

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
MEMORANDUM OF APPEAL  
APPEAL NO. 122 OF 2018  
(EARLIER APPEAL NO. 9 OF 2014) (WZ)**

ANIL V. THARTHARE

...Appellant

Versus

SECRETARY ENVIRONMENT

DEPARTMENT & ORS.

... Respondents

**INDEX**

Sr.No.	Exhibits	Particulars	Page Nos.
1.		Objection to the final joint Committee Report on behalf of Respondent no. 6:	1153 - 1173
2.	A colly	Copies of the Notifications dated 08.06.2020, 22.10.2020 and 11.01.2021	1174 - 1183
3.	B	Copy of note of MCGM dated 26.02.2012.	1184 - 1197
4.	C	Copy of the amendment dated 4 <sup>th</sup> April 2011	1198 - 1204
5.	D	Copies of the orders passed by the Hon'ble Supreme Court dated 3 <sup>rd</sup> May 2019 and 20 <sup>th</sup> September 2019.	1205 - 1206
6.	E	Google Images showing the stage of the project construction.	1207
7.	F	Copy of the circular dated 21.04.2015,	1208
8.	G	Copies of the High Court Orders	1209 - 1246
9.	H	Copies of the NGT Judgements dated 03.04.2023 and 05.04.2023	1247 - 1274
10.	I	Copy of the Judgment dated 30.09.2010	1275 - 1331
		Last page	1332

Mumbai

Dated: 10<sup>th</sup> July  
June 2023

*Abhishek Jain*  
Advocate for the Respondent No.6





filed by the Central Pollution Control Board ("CPCB") in compliance with Order dated 11.02.2019 passed by this Hon'ble Tribunal in the present proceedings. I crave leave to file a further detailed affidavit/additional affidavit along with supporting documents if the circumstances so warrant. For the reasons stated hereinbelow, the Joint Committee report may not be taken into consideration.

2. At the outset, I deny each and every finding made in the Joint Committee Report which is contrary to and/or inconsistent with that which is stated in the present Affidavit and humbly submit that nothing contained in the Joint Committee Report shall be deemed to have been admitted by or on behalf of the Respondent No. 6, merely for want of specific traverse. I clarify and submit that the averments made herein are in the alternative and without prejudice to one another. I also repeat, reiterate and confirm all that is stated in the earlier Affidavit in reply dated 20<sup>th</sup> September, 2014, Affidavit in Sur rejoinder dated 27<sup>th</sup> November, 2014 and Further Affidavit in reply dated 17<sup>th</sup> October, 2016 in the above Appeal and the same be treated as forming part hereof.



3. I say and submit that the Respondent No. 6 is M/s. Resilience Realty Private Limited {now Keystone Realtors Limited (formerly, Keystone Realtors Private Limited)}, a developer based in Mumbai and as part of their business, the Respondent No. 6 took up the redevelopment

project of 'Oriana Residential Project' on plot bearing CTS No. 646, 646 (pt) at Village Bandra at Gandhi Nagar Bandra (East), Mumbai ("the said project"). The Appellant has preferred the captioned Appeal challenging the order dated 13.03.2014 passed by the Respondent No. 2 which grants amendment to the Environment Clearance dated 02.05.2013 for the expansion of the said project.

4. I state and submit that vide order dated 11.02.2019, this Hon'ble Tribunal has constituted a five member Expert Committee to carry out capacity study of the area for relevant environment parameters and the impact of the expansion of the said project. The Joint Committee filed its Final Report on 02.12.2022. I say that on reading the Final Report of the Joint Committee ("**Joint Committee Report**") filed by the CPCB in its entirety, it is clear that the same is misconceived and erroneous for the reasons more particularly set out hereinbelow. In fact, some of the findings are contrary to law laid down by the Hon'ble Bombay High Court as well this Hon'ble Tribunal.

5. At the outset, without even addressing the merits of the committee report, the Respondent states the same deserves to be quashed and set aside for the following reasons;

**COMPOSITION OF THE COMMITTEE;**





6.3. Similarly, Mr. K. N. Das, one of the members of original committee was superannuated from the service of CPCB on 31.08.2022 and replaced by Dr. C.K. Dixit, Scientist 'C' from CPCB as stated in the Committee Report.

6.4. I say that the Committee that was originally formed pursuant to this Hon'ble Tribunal's Order dated 11.02.2019 was no longer operative in the year 2022 when the site was visited by the Committee and report of carrying capacity study were finalized. The said report was finalized by 2 members of the original committee formed along with 3 newly appointed members. I state that the newly elected members were appointed without any reference to this Hon'ble Tribunal and hence it is stated that that the unilateral appointment of the newly elected members do not have the powers or authority to submit the said committee report and the same was done arbitrarily and without following due process of law.



**REPORT PREPARED WITHOUT THE REQUIRED DATA:**

7.1. A perusal of the committee report, more particularly, clause 2 internal page no.3, makes it apparent that in order to prepare the committee report the committee had concluded there was a necessary to appoint an expert agency to collect various baseline data and for application of technical tools. In furtherance thereof,

on 12.07.2022, MPCB engaged Institute of Chemical Technology, Mumbai ("ICT") for a period of 2 months for executing the scope of study. The ICT submitted their report to the committee on 02.09.2022. However, the said Committee was of the view that there were several shortcomings in the report submitted by ICT and decided against using it. The expert committee then decided to prepare the report without conducting any site visit, without taking into consideration the findings of the ICT and without appointing another expert agency to carry out a technical study. Thus, the technical study has been conducted without collection of the required data and application of necessary tools, further, conclusions have been arrived at on the basis of assumptions, surmises and conjectures, on this count alone the report deserves to be dismissed and set aside.

#### PRINCIPLES OF NATURAL JUSTICE:

- 8.1. I say that vide Order dated 11.02.2019, the Hon'ble Tribunal constituted a five member Expert Committee to carry out capacity study of the area for relevant environment parameters, impact on the carrying capacity and analysing the project. However, at no stage of the said analysis by the Committee was the Respondent No. 6 involved who is the Project Proponent or was provided an opportunity to submit their say during the



assessment of the Project and Preparation of the Committee Report. This is in direct contravention and violation of the Respondent No. 6's right to be represented and heard which flows from the principles of natural justice. The Committee was duty bound to ensure that there was procedural fairness but instead the Committee analysed and prepared the Joint Committee Report on their own without going into any factual parameters in respect of the residential project which in itself is bad in law.



- 8.2. I say that the members of the SEAC were part of the Committee who are impleaded as the Respondent No. 2 in the present Appeal. It is submitted that a party Respondent cannot be part of the Expert Committee constituted for purpose of analysing the project as it has a direct bearing on the outcome of the proceedings. Hence, for the reasons mentioned above, the Joint Committee Report should be summarily dismissed as bad in law and set aside.

9. **ALLEGATIONS AS REGARDS NO PRIOR ENVIRONMENT CLEARANCE WAS OBTAINED FOR THE PROJECT:**

- 9.1. I say that the finding of the Joint Committee Report that there is violation at the behest of Respondent No. 6 with respect to the expansion of the said project and that the Respondent No. 6 started the construction of the said redevelopment project

without obtaining prior Environment Clearance is contrary to law and thus misconceived.

9.2. I say that in the year 2008, Respondent No. 6 and Respondent No. 7 Society executed a development agreement for redevelopment of the buildings of Respondent No. 7. Around the year 2010, the proposal for development of the said project was submitted to MCGM by Respondent No. 7 Society. Under the proposal, the project was proposed to consume 8,720.32 sq. mtrs. (built-up area) which was less than 20,000 sq. mtrs. As the said construction was below the threshold limit of 20,000 sq. mtrs, there was no requirement of applying for grant of environmental clearance for the said project as per Category 8(a) of the Schedule of the EIA Notification, 2006.

9.3. Under the then existing policy of MCGM (circular dated 10<sup>th</sup> September 2009 of the MCGM), FSI only upto 2.5 times was made available till the time the final layout of the plot was approved by the MCGM and complete FSI was determined. Therefore, the Respondent No. 6 could commence construction only with built up area of 8721.25 sq. mtrs. and this has been further crystallized in the note dated 26.02.2010 of Respondent No. 5-MCGM which refers to a circular dated 10.09.2009 of MCGM that provides that only FSI upto 2.5 times can be



allowed till the amended layout is approved. Hereto annexed and marked as “**Exhibit - B**” is a copy of the note of MCGM dated 26.02.2012.

- 9.4. It is worth noting that prior to the amendment, for the purposes of determining the requirement of obtaining Environment Clearance, only the FSI area was taken into consideration. On 4<sup>th</sup> April 2011, an amendment was introduced in the EIA Notification 2006. As per the said amendment, the built-up area for the purposes of Environment Clearance included the FSI as well as non-FSI area. It is pertinent to point out at this juncture that the issue whether the said amendment is applicable retrospectively or prospectively is pending before the Hon’ble Supreme Court in Special Leave Petition No.10078 of 2019 in Builders Association of India (“BAI”) and in Special Leave Petition No. 23143 of 2019 filed by CREDAI-Pune Metro. In the aforesaid SLPS, the Hon’ble Supreme Court by orders dated 3rd May 2019 and 20<sup>th</sup> September 2019, was pleased to issue notice and order that in the meanwhile no coercive steps be taken against the members of the Petitioner Association. It is worth noting that the Respondent No.6 is a member of Credai - MCHCI. Therefore, the Respondent No.6, as such is insulated from the retrospective applicability of the amendment dated 4<sup>th</sup> April 2011. Hereto annexed and marked as “**Exhibit-C**” is a





area of 4,490.88 sq. mtrs. The Respondent No.4, on 8<sup>th</sup> January 2013 issued NOC for use of the additional area.

9.7. The Respondent No.3 was pleased to consider the said project for grant of EC On 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> March, 2013. In the said meeting, a presentation was prepared by the Respondent No. 6 showing the extent of construction on the site as on the date of the presentation. It was also informed to the committee members the extent of construction carried out and the fact that construction has been stopped for awaiting environmental clearance. The Respondent No. 3 accordingly noted that work had been initiated as per the Commencement Certificate granted to the Respondent No. 6 and after application of mind and duly verifying all the facts was pleased to recommend the project for grant of prior environmental clearance.



9.8. The Respondent No. 2 considered the project at its 58<sup>th</sup> meeting and also approved the project and accorded prior environmental clearance on 02.05.2013 for construction of Built-up area of 32,395.17 sq. m. It is pertinent to note that while applying for the EC for the project the actual construction carried out by the Respondent No.6 was below 20,000 sq. mtrs. Hereto annexed and marked as "Exhibit-E" are the Google Images showing the stage of the project construction.

9.9. On 21<sup>st</sup> October, 2013, Respondent No. 4 allotted additional area of 3296.80 sq. mtrs to Respondent No. 7 Society thereby allowing total Built Up Area of 16940 sq. mtrs. plus fungible compensatory BUA permissible under DCR 35(4). In the meantime anticipating the grant of additional FSI and to avail its benefit, the Respondent No. 6 by its letter dated 23<sup>rd</sup> August 2013 applied to Respondent No. 3 for grant of amendment to prior EC dated 02.05.2013. However, as per consistent practice followed by Respondent No. 2, the Respondent was later advised to make an application to Respondent No. 2 instead of Respondent No. 3 as the application was for minor amendment of the prior EC. Without admitting, even without prejudice, if the committee's is to be considered to be true and correct, a perusal of the table no.1 and table no.2 at internal page no.7 and 8 would show that there is a very minor and/or inconsequential change in the said project, while upgrading the said project from 32395.17 Sq. Mtrs. to 40480.88 Sq. Mtrs., more particularly from the environment angle. The Respondent No.6 states that the change in the project is negligible which as such will not have any bearing on the environment impact of the project.



9.10. On 24.09.2013, Respondent No. 6 applied to Respondent No. 2 for minor amendments to its existing prior environmental clearance. The said letter was considered by Respondent No. 2 in its 66<sup>th</sup> meeting on 27<sup>th</sup>/28<sup>th</sup> January, 2014 and accorded approval. On 13.03.2014, the Respondent No. 6 was communicated about the revised environment clearance with respect to the said project. The same was obtained for a total proposed Built-up area of 40480.88 sq. mtrs. (FSI 21,365.54 sq. mtrs. + NON FSI 19115.34 sq. mtrs.). The Respondent No. 2 while granting the same noted that due to marginal increase in built up and construction area and only marginal changes and minimal impact on environment, the Respondent No. 2 granted the Environment Clearance dated 13.03.2014. The Respondent No. 2 being an expert body has granted the said clearance after closely examining the amendment from environmental point of view and therefore, the same does not suffer from any infirmity.



9.11. A bare perusal of the facts stated hereinabove, it is clear that there is no violation at the behest of the Respondent No.6 with respect to not obtaining Environment Clearance.

9.12. It is well settled that environment clearance is required to be obtained only if a project proponent carries out actual

construction beyond 20,000 sq. mtrs. As long as, the construction carried out on site is within the threshold of the 20,000 sq. mtrs. as stipulated under the EIA Notification 2006, there is no requirement, in law, to obtain Environment Clearance. The said proposition has been affirmed by the Circular dated 21.04.2015 issued by the Government of Maharashtra, which is valid and subsisting, as on date. The said proposition has further been confirmed by the Hon'ble Bombay High Court in *Naresh Janardhan Mali v. the State of Maharashtra & Ors.* (Writ Petition No. 504 of 2012), *Vardhaman Developers Limited v. Union of India & Ors.* (Writ Petition No. 1916 of 2012), *M/s. Saumya Buildcon Pvt. Ltd. v. Union of India & Ors.* (Writ Petition No. 470 of 2013) and *Glomore Constructions & Ors. v. Union of India & Ors.* (Writ Petition (L) No. 655 of 2014) wherein the Hon'ble Court has consistently held that environment clearance is not required for the purpose of construction of buildings below the threshold of 20,000 sq. mtrs. The Hon'ble Bombay High Court in its Criminal Jurisdiction in *M/s. P. S. Developers & Ors. v. the Maharashtra Pollution Control Board & Ors.* (Criminal Application No. 229 of 2018), *M/s. Suncity Corporation & Anr. v. Maharashtra Pollution Control Board & Ors.* (Criminal Application No. 732 of 2016) and *M/s. Sancheti Properties &*



*Ors. v. the Maharashtra Pollution Control Board & Ors.* (Writ Petition No. 3607 of 2018) has been pleased to quash and set aside process issued under Section 15 read with section 16 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006, in cases wherein the project proponent has commenced construction without EC, but the actual construction carried out is below 20,000 sq. mtrs. In fact, in recent Judgments of *Ajay Jayvantrao Bhosale v. Union of India & Ors.*, and *Shree Ramdas Vasantrao Aanerao Vs. State of Maharashtra and Ors.*, O.A. 71 of 2016, this Hon'ble Tribunal has reiterated and confirmed the proposition and held that as long as the actual construction carried out by the Project Proponent does not exceed the threshold limit of 20,000 sq. mtrs. there is no violation in terms of Environment Clearance. Hereto marked and annexed as "Exhibit-F" is a copy of the circular dated 21.04.2015, "Exhibit-G" are copies of the High Court Orders and "Exhibit-H" are copies of the NGT Judgements dated 03.04.2023 and 05.04.2023, respectively.



9.13. Therefore, as the Respondent No.6 has not carried out construction over the threshold limit of 20,000 sq. mtrs. and has exceeded the said threshold limit only after first obtaining an Environment Clearance 02.05.2013 and thereafter amended it on 13.03.2014. Further the Respondent No. 6 has carried out



10.1. A perusal of clause 7 at internal page 31 of the committee report would show that the committee has wrongfully recommended that there is violation with regards Respondent No.6 starting construction without CTE from 08.06.2010 to 19.11.2013 and further there is violation of operating without obtaining CTO from 01.04.2016 to 11.02.2019. The Respondent No.6 states that the same is completely misplaced, misconceived and baseless.

10.2. It is stated that the development with respect to the said project is purely a residential project. It is well settled principle of law that the provisions relating to obtaining consent to establish and consent to operate under the Water (Prevention and Control of Pollution) Act, 1975 ("Water Act") and the Air (Prevention and Control of Pollution) Act, 1981, ("Air Act") is not attracted with respect to a residential project as the same is not an industry, operation and/or process within the meaning of the aforesaid two Acts. Therefore, there is no requirement of obtaining Consent to Establish and/or Consent to Operate with respect to pure residential projects. The same has been affirmed by the Hon'ble Delhi High Court in *Splendour Landbase Ltd v. Delhi Pollution Control Board Committee*, 2010 SCC OnLine Del 3466. Hereto annexed and marked as "Exhibit-I" is a copy of the Judgment dated 30.09.2010.



10.3. Without prejudice to what is stated hereinabove, I state that the allegations with respect to not obtaining consent to operate, consent to establish with respect to the said project is completely false, frivolous and baseless. Till the year 2013, as the construction of the said construction project did not exceed the threshold limit of 20,000 sq. mtr., there was no requirement of an environmental clearance, resultantly, there was no requirement of Consent to Establish and Consent to Operate. However, the Joint Committee has erroneously included the period of 2010 to 2013 while computing the penalty of Rs. 8,65,12,500/- for not obtaining the Consent to Establish and Consent to Operate. I state that Respondent No. 6 had obtained consent to establish with respect to the said project from the Maharashtra Pollution Control Board ("MPCB") on 20<sup>th</sup> November, 2013 for a total plot area of 4,840 sq. mtrs. and Total Built-Up Area of 32,395.17 sq. mtrs. as per the Environment Clearance dated 02.05.2013. Thereafter, the Consent to Establish was amended from MPCB on 30<sup>th</sup> May 2015 for the total plot area of 4,840 sq. mtrs. in accordance to the amended Environment Clearance dated 13<sup>th</sup> March, 2014. The said consent to establish was valid upto 20.11.2018.



10.3. I state that the Respondent No. 6 had applied for consent to operate from MPCB on 8<sup>th</sup> September 2015 for total area of 4,840 sq.mtrs. and Total Built Up Area of 40,480.88 sq.mtrs. as per the amended Environment Clearance dated 13.03.2014 which was valid till 31.03.2016. Thereafter, the project was conveyed to the Respondent No. 7 Society in the year 2016.

10.4. I say that in any event in the year 2016, the Respondent No. 6 has conveyed the project to Respondent No. 7-Society. This development ought to have been considered by the Expert Committee while analysing the project.. In spite of this, the said Committee has attempted to levy a penalty amount on Respondent No. 6 for not obtaining Consent to Establish and valid Consent to Operate to the tune of Rs. 8,65,12,500/-. Which is completely misplaced, misconceived and baseless.

10.5. Without prejudice to what is stated hereinabove, the Respondent No.6 states that at the time of granting CTO and CTE under the Air and Water Act, with respect to a construction/real estate project, the authorities examined the operations and functioning of the sewage treatment plant (STP), Solid Waste Management, Waste Water Management, Rain Water Conservation, Sole Energy Conservation etc. In the instant case the Respondent No.6 states that admittedly the Respondent No.6 has provided for STP having capacity to deal



with the entire sewage waste Generated, there is no air pollution as there are no commercial activities carried out in the said project, there is a solid waste management as well as scientific method of water treatment, utilisation and disposal, water waste methods being employed by the Respondent No.6, functional OWC, segregation of waste generated with respect to the said project. Therefore, even assuming that the Respondent No.6 had not obtained CTO/CTE, effectively there is no environmental degradation/damage caused due to the same as admittedly, the Respondent No.6 is since the inception and continuously making facilities available and abiding by conditions which would otherwise being imposed under the CTO/CTE. Therefore, without prejudice, even assuming the joint report to be true and correct, the only violation at the behest of Respondent No.6 would be to the limited extent of not having formal certification of CTO and CTE, though, otherwise, the said project is providing all facilities and abiding by the conditions, which would have been imposed under the CTO and CTE.



10.6. In the premises therefore, the Respondent No. 6 submits that the Joint Committee Report dated 02.12.2022 must be set aside.

Solemnly affirmed at Mumbai.

Dated this 10<sup>th</sup> day of July 2023.

) **For Keystone Regitors Limited**

)   
**Authorized Signatory**

Respondent No. 6

*Udai Prakash*  
Advocates for Respondent No. 6

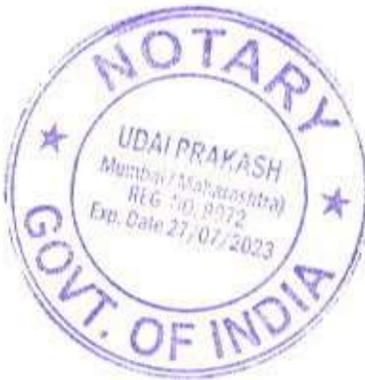
Before me,

**BEFORE ME**

*Udai Prakash*  
*10/07/2023*

UDAIPRAKASH (M.A.LL.B.)  
ADVOCATE & NOTARY GOVT. OF INDIA  
MUMBAI (MAHARASHTRA)  
REG. No. 9972

Room No. 10, S. No.94, Ishwadi, Kharodi Village,  
Marve Road, Malad (W), Mumbai - 400 095.



NOTARIAL REG. NO... 23 .....  
Sr. No. 11181.. Page No. 92 .....  
Date... 10/07/2023 .....



" 8(क) पैरा 8 में अंतर्विष्ट किसी बात के होते हुए भी महाराष्ट्र प्रथम एसईएसी, द्वितीय एसईएसी और तृतीय एसईएसी के अध्यक्ष और सदस्य, 16 सितम्बर, 2020 तक की अवधि के लिए कार्यभार संभालेंगे;"

[फा.सं.जे. जे-11013/30/2007-आईए-II(1)]

अरविंद नौटियाल, संयुक्त सचिव

टिप्पण: मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खण्ड 3, उप खण्ड (ii) में का.आ. 850 (अ) तारीख 17 मार्च, 2017 द्वारा प्रकाशित की गई थी और तत्पश्चात् तारीख 12 मार्च, 2017 के का.आ. 4040 (अ) द्वारा इसे संशोधित किया गया था।

## MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

### NOTIFICATION

New Delhi, the 8th June, 2020

**S.O. 1788(E).**—In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in pursuance of the notification of the Government of India in the erstwhile Ministry of Environment and Forests, number S.O. 1533(E), dated the 14<sup>th</sup> September, 2006, the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Environment, Forest and Climate Change, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), *vide* number S.O. 850(E), dated the 17<sup>th</sup> March, 2017, namely:-

In the said notification, -

(i) after paragraph 2, the following paragraph shall be inserted, namely:-

"2 A Notwithstanding anything contained in paragraph 2, the Chairman and Members of the Authority, Maharashtra shall hold office for a term up to the 16<sup>th</sup> September, 2020.";

(ii) after paragraph 8, the following paragraph shall be inserted, namely:-

"8 A Notwithstanding anything contained in paragraph 8, the Chairman and Members of the first SEAC, second SEAC and third SEAC, Maharashtra shall hold office for a term up to the 16<sup>th</sup> September, 2020."

[F.No. J-11013/30/2007-IA.II(I)]

ARVIND NAUTIYAL, Jt. Secy.

**Note:-** The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), *vide* number S.O. 850 (E), dated the 17<sup>th</sup> March, 2017 and subsequently amended *vide* number S.O. 4040(E), dated the 12<sup>th</sup> December, 2017.



(ii) in paragraph 5, in sub-paragraph (c), in the proviso, for the words "six months", the words "twelve months" shall be substituted.

(iii) in the APPENDIX VI, in item 7, in the proviso, for the words "six months", the words "twelve months" shall be substituted.

[F. No. J-11013/30/2007-IA. II(I)]  
ARVIND KUMAR NAUTIYAL, Jt. Secy.

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1533 (E), dated the 14th September, 2006 and was last amended vide notification number S.O. 3636(E), dated the 15th October, 2020.

### अधिसूचना

नई दिल्ली, 22 अक्टूबर, 2020

का. आ. 3753(अ).—केन्द्रीय सरकार के पर्यावरण (संरक्षण) अधिनियम 1986 (1986 का 29) की धारा 3 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के तत्कालीन, पर्यावरण और वन मंत्रालय की अधिसूचना संख्या का.आ. 1533(अ) तारीख 14 सितम्बर, 2006 के अनुसारण में, भारत के राजपत्र, असाधारण, भाग II, खण्ड 3, उप खण्ड (ii) में तारीख 17 मार्च, 2017 के का.आ. 850(अ) द्वारा प्रकाशित पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय, भारत सरकार की अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात्: उक्त अधिसूचना में,

- (i) पैरा 2 क में, अंक, अक्षर और शब्द "16 सितम्बर 2020" के स्थान पर अंक, अक्षर और शब्द "16 मार्च 2021 या नए प्राधिकरण के गठन तक, महाराष्ट्र, जो भी पहले हो" रखे जाएंगे ।
- (ii) पैरा 8 क में, अंक, अक्षर और शब्द "16 सितम्बर 2020" के स्थान पर अंक, अक्षर और शब्द "16 मार्च 2021 या नए राज्य स्तरीय विशेषज्ञ आंकलन समितियों, महाराष्ट्र के गठन तक जो भी पहले हो" रखे जाएंगे ।

[फा. सं. जे-11013/30/2007.आईए- II(I)]

अरविंद नौटियाल, संयुक्त सचिव

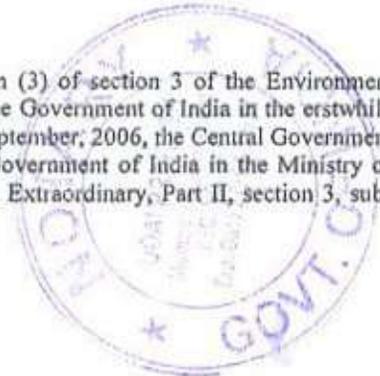
टिप्पण: मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खण्ड 3, उप खण्ड (ii) में का.आ. 850 (अ) तारीख 17 मार्च, 2017 द्वारा प्रकाशित की गई थी और तत्पश्चात् तारीख 12 मार्च, 2017 के का.आ. 4040 (अ) तथा तारीख 8 जून, 2020 के का.आ. 1788(अ) द्वारा इसे संशोधित किया गया था।

स्पष्टीकारक ज्ञापन: "16 मार्च, 2021" के रूप में "16 मार्च, 2021" को प्रतिस्थापित करके पैरा 2क और पैरा 8क में संशोधन करके, किसी भी व्यक्ति के हित पर प्रतिकूल प्रभाव नहीं पड़ेगा।

### NOTIFICATION

New Delhi, the 22nd October, 2020

S.O. 3753(E).—In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in pursuance of the notification of the Government of India in the erstwhile Ministry of Environment and Forests, number S.O. 1533(E), dated the 14th September, 2006, the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Environment, Forest and Climate Change, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii), vide number S.O. 850(E), dated the 17th March, 2017, namely:-



In the said notification, -

- (i) in paragraph 2A, for the figures, letters and word "16th September, 2020", the figures, letters and word "16th March, 2021 or till the constitution of new Authority, Maharashtra, whichever is earlier.", shall be substituted.
- (ii) in paragraph 8A, for the figures, letters and word "16th September, 2020", the figures, letters and word "16th March, 2021 or till the constitution of new SEACs, Maharashtra, whichever is earlier.", shall be substituted.

[F.No. J-11013/30/2007-IA.II(I)]

ARVIND NAUTIYAL, Jt. Secy.

**Note:-** The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 850 (E), dated the 17th March, 2017 and subsequently amended vide number S.O. 4040(E), dated the 12th December, 2017 and vide number S.O. 1788(E), dated the 8th June, 2020.

**Explanatory Memorandum:** By making amendments in paragraph 2A and paragraph 8A by substituting "16th September, 2020" as the "16th March, 2021", the interest of no person shall be adversely affected.





भारत का राजपत्र  
The Gazette of India

सी.जी.-डी.एल.-अ.-12012021-224352  
CG-DL-E-12012021-224352

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY



सं. 93]

नई दिल्ली, मंगलवार, जनवरी 12, 2021/पौष 22, 1942

No. 93]

NEW DELHI, TUESDAY, JANUARY 12, 2021/PAUSHA 22, 1942

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 11 जनवरी, 2021

का.आ. 107(अ).—केन्द्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय की अधिसूचना सं. का.आ. 1533(अ), तारीख 14 सितंबर, 2006 (जिसे इसमें इसके पश्चात् उक्त अधिसूचना कहा गया है) के अनुसरण में और भारत सरकार के पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय की अधिसूचना सं. का.आ. 850(अ), तारीख 17 मार्च, 2017 का अधिकांत करते हुए उन बातों के सिवाए जिन्हें ऐसे अधिक्रमण से पहले किया गया है या करने का लोप किया गया है राज्य स्तर पर्यावरण समाधात निर्धारण प्राधिकरण महाराष्ट्र (जिसे इसमें इसके पश्चात् प्राधिकरण, महाराष्ट्र कहा गया है) का गठन करती है, जिसमें निम्नलिखित सदस्य होंगे, अर्थात् :—

1.	श्री विजय शांतिलाल नाहटा, आईएएस (सेवानिवृत्त), 601, 6 "मंजिल, एनकेएम इंटरनेशनल हाउस, एलआईसी योगक्षेम बिल्डिंग के पीछे, 177 बाबूभाई चिनाय मार्ग, नरीमन पॉइंट, मुंबई - 400020, महाराष्ट्र।	अध्यक्ष;
----	---	----------

2.	श्री पंकज मोहन जोशी, 2/204, यशोधान अपार्टमेंट, चार बंगले, जे.पी. रोड, अंधेरी (पश्चिम), मुंबई - 400053, महाराष्ट्र।	सदस्य; और
3.	प्रधान सचिव, पर्यावरण और जलवायु परिवर्तन विभाग, महाराष्ट्र सरकार।	सदस्य-सचिव

2. प्राधिकरण महाराष्ट्र, के अध्यक्ष और सदस्य, राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष के लिए पद धारण करेंगे।
3. प्राधिकरण, महाराष्ट्र ऐसी शक्तियों का प्रयोग करेगा और ऐसी प्रक्रिया का अनुसरण करेगा जो उक्त राजपत्र की अधिसूचना में विनिर्दिष्ट है।
4. प्राधिकरण, महाराष्ट्र इस अधिसूचना द्वारा महाराष्ट्र राज्य के लिए गठित राज्य स्तरीय विशेषज्ञ अंकन समितियों (एसईएसी) की सिफारिशों पर अपना विनिश्चय लेगा।
5. केंद्रीय सरकार, महाराष्ट्र की राज्य सरकार, के परामर्श से प्राधिकरण महाराष्ट्र, सहायता करने के लिए महाराष्ट्र राज्य में उद्योग, खनन और सिंचाई से संबंधित सभी परियोजनाओं के लिए पहला राज्य विशेषज्ञ अंकन समिति (जिसे इस अधिसूचना में इसके पश्चात् पहला एस.ई.ए.सी., महाराष्ट्र कहा गया है) का गठन करती है जिसमें निम्नलिखित सदस्य होते हैं, अर्थात्:—

1.	डॉ विजय कुलकर्णी, एल 503 सेना सीएचएस, सेक्टर- 9, नेरुल, नवी मुंबई - 400706, महाराष्ट्र।	अध्यक्ष;
2.	श्रीमती कविता टकले, सर्वे नंबर 25, 2/1/9, विशाल नगर, पिंपल निलाख, पुणे - 411027, महाराष्ट्र।	सदस्य;
3.	मि. कुंदन बालकृष्ण देशमुख, एच -36, एन -5, सिडको, सत्यम नगर, औरंगाबाद - महाराष्ट्र।	सदस्य;
4.	श्री चंद्रशेखर मराठे, 202, सुशील गार्डन -3 सी.एच.एस., 52 बंगला, पुराना धाना नाका रोड, एट और पोस्ट-पनवेल, जिला.- रायगढ़-410206, महाराष्ट्र।	सदस्य;
5.	श्री जीवन वी. पटगांवकर, 604/ए -2, वाइकास कॉम्प्लेक्स, कैसल मिल कंपाउंड, लाल बहादुर शास्त्री मार्ग, ठाणे- (पश्चिम) 400601, महाराष्ट्र।	सदस्य; और
6.	उप सचिव या वैज्ञानिक- I; और उपरोक्त। पर्यावरण और जलवायु परिवर्तन विभाग, महाराष्ट्र सरकार।	सदस्य-सचिव

6. केंद्रीय सरकार, महाराष्ट्र की राज्य सरकार, के परामर्श से प्राधिकरण महाराष्ट्र, सहायता करने के लिए महाराष्ट्र राज्य में मुंबई मेट्रोपोलिटन रीज़न और कोंकण रीज़न के लिए दूसरा राज्य विशेषज्ञ अंकन समिति (जिसे इस अधिसूचना में इसके पश्चात् दूसरा एस.ई.ए.सी., महाराष्ट्र कहा गया है) का गठन करती है जिसमें निम्नलिखित सदस्य होते हैं, अर्थात्:—

1.	श्री सुधीर मानिकराव खानपुरे आईएएस (सेवानिवृत्त), फ्लैट नंबर ए/701, रनवाल रीजेंसी, 9, कनॉट रोड, पुणे- 411001, महाराष्ट्र।	अध्यक्ष;
2.	श्री बम्बले रमेश बालकृष्ण, ए/1202, ऊनीया टावर सी.एच.एस.एल.सी.डी. देशमुख गार्डन, के पीछे मुलुंड € मुंबई- 400081, महाराष्ट्र।	सदस्य;
3.	डॉ. गणेश भीमराव रसाल 30/1, आर-रेजीडेंसी, 102, उत्कर्ष सोसायटी, कटराज, पुणे - 411046 महाराष्ट्र।	सदस्य;
4.	डॉ. नितिन एम. लेभने, एसोसिएट प्रोफेसर, वनस्पति विज्ञान, बी -606 श्री हरि सीएचएस, आरटीओ लेन, चार बंगला, अंधेरी-पश्चिम, मुंबई -400053, महाराष्ट्र।	सदस्य; और
5.	उप सचिव या वैज्ञानिक- I, और उपरोक्त I पर्यावरण और जलवायु परिवर्तन विभाग, महाराष्ट्र सरकार।	सदस्य-सचिव

7. केंद्रीय सरकार, महाराष्ट्र की राज्य सरकार, के परामर्श से प्राधिकरण महाराष्ट्र, सहायता करने के लिए महाराष्ट्र राज्य में मुंबई मेट्रोपोलिटन रीज़न और कोंकण रीज़न के लिए तीसरा राज्य विशेषज्ञ अंकन समिति (जिसे इस अधिसूचना में इसके पश्चात् तीसरा एस.ई.ए.सी., महाराष्ट्र कहा गया है) का गठन करती है जिसमें निम्नलिखित सदस्य होते हैं, अर्थात्:—

1.	श्री दीपक म्हेसेकर, भारतीय प्रशासनिक सेवा(सेवानिवृत्त) फ्लैट सं. 1204 (12 "मंजिल), गेटवे टॉवर नंबर 98, सेक्टर आर -8, अमनोरा पार्क टाउन, हडपसर, पुणे- 411028, महाराष्ट्र।	अध्यक्ष;
2.	श्री मुकुन्द पाठक 502, वैदेही एप्स, सज्जनवाड़ी, मुलुंड पूर्वी मुंबई- 400081, महाराष्ट्र।	सदस्य;
3.	श्री दत्तात्रेय थोराट, प्लॉट सं. 34, हरसिद्धि हाउसिंग सोसाइटी मयूर पार्क जलगाँव रोड औरंगाबाद, महाराष्ट्र।	सदस्य;
4.	मि. किरण वसंत आचरेकर, फ्लैट सं.1000, दसवां तल 11वां रोड सुपरलिने चेम्बर मुंबई - 400071, महाराष्ट्र।	सदस्य;

5.	डॉ. असीम गोकर्ण हरवंश, 704,47, सीबुड्स एस्टेट, एनआरआई कॉम्प्लेक्स, फेज -2, पाम बीच आरडी, वाशी नवी मुंबई 400703।	सदस्य; और
6.	उप सचिव या वैज्ञानिक- I, और उपरोक्त। पर्यावरण और जलवायु परिवर्तन विभाग, महाराष्ट्र सरकार।	सदस्य-सचिव

8. पहले एस.ई.ए.सी. दूसरे एस.ई.ए.सी. और तीसरे एस.ई.ए.सी. महाराष्ट्र के अध्यक्ष और सदस्य, राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष के लिए पद धारण करेंगे।

9. हित के किसी विरोध से बचने के लिए,—

(क) प्राधिकरण महाराष्ट्र और पहले एसईएसी, दूसरे एसईएसी और तीसरे एसईएसी महाराष्ट्र, के अध्यक्ष और सदस्य, किस परामर्शदाता संगठन को घोषित करेगा वे परियोजना के प्रस्तावकों के साथ भी जुड़े रहे हैं:

(ख) वे परियोजना के लिए पर्यावरण समाघात निर्धारण (ईआईए) और पर्यावरण प्रबंधन योजना परियोजना, तैयारी के साथ कोई परामर्श या सहयोग नहीं करेंगे जिसे उनके कार्यकाल दौरान प्राधिकरण, गोवा और एसईएसी, गोवा द्वारा अंकन किया जाता है; और

(ग) यदि पिछले पाँच वर्षों में, प्राधिकरण महाराष्ट्र और पहले एसईएसी, दूसरे एसईएसी और तीसरे एसईएसी, महाराष्ट्र के अध्यक्ष या सदस्यों में से कोई भी, है किसी भी परियोजना के प्रस्तावक के लिए परामर्श सेवाएँ प्रदान करता है या ईआईए अध्ययन प्रदान करता है, उस घटना में ऐसे प्रस्तावक द्वारा प्रस्तावित किसी भी परियोजना के अंकन की प्रक्रिया में वे खुद को प्राधिकरण, गोवा और एसईएसी, गोवा की बैठकों से हटा देंगे

10. पहला एसईएसी दूसरा एसईएसी और तीसरा एसईएसी, महाराष्ट्र ऐसी शक्तियों का प्रयोग करेगा और उक्त राजपत्र अधिसूचना में प्रगणित की गई प्रक्रियाओं का पालन करें।

11. पहला एसईएसी, दूसरा एसईएसी और तीसरा एसईएसी, महाराष्ट्र सामूहिक उत्तरदायित्व के सिद्धांत पर काम करेगी और अध्यक्ष प्रत्येक मामले में सर्वसम्मति पर पहुंचने का प्रयास करेगा और यदि सर्वसम्मति पर नहीं पहुंचा जा सकता है तो बहुमत का मत अभिभावी होगा।

12. महाराष्ट्र राज्य सरकार, प्राधिकरण महाराष्ट्र और पहले एसईएसी, दूसरे एसईएसी और तीसरे एसईएसी, महाराष्ट्र के लिए सचिवालय के रूप में कार्य करने के लिए किसी अभिकरण को अधिसूचित करेंगी और सभी वित्तीय और संचार तंत्र संबंधी सहायता, जिसके अंतर्गत वास-सुविधा, परिवहन और उनके सभी कानूनी कृत्यों की बावत अन्य सुविधाएं भी हैं, उपलब्ध कराएगी।

13. प्राधिकरण महाराष्ट्र के अध्यक्ष और सदस्य, महाराष्ट्र और पहले एसईएसी दूसरे एसईएसी और तीसरे एसईएसी, महाराष्ट्र के अध्यक्ष और सदस्य, को बैठक की फीस, यात्रा भत्ते और महंगाई भत्ते महाराष्ट्र राज्य सरकार के विद्यमान नियमों के अनुसार भुगतान किया जाएगा।

[फा.सं. जे-11013/30/2007-आईए.11 (1)]

सुजीत कुमार बाजपेयी, संयुक्त सचिव

## MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

## NOTIFICATION

New Delhi, the 11th January, 2021

S.O. 107(E).—In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in pursuance of the notification of the Government of India in the erstwhile Ministry of Environment and Forests, number S.O. 1533(E), dated the 14<sup>th</sup> September, 2006 (hereinafter referred to as the said Gazette notification), and in supersession of the notification number S.O. 850(E) dated the 17<sup>th</sup> March, 2017 of the Government of India in the Ministry of Environment, Forest and Climate Change except as respects things done or omitted to be done before such supersession, the Central Government hereby constitutes the State Level Environment Impact Assessment Authority, Maharashtra (hereinafter referred to as the Authority, Maharashtra) comprising of following Members, namely:—

1.	Shri Vijay Shantilal Nahata, IAS (Retired), 601, 6 <sup>th</sup> Floor, NKM International House, behind LIC Yogakshema Building, 177 Babubhai Chinoy Marg, Nariman Point, Mumbai - 400020, Maharashtra.	Chairman;
2.	Shri Pankaj Mohan Joshi, 2 / 204, Yashodhan Apartments, Four Bungalows, J.P Road, Andheri (West), Mumbai - 400053, Maharashtra.	Member; and
3.	Principle Secretary, Environment and Climate Change Department, Government of Maharashtra.	Member-Secretary.

2. The Chairman and Members of the Authority, Maharashtra shall hold office for a term of three years from the date of publication of this notification in the Official Gazette.

3. The Authority, Maharashtra shall exercise such powers and follow such procedures as enumerated in the said Gazette notification.

4. The Authority, Maharashtra shall take its decision on the recommendations of the State level Expert Appraisal Committees (SEACs) constituted for the State of Maharashtra by this notification.

5. To assist the Authority, Maharashtra, the Central Government in consultation with the State Government of Maharashtra, hereby constitutes the First State Expert Appraisal Committee for all the projects related to Industries, Mining and Irrigation in the State of Maharashtra (hereinafter in this notification referred to as the first SEAC, Maharashtra) comprising of the following members, namely:—

1.	Dr. Vijay Kulkarni, L 503 Army CHS, Sector- 9, Nerul, Navi Mumbai - 400706, Maharashtra.	Chairman;
2.	Mrs. Kavita Takale, Survey No.25, 2/1/9, Vishal Nagar, Pimple Nilakh, Pune - 411027, Maharashtra.	Member;
3.	Mr. Kundan Balkrishna Deshmukh, H-36, N-5, CIDCO, Satyam Nagar, Aurangabad - Maharashtra.	Member;
4.	Shri Chandrashekhar Marathe, 202, Sushil Garden-3 C.H.S., 52 Bungalow, Old Thana Naka Road, At& Post- Panvel, Dist.- Raigad-410206, Maharashtra.	Member;
5.	Shri Jeevan V. Patgaonkar, 604/A-2, VIKAS COMPLEX, Castle Mill Compound, Lal Bahadur Shastri Marg, Thane- (West) 400601, Maharashtra.	Member; and
6.	Deputy Secretary or Scientist-I; and above Environment and Climate Change Department, Government of Maharashtra.	Member-Secretary.

6. To assist the Authority, Maharashtra, the Central Government in consultation with the State Government of Maharashtra, hereby constitutes the Second State Expert Appraisal Committee for Mumbai Metropolitan Region and Konkan Region in the State of Maharashtra (hereinafter in this notification referred to as second SEAC, Maharashtra) comprising of the following Members, namely:—

1.	Shri Sudhir Manikrao Khanapure, IAS (Retired), Flat No. A/701, Runwal Regency, 9, Connaught Road, Pune- 411001, Maharashtra.	Chairman;
2.	Mr. Bambale Ramesh Balkrishna, A/1202, Umiya Tower CHSL, Behind C.D. Deshmukh Garden, Mulund E Mumbai- 400081, Maharashtra.	Member;
3.	Dr. Ganesh Bhinrao Rasal, 30/1, R-Residency, 102, Utkarsh Society, Katraj, Pune – 411 046, Maharashtra.	Member;
4.	Dr. Nitin M. Labhane, Associate Professor, Botany, B-606 Shri Hari CHS, RTO Lane, Four Bungalows, Andheri-West, Mumbai-400053, Maharashtra.	Member; and
5.	Deputy Secretary or Scientist-I, and Above Environment and Climate Change Department, Government of Maharashtra.	Member-Secretary.

7. To assist the Authority, Maharashtra, the Central Government in consultation with the State Government of Maharashtra, hereby constitutes the Third State Expert Appraisal Committee, except for Mumbai Metropolitan Region and Konkan Region, in the State of Maharashtra (hereinafter in this notification referred to as third SEAC, Maharashtra) comprising of the following Members, namely:—

1.	Shri Deepak Mhaisekar, Indian Administrative Service (Retired), Flat No. 1204 (12 <sup>th</sup> Floor), Gateway Tower No. 98, Sector R-8, Amanora Park Town, Hadapsar, Pune- 411028, Maharashtra.	Chairman;
2.	Shri Mukund Pathak, 502, Vaidehi Apts, Sajjanwadi, Mulund East Mumbai- 400081, Maharashtra.	Member;
3.	Shri Dattatray Thorat, Plot no. 34, Harsiddhi housing society Mayur Park Jalgaon Road Aurangabad, Maharashtra.	Member;
4.	Mr. Kiran Vasant Acharekar, Flat No 1000, 10th Floor, 11th Road, Supralina, Chembur, Mumbai – 400071, Maharashtra.	Member;
5.	Dr. Aseem Gokarn Harwansh, 704,47, Seawoods Estate, NRI Complex, Phase-2, Palm Beach Rd, Vashi Navi Mumbai 400703.	Member; and
6.	Deputy Secretary or Scientist-I, and Above Environment and Climate Change Department, Government of Maharashtra.	Member- Secretary.

8. The Chairman and Members of the first SEAC, second SEAC and third SEAC, Maharashtra shall hold office for a term of three years from the date of publication of this notification in the Official Gazette.

9. In order to avoid any conflict of interest,—

- the Chairman and Members of the Authority, Maharashtra and first SEAC, second SEAC and third SEAC, Maharashtra shall declare to which consulting organisation they have been associated with and also the project proponents;
- they shall not undertake any consultation or associate with preparation of Environment Impact Assessment (EIA) and Environment Management Plan for a project, which is to be appraised by the Authority, Goa and SEAC, Goa during their tenure; and

- (c) if in the past five years, the Chairman or any of the Members of the Authority, Maharashtra and first SEAC, second SEAC and third SEAC, Maharashtra have provided consultancy services or conducted EIA studies for any project proponent, in that event they shall recuse themselves from the meetings of the Authority, Goa and SEAC, Goa in the process of appraisal of any project being proposed by such proponents.

10. The first SEAC, second SEAC and third SEAC, Maharashtra shall exercise such powers and follow such procedures as enumerated in the said Gazette notification.

11. The first SEAC, second SEAC and third SEAC, Maharashtra shall function on the principle of collective responsibility and the Chairman shall endeavor to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

12. The State Government of Maharashtra shall notify an agency to act as Secretariat for the Authority, Maharashtra and the first SEAC, second SEAC and third SEAC, Maharashtra. The Secretariat shall provide all financial and logistic support including accommodation, transportation and such other facilities in respect of all its statutory functions.

13. The sitting fees, travelling allowances and dearness allowances to the Chairman and Member of the Authority, Maharashtra and the Chairman and Members of the first SEAC, second SEAC and third SEAC, Maharashtra shall be paid in accordance with the existing rules of the State Government of Maharashtra.

[F.No. J-11013/30/2007- IA.II (I)]

SUJIT KUMAR BAJPAYEE, Jt. Secy.



Ex-"B"

47

7-1  
845MUNICIPAL CORPORATION OF GREATER MUMBAI

CE / 0009 / WS / AH / 337(NEW) L

Subject: Proposed building on plot bearing C.T.S. No 646 (pt), 646/1 to 8, 646/21 to 28  
Village Bandra, at Gandhi Nagar, Bandra (E)

Architect : Smt Sangita Billimoria of M/s MITI

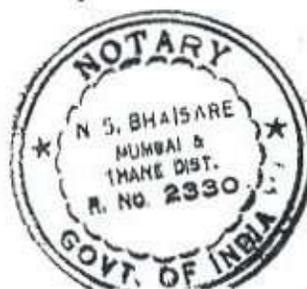
Plans at page : C- 215 to C- 229

Architect, Smt Sangita Billimoria of M/s MITI has submitted plans for a building on plot under reference on behalf of her client Shri Chandresh Mehta, Director, Resilience Realty Pvt Ltd, Developers appointed by the Cooperative Housing society in lieu of permissible FSI.

The details of the proposal are as below:

## I. Salient Features

- |                          |  |
|--------------------------|--|
| a) Survey Remarks & Plan | : At page C- 37 to C-39.   |
| b) D.P. Remarks          | : At page C- 13  |
| c) Zone                  | : Residential (R-2)  |
| d) Reservation           | : The plot u/r is not reserved for any public purpose.   |
| f) Copy of P.R. Card     | : At page C-41 to C-121  |
| g) Area of plot          | : 4840.00 sqm  |
| h) Proposed Building     | : G + 5 level car parking + Wing A 1 <sup>st</sup> to 15 <sup>th</sup> and wing B 1 <sup>st</sup> to 2 <sup>nd</sup> floor |
| i) NOC from CFO          | : At page C-209 to C-213   |





H-5  
649

two wings rising above these parking floors with setback at upper level. Wing A consists of 6<sup>th</sup> to 20<sup>th</sup> floors as habitable floors. Fitness center for the entire building is proposed at part 5<sup>th</sup> and 6<sup>th</sup> floor of this wing. Four residential tenements are proposed at each floor from 7<sup>th</sup> to 20<sup>th</sup> floors, except refuge floors. Three residential tenements are proposed at refuge floors. 3<sup>rd</sup>, 10<sup>th</sup> and 18<sup>th</sup> floors are proposed as refuge floors. Wing B consists of 6<sup>th</sup> and 7<sup>th</sup> as habitable floors. Eight residential tenements are proposed at these floors.

Architect has proposed relocation of layout RG within same plot. MHADA has been permitting such relocation as per its policy. Moreover, while permitting relocation, compliance with provision of DCR 23 is insisted. Hence, the relocating does not have material impact on the layout as far as area of RG is not altered. The developments of plots within the layout are being done by different societies. It is beyond the control of individual society to amend the entire layout. Hence, amendment of layout for each case is not insisted as a practice, however at the time of any subsequent amendment to layout, all the changes permitted in the layout earlier, are incorporated in the layout. The same shall also be insisted in Gandhi Nagar.

The proposal needs following concessions:

A. To allow six parking floors:-

Architect has proposed Gr + 5 upper floors for parking and some ancillary uses, as mentioned in preceding para. She has proposed the parking floors clear of the minimum front marginal open spaces required as per DCR 29, along the three sides facing the roads. On the fourth side, clear marginal distance of 7.65 m is proposed. A 6.0 m wide ramp is proposed in the marginal open space. The distance from the plot boundary from the edge of ramp is 1.5 m. Layout RG, which is at present at the center of the plot under reference, is proposed to be relocated along 18.3 m wide road, as shown on plan. The podium is proposed at 1.5 m from the layout RG.

Architect has represented that the parking floors are proposed to accommodate requisite car parking spaces. Further additional FSI is going to be available on the plot, when the layout shall be



M-7  
FSI

approved. She has made provisions to accommodate requisite car parking spaces for the future FSI at this stage. Hence, the car parking floors as proposed are necessary. She has proposed requisite open spaces for the car parking floors and hence, requested to allow the same with ramp as proposed.

Architect has proposed requisite open spaces from the edge of the parking floors, except from the layout RG. A ramp is allowed in the marginal open spaces. Since, the lower floors are proposed for parking, the same are proposed to be allowed, subject to the condition that approval to the parking layout from F.E. (T & C) shall be obtained before C.C.

In light of above, Ch.E. (D.P.) / Dir. (E.S. & P.) / M.C.'s approval is requested to allow the car parking floors with ramp as proposed.

**B. To Condone the Deficiency in Open Space**

The FSI available in MHADA layout as per revised DCR 33(5) is 2.5. Thus, the zonal FSI for existing MHADA colonies is more than one. Hence, plans for one FSI for determining that there is no open space deficiency for one FSI are not insisted.

**i. Car Parking floors**

As explained above, the plot is a part of MHADA layout and hence, the provisions of revised DCR 33(5) are applicable. The zonal FSI for such plots is 2.5. Hence, the plans with 1.00 FSI are not insisted.

The plot under reference abuts roads on three sides. Front open space of 6.0 m is proposed along 24.4 m wide road and 4.5 m along the other roads is proposed. As explained earlier, layout RG is proposed to be relocated along the 18.3 m wide road. This RG is proposed abutting the road and open space of 1.5 m from the parking floors is proposed. As per DCR 29(b) (iii), building at 3.0 m from the layout RG is allowed. Architect has requested that the parking floors are proposed to accommodate requisite car parking spaces. This will reduce the incidence of street side parking. There is hardship in accommodating the car parking spaces, within the reduced plinth, hence, the parking floors as proposed may be allowed.



N-9 853

It is proposed to allow the car parking floors as proposed by condoning the deficiency in open space. Since these floors are allowed free of FSI, being car parking floors, it is proposed to condone the deficiency in open space without charging premium.

Ch E. (D.P.) / Dir (E.S. & P.) / M.C.'s approval is requested to condone the deficiency in open space for car parking floors without charging premium as per provisions of DCR 64 (b).

ii. Building above

Architect has proposed the residential floors above the car parking floors with a setback at upper floors. The same is allowed as per provisions of DCR 29 (1) (d). The open spaces for upper residential floors, with setbacks are tabulated below:

	Wing 'A'	Wing 'B'
Length of building = 85.31	Ht. = 65.18 Mt	24.55 Mt
L.L.F. = (85.31 - 40) X 0.1 = 4.53m	H/3 = 20.00 Mt (Max)	8.18 Mt.
H/3 + L.L.F. = 20.00 + 4.53 = 24.53m	H/5 = 12.00m (Max)	6.00 Mt.

Side	Open space in Mtrs.				Remark.
	Required	Proposed	Deficiency	Percentage	
North	4.5	4.5 (min)	Nil	—	FOS
East	6.0	> 6.0	Nil	—	FOS
	3.0	3.0	Nil	—	From layout RG
South	6.0	> 6.0	Nil	—	FOS
West					
A-B	24.53	15.01	9.52	38.8 %	L/V
C-D	24.53	15.75	8.78	35.79 %	L/V



H-11 855

E-F	24.53	15.77	8.76	35.71%	L/V
F-G	24.53	14.57	9.96	40.60 %	L/V
H-I	24.53	16.09	8.44	34.41 %	L/V
J-K	24.53	16.79	7.74	31.55 %	L/V
L-M	24.53	15.66	8.87	36.16 %	L/V
N-O	24.53	15.76	8.77	35.75%	D/W
O-P	24.53	16.97	7.56	30.82 %	L/W
P-Q	24.53	16.56	7.97	32.49 %	D/V
R-S	24.53	17.93	6.60	26.91 %	L/V
S-T	24.53	18.03	6.50	26.50 %	L/V
U-V	24.53	17.85	6.68	27.23 %	D/W
W-X	24.53	17.20	7.33	29.88 %	L/V

From the above table it is seen that there is open space deficiency to the tune of min 26.50 % to max 40.60 % only towards West. Open spaces proposed towards other three sides are adequate.

As per provisions of DCR 64(b), where a clearly demonstrable hardship is caused, the Commissioner may, for reasons to be recorded in writing by special permission, permit any of the dimensions prescribed by these regulations to be relaxed. Provided that the relaxation will not affect the health safety, fire safety, structural safety and public safety, safety of the inhabitants of the building and in the neighborhood. Architect has outlined the hardships in the project in her letter at page C-1. Comments of this department regarding the hardship are as follows:

Hardship

Due to availability of additional FSI on account of revised DCR 33(S), maximum deficiency created is to the tune of 40.60% towards West. Architect has stated that there are constraints in planning. She has proposed 6 parking floors to accommodate requisite parking. This has increased the



H-13  
857

height of the building. She has represented that if the parking floors' height is not considered then the height of the building reduces to 65.18 m, thus reducing the deficiency considerably. Further deficiency is increased due to long length factor towards West. There is height restriction due to civil aviation requirements, hence, to consume the available FSI, it is necessary to propose a building with proposed profile. There is genuine hardship in planning.

There is substance in representation by the Architect. The deficiency is between 26.50 % to max. 40.60 %, only towards West. Adequate open spaces are proposed towards the other three sides.

Structural Safety:

Architect has proposed to demolish the existing buildings of the society. The new structure shall be insisted to be designed by a structural engineer registered with M.C.G.M. As required, the construction of the building shall be carried out under his supervision. It is proposed to insist that the structure shall be designed to withstand all possible loads, including seismic load as per the provisions of IS 1893. It is proposed to also insist that the structure shall be designed as per provisions of all relevant IS codes. Structural stability certificate from registered structural engineer shall be insisted before occupation as an IOD condition.

Health safety:

Sewage from the building is proposed to be drained to the municipal sewer existing on the road abutting the plot. Provision of proper arrangement for drainage of storm water drain from the plot into municipal storm water drain and the sewage from the building to municipal sewer shall be insisted as per the provisions of building by-laws, by incorporating suitable condition in the IOD. Compound shall be insisted to be suitably paved, thereby eliminating possibility of stagnation of water. The work of drainage shall be insisted to be carried out through licensed plumber. Drainage completion certificate shall be insisted before occupation.



N-15  
659Public safety

Height of the building proposed is 65.18m. As the building proposed is a high rise building, Architect has obtained NOC from CFO of M.C.G.M. (page C-209 to C-211). Compliance of CFO NOC conditions shall be insisted by incorporating IOD condition.

Public, Neighborhood safety

The adjoining plot is also proposed to be developed. Plans for the development on the adjoining plot are approved by this office for 2.4 FSI. These plans are also likely to be revised on further FSI being available on approval of layout. Thus, there is bound to be deficiency in joint open space in the proposed building on that plot and the proposed building under reference. It is not possible to ascertain the exact percentage of deficiency in joint open spaces at this stage. It is proposed that, a registered undertaking shall be insisted from the developer for not objecting to the development on the adjoining plots by way of suitable IOD condition.

A condition is proposed to be incorporated in the IOD, insisting that no nuisance shall be caused to the public due to proposed work. Hence, Public safety is not likely to be adversely affected.

In view of above, Ch.E.(D.P.)/Dir (E.S. & P)/M.C.'s approval is requested to condone the deficiency in open space to the tune of 24.66 % minimum to 40.60 % maximum as tabulated above for the building under reference by charging premium as per policy.

C. To allow internal chowk of lesser area

As per provision of DCR 29 (9) (a), "the inner chowk shall have an area at all its levels of not less than the square of one fifth of the height of the highest wall abutting the chowk"

In this case, the height of the highest wall abutting the internal chowk marked 'A' on plan at page C-225 is 65.18 m. The area of the Chowk required as per the provision of DCR 29 (9) (a), is 186.6 sqm. The area of the chowk is 136.98 sqm, which is less than that prescribed under DCR 1991.

Architect has represented that the deficiency in area of the chowk is 26.59 %, which is minor. Moreover, only toilets are having ventilators abutting this chowk. It is difficult to consume higher FSI



11-17/861

allotted under DCR 33(5), within the restrictions in height imposed by the Civil Aviation Authorities. She has requested to allow the chowk with minor deficiency by invoking the provisions of DCR 64 (b).

Ch.E (D.P./ Dir (E.S & P) M.C.'s approval is requested to allow the internal chowk with lesser area than that required under the provision of DCR 29 (9) (a) by condoning the deficiency as per provision of DCR 64 (b).

D. To allow the area of Staircase, Lift & Lift Lobby free of FSI

Architect has claimed the area of staircase, Lift and Lift lobby free of FSI as per provisions of DCR 35 (2) (C), & requested for following areas to be allowed free of FSI. It is proposed to allow the following areas free of FSI:

- (a) Area of staircase, lift and lift lobby and passages on all habitable floors free of FSI by charging premium as per policy. (as shown hatched on plan at page c-225)
- (b) Area of staircase, lift and lift lobby at parking level free of FSI without charging premium as per policy.
- (c) Area of second staircase free of FSI without changing premium being fire escape staircase, in each wing.
- (d) Area of staircase, lift, lift lobby, from topmost floor to terrace, free of F.S.I. with out charging premium.
- (e) Area of overhead tank and the non habitable area below the overhead water tank free of F.S.I. without charging premium as per policy.
- (f) Area of lift machine room above at terrace level free of FSI without charging premium.
- (g) In this case, Architect has represented that the tenements at the residential floors are planned as different entities, suitable structural provisions are being. Planned to prevent enclosure of any portion of common passage into the tenement. The lobby is planned only as an entrance to the residential units. Hence, she has requested to allow the lobby area free of FSI as per provisions of DCR 35 (2) (in) as hatched in red colour on plans at pg. C-215 to C-229.



H-19  
863

The area of staircase, lift and lift lobby claimed free of FSI is shown hatched on the plan at page C-215 to C-229.

In view of above Ch. E. (D.P.) / Dir. (E.S. & P.) / M.C.'s approval is requested to allow staircase, lift, lift lobby & cutoff lobby area free of F.S.I. as explained above.

E. To allow elevation features

Architect has proposed Flower beds of width maximum 1.2 m from building line and 0.75 m from the balcony line. Furthermore, Architect has proposed vertical bands in the form of fins. Horizontal beams at the edge of the fins are proposed as tie. The width of the vertical bands as measured from the building line varies and is more than 1.2 m at some places. Architect has represented that the vertical bands are proposed only for aesthetic purposes. Architect has submitted perspective view of the proposed building. She has requested to allow the elevation features as proposed to enhance the aesthetic beauty of the building.

As per DCR 30 (ii) (e) & (f), ornamental projections not more than 1.2 m from the building face and 0.75 m from the face of the balcony are permissible. The flowerbeds proposed are within the prescribed limits. The vertical fins and the tie beams are more than 1.2 m from the building face at a few places. Since, the same are proposed for aesthetic purposes, it is proposed to allow the same by insisting on an undertaking from the developers for not allowing misuse of the elevation features.

Ch. E.(D.P.)/ Dir (E. S. & P.)/ M.C.'s approval is requested to allow the elevation features as proposed by the Architect.

F. To allow the area of Telecommunication concentrator room; mailbox room; Air conditioning plant room etc free of FSI

Architect has proposed a Telecommunications concentrator room at fifth floor of the building which is the penultimate parking floor, measuring 20.00 sqm. The same is accessible from the common areas. She has requested to allow the area of the telecommunications concentrator room free of FSI as per the provisions of DCR 35 (2) (q).



57

H-21  
465

The request of the Architect is approvable in light of provisions of DCR 35 (2) (i).

Architect has proposed a mail box room below each of the wings admeasuring 10.00 sqm, each on the ground floor to house the mail boxes for the building as the building is more than 5 stories in height. The mail box room is accessible from the common staircase of the residential user. She has requested to allow the area of the mail box room free of FSI as per the provisions of DCR 35 (2) (r).

The size of the mail box room is commensurate with the size of the building proposed.

Architect has proposed DG set room and Air Conditioning plant room at 5<sup>th</sup> floor. D.G. set is proposed to provide power backup in case of necessity. Airconditioning plant room is proposed to air-condition the common areas of the building. Architect has claimed the same free of FSI as per provision of DCR 35 (2) (j).

Architect has also proposed one society office admeasuring 20.0 sqm.

claimed the same free of FSI as per provision of DCR 35 (2) (g).

Architect has proposed a servants toilet at each of the parking floors and at mid-landing of the building for common use of the servants of the building. The same is claimed free of FSI as per provision of DCR 35 (2) (h).

Ch E (D.P.) Dir (E.S. & P.) M.C.'s approval is requested to allow the area of following rooms free of FSI.

- (i) To allow the Telephone Concentrator room free of F.S.I.
- (ii) To allow the Mail box room free of F.S.I.
- (iii) To allow Airconditioning plant room and DG set room free of FSI.

G. To allow the area of Fitness Center free of FSI

Architect has proposed a Fitness Center having area of 285.71 sqm for use of the residents of the building at the fifth floor of the proposed building. The Fitness Center proposed is accessible from the common lobby. The fitness center is claimed free of FSI as per the provisions of DCR 35 (2) (u), as the



H-23  
867

which is proposed exclusively for the use of the inmates of the building and is proposed on behalf of a registered Co-operative society.

The area of Fitness Center upto 2% of the FUA of the building can be allowed free of FSI. The total BUA of the building is 14336.4 sqm. Hence, Fitness Centre upto 286.73 sqm can be allowed free of FSI. The area of Fitness Center as proposed by the Architect can be allowed free of FSI as per the provisions of DCR 35 (2) (u). The plot is leased to a registered co-operative society by MHADA. The proposal under reference is submitted by the developer as constituted attorney of the society. Hence, the Fitness center can be allowed free of FSI as requested by the Architect.

Ch E (DP) / Dir (E.S. & P.) M.C.'s approval is requested to allow area of fitness centre as proposed by the Architect free of FSI as claimed by Architect without charging premium.

#### 4. To allow Water body

Architect has planned an elevated water body at fifth floor level above the roof of ramp. Architect has claimed that the water body is being planned solely as an aesthetic feature at the same level as fitness centre. She has represented that the water for water body is proposed to be sourced from the grey water treatment plant/ rain water harvesting, for which no municipal water will be asked for.

Ch E (DP) / Dir / MC's approval is requested to allow water body as proposed by Architect.

#### 5. Relocation of RG

As seen from a copy of conveyance plan @ page C/15, there is a layout RG between the two rows of buildings. The same is also reflected in approved layout and amended layout of Gandhi Nagar, submitted to this office. Architect has proposed to construct a building on the layout RG by relocating it along 15.3m wide D.P. road, as shown on plan at page C-215. She has proposed to maintain the area of RG same, shape and size of RG is proposed to be altered. The existing as well as proposed to be relocated RG do not conform to the provisions of DCR 23. Architect has requested to allow the RG as



H-25  
469

The under reference is physical RG, the shape of existing RG is also not in conformity with DCR 23. The existing RG is accessible from 9.15m and 24.4m wide existing roads along its narrow width. Now the located RG is propose to be accessible from 9.15m, 18.3m and 24.4m wide roads, thus improving its character. She has requested to allow relocation of physical RG. Furthermore, Architect is proposed a strip 4.5m wide parallel to the building as paved RG. She has requested to allow the same as a facilitation measure for movement of fire tenders in case of emergency.

By ChE (BP) WS I's approval is requested to allow relocation and paving of physical RG as proposed by Architect. Requisite changes in layout shall be insisted in next revision.

Submitted for approval of Ch E. (D.P.)/Dir (E.S.&P.) /M.C. to

1. To allow six parking floors;
2. To condone deficiency in open space to the tune of 24.66 % minimum to 40.60% maximum by charging premium;
3. To allow deficient area for internal chowk;
4. To allow the area of staircases, lift and lift lobby free of FSI as explained in para 'E';
5. To allow the elevation features as proposed by the Architect;
6. To allow the area of Telecom Room, mailbox room, A.C. plant room, D.G. Set room free of FSI;
7. To allow the area of Fitness Center free of FSI;
8. To allow water body at fifth floor level for aesthetic purposes.



*Pamar*  
26/2/10  
E.E. (B.P.) H

Ch E. (D.P.) W.S.I

Submitted for consideration and approval please

Ch E. (D.P.)

*Shivkumar*  
Dy Ch E (B.P.)  
26/2/10

Dir (E.S.&P.), Sir,

Submitted for approval please

*3 (3/10)*  
*dst (D?)*

M.C.



next page

CE/0009/WS/AM/337(New)

contd from previous plot

- 2 MAR 2010  
 3774  
 02/03/10

Now m.c. may approve the proposal  
 subject to by ch.E (B.P) & i  
 ensuring that the area of retention  
 subdivided plot is maintained in  
 the amended layout for 2.5 A.S.  
 There are no HIG plots in the  
 layout.

Submitted please



No-MCP/9170  
 Dt-5-3-10

M.C.  
 Sir

AC Plant room  
 free of FSI not  
 allowed. Rest is  
 approved.

B. Singh  
 Director  
 (Engg. Services & Projects)

नृदम्न्युर्द महानगरपालिका  
 आयुक्तको कार्यालय  
 - 5 MAR 2010  
 614/2010



Ch. Eng. (D.P.)

By enwg (B.P) WSE

नृदम्न्युर्द महानगरपालिका  
 आयुक्तको कार्यालय  
 - 7 APR 2010  
 0055  
 08-04

नृदम्न्युर्द जम्निका  
 (शुभला प्रसाद)  
 नृदम्न्युर्द उपमहानगरको कार्यालय  
 - 12 APR 2010  
 0055

E.E.B.P.H.E & H.W.I.W.E K.A.S.I.  
 For further necessary action & report  
 Bring it to the office due date

Dy. Ch. E. (B.P) WSE  
 Chief Engineer (D.P.)  
 E.E.B.P.H.

For further necessary action & report  
 19/4/10  
 E.E.B.P.H.



# भारत का राजपत्र

## The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 580]

No. 580]

नई दिल्ली, बुधवार, अप्रैल 6, 2011/चैत्र 16, 1933

NEW DELHI, WEDNESDAY, APRIL 6, 2011/CHAITRA 16, 1933

पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 4 अप्रैल, 2011

का.आ. 695(अ).—केन्द्रीय सरकार ने, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा (3) की उपधारा (1) और उपधारा (2) के खंड (v) के अधीन जारी की गई भारत सरकार के पर्यावरण और वन मंत्रालय की अधिसूचना संख्यांक का0आ0 1533(अ), तारीख 14 सितंबर, 2006, द्वारा निदेश दिया था कि उसके प्रकाशन की तारीख से ही, नई परियोजनाओं या क्रियाकलापों का अपेक्षित संनिर्माण या उक्त अधिसूचना की अनुसूची में सूचीबद्ध विद्यमान परियोजनाओं या क्रियाकलापों का विस्तार या आधुनिकीकरण, प्रक्रिया और या प्रौद्योगिकी में परिवर्तन सहित क्षमता में परिवर्धन करते हुए भारत के किसी भाग में, यथास्थिति, केन्द्रीय सरकार से या केन्द्रीय सरकार द्वारा इसमें विनिर्दिष्ट प्रक्रिया के अनुसार उक्त अधिनियम की धारा 3 की उपधारा (3) के अधीन गठित राज्य स्तर पर्यावरण समाघात निर्धारण प्राधिकरण द्वारा केवल पूर्व पर्यावरण अनापत्ति के पश्चात् ही किया जाएगा;

और, उक्त अधिसूचना में प्रयुक्त "निर्मित क्षेत्र" पद के संबंध में स्पष्टीकरण का उपबंध करने और अधिसूचना के भिन्न-भिन्न पैराओं को पारस्परिक रूप से संगत बनाने के लिए भी तथा ऐसे अनाशयित परिवर्तनों को प्रत्यावर्तित करने के लिए जो राजमार्ग परियोजना से संबंधित पर्यावरणीय समाघात निर्धारण अधिसूचना, 2006 की अनुसूची में विशेषकर मद्र संख्या 7(च) के सामने प्रविष्टि में का.आ. 3067(अ), तारीख 1 दिसंबर, 2009 द्वारा संशोधन करते समय अधिसूचना में किए गए थे और उक्त अधिसूचना में उपयुक्त संशोधन करने के इस प्रयोजन के लिए विनिश्चय किया गया है।

और उक्त पर्यावरण (संरक्षण) नियमों का नियम 5 का उपनियम (3) का खंड (क) यह उपबंधित करता है कि जब कभी केन्द्रीय सरकार यह विचार करती है कि किसी उद्योग पर या

किसी क्षेत्र में किन्हीं प्रक्रियाओं या प्रचालन को चलाने पर, प्रतिषेध या निर्बंधन अधिरोपित करना चाहिए तो वह ऐसा करने के लिए अपने आशय की सूचना देगी;

और उक्त पर्यावरण (संरक्षण) नियमों का नियम 5 का उपनियम (4) यह उपबंधित करता है कि उपनियम (3) में किसी बात के होते हुए भी, केन्द्रीय सरकार को जब कभी यह प्रतीत होता है कि ऐसा करना लोकहित में है, वह उपनियम (3) के खंड (क) के अधीन सूचना की अपेक्षा से अभिमुक्ति दे सकेगी;

अतः, अब, केन्द्रीय सरकार उक्त पर्यावरण (संरक्षण) नियमों के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित उक्त पर्यावरण (संरक्षण) अधिनियम की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात्:-

उक्त अधिसूचना में,-

(I) पैरा 6 में “सभी मामलों में पर्यावरणीय अनापत्ति मांगने के लिए कोई आवेदन,” शब्दों के पश्चात् “परियोजना प्रस्तावक द्वारा” किया जाएगा ।

(II) पैरा 7, के खंड (i) के उप पैरा II क्रम (2) विस्तारण के उप पैरा (i) के अंतिम वाक्य में “अनुसूची की मद 8 में प्रवर्ग ख के रूप में सूचीबद्ध सभी परियोजनाओं और क्रियाकलापों (संनिर्माण, नगरी/ वाणिज्यिक, काम्पलैक्स/आवासन)” के स्थान निम्नलिखित शब्द रखे जाएंगे, अर्थात्:-

“अनुसूची की मद 8(क) में प्रवर्ग ख के रूप में सूचीबद्ध सभी परियोजनाओं और क्रियाकलापों (निर्माण और संनिर्माण परियोजना)” ।

(III) अनुसूची में,-

(i) मद 1(क) के सामने ,-

स्तंभ (5) में की प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां रखी जाएंगी, अर्थात् -  
“ साधारण शर्तें लागू होंगी ।

टिप्पणः

(i) ऐसे खान पट्टे के नवीकरण के प्रक्रम पर पूर्व पर्यावरणीय अनापत्ति भी अपेक्षित है जिसके लिए आवेदन, नवीकरण की तारीख से एक वर्ष पूर्व किया जाना चाहिए ।

(ii) खनिज पूर्वक्षण छूट प्राप्त है ।”

(ii) मद 7(च) के सामने ,-



स्तंभ (4) में की प्रविष्टि के स्थान पर “ (i) सभी राज्य राजमार्ग परियोजनाएं; और” के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:-

“ (i) सभी नई राज्य राजमार्ग परियोजनाएं ” ।

(iii) मद 8(क) के सामने,-

स्तंभ (5) में की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:-

“इस अधिसूचना के प्रयोजन के लिए निर्मित क्षेत्र को “बेसमेंट (बेसमेंटों) सहित, समस्त मंजिलें एक साथ रखे जाने पर निर्मित या आच्छादित क्षेत्र और अन्य सेवा क्षेत्र जो निर्माण/संनिर्माण परियोजनाओं में प्रस्तावित किए गए हैं” के रूप में परिभाषित है ।”

(IV) परिशिष्ट 5 के पैरा 3 के स्थान पर निम्नलिखित पैरा रखा जाएगा, अर्थात्:-

“ 3 जहां कोई लोक परामर्श आज्ञापक नहीं है वहां आकलन, विहित आवेदन प्ररूप-1 और पर्यावरणीय समाघात निर्धारण रिपोर्ट के आधार पर अनुसूची की मद 8 से भिन्न सभी परियोजनाओं और क्रियाकलापों की दशा में किया जाएगा । अनुसूची की मद 8 की दशा में इसके विलक्षण परियोजना चक्र को ध्यान में रखते हुए संबंधित पर्यावरणीय निर्धारण समिति या राज्य पर्यावरणीय निर्धारण समिति प्ररूप-1, प्ररूप-1क, धारणा योजना और पर्यावरणीय समाघात निर्धारण रिपोर्ट [केवल 8(ख) के अधीन सूचीबद्ध परियोजनाओं के लिए अपेक्षित] के आधार पर परियोजनाओं या क्रियाकलापों का आकलन करेंगी और पर्यावरणीय अनापत्ति को प्रदान करने के संबंध में परियोजना पर या अन्यथा सिफारिशें करेंगी तथा पर्यावरणीय अनापत्ति के लिए शर्तें भी नियत करेंगी” ।



[फा. सं. 3-101/2010-आईए. III]

डा. नलिनी भट्ट, वैज्ञानिक 'जी'

टिप्पण: मूल नियम, भारत के राजपत्र, असाधारण, भाग 2, खंड 3, उपखंड (ii) में अधिसूचना सं. का0आ0 1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित किए गए थे और का0आ0 1737(अ), तारीख 11 अक्टूबर, 2007 और का0आ0 सं. 3067(अ), तारीख 1 दिसंबर, 2009 द्वारा संशोधित किए गए थे ।

**MINISTRY OF ENVIRONMENT AND FORESTS****NOTIFICATION**

New Delhi, the 4th April, 2011

**S.O. 695(E).**— Whereas by notification of the Government of India in the Ministry of Environment and Forests vide number S.O. 1533(E), dated the 14<sup>th</sup> September, 2006 issued under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on or from the dates of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the said notification entailing the capacity addition with change in process and or technology shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act in accordance with the procedure specified therein;

And whereas, it has been decided to provide clarification with regard to the term "built up area" used in the said Notification and also to make various paras of the Notification mutually consistent and to restore the unintentional changes, which got into the Notification while making amendment vide S.O. 3067 (E) dated 1<sup>st</sup> December, 2009, in particular the entry against item no. 7(f) in the schedule to the EIA Notification, 2006 relating to highway projects and for this purpose to issue suitable amendments in the said Notification.

And whereas, clause (a) of sub-rule (3) of rule 5 of the said Environment (Protection) Rules provides that, whenever the Central Government considers that

prohibition or restrictions of any industry or carrying on any processes or operation in any area should be imposed, it shall give notice of its intention to do so;

And whereas, sub-rule (4) of rule 5 of the said Environment (Protection) Rules provides that, notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3);

Now therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the said Environment (Protection) Act, read with clause (d) of sub-rule (3) of rule 5 of the said Environment (Protection) Rules, the Central Government hereby makes the following amendments in the said Notification, namely:-

In the said notification, -

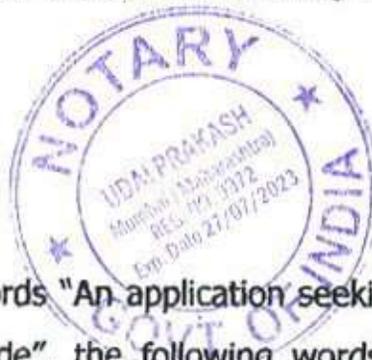
(I) In para 6, for the existing words "An application seeking prior environmental clearance in all cases shall be made", the following words shall be substituted, namely:-

"An application seeking prior environmental clearance in all cases shall be made by the project proponent".

(II) In para 7, in sub-para 7 in clause (i), sub para II, stage (2) – scoping, sub para (i), in the last sentence, for the words "activities listed as Category 'B' in item 8 of the schedule (Construction / Township / Commercial Complexes / Housing)", the following words shall be substituted, namely:-

"Activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects)".

1244 9011-2



(III) In the Schedule, -

(i) against item 1(a), -

in column (5), for the entries, the following entries shall be substituted, namely:-

"General conditions shall apply.

Note:

- (i) Prior environmental clearance is as well required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal.
- (ii) Mineral prospecting is exempted."

(ii) against item 7(f),

in column (4), for the entry "(i) All State Highway Projects; and" the following entry shall be substituted, namely:-

"(i) All New State Highway Projects".

(iii) against item 8(a), -

in column (5), for the entry, the following entry shall be substituted, namely:-

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building / construction projects"."

(IV) In Appendix V, for para 3, the following para shall be substituted, namely:-

"3. where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application Form-1 and EIA report, in the case of all projects and activities other than item 8 of the schedule. In the case of item 8 of the schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise projects or activities on the basis of Form-1, Form-1A, conceptual plan and the EIA report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance".



[F. No. 3-101/2010-IA. III]  
Dr. NALINI BHAT, Scientist 'G'

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O. 1533(E), dated the 14<sup>th</sup> September, 2006 and amended vide S.O. 1737(E), dated the 11<sup>th</sup> October, 2007 and S.O. No. 3067(E) dated 1<sup>st</sup> December, 2009.

Ex-"D"

1205

ITEM NO.32

COURT NO.1

SECTION IX

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

Petition(s) for Special Leave to Appeal (C) No(s). 10078/2019

(Arising out of impugned final judgment and order dated 29-03-2019 in WPL No. 954/2019 passed by the High Court of Judicature At Bombay)

BUILDERS' ASSOCIATION OF INDIA

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION and I.R. and IA No.65285/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES )

Date : 03-05-2019 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Anshuman Srivastava, Adv.  
Mr. E. C. Agrawala, AOR

For Respondent(s)



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

Issue notice.

In the meantime, no coercive steps shall be taken.

(SUSHIL KUMAR RAKHEJA)  
AR CUM PS

(ANAND PRAKASH)  
BRANCH OFFICER

Signature Not Verified

Digitally signed by  
DEEPAK GUPTA  
Date: 2019.05.03  
12:20:56+05'30'

ITEM NO.30

COURT NO.6

SECTION IX

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

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 32134/2019

(Arising out of impugned final judgment and order dated 29-03-2019 in WPL No. 954/2019 passed by the High Court Of Judicature At Bombay)

CREDAI PUNE METRO

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.136818/2019-CONDONATION OF DELAY IN FILING and IA No.136816/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.136815/2019-PERMISSION TO FILE PETITION (SLP/TP/WP/..) )

Date : 20-09-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s)

Mr. Sidharth Dave, Sr. Adv.  
Mr. Shyam Divan, Sr. Adv.  
Mr. Amol Chitale, Adv.  
Mrs. Pragya Baghel, AOR  
Ms. Ranjeeta Rohatgi, Adv.  
Mr. Abhishek Thakral, Adv.  
Mr. Saket Mone, Adv.  
Mr. Subit Chakrabarti, Adv.  
Mr. Abhishek Salian, Adv.



For Respondent(s)

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

Permission to file special leave petition is granted.

We have heard Mr. Sidharth Dave and Mr. Shyam Divan, learned senior counsel appearing on behalf of the petitioner.

Delay condoned.

Issue notice.

Signature Not Verified In the meantime, no coercive steps shall be taken.

Digitally signed by  
MADHU BALA  
Date: 2019.09.20  
17:10:22 IST  
Reason:

Tag with SLP(C)No. 10078 of 2019.

(MADHU BALA)  
COURT MASTER (SH)

(NISHA TRIPATHI)  
BRANCH OFFICER

Ex - 'E'

1207

Oriana 04-2011.jpg

1/7/23, 12:48 PM

Untitled Map  
04/2011

- Legend**
- 📍 Feature 1
  - 📍 Feature 2
  - 📍 Feature 3
  - 📍 Feature 4
  - 📍 Gagal Home - Service apartment in BKC
  - 📍 Rustorjee Oriana



Google Earth

com/mail/0/7?tab=rm&ogb/#inbox/FMfcgzCvnsbMNXcbkMTKQjHfkKDbXTsx?projector=1&mt\_sagePerfId=0.1

## Government of Maharashtra

Tel. No. 22793132

Fax No. 22813947

No. ENV 2013/CR 39/TC-1

Environment Department,

Mantralaya, Mumbai - 400 032

Dated: 21 April, 2015.

## CIRCULAR

**Sub:** Requirement of Environmental Clearance for building projects modification regarding.



This department, vide circular no. ENV 2013/CR 39/TC-1 dated 17/04/2014 had issued guidelines indicating procedure for consideration of violations of EIA Notification. Vide this circular it was decided that in view of orders of Hon'ble High Court in the matters of redevelopment projects wherein rehabilitation of tenants in SRA/Dilapidated/CESS buildings was involved, construction of rehab component below 20,000 m<sup>2</sup> was not to be considered as a violation of EIA Notification read with OM of MoEF dated 12/12/2012 and 27/06/2013.

Now, Hon'ble High Court in the matter of Glomore Construction and others Vs. Union of India (W.P. No. 655 of 2014) vide order dated 24/03/2014 & 18/12/2014 allowed construction up to 20,000 m<sup>2</sup> of free sell component, even in residential and commercial projects, indicating no violation of EIA Notification of 2006. Further, AGP, High Court, Original Side, Mumbai, vide his letter no. NPP/18087 dated 3/12/2014 informed State Government to take note of High Court orders and comply them accordingly to avoid issuance of contempt notice against the officers of Government of Maharashtra for continuing to disregard the orders of High Court.

In view of the above orders of Hon'ble High Court, Mumbai, proposed construction projects wherein project proponent has undertaken total construction below 20,000 m<sup>2</sup> may not be considered as a violation of EIA Notification of 2006 (Amended time to time) and read with OM of MoEF dated 12/12/2012 and 27/06/2013. However, it is to be noted that by this way indemnity is not given to the construction under taken by project proponent. If, at the time of appraisal of the project, it is found that the construction undertaken is not fulfilling the environmental considerations, project proponent will have to comply with the direction of concern committee to accommodate environmental concerns. Therefore, it is desirable that in such cases all environmental concerns are addressed at the planning stage only. The State Environmental Appraisal Committees (SEACs) should ensure the compliance of above order of Hon'ble High Court to avoid contempt of its orders. This is subject to further orders of the Hon'ble High Court.

*Ajay Mehta*  
(Ajay Mehta)  
Principal Secretary

Copy to,

1. Director (IA), MoEF CC, New Delhi, is kindly requested to convey his say, if any, in the above said matter within 8 days.



Ex-"G"

wp-504-12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.504 OF 2012

Naresh Janardhan Mali ... Petitioner  
Versus  
The State of Maharashtra and others ... Respondents

Mr. Niranjana Pandit, Assistant Government Pleader for respondent No.1.  
Mr. Mukul Taly with Ms. Mallika Taly, Mr. Yusuf Shaikh, Mr. Rakesh Misar  
i/by M/s. S. Mahomedbhai & Co. for respondent Nos.3 and 4.

**CORAM : MOHIT S. SHAH, C.J. &  
RANJIT MORE, J.**

**Thursday, March 29, 2012**



P.C.

In this petition purporting to be PIL, the petitioner has challenged the letter dated 3 January 2012 (Exhibit 'K' at page 49 of the petition) by which the Slum Rehabilitation Authority has withdrawn the stop-work notice dated 3 September 2011.

2. It is the petitioner's contention that respondent Nos.3 and 4 are carrying on the construction of more than 20,000 sq. meters. without getting environmental clearance from the State Government and, therefore, the Slum Rehabilitation Authority which had initially issued stop-work notice dated 3 January 2011 is not justified in withdrawing the same.

3. Our attention is invited to the applications made by respondent Nos.3 and 4 for construction of 28,000 sq.mtrs of built up area.



4. The learned counsel for respondent Nos.3 and 4 submits that at present respondent Nos.3 and 4 are only proposing to construct the rehabilitation tenements for resettling 370 slum dwellers out of whom 160 slum dwellers have already been shifted to the transit accommodation and, therefore, respondent Nos.3 and 4 cannot be restrained from proceeding with the project of constructing rehabilitation tenements. The learned counsel for respondent Nos.3 and 4 submits that when about 650 applications for environmental clearance are pending with the State Government, the applicant does not expect to get environmental clearance immediately and that since the CRZ notification requires environmental clearance from the State Government only when the construction is in excess of 20,000 sq.meters, no useful purpose will be served by requiring respondent Nos.3 and 4 not to proceed with the construction of rehabilitation tenements which will be only for construction of about 14,000 sq.mtrs and which would come to about 18,000 sq.mtrs if construction of closed area and area open to the sky is taken into consideration.

5. Mr. Niranjana Pandit, learned Assistant Government Pleader has submitted that when the project proponent cannot undertake construction project for more than 20,000 sq.meters 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.meters also without obtaining prior environmental clearance.

6. In order to assure the Court that respondent Nos.3 and 4 will not undertake any construction activity equal to or exceeding the limit of 20,000 sq.meters as prescribed by notification dated 14 September 2006, Mr. Percy S. Chowdhry, Director of respondent No.3 company-developer has filed affidavit dated 29 March 2012 giving the following undertaking:-



“8. I undertake to this Hon'ble Court that I as the Developer will not carry out any construction exceeding the limit i.e. equal to or beyond 20,000 sq.meters, as prescribed by the provisions of Notification No.S.O. 1533 dated September 14, 2006 on the land bearing CTS No.G/626 and G/164 A (Part) of Village Bandra under the Slum Rehabilitation Scheme for Narli Agripada (SRA) Co-operative Housing Society (Prop.) at Ram Krishna Mission Road, Khar (West), Mumbai, without obtaining prior environmental clearance from the State Environment Impact Assessment Authority (SEIAA).”

7. Having heard the learned counsel for the parties and also having regard to the fact that the project in question is for rehabilitation of 370 slum dwellers out of whom 160 slum dwellers have already shifted to the transit accommodation, and also having regard to the fact that a large number of environmental clearance applications are pending with the Government and that environmental clearance is required only when the built up area exceeds 20,000 sq.meters and having regard to the aforesaid undertaking given on behalf of respondent No.3, we are inclined to accept the submissions made on behalf of respondent Nos.3 and 4.

8. We accordingly accept the above undertaking and direct that while calculating the area, respondent Nos.3 and 4 shall take into account notification No. S.O.1533 dated September 14, 2006 under which built up area is to include covered construction and in the case of facilities open to the sky continue to be activity area. As per the current approvals, respondent Nos.3 and 4 have approval for built up area of 18,031.78 sq meters.





srk

wp-504-12

9. Accordingly, subject to the direction that respondent Nos.3 and 4 shall act in accordance with the aforesaid undertaking and shall not undertake any construction in excess of 20,000 sq.meters without obtaining prior environmental clearance from the Competent Authority of the State Government, the petition is disposed of.

**CHIEF JUSTICE**

**RANJIT MORE, J.**





kambli

1

wp-1916.12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1916 OF 2012

Vardhman Developers Limited ...Petitioner

v/s.

Union of India & Ors. ...Respondents

Mr.Milind Sathe, Senior Advocate with Mr.D.H.Mehta i/b  
Mr.Jitendra J. Shah for petitioner.

Ms.Navina Kumai for respondent no.1.

Mr.G.W.Mattos, AGP for State.

Ms.Sharmila Modle for respondent No.4-(BMC).

Mr.Parag Shah with Mr.Mahesh Shah for respondent No.5.

**CORAM: MOHIT S. SHAH, C.J. &  
N.M. JAMDAR, J.**

**DATE : 24 September 2012.**



P.C.

Rule. Respective counsel waive service of rule.

2. In the facts and circumstances of the case, the matter is taken up for final hearing.

3. The petitioner-company is a developer, which has acquired development rights from respondent No.5-Mazgaon Dholkawala Co-operative Housing Society (proposed) having premises on City Survey No.366(part) and City Survey No.1/367 of Mazgaon Division, 'E' Ward in Mumbai. The land admeasures about 13,098.96 sq.meters.

4. It is the petitioner's case that part of the above land is reserved for municipal primary school as per the Development Plan. However, some portion of the land was encroached upon by slum dwellers. The other land is occupied by 54 municipal tenants. In view of the above situation, the development agreement has been entered into between respondent No.5-society and the petitioner-developer, and the Municipal Corporation has also agreed to the arrangement under which-

(i) the petitioner will construct municipal school on the land admeasuring 1045 sq.meters and hand over the same to the Municipal Corporation free of costs.

(ii) the petitioner will also construct, free of costs, municipal employees quarters on the land of 1,952.84 sq.meters.

(iii) the Municipal Corporation will also get Rs.51,33,11,059/- over and above the above constructed properties.

(iv) all the municipal tenants/ and eligible slum dwellers will be rehabilitated and will be allotted permanent accommodation free of costs and they will also receive corpus fund each of the commercial occupants Rs.37,500 and each of the residential tenants/eligible slum dwellers Rs.18,750/-.





kambli

3

wp-1916.12

5. According to the petitioner, the Municipal Corporation has already sanctioned the above proposal and the Municipal Corporation has also issued Intimation of Disapproval (IOD) under section 346 of the Mumbai Municipal Corporation Act on 25 April 2012. In accordance with the said redevelopment agreement, the petitioner has already demolished the existing structures on the land and is also paying compensation in lieu of transit accommodation to tenants and eligible slum dwellers, who are going to be allotted permanent accommodation free of costs.

6. The grievance of the petitioner in this petition is that clause 29 of the IOD provides that the petitioner cannot obtain commencement certificate before obtaining NOC from the Ministry of Environment and Forest. It is submitted that such NOC from Ministry of Environment and Forest is required because the total built up area of the project submitted by the petitioner is 46,200 sq. meters and as per the notification dated 14 September 2006 issued by the Ministry of Environment and Forest, prior environmental clearance is required from the Ministry of Environment and Forest, where the built-up area exceeds 20,000 sq.meters. The State Environmental Impact Assessment Authority, which is appointed for considering such proposal for environmental clearance has a large number of pending applications. The petitioner's application for prior environmental clearance was submitted to the said authority on 15 June 2012. However, the application is still at serial No.296 of the list of applications, from which so far only first ten applications have been considered by respondent No.3-the State



Environmental Impact Assessment Authority. It is, therefore, submitted that the petitioner does not expect its application to be considered for another 6 to 12 months, which would unnecessarily delay implementation of the project, which would include construction of a municipal school free of costs, and construction of municipal employees quarters, free of costs, to be provided by the petitioner to the Municipal Corporation, and also construction of rehabilitation buildings for 54 municipal tenants and 29 eligible slum dwellers, free of costs. It is submitted that the total built-up area of this part of the project will be hardly about 11,000 sq.meters, which is well below the stipulated limit of 20,000 sq.meters, beyond which the developer cannot construct without obtaining prior environmental clearance.

7. Mr.Sathe, learned Senior Counsel for the petitioner relies upon the order dated 29 March 2012 passed by this Court in Writ Petition No.504 of 2012 and submits that in the said case this Court had permitted the concerned developer to take up construction of area up to 18,031.78 sq.meters, for which the concerned developer had obtained approval from the Municipal Corporation and had observed that having regard to the fact that a large number of environmental clearance applications are pending with the Government and that environmental clearance is required only when the built up area exceeds 20,000 sq.meters and an undertaking being given by the developer not to exceed construction of more than 20,000 sq.meters before getting environmental clearance, can be acted upon so that project for rehabilitation of slum dwellers is not delayed.



8. The writ petition is opposed by Mr.Mattos, learned AGP appearing for respondent No.2-State of Maharashtra and respondent No.3-State Environmental Impact Assessment Authority. The learned counsel for Municipal Corporation, Gr.Mumbai also submits that since clause 29 of the IOD requires the petitioner to obtain NOC from the State Environment Impact Assessment Authority before applying for commencement certificate, prayer made by the petitioner may not be granted. Mr.Mattos further states the petitioner's grievance about delay in disposal of applications for environmental clearance is not justified, because it was on account of pendency of a large number of applications that the State Government has appointed another committee to expedite consideration of applications for environmental clearance for projects in Mumbai Metropolitan Region. The learned counsel for the Union of India states that she has no instructions in the matter.



9. Before proceeding further, we note that while issuing notice on this petition on 11 September 2012, we had indicated the petitioner's grievance and suggestion that prima facie no prejudice will be caused to any party if the petitioner is permitted to put up construction not exceeding 20,000 sq.meters, because environmental clearance is required only if the project involves construction of built up area exceeding 20,000 sq.meters.

10. The learned counsel for the respondents have not addressed us on this particular issue of prejudice. As already indicated above, out of 46,200 sq.meters of built-up area for which the petitioner has been granted IOD by the Municipal Corporation about 11,000 sq.meters of the construction is going to be for the benefit of the municipal tenants, eligible slum dwellers and also the Municipal Corporation itself, because the petitioner is required to construct municipal staff quarters as well as municipal school, all free of costs. The learned counsel for the petitioner further states that since these buildings for the municipal school, municipal staff quarters and rehabilitation buildings for 84 families are going to have a separate foundation from the foundation for the free sale component buildings, the foundation for buildings with built up area of 11,000 sq.meters will not have the same impact which will be caused by laying foundation for construction of free sale component buildings for more than 30,000 sq.meters. The learned counsel further states that the petitioner undertakes not to construct built-up area in excess of the built-up area for municipal school, municipal staff quarters and the rehabilitation buildings for 84 families or any further construction on the basis of free FSI available to the developer on account of development of above buildings.

11. The learned counsel further states that the Director of the petitioner-company with an authority of the resolution of the Board of Directors will file an undertaking on the above lines within two weeks from today.





12. Having heard the learned counsel for parties, we are of the view that since what the petitioner proposes to construct in the first phase is only about 11,000 sq.meters of built-up area and that too only construction of a municipal school buildings, to be provided free of costs to the Municipal Corporation, construction of municipal staff quarters, to be provided free of costs to the Municipal Corporation and rehabilitation building for municipal tenants and eligible slum dwellers, all aggregating to about 84, free of costs, and also payment of pro-rata amount to the Municipal Corporation out of Rs.51.33 crores, no prejudice will be caused to any of the respondent-authorities or to any public interest if the petitioner is permitted to put up above construction of about 11,000 sq.meters in the first phase, before the petitioner's application for prior environmental clearance is considered by respondent No.3-authority. As already indicated above, prior environmental clearance is required only where the proposed construction exceeds 20,000 sq.meters.

13. For the reasons aforesaid, the petition is partly allowed. Respondent No.4 is directed to consider the petitioner's application for grant of commencement certificate only for the construction of municipal school, municipal staff quarters and rehabilitation building for 84 families of municipal tenants/eligible slum dwellers, after the petitioner files an undertaking in terms of the contents of para 10 hereinabove.

14. It is clarified that this order shall not create any equity in favour of the petitioner when its application for environmental clearance is considered by respondent No.3-Authority. It is also clarified that respondent No.3-Authority shall consider such proposal for environmental clearance on its own merits without being influenced by this order, but as expeditiously as possible.

15. Rule is made absolute to the above extent only.

**CHIEF JUSTICE**

**(N.M. JAMDAR, J.)**





gopi

wp-lodg.470-13.sxw



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LODGING NO.470 OF 2013

M/s.Saumya Buildcon Pvt. Ltd.

...Petitioner

Versus

Union of India & Ors.

...Respondents

Dr. Milind Sathe, Senior Advocate with Mr. Vishal Kanade and Mr. Hemant Shah i/b. IC Legal and Mira Lalani for petitioner.  
Mr. N.D. Sharma with Mr. H.V. Mehta for respondent No.1.  
Mr. Niranjani Pandit, AGP for respondent State.  
Ms. Sharmila Deshmukh for respondent MCZMA.  
Ms. Sharmila Modle for respondent B.M.C.

**CORAM : MOHIT S. SHAH, C.J. &  
ANOOP V. MOHTA, J.**

**DATE : 06 March 2013**

**ORAL JUDGMENT (PER CHIEF JUSTICE)**

Rule. Respective counsel waive service of Rule. In the facts and circumstances, the matter is taken up for final hearing today.

2. The petitioner is a developer who had acquired development rights over the land situated and lying at Survey No.777, 778, 779 and 780 (Part) of Worli Division, Mumbai admeasuring 7872.14 sq. meters. The petitioner is in the process of implementing the project as contemplated under Article 33(7) of the Development Control Regulation, 1991.

3. The land belongs to respondent No.4 which had constructed flats for municipal tenants, who have formed a Co-operative Housing Society which is respondent No.6 herein. The petitioner had submitted

gopi

wp-lodg.470-13.sxw

building plans to the Municipal Corporation for construction of buildings with 99 flats for rehabilitation of the municipal tenants and 9 shops, municipal school building, having ground plus 5 floors and a free sale building having various floors, for parking, club, etc. and first to 33 upper residential floors.

4. When the building plans were submitted in the year 2004 and they were approved, the applicable notification was Environment Impact Notification dated 14 September 2006 which lays down the following requirements for obtaining environmental clearance:-

**“2. Requirement of prior Environmental Clearance (EC):-**

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be the Central Government in the Ministry of Environment and Forests for matters falling under Category “A” in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category “B” in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this Notification.
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”





gopi

wp-lodg.470-13.sxw

(See Paragraph 2 and 7)  
LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR  
ENVIRONMENTAL CLEARANCE:

Project or Activity	Category with threshold limit		Conditions if any
	A	B	

1	2	3	4	5
8	Building/Construction projects/Area Development projects and Townships.			
8(a)	Building and Construction project		> 20000 sq.mtrs and < 1m 50,000 sq. mtrs. of built-up area #	# (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area > 50 ha and or built up area > 1,50,000 sq. mtrs. ++	++ All projects under Item 8(b) shall be appraised as Category B1.

5. The petitioner also applied to the MCZMA which granted approval by communication dated 14 February 2007 at Exhibit "F", in the following terms:-

"Accordingly, the proposal was forwarded to the Ministry of Environment & Forests, Govt. of India for grant of necessary CRZ clearance vide letter No.MCZMA/54, dtd. 16/10/2006. Now, the Ministry of Environment & Forests, Govt. of India (1A-III Division) vide letter dtd.24/1/2007 (copy enclosed) accorded CRZ clearance for the above project, subject to the following conditions:"

.....

6. It is necessary to note that as per the criteria laid down in the aforesaid Notification dated 14 September 2006 the proposed construction was to the extent of 15,645.70 sq. meters. It is also necessary to note that as per Environment Impact Notification dated 14 September 2006 in the



gopi

wp-lodg.470-13.sxw

case of facilities open to the sky, it was to be treated as the activity area and not built up area and only covered construction was to be treated as built up area.

7. As per the IOD and the commencement certificate granted by the Municipal Corporation the petitioner proceeded to construct the buildings having 99 flats for rehabilitation of municipal tenants and 9 shops. The construction is almost complete. Similarly, the petitioner also proceeded to construct the Municipal School building of ground plus 5 floors and it is stated that the construction is almost complete.

8. It is necessary to note that when the petitioner was granted the MCZMA clearance in the year 2007 the built up area for the residential building and the shops was 6373.57 sq. meters and the built up area of the Municipal School building was 1045.54 sq. meters. However, by MOEF Notification dated 4 April 2011 the definition "built up area" was substituted as under:-

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects."

In other words, what was earlier known non-FSI area was not included in the definition of built up area but by the aforesaid Notification dated 4 April 2011 the definition of "built up area" was expanded to include construction of not only covered area, but also basement and other service areas which were earlier not included in the definition of built up area. In view of the above Notification, the built up area of the residential building



gopi

wp-lodg.470-13.sxw

for 99 flats and 9 shops was re-computed at 8720.51 sq. meters and the built up area of the municipal school was re-computed at 1196.16 sq. meters aggregating to 9916.67 sq. meters as against the previous area aggregating to 7419.06 sq. meters.

9. In view of the above amended Notification the built up area of the proposed sale component building which was earlier computed at 8226.57 sq. meters would now be 14,000 and odd sq. meters and aggregating all the three built up areas of the residential building, 9 shops, municipal school building and the free sale component building the aggregate area would work out to 39,681.13 sq. meters.

10. In view of the above, as the construction area is to exceed 20,000 sq. meters, the petitioner is required to obtain environmental clearance from the State Expert Appraisal Committee (SEAC). The SEAC would forward its recommendation to the State Environment Impact Assessment Authority (SEIAA). The petitioner has accordingly submitted its application to the SEAC in June 2011. However, by the impugned decision dated 16 November 2011 the petitioner has been informed about the following decision :-



**“Decision:**

The case was discussed on the basis of the presentation made by the proponent. The proponent is requested to **comply** with the following observations:

1. The proponent shall obtain CRZ Clearance as per 4(d) of CRZ Notification 2011 which states that any construction involving more than 20000 m<sup>2</sup> BUA in CRZ-II, prior recommendation of concerned CZMA shall be essential for considering grant of environmental clearance as per EIA Notification 2006 or grant of approval by the relevant planning authority.

2. The proponent shall submit letter from MCGM (Municipal Corporation of Greater Mumbai) with detailed clarification on the following points:

- a. Total area of the plot nearing C S No.777, 778 and 780.
- b. Plot area on which “Prerna Co-op. Housing Society” is proposed.
- 3.
- c. Remaining plot area and details, if any other scheme, proposed thereon.
4. The draft general guidelines of MCGM dated 16<sup>th</sup> July 2011, including fire safety norms, for High Rise Building Proposals, shall be complied with.
5. Details of car park arrangement calculations.”



11. In the meantime, the petitioner has also been served with stop work notice dated 21 June 2011 from the Secretary, Environment Department of the State Government stating that since the petitioner's project construction is more than 20,000 sq. meters, it was obligatory on the petitioner's part to obtain prior environmental clearance from competent authority as per EIA Notification dated 14 September 2006



gopi

wp-lodg.470-13.sxw

before starting any building construction activity. The notice further stated that since the petitioner had failed to obtain prior environmental clearance before starting construction activities, there is violation of Notification dated 14 September 2006 and, therefore, the petitioner must stop the construction work forthwith. Consequently the Municipal Corporation of Greater Mumbai has also issued stop work notice dated 27 July 2011.

12. According to the petitioner the petitioner has complied with both the stop work notices and the petitioner has filed this petition under Article 226 of the Constitution challenging the above decision dated 16 November 2011 and the aforesaid two stop work notices.

13. Dr.Milind Sathe, learned counsel for the petitioner has urged the following contentions:



(i) That the petitioner's project was approved and the CRZ clearance was granted on 14 February 2007 by MCZMA. The project was for construction with built up area of only 15,645.70 sq. meters in view of the definition of "built up area" then prevailing. In fact, the petitioner has only constructed the residential building for rehabilitation of municipal tenants for 99 flats, 9 shops and the Municipal School building of ground plus 5 floors which is to be handed over to the Municipal Corporation of Greater Mumbai free of costs.

(ii) In any view of the matter, even the built up area of the sale component building added to the above constructions



gopi

wp-lodg.470-13.sxw

would be within 20,000 sq. meters (15,645.70 sq. meters as per the definition of "built up area" when CRZ clearance for the project was granted by MCZMA). The changed definition of built up area as per Notification dated 11 April 2011 cannot apply to a project which was sanctioned prior to 11 April 2011.

(iii) In any view of the matter, even if the changed definition under Notification dated 11 April 2011 were to apply to the petitioner's project, the petitioner has already applied to SEAC for environmental clearance for a project having built up area exceeding 20,000 sq. meters and the petitioner is awaiting the said environmental clearance, but there can be no requirement again to go back to MCZMA for getting CRZ clearance which was already granted earlier on 14 February 2007. The proposed construction at the time of grant of CRZ clearance on 14 February 2007 and the proposed constructions now are for the same construction areas and merely because there is change in the definition of built up area, there is no justification for the State Expert Appraisal Committee to require the petitioner to obtain CRZ clearance again from MCZMA.



(iv) Without prejudice to the above submissions, it is submitted that in any view of the matter since the environmental clearance from State Expert Appraisal Committee and the State Environment Impact Assessment Authority under the EIA Notification dated 14 September,



gopi

wp-lodg.470-13.sxw

2006 is required only when the construction exceeds 20,000 sq. meters, the petitioner is entitled to continue with the construction which would not exceed 20,000 sq. meters.



(v) Reliance is placed on orders dated 16 January 2013 in Writ Petition No.2809 of 2012 and 24 September 2012 in Writ Petition No.1919 of 2012 and other matters in support of the contention that the authorities cannot be permitted to object to the developer proceeding to construct upto 20,000 sq. meters without obtaining environmental clearance which is required to be obtained only when the construction is to exceed 20,000.

14. On the other hand, Ms. Sharmila Deshmukh, learned counsel for MCZMA and Mr. Niranjana Pandit, learned A.G.P., for the State Authorities have opposed the petition and submitted that the notification dated 4 April 2011 of the MOEF is merely clarificatory amendment relating back to the original Notification dated 14 September 2006. As per the amended definition of built up area, even the open construction areas are included in the built up area and since the petitioner's application to the said Expert Appraisal Committee itself indicates that as per the amended definition, the total construction area is going to be 39681.13 sq. meters, the authorities are justified in requiring the appellant to obtain not only environmental clearance, but also CRZ clearance from MCZMA. It is submitted that when the MCZMA had granted clearance on 14 February 2007 it was on the basis of the built up area being less than 20,000 sq. meters. Now that the built up area is going to exceed 20,000 sq. meters fresh CRZ clearance will be required from the MCZMA.

gopi

wp-lodg.470-13.sxw

15. It is further submitted that the petitioner cannot be allowed to put up any construction and that the authorities are justified in issuing the stop work notices as the project is for construction exceeding 20,000 sq. meters of built up area.

16. As regards the decision of the State Expert Appraisal Committee that the petitioner should obtain CRZ clearance as per the CRZ Notification of 2011, when construction area remains the same, two views may be possible on the question whether the petitioner having obtained CRZ clearance from MCZMA with proposal for built up area upto 20,000 sq. meters should again be required to approach MCZMA for CRZ clearance when the built up area as per the amended definition is exceeding 20,000 sq. meters. However, in matters of environment concern, we would prefer to err on the safer side. We, therefore, do not find any fault with the decision of the State Appraisal Committee requiring the petitioner to move the MCZMA for environmental clearance because now the built up area of the project is computed at 39,681.13 sq. meters. We do not accept the petitioner's contention that because the petitioner's project was earlier granted CRZ clearance before 4 April 2011, the clarificatory amendment provided by the said Notification will not apply to the petitioner's project. The amendment dated 4 April 2011 is clarificatory as indicated in the preamble to the Notification itself. The change in the definition of built up area from merely covered area to areas including basement and service areas will significantly increase the construction area. After all, CRZ clearance is all about construction activity in a coastal zone and, therefore, merely because the construction is open to sky would not make it any less the construction than the construction of the covered area. We, therefore, find considerable substance in the submission made





gopi

wp-lodg.470-13.sxw

on behalf of the MCZMA that the Notification dated 4 April 2011 will apply to the pending projects as well, meaning thereby the projects are not already executed.

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. meters, 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 Vivekanand 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. meters 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. meters, without obtaining prior environmental clearance. This Court has held that when clearances 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 been granting





gopi

wp-lodg.470-13.sxw

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.

18. Following the orders in the aforesaid cases i.e. orders dated January 16, 2013 in Writ Petition No.2809 of 2012 and 24 September 2012 in Writ Petition No.1916 of 2012, we are of the view that the respondent authorities are not justified in calling upon the petitioner to stop work even within 20,000 sq. meters of work, particularly when the petitioner has already completed the construction of residential building for rehabilitation of 99 municipal tenants, 9 shops required for the ordinary needs of the residents and municipal school constructed by the petitioner for the benefit of the Municipal Corporation all free of costs. As regards the free sale building also, learned counsel for the petitioner gives an undertaking that the petitioner will construct only a portion of the free sale building to the extent that the aggregate construction of the rehabilitation building for 99 flats, 9 shops, municipal school building and the free sale building will not exceed 20,000 sq. meters, without first obtaining the CRZ clearance from the MCZMA and the environmental clearance from the State Environment Impact Assessment Authority.



19. Accordingly, the petition is partly allowed and the stop work notices dated 21 June 2011 issued by the Secretary, Environment Department, (Exhibit "T") and 27 July 2011 (Exhibit AA) issued by the Executive Engineer (Building Proposal, City) Municipal E-Ward of the Municipal Corporation of Greater Mumbai shall stand modified to the effect that the petitioner is restrained from putting up any construction in excess of 20,000 sq. meters computed on the basis of the MOEF



gopi

wp-lodg.470-13.sxw

Notification 4 April 2011, including the construction of the rehabilitation building for 99 flats, 9 shops and the municipal school building already constructed or almost constructed. An undertaking to this effect shall be filed by a Director of the petitioner company within two weeks from today and the petitioner shall commence construction only after such an undertaking is filed before this Court.

20. It is clarified that the above direction is given only in respect of the environmental clearance and the CRZ clearance and this judgment does not exempt the petitioner from complying with the other legal requirements in the matter of construction of the buildings in question.

21. It will be open to the petitioner to pursue their application for CRZ clearance before the MCZMA and for environment clearance before the State Expert Appraisal Committee and the State Environment Impact Assessment Authority.

22. Writ Petition accordingly stands disposed of.

**CHIEF JUSTICE**

**ANOOP V. MOHTA, J.**



2014:BHC-OS:14328-DB



82-wp.1352.2014.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1352 OF 2014**

Glomore Constructions and Ors. ... Petitioners

Vs

The Union of India and Ors. ... Respondents

*Mr.Arn timer N. i/b Wadia Ghandy & Co., for the Petitioners.*

*Mr.Niranjan Pandit, AGP for Respondent No.2.*

**CORAM : V.M.KANADE &  
REVATI MOHITE DERE, JJ.**

**DATE : 18<sup>th</sup> DECEMBER, 2014**



**P.C. :**

1. We are informed that Environment clearance has been granted. Learned Counsel for the petitioners have placed before us the Minutes of the meeting of SEIAA held on 28<sup>th</sup> and 29<sup>th</sup> October, 2014, which shows that Environment clearance has been granted to the petitioners. The said order has been communicated to the petitioners by a letter



dated 11<sup>th</sup> December, 2014.

2. That being the position, the petition has become infructuous and is accordingly disposed of reserving the rights of the petitioners to apply for restoration in the event according to the petitioners counsel some reliefs still survive in the petition.

**REVATI MOHITE DERE, J.**

**V.M.KANADE, J.**



2019:BHC-AS:8939



6-apl-229-2018.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 229 OF 2018

M/s.PS Developers & Ors.

...Applicants

Versus

The Maharashtra Pollution Control Board & Anr.

...Respondents

-----  
Mr.Niranjan Mundargi i/b.Mr.Siddharth R. Karpe for the Applicants.  
Ms. A.R.Patil, APP for Respondent No.1-State.  
Ms. Jaya J. Bagwe for Respondent No.2  
-----

**CORAM : MRS. MRIDULA BHATKAR, J.**  
**DATE : 15 MARCH 2019**

**P.C.:**

1. This Criminal Application is filed under section 482 of the Code of Criminal Procedure.
2. This Criminal Application is directed against the order dated 07.12.2015 passed by the learned Chief Judicial Magistrate First Class, Pune in R.C.C. No. 1222 of 2015 thereby issuing process under section 15 read with section 16 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006.

Trupti



1/3



6-apl-229-2018.doc

3. As per case of the complainant i.e., the Maharashtra Pollution Control Board (for short "Board"), the Board is having a policy decision if the construction is above more than 20,000 sq. meters and also as per Environment Impact Assessment Notification, 2006, then the environment clearance certificate is required to obtain for construction beyond 20,000 sq. meters.

4. Heard submissions. Perused complaint. In paragraph No. 9 of the complaint, the complainant has specifically stated that the applicants/accused have started construction having total built up area more than 20,000 sq. meters without obtaining such Environment Clearance. The words are started from "have started construction". This is not the requirement to constitute an offence. The construction should be complete more than 20,000 sq. meters.

5. The learned counsel for the applicants/accused has produced the plan. The Principal Secretary, Environment Department had written a letter dated 02.02.2015 to the applicants/accused wherein it was mentioned that the applicants have completed the construction of total built up area admeasuring 19959.06 sq. meters. It appears that the applicants/accused



6-apl-229-2018.doc

want to construct more than 20,000 sq meters and accordingly they have made correspondence with the Municipal Corporation, other authorities and the Environment Department.

6. Undoubtedly, if the construction is going beyond 20,000 sq. meters, then the environment clearance certificate is required to obtain, is a rule and this is not to be breached. However, there is no *prima facie* material to show that the construction is beyond 20,000 sq. meters. Hence, the order of issuance of process is hereby quashed and set aside. Criminal Application is allowed in terms of prayer clause (b).



(MRIDULA BHATKAR, J.)

2017:BHC-AS:20068



42-apl-732-2016.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
 CRIMINAL APPELLATE JURISDICTION  
 CRIMINAL APPLICATION NO. 732 OF 2016

M/s. Suncity Corporation & Anr. ... Applicants  
 vs.  
 Maharashtra Pollution Control Board & Anr. ... Respondents

WITH  
 CRIMINAL APPLICATION NO. 733 OF 2016

Manoj Daisaria ... Applicant  
 vs.  
 Maharashtra Pollution Control Board & Ors. ... Respondents

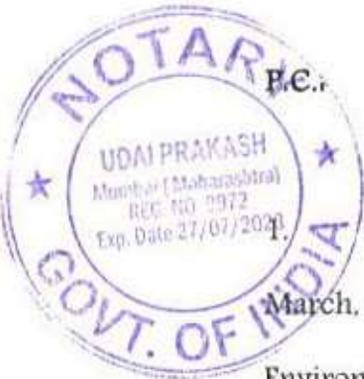
Mr. Robin Jaisinghani a/w. Mr. Harshil Parekh i/b. M/s. Purnanand & Co. for the Applicants.

Ms. Rupali Dixit for Respondent no.1

Ms. P. N. Dabolkar, APP for the State.

CORAM , A. K. MENON, J.

DATE , 26<sup>th</sup> JULY, 2017



By these applications the applicant's challenges identical orders dated 10<sup>th</sup> March, 2015 issuing process against the petitioners under Section 15 of Environment (Protection) Act, 1986 r/w. Environment Impact Assessment Notification 2006 dated 14<sup>th</sup> September, 2006 which required any development or construction project in excess of 20000 sq.mtrs to obtain clearance under the said Environment Impact Assessment Notification dated 14<sup>th</sup> September, 2006, copy of which is at Exhibit "C".

1/3



42-apl-732-2016.odt

2. It is common ground that a division bench of this court has in WP(L) 2305 of 2013 and WP(L) NO. 655 OF 2014 passed an order permitting construction upto 20000 sq.mtrs without obtaining environment clearance. Mr. Parekh, learned Counsel for the petitioner has tendered a copy of the order dated 18<sup>th</sup> December, 2013 passed in the aforesaid Writ Petition. The Writ Petition was disposed of. In paragraph 6 of the said order the Court noted that there was no impediment in granting any interim relief permitting the petitioner therein to carry out construction upto 20000 sq.mtrs without obtaining environment clearance.

3. It is not in dispute today that the aforesaid order dated 18<sup>th</sup> December, 2013 has not been challenged by the Board or any other respondent. The Writ Petition was finally disposed of by the said order. Process was issued on 10<sup>th</sup> March, 2015 well after the order dated 18<sup>th</sup> December, 2013 was passed and therefore process could not have been issued and probably may not have been issued if the Order of this Court was brought to the attention of the Ld. Magistrate. For these reasons the impugned orders must be set aside. Furthermore it is stated on behalf of the applicant that sanction has subsequently been obtained in respect of entire project from the said Environment Impact Assessment Authority on 12<sup>th</sup> January, 2016. Copy of sanction appears at Exhibit "E" to this application.



42-apl-732-2016.odt

4. In view of the fact that the commencement of construction upto 20000 sq.mtrs was not objectionable, in view of the order dated 18<sup>th</sup> December, 2013 and in view of the fact that subsequently permission has been granted for the entire project, there is no justification in sustaining the impugned order. Hence, I pass the following order: -

- (i) Applications are allowed in terms of prayer clause (a)
- (ii) Regular Criminal Case No. 261/SS/2015 before the 53<sup>rd</sup> Court Mulund and the common impugned order dated 10<sup>th</sup> March, 2015 are quashed and set aside.
- (iii) No order as to costs.

(A. K. MENON, J.)





IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3607 OF 2018

M/s. Sancheti Properties and Ors. ...Petitioners

Versus

Maharashtra Pollution Control Board & Anr. ...Respondents

.....

Mr.R.D.Soni i/b. Ram and Co. for the Petitioners.

Ms.Sharmila U.Deshmukh for Respondent No.1.

Mr.A.R.Patil, APP for Respondent No.2 – State.

.....

CORAM: MRS.MRIDULA BHATKAR, J.

DATED: OCTOBER 24, 2018



1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.

2. This Petition is directed against the order dated 29<sup>th</sup> January 2015 of issuance of process passed by the learned Judicial Magistrate First Class, Pune in R.C.C. No.2926 of 2014.

3. On 22<sup>nd</sup> October 2018, this Court has passed the following order :.

*“1. In this Petition, the petitioners, who are the builders, are praying for quashing and setting aside the order dated They are also challenging the order dated 21<sup>st</sup> June 2018 passed by the learned Chief Judicial*



Magistrate, Pune below application exhibit 17 in R.C.C. No. 2926 of 2014.

2. ...The process is issued against petitioner Nos. 1 to 3 for the offence punishable under Section 15 read with Section 16 of the Environment (Protection) Act, 1986 read with the Environment Impact Assessment Notification of 2006.

3. Admittedly, as per notification of 2006 and further circular dated 21<sup>st</sup> April 2015, prior permission of Environmental Department is not required for construction upto 20,000 sq.meters. If the construction is going beyond 20,000 sq. meters, then prior clearance from the Environmental Department is mandatory. The same view is taken by the Division Bench of this Court in the case of *M/s. Vardhman Developers Limited vs. Union of India & Ors.* (Writ Petition (L) No. 2305 of 2013 with Notice of Motion (L) No. 539 of 2013 decided on 18<sup>th</sup> December, 2013) by holding that no prior permission is required from the Environmental Department to put up construction below 20,000 sq. meters.

4. In the present case, admittedly, the petitioners have submitted plans for construction of more than 20885.18 sq. meters before the Corporation. The petitioners had started their construction in the year 2010. According to the petitioners, they have completed first phase upto 14750 sq. meters without obtaining prior approval from the Environmental Department. Subsequently, the environmental clearance was obtained on 7<sup>th</sup> September, 2012 for construction of 38980 sq. meters".

4. The learned counsel for the petitioners has pointed out that in the case of *M/s. Vardhman Developers Limited vs. Union of India &*



*Ors.* (Writ Petition (L) No. 2305 of 2013 with Notice of Motion (L) No. 539 of 2013 decided on 18<sup>th</sup> December, 2013), the Division Bench of this Court while dealing with the similar issue has accepted the undertaking given by the petitioners that they would construct only upto 20,000 sq. meters and shall not construct further. It means that in the said case, the proposal was given for more than 20,000 sq. meters. He has submitted that the petitioners have constructed upto 14,750 sq meters in the first phase i.e., in 2010 for which the action was taken by respondent No.1. He has relied on the sanctioned plan of first phase wherein the Collector has approved the construction upto 13,027.37 sq. meters. He has further submitted that the petitioners have not violated the rules and the notification. If the construction is beyond 20,000 sq. meters, then prior clearance from the environmental department is required.

5. The learned counsel for respondent No.1 has mainly relied on Section 15 read with Section 16 of the Environment (Protection) Act, 1986. She has submitted that if the party proposes to construct more than 20,000 sq. meters, then at that time also, prior clearance from the environmental department is mandatory. She has further submitted that the petitioners had submitted their first proposal in the year 2009 and it was of 20,885 sq. meters and, therefore, it was binding on the



petitioners to obtain prior clearance from the environmental department.

6. Heard submissions. Considered the documents and record placed before this Court especially the circular dated 21<sup>st</sup> April, 2015 and the notification of 2006. Both the documents disclose that for construction beyond 20,000 sq. meters, prior clearance from the environmental department is mandatory. If the construction is below 20,000 sq. meters, such clearance is not required. In the case of **M/s. Vardhman Developers Limited** (supra), the Division Bench of this Court has accepted the undertaking given by the petitioners that they would not construct more than 20,000 sq.meters and restrict upto limit as prescribed in the circular. In the present case, though, the proposal was given above 20,000 sq. meters as pointed out by the learned counsel for the petitioners, the authority has approved the construction upto 13,027.37 sq.meters and the construction was upto 14,750 sq. meters.

7. Under such circumstances, it cannot be said that there is breach of law or rules under the Environment (Protection) Act, 1986. The environmental department gave clearance on 7<sup>th</sup> September, 2012 for construction upto to 38,983.59 sq. meters. Therefore, I do not find any breach or violation of the rules under Environment (Protection) Act,





911-wp-3607-18.doc

1986 as per complained by respondent No.1. Hence, it is a fit case to invoke the supervisory jurisdiction of this Court. Writ Petition is allowed. Rule made absolute in terms of prayer clause (a).

(MRIDULA BHATKAR, J.)



Ex-"H"

1247

**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

.....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

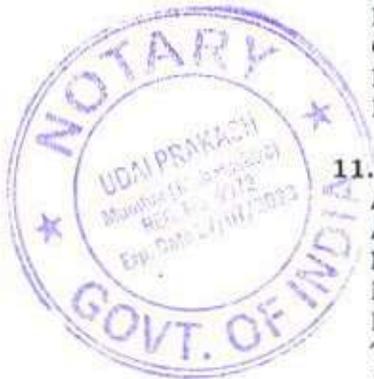
....Respondent(s)

**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**

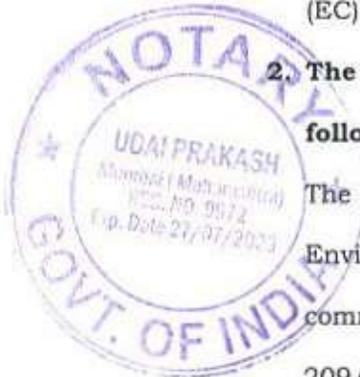
**Pronounced on : 03.04.2023**

**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



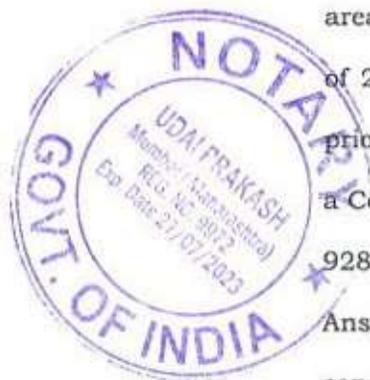
direction was given for issuance of notices to the Respondents 1,3,4,5,7,8,9,10 and 11 as other respondents had already appeared. Thereafter, on the next date 10.12.2021, no material order was passed. On 10.12.2021, for the first time, this Bench had taken up this matter for consideration and recorded 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, **Glomore 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*



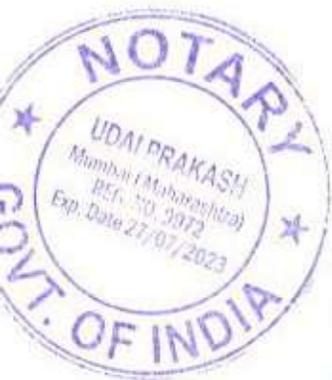
construct up to 20,000 sq. meters without Environmental Clearance. Nowhere we find that the Hon'ble High Court considered the scope and scheme of the EIA Notification, 2006 and expounded the law concerning need to have prior EC for the construction as specified in Entry 8 (a) of EC Regulation, 2006. 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

- 1) 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 appellants are entitled to be granted ?

**17. FINDINGS:**

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

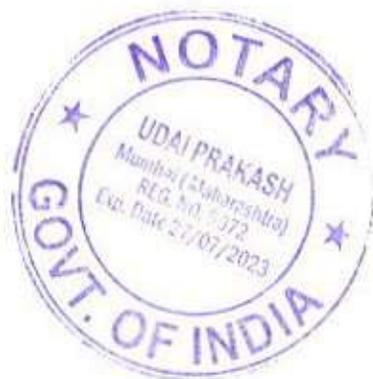
In respect of question No.1 and 2, we have gone through the judgment of Hon'ble Bombay High Court in ***M/s Saumya Buildcon Pvt. Ltd. Vs. Union of India*** case which in para-17 clearly says that if the Project Proponent does not exceed 20,000 sq. m. construction for residential buildings, without obtaining 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.



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

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

Item No.6

(Pune Bench)

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

(By Video Conferencing)

Misc. Application No. 10/2022(WZ)  
In  
Original Application No. 71/2016 (WZ)

Shri Ramdas Vasant Rao Anerao

.....Applicant

Versus

State of Maharashtra &amp; Ors.

.....Respondent(s)

Date of hearing: 06.12.2022

**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. Sangram Singh Bhonsle along-with Ms. Samridhi Jain, Advocates for R-2/PP Mr. Girish Utangale, Advocate for R-5/SRA Ms. Manasi Joshi, Advocate for R-6/MPCB Mr. Aniruddha Kulkarni, Advocate for R-7 & 8/Envtt. Deptt.



**ORDER**

This application has been filed by the Applicant praying to set aside the order dated 20.10.2020, where-by Original Application No. 71/2016 (WZ) was dismissed in default, which is annexed at page 12 of the paper book. It is submitted in this application that Applicant had filed M.A. No. 71/2017 (WZ) for restoration of the Original Application No. 71/2016 (WZ), which was allowed vide order dated 21.12.2017 by imposing cost of Rs. 5,000/-, which was deposited by him vide receipt dated 31.01.2018, copy of which has been annexed. After March, 2020, due to Covid-19 Pandemic, the Courts were closed and the Applicant/Advocate was not intimated about assembly of the Tribunal. On 20.10.2020, this Tribunal assembled through Video Conferencing and dismissed the Original Application due to non-compliance of order dated 21.12.2017, although

he had already complied with the said order on 31.01.2018, though the receipt of depositing the fine could not be filed by him in the Tribunal.

2. It is further submitted that due to Covid-19 Pandemic, the Apex Court had directed all subordinate Courts, not to pass any adverse order in absence of either party or Advocates. He came to know about this order on 07.06.2021, when the Court assembled after Summer Vacation. Therefore, there is no delay in filing the present application. He has also referred to the Judgment of Hon'ble Supreme Court in *Suo Moto* Writ Petition (C) No. 03 of 2020, where-in period from 15.03.2020 to 28.02.2022 is directed to be excluded in computing the period of limitation. In this backdrop, he has prayed that the impugned order should be set aside and Original Application should be restored.

3. From the side of Respondent No. 2/Project Proponent, objection has been filed stating that the Applicant had full knowledge about the date on which dismissal order has been passed and for this, our attention is drawn by the learned Counsel to the Cause list of this Tribunal dated 31.01.2018, 08.01.2020, 10.01.2020, 15.03.2020, 16.05.2020, 30.06.2020 and 20.10.2020 and has indicated that the Original Application, which has been dismissed, was constantly being listing for hearing though it kept being adjourned. He has also drawn our attention to the Order of Registrar General of NGT dated 20.02.2020, where-by the matters of Pune Bench were directed to be taken up by the Principal Bench of NGT on daily basis and further Circulars of this Tribunal dated 13.02.2020 and 18.03.2020 have already been shown in order to establish that the Applicant was well informed that this Tribunal was to take up the matter on the appointed date, but he deliberately failed to appear. Therefore, he does not require any indulgence of this Tribunal and restoration application deserves to be rejected.

4. The learned Counsel for the Respondent No. 5 has also pointed out that in para 8 of the application, the Applicant has submitted that he

came to know about the Order passed by the Hon'ble Apex Court on 07.03.2021, directing that no subordinate Courts would pass any adverse order in absence of party even then he moved the restoration application dated 31.05.2020 after a considerable delay. Therefore, his conduct is quite evident that he was never serious in contesting this matter.

5. We have heard learned Counsels for the parties and are of the view that it is on record that this Tribunal was not functioning regularly and that the matters were being taken up by the Principal Bench of NGT, therefore, it could be possible that the Applicant might not have noticed the date on which the same was to be taken up, hence it resulted in its dismissal. The fact that he has deposited an amount of Rs. 5,000/- by way of cost on 31.01.2018, the receipt of which is annexed at page no. 11 of the paper book, shows that he wanted to contest, but due to this Tribunal not working regularly, it could be possible that he missed out the date of hearing, because of which this application might have been dismissed by this Tribunal. Therefore, giving benefit of this doubt, we direct the Registry to restore the Original Application, giving the Applicant last opportunity to contest, subject to cost of Rs. 10,000/- (Rupees ten thousand only) to be deposited in the account of the Bar Association of NGT, Western Zone Bench, Pune.

6. Registry is directed to place this matter for hearing on 09.02.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM



December 06, 2022  
Misc. Application No. 10/2022(WZ) In  
Original Application No. 71/2016 (WZ)  
P.Kr

2010 SCC OnLine Del 3466 : (2010) 173 DLT 52

**Delhi High Court**  
BEFORE DR. S. MURALIDHAR, J.

Splendor Landbase Ltd. ... Petitioner;

*versus*

Delhi Pollution Control Committee ... Respondent.

W.P. (C) 543/2008 with 2714/08, 2771/08, 2772/08, 3815/08, 7081/08, 8143/08, 8144/08, 8145/08, 8146/08, 8147/08, 8148/08, 8149/08, 9040/08, 464/09, 465/09, 508/09, 509/09, 510/09, 511/09, 525/09, 794/09, 7575/09, 8208/09, 8751/09, 10860/09, 3095/08, 4319/08, 4321/08, 4322/08, 4323/08, 4330/08, 4333/08, 3905/08, 8789/08, 8901/08, 9128/09 & 1391 of 2010

Decided on September 30, 2010

**A. Environment and pollution – Water (Prevention and Control of Pollution) Act, 1974 – S. 33-A – Air (Prevention and Control of Pollution) Act, 1981 – S. 31-A – Delhi Pollution Control Committee – Powers under – On a collective reading of Ss. 25 and 33-A, the legislative scheme appears to be that where there is a failure by a person to comply with either S. 25(1)(a) or S. 25(5) of the Water Act then it would be open to the DPCC to exercise its powers under S. 33-A of the Act – Without giving any show cause notice under S. 25(5) in the instant case and without waiting for the expiry of the time within which the corrective steps have to be taken, it will not be open to the DPCC to straightaway invoke its power under S. 33-A to order closure of the shopping mall or commercial or residential complex concerned – That would make such exercise of power vulnerable to invalidation on the grounds of arbitrariness and unreasonableness – The position as regards S. 31-A of the Air Act is no different – That power too cannot be exercised to straightaway order closure of a building without giving the person concerned a prior show cause notice consistent with the procedure outlined under the Rules under the Air Act**

**B. Environment and pollution – Water (Prevention and Control of Pollution) Act, 1974 – S. 25 – Air (Prevention and Control of Pollution) Act, 1981 – Ss. 21 and 22 – Delhi Pollution Control Committee – Penalties, fines and environment damages in the form of fixed sums of monies or by requiring bank guarantees – Levy of – Although the Chairman of the DPCC may be the Chairman of the CMC, he is but one member in the CMC – There is nothing to indicate that the decision of CMC was unanimous or by majority or that it was the decision only of the Chairman – There is no power under the Water Act or the Air Act given to the Chairman to further sub-delegate his powers in regard to consent to establish or consent to operate to the CMC – Such sub-delegation was obviously bad in law – Unless it is shown, and it is not, that the other members of the CMC apart from the Chairman were performing a mere advisory role and had nothing to do with the actual grant or refusal of the consent to establish or consent to operate, such decision by the CMC is clearly *ultra vires* the Air Act and Water Act – Held no justification for the CMC to itself take decision as regards the grant and refusal of the consent to establish under the Water Act and consent to operate under the Air Act – Secondly, even where it agreed to grant consent to establish, the CMC imposed a pre-condition that the applicant should pay a penalty or fine or furnish a bank guarantee or in some cases all or some of them – There is no statutory basis for such a direction to be issued by the CMC, or for that matter by even the Chairman of the DPCC – The grant of the consent to establish or consent to operate ought not to be made conditional upon payment of some fine or penalty or furnishing of bank guarantee – Given the object of the Water Act and the Air Act, which is the prevention and control of pollution, the mere payment of fine or penalty or furnishing of bank guarantee is unlikely to prevent and control the likely pollution that can be caused – The basic approach adopted by the CMC where such penalty or fine has been levied or bank guarantee secured appears to be faulty – The decision to levy environmental damages and to seek the furnishing of bank**



guarantees has been sought to be justified by the DPCC with reference to S. 31-A of the Air Act and S. 33A of the Water Act — S. 31-A of the Air Act is more or less similarly worded as S. 33-A of the Water Act and both provisions have been inserted by the 1988 Amendments — Power includes the power of the DPCC to issue “any directions in writing to any person” — The ‘Explanation’ to the provision clarifies that the power to issue directions includes the power to direct “closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service” — Yet, this power has to be one coupled with a duty to act reasonably and fairly — It cannot be stretched to include a power to levy a penalty — Power to levy a penalty on any party is in the nature of a penal power — Unless there is a specific power in the statute enabling the authority to do so, it cannot levy penalties or damages with reference to the general power under S. 31-A of the Air Act or S. 33-A of the Water Act

C. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — S. 2(k) — Delhi Pollution Control Committee — Prior consent of — “Trade effluent” — Definition of — Amendment Act No. 53 of 1988 — What stood excluded from the definition of “trade effluent” was “domestic sewage” — The word “sewage, itself has been defined under S. 2(g) to mean effluent from any sewerage system or sewage disposal works and includes sullage produced from open drains — The word ‘sewage, when qualified by the word ‘domestic, should necessarily mean sewage produced from premises used for domestic purposes — The word “domestic” when contra-distinguished from the expression “trade” could mean a place used for residence rather than for business or trade — Definition of “trade effluent” does not take a residential complex or even a commercial shopping complex or shopping mall out of the purview of S. 25(1) of the Water Act — A careful reading of S. 25(1) of the Water Act would show that it is intended to cover not just “industry” which discharges “trade effluent” but any “process or operation” that results in a discharge of “sewage” not limited to trade effluent — The expression “sewage or trade effluent” in S. 25(1)(a) Water Act which follows the words “operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge...” is wide enough to cover all kinds of sewage and not just “trade effluent” — Likewise, the expressions “process” and “operation” is not meant to be confined to “industry” but to all kinds of processes and operations including those that take place in kitchens and bathrooms of residential complexes and retail sales in shops and restaurants and activities in the rest rooms of commercial shopping complexes and malls — Under S. 25 (1)(b), Water Act if the operation, process or the process that is proposed to be established brings into use “any new or altered outlet for the discharge of sewage” then S. 25(1) will stand attracted — The proviso to S. 25(1) states that where the steps to establish an industry, operation or process have already commenced before the commencement of the 1988 Amendment Act, such steps may continue for a period of three months and if, the person who has taken such steps makes an application for consent within that period, till the disposal of such application — The proviso underscores the mandatory nature of the requirement of even an ongoing construction to obtain prior consent to establish from the State PCC

D. Environment and pollution — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21 and 22 — Delhi Pollution Control Committee — Prior consent of — Where it is a residential complex, while there may be no need to obtain prior consent to operate under S. 21(1) of the Air Act, once the construction activity commences, that activity has to be in consonance with the provisions of both the Air Act as well as the Water Act — Needless to mention, once the complex, whether commercial or residential or a shopping mall, is functional, the norms under both the Air Act and the Water Act, or for that matter the EPA or any other environmental law will have to be complied with

E. Environment and pollution — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21 and 22 — Delhi Pollution Control Committee — Prior consent of — The position where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate — Unlike the fall back plan of action under S. 25(5) of the Water Act, the course of action available to the DPCC would be to inspect the building in exercise of its powers under the Air Act and the Rules thereunder and then issue a show cause notice requiring the builder or the owners or occupiers as the case may be to comply with the conditionalities imposed by it under the Air Act within a specified timeframe, failing which the DPCC can issue further directions under S. 31-A Air Act



**F. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — Air (Prevention and Control of Pollution) Act, 1981 — Delhi Pollution Control Committee — Conclusions**

(i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of S. 25(1)(a) of the Water Act and apply to the DPCC for prior consent to establish.

(ii) Where a person has already established a commercial shopping mall or shopping complex or residential complex and has not been issued any show cause notice till the completion of such building then it would be pointless to require such person to thereafter comply with the requirements of S. 25(1) of the Water Act. The available course to the DPCC in such event is to invoke the powers under S. 25(5) of the Water Act and set out a time limit for such person to comply with the requirements of the Water Act. Upon failure to comply with the requirements as specified by the DPCC, it would be open to the DPCC to invoke its powers under S. 33A of the Water Act after complying with the due process outlined under the Water Rules.

(iii) Where a person has made an application for consent to establish and four months have elapsed during which the DPCC has not communicated to him its decision thereon, then in terms of S. 25(7) Water Act consent to establish will be deemed to have been granted. In such event the question of the person being thereafter required to apply for consent to establish does not arise.

(iv) Where the builtup area is more than 20,000 sq.m., the requirement of obtaining an EIA clearance for such activity is mandatory. The mere fact that an EIA clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the DPCC for a consent to establish under the Water Act.

(v) Where an EIA clearance has already been granted by the MoEF, and the DPCC is thereafter approached for grant of prior consent to establish or prior consent to operate, it would be incumbent on the DPCC to avoid re-examining those aspects that have been examined by the MoEF while granting EIA clearance. The DPCC will examine other aspects not covered by the EIA clearance.

(vi) The requirement of obtaining prior consent to operate under S. 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of 'industrial plant' under S. 2(k) of the Air Act. However on the present wording of S. 21(1) Air Act, there is no such requirement as regards a residential complex.

(vii) The requirement of having to obtain the consent to operate under S. 21 of the Air Act does not get obviated only because the person has an EIA clearance under the EPA.

(viii) The DPCC when approached with an application for consent to operate by a person who has already obtained an EIA clearance, will examine only those aspects not covered by the EIA clearance.

(ix) During the phase of construction, and post-construction, the provisions of the Water Act, the Air Act and the EPA and other environmental statutes will apply to all types of buildings and activities.

(x) Without issuing a show cause notice and without giving an opportunity to the alleged violator to rectify the defects detected during an inspection of the premises carried out in accordance with the relevant rules, the power to order a closure under either S. 33A Water Act or 31A Air Act should not generally be straightway invoked.

(xi) There is no power vested in the Chairman of the DPCC, either under the Water Act or under the Air Act to further sub-delegate the powers delegated to him by the DPCC as regards granting or refusing consent to establish or consent to operate under the Water Act and the Air Act respectively. Any Committee established by the Chairman of the DPCC like the CMC has no power to itself decide whether to grant or refuse the consent to establish or consent to operate. Such decision can be taken either by the DPCC itself or by its delegate i.e. the Chairman DPCC and no one else.

(xii) The decisions by the CMC or even by the Chairman, DPCC to levy penalty or environmental damages and insist on furnishing of bank guarantees as a condition for grant of consent to establish or consent to operate are without the authority of law. There is no power under the Air Act or the Water Act which enables the DPCC or its Chairman, much less the CMC, to pass such orders. Absent specific provisions under the Water Act and Air Act which permit the DPCC or its Chairman to levy and collect penalties, environmental damages or to pass orders for furnishing of bank guarantees, the general power to issue directions under S. 31A of the Air Act and S. 33A of the Water Act cannot be invoked for such purpose.

(xiii) Where there are multiple owners in a constructed building, the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such



individual owners or occupiers. If the building has been completed without obtaining prior consent to establish under S. 25(1)(a) of the Water Act it would be incumbent upon the person first receiving a show cause notice from the DPCC in terms of S. 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. The position is more or less similar under the Air Act. Notices can then issue to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be answerable under the Water Act and/or the Air Act.

Page: 53

Page: 54

Page: 55

The Judgment of the Court was delivered by

*Introduction*

**DR. S. MURALIDHAR, J.**— These are 38 writ petitions filed by builders of various properties in the National Capital Territory of Delhi (NCT of Delhi) who have been issued show cause notices and also directions by the Respondent Delhi Pollution Control Committee ('DPCC.') for alleged violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 [hereafter 'the Water Act'] and Sections 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981 [hereafter 'the Air Act']. Barring two petitions where the buildings constructed are residential complexes, in each of the other petitions the building constructed is a commercial shopping complex or a shopping mall.

2. The show cause notices have been issued on the ground that these Petitioners had not, prior to commencing construction, applied to the DPCC for and obtained from it the "consent to establish" under Section 25 of the Water Act or the DPCC's "consent to operate" under Section 21 of the Air Act.

3. Some of the petitioners have constructed commercial complexes or shopping malls of a builtup area of over 20,000 sq.m. They were therefore required to comply with the environment impact assessment (EIA) notifications in terms of the Environment (Protection) Act, 1986 (EPA). The EIA norms with which they are expected to comply are set out in the EIA. notification dated 27th January 1994 as further amended on 7th July 2004 and 14th September 2006. The issue that arises in

Page: 56

some of these petitions, where the commercial or residential complex is of a builtup area of over 20,000 sq.m. is whether independent of the EIA clearance obtained by such petitioners from the Government of India in the Ministry of Environment and



Forests ('MoEF'), a separate consent to establish under the Water Act and a consent to operate under the Air Act would nevertheless be required to be obtained from the DPCC.

4. Another issue common to some of these petitions is the validity of the levy by the DPPC of penalties, fines and environment damages in the form of fixed sums of monies or by requiring the Petitioners to furnish bank guarantees as a condition to the grant of consent under the Air Act and the Water Act.

5. The case of the Petitioners broadly stated is that the residential and commercial shopping complexes and shopping malls are not covered under either the Water Act or the Air Act. Therefore there was no need for any of these Petitioners to have obtained from the DPCC either prior consent to establish under Section 25 of Water Act or prior consent to operate under Section 21 of the Air Act. The case of the DPCC is that the activity of construction of commercial complexes, shopping malls and even residential complexes is covered under both the Air Act and the Water Act and the failure to obtain prior consent to establish or prior consent to operate makes the petitioners liable under either or both Acts. For complexes where the builtup area is over 20,000 sq.m. the stand of the DPCC is that the mere obtaining by such builders of EIA clearance from the MoEF will not obviate the need to obtain separate prior consents from the DPCC under the Water Act and Air Act.

*Background to the Water Act and amendments*

6. The first issue to be considered is the applicability of the Water Act to the complexes in question. Emphasis has been placed by both sides on the background to the enactment of the Water Act. The Statement of Objects and Reasons ('SOR') to the Water Act as it was first enacted on 23rd March 1974 referred to a Committee set up in 1962 to draw up a draft enactment for the prevention of water pollution. The SOR noted that "the problem of pollution of rivers and streams has assumed considerable importable and urgency in recent years as a result of the growth of the industries and the increasing tendency to urbanization". The Report of the Committee was circulated to the State Governments and was also considered by the Central Council of Local Self-Government. Based on the recommendation of the Central Council a draft bill was prepared. The Bill was passed by both the Houses of Parliament and received the assent of the President in 1974.

7. The Water Act underwent further changes in 1978 and thereafter in 1988. Section 25 of the Water Act in its present form was a result of certain extensive amendments made to it in 1988. Para 2 of the SOR of the Amendment Act No. 53 of 1988, which is relevant for the present purposes, reads as under:

"2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies.

Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties. The State Legislatures of Himachal Pradesh, Manipur and Tripura have passed resolutions under Article 252(2) of the Constitution authorizing the Parliament to amend the provisions of the Water Act to give effect to those amendments."



8. Thereafter in Paras 3(iii) and 3(vi) of the SOR, it was explained that the Bill *inter alia* sought to make the following amendments to the Act, namely:

"(iii) it is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board for establishing or taking any steps to establish any industry, operation or process which is likely to cause pollution of water and also to empower the Boards to limit their consents for suitable periods so as to enable them to monitor observance of the prescribed conditions;

.....  
(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure on regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity."

9. It is plain, therefore, that the amendments made in 1988 were with a view to making it obligatory on the part of the person taking any steps to establish "any industry, operation or process which is likely to cause pollution of water...." to obtain the prior consent of the State Pollution Control Committee (PCC).

*Position under the Water Act*

10. To recapitulate, one of the central issues in these petitions is whether there is statutory requirement in terms of Section 25(1)(a) of the Water Act for persons establishing a commercial shopping complex or shopping mall or a residential complex to obtain prior consent to establish from the DPCC. Section 25 of the Water Act which mandates such requirement reads as under:

"25. *Restrictions on new outlets and new discharges*—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board—

- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this Section referred to as discharge of sewage); or
- (b) bring into use any new or altered outlet for the discharge of sewage; or
- (c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution)

Page: 58

Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

- (2) An application for consent of the State Board under Sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.
- (3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.
- (4) The State Board may—
  - (a) grant its consent referred to in Sub-section (1), subject to such conditions as



it may impose, being—

- (i) in cases referred to in Clauses (a) and (b) of Sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;
  - (ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and
  - (iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or
- (b) refuse such consent for reasons to be recorded in writing.
- (5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.
- (6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be

Page: 59

open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorized by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

- (7) The consent referred to in Sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.
- (8) For the purposes of this Section and Sections 27 and 30—
- (a) the expression 'new or altered outlet' means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;
  - (b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any



reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge."

**11.** For further understanding the scope of the expressions used in Section 25(1) of the Water Act, the definitions therein of the terms "outlet" occurring in Section 2(d) (d), "sewage effluent" under Section 2(g) and "trade effluent" under Section 2(k) are relevant. They read as under:

"2(dd) 'outlet' includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;

.....

2(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

.....

2(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage."

**12.** One of the submissions made by Mr. Sorabjee, learned Senior Counsel on behalf of the Petitioners is that the requirement of obtaining prior consent to establish in terms of Section 25(1)(a) of the Water Act arises only where the activity in question is to establish an "industry, operation or process" which in turn discharges "trade effluent". The argument is that a residential complex cannot produce "trade effluent". It can only produce domestic sewage which the legislature

Page: 60

has consciously excluded from the expression "trade effluent". It is further urged that what takes place in a commercial shopping complex or shopping mall is mere retail sale of goods and services. There is no "industry, operation or process" that goes on inside a commercial shopping complex or mall that discharges "trade effluent". On behalf of the Petitioners, it is sought to be contended that the above provision was never intended to cover shopping complexes, malls or the residential complexes. Mr. Sorabjee submitted that the words "operation or process or any treatment and disposal system or any system of extension or addition thereto" following the word "industry" have to be read *ejusdem generis* the word "industry" and therefore was not meant to cover an activity which is not an industrial activity. It is contended that there is no industrial activity that takes place in a shopping complex or mall or a commercial complex. In other words, only industries such as chemical industries, metallurgical industry, engineering industry and so on are meant to be covered by the Water Act. Consequently, it is argued that Section 25(1) of the Water Act is not attracted in any of the present cases.

**13.** It must be noticed that the definition of "trade effluent" under Section 2(k) underwent a change with the Amendment Act No. 53 of 1988. The definition of "trade effluent" in the unamended Section 2(k) contained the words "carrying on any trade or industry" following the words "...any premises used for..." This was replaced by the words "...from any premises carrying on any industry, operation or process, or treatment and disposal system". The idea was to expand the use of the premises and not limit it to an industry but also any process or treatment and disposal system. What stood excluded from the definition of "trade effluent" was "domestic sewage". The word "sewage, itself has been defined under Section 2(g) to mean effluent from any sewerage system or sewage disposal works and includes sullage produced from open



drains. The word 'sewage, when qualified by the word 'domestic, should necessarily mean sewage produced from premises used for domestic purposes. The word "domestic" when contra-distinguished from the expression "trade" could mean a place used for residence rather than for business or trade.

14. However, the above definition of "trade effluent" does not take a residential complex or even a commercial shopping complex or shopping mall out of the purview of Section 25(1) of the Water Act. A careful reading of Section 25(1) of the Water Act would show that it is intended to cover not just "industry" which discharges "trade effluent" but any "process or operation" that results in a discharge of "sewage" not limited to trade effluent. The expression "sewage or trade effluent" in Section 25(1)(a) Water Act which follows the words "operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge..." is wide enough to cover all kinds of sewage and not just "trade effluent". Likewise, the expressions "process" and "operation" is not meant to be confined to "industry" but to all kinds of processes and operations including those that take place in kitchens and bathrooms of residential complexes and retail sales in shops and restaurants and activities in the rest rooms of commercial shopping complexes and malls.

15. The definition of the words "operation" and "process" as occurring in the New Shorter Oxford English Dictionary (Leslie Brown Ed.) are as follows:

operation: An action, deed; exertion of force or influence; working,

Page: 61

activity; an act of a practical or technical nature, esp one forming a step in a process

process: The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end.

16. Under Section 25(1)(b), Water Act if the operation, process or the process that is proposed to be established brings into use "any new or altered outlet for the discharge of sewage" then Section 25(1) will stand attracted. The proviso to Section 25(1) states that where the steps to establish an industry, operation or process have already commenced before the commencement of the 1988 Amendment Act, such steps may continue for a period of three months and if, the person who has taken such steps makes an application for consent within that period, till the disposal of such application. The proviso underscores the mandatory nature of the requirement of even an ongoing construction to obtain prior consent to establish from the State PCC.

17. When the Water Act Was first enacted in 1974, the scale of both commercial and residential shopping complexes as a result of urbanization was perhaps not anticipated. There has been a dramatic increase in the number of residential and commercial shopping complexes that have come up in urban metropolises in the recent past. More significant is the size of such commercial/shopping complexes. Having huge shopping malls having a builtup area of 20,000 sq. m. is not an unusual feature as is evident in seven cases in the present batch of writ petitions. The volume of sewage that such residential and commercial complexes and shopping malls are likely to discharge into the sewage system would indeed be enormous. The recognition of the need to have the regulatory authority, in these cases the DPCC, to be approached by the builders of such complexes and malls for prior consent to establish under the Water Act is consistent with the object of the Water Act as amended in 1988. The ultimate object is to ensure that there is effective prevention and control of pollution.



### *Purposive construction*

**18.** In the considered view of this Court, it is not possible to place a narrow construction on the words "operation" and "process" occurring in Section 25(1) of the Water Act. The words "operation or process" occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context. On the other hand the principle of purposive construction commends itself for application. In *Anderton v. Ryan*, (1985) 2 All ER 355, it was explained that: "Statutes should be given what has become known as the purposive construction, that is to say the Courts should identify the 'mischief that existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified." In *Pepper v. Hart*, (1993) 1 All ER 42, it was held: "The Courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted." This has been consistently

Page: 62

followed by our Supreme Court in *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279; *Tanna and Modi v. CIT*, (2007) 7 SCC 434 : AIR 2007 SC 2301 and recently in a decision dated 31st August 2010 in Civil Appeal No. 5842 of 1998, *Grid Corporation of Orissa Ltd. v. Eastern Metals and Ferro Alloys*, VI (2010) SLT 581.

### *Position of residential complexes under the Water Act*

**19.** While it is clear that commercial shopping complexes and shopping malls would stand covered under Section 25(1)(a) of the Water Act, the position *vis-a-vis* residential complexes is examined next. The DPCC is right in its contention that residential complexes where there are a large number of residential apartments would also be within the purview of Section 25(1)(a) of the Water Act. The residential complexes are likely to discharge large volumes of "sewage" as distinguished from "trade effluent". Section 25(1)(a) of the Water Act envisages any "operation or process" which is likely to discharge "sewage". The collective operation or processes that take place within a residential complex is likely to discharge large volumes of sewage into the municipal sewerage system. To repeat, these processes or operations may take place within the toilets and bathrooms and kitchens of a residential complex. They could also take place as a result of any treatment of such sewage collected in some effluent treatment plant within a residential complex. Then there is the watering of the lawns and plants in such residential complexes. Large volumes of water may be used for central air-conditioning or cooling. There can be many activities in a residential complex which result in the use of water, generation and discharge of sewage and the carrying of such sewage into main sewerage system for further treatment. In the circumstances, it is difficult to accept the contention of the Petitioners that residential complexes would fall outside the purview of Section 25(1)(a) of the Water Act.

**20.** The question whether the construction of a single-storeyed residential building of insubstantial dimensions would attract Section 25(1)(a) of the Water Act need not be answered in these petitions since none of them concerns such a situation. As far as the present cases are concerned, the two residential complexes which have been constructed have a builtup area of 23,281 sq.m. and 10,733 sq.m respectively. It is not possible therefore to underestimate the impact that the discharge from such



residential complexes of large volumes of sewage would have on water pollution in general particularly when such sewage joins the main sewerage system.

**21.** It was urged that as long as the municipal sewage system is being treated in effluent treatment plants, and the discharged sewage from these complexes joins such systems, there is no need for each of these complexes to obtain a prior consent to establish from the DPCC under the Water Act. This argument although attractive does not account for the mandatory nature of the requirement to obtain consent to establish under the Water Act. It also does not account for the fact that at the stages of pre-construction, during construction and post-construction these complexes would continue to attract the provisions of the Water Act. The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

Page: 63

#### *Water pollution during the construction phase*

**22.** At this juncture it is important to understand the impact that the activity of construction of a commercial shopping or residential complex or a shopping mall is likely to have on water pollution. This Court wishes to draw a distinction between the pre-construction stage when Section 25(1), Water Act is attracted and a prior consent to establish is mandated and the construction phase itself which can also result in pollution being caused. For instance during construction, water is drawn from bore wells dug in the property itself or water is brought in through water tanks. Large quantities of water are used during construction and used water is also discharged. If unregulated, this could have an adverse impact on the neighbourhood, the ground water and generally on the municipal sewerage system.

**23.** The pollution that can possibly be caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase would attract the various provisions of the Water Act. Even after completion of construction a functional residential or commercial complex will have to abide by the water pollution norms stipulated by the Water Act. The DPCC has been constituted under Section 4(4) of the Water Act. Section 9 of the Water Act permits the constitution of committees by the DPCC. Under Section 11A the DPCC can delegate its powers to its Chairman. Section 16 of the Water Act sets out the functions of the Central Pollution Control Board ('CPCB'). Section 21 of the Water Act empowers the DPCC or any of its officials to take samples of water "from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well" for the purposes of analysis. The word 'sewage' in this context would include "domestic sewage" as well. Section 23 gives the DPCC power of entry at any time any place for the purposes of performing any of the functions entrusted by the DPCC to such officer for the purposes of determining "whether and if so in what manner, any such functions are to be performed or whether any direction or authorization served, made, given, or granted under this Act is being or has been complied with". Section 24 of the Water Act prohibits the use of a stream or well for disposal of polluting matters. Consequently, all of the above provisions of the Water Act get attracted when an activity, including an industrial, trade, commercial or domestic activity, causes pollution. This power can be exercised by the DPCC at any time during the construction phase and after the



completion of construction when the complex in question becomes functional.

*Applicability of Section 25 (5) Water Act to the cases on hand*

**24.** While this Court accepts the contention of the DPCC that Section 25(1)(a) stood attracted in these cases, the DPCC for some reason did not act at a time when the construction of these residential and commercial complexes had either not commenced or having commenced, had not been completed. In other words, in most cases, as will be seen in the discussion of the individual petitions, the DPCC did not issue a show cause notice at a time when the constructions had either not begun or were in progress. The show cause notice was invariably issued by the DPCC after the construction had been completed and in many cases after the completion certificate was issued. In such a situation, to require the builder of such

Page: 64

complex to obtain "prior consent to establish" under Section 25(1)(a) of the Water Act was a direction that was not capable of being complied with. Unfortunately, this was the only provision invoked by the DPCC in each of the cases to pass consequential orders of either imposition of fine or damages or order closure.

**25.** It appears to this Court that with the buildings in question having already been constructed without obtaining prior consent to establish, the DPCC ought to have fallen back on the legislatively envisioned 'Plan B'. What ought to have been done by the DPCC was to invoke Section 25(5) of the Water Act. Section 25(5) talks of a situation where an industry operation or process has already been established or the steps for establishment have already been taken without obtaining the prior consent of the State PCC. In such an event the State PCC has to serve, on the person who has established or taken steps to establish, a notice imposing any such conditions as it might have imposed if an application had been made for its consent "in respect of such establishment, such outlet or discharge".

**26.** The DPCC ought to have proceeded on the premise that each of the buildings of the petitioners were constructed without its prior consent to establish and then should have invoked its powers under Section 25(5) of the Water Act. What the DPCC has however done in each of the cases is invoke Section 25(1) and therefore require the petitioners to apply at that stage to it for consent to establish. While the DPCC was armed with sufficient powers under Section 33A of the Water Act to issue directions, such directions must be such as are capable of being complied with.

**27.** It was urged by Mr. Sudhir Chandra, learned Senior Counsel for the DPCC that by letting off the petitioners who had admittedly acted in violation of Section 25(1)(a) of the Water Act a wrong message would be sent and a premium placed, as it were, on brazen violations of the Water Act. Such submission, in the considered view of this Court, does not reflect the correct legal position. If for some reason the DPCC has failed to take action against those who have established commercial or residential complexes without obtaining prior consent to establish, then it is not as if no action can at all be taken against the builders, owners or occupiers of such complexes. Section 25(5) has been enacted precisely for such a contingency. Section 26 of the Water Act further arms the DPCC with review and monitoring powers and to change the conditions imposed if they are found to be not effective. The DPCC can even after the construction is complete, proceed to act in exercise of its powers under Section 25 (5) of the Water Act. In other words, the Legislature expects that the DPCC will act vigilantly at all times to ensure that no violator escapes legal liability under the Water Act.



**28.** There is another aspect to the matter. There was no clarity about the correct legal position till now even as far as the DPCC was concerned. These cases were for the DPCC, in a sense, test cases. Section 25 of the Water Act was perhaps not invoked by the DPCC earlier and in any event not on this scale against commercial or residential complexes. Not having acted at a time when it should have under Section 25(1) of the Water Act and having allowed the construction of the complexes to be completed, it would not be reasonable for the DPCC to insist that these petitioners must go back to the stage of obtaining 'prior consent to establish'. If after a show cause notice is issued under Section 25(5) of the Water Act and within the

Page: 65

time stipulated, the corrective measures are not put in place by the person who has established the shopping mall or residential complex, then it would be open to the DPCC to take further steps in accordance with Section 33A of the Water Act. As long as the power to take action under Section 25(5) of the Water Act remains, there need not be any apprehension of any wrong message being given to those who failed to obtain consent of the DPCC prior to establishing the complexes.

*Multiplicity of authorities does not render exercise of powers under the Water Act illegal*

**29.** It was argued on behalf of the Petitioners that under Schedule XII to the Constitution of India, read with Article 243W thereof, the powers, authority and responsibility in relation to water and water treatment is exclusively vested in the municipalities, *i.e.*, in this case the Municipal Corporation of Delhi ('MCD'). It was further submitted that under the Delhi Municipal Corporation Act, 1957 ('DMC Act') the powers to grant permission and regulate constructions of buildings in Delhi are exclusively vested with the MCD. Reference is also made to the provisions of the Delhi Jal Board Act (Delhi Water Board Act). The submission is that there cannot be a multiplicity of authorities over the same subject matter and that if the control and regulation of water and sewage is within the exclusive domain of the MCD then the DPCC cannot also exercise such powers' in relation to the same subject matter under the Water Act.

**30.** This Court is unable to agree with the above submission. The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water. For instance, the MCD may have the power to levy tariffs for the use of water. That does not mean that the DPCC cannot issue directions in regard to the prevention and control of pollution of water. They operate in separate fields and both sets of regulations and norms will have to be complied with. Incidentally Entry 5 in Schedule XII reads: "water supply for domestic, industrial and commercial purposes". It obviously does not cover the entire field of the use of water and treatment and discharge of sewage.

*Deemed consent in terms of Section 25(7) Water Act*

**31.** The Court would like to observe that when an application is made by a project proponent for consent to establish under the Water Act, the DPCC has to process and decide such application within four months in terms of Section 25(7) of the Water Act. As will be presently seen while discussing the individual cases, there has been no answer by the DPCC to the factual assertion in some of these cases that despite applying twice for the consent to establish under Section 25(1) of the Water Act, no response was received from the DPCC for well over four months after the making of



such application. Consequently, where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. If thereafter DPCC finds that any activity in the building which has already been constructed attracts the provisions of the Water Act then it will have to proceed in accordance with other provisions of the Act to prevent or control such polluting activity. Section 25(1) of the Water Act cannot obviously be enforced if the DPCC has allowed the four

Page: 66

months period after the making of an application for consent to establish, as envisaged under Section 25(7) of the Water Act, to elapse.

*Summary of the position under the Water Act*

**32.** The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

- (i) Section 25(1) of the Water Act is intended to cover not just 'industry' which discharges "trade effluent" but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.
- (ii) The words "operation or process" occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.
- (iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.
- (iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.
- (v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.
- (vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a timeframe and upon failure to do so, invoke the powers to issue directions under Section 33A, Water Act.
- (vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.
- (viii) Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced.



*Position under the Air Act*

**33.** Next for consideration are the provisions of the Air Act and the validity of the action taken thereunder by the DPCC. It requires to be first noticed that the definitions of the different terms under the Air Act are not identical to the corresponding terms in the Water Act. The words "air pollutant" or "air pollution", "emission", "industrial plant" occurring in Sections 2(a), 2(b), 2(j) and 2(k) respectively of the Air Act read as under:

"(a) "air pollutant" means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant."

.....

(j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere."

**34.** The requirement of obtaining from the DPCC a prior consent to operate flows from Section 21(1) of the Air Act which reads as under:

"21. *Restrictions on use of certain industrial plants.*—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, operate any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application."

**35.** After its amendment in 1988, the essential definitions remained unchanged. The consent to establish or operate had to be obtained only where it was concerning "any industrial plant in an air pollution control area". It appears to this Court that as far as the Air Act is concerned, the emphasis was only on consent to operate having to be obtained for establishment of an industrial plant. Section 2(k) defines industrial plant to mean "any plant used for any industrial or trade purpose and made any area pollutant into the atmosphere". In the instant case, the expression "trade purposes" therefore have to be distinguished from the industrial purposes. The word "trade" could have a wide meaning. It could include the transaction that takes place within a Commercial shopping complex or a shopping mall. The word "air pollutant", as defined in Section 2(a), means the presence in the atmosphere "in such concentration as may be or tend, to be injurious to the atmosphere or the other breeding creatures or plants or property or environment".



Therefore the activity has to be such that it results in the establishment of an industrial plant in an air pollution control area. Air pollution, in terms of Section 2(b) is "presence in the atmosphere of any air pollutant".

**36.** A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act. Mr. B.B. Gupta, learned Counsel for some of the Petitioners drew the attention of the Court to the Air (Prevention and Control of Pollution) Union Territory Rules, 1983 (UT Rules). He submitted that Rule 2(h) of the UT Rules is the only provision which defines the word "premises" which has been defined to mean "any building constructed or already used for industrial or commercial purposes". Far from supporting the submission of Mr. Gupta, this definition suggests that even a building used for commercial purposes would be covered by Section 21(1) of the Air Act. Likewise, Rules 9 and 10 of the UT Rules and the forms thereunder do not exclude a commercial/shopping complex from the applicability of the Section 21 of the Air Act.

**37.** One of the submissions on behalf of the DPCC was that in most of these buildings, whether it was a commercial shopping complex or a residential complex, there would be a 24-hour power back-up diesel generator set (DG set) that was likely to cause air pollution and attract the provisions of the Air Act. This submission was sought to be countered by the Petitioners by pointing out that only such DG sets that satisfy the pollution control norms would be used by the Petitioners and that this is an event that was likely to take place after the building was commissioned and not at the stage of consent to operate.

**38.** Here the Court would like to make two observations. The position of the applicability of Section 21(1) of the Air Act to commercial shopping complexes and shopping malls is different from its applicability, to residential complexes. This will be discussed in some detail shortly hereafter. Secondly, these cases are concerned with the applicability of Section 21(1) of the Air Act at a stage when construction of the building in question has not commenced. The position of the applicability of the Air Act to any on-going construction and to any building complex which is functional is again different.

**39.** As far as commercial shopping complexes or shopping malls are concerned, it might be difficult to anticipate, even before the start of construction, what would be the extent of use of DG sets. In any event this need not be the only factor that will determine whether Section 21(1), Air Act applies to commercial shopping complexes or shopping malls. Given the definition of "air pollutant" under Section 2(a) read with Section 21 (1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade or commercial activity, is sufficient to attract the provisions of Section 21(1) of the Air Act. Whether or not the use of a DG set will attract the provisions of the Air Act is a separate matter. It is obvious as and when the building begins to get used for a trade or commercial purpose and DG sets are used therein, if such DG sets do not comply with the pollution control norms, a separate cause of action arises for the DPCC to take action.

**40.** Next the position vis-a-vis residential complexes may be examined. Since

Section 21(1) of the Air Act only talks of obtaining prior consent to operate where the air pollution is likely to be caused as a result of the operation of any "industrial plant for the purpose of any industry specified in the Schedule", there is no possibility of



expanding the meaning of the word "industrial plant", even on a purposive construction, to include a residential complex. Reliance was placed by learned Senior Counsel for the DPCC on the judgment of the Karnataka High Court in *Nitin Majumdar v. State of Karnataka*, 2007 (4) Kar LJ 569. That case concerned a place used for storage, which was held to be covered under the definition of 'plant'. It is not possible to stretch the meaning of the word 'plant' to include a residential complex. The ratio of the said decision is therefore inapplicable to a complex used only for residential purposes. The contrast with the corresponding words in Section 25(1)(a) of the Water Act is indeed striking when one examines Section 21(1) of the Air Act. The crucial words "operation or process" inserted into Section 25(1)(a) of the Water Act after the 1988 amendment do not find place in Section 21(1) of the Air Act. The resultant position is that as far as a purely residential complex is concerned, on the present wording of Section 21 (1) of the Air Act, there is no requirement of obtaining the prior consent of DPCC to operate.

**41.** It was further contended on behalf of the DPCC that the construction activity itself could cause both air and water pollution. One of the purposes of requiring the obtaining of prior consents, as noticed by the Supreme Court in *T.N. Godavarman Tirumulpad v. Union of India*, 2006 (10) SCALE 246 (the Vasant Kunj Ridge matters) is the inevitable use of reinforced cement concrete (RCC) mix during construction. There is a likelihood of air pollution being caused due to use of loose cement during construction activity. Clearly, therefore, it is anticipated that the very activity of construction is likely to cause both air and water pollution. This can be appreciated in more than one context. Where what is being constructed is a building that has to be used for the purposes of a commercial complex or shopping complex or shopping mall, then apart from obtaining the consent to establish under the Water Act and consent to operate under the Air Act, after the construction activity commences such activity will have to nevertheless comply with the pollution control norms that would give rise to a separate cause of action to the DPCC for the applicability of the provisions of the Water Act and the Air Act.

**42.** Where it is a residential complex, while there may be no need to obtain prior consent to operate under Section 21(1) of the Air Act, once the construction activity commences, that activity has to be in consonance with the provisions of both the Air Act as well as the Water Act. Needless to mention, once the complex, whether commercial or residential or a shopping mall, is functional, the norms under both the Air Act and the Water Act, or for that matter the EPA or any other environmental law will have to be complied with.

**43.** The position where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate is examined next. In such event, unlike the fall back plan of action under Section 25(5) of the Water Act, the course of action available to the DPCC would be to inspect the building in exercise of its powers under the Air Act and the Rules thereunder and then issue a show cause notice requiring the builder or the owners or occupiers as the case may be to comply with the conditionalities imposed by it

Page: 70

under the Air Act within a specified timeframe, failing which the DPCC can issue further directions under Section 31A Air Act.

*Summary of the position under the Air Act*

**44.** The position under the Air Act may be summarized:



- (i) A collective reading of Section 21(1) of the Air Act with Sections 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.
- (ii) The definition of "air pollutant" under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21(1) of the Air Act
- (iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.
- (iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.
- (v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act.

*The position under the EPA*

**45.** The EIA Notification dated 14th September 2006 requires the obtaining of a prior EIA clearance for "new projects or activities listed in the schedule to this notification". The schedule includes, *inter alia*, building/construction projects/area development projects and townships. Serial 8(A) concerns building and construction projects. In column 4 it is stated that where the extent is of equal to or more than 20,000 sq.m. and less than 50,000 sq.m. of builtup area, the EIA clearance is mandatory.

**46.** The appendix to the above EIA Notification sets out the format in which an application has to be made for an EIA clearance. The second part of the format concerns "use of natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply)". Serial No. 2.2 asks for details about "Water (expected sources & competing users)". Appendix 2 sets out the exclusive requirement for construction projects. In para 2 there is a detailed check-list concerning 'Water Environment'. Para 2.1 requires the applicant to "give the total quantity of

water requirement for the proposed project with the breakup of requirements for various users". In particular, the following questions are asked:

"2.9. What the impacts of the proposal on the ground water? (Will there be tapping of ground water give the details of ground water table, recharging capacity, and approvals obtained from competent authority, if any)

2.10. What precaution/measures are taken to the prevent the run-off from construction activities polluting land & aquifers? (Give details of quantities and the measures taken to avoid the adverse impacts)

2.11. How is the storm water from within the site managed? (Since the provisions made to avoid flooding of the area, details of the drainage facilities provided along with a site layout indication contour levels)



2.12. With the deployment of construction labourers particularly in the peak period lead to unsanitary conditions around the project site (Justify with proper explanation)

2.13. What on-site facilities are provided for the collection, treatment and safe disposal of sewage? (Give details of the quantities of wastewater generation, treatment capacities with technology and facilities for recycling and disposal)

2.14. Give details of dual plumbing system if treated waste used is used for flushing of toilets or any other use."

**47.** As regards 'Air Environment' para 5 of the form lists out the various questions that have to be answered by the applicant. The questions read as under:

"5.1. Will the project increase atmospheric concentration of gas and result in heat islands? (Give details of background air quality levels with.....based for dispersion models taking into account the increased traffic generation as a result of the proposed constructions)

5.2. What are the impacts on generation of dust, smoke, odours, fumes or other hazardous gases? Give details in relation to all the metrological parameters.

5.3. Will the proposal create shortage of parking space for vehicles? Furnish details of the present level of transport infrastructure and measures proposed for improvement including the traffic management at the entry and exit to the project site.

5.4. Provide details of the movement patterns with internal roads, bicycle tracks, pedestrian pathways, footpaths, etc., with areas under each category.

5.5. Will there be significant increase in traffic noise and vibrations? Give details of the sources and the measures proposed for mitigation of the above.

5.6. What will be the impact of DG sets and other equipment on noise levels and vibration in and ambient air quality around the project site? Provide details."

Page: 72

**48.** The contention of those Petitioners who have obtained EIA clearance for their projects is that by requiring them to again approach the DPCC for consent to establish under the Water Act and consent to operate under the Air Act, the same exercise is being unnecessarily asked to be repeated by the DPCC. It is further submitted that once the MoEF has already given clearance, it would not be open to the DPCC to again examine those very issues and refuse either the consent to establish under the Water Act or the consent to operate under the Air Act.

**49.** In reply it is pointed out by the DPCC that under most of the EIA clearances, one of the conditionalities imposed is that the applicant has to obtain consent to establish under the Water Act and consent to operate under the Air Act respectively from the DPCC. Additionally, reference is made to a Circular dated 21st November 2006 issued by the MoEF clarifying that an NOC from the State Pollution Control Board ("SPCB") and its consent to establish are "separate legal requirements, any project proponent has to fulfil". It is clarified that "NOCs are required under Water and Air Acts are mandatory requirement under those Acts and will have to be taken as required and do not require to be intended as environmental clearance". The DPCC has also pointed out that there is no question of repugnancy between the Air and Water Acts on the one hand and the EPA on the other. To be fair to the Petitioners, it was not their case that there is any repugnancy between the statutes in question. Their



submission is that once they have obtained EIA clearance under the EIA Notification dated 14th September 2006, they do not have to again go before the DPCC for a separate consent to establish and consent to operate.

**50.** This Court finds that there is indeed an element of overlap between some of the aspects examined by the MoEF while granting EIA clearance, and those aspects on which the DPCC grants either consent to establish or consent to operate or both. At the same time, the need to separately obtain consent to establish under the Water Act and consent to operate under the Air Act from the DPCC is mandatory as clarified by the MoEF in its Circular dated 21st November 2006. As explained by the Supreme Court in *State of Bihar v. Kedar Sao*, (2004) 9 SCC 344, it is possible that more than one enactment applies to the same facts and circumstances and it is possible that the applicant may have to get clearances from different agencies for the same activities. The mere fact that an EIA clearance has been obtained from the MoEF cannot be a ground to seek exemption from obtaining consent to establish under the Water Act and consent to operate under the Air Act.

**51.** A possible balance that can be struck with a view to avoiding duplication is to hold that when a holder of an EIA clearance applies to the DPCC for either consent to establish under the Water Act or consent to operate under the Air Act, it would be incumbent on the DPCC to ascertain the aspects that have already been examined by the MoEF in granting the EIA clearance. Those aspects need not be again examined by the DPCC. There is usually a role assigned to the SPCB under the EIA notifications. Even assuming that the position in Delhi is different and the DPCC does not come into the picture when an EIA clearance is granted by the MoEF, it would nevertheless be necessary for the DPCC to avoid repeating the same exercise which has been performed by the MoEF in granting the EIA clearance. Therefore, to the extent that certain aspects have not been covered by the EIA

Page: 73

clearance, it would certainly be open for the DPCC to examine those aspects and decide whether or not to grant consent to establish under the Water Act and consent to operate under the Air Act.

*Who should apply for consent?*

**52.** It was submitted on behalf of the Petitioners that after the completion of the construction in terms of validly sanctioned plans the ownership of the property, or portions thereof, usually changes hands. The question posed is, in such event, who should apply for consent to establish or to operate and who should be called upon to comply with the environmental norms?

**53.** It is not as if the person who originally applied for EIA clearance or the consent to establish or consent to operate would have nothing to do with the property in question once the construction is complete. There may indeed be multiple owners in a constructed building. In such event, if the builder already knows who they are, even before construction commences, then the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners. If the building has been completed without obtaining prior consent to establish under Section 25(1)(a) of the Water Act it would be incumbent upon the person receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. Notices can then be issued to such persons as well. Till such time the person first receiving a show cause notice



furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be liable to answer the show cause notice and to explain why he should not be proceeded against for the violations of the Water Act. The position would be more or less similar under the Air Act. In any event, since under the Rules under both the Water Act and the Air Act there is a requirement that the DPCC should conduct an enquiry or investigation before issuing a show cause notice, that might reveal the names of the persons to whom the notices should be issued.

*The ambit of DPCC's powers under Section 33A, Water Act and Section 31A Air Act*

**54.** This brings up the next question as to the scope of the powers of the DPCC under Section 33A of the Water Act and Section 31A of the Air Act which are more or less identically worded. Section 33A of the Water Act reads as under:

"33A. *Power to give directions*—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

*Explanation*—For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

Page: 74

(b) the stoppage or regulation of supply of electricity, water or any other service."

**55.** The above provision opens with a non obstante clause. However, it is subject to the other provisions of the Water Act. It gives the DPCC the power to issue directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. The directions would include the power to order closure prohibition or regulation of any "industry, operation or process" or the "stoppage or regulation of supply of electricity, water or any other service". The power of the DPCC under Section 33A Water Act is indeed wide. It implies within it the requirement of following the principles of natural justice before the exercise of such power. On a collective reading of Sections 25 and 33A, the legislative scheme appears to be that where there is a failure by a person to comply with either Section 25(1)(a) or Section 25(5) of the Water Act then it would be open to the DPCC to exercise its powers under Section 33A of the Act. Without giving any show cause notice under Section 25(5) in the instant case and without waiting for the expiry of the time within which the corrective steps have to be taken, it will not be open to the DPCC to straightaway invoke its power under Section 33A to order closure of the shopping mall or commercial or residential complex concerned. That would make such exercise of power vulnerable to invalidation on the grounds of arbitrariness and unreasonableness. The position as regards Section 31A of the Air Act is no different. That power too cannot be exercised to straightaway order closure of a building without giving the person concerned a prior show cause notice consistent with the procedure outlined under the Rules under the Air Act.

*Validity of the levy of penalties and environmental damages*

**56.** The powers of the DPCC to levy environmental damages and seek the furnishing of bank guarantees as a pre-condition to the grant of consents are examined next. Connected with this issue is the question whether the Chairman of the DPCC had the



power to constitute a Consent Management Committee ('CMC') which proceeded to levy environmental damages, penalties, fines and require the furnishing of bank guarantees in some of these cases.

**57.** Section 15 of the Air Act provides for delegation of powers stating that a State Board may, by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board, its powers. Under Section 12(3B) of the Water Act, a similar power has been conferred on the State Board to delegate its powers.

**58.** It is pointed out by the Petitioners that the DPCC has, contrary to the relevant provisions of the Water Act and Air Act, delegated its powers with regard to granting prior consent to establish or consent to operate and to issue directions under Section 31A of the Air Act and Section 33A of the Water Act to the Chairman and Member-Secretary. It is stated that the Chairman DPCC is also the Chairman of the CMC which deals with the aspect concerning consent. It is accordingly sought to be contended that there can be no sub-delegation by the Chairman of his powers to the CMC and the decision taken by the Chairman with the assistance of the Members of the CMC is invalid.

Page: 75

**59.** If indeed it was the Chairman alone who was acting in exercise of the powers delegated to him under Section 31A of the Air Act and Section 33A of the Water Act, then the final decision to either agree to or to refuse the consent to establish or consent to operate should have been taken independently by the Chairman. The minutes of the meetings, however, show that this was the decision of the CMC. Although the Chairman of the DPCC may be the Chairman of the CMC, he is but one member in the CMC. There is nothing to indicate that the decision of CMC was unanimous or by majority or that it was the decision only of the Chairman. There is no power under the Water Act or the Air Act given to the Chairman to further sub-delegate his powers in regard to consent to establish or consent to operate to the CMC. Such sub-delegation was obviously bad in law. Unless it is shown, and it is not, that the other members of the CMC apart from the Chairman were performing a mere advisory role and had nothing to do with the actual grant or refusal of the consent to establish or consent to operate, such decision by the CMC is clearly *ultra vires* the Air Act and Water Act.

**60.** In the instant case, this Court is unable to find any justification for the CMC to itself take decision as regards the grant and refusal of the consent to establish under the Water Act and consent to operate under the Air Act. Secondly, even where it agreed to grant consent to establish, the CMC imposed a pre-condition that the applicant should pay a penalty or fine or furnish a bank guarantee or in some cases all or some of them. There is no statutory basis for such a direction to be issued by the CMC, or for that matter by even the Chairman of the DPCC. The grant of the consent to establish or consent to operate ought not to be made conditional upon payment of some fine or penalty or furnishing of bank guarantee. Given the object of the Water Act and the Air Act, which is the prevention and control of pollution, the mere payment of fine or penalty or furnishing of bank guarantee is unlikely to prevent and control the likely pollution that can be caused. The basic approach adopted by the CMC where such penalty or fine has been levied or bank guarantee secured appears to be faulty.



**61.** The decision to levy environmental damages and to seek the furnishing of bank guarantees has been sought to be justified by the DPCC with reference to Section 31A of the Air Act and Section 33A of the Water Act. As already noticed, Section 31A of the Air Act is more or less similarly worded as Section 33A of the Water Act and both provisions have been inserted by the 1988 Amendments. A reference has already been made to Section 33A of the Water Act. The power under the said provision includes the power of the DPCC to issue "any directions in writing to any person". The 'Explanation' to the provision clarifies that the power to issue directions includes the power to direct "closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service". Yet, this power has to be one coupled with a duty to act reasonably and fairly. It cannot be stretched to include a power to levy a penalty.

**62.** In the considered view of this Court, the power to levy a penalty on any party is in the nature of a penal power. It is settled law that unless there is a specific power in the statute enabling the authority to do so, it cannot levy penalties or damages with reference to the general power under Section 31A of the Air Act or

Page: 76

Section 33A of the Water Act. The decisions in *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra*, (1975) 2 SCC 22; *J.K. Synthetics Limited & Birla Cement Works v. Commercial Taxes Officer*, (1994) 4 SCC 276 and *India Carbon Ltd. v. State of Assam*, (1997) 6 SCC 479 are relevant in this regard. In *Khemka & Co.*, the question was whether an assessee under the Central Sales Tax Act, 1956 could be made liable for penalty under the provisions of the Mysore Sales Tax, 1957 when there was no provision in the Central Act for imposition of penalty for default in payment of tax. Answering the question in the negative, the opinion of Ray CJ, writing for the majority explained (SCC, p. 31):

"25. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to Section 28 of the Indian Income-tax Act, 1922 where penalty is provided for concealment of income. Penalty is in addition to the amount of income-tax. This Court in *Jain Brothers v. Union of India*, [1970] 77 ITR 107 (SC) said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax."

**63.** In his concurring opinion Beg, J. (as His Lordship then was) observed (SCC @ p. 35):

"39. On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the law. The machinery or procedure for its realization comes into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. It is a well settled canon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability. But, I do not think that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realization of tax. It is more than that. Such liabilities must be created by clear, unambiguous, and



express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good government of laws. It is implied in the Constitutional mandate found in Section 265 of our Constitution: 'No tax shall be levied or collected except by authority of law'."

**64.** Later in *India Carbon Ltd.*, the question arose whether sales tax authorities in the States could charge interest when collecting and enforcing payment of central sales tax. Following the decision in *Khemka* it was held that absent a substantive provision in the central Act requiring the payment of interest on central sales tax, the authorities in the states could not charge interest thereon. The resultant position is that there being no specific provision in the Water Act or Air Act empowering the

 Page: 77

DPCC to levy penalties, fines or environmental damages, or to require the furnishing of bank guarantees, no such order or direction can be issued by the DPCC, much less the CMC, in exercise of the general powers to issue directions under Section 33A Water Act and Section 31A, Air Act.

**65.** The DPCC has placed reliance upon the decision of the learned Single Judge of this Court dated 16th January 2009 in Writ Petition (C) No. 7516 of 2007 (*Regent Automobiles Pvt. Ltd. v. GNCTD*). The Court in *Regent Automobiles* was interpreting the provisions of the Delhi Common Effluent Treatment Plants Act, 2000 (DCETP Act). Section 11 of the DCETP Act which contains a specific provision for penalty reads as under:

"11. Penalty for non-payment within the specified time. If any amount payable by any person is not paid within the date specified in the order it shall be deemed to be in arrears and the appropriate authority may after such inquiry as it deems fit, impose on such person a penalty not exceeding the amount in arrears."

**66.** Section 16 of the DCETP Act reads as under:

"16. *Power to give directions*—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, the appropriate authority may, in exercise of its powers and performance of its functions under this Act, issue any directions in writing to any occupier, society, person, officer or authority, and such occupiers, society, person, officer or authority shall be bound to comply with directions.

*Explanation*—For the avoidance of doubts, it is hereby declared that the power to issue directions under this clause includes the power to direct—

- (a) the closure, prohibition or regulation of any industry, establishment, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service."

**67.** Further Section 17, DCETP Act spells out the consequences of failing to comply with the direction issued by the authority. It enables the authority to levy a further penalty in the event of such failure. In addition, Section 18, DCETP Act talks of penalty for certain kinds of acts. Section 19, DCETP Act provides for residual penalty for contravention of certain provisions of the Act. It was noticed by learned Single Judge that, "but for Section 16 it can be argued that the entire range of sanctions including penalties have been specifically provided by various provisions such as Section 11, 18, 19 and 20". It was in the above context that the question posed by the learned Single Judge was 'whether the general power to issue directions comprehends the power to require bank guarantees to be furnished'? After referring to certain decisions which



explained that 'everything necessary to carry out the purposes of the grant can be done by the authority entrusted with the power', the learned Single Judge came to the conclusion that the "Court cannot limit the options available to statutory authorities to meet emerging challenges, towards ensuring compliance with the provisions". Yet, even in that case the Court accepted the contention of the Petitioners that in the show cause notices, preceding the impugned orders, there was no mention about the possibility of issuance of orders

Page: 78

requiring bank guarantees to be furnished. Further the orders did not indicate the application of mind to what existed on site, and what was the standard required to be complied with. Therefore while the challenge on account of lack of power failed, the impugned orders were held not sustainable in law and set aside.

**68.** In the considered view of this Court, the above decision in Regent Automobiles is of no assistance to the DPCC in the present case. The provisions of the DCETP Act are different from the provisions of the Air Act and Water Act particularly with reference to the penalty provisions. In the DCETP Act, Sections 11, 17, 18 and 19 talk of penalties and it is in that context it was held that the power under Section 16 of that Act includes power to require furnishing of bank guarantee. Neither in the Water Act nor in the Air Act is there any provision that permits DPCC to levy a penalty. That power is with the Courts and that too after returning a conviction. Chapter VI of the Air Act and Chapter VII of the Water Act talks of penalties which result from a conviction for violation of the provisions. Clearly, the penalties envisaged under the Air Act and the Water Act can be levied only at the end of judicial proceedings before a criminal Court. That power cannot be exercised by the DPCC. There is no provision either under the Water Act or under the Air Act that empowers a State Board to levy penalties or environmental damages, much less require the furnishing of a bank guarantee.

**69.** This Court has, therefore, no hesitation in coming to the conclusion that orders issued by the CMC or even the DPCC in the instant case levying penalty and requiring furnishing of bank guarantees and making the grant of consent to establish under the Water Act and consent to operate under the Air Act conditional upon payment of such penalties and furnishing of such bank guarantees are entirely without the authority of law and require to be set aside. Procedural violations by the DPCC

**70.** This Court finds that the procedure adopted in the instant case by the DPCC in levying the damages and requiring the Petitioners to furnish bank guarantees was not consistent with the requirements of the Rules under the Air Act and Water Act. Under Rule 20A(3) of the UT Rules the requirement is of serving a copy on the alleged violator of the proposed directions and being given an opportunity of not less than 15 days from the date of service of a notice to file objections to the proposed directions. Where the direction is for the stoppage or regulation of electricity or water or any other service then under Rule 20A(4) copy of the proposed direction should be endorsed to the occupier of the industry, operation or process. After the receipt of the objection and within 45 days from that day, the DPCC should give an opportunity to the person to file objections and after considering the objections and for reasons to be recorded in writing, either confirm, modify or decide not to issue such directions. Where the DPCC decides that it is not expedient to provide such an opportunity on account of a likelihood of grave injury to the environment, it should record an opinion to that effect.

**71.** Rule 33 of the Water (Prevention and Control of Pollution) Rules, 1975 ('Water Rules') spells out the procedure for making an inquiry into application for consent. The



said Rule reads as under:

"33. *Procedure for making inquiry into application for consent*—(1) On receipt of an application for consent under Section 25 or Section 26, the Central

Page: 79

Board may depute any of its Officers, accompanied by as many assistants as may be necessary, to visit the premises of the applicant, to which such application relates, for the purpose of verifying the correctness or otherwise of the particulars furnished in the application or for obtaining such further particulars or information as such officer may consider necessary. Such officer may, for that purpose, inspect any place where water or sewage or trade effluent is discharged by the applicant, or treatment plants, purification works or disposal systems of the applicant and may required the applicant to furnish to him any plans, specifications and other data relating to such treatment plants, purification works or disposal systems or any part thereof, that he considers necessary.

- (2) Such officer shall before visiting any premises of the applicant for the purpose of inspection under Sub-rule (1) above, give notice to the applicant of his intention to do so in Form XIV. The applicant shall furnish to such officer all facilities that such officer may legitimately require for the purpose.
- (3) An officer of the Central Board may, before or after carrying out an inspection under Sub-rule (1) above, required the applicant to furnish to him, orally or in writing such additional information or clarification, or to produce before him such documents, as he may consider necessary for the purpose of investigation of the application and may, for that purpose, summon the applicant or his authorised agent to the office of the Central Board."

**72.** This Court finds that in none of the cases the above procedure has been followed by the DPCC. This would be discussed in greater detail while dealing with the individual cases. This Court would like to emphasise the power of the DPCC under Section 31A of the Air Act and 33A of the Water Act, which is indeed a coercive power, has to be exercised with caution and after complying with the due process requirements. The Rules under both statutes have to be mandatorily followed while exercising such powers.

#### *Conclusions*

**73.** The summary of the conclusions of this Court are set out hereunder. It is clarified that these summary conclusions have to be read with the specific conclusions under different sub-topics already set out hereinbefore:

- (i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of Section 25(1)(a) of the Water Act and apply to the DPCC for prior consent to establish.
- (ii) Where a person has already established a commercial shopping mall or shopping complex or residential complex and has not been issued any show cause notice till the completion of such building then it would be pointless to require such person to thereafter comply with the requirements of Section 25(1) of the Water Act. The available course to the DPCC in such event is to invoke the powers under

Page: 80



Section 25(5) of the Water Act and set out a time limit for such person to comply with the requirements of the Water Act. Upon failure to comply with the requirements as specified by the DPCC, it would be open to the DPCC to invoke its powers under Section 33A of the Water Act after complying with the due process outlined under the Water Rules.

- (iii) Where a person has made an application for consent to establish and four months have elapsed during which the DPCC has not communicated to him its decision thereon, then in terms of Section 25(7) Water Act consent to establish will be deemed to have been granted. In such event the question of the person being thereafter required to apply for consent to establish does not arise.
- (iv) Where the buildup area is more than 20,000 sq.m., the requirement of obtaining an EIA clearance for such activity is mandatory. The mere fact that an EIA clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the DPCC for a consent to establish under the Water Act.
- (v) Where an EIA clearance has already been granted by the MoEF, and the DPCC is thereafter approached for grant of prior consent to establish or prior consent to operate, it would be incumbent on the DPCC to avoid re-examining those aspects that have been examined by the MoEF while granting EIA clearance. The DPCC will examine other aspects not covered by the EIA clearance.
- (vi) The requirement of obtaining prior consent to operate under Section 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of 'industrial plant' under Section 2(k) of the Air Act. However on the present wording of Section 21(1) Air Act, there is no such requirement as regards a residential complex.
- (vii) The requirement of having to obtain the consent to operate under Section 21 of the Air Act does not get obviated only because the person has an EIA clearance under the EPA.
- (viii) The DPCC when approached with an application for consent to operate by a person who has already obtained an EIA clearance, will examine only those aspects not covered by the EIA clearance.
- (ix) During the phase of construction, and post-construction, the provisions of the Water Act, the Air Act and the EPA and other environmental statutes will apply to all types of buildings and activities.
- (x) Without issuing a show cause notice and without giving an opportunity to the alleged violator to rectify the defects detected during an inspection of the premises carried out in accordance with the relevant rules, the power to order a closure under either Section 33A

Water Act or 31A Air Act should not generally be straightway invoked.

- (xi) There is no power vested in the Chairman of the DPCC, either under the Water Act or under the Air Act to further sub-delegate the powers delegated to him by the DPCC as regards granting or refusing consent to establish or consent to operate under the Water Act and the Air Act respectively. Any Committee established by the Chairman of the DPCC like the CMC has no power to itself



decide whether to grant or refuse the consent to establish or consent to operate. Such decision can be taken either by the DPCC itself or by its delegate *i.e.* the Chairman DPCC and no one else.

- (xii) The decisions by the CMC or even by the Chairman, DPCC to levy penalty or environmental damages and insist on furnishing of bank guarantees as a condition for grant of consent to establish or consent to operate are without the authority of law. There is no power under the Air Act or the Water Act which enables the DPCC or its Chairman, much less the CMC, to pass such orders. Absent specific provisions under the Water Act and Air Act which permit the DPCC or its Chairman to levy and collect penalties, environmental damages or to pass orders for furnishing of bank guarantees, the general power to issue directions under Section 31A of the Air Act and Section 33A of the Water Act cannot be invoked for such purpose.
- (xiii) Where there are multiple owners in a constructed building, the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners or occupiers. If the building has been completed without obtaining prior consent to establish under Section 25(1)(a) of the Water Act it would be incumbent upon the person first receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. The position is more or less similar under the Air Act. Notices can then issue to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be answerable under the Water Act and/or the Air Act.

**74.** This Court would like to end this part of the judgment, before commencing to examine the individual petitions, with the observation that the DPCC should take proactive steps to make the correct legal position publicly known not only through its website, but act in coordination with the governmental and municipal agencies, the planning authorities, the construction industry, consumer associations as well as civil society groups involved in issues of environmental protection. Not only should DPCC reorganize itself as a vigilant regulator but seek the active cooperation of all of the above interested parties. Also, to avoid any criticism of selective application of law, the DPCC should ensure that the law applies and is

Page: 82

enforced in a uniform, predictable and certain way, while ensuring that action taken is within the four corners of the law.

*Consideration of individual petitions*

**75.** The individual petitions are now taken up for consideration W.P. (C) No. 2714 of 2008 (Vardhman Properties Ltd.)

**76.** The building in this case is a shopping-cum-office complex built on a commercial plot. The total builtup area is 7700 sq.m. The show cause notice was issued by the DPCC on 13th February 2008 asking the Petitioner to explain why it should not be proceeded against for its failure to apply for a consent to establish under Section 25 of the Water Act and consent to operate under Section 21 of the Air Act. The show cause notice further stated with reference "you are proposing to construct/have started construction activities without obtaining prior 'Consent to Establish' under Air and Water Acts from DPCC". The Petitioner was asked to show



cause why "prosecution proceedings should not be initiated against you and/or your establishment should not be closed under the appropriate provisions of the Acts for contravention of the provisions of the aforesaid Acts".

**77.** By the time the above show cause notice was issued, the building had already been constructed. In fact, construction commenced on 7th June 2005 in terms of the sanctioned building plan and was completed on 25th June 2007. The Petitioner replied to the above notice on 18th February 2008. *Inter alia*, it was pointed out that an application was made on 3rd September 2007 under the Right to Information Act, 2005 ('RTI Act') on the exact criteria adopted by the DPCC for identifying commercial complexes for the purposes of consent under the Air Act and the Water Act. The DPCC had replied that commercial/residential buildings not generating trade effluent are required to discharge their sewage into sewage system maintained by Delhi Jal Board/MCD/DDA which in turn was responsible for treating the sewage in the sewage treatment plant as per the norms prescribed under the pollution control laws and in such event consent was not required for the said commercial/residential buildings.

**78.** On 18th March 2008, an order was passed by the DPCC noting that a reply had been filed by the Petitioner to the show cause notice on 18th February 2008 that "no application has been made till date". The case was then placed before the CMC (Orange). It was decided by the CMC to direct the Petitioner to apply for consent to establish and submit "Environmental Clearance obtained from MoEF, Govt. of India" and an "affidavit indicating date of start of construction and completion of construction, approved architectural drawing and completion certificate within 15 days from the issue of this letter".

**79.** The challenge in the present petition is to the aforementioned order dated 18th March 2008.

**80.** As already held by this Court hereinbefore that there was no question of the Petitioner having to apply for environmental clearance from the MoEF in terms of the EIA Notification dated 14th September 2006 since the builtup area was not above 20,000 sq.m. In the present case the builtup area was 7700 sq.m. The categorization of an industry as Orange, Red or Blue appears to that of the DPCC. It is not found either under the Air Act or under the Water Act. Nevertheless, a

Page: 83

commercial shopping complex required prior consent to establish prior to commencement of construction. But once the construction was already complete, then it was pointless to require the Petitioner to apply thereafter for consent to establish.

**81.** Thirdly, the Petitioner's reply dated 18th February 2008 has been noticed but not discussed by the DPCC in the impugned order. In particular, the Petitioner's response to the reply received by it under the RTI Act has not been adverted to at all. Although it is possible that the sewage generated by the shopping complex will join the main sewage system which is being taken to the effluent treatment plant of the DJB, that by itself will not obviate the need to obtain consent to establish from the DPCC.

**82.** It appears that DPCC itself was not very clear about the legal position and, therefore, the above reply was given under the RTI Act. It cannot be said that the DPCC estopped from rectifying its position or correcting its understanding of the law.

**83.** Inasmuch as the building already was constructed on 25th June 2007, by the time the show cause notice dated 13th February 2008 was issued, the direction issued by the DPCC requiring the Petitioner to thereafter apply for a consent to establish



under the Water Act and consent to operate under the Air Act was a direction which was incapable of being complied with.

**84.** This is, however, not the end of the matter. The DPCC can still proceed under Section 25(5) of the Water Act requiring the Petitioner to comply with the pollution control norms under the Water Act. This it can do after following the procedure under Section 25(5).

**85.** As far as Air Act is concerned, the DPCC can inspect the premises to ascertain what is the extent of the air pollution caused, if any, and then issue notice to the Petitioner.

**86.** The direction issued in the impugned order dated 18th March 2008, requiring the Petitioner to apply for consent to establish and consent to operate, is for the aforementioned reasons not sustainable in law. While setting aside the impugned order dated 18th March 2008 for the aforementioned reasons, this Court leaves it open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. If it finds after an inquiry or investigation that the use of the premises is causing either water or air pollution, and corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act.

**87.** The writ petition is disposed of with the above directions.  
*W.P. (C) No. 2771 of 2008 (Vardhman Properties Ltd.)*

**88.** The total builtup area in the present case is to an extent of 6131.22 sq.m. The building has been constructed on a commercial plot. The building is a shopping complex. Like in Writ Petition (C) No. 2714 of 2008, a show cause notice was issued by the DPCC on 13th February 2008 requiring the Petitioner to apply for prior consent to establish and consent to operate under the Air Act and the Water Act respectively. A similar response was received from the Petitioner on 18th February

 Page: 84

2008 and a similar order as in Writ Petition (C) No. 2714 of 2008 was passed by the DPCC on 18th March 2008.

**89.** Here again the construction commenced on 15th February 2005 and was completed on 4th December 2006 i.e. much prior to the issuance of the show cause notice. For the reasons already explained in Writ Petition (C) No. 2714 of 2008, the impugned order cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter, it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No., 2772 of 2008 (Vardhman Properties Ltd.)*

**90.** The building in this case is a shopping complex built on a commercial plot. The total builtup area is 5907.25 sq.m. The facts are identical to the facts in Writ Petition (C) Nos. 2714 and 2721 of 2008. The date of completion of the building is 14th December 2006.

**91.** For the reasons already stated hereinbefore, the impugned order dated 18th March 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It



would nevertheless be open to the DPCC to now proceed in accordance with Section 25 (5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 7081 of 2008 (Pankaj Buildwell Ltd.)*

**92.** The total builtup area in this case is 1593 sq.m. The building is a shopping complex and is builtup on a commercial plot. The completion certificate was obtained on 2nd June 2008 itself. It is only thereafter on 14th February 2008 that the standard show cause notice was issued by the DPCC which was identically worded as the show cause notice dated 13th February 2008 in the cases of Writ Petition (C) Nos. 2714, 2771 and 2772 of 2008. The impugned order is dated 9th September 2008 which is again identically worded.

**93.** The decision taken by the CMC on 3rd September 2008 has been placed on record. It shows that apart from the Chairman, DPCC there were three other members along with the Executive Engineer, Assistant Executive Engineer and Joint Executive Engineer of the CMC. As regards the Petitioner, its contention that it had no DG set and no bore well and there was no effluent were noted. The decision was to let the unit file its application to the DPCC and its case would be considered by the CMC on 30th September 2008. The above decision of the CMC was communicated to the Petitioner on 9th September 2008 asking it to file an application

Page: 85

for consent to establish. This is the decision which has been challenged in the writ petition.

**94.** For the reasons already stated hereinbefore, the impugned order dated 9th September 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 3815 of 2008 (Vardhman Properties Ltd.)*

**95.** The building in question has a total builtup area 4735.62 sq.m. and is on a commercial plot. The construction of the building commenced on 27th November 2003 and was completed on 2nd December 2004. A show cause notice was issued on 24th April 2008 requiring Petitioner to apply for consent to establish. It was at this stage that the present writ petition was filed challenging the said show cause notice. An interim order was passed by this Court on 19th May 2008 directing the Respondent not to take coercive action pursuant to the abovementioned notice dated 24th April 2008.

**96.** In the reply filed to the petition, a reference is made by the DPCC to the Petitioner's response dated 6th May 2008 to the show cause notice in which it was



mentioned that the DDA has already issued a completion certificate. It appears that the DPCC undertook an inspection of the site on 1st July 2008 and confirmed that the builtup area was 4735.62 sq.m., and that the completion of the construction took place on 2nd December 2004. The inspection team was also informed that the building was under occupation since 1st April 2005 and the occupancy was to the extent of 50 to 60 persons. There was one DG set of 140 KVA along with two more DG sets located at the terrace, there was no information about their KVA. Sewage connection was available and the estimated waste water generation was 11.2 KLD. It was informed that the CMC was yet to take any decision on the said report.

**97.** This Court finds that the builtup area being 4735.62 sq.m., there was no question of the Petitioner having to obtain an EIA clearance in terms of the EIA Notification dated 14th September 2006. The construction having already been completed on 2nd December 2004, the direction to the Petitioner to apply for consent to establish which had to happen prior to commencement of construction was incapable of being complied with.

**98.** The impugned orders dated 24th April 2008 of the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can

Page: 86

proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

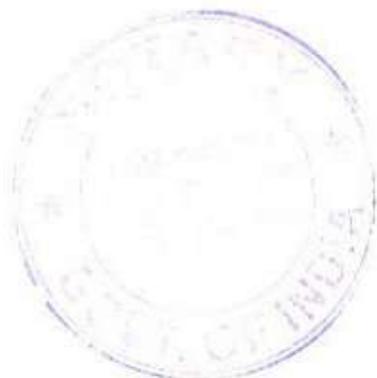
*W.P. (C) No. 8143 of 2008 (Manish Buildwell Pvt. Ltd).*

**99.** The total builtup area of the commercial complex in the present petition is 2160 sq.m. Construction of the building commenced some time in May 2007 and was completed in May 2008. A show cause notice was thereafter issued on 6th June 2008. On 16th October 2008, a direction was issued by the DPCC requiring the Petitioner to apply for consent to establish. This is identically worded as the direction issued by the DPCC on 10th September 2008 in Writ Petition (C) No. 7081 of 2008.

**100.** For the reasons already explained hereinbefore, the directions contained in the order dated 10th September 2008 and 16th October 2008 passed by the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 8144 of 2008 (Vardhman Properties Ltd.)*

**101.** The total builtup area of the commercial complex constructed on a commercial plot in the present petition is 18,250 sq.m. Construction of the building was completed on 14th September 2007. An order was passed on 24th October 2008 by the DPCC in terms of the decision of the CMC at its meeting on 7th October 2008 asking the Petitioner to apply for consent to establish and also give parawise reply to



the observation made by the special inspecting team on the inspection that was carried out on 3rd September 2008.

**102.** For reasons already mentioned, the direction to the Petitioner to apply for consent to establish is now incapable of being complied with inasmuch as construction was already completed on 14th September 2007. It is not clear if the due process requirement of a prior show cause notice was complied with by the DPCC before issuance of the above direction. While setting aside the impugned order dated 24th October 2008, this Court leaves it open to the DPCC to initiate appropriate proceedings in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 8145 of 2008 (Sachdeva Buildcon Pvt. Ltd.)*

**103.** The total builtup area of the commercial shopping complex constructed on a commercial plot in the present petition is 2407.7 sq.m. Construction of the building

Page: 87

commenced some time in January 2005 and was completed in May 2006. It appears that on 28th April 2008 and 29th May 2008 the DPCC passed orders directing the Petitioner to apply for consent to establish.

**104.** For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 8146 of 2008 (Rajesh Projects India Pvt. Ltd.)*

**105.** The total builtup area of the building constructed on a commercial plot in the present petition is 5000 sq.m.(approx). Construction of the building commenced on 5th July 2005 and completed in April 2007. A show cause notice was issued on 24th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

**106.** For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.



*W.P. (C) No. 8147 of 2008 (Rajesh Projects India Pvt. Ltd.)*

**107.** The total builtup area of the shopping mall constructed on a commercial plot in the present petition is 3990 sq.m. Construction of the building commenced on 27th February 2003 and was completed on 27th July 2006. A show cause notice was issued on 24th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

**108.** For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

Page: 88

*W.P. (C) No. 8148 of 2008 (Manish Buildwell Pvt. Ltd.)*

**109.** The total builtup area of the building constructed on a commercial plot in the present petition is 8485.75 sq.m. Construction of the building commenced on 15th June 2005 and was completed on 22nd May 2007. A show cause notice was issued on 13th February 2008 and a direction was issued asking the Petitioner to apply for consent to establish.

**110.** For the reasons already explained hereinbefore, this Court finds that the impugned directions dated 18th March 2008 and 29th May 2008 are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 8149 of 2008 (Fargo Estates Pvt. Ltd.)*

**111.** The total builtup area of the building constructed on a commercial plot in the present petition is 10,100 sq.m. Construction of the building commenced on 2nd May 2004 and was completed some time in May 2006. A show cause notice was issued on 21st May 2007 and an order was passed on 31st October 2008 requiring the Petitioner to pay environmental damages of Rs. 40 lakh and furnish bank guarantee of Rs. 95 lakhs.

**112.** The above directions were stayed by this Court by an order dated 17th November 2008.

**113.** For the reasons already explained hereinbefore, the impugned order dated 31st October 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own



inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

**114.** It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 9040 of 1008 (Home Linkers Pvt. Ltd.)*

**115.** The total builtup area of the building constructed on a commercial plot in the present petition is 3,526.83 sq.m. Construction of the building commenced on 11th November 2004 and was completed on 7th June 2006. A show cause notice was issued on 14th February 2008 and orders were passed on 18th March 2008 and 19th September 2008 requiring the Petitioner to apply for consent to establish.

Page: 89

**116.** For the reasons already explained hereinbefore, the impugned orders dated 18th March 2008 and 19th September 2008 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 464 of 2009 (Vardhman Land Developers Pvt. Ltd.)*

**117.** The Petitioner purchased a commercial plot measuring 5112 sq.m. in Raja Garden, New Delhi in an open auction held by the MCD on 6th May 2002 and a perpetual lease deed was executed and building plans were sanctioned by the DDA on 24th March 2004. A completion certificate was issued on 31st January 2005.

**118.** The Petitioners pointed out that although they did not consider it necessary to apply for consent to establish, they nevertheless did apply on 22nd November 2007 with the DPCC. A show cause notice was issued on 5th December 2007 which was replied to on 13th December 2007 informing the DPCC that the application seeking "consent to establish, was already pending. No reply was received from the DPCC. The DPCC again sent a notice dated 14th March 2008 requiring the Petitioner to submit environmental clearance, approved architectural drawings and the completion certificate. Thereafter the DPCC sent a letter dated 26th May 2008 informing the Petitioner that its case was being placed before the CMC.

**119.** At its meeting on 21st August 2008, the CMC took note of the fact that the total project cost is Rs. 44.14 crores and that in similar cases the CMC has levied damages of 1% of the project cost and 2% of the project cost for bank guarantee which in the present case worked out to damages as cash penalty of Rs. 44 lakh and bank guarantee of Rs. 88 lakhs. The aforesaid damages as cash penalty and bank guarantee valid for three years was asked to be furnished by 17th September 2008. The Petitioner then made a representation which was again considered by the CMC in its meeting held on 7th October 2008. The CMC now reduced the penalty amount to



Rs. 40 lakh and bank guarantee amount to Rs. 85 lakh and asked the unit to comply with the directions of 6th July 2008.

**120.** It was at that stage that the Petitioner filed the present writ petition in which by an order dated 27th January 2009 an interim order was passed restraining the Respondents from taking any coercive action against the Petitioner.

**121.** As explained hereinbefore, the DPCC had no power to require the Petitioner to pay environmental damages or to furnish bank guarantee and, therefore, the impugned direction is wholly unsustainable in law and is hereby set aside. If indeed the Petitioner had already filed an application for consent to establish on 22nd November 2007, then in the absence of any reply thereto by the DPCC in terms of Section 25(7) of the Water Act such consent is deemed to have been granted.

Page: 90

**122.** This will, in any event, not preclude the DPCC from taking action against the Petitioner after an inspection undertaken by it of the premises hereafter. If the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act, the DPCC can proceed to take action but only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 543 of 2008 (Splendor Landbase Ltd.)*

**123.** The property in question is an office complex-cum-shopping mall on Plot No. 3, District Centre, Jasola, New Delhi known as Splendor Forum. The area of the plot is about 5704 sq. m. It was purchased from the Delhi Development Authority for commercial purposes in an open auction. The Petitioner states that all the necessary permissions from all authorities concerned including the municipalities, electricity department, Chief Fire Officer, Delhi Urban Art Commission, and Airport Authority of India were taken. The construction of the building started in March 2004 and the construction up to the plinth level was completed in December 2005. The EIA Notification dated 7th July 2004 brought within its fold construction activity. The Petitioner states that in terms of the said EIA Notification where construction was complete till the plinth level, no environmental clearance was necessary. However, since DDA insisted on the Petitioner producing the EIA clearance certificate in order to process its case for additions, alterations and modifications, the Petitioner applied and was granted EIA clearance by the MoEF on 2nd November 2007.

**124.** In response to a notice dated 20th/21st August 2007 from the DPCC, the Petitioner applied for consent to establish under Section 25(1)(a) of the Water Act on 5th September 2007. A reply to the notice dated 20th/21st August 2007 was also sent to the DPCC by the Petitioner. The aforesaid application for consent dated 5th September 2007 was never formally rejected by the DPCC. However, an order dated 31st December 2007 was passed by the DPCC issuing directions under Section 31A of the Air Act and Section 33A of the Water Act primarily on the ground that the construction was started and completed without first obtaining consent to establish. It was also alleged that there were certain violations of the conditions of the EIA clearance although according to the Petitioner this was outside the scope of the powers of the DPCC. By the impugned order dated 31st December 2007, the Petitioner was asked to pay fine and furnish a bank guarantee. The Petitioner submits that said order was passed without complying with the principles of natural justice and was contrary to the procedure under the Rules. The premises was inspected by MoEF. It is stated



that in its report dated 5th May 2008 the MoEF recorded that there has been satisfactory compliance of most of the conditions laid down in the EIA clearance. It was concluded that the commencement of construction by the Petitioner in March 2004 could not be treated as a violation of the EPA. Hence no legal action was recommended by the MoEF against the Petitioner under the EPA.

**125.** The directions issued by the DPCC on 31st December 2007 have been assailed as being *ultra vires* the powers of the DPCC under the Air Act and the Water Act. The said order is also challenged on the ground of non-compliance with the applicable Rules and further that DPCC cannot take action for alleged non-compliance with the conditions forming part of the EIA clearance.

Page: 91

**126.** In its counter affidavit dated 31st January 2008 the DPCC contended that the Petitioner initially did not apply to the DPCC for prior consents under either the Water Act or the Air Act. It was only after a formal notice was issued to the Petitioner in August 2005 that on 5th September 2007, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act. According to the DPCC the Standing Counsel of the GNCTD advised it that it could not initiate actions under Sections 15, 16 and 19 of the EPA. An inspection was carried out in the premises on 23rd December 2007 and the deficiencies noted at that time have been listed out in the counter affidavit. The conditions imposed by the amended clearance dated 10th February 2007 and the status of compliance was also set out in detail in the counter affidavit. It is stated that the CMC at its meeting on 26th December 2007 and 28th December 2007 deliberated upon the matter considering the facts and circumstances including the representation dated 27th December 2007 made by the Petitioner. Thereafter the impugned order dated 31st December 2007 was passed under Section 31A of the Air Act and Section 33A of the Water Act asking the Petitioner to pay 0.5% of the project cost of Rs. 65 crores as fine, which was required to be deposited in the DPCC's account within 30 days. The DPCC's stand is that "any smaller amount of fine will only mean that a non-deserving Petitioner with no *bona fides* of commitment to preserving clean air and water in his environment, would not work towards a correction. Surely environment deserves ½% of his total project cost to make him realize the degree of his callousness". A detailed parawise reply to the writ petition has also been given by the DPCC.

**127.** In its rejoinder filed on 6th February 2008, the Petitioner pointed out that it had in fact obtained EIA clearance. A reference was made to the website of the DPCC where under the caption 'frequently asked questions' under the sub-heading "consent procedure" the following questions and answers appear:

"Q. I am involved in trading activity, Do I need to apply for consent?"

Ans. At present, consents are not required for enterprises engaged only in trading activities.

Q. I have an office and have installed a D.G. Set. Do I need to take consent from DPCC?"

Ans. DPCC does not issue consent for offices. For D.G. Sets you are required to install acoustic enclosure meeting the prescribed norms/standards for noise for D.G. Sets."

**128.** It is pointed out that it is only by the amendment with effect from 7th July 2004 that construction activity came to be added to the EIA Notification and again it



was clarified that such amendment would not apply to "any construction project falling under Entry 31 of Schedule-1 including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs. 50,00,000/- (Rupees Fifty lakhs) or below." The Petitioner proceeded on the assumption that the term "investment" in the said Notification would include the amount invested in construction and raising the superstructure and since that was

Page: 92

around Rs. 34 crores, no EIA clearance was required. Thereafter when a further modified EIA Notification was issued on 14th September 2006, the Petitioner applied to the MoEF for EIA clearance on 12th March 2007. Time was granted by a Circular dated 21st November 2006 of the Central Government up to 30th June 2007 for applying for EIA clearance.

**129.** It is not the submission of learned Counsel for the Petitioner that there is any repugnancy between the EPA and the Air Act and the Water Act. On the other hand, it is not denied that the EPA would apply and that in the Petitioner's case, the EIA clearance would have to be obtained. What is contended is that once EIA clearance has been obtained, there is no occasion to again apply to the DPCC under the Air Act and the Water Act for consent to operate and consent to establish respectively. Further, it is submitted that there are many aspects of the EIA clearance which include water and air pollution and, therefore, the exercise would become repetitive and cumbersome. Thirdly, it is sought to be contended that the jurisdiction as regards the EIA clearance is of the Central Government and not of the DPCC particularly with reference to the National Capital Territory of Delhi.

**130.** The stand of the Respondents, on the other hand, is that consent under the Air Act and the Water Act are independent of the EIA clearance and that although the DPCC may have no jurisdiction as regards the EIA clearance, to the extent that such EIA clearance itself mandates that the person in whose favour such clearance has been granted has to obtain consent under the Air Act and the Water Act, the DPCC's jurisdiction will stand attracted. It is further submitted that the parameters that would weigh with the DPCC in processing an application for consent under the Air Act and the Water Act might be different from those which would weigh with the MoEF in granting EIA clearance.

**131.** This Court has considered the above submissions. In view of the builtup area of the building being over 20,000 sq.m., an EIA clearance is mandatory. For the reasons already discussed, it must be held that the requirement of obtaining consent to establish under the Water Act and consent to operate under the Air Act is independent of the EIA clearance obtained in respect of the Petitioner's shopping complex or shopping mall. But this requirement would have applied at the stage when construction had not commenced.

**132.** However, in this case at the time when the Petitioner applied for and obtained the EIA clearance, the construction of the building was complete. There was no show cause notice issued to it by the DPCC from the time it commenced construction sometime in March 2004 till it completed its construction in December 2005. Clearly, the DPCC woke up very late. The first show cause notice was issued some time in August 2007. Even then the show cause notice was issued to M/s. G.S. Developers and Contractors Pvt. Ltd. who were only contractors whereas the whole shopping complex was built by the Petitioner. Be that as it may, for the reasons already discussed the



course open to the DPCC was to invoke Section 25(5) of the Water Act to require the Petitioner to rectify any deficiency that must have been noticed on the inspection of the premises. Even under the Air Act, there is no question of now requiring the Petitioner to apply for "prior consent to operate" since the construction of the building is already complete.

**133.** There are enough provisions in both the Air Act and the Water Act to deal

Page: 93

with a situation where without obtaining prior consent a building been constructed and has become functional. As already pointed out the action under Section 31A of the Air Act and Section 33A of the Water Act will have to be exercised reasonably after complying with the rules envisaged under both these Acts. The exercise should not be a mechanical one. Since this is a building which has been granted EIA clearance, the DPCC should find out first whether there are other aspects, not covered by the EIA clearance that require to be rectified by the Petitioner both under the Water as well as the Air Acts. In other words, the exercise to be undertaken by the DPCC ought not to be repetitive of the exercise undertaken by the MoEF while granting EIA clearance.

**134.** Thirdly, there is no legal basis for the DPCC to impose penalty and environmental damages on the Petitioner or require it to furnish a bank guarantee. For the reasons already discussed, such orders are plainly outside the powers of the DPCC under the Water Act and the Air Act and cannot be sustained in law.

**135.** The DPCC has relied upon an order dated 14th October 2003 passed by the Supreme Court in Writ Petition (C) No. 657 of 1995 (*Research Foundation for Science Technology and National Resource Policy v. Union of India*) where in para 70.6 an observation was made to the following effect:

"MoEF should consider making a provision for bank guarantee being given by importer while seeking permission to import used oil, furnace oil and zinc wastes to be released only on the imported consignment being found to be in conformity with the declared item of import. After taking a decision, affidavit shall be filed within four weeks."

**136.** The above observation of the Supreme Court does not by any means imply that an SPCB like the DPCC can begin to levy penalties and fines and environmental damages or require bank guarantees to be furnished in exercise of its powers under Section 31A of the Air Act and Section 33A of the Water Act. The above contention is accordingly rejected.

**137.** Reliance has been placed by the DPCC on an order dated 17th October 2006 passed by the Supreme Court in the Vasant Kunj Ridge matters. The above order was passed in an application filed seeking acceptance of the report of the Expert Committee relating to violation of environmental norms by certain parties who had constructed shopping malls or hotel complexes in the Vasant Kunj Ridge area. After referring to the earlier orders dated 19th August 1997 and 8th March 2004, the Supreme Court observed that the parties were not aware that they had to take EIA clearance in terms of the amended EIA Notification dated 7th July 2004. It was then observed as under:

"The confusion arose because DDA all through all through gave an impression to the parties participating in auction that all requisite clearances had been obtained. Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot



apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have

Page: 94

made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. Some of the allottees are the National Book Trust, School of Planning or Architecture, Shri Ram Vithala Sikha Seva Samiti, International Centre for Alternate Dispute Resolution and Institute for Studies and Industrial Development. In most of these cases the constructions are already complete and have become functional."

**138.** Consequently, the following directions were issued:

"10. In view of what has been stated above, the MoEF has now to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the stands projected by the Respondents. We are *prima facie* satisfied about the *bona fides* of the Respondents but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site for auction where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken".

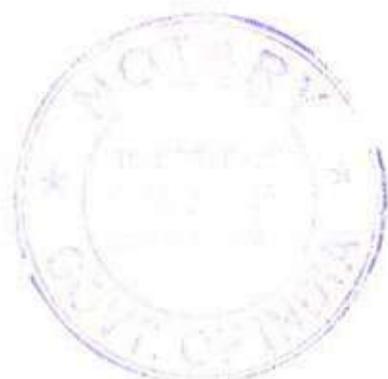
**139.** The position as far as the present set of cases is concerned, is not very different. The DPCC appears to have woken up after the construction of the shopping-cum-commercial complexes/malls was completed. Therefore as far as the present cases are concerned, the above orders do not come to the aid of the DPCC for seeking to proceed against the Petitioner for failing to obtain prior consent to operate under the Air Act and prior consent to operate under the Water Act. As already clarified, this would not preclude the DPCC from proceeding under the Air Act and Water Act in the manner already discussed hereinbefore.

**140.** The understanding of the law by the DPCC as reflected on its website should not be taken to be determinative. There is no estoppel against law. The position depicted by the DPCC on its website will be obviously subject to and in consonance with the correct legal position. There has been a lack of clarity even within the DPCC on whether the provisions of the Water Act and the Air Act apply to construction activity. Hopefully that confusion should not remain any longer.

**141.** For the aforementioned reasons, this Court while setting aside the order dated 31st December 2007 passed by the DPCC permits it to proceed in accordance with law against the Petitioner in terms of Section 25(5) of the Water Act and the relevant provisions of the Air Act.

**142.** A point has been urged by the Petitioner that substantial portions of the complex have been sold/leased out to different persons and, therefore, the complex is no longer in the control of the Petitioner. As and when a fresh show cause notice is issued to the Petitioner by the DPCC, it will be open to the Petitioner to furnish to the DPCC the name's of the individual owners of the different portions who might be liable to the extent of their respective portions. This by no means will absolve the Petitioner of its liability which is joint and several with such individual owners/

Page: 95



lessees. It will be for the DPCC to decide who should be made liable for complying with the various provisions under the Water Act and the Air Act.

**143.** The writ petition is accordingly disposed of with the above directions.  
*W.P. (C) No. 3095 of 2008 (DLF Ltd.).*

**144.** The case of the Petitioner is that a plot of land admeasuring 15659.50 sq.m. situated at District Centre, Saket, New Delhi with an attached general parking plot admeasuring 14072.48 sq. m. was purchased in an auction from DDA to be used as retail/office/multiplex/service apartment purposes. Although according to the Petitioner no formal consent was required, to avoid any hyper-technical objection and impediment at a later stage and without prejudice to its rights, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act on 3rd June 2005. The first of the Applications has not till date been formally rejected and thus shall be deemed to have been granted on 2nd October 2005 in terms of Section 25(7), Water Act.

**145.** The Petitioner applied on 2nd December 2005 seeking EIA clearance under the EIA Notification as amended on 7th July 2004. As per the requirement of the said Notification, a no objection certificate and public hearing was to be afforded by the public hearing panel of which the representative of the DPCC was a member.

**146.** The Petitioner states that all necessary permissions for commencement of construction including those from the MCD, Fire Department, Electricity Department, Airport Authority of India and Delhi Urban Arts Commission were taken. The MoEF granted EIA clearance to the Petitioner on 15th January 2007. DPCC wrote to the Petitioner on 20th and 30th August, 2007 that the earlier application filed by it for consent on 3rd June 2005 has been forwarded to the Government of India and that it should file a fresh application.

**147.** A fresh application for consent to establish was filed by the Petitioner with the DPCC on 25th/26th September, 2007. The said application was not disposed of or rejected within a period of four months thereafter. Thus consent was deemed to have been granted on 25th January 2008 in terms of Section 25(7), Water Act. Nevertheless, the DPCC issued the impugned order dated 4th April 2008 and directed the Petitioner to pay fine and furnish a bank guarantee. This has been challenged in the present writ petition.

**148.** The stand of the DPCC is no different from its stand in W.P.(C) No. 543 of 2008 (Splendor Landbase).

**149.** For the reasons already discussed, the need for the Petitioner to apply under the Air Act and the Water Act did not get obviated on account of the fact that it had an environmental clearance. However, here the construction was already complete. 50% of the construction was complete by end of 2006 and no show cause notice was issued to the Petitioner. An order was straightaway passed requiring the Petitioner to pay penalty and furnish a bank guarantee. Such a direction is, for reasons already stated, *ultra vires* the powers of the DPCC under the Water Act and the Air Act and is unsustainable in law.

**150.** For the aforementioned reasons, the impugned order dated 4th April

2008 is set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air



Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter, it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

*W.P. (C) No. 4319 of 2008. (DLF Ltd.).*

**151.** The Petitioner is the owner of a residential plot at W-Block, Greater Kailash-II, New Delhi. It purchased the property from a private individual in terms of Sale Deed dated 31st March 1959. The Petitioner proposed to construct a residential housing complex. The Petitioner filed an application on 23rd February 2007 with the MoEF for EIA clearance, which was granted on 26th December 2007. Without prejudice to its rights, the Petitioner applied to DPCC for consent to establish on 8th March 2007. The application remained pending and was not rejected for over four months thereafter. Consequently consent to establish was deemed to have been granted on 7th July 2007 in terms of Section 25(7) Water Act.

**152.** The Petitioner had not started the construction till the filing of this petition. Reminders dated 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 were sent to DPCC but to no effect. DPCC wrote to the Petitioner on 3rd April 2008 seeking to take action against the Petitioner for not taking the prior consent before commencement of construction. By letters dated 20th and 30th August 2007, the DPCC wrote to the Petitioner asking him to apply afresh as the earlier application had been forwarded to Central Government. During the course of hearing in other cases of group companies, it was explained that the project is for residential group housing and not for trade, commercial or industrial purposes; environment clearance had been granted and there was a deemed consent in view of the fact that their application dated 8th March 2007 was not rejected for over four months thereafter.

**153.** Feeling aggrieved by the threatened action of the Respondent, *Inter alia*, of closure, imposition of penalty and bank guarantee, the Petitioner filed the present petition. It is further pointed out that during the present petition the DPCC has granted consent to establish. There is no denial by the DPCC of the above assertions by the Petitioner.

**154.** Even if the building had an EIA clearance, the provisions of the Water Act would continue to apply for the reasons already explained by this Court hereinbefore. However, considering that it is a residential complex the Petitioner was not required to obtain consent under the Air Act. The Petitioner has already been granted EIA clearance on 26th September 2007. The order passed by the DPCC directing the Petitioner to apply for consent to establish does not survive since consent to establish has been granted to the Petitioner. Any violations of either the Water Act or Air Act detected hereafter by the DPCC will obviously be actionable but only after the DPCC follow the due process requirements of the law.

**155.** The writ petition is disposed of.

Page: 97

*W.P. (C) No. 4321 of 2008 (Paliwal Developers Ltd.)*

**156.** The Petitioner purchased a plot of land admeasuring about 5495 sq.m. situated at Mayur Vihar Phase-I Extension, Delhi in an open auction from the DDA for



constructing a shopping complex. According to the Petitioner, since the builtup area proposed was 12325 sq.m. no environment clearance was considered necessary. All the necessary permissions for construction were granted by the MCD and other authorities. On 5th September 2006, an application for consent to establish was filed with the DPCC. The application remained pending and was not rejected for over four months thereafter. The Petitioner's case is that consent to establish should be deemed to have been granted on 4th January 2007. Reminders were sent on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 to avoid any difficulty at a later stage but to no effect. DPCC wrote to the Petitioner on 2nd November 2007, 14th March 2008 and 21st April 2008 for taking action for not taking prior consent to establish and prior environment clearances. The Petitioner replied to these letters. The DPCC by letters dated 20th and 30th August 2007 asked the Petitioner to apply afresh as its earlier application dated 5th September 2006 had been sent to the Central Government. Another application for consent to establish was filed by the Petitioner with the DPCC on 8th February 2007. This was also not disposed of within four months. Consequently the Petitioner contends that for a second time consent to establish should be deemed to have been granted on 7th June 2007. After about one year of the filing of the second application, the DPCC asked the Petitioner to file an affidavit of compliance, which was complied with. It was explained that no environment clearance was necessary as the builtup area was less than 20,000 sq.m. In any event consent to establish should be deemed to have been granted. Yet, the DPCC insisted and threatened to take legal action including levying a penalty, asking for a bank guarantee and ordering closure. In the circumstances, the present writ petition was filed.

**157.** The DPCC has not denied the above contentions of the Petitioner. In particular there is no denial of the assertion that the application for consent to establish filed by the Petitioner on 5th September 2006 should be deemed to have been granted on 4th January 2007. Therefore, in this case even the proceedings under Section 25(5) of the Water Act cannot be initiated by the DPCC. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules.

**158.** The impugned orders passed by the DPCC on 2nd November 2007, 14th March 2008 and 21st April 2008 directing the Petitioner to apply for consent to establish are hereby set aside. The writ petition is disposed of with the above directions.

*W.P. (C) No. 4322 of 2008 (DLF Ltd.)*

**159.** The Petitioner states that it is the owner of a residential plot at E-Block, Greater Kailash-II, New Delhi having purchased the same from a private individual in terms of Sale Deed for the purpose of construction of a residential complex. According to the inspection report dated 2nd June 2008, the total builtup area is

14,246.918 sq.m. As such, no environment clearance was necessary under EIA Notification. All necessary permissions to construct a residential housing complex were granted on 22nd August 2007. Before commencement of construction, the Petitioner filed an application dated 14th May 2007 with the DPCC, complete in all respects, seeking consent to establish. The said application was not rejected for over four months thereafter. The Petitioner submits that in the circumstances, in terms of Section 25(7), Water Act, consent to establish shall be deemed to have been granted



on 13th September 2007. However, to avoid any difficulty at a later stage, reminders were sent to the DPCC by the Petitioner on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008. The DPCC threatened to take action against the Petitioner by its letters dated 3rd March 2008 and 2nd May 2008 for not taking prior consent and prior environment clearance. The Petitioner explained the entire position to the Respondent. By letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh as its earlier applications had been forwarded to the Central Government. During the course of hearing before the CMC, it was explained that the project was for residential group housing and not for trade, commercial or industrial purposes; no environment clearance was necessary and consent to establish should be deemed to have been granted since the Petitioners application dated 14th May 2007 for consent to establish had not been rejected even four months thereafter. Feeling aggrieved by the threatened action of the DPCC of directing closure, imposition of penalty and requiring the furnishing of bank guarantee, the present petition was filed.

**160.** The facts of this case are no different from the facts in W.P.(C) No. 4319 of 2008 except that the construction commenced on 5th March 2008 and the construction was proposed to be completed in 3 years from the date of its commencement. Further, the total builtup area is 14,246.918 sq.m. and, therefore, there was no requirement for obtaining EIA clearance. The DPCC is not disputing that the Petitioner had filed an application on 14th May 2007 which was not disposed of within four months thereafter. In terms of Section 25(7) of the Water Act, therefore, the consent to establish must be deemed to have been granted. This being a residential complex, there was no need to obtain consent to operate under the Air Act.

**161.** Consequently, the impugned orders dated 2nd November 2007, 3rd March 2008 and 2nd May 2008 passed by the DPCC directing the Petitioner to apply to the DPCC for consent to establish are hereby set aside. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 4323 of 2008 (DLF Retailer Developers Ltd.)*

**162.** The Petitioner purchased two plots of land bearing Nos. A-1 and P-2B Saket Place, New Delhi admeasuring about 9492 sq.m. and 8775.92 sq.m. respectively from the DDA in an open auction for the purpose of shopping-cum-commercial complex. EIA clearance was granted on 15th January 2007. According to the Petitioner, all necessary permissions from the MCD and other authorities

were granted in November 2006. On 1st June 2006, the Petitioner applied to DPCC for consent to establish. The application remained pending and was not rejected for over four months thereafter. The Petitioner's case is that consent to establish is deemed to have been granted on 30th September 2006. However, to avoid any difficulty at a later stage, reminders were sent by the Petitioner to the DPCC in March/April 2008 but to no avail. During the course of hearing concerning other projects of the group companies, it was explained to the CMC that EIA clearance had been granted and that consent to establish should be deemed to have been granted. By its letters dated 20th and 30th August 2007 DPCC asked the Petitioner to apply a fresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner with the DPCC on



25th September 2007. This too was not rejected for over four months thereafter. According to the Petitioner, for a second time consent to establish should be deemed to have been granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file the affidavit of compliance. This was done by the Petitioner. Nevertheless, the DPCC threatened to take action against the Petitioner by ordering closure, imposing a penalty and/or requiring the furnishing of a bank guarantee on the ground that the Petitioner had commenced construction without prior consent to establish and without prior EIA clearance. In the circumstances, the present petition was filed.

**163.** The construction commenced in February 2007 and was completed in December 2008. The Petitioner obtained EIA clearance on 15th January 2007. The Petitioner applied to the DPCC for consent to establish on 1st June 2006 and there was no decision thereon for over four months thereafter. The consent to establish should be deemed to have been granted under Section 25(7) of the Water Act on 13th September 2006. The subsequent letters dated 20th and 30th August 2007 written by the DPCC requiring the Petitioner to apply afresh were without the authority of law. Nevertheless, even the fresh application filed on 25th September 2007 for consent was not rejected within four months thereafter. Therefore the Petitioner should be deemed to have been granted consent to establish on 24th January 2008 as well.

**164.** With the DPCC having failed to act upon the Petitioner's application for consent to establish, there was no legal basis for its orders dated 20th and 30th August 2007. They are accordingly set aside. This will not preclude the DPCC in any event from taking any action against the Petitioner upon any inspection undertaken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 4330 of 2008 (DLF Commercial Developers Ltd.)*

**165.** The Petitioner purchased a plot of land bearing Nos. 10-11 at Jasola, New Delhi, admeasuring 12,880 sq.m. in an open auction held by DDA. The land was to be used for construction of a commercial and retail centre. The total builtup area of the proposed building was 47603.461 sq.m. The Petitioner was granted EIA clearance on 16th May 2007. The Petitioner states that all necessary permissions to construct from the municipal and other authorities were granted. On 6th September

2006/14th October 2006, the Petitioner applied to the DPCC for consent to establish. The application was not rejected for over four months thereafter and in terms of Section 25 (7) of the Water Act it was deemed to have been granted on 13th February 2007. Reminders were sent by the Petitioner to the DPCC in March and April 2008 to avoid any difficulty at a later stage but to no avail. DPCC sent notices dated 18th March 2008 and 30th April 2008 and threatened to take action against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that environment clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC, this was reiterated. Nevertheless by its letters dated 20th and 30th August 2007, the DPCC required the Petitioner to apply afresh as the earlier application had been forwarded to the Central Government. A fresh application was filed on 8th February 2007. This too was not rejected for over four months thereafter.



The Petitioner contends that for a second time, the consent to establish should be deemed to have been granted on 7th June 2007. On one of the visits to the office of the DPCC, the Petitioner was directed to file the affidavit of compliance. This was done. Nevertheless, the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had commenced construction without obtaining prior consent to establish and without prior environment clearance. In the circumstances, the present writ petition was filed.

**166.** The total builtup area here is 47603.46 sq.m. The EIA clearance was obtained on 16th May 2007. The Petitioner commenced construction sometime in December 2006/January 2007 and completed it in August 2008. The letters received by the Petitioner on 20th August 2007 and 30th August 2007 asking it to apply for consent to establish were, in fact, to no effect since application had been filed earlier on 6th September 2006 and 14th December 2006 which were not rejected within four months thereafter. Again on 8th February 2007 a fresh application was filed. Therefore these two show cause notices were to no effect. The subsequent letters dated 18th March 2008 and 30th April 2008 asking the Petitioner again to apply were also to no effect. The said two letters are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking action against the Petitioner if upon any inspection undertaken hereinafter, the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 4333 of 2008 (Galleria Property Management Services Pvt. Ltd.)*

**167.** The Petitioner purchased a plot of land at Shalimar Bagh, New Delhi admeasuring 14145.040 sq.m. in an open auction held by the DDA. The plot of land was to be used for construction of a shopping centre. The Petitioner was granted EIA clearance on 15th January 2007. All necessary permissions to construct from the municipal and other authorities were granted. On 5th April 2005, the Petitioner applied to the DPCC for consent to establish. The application was not disposed for over four months thereafter. According to the Petitioner, consent to establish should be deemed to have been granted in terms of Section 25(7), Water Act on 4th

August 2005. The DPCC sent notices dated 14th March 2008 and 9th May 2008 and threatened to take action against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that EIA clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC this was reiterated. By its letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application was filed on 25th September 2007. This too was not rejected for over four months. According to the Petitioner for a second time consent to establish should be deemed to have been granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file an affidavit of compliance, which it did. Nevertheless the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had not obtained consent to establish prior to commencement of construction. In the circumstances, the present writ petition was filed.



**168.** This shopping complex has a total builtup area of 34895.55 sq.m. The Petitioner obtained EIA clearance on 15th January 2007. The letters received by the Petitioner from the DPCC on 14th March 2008 and 9th May 2008 asking him to apply for prior consent is to no effect since the Petitioner had applied as early as 5th April 2005 to DPCC which was not rejected within four months thereafter. A fresh application was filed on 25th September 2007 and that too was not rejected for over four months thereafter. Thus, for the second time, consent should be deemed to have been granted under the Water Act on 24th January 2008.

**169.** The orders dated 14th March 2008 and 9th May 2008 of the DPCC are accordingly set aside. It is made clear that this will not preclude the DPCC from taking action against the Petitioner upon any inspection undertaken hereinafter and if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 3905 of 2008 (Regency Park Property Management Services Pvt. Ltd.)*

**170.** The Petitioner states that in an auction held on 15th December 2003, the Petitioner purchased a commercial Plot No. 4 in the layout plan of Shopping Mall, Vasant Kunj, New Delhi admeasuring about 15300 sq. m. The necessary permissions from municipal authorities, Electricity, Airport Authority of India, Fire Services and Delhi Urban Art Commission were obtained. On 27th April 2005, an application for consent to establish was filed by the Petitioner with the DPCC. The DPCC was a party to the proceedings before the Supreme Court of India in W.P. (C) No. 202 of 1995 titled as *T.N. Godavarman Thirumulpad v. Union of India*. The Supreme Court, by an order dated 20th March 2006, took note of the ongoing construction and directed that as a special case, all permissions and clearances in the present case would be dealt with by the Central Government. The DPCC was directed to forward all the papers to the Central Government. The DPCC did so. A public hearing was organized to which a Member, DPCC was a party. One of the requirements of the public hearing was the grant of a No Objection Certificate by

 Page: 102

the DPCC, which apparently was granted or was deemed to have been granted by the DPCC before conducting the public hearing. The EIA Notification 1994 as amended on 7th July 2004 was replaced by a Notification dated 14th September 2006. Certain clarificatory Circulars dated 13th October 2006 and 21st November 2006 were issued by the Central Government permitting the existing projects to continue. EIA clearance was granted by the MoEF on 24th November 2006. The application for consent to establish filed by the Petitioner with DPCC on 27th April 2005 remained pending. A reminder was sent by the Petitioner on 16th July 2007 to know the fate of their application. By letters dated 20th and 30th August 2007, the DPCC directed the Petitioner to file a fresh application for consent as the earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner on 21st/25th September 2007 but this too was not rejected within four months. For a second time, the consent to establish was deemed to have been granted on 24th January 2008. It was for the first time on 18th March 2008 that the DPCC asked for certain documents. These were supplied. The CMC insisted on levying a penalty on the Petitioner apart from requiring the furnishing of a bank guarantee.

**171.** The total builtup area is 59731.67 sq.m. The construction commenced in



September 2005 and was completed on 17th August 2008. EIA clearance was granted on 24th November 2006. On 27th April 2005, application for consent was filed. Fresh applications were filed on 21st/25th September 2007 and no rejection order was passed for at least four months thereafter. The Petitioner is right in its contention that consent under the Water Act must have been deemed to be granted on 24th January 2008. On 18th March 2008, DPCC asked for documents and these were supplied.

**172.** The order dated 18th March 2008 of the DPCC imposing environmental damages and requiring the Petitioner to furnish a bank guarantee are, for the reasons already explained, unsustainable in law. The said order is hereby set aside. It is made clear that this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 8789 of 2008 (Laxmi Buildtech Pvt. Ltd.)*

**173.** The Petitioner states that EIA clearance had been granted to the Petitioner by the MoEF under the EPA on an application filed by it on 28th March 2007 *i.e.* much before it commenced construction. The very basis on which penalties are sought to be imposed on the Petitioner under the Air and Water Acts do not per se amount to acts of pollution much less industrial pollution or air pollution or water pollution as contemplated by the said acts. This fact is not denied by Respondent No. 1 in its pleadings.

**174.** The case of the Petitioner is that the CMC or the DPCC has no power to impose environmental damages and/or seek bank guarantee under either the Water Act or the Air Act. It is submitted by the Petitioner that the "precautionary principle" and/or the polluter pays principle are being misconstrued and misused

 Page: 103

by Respondent No. 1. Fee and fines/penalties are two totally different concepts in law. While a fee or a levy can be collected under an appropriate statute by way of a statutory interdict and used for the purpose for which it has been imposed, a fine or penalty cannot be collected and used for discharging governmental obligations or meeting expenses of the government. It is submitted that the actions of the Respondent in imposing and collecting penalties are ultra vires their powers under the Air Act and Water Act and beyond the powers vested in the said Respondent under the said Acts.

**175.** This is a commercial plot over a total builtup area of 27,667.288 sq.m. EIA clearance has been granted on 31st January 2008. The date of commencement of construction was sometime in March 2007 and it was proposed to be completed in June 2009. It appears, that by a letter dated 7th December 2007, the Petitioner was asked to apply for consent to establish which it disputed. The impugned order dated 15th October 2008 was passed imposing environmental damages and requiring the furnishing of bank guarantee and also directing the Petitioner to obtain consent to establish.

**176.** For the reasons already discussed, the order imposing environmental damages to the extent of Rs. 40 lakh and requiring the Petitioner to furnish a bank guarantee are unsustainable in law and hereby set aside. The direction that the Petitioner should now apply afresh for consent to establish is also not capable of being complied with. The said order is hereby set aside. It is made clear that this will, in any event, not



preclude the DPCC from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 8901 of 2008 (Brightways Housing and Development Ltd.)*

**177.** A commercial plot No. 7, Non-Hierarchical Commercial Centre, Jasola, New Delhi, measuring 5198 sq.m. was purchased by the Petitioner in an open auction of the DDA on 7th July 2004 for a total consideration of Rs. 33,07,50,000/-. A perpetual Lease Deed was executed in favour of the Petitioner on 29th September 2005 and the actual, physical possession of the said plot was also handed over on the same date. Building plans for raising construction on the said plot were sanctioned by the DDA on 7th February 2006. The Petitioner states that although no EIA clearance was required for raising construction on the said plot, either prior or subsequent to the raising of construction, but to avoid precipitate action, the Petitioner filed an application dated 1st September 2007 with Respondent No. 3 for EIA clearance and also submitted the requisite documents.

**178.** The Petitioner filed an application dated 25th October 2007 with the DPCC for consent to establish. A notice dated 18th March 2008 was received by the Petitioner from the DPCC alleging that the Petitioner had commenced construction without obtaining prior consent to establish. A reply dated 27th March 2008 was sent by the Petitioner informing that its application seeking consent to establish was already pending with the DPCC. The DPCC sent a notice dated 30th April 2008 requiring the Petitioner to submit an EIA clearance, approved architectural drawing

Page: 104

and completion certificate. Thereafter the DPCC sent a letter dated 1st July 2008 informing the Petitioner that its case was being placed before the CMC. The Petitioner submits that after exchange of correspondence and certain meetings held, the CMC in its meeting held on 28th August 2008, without appreciating the case of the Petitioner and without any authority imposed a penalty of Rs. 1 crore and further called upon the Petitioner to furnish a bank guarantee of Rs. 2 crores.

**179.** The MoEF intimated the Petitioner of the creation of a States Committee for obtaining environmental clearance. As a result the Petitioner applied afresh to the State Committee of the MoEF for an EIA Clearance by way of application dated 2nd September 2008. No decision was however taken on the said application. On a representation made by the Petitioner to the DPCC on 16th September 2008, the CMC of the DPCC in a meeting held on 24th November 2008 reduced the penalty to Rs. 72 lakh and required the Petitioner to furnish a bank guarantee in the sum of Rs. 1.5 crores considering an amount of Rs. 28 lakh had been earlier paid by the Petitioner to the DDA.

**180.** This Court finds that the impugned order imposing the penalty has not been issued by DPCC but by the CMC, which is a Committee constituted by the Chairman, DPCC by an office order dated 28th December 2006. First, no power vests with the Chairman, DPCC under the Water Act or the Air Act to further delegate his powers to the CMC. Therefore CMC had no authority to conduct any proceedings for imposing penalty on the Petitioner. In any event, even the constitution of the CMC was solely for the purpose of granting/refusing/revoking of consent to establish. It had no power delegated to it to impose any penalty or seek bank guarantee or order closure of the



premises or recommend prosecution. For the aforesaid reasons, the impugned order dated 24th November 2008 of the CMC imposing environmental damages to the tune of Rs. 72 lakh and requiring the Petitioner to furnish a bank guarantee in the sum of Rs. 1.5 crore is unsustainable in law and is hereby set aside.

**181.** The construction commenced in June 2005 and was completed in June 2007. It is only thereafter that an impugned notice dated 18th March 2008 was issued by the DPCC asking the Petitioner to apply afresh for consent to establish. For the reasons already mentioned, such a direction was not capable of being complied with. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and relevant provisions of the Air Act but only after following the due process of law. If, after making its inquiry/investigations into the matter, the DPCC finds that the use of the premises is causing either water or air pollution, then it can proceed thereafter in accordance with law. It may be observed that EIA clearance was required for the project of the Petitioner since the total builtup area is 21096.513 sq.m. It is not clear whether the MoEF has taken a decision on the Petitioner's application dated 2nd September 2005.

**182.** The writ petition is disposed of with the above directions.  
*W.P. (C) No. 1391 of 2010 (R.C. Sood and Co. Pvt. Ltd.)*

**183.** The Petitioner is stated to be the owner of Plot No. 10, Shivaji Palace District Center, Shivaji Palace, Raja Garden, New Delhi. The size of the plot is 5,832 sq.m. The plot was purchased from the MCD through a tender process on 30th July

 Page: 105

2004. The Petitioner was granted the requisite permission to construct a shopping-cum-residential complex by the DDA. The Petitioner, on 7th September 2006, applied to the MoEF for EIA clearance. The Petitioner resumed the construction of the shopping complex in accordance with the notifications and circulars.

**184.** The Petitioner states that it proceeded on the basis that it was not required to obtain consent to establish or consent to operate under the Water Act and Air Act respectively. However, since the Petitioner did not want any impediment in its project, it made an application dated 11th September 2006 to the DPCC seeking consent to establish along with requisite documents. The Petitioner alleges that the DPCC erroneously forwarded the said application of the Petitioner to the MoEF for issuance of a 'No Objection Certificate' under the 2006 Notification. The Petitioner claims to have been surprised to receive a notice dated 15th January 2007 from the DPCC to show cause why prosecution proceedings should not be initiated against it and why the establishment should not be closed down as the Petitioner had started construction without obtaining prior consent to establish under the Water Act and prior consent to operate under the Air Act. The Petitioner replied to the show cause notice on 28th February 2007 stating that it was the DPCC itself which had forwarded the application of the Petitioner to the MoEF. Nevertheless, as a measure of caution, the Petitioner re-submitted the application along with all requisite documents to the Respondent on 27th February 2007.

**185.** The Petitioner states that after an inordinate delay, DPCC replied to the Petitioner on 5th December 2007 by directing the Petitioner to first pursue its application for obtaining EIA clearance from the MoEF and thereafter forward a copy of the said EIA clearance to the DPCC for consideration of its application. The Petitioner was granted the EIA clearance by the MoEF on 26th March 2008 which the Petitioner forwarded to the DPCC on 27th March 2008. Thereafter the DPCC by letter dated 28th



April 2008 directed the Petitioner to submit an affidavit giving item-wise compliance of all the conditions laid down in the EIA clearance. It is submitted that although the DPCC had no role in the matter of EIA clearance, the Petitioner, with a view to avoiding controversy, submitted the said affidavit under cover of its letter dated 10th June 2008.

**186.** The Petitioner was called for a hearing before the CMC of the DPCC on 17th September 2008. During the course of the hearing, it appeared that the Petitioner had been called for the purposes of deciding on the imposition of penalty and requiring the furnishing of a bank guarantee for the purported violation of the Water Act and Air Act on part of the Petitioner. Ultimately, the CMC imposed a penalty of Rs. 59 lakh and directed the Petitioner to furnish a bank guarantee for Rs. 1.18 Crores for a period of three years.

**187.** On 28th November 2008, the Petitioner received a letter from the DPCC alleging that the Petitioner had commenced construction activities without obtaining prior consent under the aforesaid Acts and therefore had violated the provisions of the aforesaid Acts. It was further alleged that certain deficiencies were noted in the project/building of the Petitioner. On 3rd December 2008, in another meeting called by the DPCC, the Petitioner tried to explain to the DPCC that it had not committed any violation of any of the laws, rules, regulations. On this, the DPCC made a marginal reduction of the penalty from Rs. 59 lakh to Rs. 50 lakh and

Page: 106

of the bank guarantee from Rs. 1.18 crores to Rs. 1 crore. In response to the letter dated 28th November 2008 of the Respondent, the Petitioner filed an affidavit on 30th January 2009 claiming that the deficiencies pointed out by the DPCC in its letter dated 28th November 2008 had been duly rectified.

**188.** The Petitioner states that after the completion of construction it let out the building to M/s. Shoppers Stop Ltd. and executed a sub-lease dated 11th May 2007 for running a shopping mall in the said building. Shopper's Stop took possession of the building in June 2007. The DPCC in its meeting held on 23rd December 2008 directed Shoppers Stop Ltd. to apply for consent to operate.

**189.** The Petitioner states that it received another letter from the DPCC on 3rd March 2009 referring to the inspection conducted by "Special Inspection Team" of the DPCC on 16th January 2009 wherein certain deficiencies were noted by SIT in the premises of the Petitioner. On 23rd May 2009, the Petitioner clarified to the Respondent that it had already rectified the deficiencies pointed out by the SIT. The Petitioner states that it was given a hearing on 21st January 2010. According to the Petitioner, the DPCC at this meeting took a decision to launch prosecution against the Petitioner. The Petitioner received a letter dated 11th February 2010 from the DPCC stating that its earlier application of 11th September 2006 had become infructuous. With the Petitioner's representation dated 26th February 2010 to the DPCC eliciting no response, the present writ petition was filed challenging the minutes of the CMC's meetings dated 17th September 2008, 3rd December 2008 and 21st January 2010.

**190.** The decision dated 17th September 2008 of the CMC of the DPCC imposing environmental damages to the tune of Rs. 59 lakh and requiring the Petitioner to furnish bank guarantee in the sum of Rs. 1.18 crores is for reasons already discussed unsustainable in law and is hereby set aside. The subsequent decisions dated 3rd December 2008 and 21st January 2010 are also without the authority of law and are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC



from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 9128 of 2009 (Ridge View Construction Pvt. Ltd.)*

**191.** A commercial plot measuring 2500 sq.m. being Plot No. D-2, District Centre, Saket, New Delhi was purchased by the Petitioner in an open auction conducted by DDA on 29th September 2003 for a total consideration of Rs. 43,41,00,000/- and the possession of the said plot was handed over to the Petitioner soon thereafter. A perpetual lease deed dated 1st July 2004 was subsequently executed by the DDA in favour of the Petitioner. The DDA handed over to the Petitioner the architectural conditions and controls which enabled the Petitioner to raise construction as per the control drawings. Construction was thus raised by the Petitioner on the plot till the plinth level much before 7th July 2004.

**192.** The Petitioner filed an application with the MoEF seeking EIA clearance

 Page: 107

on 2nd September 2008. The Petitioner also filed an application dated 2nd September 2008 with DPCC for consent to establish. The Petitioner states that it was surprised to receive a notice dated 9th August 2008 issued by the DPCC to M/s. Taneja Developers and Infrastructure Limited ('TDIL') wherein it was alleged that the construction of a retail-cum-office complex was being carried out by TDIL. The Petitioner states that on various occasions it clarified to the DPCC that the said commercial complex was being developed by the Petitioner. However the show cause notices continued to be issued to TDIL. Subsequently, the CMC by an order dated 15th October 2008 issued directions for closure of the Petitioner's retail-cum-office complex immediately and further asked the electricity distribution companies to disconnect the electricity supply and the DJB to disconnect the water supply.

**193.** Aggrieved by the impugned order dated 15th October 2008, the Petitioner filed W.P.(C) No. 7850 of 2008. This Court stayed the operation of the impugned order. Another show cause notice dated 10th November 2008 was issued by the DPCC. This Court at the next hearing held that on account of issuance of the fresh show cause notice nothing survived in the said writ petition.

**194.** The Petitioner replied to the fresh show cause notice on 21st November 2008. Thereafter, the DPCC issued a letter dated 8th May 2009 directing the Petitioner to close its commercial building immediately and further directing the NDPL/BSES to disconnect the electricity supply and the DJB to disconnect the water connection to the said building. The said directions were purportedly as a result of a decision taken by the CMC on 23rd April 2009 and an inspection carried out at the site on 8th April 2009.

**195.** The Petitioner submitted that no EIA clearance was required since the builtup area of the premises (19,227.15 sq.m.) was less than 20,000 sq.m. The Petitioner had installed a Sewage Treatment Plant (STP) of 56 KLD capacity which was fully operational prior to 8th April 2009 and for which an adequacy report/certificate had also been granted by a recognised institute nominated by the DPCC itself. Regarding no permission having been obtained from the DJB for extraction of ground water from bore well, it is submitted that the Petitioner has already obtained permission from the concerned authorities. The Petitioner states that it is not utilizing the water from the



bore well and it has deployed tankers for fulfilling its requirements of water in the complex. The Petitioner alleges that when its representative went to the DPCC to submit an application for consent to operate, the application was refused.

**196.** In the above circumstances, the present writ petition was filed challenging the closure order dated 23rd April 2009 communicated to the Petitioner on 8th May 2009.

**197.** For the detailed reasons already discussed, the question of the DPCC taking action for the Petitioner not having obtained EIA clearance does not arise. In any event, the Petitioner with the builtup area being less than 20,000 sq.m., there was perhaps no requirement to obtain such EIA clearance. If this was one of the reasons for the closure order then such closure order is unsustainable in law. As regards the other deficiencies pointed out, and the Petitioner's claim to have cured them, they involve disputed questions which this Court cannot possibly go into. Nevertheless, it appears to this Court that the procedural requirement to be

Page: 108

followed by the DPCC prior to passing such closure order was not complied with by the DPCC in the instant case.

**198.** For the aforementioned reasons, this Court sets aside the closure order dated 23rd April 2009 communicated to the Petitioner on 8th May 2009. However, this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

*W.P. (C) No. 465 of 2009 (Prosperous Estates Pvt. Ltd.)*

**199.** The total builtup area of the building constructed on a commercial plot in the present petition is 14,850.227 sq.m. Completion certificate was granted on 12th October 2006. No show cause notice was issued. On 5th December 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 23rd December 2008. On 23rd December 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish.

**200.** For the reasons already explained hereinbefore, the impugned order dated 23rd December 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 508 of 2009 (Best Realtors India Pvt. Ltd.)*

**201.** The total builtup area of the building constructed on a commercial plot in the present petition is 9171.63 sq.m. The construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner



on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

**202.** For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring

Page: 109

the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 509 of 2009 (Nirvan Hire Purchase Ltd.)*

**203.** The total builtup area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

**204.** For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 510 of 2009 (Maltri Mutual Benefits Ltd.)*

**205.** The total builtup area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced some time in January 2007 and was completed in November 2008. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

**206.** For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds



that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 511 of 2009 (A.S. Bulldwell Pvt. Ltd.)*

**207.** The total builtup area of the building constructed on a commercial plot in the present petition is 989,548 sq. m. Construction of the building commenced

Page: 110

sometime in January 2006 and was completed in October 2007. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

**208.** For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 525 of 2009 (ESS CEE CEE and Associates (India) Pvt. Ltd.)*

**209.** The total builtup area of the building constructed on a commercial plot in the present petition is 15883.097 sq. m. Construction of the building commenced on 10th January 2005 and was completed on 23rd February 2007. A show cause notice was issued on 5th December 2007 and an order was passed on 12th August 2008 requiring the Petitioner to pay environmental damages of Rs. 20 lakh and furnish a bank guarantee of Rs. 1 crore.

**210.** For the reasons already explained hereinbefore, the impugned order dated 12th August 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 794 of 2009 (Nipun Builders and Developers Pvt. Ltd.)*

**211.** The total builtup area of the building constructed on a commercial plot in the present petition is 2802 sq. m. Construction of the building commenced on 10th September 2004 and was completed on 24th March 2005. A show cause notice was issued on 28th April 2008 and an order was passed on 6th November 2008 requiring



the Petitioner to pay environmental damages of Rs. 2 lakh and furnish a bank guarantee of Rs. 4 lakhs.

**212.** For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The

Page: 111

DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 7575 of 2009 (Jindal Blochem Pvt. Ltd.)*

**213.** The total builtup area of the building constructed on a commercial plot in the present petition is 3290 sq. m. Construction of the building commenced on 2nd February 2005 and was completed on 31st May 2006. A show cause notice was issued on 27th June 2008 and an order was passed on 6th November 2008 requiring the Petitioner to pay environmental damages of Rs. 2 lakh and furnish a bank guarantee of Rs. 4 lakh.

**214.** For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 8208 of 2009 (Best City Developers (India) Pvt. Ltd.)*

**215.** The total builtup area of the building constructed on a commercial plot in the present petition is 1066 sq. m. No show cause notice was issued. On 7th January 2009, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 21st January 2009 an order was passed requiring the Petitioner to pay environmental damages of Rs. 1 lakh and furnish a bank guarantee of Rs. 1 lakh. This order was communicated to the Petitioner on 27th March 2009 and the Petitioner was asked to take necessary action to comply with the said order.

**216.** For the reasons already explained hereinbefore, the impugned order dated 21st January 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.



*W.P. (C) No. 8751 of 2009 (Vardhman Properties Ltd.)*

**217.** The total builtup area of the building constructed on a commercial plot in the present petition is 5461 sq. m. Construction of the building commenced on

Page: 112

10th September 2007 and was completed in April 2009. An order was received by the Petitioner on 3rd January 2009 directing the Petitioner to obtain consent to establish. Another show cause notice was issued on 9th March 2009 to apply for consent to establish. On 30th April 2009, an order was passed directing closure of the Petitioner's building.

**218.** For the reasons already explained hereinbefore, the impugned orders dated 3rd January 2009 and 30th April 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

*W.P. (C) No. 10860 of 2009 (Manish Buildwell Pvt. Ltd.)*

**219.** The total builtup area of the building constructed on a commercial plot in the present petition is 8478.27 sq. m. A show cause notice was received by the Petitioner on 13th February 2008 alleging that he had completed construction without obtaining the consent to establish. An order dated 18th March 2008 was passed directing the Petitioner to obtain consent to establish. On 24th July 2009 an order was passed directing the closure of the Petitioner's building.

**220.** For the reasons already explained hereinbefore, the impugned orders dated 13th February 2008, 18th March 2008 and 24th July 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

*Writ Petition disposed of.*

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.



BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
MEMORANDUM OF APPEAL  
APPEAL NO. 122 OF 2018\  
(EARLIER APPEAL NO. 9 OF 2014) (WZ)

ANIL V. THARTHARE ...Appellant

Versus

SECRETARY ENVIRONMENT  
DEPARTMENT & ORS. ... Respondents

OBJECTION TO THE FINAL JOINT  
COMMITTEE REPORT ON BEHALF OF  
RESPONDENT NO. 6:

Dated this      day of June 2023



Vidhii Partners,  
Advocates for Respondent No.6  
2<sup>nd</sup> Floor, Darabshaw House,  
Shoorji Vallabhdas Marg,