

NATIONAL GREEN TRIBUNAL, WZ, PUNE

ORIGINAL APPLICATION NO.38/2020

IA No. 48/2020

BETWEEN

Tanaji B. Gambhire **Applicant**

Versus

Union of India & Ors. **Respondent**

REJOINDER BY RESPONDENT NO. 12

**M/S. PARANJAPE SCHEMES
(CONSTRUCTION) LTD. (PSCL)**

**REPLY TO AFFIDAVIT SUBMITTED BY
MPCB DATED 11/01/2023 AND**

**REPLY SUBMITTED BY THE APPLICANT
DATED 23/02/2023**

MOST RESPECTFULLY SUBMITTED:

1. Respondent No.12 received the Affidavit from MPCB and Applicant. As such few corrections and response to the contents is given hereinbelow.

2. The stand of the MPCB and the computation of fees for the arrears stated in the affidavit, was not the subject of the Original Application or the prayers in it. It is a separate independent statement and order of the MPCB. There is a legal remedy against it by way of filing the Appeal as provided in the Water/Air Acts and NGT Act. The same shall be an independent exercise and that is not the issue of the adjudication in this present OA.

3. The current submissions and opposition by PSCL are limited to basic law points on the limitation and maintainability of the OA.

4. Respondent, therefore, craves leave to file the detailed reply affidavit at later date.

**EXTRACT FROM MPCB AFFIDAVIT 11.01.2023
(SR NO.2 –PAGE NO.1 & 2) –**

2) I say and submit that Respondent No.12-Project Proponent(PP) obtained Environment Clearance from the Competent Authority i.e. MoEF on 25/6/2007 for construction of Residential Complex 'Magnolia' at Pashan, Pune for Total Plot Area – 17,400 Sq Mtr

and Total Built Up Area – 22,592.86 Sq Mtrs. I submit that Respondent PP further obtained Environment Clearance for expansion of Residential Complex from the State Level Environment Impact Assessment Authority i.e. SEIAA on 20/9/2019 for TPA – 17,400 Sq Mtr and TBUA – 35,966 Sq Mtr. A copy of the Environment Clearances dated 25/6/2007 & 20/9/2019 are enclosed herewith and marked as **Annexure – I collectively.**

5. In Sr.no. 2 of their Affidavit dated 11/01/2023, MPCB has stated that "PP further obtained Environmental Clearance (EC) for **expansion of 'Residential Complex'** from SEIAA on 20.09.2019."

REPLY (PART A)–

6. The Environmental Clearance dated 20/09/2019 is NOT granted for expansion of 'Residential Complex.'

- **The said EC has been granted for one newly proposed commercial building ONLY.**

7. The said EC was applied vide UAN no. 1583, and SEIAA decided to grant EC against the said application during their 174th meeting dated 29/08/2019

- The Minutes of the meeting **state only 1 commercial building with Lower Parking + Ground + 4 floors** and 22.90m height,
- In the same MoM the Residential portion of the project is mentioned under point no.29 **Existing Structures – “1 residential building with 4 wings” (i.e., A, B, C, D which were already completed in 2009 as per earlier EC dated 25/06/2007).**

8. Furthermore, MPCB has Consent to Establish dated 17/12/2019 (against application UAN no. 67422). While processing the said application, MPCB Field Officer conducted a site visit on 24/06/2019 and provided a ‘Visit Report’ of the same (uploaded on the official MPCB web portal [ecmpcb. in](http://ecmpcb.in)).

- In the said report, it is mentioned at Point no.1 that “it is a commercial building construction project.”
- In the same visit report, it is also mentioned at Point no.5 that PP has applied for EC vide UAN no.1583 (which was applied for 1 newly proposed commercial building only, as described above).
- In the same visit report, it is also mentioned at Point No. 6 that PP has not started any construction activity at the site. This implies that the said application for consent to establish was being processed for 1 commercial building only

(because the residential buildings in the project were already existing as of the date of the site visit i.e., 24/06/2019).

9. The above-referred documents make it amply clear that the EC dated 20/09/2019 and Consent to Establish dated 17/12/2019 have been granted for 1 newly proposed commercial building only, in the same larger plot, where 4 residential wings (A, B, C, D) and their parking, services, clubhouse, swimming pool were already existing since 2009 (completion certificates granted in 2009).

10. However, MPCB in its affidavit dated 11/01/2023 mentioned that "PP obtained EC for **expansion of 'Residential Complex'** from SEIAA on 20/09/2019."

EXTRACT FROM MPCB AFFIDAVIT 11/01/2023 (SR NO.3 – PAGES NO.2 & 3)

I say and submit that neither Respondent no. 12 nor the Society Committee Members have renewed the Consent to Operate after last C to O dated 9/11/2015 till date. A copy of the renewal of Consent to Operate dated 9/11/2015 is enclosed herewith and marked as an **Annexure – II**.

REPLY (PART B)–

11. The residential project along with parking, services, clubhouse, and swimming pool was handed over to the management committee of Magnolia Apartments (association of bonafide buyers of residential units), vide Registered Deed Of Declaration dated 11/12/2009. As per clause no. Eleven (a) of the said deed, it was actually the

responsibility of the management committee, to obtain the renewal of NOCs/licenses such as Consent to Operate from MPCB (This was in line with condition no.12 of EC dated 25/06/2007 granted by MOEF which states that 'the project authority will enter into MOU with all buyers of the property to ensure operation and maintenance of the assets handed over to the society formed by the residents/owners of the buildings').

12. However, MPCB in the first Consent to Operate dated 02/08/2010, stipulated in condition (iii) that "PP shall operate the STP for five years from the date of obtaining Occupation Certificate".

13. Therefore, PP continued to operate the STP, and also renew the consent to operate for five years from the final completion certificate i.e., up to 17/12/2014, and subsequently no further consent to operate renewals were pursued by PP.

EXTRACTS FROM MPCB AFFIDAVIT 11/01/2023 (SR NO.7 –PAGE NO.4)

7) I say and submit that as per Circular dated 12/7/2022 (which is annexed as an Annexure – V to the Joint Committee Report), the MPC Board has assessed penal charges of Rs.29,10,616.42/- (Rs. Twenty-Nine Lacs Ten Thousand Six Hundred and Sixteen and Forty-Two Paise only) against Respondent No. 12 calculating the gaps in period of Consents obtained by Respondent PP from the MPC Board and submitted detailed calculation in the Joint Committee Report filed before this Hon'ble Tribunal.

REPLY (PART C)–

14. MPCB has assessed penal charges of Rs.29,10,616.42/-, the breakup of which has been given on the Table provided on Page no.18 & 19 of the Joint Committee Report dated 14/12/2022. In the said table, row no.4 states the period of 1647 days from 01/01/2017 (lapse date of last CTO obtained by PP) to 06/07/2020 (date of filing of Original Application in NGT), and penal fees Rs. 22,56,164.38 calculated for the said period.

15. It has been already clarified in Reply (Part B) above, that, PP was not responsible for the renewal of Consent to Operate as per clause no. 11(a) of the Deed of Declaration dated 11/12/2009. Therefore, PP cannot be penalized for non-renewal of Consent to Operate during the said period of 1647 days from 01/01/2017 to 06/07/2020.

REPLY TO OBJECTIONS BY APPLICANT DATED 23/02/2023

PART – B: JOINT COMMITTEE REPORT

16. Joint Committee has exceeded its jurisdiction. The Joint Committee was a fact-finding committee. It was NOT an Expert Committee.

17. No excess Construction has been ever done by the PP beyond what was sanctioned in the building plans, presented to SEAC, SEIAA and approved by them.

PART – C: PRELIMINARY ISSUES

18. LIMITATION: Protection of limitation is applicable to total residential buildings that were

sanctioned, built, constructed, completed and handed over to society, way back in the year 2009, as per the earlier EC of 2007.

19. The expansion was only for the construction of a commercial building. As such under the guise of a new EC (expansion) granted in the year 2019, the constructions done earlier before 2009 can't be considered by the Hon'ble Tribunal; and hence therefore by even the Joint Committee appointed by Hon'ble Tribunal.

20. The expansion of the project was by way of the proposed addition of a totally separate stand-alone commercial building on the same plot. There was no residential component in it. All utilities in EMP are separate.

21. FORWARD FOUNDATION (KARNATAK) AND MANTRI TECHZONE (2019 18 SCC 494) (JUDGEMENT): The principle laid down, in these cases, does not apply here as the facts are totally different. **In the referred case, the construction of the buildings was done in the water body area.** Hence there was a recurring cause of damage to the environment. Here the construction is done on open land and is fully compliant with the PMC regulations. The principle can't be applied when the basic facts are altogether different. Moreover, when the provision of the Act u/s.14 and even s.15 can be clearly read and applied in this case.

22. 'CONTINUING CAUSE OF ACTION', 'RECURRING CAUSE OF ACTION' OR 'SUCCESSIVE CAUSE OF ACTION': There is

no such cause of action in respect of the EC of 2007 and the construction that was done prior to 2009. The project is not in NDZ. It is not in wet land or water body. The issue of parking in fact is help to the environment. In the case of Forward Foundation Judgement, the issue was of the limitation u/s.14(3) (six months) and s.15(3) (five years) as the later section was not quoted in the application. **Even in this Judgement, a delay beyond 5 years has not been condoned.** The allegation is in respect of the parking area as it doesn't generate any kind of pollution. Nothing changed in the parking OR the residential project once the construction was complete in the year 2009.

23. PLURAL CAUSES: The objection is against raising plural grounds/causes and not the plural consequential reliefs/remedies sought, if any. The applicant himself states that it is a bundle of causes, thereby meaning that there are many causes and not mere remedies. Access to information is no excuse when the structure is standing in the public domain for over 10 years.

PART – D: REJOINDER TO REPLY BY PP

24. These are simple averments and no evidence in support of it adduced. Hence all are denied in totality.

PART – E: REPLIES MOEFCC, MPCB, SEIAA, PMC

25. MPCB: As per the provisions of the Water and Air Acts, the Consent is to be obtained by the 'occupier'. PP has applied and obtained the 'Consent to Establish' and Environmental Clearance. All

aspects of the environment INCLUDING water and air pollution are dealt with in Environment Management Plan (EMP). EMP was fully implemented and operated and hence there was no pollution issue.

26. The 'Consent to Operate' and renewal of the 'Consent to Operate' has to be done by the 'occupier' only as per the Act. There is no estoppel against the provisions of the law. Society was formed and taken over the premises in the year 2009. As such all lawful liabilities, duties and functions of the occupants are to be done by Society.

27. The 'occupants' OR the society of the bonafide buyer pays for the municipal taxes, electricity charges, maintenance, and water charges, pay for the security of the watchmen, runs the utilities, water pumps, OWC, STP, takes benefit of the solar systems installed, pays GST etc. as applicable. In short, society discharges and is obliged to discharge all lawful liabilities, duties and functions as per the law.

28. However, if there is any delay as long as the PP was the occupant and was lawfully liable to pay for the 'Consent to Operate' OR its renewal, the PP will be glad to pay for it along with charges for the delay. Since Society is in possession of the property including everything, there is no liability on PP on that ground.

29. SEAC AND SEIAA: PP had applied for the Corrigendum in the EC. i.e., corrections in the figures stated in the EC. Corrigendum is applied and obtained, when there is no need for 'amendment' to

EC due to expansion OR modernization OR changes of product mix. If there are any errors of facts left out in the manifestation of the EC document, those are corrected by issuing the 'corrigendum'.

30. EC (Corrigendum) has been considered, deliberated and recommended in the SEAC after carefully considering the earlier EC of 25/06/2007 and the subsequent EC of 20/09/2019. Thereafter SEIAA in its meeting held on 10/03/2023 also accepted the recommendations of SEAC and decided to grant the corrigendum.

PART – F: CASE LAWS BY APPLICANT

31. None of the case laws submitted by the applicant applies to this case. The facts of this case are totally different from these case laws referred.

32. In the present case PP had EC for the residential project in 2007 itself. The construction was completed in all respect and the project was handed over to the residents way back in the year 2009. The plans approved by PMC and submitted at that time to MoEFCC were having the parking area and it was constructed at that time only prior to 2009. However, the same was not mentioned in the EC, as per the then-prevailing practice.

33. Then PP got the EC (expansion) in the year 2019 for a commercial building to be constructed. This commercial building was not a part of the Society OR the earlier residential project.

34. This error remained uncorrected and unaddressed even in the amendment of EC in the

year 2019. Now this error was pointed out to the SEAC and SEIAA. Accordingly, the SEAC and SEIAA did consider everything in detail and recommended the case for grant of EC (Corrigendum).

35. These facts are not similar to any of the case laws mentioned by the PP.

PART – G: CASE LAWS BY PP

36. Appeal 37/2012 Real Gem case is relevant as Hon'ble Tribunal held that extra construction of basement parking (even if it is so) is not creating any adverse impact on the environment.

37. Appeal 77/2013 Arvind Aswal is relevant because Hon'ble Tribunal held that parking has to be provided even for the rehab portion of the project, even if it is not part of the original scheme approved by SRA.

38. MA 74/2015 in Original Application 10/2014 Lakahn Musafir is relevant for the ratio that s.14 and s.15 are two separate jurisdictions of the Hon'ble Tribunal. For seeing relief under s.15, the adjudication under s.14 raising 'substantial question related to the environment' must be complete.

DAMAGE TO ENVIRONMENT

39. The inconsistency in the EC has been examined, deliberated and recommended by SEAC and SEIAA after careful consideration. **There is no mention of any damage to the environment.**

40. MoEFCC Regional Nagpur also has issued Certified Compliance Report. **There is no mention of any damage to the environment.**

41. If there is any delay from the PP in applying and obtaining the 'Consent to Operate' OR its renewal, the PP is ready and willing to pay the penalty as per MPCB Circular 12/07/2022.

42. If there is a delay from the 'occupant' society in applying and obtaining the 'Consent to Operate' OR its renewal, PP is willing to assist the Society. But no responsibility OR environmental compensation shall be slapped on the PP for this, against the estoppel of law.

43. It is amply clear that there is no damage to the environment from the Minutes of the Meeting of SEAC and SEIAA and the Compliance Certification Report of MoEFCC. There was an inadvertent error in the EC of 2007 and 2019 that the parking area was not mentioned; even though it was always an integral conceptual and sanctioned building construction plan approved by PMC. **That error too has been corrected. Hence nothing survives in the application. Therefore the same may be disposed of with appropriate directions.**



Place: **Pune**
Date: **23/04/2023**

Advocate for
Respondent No. 12

**NGT OA 38/2020(WZ) Tanaji Gambhire : Next
Date:24-April-2023: R-12 Paranjape Scheme**

1 message

Raghunath Mahabal <mahabal60@gmail.com>23 April 2023 at
15:32

To: raghunath mahabal <adv.rbmahabal@gmail.com>, "secy-moef@nic.in" <secy-moef@nic.in>, "Principal Secretary Environment Dept. Govt. of Maharashtra" <psec.env@maharashtra.gov.in>, "ms@mpcb.gov.in" <ms@mpcb.gov.in>, "ropune@mpcb.gov.in" <ropune@mpcb.gov.in>, Thane Mahabal <thane@mahabal.com>, pmcmco@gmail.com, prashant.waghmare@punecorporation.org, rdc.pune-mh@gov.in, cs@pscl.in, Manasi Joshi <adv.manasi.joshi@outlook.com>, Rahul Garg <rahul.garg@mgklegal.com>, Aniruddha Kulkarni <aniruddha1488@gmail.com>, National Green Tribunal Pune <ngt-pune@gov.in>, Adv Sachin S Gore 7350212877 <ssgore2005@gmail.com>, Yash Paranjape <yashp@pscl.in>, Apoorv Ranade <apoorvr@pscl.in>, Tanaji Gambhire <tanaji_9june@yahoo.com>
Bcc: Adv Sachin S Gore 7350212877 <ssgore2005@gmail.com>, Mahabal Pune <mahabal.pune@gmail.com>

To: The Hon'ble Registrar, NGT WZ Pune**Item No.5: 24-April-2023 (Monday)****I shall be bringing the extra print copy as required by the Hon'ble Bench.****I am pleased to circulate the submissions as above under the subject.****Regards**

Dhananjay Chavan 7038383654

Office: Advocate Raghunath Mahabal रघुनाथ भालचंद्र महाबळ +91-**7400116222 mahabal60@gmail.com****B 202, Chandravijay Society, Phule Road, Mulund EAST, Mumbai-400081, Maharashtra, INDIA****2023-04-23 R-12 Paranjape Scheme ReplyMPCB & Applicant F.pdf**

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