

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 82/2023

Abdul Samad Ismail Maknojia & 60 Ors.

... Appellant

v.

The State of Maharashtra, Through its Secretary,

Environment Department,

Govt. Of Maharashtra & Ors.

... Respondents

REPLY AFFIDAVIT BY RESPONDENT NO. 1,
ENVIRONMENT AND CLIMATE CHANGE DEPARTMENT,
GOVERNMENT OF MAHARASHTRA

Sr. No.	Annexure	Particulars	Page No.
1.		Reply Affidavit By Respondent No. 1, Environment And Climate Change Department, Government Of Maharashtra	
2.	1	Copy of SEIAA Minutes dated 21-04-2022.	
3.	2	Copy of Minutes of 246 th meeting dated 27 th July, 2022.	

Pune

Date : 19-03-2024

Adv. Aniruddha Kulkarni

Standing Counsel,

Environment and Climate Change Department,

Government of Maharashtra



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 82/2023**

Abdul Samad Ismail Maknojia & 60 Ors. ... Appellant

V/s.

The State of Maharashtra, Through its Secretary,
Environment Department, Govt. Of Maharashtra & Ors. ... Respondents

**REPLY AFFIDAVIT BY RESPONDENT NO. 1,
ENVIRONMENT AND CLIMATE CHANGE
DEPARTMENT, GOVERNMENT OF MAHARASHTRA**

I, Dattatray Suryakant Bhalerao, working as Scientist II & Under
Secretary, Environment and Climate Change Department, Government of
Maharashtra do hereby state on solemn affirmation as under –

I am well conversant with the facts of the present case and I am competent to swear this Affidavit based upon the records available with this office.

1. It is submitted that at the very outset this respondent denies each averment made in the present application which is contrary to and inconsistent with the averments made and facts stated in the present reply. It is submitted that nothing stated in the application may be deemed to have been admitted by this respondent unless and until the same has been admitted by the respondent.
2. The present case pertains to non compliance of EC conditions by PP.
3. SEAC observed that the project is slum rehabilitation scheme coming under residential zone with school reservation as per DP remarks of MCGM. PP also informed that project had received first LOI from SRA on 10th August 2009 and revised LOI in the year 2011, 2018, 2020 and 2021. PP submitted that they had received first IOA on 30th December, 2011 to the project and accordingly they carried out and completed construction of rehab building (Wing C) and received OC on 16th June, 2021 to this building. PP also submitted that the plinth work of sale building (Wing A and B) has been initiated. PP further submitted that they have completed



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construction (Both Rehab & Sale building) for total construction area of 12,931.83 m² and submitted Architect's certificate to that effect.

4. Now due to applicability of DCPR, 2034 by local planning authority, plot potential has increased above 20,000 m². Therefore PP applied for EC.
5. SEAC noted that as mentioned in Environment Department circular dated 21-04-2015, proposed construction projects wherein PP has undertaken total construction is below 20,000 m² may not be considered as violation of EIA Notification, 2006. SEAC noted that as per the Architect's certificate submitted by PP, construction completed is 12,931.83 m² which is below 20,000 m² as mentioned in circular dated 21-04-2015. Therefore SEAC decided to appraise the project.
6. PP submitted that the project falls under the ESZ area of Sanjay Gandhi National Park accordingly they have applied on 19th August 2021 for NOC from National Board for Wildlife.
7. SEIAA deferred the proposal of the PP in their 242nd Meeting dated 21-04-2022 and asked PP to submit detailed clarification regarding why relevant Environment and Forest Clearances were not obtained



Sharma

before starting construction on site. Copy of SEIAA Minutes dated 21-04-2022 is attached as **Annexure 1**.

8. Later SEIAA considered the proposal of the PP in their 246th meeting dated 27th July, 2022. PP submitted the following –

- 1) The project under consideration is Slum Rehabilitation Project with BMC school reservation.
- 2) First LOI was issued for this project on 10-08-2009 for FSI 13,542.52 m² and subsequent LOIs were issued on 28-12-2011, 03-02-2018, 14-02-2020 and 18-05-2021 followed by IOA. In the LOT issued, there was no condition of obtaining NBWL NOC was mentioned.
- 3) CC was issued to the project on 09-12-2010 and construction activity started as per CC.
- 4) At the time of commencement of project, SGNP Notification was not in force, it came in force on 6th December, 2016.

9. SEIAA observed that PP initiated construction activity on site without obtaining EC. PP submitted that their project is a SRA scheme and they have initiated the construction activity and constructed total BUA of 12,931.83 m² as per the Govt. of Maharashtra circular dated 21-04-2015. PP also requested to consider the same.



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10. SEIAA decided to grant EC with a condition that planning authority to ensure that OC shall not be issued to the project till PP obtains SGNP NOC. Minutes of 246th meeting dated 27th July, 2022 are attached as **Annexure 2**.

11. Accordingly, SEIAA issued EC to PP on 10-08-2022.

12. PP has to submit 6 monthly compliance reports to MoEF&CC regional office at Nagpur. Monitoring of a project after grant of EC is not within the domain of SEIAA, it is with MoEF. Therefore, whatever non-compliance of EC conditions are alleged by the PP, it is kindly submitted that, it may be answered by MoEF&CC.

13. SEIAA has followed the due procedure under EIA Notification, 2006 and the Office Memos and Circulars issued by MoEF&CC from time to time while granting of the impugned EC. There are no procedural lapses on part of the SEIAA while granting the EC. SEIAA grants the EC on the basis of the documents submitted by the PP.

14. This respondent craves leave to file any additional reply as and when required. In light of the above submissions, it is respectfully prayed that Environment Department shall abide by any orders and directions issued by the Hon'ble Tribunal.



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Whatever is stated above is true and correct to the best of my knowledge, ability and belief and I affirm it to be true.

Mumbai

Date-19/03/2024

Dattatray Suryakant Bhalerao
Scientist II & Under Secretary,
Environment & CC Department,
Government of Maharashtra



VERIFICATION

I, Dattatray Suryakant Bhalerao, Age-41, working as Scientist II & Under Secretary, Environment and Climate Change Department, Government of Maharashtra, having my office address at 15th Floor, New Administrative Building, Mantralaya, Mumbai – 400 032 do hereby verify and declare that the statements made in the aforesaid paras are true and correct to the best of my knowledge and information and I believe the same to be true and that no material is has been concealed therefrom.

Solemnly affirmed on this 19th day of March, 2024 at Mumbai.

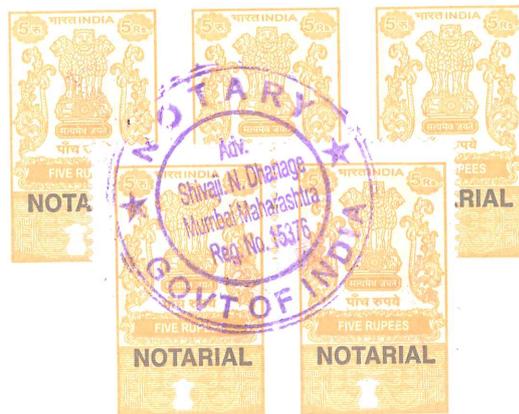


Dattatray Suryakant Bhalerao
Scientist II & Under Secretary,
Environment & CC Department,
Government of Maharashtra



BEFORE ME

Adv. Shivaji N. Dhanage
Notary Govt Of India
Regd. No. 15376 MUMBAI (MS)
404-405, 4th Floor, Davar House,
197/199, Near Central Camera Bldg
D.N. Road, Fort, Mumbai - 400001
Mob.: 8591897834



NOTED & REGISTERED

Page No. 13 Sr. No. 87

Date. 19 MAR 2024

Item no. 35**Proposal No.:-** SIA/MH/MIS/226127/2021**Type of Project:** EC

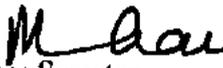
Subject- Environment clearance for S.R. Scheme construction project under Reg. 33 (10) of DCR 1991 for "Shree Azad Co.Op. HSG Society" on plot bearing C.T.S. No. 738/B/1/A at Rani Sati Marg, Azad Link Road, Sanjay Nagar, Pathan Wadi, Malad (E), Mumbai by M/s Nirman Constructions (Alias M/s Nirman Realtors and Developers LTD).

Project Details-

PP submitted the application for environment clearance to their proposed Slum Redevelopment Project having total plot area of 4,220.00 Sq. Mtrs., Total Construction Area of 26,386.08 Sq. Mtrs. and FSI area of 12,493.20 Sq. Mtrs. PP proposes to construct Composite building (Rehab Building- Wing 'C' and Sale Building- Wing 'A' & 'B') as mentioned at Sr.no.5 of the project details.

Representative of PP was present during the meeting along with Environmental Consultant Enviro Analysts & Engineers Pvt Ltd. The details of project are as mentioned below:

Sr. No.	Description	Details		
1.	Plot area (sq.m.)	4,220.00 sq.m.		
2.	FSI (sq.m.)	12,493.20 sq.m.		
3.	Non FSI (sq.m.)	13,892.88 sq.m.		
4.	Proposed built-up area (FSI + Non FSI) (sq.m.)	26,386.08 sq.m.		
5.	Building configuration	1 composite Building/Wing	Configuration	Height
		Rehab Bldg (C wing)	Ground+1st to 15th (pt.) Upper floor	50.30 m
		Sale Bldg (A & B wing)	Stilt+1st to 2nd podium+ 3rd to 20th upper floor	65.80 m
6.	No. of Tenements & Shops	Rehab Bldg (Wing C) Residential - 168 nos Shops- 30 no. School & Balwadi- 10 & 2 No. Sale Bldg (A & B wing) Residential - 178 nos Shops- 4 no. Offices- 2 No.		
7.	Total population	Residential: 1402 nos School & Balwadi: 578 no. Shops & offices: 133 no.		


Member Secretary

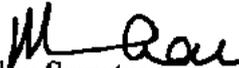

Chairman

		Total Population is expected to be 2112 No's.
8.	Water requirement (CMD)	223 CMD
9.	Sewage generation (CMD)	192 CMD
10.	STP Capacity & Technology	3 STP of capacity 100, 95 & 25 CMD with MBBR Technology
11.	STP Location	Below Ground
12.	Total Solid Waste quantities	Bio- degradable waste: 505 Kg/day Non- degradable waste: 408 Kg/day Total Solid Waste Generated: 913 Kg/day
13.	R.G. Area in sq.m.	Required - 288.20 sq. m Proposed - 443 sq. m
14.	Power requirement	Operation phase: Source: TATA/Adani Connected load: 1220 kW Demand load: 976 kW
15.	Energy Efficiency	Rehab wing: Total energy savings: 25%, through solar: 5 % Sale wing: Total energy savings: 24%, through solar: 5 %
16.	DG Sets Capacities	1x 150 KVA.
17.	Parking 4W & 2W	4-W: 70 Nos. 2-W: 20 Nos.
18.	Rain water harvesting scheme	Rehab- 32 cum/day Sale-26 cum/day
19.	Project Cost (Cr.)	Rs. 62 Crores
20.	EMP Cost (Including DMP cost)	Capital Cost: Rs. 370 lakhs O & M Cost: Rs. 31 lakhs
21.	CER Details with justification if any....	-

SEAC Deliberation –

PP informed that the project is slum rehabilitation scheme coming under residential zone with school reservation as per DP remarks of MCGM. PP also informed that project had received first LOI from SRA dated 10th August, 2009 and revised LOI in the year 2011, 2018, 2020, 2021.

PP submitted that they had received first IOA dated 30th December, 2011 to the project and accordingly they had carried out and completed construction of Rehab building (Wing 'C') and received OC on 16th June, 2021 to this building. PP also submitted that the plinth work of Sale building (Wing 'A' and 'B') has been initiated. PP further submitted that they have completed construction (Both Rehab & Sale building) for total construction area of 12,931.83 Sq. Mtrs. and submitted Architect certificate to that effect.


Member Secretary


Chairman

Now, due to applicability of DCPR,2034 by local planning authority, plot potential has increased above 20,000 Sq.Mtrs. Therefore, PP applied for environment clearance.

Committee noted that as mentioned in circular dated 21.04.2015 of Environment Department, proposed construction projects wherein Project Proponent has undertaken total construction below 20,000 Sq. Mtrs may not be considered as violation of EIA notification, 2006. Committee noted that as per the Architect certificate submitted by PP, construction completed is 12,931.83 Sq. Mtrs, which is below 20,000 Sq. Mtrs. as mentioned in circular dated 21.04.2015. Therefore, committee decided to appraise the project.

PP submitted that site is accessible through 18.30 Mtr.wide Pimpri Para DP Road on north-west side and 18.30 Mtr. wide Pathan Wadi DP Road on south side. PP also submitted that the project site falls under the ESZ area of Sanjay Gandhi National Park, accordingly they have applied on 19th August, 2021 for NOC from NBWL.

The project proposal was discussed on the basis of presentation made and documents submitted by the proponent along with environmental consultant Enviro Analysts & Engineers Pvt. Ltd. All issues related to environment, including air, water, land, soil, ecology and biodiversity and social aspects were discussed. Committee noted that the project is under 8(a) B2 category of EIA Notification, 2006. Consolidated Statements, Form- 1/1A, presentation & plans submitted are taken on the record.

During discussion following points emerged:

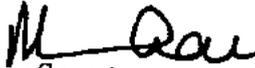
1. PP to submit IOD/IOA/Concession Document/Plan Approval or any other form of documents as applicable clarifying its conformity with local planning rules and provisions as per the Circular dated 30.01.2014 issued by the Environment Department, Govt. of Maharashtra.
2. PP to obtain following NOCs & remarks as per amended plan:
 - a) Water NOC; b) Sewer Connection; c) Storm Water Drain.
1. PP to obtain NOC of concerned authority as project falls within the ESZ of Sanjay Gandhi National Park.
2. PP to submit revised cross section of UGT for sale building and ensure that top of the UGT should be 6 inch above the ground level.
3. PP to relocate proposed portable STP from drive way.
4. PP to provide 1.5 Mtr. parapet wall around the tanks of STP which are open on ground.
5. PP to plant trees as per Tree NOC received to the project. PP to explore to increase tree density in the project.

Recommendations of SEAC-

In view of above discussion and subject to compliance of above points, the proposal is recommended to SEIAA for grant of Environmental Clearance.

Deliberation in SEIAA-

Proposal is a new construction project. Proposal is recommended in 162nd meeting of SEAC-2 for grant of Environment Clearance for total plot area of 4,220.00 Sq. Mtrs., Total Construction Area of 26,386.08 Sq. Mtrs. and FSI area of 12,493.20 Sq. Mtrs.


Member Secretary


Chairman

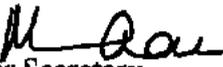
Proposal was then considered in 238th SEIAA meeting and deferred for clarification regarding why relevant Environment and Forest Clearances were not obtained before starting construction on site.

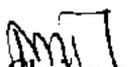
During the meeting, SEIAA asked PP to submit detailed clarification regarding not obtaining SGNP NOC and Forest Clearance before initiating construction activity.

SEIAA decided to defer the proposal for compliance of above point.

SEIAA Decision-

SEIAA decided to defer the proposal.


Member Secretary


Chairman

Minutes of 246th (Day - 3) Part – B meeting of SEIAA held on 27th July, 2022.

Item no. 42

Proposal No.:- SIA/MH/MIS/226127/2021

Type of Project: EC

Subject- Environment clearance for S.R. Scheme construction project under Reg. 33 (10) of DCR 1991 for “Shree Azad Co.Op. HSG Society” on plot bearing C.T.S. No. 738/B/1/A at Rani Sati Marg, Azad Link Road, Sanjay Nagar, Pathan Wadi, Malad (E), Mumbai by M/s Nirman Constructions (Alias M/s Nirman Realtors and Developers LTD).

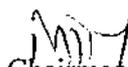
Project Details-

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Representative of PP was present during the meeting along with Environmental Consultant Enviro Analysts & Engineers Pvt Ltd. The details of project are as mentioned below:

Sr. No.	Description	Details		
1.	Plot area (sq.m.)	4,220.00 sq.m.		
2.	FSI (sq.m.)	12,493.20 sq.m.		
3.	Non FSI (sq.m.)	13,892.88 sq.m.		
4.	Proposed built-up area (FSI + Non FSI) (sq.m.)	26,386.08 sq.m.		
5.	Building configuration	1 composite Building/Wing	Configuration	Height
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6.	No. of Tenements & Shops	Rehab Bldg (Wing C) Residential - 168 nos Shops- 30 no. School & Balwadi- 10 & 2 No. Sale Bldg (A & B wing) Residential - 178 nos Shops- 4 no. Offices- 2 No.		
7.	Total population	Residential: 1402 nos School & Balwadi: 578 no.		


Member Secretary


Chairman

Minutes of 246th (Day - 3) Part – B meeting of SEIAA held on 27th July, 2022.

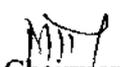
		Shops & offices: 133 no. Total Population is expected to be 2112 No's.
8.	Water requirement (CMD)	223 CMD
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10.	STP Capacity & Technology	3 STP of capacity 100, 95 & 25 CMD with MBBR Technology
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15.	Energy Efficiency	Rehab wing: Total energy savings: 25%, through solar: 5 % Sale wing: Total energy savings: 24%, through solar: 5 %
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Member Secretary


Chairman

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Committee noted that as mentioned in circular dated 21.04.2015 of Environment Department, proposed construction projects wherein Project Proponent has undertaken total construction below 20,000 Sq. Mtrs may not be considered as violation of EIA notification, 2006. Committee noted that as per the Architect certificate submitted by PP, construction completed is 12,931.83 Sq. Mtrs, which is below 20,000 Sq. Mtrs. as mentioned in circular dated 21.04.2015. Therefore, committee decided to appraise the project.

PP submitted that site is accessible through 18.30 Mtr.wide Pimpri Para DP Road on north-west side and 18.30 Mtr. wide Pathan Wadi DP Road on south side. PP also submitted that the project site falls under the ESZ area of Sanjay Gandhi National Park, accordingly they have applied on 19th August, 2021 for NOC from NBWL.

The project proposal was discussed on the basis of presentation made and documents submitted by the proponent along with environmental consultant Enviro Analysts & Engineers Pvt. Ltd. All issues related to environment, including air, water, land, soil, ecology and biodiversity and social aspects were discussed. Committee noted that the project is under 8(a) B2 category of EIA Notification, 2006. Consolidated Statements, Form- 1/1A, presentation & plans submitted are taken on the record.

During discussion following points emerged:

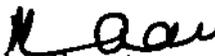
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3. PP to relocate proposed portable STP from drive way.
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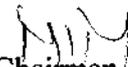
Recommendations of SEAC-

In view of above discussion and subject to compliance of above points, the proposal is recommended to SEIAA for grant of Environmental Clearance.

Deliberation in SEIAA-

Proposal is a new construction project. Proposal is recommended in 162nd meeting of SEAC-2 for grant of Environment Clearance for total plot area of 4,220.00 Sq. Mtrs., Total Construction Area of 26,386.08 Sq. Mtrs. and FSI area of 12,493.20 Sq. Mtrs.


Member Secretary


Chairman

Proposal was then considered in 242nd meeting of SEIAA and deferred for clarification regarding not obtaining SGNP NOC and Forest Clearance before initiating construction activity. Now, PP submitted the compliance.

During the meeting, PP submitted that,

1. The project under consideration is Slum Rehabilitation Project with BMC School reservation.
2. First LOI was issued for this project on 10.08.2009 for FSI 13542.52 m² and subsequent LOIs were issued on 28.12.2011, 03.02.2018, 14.02.2020 and 18.05.2021 followed by IOA. In the LOI issued, there was no condition of obtaining NBWL NOC was mentioned.
3. Commencement Certificate (CC) was issued to the project on 09.12.2010 and construction activity was started for rehab building as per CC received.
4. At the time of Commencement of the project, SGNP Notification was not in force, it came in force on 06th December, 2016.

In the view of above, PP requested to process their application. SEIAA noted the same.

During the meeting, SEIAA also observed that, PP has initiated construction activity on site without obtaining prior Environment Clearance. PP submitted that, their project is a Slum Rehabilitation Scheme and they have initiated the construction activity and constructed total BUA of 12931.83 m² as per the Govt of Maharashtra Circular dated 21.04.2015. PP also requested to consider the same. SEIAA noted the same.

SEIAA decided to grant Environment Clearance with a condition that planning authority to ensure that OC shall not be issued to the project till PP obtains necessary SGNP NOC.

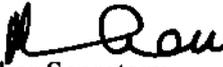
SEIAA after deliberation decided to grant EC for – FSI -12493.20 m², Non FSI-13892.88 m², Total BUA-26386.08 m². (Plan approval No.SRA/ENG/2313/PN/PL/AP, dated-16.06.2021)

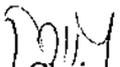
SEIAA after deliberation decided to grant Environment Clearance subject to compliance of following conditions-

1. Planning authority to ensure that OC shall not be issued to the project till PP obtains necessary SGNP NOC.
2. PP to keep open space unpaved so as to ensure permeability of water. However, whenever paving is deemed necessary, PP to provide grass pavers of suitable types & strength to increase the water permeable area as well as to allow effective fire tender movement.
3. PP to achieve at least 5% of total energy requirement from solar/other renewable sources.
4. PP Shall comply with Standard EC conditions mentioned in the Office Memorandum issued by MoEF& CC vide F.No.22-34/2018-IA.III dt.04.01.2019.
5. SEIAA after deliberation decided to grant EC for – FSI -12493.20 m², Non FSI-13892.88 m², Total BUA-26386.08 m². (Plan approval No.SRA/ENG/2313/PN/PL/AP, dated-16.06.2021)

SEIAA Decision-

SEIAA after deliberation decided to grant Environment Clearance.


Member Secretary


Chairman