely to exceed 20,000 sq. m. for which approval has been taken, prior EC must be obtained by the Project Proponent before starting any construction. In our view, EIA Notification 2006 is silent on this point as to whether before initiating any construction of building project, the prior EC would be required or not, if construction exceeds 20,000 sq. m. at any future point of time but this grey area appears to have been covered by the above judgments cited by us. Since the Hon'ble Bombay High Court is the jurisdictional High Court under whose jurisdiction this Tribunal is functioning, the view taken by the Hon'ble Bombay High Court would have to be followed by us, though in our view the provision laid down in EIA Notification 2006 appears to be that if large building construction project is to be undertaken by any builder /Project Proponent who aims to certainly exceed 20,000 sq. m. of Total Built up Area, it should obtain prior EC in the interest of protection of environment because at the initial stage it would be feasible to put in place all such systems which would be conducive to protecting environment after thorough prior study. If at subsequent stage after crossing the Built up Area of 20,000 sq. m., further permission is granted to expand a project, that would certainly harm the environment. But because of the above view taken by the Hon'ble Bombay High Court, we are going by the same. In the present case, first Commencement Certificate was taken in the year 2008 for the BUA 17995.00 sq. m. which was below 20,000 sq. m. Threshold limit and hence

prior EC was not required to be obtained before starting construction. The Project Proponent in this case has been granted commencement certificate on 09.04.2013 for Total Built up Area 21368.30 sq. m., exceeding 20,000 threshold limit. Therefore, it required prior EC to be obtained. On 07.09.2013, application for EC was moved before the SEIAA Maharashtra for which a long process started for considering the same which is apparent from the pleadings above and ultimately the impugned EC was granted on 18.02.2020. Prior to grant of impugned EC, the Project Proponent never exceeded the construction beyond the 20,000 sq. m. as stated by it in para 6.18 of their affidavit at Page No.261 of the paper book. Therefore, it is apparent that prior to applying for the prior EC and same having been granted, the Project Proponent did not exceed threshold limit of 20,000 sq. m and whatever construction below that was done by it would not be treated to be violation in terms of the judgments of the Hon'ble Bombay High Court cited above. Because of this reason, we also come to the conclusion that impugned EC would also not be treated to be ex- post facto. Therefore, question Nos.1 and 2 stand answered in favour of the Project Proponent against the appellant.

**Finding on question No.3.**

In respect of question No.3, we are of the opinion that since the answers to the question No.1 and 2 have gone in favour of the Project Proponent and against the appellant, this question would require to be answered to the effect that no violation is committed by the Project Proponent in proceeding with construction. It is decided accordingly.

**Finding on question No.4**

In respect of question No.4 as regards relief to the appellant we are of the view that the relief for quashing impugned EC does not

deserve to be allowed. We may also note that the Project Proponent has already given all the details of the measures taken/ to be taken by it for the entire project regarding water, energy, management of waste, rain water harvesting, storm water management etc. We have also noted that as per page No. 1082 of the paper book, Project Proponent is going to incur the 1.99 cr. which is 1.5% of Capital cost of project towards the CER and EC specifically mandates to him to get that CER (Corporate Environmental Responsibility) approved from Municipal Commissioner / District Collector.

18. We have also noted that as per EC letter at page Nos. 32 to 42, PP has proposed comprehensive plan for treatment and recycle/ reuse of sewage, rain water harvesting, storm water management, organic Waste Composting, energy conservation including solar water heating, and tree plantation. Estimated project cost is Rs. 132.68 cr. Whereas capital cost of environmental management plan (EMP) is Rs. 2.68 cr and annual O &M provision is Rs. 58.27 lakh. EMP seems to be planned for both already constructed as well as proposed construction. Hence, apprehension that PP has tried to save on expenditure for protection of environment stands dispelled.

19. At this stage we are seriously concerned about practice of granting Commencement Certificate for BUA beyond 20,000 sq. m. by the Municipal Authorities without ensuring availability of environmental clearance when BUA is more than 20,000 sq. m. In OA 13-2021 SEIAA Maharashtra had submitted affidavit dated 15.07.2022 stating that-

*“VI. In order to reiterate primary responsibility of Local Planning Authority Urban Local Bodies Circular instructions are being issued by Department of Environmental and Climate Change government of Maharashtra.*

*a) State of Commencement Certificate- At the time of granting Commencement Certificate to construction projects where EIA Notification, 2006 is applicable, the authority concerned, should verify whether prior Environmental Clearance has been granted.*

*If authority comes across any violation, Commencement Certificate should not be given unless the project has received valid prior EC bearing EC identification Number. (ECs given after 20.10.2021 bear EC Identification Number) and the same to be brought to the notice of Regional Officer Maharashtra Pollution Control Board, who should initiate action in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 and also inform EC Co-ordination Cell/ SEIAA/”*

It seems that Government of Maharashtra has conveniently forgotten the said Affidavit. We direct Chief Secretary Maharashtra to personally ensure that necessary directions are issued within one month of this order.

20. Appeal is accordingly dismissed.

Dinesh Kumar Singh, JM

Dr.Vijay Kulkarni, EM

April 3, 2023.  
Appeal No. 26/2020(WZ)  
Sachin J.



Item No. 7

(Pune Bench)

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

(By Video Conferencing)

Original Application No.71/2016 (WZ)  
(Restored as per the order passed in  
M.A. No.10/2022 (WZ) dated 06/12/2022)

Shri Ramdas Vasantryao Aanerao

.....Applicant

Versus

State of Maharashtra &amp; Ors.

....Respondent(s)

Date of hearing: 05.04.2023

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

Applicant : Mr. Sandeep Vasant Bane, Advocate  
Respondent(s) : Mr. Girish Utangale, Advocate for R-1/State of Maharashtra & R-5/SRA  
Mr. Sangramingh Bhonsle, Advocate along-with Ms. Nrupal Dingankar, Ms. Aarti D. Bhonsle, Ms. Pushkara Bhonsle, Ms. Samridhi Jain and Mr. Riwaj Rai, Advocates for R-2  
Ms. Manasi Joshi, Advocate for R-6/MPCB  
Mr. Aniruddha Kulkarni, Advocate for R-7 & 8/Env. Deptt.

**ORDER**

1. From the side of Applicant, learned Counsel Mr. Sandeep Vasant Bane has appeared.

2. From the side of Respondent No. 1/State of Maharashtra and for Respondent No. 5/Slum Rehabilitation Authority, learned Counsel Mr. Girish Utangale has appeared and apprised that reply affidavit has been filed.

3. From the side of Respondent No. 2-M/s. Rehab Pranay Developer/Project Proponent, learned Counsel Mr. Sangramingh Bhonsle has appeared and apprised that he does not want to file reply affidavit in case this Tribunal is ready to hear the argument in this matter today

itself as he is ready to argue on the basis of documentary evidence on record.

4. None has appeared from the side of Respondent No. 3/Budha Vihar Co-operative Housing Society Ltd. and Respondent No. 4/The Collector, Mumbai City despite sufficient service.

5. From the side of Respondent No. 6/MPCB, learned Counsel Ms. Manasi Joshi has appeared and apprised that reply affidavit has already been filed.

6. From the side of Respondent Nos. 7 & 8/Environment Department, learned Counsel Mr. Aniruddha Kulkarni has appeared and apprised that he does not want to file reply affidavit.

7. This application has been filed with the prayers that Respondent No. 2-M/s. Rehab Pranay Developer/Project Proponent be directed to halt further developments in respect of illegal construction being carried out without prior environmental clearance; further it is prayed that on the basis of 'Polluter Pays Principle', the environmental compensation be levied from the Project Proponent.

8. In brief the facts of this case are that the Applicant is a local resident and eligible hutment dweller and member of Respondent No. 3/Budha Vihar Co-operative Housing Society Ltd. He is adversely affected by rampant illegal construction being done at C.T.S. No. 116 (pt) of Salt Pan Division situated at Antop Hill, Wadala (E), Mumbai, admeasuring 65614.64 sq. mtrs. without prior mandatory Environment Clearance. Pursuant to the proposal submitted by the Respondent No. 2/Project Proponent for re-development, Respondent No. 5/ issued 'Letter of Intent' and 'Intimation of Approval' in favour of Respondent No. 2/Project Proponent, specifically imposing Condition No. 52 to the effect that "*The*

*Developer shall submit prior environmental clearance from Ministry of Environment & Forest (MoEF) as per the notification No. SO-1533(E) dated 14.9.2006 before obtaining C.C. for the scheme with total actual area to be constructed on site having more than 20000 sq. mt.”, which is annexed as Exhibit ‘B’.*

9. Further, it is mentioned that on the said plot of land, several other societies have been formed and appointed Developer for their re-development and also submitted proposal for re-development. The Respondent No. 2 had filed *Writ Petition No. 865 of 2013* saying that he wanted to develop whole property, hence the Hon’ble High Court disposed of said Writ Petition vide order dated 15.10.2013 on the statement recorded of Dy. Collector (Encro. Removal) that they do not intend process impugned application for acquisition under Section 14 of the Slum Rehabilitation Act, which is annexed as Exhibit ‘C’. The Applicant had made complaints on several occasions against the Respondent No. 2 but the Respondent Nos. 3 to 8 being hand in gloves with Respondent No. 2, did not take any action against the Respondent No. 2 for their illegal construction.

10. It is further mentioned that the guidelines given in para no. 3 of the letter dated 24.01.2014, which are numbered as (i) to (xlix), are being blatantly violated by the Respondents but we find that the same were with respect to another Project Proponent, who was developing the project by the name “proposed development project”, therefore, these guidelines do not appear to be applicable in the present case, hence above-mentioned prayers have been made.

11. We have given sufficient opportunity of hearing to the learned Counsel for the Applicant to argue in this matter and to convince us as to

whether there is *prima facie* evidence on record to show that Respondent No. 2 is raising construction beyond 20,000 sq. mtrs. of BUA because below that, there is no requirement of prior EC to be obtained, as per the EIA Notification, 2006 but nothing could be shown by him. He has tried to draw our attention to the document annexed as Exhibit 'A', which is found to be a proforma of an agreement and the same is unsigned, therefore, it cannot be treated to be an evidence in the present case nor of any significance. He kept on insisting that some other date may be allowed to him to argue in this case because he wants to convince this Tribunal. We find that this matter is of the year 2016 and till date, if any such document was there in Applicant's possession, which would convince this Tribunal *prima facie* that the Respondent No. 2 was raising construction beyond 20,000 sq. mtrs., he could have shown us. Therefore, we do not find it appropriate to grant adjournment in this case and heard the learned Counsel for the parties today itself.

12. From the side of Respondent No. 2/Project Proponent, no reply affidavit has been filed but the learned Counsel has argued on the basis of evidence on record, which has been provided from the side of learned Counsel for the the Applicant himself.

13. From the side of Respondent No. 1/State of Maharashtra and for Respondent No. 5/Slum Rehabilitation Authority, an affidavit dated 31.03.2023 has been filed, where-in it is submitted that Applicant himself is one of the beneficiaries in the slum scheme, which is being implemented by the Respondent No. 2/Project Proponent on behalf of the Respondent No. 3 Society of slum dwellers. The Applicant having been provided rehab tenement free of cost in the rehab building, which has been constructed by the developer, is now challenging the entire scheme itself on flimsy grounds by making false statements. The slum scheme

which is sanctioned by the Answering Respondent as Planning Authority in favour of the Respondent No. 2, is 7200 sq. meters only. The Answering Respondent had issued a 'Letter of Intent' dated 30.03.2011 in favour of Respondent No. 2 for rehabilitation of 236 eligible slum dwellers on the property in question and clause 52 of the said LOI specifically provides that "The developer shall submit prior environmental clearance from Ministry of Environment & Forest (MOEF) before obtaining C.C. for the scheme with total actual area to be constructed on site having more than 20,000 sq. mtrs." It is obligatory on the part of Respondent No. 2 to obtain Environment Clearance (EC) as soon as his actual construction on the site touches, in all, 20,000 sq. mtrs. Till date, the actual construction of Respondent No. 2 is only 9042 sq. mtrs., as a result of which the permission was granted by the Answering Respondent. Once the actual construction on the site touches, in all, 20,000 sq. mtrs., the answering Respondent shall insist upon obtaining prior EC to be obtained by the Project Proponent.

14. From the side of Respondent No. 6/MPCB, a reply affidavit dated 03.04.2023 has been filed, where-in it is recorded that as per LOI dated 30.03.2011, the total plot area is 7200 sq. mtrs. and BUA permissible on plot is 21,600 sq. mtrs. There are total 258 flats existing in building, of 269 sq. feet each and at present, there is upgradation work from 269 sq. feet to 300 sq. feet in progress, as per the Government Resolution. As per the Architect Certificate submitted by the Project Proponent, they have completed construction work of the project, of about 14,881 sq. mtrs. out of permissible BUA 21,600 sq. mtrs.

15. It is further mentioned in that affidavit that the Project Proponent has given possession of 170 flats out of total 258 flats in existing 22 storied building since May, 2018 but has not provided STP for the

treatment of sewage generation nor have they provided OWC for treatment of wet garbage.

16. None-else has filed any reply affidavits.

17. We have heard the arguments at length of the learned Counsel for the parties and find that the total construction which has been done by the Respondent No. 2 so far is (BUA) 14,881 sq. mtrs., as per the affidavit filed by the Respondent No. 6/MPCB, therefore, the same is well below (BUA) 20,000 sq. mtrs. It has also come on record in the affidavit of Respondent Nos. 1 & 5 that as soon as the construction touches 20,000 sq. mtrs., they would insist upon the Respondent No. 2 to obtain prior EC before proceeding with the construction, which we find to be in consonance with law laid down by the Hon'ble Bombay High Court in *Writ Petition (L) No. 655 of 2014 (Glomore Construction & Ors. vs. Union of India & Ors.)* and we have also expressed our opinion in this regard in *Appeal No. 26/2020 (WZ) (Mr. Ajay Jayvantrao Bhosale vs. Union of India & Ors.)* that till the Project Proponent exceeds 20,000 sq. mtrs. of construction, no EC would be required.

18. Therefore, we do not find any substance in the present application, hence this application stands disposed of accordingly.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 05, 2023  
Original Application No. 71/2016 (WZ)  
(Restored as per order passed in  
M.A. No. 10/2022(WZ) dated 06/12/2022)  
P.Kr