

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE**

AT PUNE

I.A No. 204 OF 2023

IN

ORIGINAL APPLICATION NO. 02 OF 2020 (WZ)

VAIBHAV TAPKIR

.. **APPLICANT**

V/s

TANISH ASSOCIATES
AND OTHERS

.. **RESPONDENTS**

REPLY ON BEHALF OF RESPONDENT NO. 1
(M/s TANISH ASSOCIATES)

MAY IT PLEASE THE HON'BLE TRIBUNAL

1. At the outset, the Respondent No.1 in the present proceedings denies everything that is contrary what is stated therein and/or inconsistent therewith as if the same is set out in extenso and traversed. The Respondent No.1 submits that, nothing not expressly admitted herein ought to be taken as admitted by the Respondent No.1 or be deemed to have been admitted by the Respondent No.1 for want of specific traverse. The Respondent No.1 states that for the purpose of brevity, the Respondent No.1 is not denying each and every allegation, statement and contention of the Applicant which is ex-facia contrary to the contention of

Respondent No.1 and its stand in the present case except to the extent that such allegation, statement or contention necessitate, cogent, warrant or reply.

2. The Respondent No.1 submits that vide the present Original Application, the Original Applicant has prayed as under:-

PRAYERS

- a. *The Respondent No.1 may be directed to remove the encroachment on the said Nallah which is obstructing the free flow of water.*
 - b. *The Respondent No.1 be directed to restore the Nallah to its original position.*
 - c. *The Responds No.1 be directed to treat the sewage effluent before letting it in the Nallah.*
 - d. *The Respondent No.1 may be heavily Penalized for degrading the Environment.*
 - e. *The Respondent Nos 2 , 3 and 4 and 5 be directed to inquire in the said matter and take necessary steps to abate nuisance caused on the said land.*
 - f. *The Respondent No.2 (MPCB) be directed to take steps to control pollution caused by letting of untreated sewage effluent into the Nallah and clear the encroachment of the said Nallah.*
3. The Respondent No.1 submits that, by the present application, the Applicant has not given any justification as to the necessity to implead the Parties stated in the IA. Furthermore, the Applicant has

not produced the required evidence to show the necessity of these parties.

4. The Respondent No.1 submits that, the Applicant has prayed in the Application, as per the prayers re-produced herein above pertains to the issue of discharge of sewage effluent into the Nallah and also the encroachment on the Nallah. The Applicant in his Original Application has restricted his prayers only to these two issues. Hence, at the fag end of and at the stage of the final argument, the Applicant is not permitted to change his stand only in view of the change of Advocate representing him. The Applicant has failed to make out any case before this Hon'ble Tribunal to interfere and Applicant in view of this delaying tactic, indulging into such acts is preventing this Hon'ble Tribunal from adjudicating the matter.
5. The Respondent No.1 already filed the detailed Reply on 21.07.2023 and in the said Reply, the Respondent No.1 has stated that, the operation and management of the STP has been handed over to the Society and that Society is entirely responsible for taking care of the same. This act was brought on record by the Respondent No.1 in response to the Report submitted by the Committee, constituted by this Hon'ble Tribunal. The Applicant after the submission of the reply and after pointing out by the

Respondent No.1 in the reply, the Applicant is now seeking to improve his case before this Hon'ble Tribunal by filing an Application, seeking impleadment. Be that as it may, the Respondent No.1 has already raised the preliminary objections, pertaining to the maintainability of the present Application, as the same is time barred. Hence, the present Application is nothing but eyewash, and trying to divert the attention of the Hon'ble Tribunal from the core issue of this Original Application.

6. The Applicant in the said IA is also praying to implead the MoEF&CC and SEIAA, Maharashtra as the party Respondents. However, no justification as regards the same is given in the IA. Also, the Hon'ble Tribunal at the time of passing of the orders dated 17th August 2020 and 9th March 2022, did not deem fit to appoint the aforesaid parties as Party Respondent or Member of the Joint Committee. The Applicant also did not mention about the said parties being part of the Committee or impleadment at that point in time. The Applicant has also accepted the said orders and has not challenged the said orders as well as the Committee Reports. Hence the Applicant is not permitted to file the present Application belatedly. The present application is nothing but an abuse of process of law.

7. This Hon'ble Tribunal also had the occasion to decide an identical issue, wherein the Hon'ble Tribunal has held it in favour of the Project Proponent. Copy of the said judgment in OA No.20 of 2020 is annexed hereto and marked as **ANNEXURE – R-1**.
8. The present Application is nothing but, enlarging the scope of the Original Application, which is impermissible in law and also is an abuse of process of law. The Respondent No.1 therefore, prays that, the present Application may kindly be dismissed with exemplary costs.

PUNE
DATE :18/10/2023



ADVOCATE FOR RESPONDENT NO.1

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D-1823
2023



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE

AT PUNE

I.A No.

204 OF 2023

IN

ORIGINAL APPLICATION NO. 02 OF 2020 (WZ)

VAIBHAV TAPKIR

.. APPLICANT

V/s

TANISH ASSOCIATES
AND OTHERS

.. RESPONDENTS

AFFIDAVIT IN SUPPORT OF REPLY TO IA

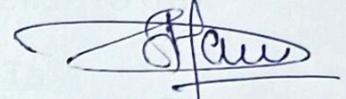
I, Mr. Dilip Shantilal Solanki, Age: 50 years, Occu.: Business,
R/At: 27/1, Somwar Peth, Pune - 411011, Partner of Respondent No.1
herein above, do hereby state on solemn affirmation as under:-

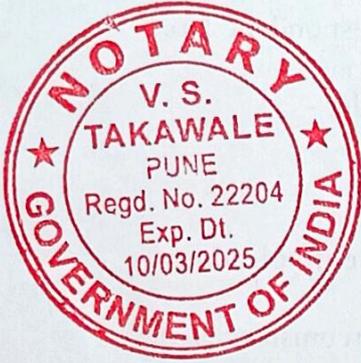
1. That the Respondent No.1 is filing the reply to the Impleadment Application filed by the Applicant. The facts and circumstances are well set out in the main body of the Reply. The Respondent No.1 adopts, maintains, confirms, repeats and reiterate whatever has been stated in the main body of the reply and for the sake of brevity, convenience and in order to avoid repetition, craves leave of this Hon'ble Tribunal to treat the statements, averments and submissions in the main body of the Reply as part and parcel of

this Affidavit as if the same are reproduced herein ad-seriatim, with a view to avoid repetition and for the sake of brevity.

2. I say that whatever stated in the Reply and the present Affidavit is true and correct to the best of my knowledge, information and belief and the legal advice, which I believe to be true.

Solemnly affirmed at Pune, on 16th day of October, 2023.


Deponent



BEFORE ME

V. S. Takawale

V. S. TAKAWALE
ADVOCATE & NOTARY
NOTARY GOVT. OF INDIA
Regd. No. 22204
Exp. Dt.: 10/03/2025

Noted & Registered

At Sr.No... D-1823/2023

17 OCT 2023

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CONTAINS 2/2 PAGES

दस्तावेजावत धरिण्यात काही वाद/तटा
उपस्थित झाल्यास आम्ही उभयता पक्षकार
व्यक्तिगत जबाबदार राहू.



(Pune Bench)

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

[THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)]

ORIGINAL APPLICATION NO.20 OF 2020 (WZ)

Mr. Tanaji Balasaheb Gambhire,
Age : Adult, Occu. Self-employed,
R/o CTS-296, Shukrawar Peth,
Laxmi Apartment, White House Lane,
Near Shivaji Maratha High School,
Pune – 411 002

.... **Applicant****Versus**

1. Union of India,
Through Secretary,
Ministry of Environment and Forest,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 001
2. Chief Secretary,
Government of Maharashtra,
Annex Building, Mantralaya, Mumbai – 400 032
3. The Principal Secretary,
Environment Department,
Government of Maharashtra,
Room No.217, 2nd Floor, Annex Building,
Mantralaya, Mumbai – 400 032
4. State Level Environment Impact Assessment
Authority – Maharashtra (SEIAA),
THROUGH Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
5. State Expert Appraisal Committee (III) –
Maharashtra (SEAC-III),
Through Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
6. Maharashtra Pollution Control Board,
Through Member Secretary,
Kalptaru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion (E),
Mumbai – 400 022, Maharashtra
7. Maharashtra Pollution Control Board,
Through Regional Officer,
Jog Centre, 3rd Floor, Mumbai-Pune Old Highway,
Wakadewadi, Pune – 411 003, Maharashtra

8. Pune Municipal Corporation,
Through Municipal Commissioner,
Main Building, Shivaji Nagar,
Pune – 411 005
9. Building Permission Department-PMC,
Through City Engineer, Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
10. Collector of Pune,
As Sanctioning Authority and President of
District Environment Protection Committee, Pune
Collector Office, Bund Garden, Pune – 411 001
11. Police Commissioner, Pune,
Police Commissioner Office,
Near Sadhu Waswani Chowk,
Pune – 411 001
12. M/s MAA Sankalp Buildcon LLP,
A limited liability partnership firm with
LLPIN-AAL-8904,
Having registered office at Shop No.25,
B-Wing KPCT Mall, Fatimanagar,
Near Mega Mart, Opp. Parmar Nagar,
Wanawadi, Pune – 411 013,
Through its Partners
12A. Vishal Suresh Pawar
12B. Hemat Pishorilal Malik

...**Respondents**

APPEARANCE :

- | | |
|-------------|---|
| Applicant | : Applicant-in-person along with Mr. Vijay Mhaske, Ms. Kajal Mandge and Ms. Pratiksha Kulkarni, Advocates |
| Respondents | : Mr. Rahul Garg, Advocate for R-1, R-8 and R-9
Mr. Aniruddha S. Kulkarni, Advocate for R-3, R-4 and R-5
Ms. Manasi Joshi, Advocate for R-6 and R-7
Mr. Saket Mone, Advocate along with
Mr. Abhishek Saliyan, Advocate for R-12 |

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

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Reserved on : 26.07.2023

Pronounced on : 26.09.2023
=====

JUDGMENT

1. This Original Application has been filed with the prayers that the respondents be directed to demolish illegal structures at the site in question and restore the area and respondent No.12/Project Proponent - M/s MAA Sankalp Buildcon LLP be directed to deposit heavy amount of environmental compensation on the principle of 'polluter pays'.

2. The facts of this case, in brief, are that respondent No.12/Project Proponent - M/s MAA Sankalp Buildcon LLP is constructing a project "Sai Dwarika" at Survey Nos.40/1/1, 40/1/2 and 40/1/3/1 as Phase-III and IV and Survey Nos.40/1/3/2, 40/1/4 and 40/1/5 as Phase-I and II at village Yewalewadi, Taluka Haveli, District Pune, in gross violation of Environment (Protection) Act, 1986 read with EIA Notification, 2006, Water (Prevention and Control of Pollution) Act, 1974 ("Water Act", for short) and Air (Prevention and Control of Pollution) Act, 1981 ("Air Act", for short). The details of the project are as follows:

<i>Description</i>	<i>EC & CTE permission</i>	<i>Completed</i>	<i>Under Construction</i>	<i>Total Proposal</i>
<i>ABC-Bldg.</i>	<i>0</i>	<i>3</i>	<i>0</i>	<i>6</i>
<i>ABC-Bldg.</i>	<i>0</i>	<i>3</i>	<i>0</i>	
<i>ABC Flats</i>	<i>0</i>	<i>244</i>	<i>0</i>	<i>486</i>
<i>DEF Flats</i>	<i>0</i>	<i>242</i>	<i>0</i>	
<i>ABC-BUA</i>	<i>0</i>	<i>19429.71</i>	<i>3213.23</i>	<i>22642.94</i>
<i>DEF-BUA</i>	<i>0</i>	<i>19315.42</i>	<i>3052.64</i>	<i>22368.06</i>
<i>Total BUA</i>	<i>0</i>	<i>38745.13</i>	<i>6265.87</i>	<i>45011</i>
	<i>PP have procured the ex-post facto ECs dated 05.10.2021 after filing of this OA and ex-post facto CTE dated 17.03.2020.</i>			

3. The above project is a single project, but the developer/Project Proponent is misleading the authorities on account of PMC sanctions and

other permissions issued by the Authorities under Development Control Rules (DCR), Maharashtra Regional and Town Planning Act (MRTP Act), Maharashtra Land Revenue Code (MLRC), Tree Felling Act and Fire & Safety Rules, etc. to show the same as two different projects. Following documents of the Project Proponent itself show that the entire project is a single project comprising two Phases, which would attract mandatory prior Environmental Clearance (EC) as provided under EIA Notification, 2006 and Consent to Establish under Water Act and the Air Act from the very inception of the project.

Document Type	Para/IMP Fact
<i>Notification 07.07.2004</i>	<i>Para-(iii), "Entire Project-Phase/Modules"</i>
<i>MoEFCC Notification 14.09.2006</i>	<i>Para-6, "Conceptual Plan"</i>
<i>Project Boucher/booklet</i>	<i>Site Layout</i>
<i>Site Photographs captured through Drone 29.04.2023</i>	<i>Single Compound Wall, Single premises, Sharing common garden, Sharing Common transformer, Shows single project, which is patently integral</i>
<i>Search & Title Report: Charge over the Property, Mortgage Deed and Site Conditions</i>	<i>Loan obtained for entire property as Single Project with single deed vide No.5459/2016 dated 06.04.2016 at Sub-Registrar, Haveli-22</i>
<i>Re-conveyance Deed: Mortgage Released dated 06.12.2017 (Index-II)</i>	<i>Release of entire property from Mortgage with single Re-conveyance deed vide No.12809/2017 dated 06.12.2017 at Sub-Registrar, Haveli-22</i>
<i>Joint Committee Report dated 06.09.2021</i>	<i>Adjacent to each other</i>

4. Sub-clause (iii) of Explanation to sub-para (ii) of para I of the EIA Notification dated 07.07.2004 provides as under:

"Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification."

5. The EIA Notification dated 14.09.2006, in para 6, provides as follows:

“Application for Prior Environmental Clearance (EC) :

*An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a **copy of the conceptual plan shall be provided**, instead of the pre-feasibility report.”*

6. The conceptual plan, which has been annexed from pages 461 to 488, in the form of Project Brochure/Booklet would indicate that the entire project, which is being shown by the Project Proponent as split into two parts is actually one project, photographs of the buildings under construction are also shown in colour. At page 1587 of the paper-book, photographs of the project in question are captured through drone on 29.04.2023, which clearly indicate that single compound wall, single premises, sharing of common garden, sharing common transformer. All these things would indicate that the entire project was a single project.

7. It is further submitted by the applicant that the loan which has been obtained for the entire property shows it to be a single project with single deed No.5459/2016 dated 06.04.2016 at Sub-Registrar, Haveli-22 and in this regard, Search and Title Report is annexed at pages 271 and 272 of the paper-book. The release of entire property from mortgage with single re-conveyance deed vide No.12809/2017 dated 06.12.2017 at Sub-Registrar, Haveli-22, which is annexed at page 1596 of the paper-book, which also relates to the entire property and not in two parts.

8. According to the applicant, apart from these documents, the Joint Committee report dated 06.09.2021 shows two alleged projects adjacent to each other, which the applicant says that it is nothing but averments of this report are that two phases of the same project are adjacent to each other, which should be treated to be in fact one project instead of two. The Project Proponent has adopted these Rules to defeat the provisions of EIA Notification, 2006, which would necessitate obtaining prior EC, had two projects been shown as one project because in that case, the area would have exceeded 20000 sq.mtrs at quite an early stage.

9. It is further submitted by the applicant that respondent No.12 – Project Proponent has procured *ex post facto* EC vide order dated 05.10.2021 for both the phases during the pendency of this Original Application and after submission of the Joint Committee report dated 06.09.2021 which are granted subject to the final outcome of this Original Application as per the specific condition No.IV stipulated therein. The details of the said ECs are given in tabular form as follows:

Sr. No.	Phase	Phase I & II	Phase III & IV	Total
1.	EC date	05.10.2021	05.10.2021	
2.	Project Name	Sai Dwarika Phase I & II	Sai Dwarika – Phase III & IV	
3.	Survey No.	40/1/3/2, 40/1/4, 40/1/5	40/1/1, 40/1/2, 40/1/3/1	
4.	Land Area (M ²)	10000	10000	20000
5.	Note on initiated work (M ²)	19429.71	19315.42	38745.13
6.	FSI Area (M ²)	13400.62	13320.65	26721.27
7.	Non- FSI Area (M ²)	9242.32	9047.41	18289.73

8.	Total BUA Area (M ²)	22642.94	22368.06	45011
9.	Project cost (Rs.)	334970715	331027519	665998234
10.	Total Water Requirement (KLD)	177.7	169.35	347.05
11.	Rain Water Harvesting (Nos.)	4	4 Nos.	8
12.	Sewage Generation	142.42	147.33	289.75
13.	STP (KLD)	150	150	300
14.	Dry Waste (Kg/Day)	244	242	486
15.	Wet Waste (kg/Day)	379.46	376.53	755.99
16.	STP Sludge (Kg/Day)	13.46	13.53	26.99
17.	Power Required Operation (KW)	473	482	955
18.	DG Sets	125KVA x 1	125 KVA x 1	2
19.	% Energy Saving	15%	15%	
20.	Specific Condition : IV	EC granted subject to OA	EC granted subject to OA	

10. Citing the above table, it is submitted by the applicant that the configuration of the project as shown above would show huge un-assessed and unapprised burden inflicted upon the Mother Nature due to substantial illegal construction carried out to the tune of 38745.13 sq.mtrs, out of 45011 sq.mtrs without mandatory prior EC, Consent to Establish (CTE) and Consent to Operate (CTO). Despite this project being single one, undertaken by single Project Proponent as single financial beneficiary, in collusion with the Government authorities by the Project Proponent, it has resulted, in a way, in damage to the environment and ecology, which requires imposition of heavy environmental compensation on the Project Proponent. Past violation of the Project Proponent cannot be overlooked on account of subsequent grant of *ex post facto* EC.

11. Further it is submitted by the applicant that the Project Proponent – respondent No.12 has taken *ex post facto* CTE vide order dated 17.03.2020 after the complaint was made by the applicant to MPCB on 29.06.2019, the details of the said grant of CTE and EC are given below in tabular form:

Sr. No.	Date	Event
1	28.02.2014	MoEF issued notification granting power to the SEIAA to action against violation u/s 5 of EPA, 1986
2	29.06.2019	Complaint to Respondent Authorities
3	07.08.2019	MPCB Site visit
4	08.08.2019	PP application for ex-post facto EC
5	13.08.2019	MPCB Warning Notice
6	29.08.2019	Show Cause Notice (SCN) by SEIAA & PS-DoE
7	09.10.2019	Online Complaint to PS-DoE, SEIAA, SEAC-III
8	11.11.2019	Personal Hearing conducted in the chamber of PS-DoE
9	26.11.2019	Withdrawal of Show Cause notice by PS-DoE
10	16.03.2020	OA filed before this NGT
11	17.03.2020	Ex-post facto CTE
12	06.09.2021	Joint Committee Report
13	05.10.2021	Ex-post facto EC

12. Further it is mentioned that both the Consents to Establish dated 17.03.2020 are granted *ex post facto*. The applicant, vide complaint dated 29.06.2019, exposed the Project Proponent for his violations and thereafter, the Project Proponent had applied for Consent to Establish on 08.08.2019 to cover up his violations.

13. The Project Proponent has not obtained any Consent to Operate so far relying on the judgment of the Hon'ble High Court of Delhi in ***Splendor Landbase Ltd. Vs. Delhi Pollution Control Committee;***

2010 SCC OnLine Delhi 3466 stating that the residential projects do not require Consent to Operate. It is essential to mention here that the Project Proponent has handed over the possession of the complete units since January, 2018 and has also obtained Consent to Establish. Besides that, this Tribunal has expressed its opinion about mandatory requirement of the Consents in **Forward Foundation's** case in Original Application No.222/2014 by order dated 07.05.2015 and in **S.P. Muthuraman** in Original Application 37/2015 vide order dated 07.07.2015, which have attained finality as the appeals as against those judgments in the Hon'ble Supreme Court have been dismissed. In view of this, the Project Proponent cannot take contrary stand that he did not require Consent to Operate.

14. Further it is submitted by the applicant that complaint dated 29.06.2019 was filed by him before the respondent Authorities for taking action against the Project Proponent for violations and infringements by them in not obtaining mandatory prior EC, CTE and CTO. The SEIAA and the Member Secretary of Department of Environment had jointly issued show-cause notice dated 29.08.2019 to the Project Proponent, but the same was withdrawn on 26.11.2019 without giving any opportunity to the applicant. The said order of withdrawal has been passed in collusion with the Project Proponent.

15. Further it is mentioned by the applicant that the Project Proponent – respondent No.12 has obtained following sanctions along with conditional commencement certificate in phase-wise manner indicating therein total BUA, details of which are given in tabular form as below:

Sr. No.	Phase	Phase-CC Date	Phase-BUA M²	Total BUA (M²)	Condition for EC & CTE
1	III&IV	09.01.2014	14788.49	29642.41	Condi.No.10

	<i>I&II</i>	<i>01.04.2014</i>	<i>14853.92</i>		<i>Condi.No.10</i>
<i>2</i>	<i>III & IV</i>	<i>20.10.2015</i>	<i>16674.50</i>	<i>33350.22</i>	<i>Condi.No.19</i>
	<i>I & II</i>	<i>23.11.2015</i>	<i>16675.72</i>		<i>Condi.No.19</i>
<i>3</i>	<i>III & IV</i>	<i>15.12.2016</i>	<i>18675.69</i>	<i>37512.4</i>	<i>Condi.No.10</i>
	<i>I & II</i>	<i>15.12.2016</i>	<i>18836.69</i>		<i>Condi.No.10</i>
<i>4</i>	<i>III & IV</i>	<i>31.03.2017</i>	<i>21577.18</i>	<i>43274.55</i>	<i>Condi.No.10</i>
	<i>I & II</i>	<i>03.05.2017</i>	<i>21697.37</i>		<i>Condi.No.10</i>
<i>5</i>	<i>III & IV</i>	<i>09.03.2018</i>	<i>21793.62</i>	<i>43584.83</i>	<i>Condi.No.27</i>
	<i>I & II</i>	<i>09.03.2018</i>	<i>21791.21</i>		<i>Condi.No.27</i>
<i>6</i>	<i>III & IV</i>	<i>13.03.2020</i>	<i>21885.06</i>	<i>43731.76</i>	<i>Condi.No. 4</i>
	<i>I & II</i>	<i>13.03.2020</i>	<i>21846.70</i>		<i>Condi.No.4</i>
<i>7</i>	<i>III & IV</i>	<i>24.08.2020</i>	<i>23428.19</i>	<i>46126.44</i>	<i>Condi.NO.27</i>
	<i>I & II</i>	<i>24.08.2020</i>	<i>22698.25</i>		<i>Condi.No.27</i>

16. The above table would indicate that the BUA of the proposed project on site since 01.04.2014 was more than 20,000 sq.mtrs, which mandated prior EC & CTE as per EIA Notification, 2006, but the Project Proponent misled the authorities by showing the project in question as two different projects. The details of the revised sanctions have also been indicated by the applicant in tabular form from pages 1549 to 1553 of the paper-book, which would indicate that not once, many times, revision has been cited by the Project Proponent in the project in question. The applicant has indicated the Architect's Certificates, which show total BUA of the project in question and are shown in tabular form as follows:

<i>Sr. No.</i>	<i>Date</i>	<i>Phase</i>	<i>TBUA (M²)</i>
<i>1.</i>	<i>TBUA as per sanction dated 09.03.2018</i>	<i>I & II</i>	<i>19469.98</i>

2.	<i>TBUA of Proposed Construction</i>	<i>I & II</i>	<i>22531.46</i>
3.	<i>TBUA of Completed Construction</i>	<i>I & II</i>	<i>19429.71</i>
4.	<i>TBUA as per sanction dated 09.03.2018</i>	<i>III & IV</i>	<i>19357.20</i>
5.	<i>TBUA of Proposed Construction</i>	<i>III & IV</i>	<i>22368.06</i>
6.	<i>TBUA of Completed Construction</i>	<i>III & IV</i>	<i>19315.42</i>

17. According to the applicant, the above TBUA is also misleading because the same has been shown by splitting a project into two.

18. The applicant has further indicated that respondent No.12 – Project Proponent has procured occupancy check certificates (OCC), details of which are given in tabular form as follows:

<i>Sr. No.</i>	<i>OCC date</i>	<i>Building</i>	<i>Phase</i>	<i>Exhibit</i>
1.	21.02.2019	E & F	III & IV	CC
2.	No OCC obtained,	D	III & IV	Illegal occupancy
3.		A, B, C	I & II	

19. It is submitted that the Project Proponent completed the construction of all the buildings in the Project and obtained Occupancy Certificate only in respect of Building E and F. The Project Proponent failed to obtain the Occupancy Certificate as well as Consent to Operate and started using the premises by giving the possession to the respective purchasers, which is illegal.

20. Further it is submitted that the Project Proponent has not annexed any permission for felling of trees as well as NOC from the Garden Department for completing the tree plantation of requisite

number of trees. In fact, he has not done any plantation as per norms, nor has he taken care for survival of the plants.

21. This matter was considered by us on 27.08.2020 and a Joint Committee was constituted directing it to submit the factual as well as action taken report and notices were directed to be issued to the respondents. In pursuance of the said order, the Joint Committee submitted its report, the relevant portion of which is quoted hereinbelow:

Sr. No.	Point Examined	Remarks
a	<i>The PP has been misleading, on account of the two different projects</i>	<i>M/s Maa Sankalp Buildcon is the construction company and M/s Sail Dwarka is the project name.</i>
b	<i>BUA of the project was more than 20,000 sq.m but PP did not apply for EC and consent.</i>	<i>As submitted by PMC vide letter dated 26.08.2021 M/s Maa Sankalp Buildcon (Project name is Sai Dwarka Part I and Part II) A1, A2,B, C1 & C2, S. No. 40, H. No. 1/3/2, + ¼ +1/5, Yewalewadi, Taluka Haveli District Pune are two different projects which are adjacent to each other, and hold different permissions, plinth checking certificates, completion certificates, side and front margins, separate recreational open spaces and separate amenity spaces which are adjacent to each other.</i> Project Sai Dwarka Part- I :
c	<i>PP has completed BUA of 38,745.13 sqm, proposed construction BUA is 6,2654.87sqm and total BUA is 45,011 sqm comprising 6 buildings and 486 flats, without obtaining any environment clearance from SEIAA, any prior consent to establish and any prior consent to operate from MPCB.</i>	
d	<i>BUA of project was more than 45,011 sqm but PP did not apply for Environment Clearance from SEIAA or any consent from MPCB.</i>	
e	<i>PP has not obtained any prior Environment Clearance from SEIAA or MoEF.</i>	
f	<i>PP has not obtained any prior Consent to Establish from MPCB</i>	

g	<p>The PP has achieved partial project completion in mid-2018 but has not applied for Consent to Operate and started using the project without the Consent to Operate.</p>	<p>Dwarka, Part I) has been constructed vide CC No. CC/003406/13 dated 09.01.2014, As per the layout sanctioned by PCM vide CC no. CC/3296/17 dated 09.03.2018, the total built-up area is 19,357.20 sq.m.</p> <p>As per the last revision vide CC no. CC/0403/20 dated 24.08.2020, the total built-up area is 22,770.6 sqm. However, PP has not yet started construction activity as per the CC, dated 24.08.2020 as it requires prior EC.</p> <p>Project Sai Dwarka Part II:</p> <p>As per report of PMC M/s Maa Sankalp Buildcon (project name- Sai Dwarka, Part-II has been constructed vide CC no. CC/0011/14 dated 01.04.2014. As per the layout sanctioned by PCM vide CC No. CC/3294/17 dated 09.03.2018, the total built-up area is 19,469.98 sq.m.</p> <p>As per the Architect's Certificate dated 10.08.2021, the total constructed built-up area is 19,429.71 sq.m.</p> <p>As per the last revision vide CC no. CC/0404/20 dated 24.08.2020, the total built-up area is 20,490.12 sq.m However, PP has not yet started construction activity as per CC dated 24.08.2020 as it requires prior EC.</p> <p>Copy of the PMC report, dated 26.08.2021 and the Architect's Certificate are attached in Annexure I & II.</p>
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		<p><i>Environment Department, Govt. of Maharashtra has issued Show Cause notice/ Proposed Direction under Section 5 of the Environment (p) Act 1986 r.w. EIA Notification dated 14.09.2006, issued top PP, vide letter dated 29.08.2019 for violation of EIA Notification. Subsequently, the Direction has been withdrawn as there was no violation of EIA Notification, 2006 vide letter no. COMP-2019/CR/24 SEIAA dated 26.11.2019.</i></p> <p><i>Copy of the Direction, dated 29.08.2019 and withdrawn direction dated 26.11.2019 are attached in Annexure III & IV.</i></p> <p><i>The PP has applied for Environment Clearance on 08.08.2019 for :</i></p> <p><i>M/s. Sai Dwarka- phase- I and II at S. NO. 40, H. NO. 1/3/2 ¼ + 1/5 Yewalewadi, Taluka Haveli District Pune for TPA-10,000 Sq.m and TBUA-22,642.94 Sq.m. and for</i></p> <p><i>M/s. Sai Dwarka- phase- III and IV at S. NO. H. No. 1/3/2, + ¼ + 1/5, Yewalewadi, Taluka Haveli District Pune for TPA- 10,000 Sq.m and TBUA-22,368.06 Sq.m</i></p> <p><i>The EC is under process</i></p> <p><i>Copy of the EC application dated 08.08.2019 is attached in Annexure V</i></p>
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		<p>The PP has obtained Consent to Establish from MPC Board, vide letter datd 17.03.2020, for M/s Maa Sankalp Buildcon, A1, A2, B, C1, & C2, S. No. 40, H. NO. 1/3/2 + ¼ + 1/5 Yewalewadi, Taluka Haveli District Pune for TPA-10,000 Sq.m and TBUA-22,642.94 Sq. m.</p> <p>The PP has obtained Consent to Establish from MPC Board, vide dated 17.03.2020 for M/s Maa Sankalp Buildcon, D1, D2, E, F1 & F2 S. No.40 H. NO. 1/3/2, + ¼ + 1/5, Yewalewadi, Taluka Haveli District Pune for TPA- 10,000 sq.m. and TBUA-22,368.06 Sq.m</p> <p>Copy of the Consent to Establish dated 17.03.2019 for both projects is attached in Annexure VI & VII.</p>
h	PP carried out the construction activity without conducting an environment impact assessment.	An Environment Impact Assessment Report is required only when the proposed BUA exceeds the threshold limit of 1,50,000 sqm, as per EIA Notification 2006.
i	PP has extracted huge quantity of groundwater without any permission from two borewells for construction of the project.	No borewells were noticed on site in the visit.
j	PP is illegally extracting groundwater without permission from competitive authority for operational purpose.	
k	PP has not provided any solid waste management system. The waste generated is dumped in the PMC waste yard, creating burden on public systems and this solid waste is generating various green house gases.	
l	PP has not provided any solid waste management system. The	
		PP has provided separate Organic Waste convertors of 250 KGD capacity

	<i>waste generated is dumped in the PMC waste yard, creating burden on public systems and this solid waste is generating various greenhouse gases</i>	<i>each, for both projects, for the treatment of wet waste.</i>
<i>m</i>	<i>PP has not provided any energy conservation systems for energy saving like passive solar measures or solar panels system.</i>	<i>The PP has provided solar panels on the transformer room and club house for both projects.</i>
<i>n</i>	<i>PP has not provided any rain water harvesting system for groundwater recharge</i>	<i>A separate rainwater harvesting system has been provided by the PP for both projects.</i>
<i>o</i>	<i>PP has not preserved the top layer of fertile soil and there is no test for contamination.</i>	<i>The existing buildings have already been constructed and there was no ongoing construction activity during the visit. The committee is unable to comment on soil preservation.</i>
<i>p</i>	<i>PP has not grown tree plantation as per the norms</i>	<i>The Tree NOC from Tree Authority, PMC, dated 01.02.2020 for one project has been obtained, and for the other project, there is a provisional NOC obtained on 28.12.2018. Copy of NOC for both projects is enclosed herewith as Annexure VIII.</i>
<i>q</i>	<i>The PP has provided swimming tank which may create further pressure on water resources.</i>	<i>There is no swimming pool constructed on site.</i>
<i>r</i>	<i>PP has installed 2 DG sets at the project site and the operation of DG set is causing air pollution</i>	<i>PP has installed DG sets of 125 KVA capacity for both projects separately.</i>
<i>s</i>	<i>Huge quantity of sewage water is generated and there is no scientific treatment of sewage water by PP</i>	<i>PP has provided two STP of MBBR technology with filters of capacity 150 and 140 cmd respectively for each project separately.</i>
<i>t</i>	<i>PP is creating huge burden on the environment due to day to day waste generation by consumption of natural resources and it is causing huge burden on the public facilities and services on account of environment damage</i>	<i>Dry waste management is carried out by M/s SWACH pune Seva Sahakari Sanstha Ltd. Pune.</i>
<i>y</i>	<i>There is no approach road for fire engine</i>	<i>PP has obtained Fire NOC for both projects. Copy of both projects is</i>

		<i>enclosed herewith as Annexure IX</i>
<i>z</i>	<i>PP has not provided the slope in the ratio of 1:10</i>	<i>No ramps have been constructed in either project.</i>
<i>aa</i>	<i>PP has not provided site margin as per the DC Rules</i>	<i>Construction work is carried out as per the sanctioned plan approved by PMC</i>
<i>bb</i>	<i>PP has not provided fire and safety systems at site.</i>	<i>PP has provided fire and safety measures at site and obtained Fire NOC. Copy of both projects are enclosed herewith as Annexure IX.</i>

Remarks of committee:-

Upon perusal of the report submitted by the Executive Engineer of the Building Permission Department, Pune Municipal Corporation, Pune dated 26.08.2021 and Architect's Certificate, dated 10.08.2021, under Annexure- I & II, it is concluded that these are two different projects which are adjacent to each other and hold different permissions, plinth checking certificates, part completion certificates, side and front margins, separate recreational pen spaces and separate amenity spaces. The total constructed built up area of each developed individual project has not gone beyond 20,000 sq.m and hence does not require prior Environmental Clearance.”

22. Against the above Joint Committee report, the applicant has filed objections to the effect that the same has been prepared at the behest of the Project Proponent and former Principal Secretary, Department of Environment Mr. Anil Diggikar and his Secretary Mr. Kartikey Langote. The same has been prepared on the basis of PMC report as well as the information provided by the Project Proponent and that no actual fact finding has been done by the Committee members. The Joint Committee ignored the fact that the entire development, which has been carried out, is in single premises comprising of single boundary wall. There is no physical separation in the development of Phase-I & II and Phase-III & IV and mere obtaining separate permissions does not support the finding of

the Joint Committee. The Joint Committee also ignored that the project is a patently integral one situated at single location owned by single Project Proponent, having total BUA of both the phases to be more than 20,000 sq.mtrs, which mandated prior EC and CTE. The Committee failed to impose the Environmental Compensation for not obtaining prior EC as well as CTE & CTO. The Committee also failed to comment on the operation of OWC and stated that the OWC of 250 kg/day is provided in each project. Besides this, there are other grounds on which the Joint Committee report has been vehemently opposed by the applicant.

23. The stand taken by **respondent No.12 – Project Proponent** is that the answering respondent has undertaken two projects namely 'Sai Dwarka Phase-I and II' being developed on land Survey Nos.40/1/1, 40/1/2 and 40/1/3/1 and 'Sai Dwarka Phase III and IV' being developed on land Survey No.40/1/3/2, 40/1/4 and 40/1/5, at the village which has been already cited by the applicant. On 01.04.2014, the answering respondent has obtained approval of layout plans as per the then prevailing laws with respect to Sai Dwarka Phase I & II, which is provided with its own amenity space, garden, parking, club house, open area, etc. as mandated by the applicable municipal laws. The answering respondent also obtained commencement certificates on the same date. It has also given the details of the commencement certificates which have been obtained by it yearly from time to time with respect to Phase I & II. The Phase I & II is an independent residential project comprising of buildings A, B and C having total BUA of 22.642.94 sq.mtrs. Though the proposed construction is over 20,000 sq.mtrs., the answering respondent had carried out construction in pursuance of sanction dated 09.03.2018, which permitted to build only 19,429.71 sq.mtrs., which was below 20,000 sq.mtrs. Therefore, it is apparent that the answering respondent

has not carried out the construction over 20,000 sq.mtrs with respect to Phase I & II. Hence, the same did not require any prior EC.

24. With respect to Phase-III & IV, similar facts have been given by the answering respondent and it is stated that the said project consisted of buildings D, E and F having the total BUA of 22, 368.06 sq.mtrs and in this also, it had not exceeded the construction above 20,000 sq.mtrs and hence, no prior EC was required. For that, it is clarified by the answering respondent that both the projects are two different, distinct and independent projects having independent amenities like space, parking area, open space, clubhouse, STPs amongst others.

25. In order to show that the answering respondent – Project Proponent has not committed any error in not going for prior EC for the construction which it has already done, as the same is till date only below the threshold limit of 20,000 sq.mtrs. The reliance is placed by the Project Proponent upon the judgment of the Hon'ble High Court of Bombay dated 06.03.2013 in **Writ Petition (L) No.470 of 2013**, relevant part of which is quoted hereinbelow:

“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 (Varchman Developers Limited Vs. Union of India & Ors.) and Writ Petition NO. 2809 of 2012 (Nahur Vivekanad Cooperative 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. mtrs. 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 up to 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 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,”

26. It is clear from above that it provided that below threshold limit of 20,000 sq.mtrs., prior EC would not be required and it is only when the said threshold limit of 20,000 sq.mtrs. exceeds, the Project Proponent would be required to obtain prior EC.

27. Besides that, the answering respondent has also relied upon the judgment of the Hon’ble High Court of Bombay dated 09.05.2013 in **Writ Petition No.654 of 2014** (appears to be of **2013** and not 2014) in the case of **Tridhaatu Ventures LLP Vs. State of Maharashtra & Ors.**, wherein the above law is reiterated that the EC is not required for residential project, construction of which is below 20,000 sq.mtrs. The relevant portion of the said judgment is quoted hereunder:

“16. In judgment dated 6 March 2013 in Writ Petition (L) No.470 of 2013, this Court has dealt with a similar controversy and held as under:

“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 (Varchman Developers Limited Vs. Union of India & Ors.) and Writ Petition NO. 2809 of 2012 (Nahur Vivekanad Cooperative 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. mtrs. 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 up to 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 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,”

(emphasis supplied)

17. Having heard learned counsel for parties, and in the facts and circumstances of the case and particularly in view of the fact that the width of the road is sufficient as required by the DCR 1991 and as far as OM is concerned, the same is treated as advisory and not mandatory and in the facts of the present case where the petitioner does not propose to make any further digging in the earth or laying any further foundation structure for the purpose of putting up construction upto 19,000 sq. mtrs of built up area including 4935 sq. mtrs already put up by the petitioner, we are inclined to direct the respondent- Municipal Corporation to permit the petitioner to up construction upto to 19,000 sq. mtrs. including 4935 sq. mtrs. already put up, subject to following condition:

(i) that the petitioner as well as the Chairman of ‘Sri Swati Co operative Housing Society ‘ shall file undertakings stating that the petitioner and the society shall not put up any construction

exceeding 20,000 sq. mtrs including the existing construction on the site being land CTS NO. 275, 275/1 to 276/1 to 16 & 277 village of Borla, Govandi.

28. It is submitted by the answering respondent that in pursuance of the order of the Hon'ble High Court of Bombay dated 24.03.2014, passed in Writ Petition No.655 of 2014 (**Glomore Construction and others Vs. Union of India**), the Environment Department of the Govt. of Maharashtra issued Circular dated 21.04.2015, which is annexed at page 1069 of the paper-book, wherein it is clearly mentioned as follows:

“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 m2 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 undertaken 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 concerned 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.”

29. It is further submitted by respondent No.12 – Project Proponent that on 17.03.2020, the MPCB has granted Consent to Establish for construction of above housing project of Phase-I & II, which is valid for five years or till the commissioning of the project, whichever is earlier and on the same date, it also gave Consent to Establish for construction of housing project of Phase-III & IV with the same terms and conditions

for the same period. Further it is mentioned that since construction is not completed/commissioned, the answering respondent is not required to obtain Consent to Operate at this point in time.

30. Further it is submitted that all the allegations with respect to non-installation of rain water harvesting system, not doing soil preservation and soil system, non-installation of Sewage Treatment Plant (STP), illegal installation and operation of DG Sets and non-installation of Solar system, are false allegations as these lacunae have been taken care of by the answering respondent, who is responsible builder and take special care for protection of environment.

31. We also find that additional affidavit dated 19.06.2023 has been submitted by respondent No.12 – Project Proponent wherein same averments have been reiterated which are stated by it in their affidavit-in-reply, narrated by us herein above, except that one map/plan has been attached at page 1348 of the paper-book.

32. The stand taken by **respondent Nos.8 and 9 – PMC** is that it has granted permissions to the Project Proponent as per the provisions of the Maharashtra Regional and Town Planning (MRTP) Act, 1966 and DC Rules. There is no violation done at their end while granting said permissions.

33. From the side of **respondent Nos.6 and 7 – MPCB**, the stand taken is that for both projects of the Project Proponent, Consent to Establish was granted on 17.03.2020. This reply does not indicate as to whether the Consent to Operate was taken by the Project Proponent, as no such evidence has been given from the side of the Project Proponent.

34. From the side of **respondent No.4 – SEIAA**, following stand is taken:

According to the answering respondent, there are two plots having separate demarcation, independent layout sanctions and building

permission from the PMC dated 09.03.2018. The total BUA as per sanction is 19,357.20 sq.mtrs, which is less than 20,000 sq.mtrs. Therefore, there was no violation of EIA Notification 2006. A show-cause notice was issued by them under Section 5 of the Environment (Protection) Act, but later on the same was withdrawn and the complaint made in this regard against the Project Proponent was dismissed. It appears from paragraph No.7 of the reply that the Project Proponent moved proposal for granting prior EC for both phases i.e. Phase I & II and Phase III & IV, which was considered by SEAC in its meeting held on 28.12.2019, in which Phase-I & II was shown to have total BUA of 22,642.94 sq.mtrs and Phase-III & IV was shown to have total BUA of 22,368.06 sq.mtrs. Both these proposals were recommended by SEAC-III for grant of EC and the answering respondent decided to grant EC in its meeting held on 01.10.2021. We find few discrepancies in the dates of the meetings when the said proposals were considered because in paragraph No.8 of the reply, it is mentioned that the answering respondent decided in the meeting dated 01.10.2021 to grant EC while in another paragraph No.8 on page no.1400 of the paper-book, the date of meeting is mentioned as 05.08.2021 when the proposals were considered. But the date of grant of EC was taken to be 05.10.2021 as the same has been mentioned in two ECs granted for these projects, which bear the date of 05.08.2021. We deprecate the practice of SEIAA in submitting the affidavits before us in such light manner without verifying the same.

35. On the basis of above pleadings and the arguments made by the respective learned counsel, following issues are being framed by us for determination of the dispute involved herein:

Issues :

- (i) Whether the Phase-I & II and Phase-III & IV are integral part of one single project undertaken by respondent No.12 – Project Proponent or they should be treated to be two different projects ?
- (ii) Whether respondent No.12 – Project Proponent was required to obtain prior Environmental Clearance for each project separately because the total Built-up Area (BUA) is shown to be more than 20,000 sq.mtrs in each of these projects ?
- (iii) Whether the Consent to Establish and Consent to Operate were required to be taken by respondent No.12 – Project Proponent for each project separately ? If yes, from which date ?
- (iv) What should be the Environmental Damage Compensation, if any ?

Findings :**Issue No.(i) :**

36. As per this issue, we have to decide as to whether the Phase-I & II and Phase-III & IV are integral part of one single project undertaken by respondent No.12 – Project Proponent or they should be treated to be two different projects. In this regard, the learned counsel for the applicant vehemently argued that the project in question is owned by a single Project Proponent i.e. respondent No.12 who had secured loan by mortgaging the property in question, which shows that the entire property which comprises of Phase-I to II and Phase-III to IV, were mortgaged in order to secure the loan amount. Had they not been a single project, it would not have mortgaged the said property and would have redeemed the same subsequently on the basis of common documents. We are not in agreement with the said argument because if the Project Proponent is the same person for both the projects, who tries

to secure loan by mortgaging the property, that cannot be taken to mean that since the properties used for obtaining the loan were the same, the conclusion should be drawn that the project was one and not two different projects.

37. Next the learned counsel for the applicant has urged that the project brochure shows that the entire project consists of six buildings, three on one side and three on the other, which were adjacent to each other, which shows that the entire project was one and was deliberately divided into two in order to defeat the provisions of EIA Notification, 2006, which mandates that if construction goes beyond 20,000 sq.mtrs., then prior Environmental Clearance would be required. We are not in agreement with this argument because in the case in hand, the Project Proponent has obtained separate sanction for Phase-I & II and a different sanction for Phase-III and IV, which are also separate plots although they belong to the same developer. Besides that, the report of the Joint Committee indicates that these are two different projects which are adjacent to each other and hold different permissions, plinth checking certificates, completion certificates, side spaces and separate amenity spaces, which clearly prove that the said projects are two different projects and not one as is being tried to be asserted by the applicant. We decide the issue No.(i) accordingly, holding that the projects namely “Sai Dwarika” at Survey Nos.40/1/1, 40/1/2 and 40/1/3/1 as Phase-III and IV and Survey Nos.40/1/3/2, 40/1/4 and 40/1/5 as Phase-I and II at village Yewalewadi, Taluka Haveli, District Pune, are two different projects.

Issue No. (ii) :

37. As per this issue, we have to decide as to whether respondent No.12 – Project Proponent was required to obtain prior Environmental Clearance for each project separately because the total Built-up Area

(BUA) is shown to be more than 20,000 sq.mtrs in each of these projects. In respect of this, we have to consider the position of law in the light of the judgment of the Hon'ble High Court of Bombay in the case of **Glomere Construction and others** (supra), which clearly lays down that if the construction does not exceed 20,000 sq.mtrs, the prior Environmental Clearance (EC) would not be required and that prior EC would only be required when the said threshold limit of construction is going to be crossed by the Project Proponent. In the case in hand, we find from the evidence which has come on record that the record reveals that at page 1547 of the paper-book, the applicant has given the date of obtaining Commencement Certificate for Phase-I & II dated 03.05.2017 showing the total BUA to be 21,697.37 sq.mtrs and for Phase-III & IV, the date of obtaining Commencement Certificate is given as 31.03.2017 which shows total BUA as 21,577.18 sq.mtrs. Prior to that, the commencement certificates were issued for the area less than 20,000 sq.mtrs. It was in the year 2017 for the first time that the Project Proponent was granted Commencement Certificate for the area over 20,000 sq.mtrs. He applied for grant of EC on 08.08.2019 which is admitted by the parties and till that date i.e. 08.08.2019, he had raised construction as per the Architect Certificate dated 10.08.2021, the total BUA was below 20,000 sq.mtrs. in each project. In the Joint Committee report, it is mentioned that the Architect's Certificate dated 10.08.2021, indicated that total BUA by then was 19,315.42 sq.mtrs for Phase-I & II (Part-I) of the project. Similarly, the Architect's Certificate dated 10.08.2021 indicates that total BUA for Phase-III and IV (Part-II) of the project was 19,429.71 sq.mtrs. Therefore, it is evident from the above position given by the Joint Committee that in each project, the Project Proponent did not exceed the total BUA beyond 20,000 sq.mtrs and moved for prior EC to be granted before exceeding that threshold

construction limit by moving an application on 08.08.2019. We make it clear that in **Ajay Jayvantrao Bhosale Vs. Union of India and Ors. (Appeal No.26 of 2020, decided on 03.04.2023)**, we have already taken following view based on the judgment of the Hon'ble High Court of Bombay in the case of **Glomore Construction and others** (supra):

*"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 rEC 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.mtrs. 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.mtrs., 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.”

38. Therefore, in our estimation, there is no violation of EIA Notification 2006 at the hand of the Project Proponent. We decide issue no. (ii) accordingly.

Issue No. (iii) and Issue No. (iv) :

39. As per these issues, we have to decide as to whether the Consent to Establish and Consent to Operate were required to be taken by respondent No.12 – Project Proponent for each project separately ? If yes,

from which date and what should be the Environmental Damage Compensation, if any.

40. First, we take up the issue as to Consent to Establish. As per directions issued by the Central Pollution Control Board (CPCB), vide letter dated 07.03.2016, for building and construction more than 20,000 sq.mtrs BUA, are categorized at serial No.21 and marked as Orange category project for obtaining Consent and under that category, the Project Proponent needs to obtain the Consent to Establish from the authorities concerned – MPCB. The Commencement Certificate for the project (Phase-I & II) is taken on 01.04.2014 and for Phase-III & IV, it is taken on 09.01.2014. Therefore, from these dates, we presume initiation of the construction of the project without any Consent to Establish as the same has been taken on 17.03.2020. Therefore, the period from 09.01.2014 to 17.03.2020 would be treated to be the period of violation, for which we direct the MPCB – respondent Nos.6 and 7 to calculate the Environmental Damage Compensation in accordance with the principles laid down in the case of ***Paryavaran Suraksha Samiti and another Vs. Union of India & Ors.*** We decide issue No.(iii) accordingly.

41. As far as the issue regarding Environmental Damage Compensation is concerned, it is admitted that the Project Proponent – respondent No.12 has procured the Occupancy Check Certificate (OCC) for Phase-III and IV of the project on 21.02.2019 and not for Phase-I & II. Therefore, we presume that Phase-III & IV was given Occupancy Check Certificate on 21.02.2019, but till date, it is apparent that no Consent to Operate has been taken. Therefore, from 21.02.2019 onwards, for the project i.e. Phase-III & IV, we direct MPCB – respondent Nos.6 and 7 to make calculation with respect to environmental compensation as per the principles laid down in the case of ***Paryavaran Suraksha Samiti***

(supra), after giving an opportunity of hearing to the Project Proponent – respondent No.12.

42. On the basis of analysis made by us, we are of the view that this Original Application needs to be disposed of with the direction to MPCB – respondent Nos.6 and 7 to make calculation of the environmental compensation as directed by us while deciding issue No.(iii) above, which exercise, we direct, shall be completed within two months from the date of uploading of this judgment and that the amount so calculated shall be deposited by respondent No.12 – Project Proponent with MPCB within one month thereafter. The said amount shall be utilized for improvement of the environment in the project affected area.

43. In view of disposal of Original Application, pending Interlocutory Applications stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

SEPTEMBER 26 , 2023
O.A. NO.20 OF 2020 (WZ)
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