

IN THE NATIONAL GREEN TRIBUNAL AT CHENNAI

OA NO.106 OF 2020 (SZ)

Atana Flat Owners and Residents
Association Kancheepuram District – Applicant

Vs

The District Environment Engineer,
TNPCB Kancheepuram & Two Others

OBJECTIONS FILED BY THE
2ND RESPONDENT

M/s.R.Kamala Rani
(1451/1992)
COUNSEL FOR 2ND RESPONDENT
98412 56181

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Original Application No.106 of 2020 (SZ)

BETWEEN

Atana Flat Owners and Residents Association
Regn.No.80201B
Rep. by its Secretary Mrs.G.Anitha
Vandalore-Walajabad Road,
Karanithangal Village,
Kancheepuram District 602105

Applicant

AND

1) The District Environmental Engineer
Tamil Nadu Pollution Control Board
Plot No.CP-5B, SIPCOT, Oragadam,
Sriperumpudur Taluk,
Kancheepuram District – 602 105

2) M/s. Arun Excello Constructions LLP,
Represented by its Designated Partner
Mr.P.Suresh,
Bhattad Tower,
No.18, West Cott Road,
Royapettah, Chennai – 600 014.

3) The Chairman
State Level Environment Impact Assessment Authority (SEIAA)
Govt. of Tamil Nadu, Panagal Maligai,
3rd Floor, Saidapet,
Chennai – 600 015

Respondents

**OBJECTIONS FILED ON BEHALF OF THE 2nd RESPONDENT TO THE
REPORT OF THE JOINT INSPECTION COMMITTEE DATED 4-11-2020**

CASE DETAILS

M/s. Atana Flat owners and Residents association, Kancheepuram District has filed a Original Application No. 106 of 2020 before the Hon'ble National Green Tribunal (SZ), Chennai for the following main prayer.

1. To call for the records culminated in the District Environmental Engineer show cause notice in Proc. NO. To call for the records culminated in the respondent's show-cause notice in Proc.No.DEE/ TNPCB/SPR/ Complaint /Cr.No.5443-2020-1, dated: 19.05.2020 and quash the same.

2. Directing the 2nd respondent to ensure that the STP is made to operational without causing any disturbance to the residents of the residents of the Applicant and without causing any pollution by complying with the directions issued by this Hon"le court in the above referred order dated: 13.01.2016 in Application No.291 of 2014 (SZ).
3. Pass such other order or relief that may deem fit and proper in the circumstances of the case.

It is submitted that pursuant to the above referred the Honourable Tribunal was pleased to pass an order dated 2-7-2020 which reads as follows :

"11. In order to ascertain the factual situation as well as any violation of environmental laws, by the builder, we feel it appropriate to appoint a joint committee consisting of 3 members 1) senior officer from Regional office, MoEF & CC, Chennai II) Senior officer from the SEIAA, Tamil Nadu III) A senior officer from the TNPCB to inspect the area in question and submit a factual as well as action taken report, in case if any violation is found.

12. The committee is directed to ascertain whether the builder had obtained environmental clearance and what are all the terms and conditions imposed in the environmental clearance regarding the establishment of STP and its treatment and whether the builder had complied with the conditions of the conditions and if there is any violation what are the remedial measures to be taken to rectify the same, and assess the environmental compensation to be 1.2. 3. payable for the damage caused to the environment and submit a factual as well as action taken report to this tribunal within a period of two months."

It is submitted that a joint committee was constituted consisting of 3 members viz 1) Dr.C.Kaliyaperumal, Director, Regional Office, MOEF, Chennai 2) Engineer Mr.P.Ravichandran, District Environmental Engineer, TNPCB, Sriperumpudur and 3) Mr.K.Vijayakumar, Assistant Executive Engineer, State Environment Impact Assessment Authority, Saidapet, Chennai and had filed their report before this Hon'ble Tribunal and the copies of the same had not been served to the 2nd respondent.

Observations of the joint Committee made with regard to Project "Madhulika"

- a. It has been reported in Point (iv) that though the bore well has been provided for meeting fresh water requirement, the residential apartment has not obtained any ground water permission from the competent authority.

It is pertinent to mention that no permission was required from any competent authority whatsoever at that point of time for providing bore well for supply of fresh water for the residential apartment. Tamil Nadu Panchayats (Regulation of Sinking of wells and Safety measures) Rules, 2015 came into effect only on 18.02.2015. The sinking of bore well had taken place at the time of grant of approval of building plan much earlier than the Notification of the Rules.

- b. At Point. (vi), the report mentions that STP provided was revamped completely for efficient operation on receiving show cause notice issued by the TNPCB.

The STP was handed over by the Developer / 2nd Respondent to the Respondents Association in good condition. This would aptly prove the lethargic attitude of residents association in not maintaining the STP. The fact remains that the STP had been found functional and fully operational until the maintenance was under the 2nd respondent till 31.12.2018. Now the improper maintenance of the STP had resulted only due to the non-maintenance of the STP by the registered resident association and no fault can be attributed to the 2nd respondent in this regard.

- c. As observed in Point (viii) in the report that the OSR area allocated is inadequate and hence the quantity of water supply had been restricted to one hour in the morning and one hour in the evening is totally false.

The 10% of the area has been allocated to the OSR as per DTCP approval norms which have been gifted to the local body. Only thereafter the approval was granted for the project execution. Hence there is no shortfall in the OSR extent.

- d. As observed in point (ix), it has been stated that there is no facility for treatment and disposal of solid waste generated from the residential apartment and it is stored in plastic bin and disposed through local body for further disposal.

This cannot be attributed as fault against the developer as there is no such requirement under any laws whatsoever for provision of the same by the Developer. Moreover the core issue in this proceeding is that of STP and the connected issue of effluent and not solid waste.

Observations of the joint Committee made with regard to Project "Vasantha"

- a. It has been reported in clause (iv) that though the bore well has been provided for meeting fresh water requirement, the residential apartment has not obtained any ground water permission from the competent authority.

It is pertinent to mention that no permission was required from any competent authority whatsoever at that point of time for providing bore well for supply of fresh water for the residential apartment. Tamil Nadu Panchayats (Regulation of Sinking of wells and Safety measures) Rules, 2015 came into effect only on 18.02.2015. The sinking of bore well had taken place at the time of grant of approval much earlier than the Notification of the Rules.

- b. As pointed in point (v) in the report, it has been mentioned that STP provided is below the Ground level and point No.(vi) it has been mentioned that operation and maintenance of the STP is not satisfactory. It is submitted that the developer/2nd respondent is not at fault as the STP is maintained by the Residents association.
- c. As per point. (VII), the treated /untreated sewage is disposed into the open well provided within the premises. This respondent submits that there has not been any advice made by this respondent to that effect and this respondent is not responsible for the same.
- d. As observed in point (VIII), it has been stated that there is no facility for treatment and disposal of solid waste generated from the residential apartment and it is stored in plastic bin and disposed through local body for further disposal.

This cannot be attributed as fault against the developer for there is no such requirement under any laws whatsoever for provision of the same by the developer.

Observations of the joint Committee made with regard to Project “Megha”

- a. It has been reported in clause (iv) that though the bore well has been provided for meeting fresh water requirement, the residential apartment has not obtained any ground water permission from the competent authority.

It is pertinent to mention that no permission was required from any competent authority whatsoever at that point of time for providing bore well for supply of fresh water for the residential apartment. Tamil Nadu Panchayats (Regulation of Sinking of wells and Safety measures) Rules, 2015 came into effect only on 18.02.2015. The sinking of bore well had taken place at the time of grant of approval much earlier than the Notification of the Rules.

- b. As pointed in point (vi) in the report it has been mentioned that operation and maintenance of the STP is not satisfactory. Therefore it is made clear that the developer/2nd respondent is not at fault as it being maintained properly by the resident association at the time of the committee inspection.
- c. As per point. (VII), the treated /untreated sewage is pumped into the open area within the premises for evaporation and also it is disposed outside the premises through storm water drain which is beyond the scope of this respondent. The act of pumping treated / untreated sewage into storm water drain was carried out by the residents association and for such act of the association this respondent should not be held liable or responsible.

Observations of the joint Committee made with regard to Project “Atana”

- a. It has been reported in point (iv) that though the bore well has been provided for meeting fresh water requirement, the residential apartment has not obtained any ground water permission from the competent authority.

It is pertinent to mention that no permission was required from any competent authority whatsoever at that point of time for providing bore well for supply of fresh water for the residential apartment. Tamil Nadu Panchayats (Regulation of Sinking of wells and Safety measures) Rules, 2015 came into effect only on 18.02.2015. The sinking of bore well had taken place at the time of grant of approval of the building plan much earlier than the Notification of the Rules.

- b. It has been stated in point. (vii), that it is reported by the association secretary, the excess treated sewage is pumped into the terrace and open area within the premises for evaporation. This cannot be attributed as fault against the developer and developer has not given any such advice to the association.
- c. As observed in point (VIII), it has been stated that there is no facility for treatment and disposal of solid waste generated from the residential apartment and it is stored in plastic bin and disposed through local body for further disposal.

This cannot be attributed as fault against the developer as there is no such requirement under any laws whatsoever for provision of the same by the developer. Moreover the core issue is that of STP and the connected issue of effluent and not solid waste.

The 2nd Respondent is submitting the objections to the report of the Joint Committee on the following grounds;

1. It is submitted that the report filed by this Joint Committee is against the true facts and circumstances of the case.
2. It is submitted that the report lacks any justification with regard to the issue on hand.
3. It is submitted that the report does not disclose the true factum of the case and the recommendation made to penalise the 2nd respondent is contradictory to each other and creates an ambiguity.
4. It is submitted the following facts would enlighten the Hon'ble Tribunal of the errors committed by the Joint committee in analysing the prevailing conditions in and around the projects that was directed to be looked into.
5. It is submitted that the committee has filed the report stating that the environmental clearance from the competent authority has not been obtained by the developer, without considering the facts that the Projects Vasantha, Megha, Madhulika and Atana are separate projects and there are separate approvals for each project and each project was carried out on separate land parcels divided by distinct metes and bounds. The projects were commissioned and completed at different points of time.

6. The Joint committee had failed to note that each project comprised of less than 20,000 sq.mtr of construction area. Hence, the environmental clearance was not required to be obtained from the competent authority by then.
7. It is pertinent to mention that the Joint Committee had failed to consider the following aspects before filing the report;
 - a. The development of the projects namely Vasanthaa, Megha, Madhulika & Atana were primarily for the affordable segments of society and were planned and executed separately at different points of time.
 - b. The first project "Vasanthaa" comprises only 1BHK apartments ranging from 375 Sq.ft to 395 Sq.ft area. each (420 units) and was constructed using Mivan technology for speedy delivery. This technology does not allow for alterations in the interiors since it is a fully concrete structure but allows for a speedy construction with more carpet space which is an added advantage when compared to conventional method of construction.
 - c. The second project "Megha" was also constructed with this method comprising 1BHK apartments (388 units) area ranging from 375 sq.ft to 395 Sq.ft. Both these projects were developed in two different parcels of land with 2 different approvals from the DTCP authorities and completed and handed over to the owners during the years 2015 and 2016 respectively.
 - d. The third project "Madhulika" was then launched with 2BHK apartments (213 units) ranging from 510 Sq.ft to 910 Sq.ft area in a separate parcel of land adjacent to project Vasanthaa which was completed and handed over during the year 2016. Since there was change in the market conditions and requirement in the area as there was a demand for bigger sized apartments in 2BHK category, the 2nd respondent had changed the strategy accordingly and planned for construction of 2BHK apartments to meet the growing demand. Considering this change in demand and the market need for accepting minor changes in the interior design, it was decided to construct these 2BHK apartments using the conventional method.

- e. The fourth project "Atana" also was launched with 2BHK apartments (198 units) ranging from 470sq.ft to 980 Sq.ft area adjacent to project "Megha" constructed in the conventional method in a separate parcel of land and handed over during the year 2016.
 - f. All the four projects were constructed separately in different periods of time as per the approval of DTCP and were handed over to the owners at different periods.
 - g. When the approval of Megha was applied the details that there is an already DTCP approved project Vasantha is there in the vicinity has been shared with DTCP and with their full knowledge only the approval for Megha was accorded.
 - h. Similarly when Madhulika approval was applied DTCP was given the information about the Vasantha & Megha projects and so on and so forth. Since all the requirements were met as per the approval norms, DTCP had accorded approval for the respective projects after proper scrutiny.
8. It is submitted that the Joint Committee had failed to consider the Notification by Ministry of Environment and forest dated 14.09.2006.
 9. It is submitted that it has been mentioned in Point No.4 of the report of the joint committee that this respondent has not obtained consent for establishment / consent to operate from the Tamil Nadu Pollution Control Board. As such, it is submitted that as per the Notification referred above, it is well explained that " no consent to establish and operate under the water (prevention and control of pollution) Act 1974 and the Air (prevention and control of pollution Act 1981) will be required from the State Pollution Control Boards for residential buildings upto 1,50,000 sq.mtrs. The same is clearly set out in the Notification of the Ministry of Environment, Forest and Climate Change, New Delhi dated 9-12-2016 under the other buildings categories Clause 8(a). Hence, there was no fault on the developer for not obtaining the same at that point of time. Consequent to the same the environmental clearance was also not required for the said project which comprised of constructed area coming below 20,000 sq.mtr for each project respectively.

10. It is submitted that the joint committee failed to consider that each project consists of built up area ranging between 12,000 to 14,000 sq.mtr. approximately. Hence, falling under the purview of the notification any built up area coming within 20,000 sq.mtr of constructed area does not attract the provision as to the requirement to obtain environmental clearance or the consent to establish / operate under the TNPCB laws.
11. It is further submitted that since all the four projects have been launched and completed on various different dates by obtaining due approvals from the concerned authority such as the DTCP and local body and therefore the total extent of all the four projects cannot be taken into account as a single project extent and the developer cannot be attributed with any fault. Further, the various amenities provided to all the projects are distinct and different inclusive of the capacity of the STP, provided in proportion to the number of dwelling units of each project respectively.
12. It is submitted that the joint committee had erroneously held in the recommendation that the STP provided by the 2nd respondent was inadequate, whereas in the report filed with individual projects it has been observed that STP were not properly maintained and was not up to the satisfaction. Nowhere in the observation made by the joint committee it has been mentioned that the STP is insufficient or inadequate to the proposed number of flats in each project. In fact, apart from provision of STP facility, recycling of grey water facility has also been provided for each project for ablution purposes to reduce the fresh water requirement by more than 50%.
13. It is submitted that the joint committee had failed to consider that the STP provided by this respondent in each of the project is in line with the National Building Codes 2005 (NBC Clause 4.3 for the construction of the residential / dwelling units.

NBC 2005 - Water Supply Requirements for Buildings
Page 18 – Part IX – Refer Clause 4.1.1

Note: The value of water supply given as 150 to 200 litres per head per day may be reduced to 135 litres per head per day for houses for Lower income groups (LIG) and Economically Weaker Section Of Society (EWS). Depending upon prevailing conditions.

NBC 2005 - Occupant Load for STP
Page 27 – Part – IV

As per National Buildings Code 2005 (NBC) in Table 20 clause 4.3 Residential occupancy - Occupant Load, floor area for Residential is 12.5 m² per person.

As per the above referred clauses, the dwelling units put up in Atana project

Carpet area / 12.5 = 49.84 / 12.5 = 3.99

Note: 5 Persons considered for each unit for water supply and STP design calculation.

14. It is submitted that the joint committee had failed to consider that STP had been provided by this respondent in all the projects proportionate to the STP design arrived after calculation for total number of units in each project, number of persons allowed for each type of units (that is 1BHK or 2 BHK) and capacity of the STP.
15. It is submitted that more number of people were staying as they were mainly bachelors working in nearby factories. Most of the houses were rented out. When the number of persons staying in a house exceeds what has been considered for the design of STP based on NBC guidelines, obviously the water requirement goes up which in turn increases the load on the STP more than the designed capacity which is also one of the main reason. This has been highlighted to the Residential Associations by way of Email Communication to either restrict the number of person per apartment or to regulate the quantum of water, which has not been done by them. This has led to the overflowing of the sewage for which the developer/2nd respondent cannot be held responsible.
16. It is further submitted that as per the report of the Joint Committee, it has been stated that this respondent has provided for fresh water for the residents without obtaining the required ground water permission from the competent authority. It is submitted that the projects had been completed in the years between 2015 to 2016 and at that point of time there was no provision to obtain the same. Hence, this cannot be attributed as a fault committed by the respondent for not obtaining ground water permission.
17. It is submitted that even in the report filed by the joint committee the STPs have been found operational in some of the projects and found improperly maintained in some of the projects. Moreover it is submitted that until the

maintenance of the each project was with this respondent namely the developer/builder, all the STPs provided to the four projects were in proper working condition and functioning without any default whatsoever. This respondent had maintained the STP provided to the various projects for a period of two years from the date of completion of the project. This respondent maintained the same by entering into AMC with the vendors of the STP in order to provide best services to the flat owners of the respective projects.

18. It is submitted that Joint Committee had failed to note that some of the registered flat owners association had also revamped the STPs in the year 2020 on receiving the show cause notice issued by the TNPCB for efficient operation of the same. This would manifest the fact that the STP has been ruined and has become defunct only due to the improper maintenance of the STP by the registered flat owners association and the same cannot be fastened to the developer.
19. It is further submitted that even in the recommendations given by the joint committee it has been mentioned that the society except for Madhulika and Atana are maintaining the STP properly. This fact would go to prove that the STPs provided to all the projects have been adequate, proportionate to the required capacity to the number of persons accommodating in each flat respectively.
20. The report showing the design calculation would prove its authenticity
21. It is submitted that when the other two flat owner associations namely Vasantha and Megha have maintained the provided STP in proper condition, the flat owners Association of Madhulika and Atana have failed to maintain the STP in proper condition for the reasons best known. Now, that the said association have come forward with this complaint on a false pretext coupled with fabricated facts against this respondent with an ulterior motive.
22. It is submitted that Joint Committee had failed to consider the fact that any excess treated water shall be disposed off using tanker Lorries as per the local body approval. Accordingly tanker Lorries were also provided to each Residents association separately by the respondent at the time of handing

over of the maintenance to the association, Atana Association has refused to accept the lorry till date and that is also one of the reasons for the letting out of the sewage outside. . Two of the association have sold the Lorries and utilised the funds towards maintenance, as the associations have found it difficult to collect monthly maintenance fee from the owners / tenants.

23. We are agreeable to the recommendation that the design of the STP's of all the four projects can be certified by either Anna University / IIT to check the adequacy.
24. It is further submitted that one of the points mentioned as a fault attributed against this respondent is that the OSR area allocated is inadequate. It is pertinent to mention that 10% of the area in each of the project has to be allotted as OSR as per the DTCP norms. This respondent has followed the same and only after gifting the OSR area to the local body, the necessary planning permission was granted by DTCP.
25. It is submitted that this respondent is ready to take necessary steps to get the STP certified in all the 4 projects as per the direction of this Honourable Court for proving its adequacy. In fact the design calculation of the STP has been submitted to the approval authorities for approval purposes as per the norms which are mandatory. Also the STP line diagram forms part of the approval.
26. It is submitted that the Joint Committee had erroneously mentioned in its report that the required consent has not been obtained from competent authorities, without considering the section 25 (1) (a) of Water (Prevention and Control of Pollution) Act 1974 as amended in 1988.

The section 25 (1) (a) read as follows;

25. Restriction on new outlets and new discharges – 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*

We require consent of the State Board only when it is which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land. There is no likely to discharge of Sewage or trade effluent by STP installed by us and therefore there is no question of getting consent from the State Board for installing the STP and thereby the Section 5 of The Water (Prevention and Control of Pollution) Act 1974 has not been contravened.

27. It is therefore submitted that the developer/2nd respondent has carried out their obligations and the Commissions or omissions of the registered Residents Association cannot have any adverse impact on this respondent.

It is therefore submitted that the projects namely Vasantha, Megha, Madhulika and Atana has been developed by this respondent at different points of time on different parcels of land by obtaining the planning permissions for each project separately. The extent of area constructed in each project ranges between 12,000 to 14,000 sq.mtr., approximately and the all other required permissions and consent from various competent authorities have been duly obtained by this respondent. The constructions have also been completed between the years 2015 to 2016. The maintenance periods of the said projects have been also completed in the year 2017 to 2019 and the same has been handed over to the respective registered Resident's Association in the best manner and there had been no complaint whatsoever till then. Now this complaint having been put forth against this respondent at this stretch of time cannot attract any penal provisions for imposing any penalty or penal charges as against the developer for any reasons whatsoever and therefore this respondent prays that this report may not be taken for consideration against this respondent and thus render justice.

Dated on this 7th day of July 2021


Counsel for the
2nd Respondent