

NEXT DATE
09/05/2023

HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

APPLICATION NO. 105/2021 (WZ)

Shashikant Vitthal Kamble Applicant

VERSUS

Ministry of Environment and Respondents
Forest, New Delhi & Ors

**AFFIDAVIT BY RESPONDENTS NO. 14
AURNAGABAD HOLIDAY RESORTS
POINT-WISE REPLY TO
JOINT COMMITTEE REPORT**

INDEX

Sr.	Particulars	Page
1	Point-wise reply to allegations in the Original Application and observations of the Joint Committee Report dated 20-082022 (Contiguous Page Nos. from 45 to 90)	228-244

Date: **08/05/2023**

Place: Thane

Filed by:

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Chartered Engineer, FIE, Arbitrator-IIE, LLM **ADVOCATE**

ABBREVIATIONS USED

Short form	Full-form
MoEFCC	Ministry of Environment, Forest and Climate Change
CGWA	Central Ground Water Authority
CPCB	Central Pollution Control Board
SEIAA	State Environment Impact Assessment Authority
SEAC	State Expert Appraisal Committee
MPCB	Maharashtra Pollution Control Board
DEIAA	District Environment Impact Assessment Authority
PMC	Pune Municipal Corporation
RTI	Right to Information
STP	Sewage Treatment Plant
PP	Project Proponent
NGT	National Green Tribunal
JCR	Joint Committee Report
EC	Environmental Clearance
OM	Office Memorandum
OA	Original Application
BUA	Built up Area
PCMC	Pimpri Chinchwad Municipal Corporation
MRTP	Maharashtra Regional and Town Planning 1966 & UDPCR 2034
UGT	Underground Tank
DG	Deiseal Generator
OWC	Organic Waste Converter
CMD	Cubic Meter Day
RG	Recreational Ground
AAC	Autoclaved aerated concrete blocks

AFFIDAVIT BY RESPONDENTS NO. 14 AURNAGABAD HOLIDAY RESORTS POINT-WISE REPLY TO JOINT COMMITTEE REPORT

POINTWISE REPLY TO THE ALLEGATIONS

Grounds of the OA

➔ Allegation Page No: 8, Point No: 18

The Applicant submits that the said project was proposed in the year 2021 and the construction in the said project is carried out by Respondent No. 14, over these years and till today the Respondent is into constructing towers after towers, Consent to Establish, Consent to Operate and Environment Clearance Permission. The Applicant further submits that no application was proposed by the respondent No. 14 for obtaining the Consent to Establish, Consent to Operate and Environment Clearance Permission. The Respondent No.14 right from the year 2021 and as on today is carrying out construction without Consent to Establish, Consent to Operate and Environment Clearance Permission. Thereafter since 2021, till today the Respondent No. 14 has never made an application for obtaining Consent to Establish, Consent to Operate and Environment Clearance Permission. The Respondent over these years is violating the Environmental Laws and has acted in contravention of the Laws.

Reply: As per the New DP layout dated 16/09/2005 the total built-up area was 13536.93 m². After this several revisions took place till 02/02/2012. But the **'total covered built-up construction area (including FSI and non-FSI)'** TBUA was not increased by more than 20,000 m².

At the time of the revised building permission dated 18/06/2012 sectioned TBUA was increased and became 26110.5 m².

But PP has never crossed the threshold limit of EC i.e., 20,000 m² while doing construction.

The Joint Committee Report submitted by the PMC and the architect certificate, both, clarified that the present construction of the project is 12457.37 m² which is much below the threshold limit of the EC. [■ Page No. 47 Point No. 3.1.1, Table Row No.10]

PP denies the allegation made by the application that PP has not applied for consent to establish, Consent to operate or environmental clearance. This is a misleading fact.

PP first time applied to the MOEFCC on 19.05.2017 for environmental clearance under the Violation Notification 14/03/2017 window.

The complete history is mentioned by the Joint Committee Report. Not only this, an applicant in his own application admitted this fact and also annexed the MOM of SEIAA.

➔ **Allegation Page No: 9, Point No: 19**

The Applicant submits that in the SEIAA 230th meeting dated 1 October 2021 the proposal made by respondent no. 14 for the Environmental Clearance Permission was placed in the meeting. The Applicant further submits that in the said meeting the Environmental Clearance Permission of the Respondent No. 14 was differed. The Said minutes are annexed herewith at 'Annexure A'.

Reply: Yes, SEIAA in its 230th Part A, meeting deferred the PP's proposal but it was deferred on the grounds of the requirement for additional details regarding the construction along with the architect certificate and the chronology of the proposal. Then 235th SEIAA meeting, deferred the proposal for

submission of a revised architect certificate and 247th SEIAA meeting, deferred the proposal due to network issues from the client end.

➔ **Allegation Page No: 9 : Point No: 20**

The Applicant submits on 24/08/2021, an application under the Right to Information was proposed by the Applicant to the Pune Municipal Corporation, Building Department, seeking information for the environmental Violations done by the Respondent No. 14. The Respondent submits that the no sufficient and relevant information was communicated to Applicant regarding the Violations committed by the Respondent No. 14 by the Pune Municipal Corporation, Building Department. The said RTI Application is annexed herewith Annexure 'B'.

Reply: Nothing to say

➔ **Allegation Page No: 9, Point No: 21**

The Applicant submits that it was found that the Respondent No. 14 has carried out construction without Consent to Establish, Consent to Operate and Environment Clearance Permission and other necessary permission. The Respondent No. 14 has constructed the illegal structure, without any fear of litigations, government actions, which would arise in the future. The Respondent No. 14 without Consent to Establish, Consent to Operate and Environment Clearance Permission has continued and is carrying on its Civil Construction activity, till today. The Applicant further submits that the Respondent No. 14 has violated the directions given by the government authorities and further is showing disrespect towards the authorities and the directions issued, by the government authorities, which were essential for the environment. The Applicant submits that the photographs of the said building showing the construction carried out by respondent no. 12 is annexed herewith at Annexure 'C'.

Reply: Respondent submits that he has applied for the EC to MOEFCC as per the notification

14/03/2017. This application was as per the provision of the violation category.

Yes, it is right that PP has not applied for consent to establish and consent to operate.

But PP denied the allegation made by the applicant that the PP continued the construction.

PP has stopped the construction on 15.04.2015 after construction of the first two buildings (Wing B & wing C). The project 'total covered built-up construction area including FSI and non-FSI' construction as on date, is 12177.37 m².

PP has not crossed 20,000 m² yet. The completed construction of the project is as per the PMC sanctions only therefore the allegations made by the applicant are wrong that PP disrespects the government's authorities.

➔ **Allegation Page No: 10, Point No: 22**

The Applicant submits that the Respondent No. 14 has constructed buildings without the sanction of the planning authority and also the respondent No. 14 has not complied with the directions as required by law, which are essential for the Environment. The Respondent No.14 is a habitual environment polluter and the Respondent No. 14 is doing these illegal acts, intentionally and has violated the Environmental Law and Construction Laws of the concerned government authority. The Applicant further submits that to investigate the quantum of damage caused by the Respondent No. 14 to the Environment, the Applicant made a site visit and the on-site observations made by Applicant are as follows;

Reply: PP dines the allegation made by the applicant. PP is a reputed and well-known builder. PP's present construction is per the sanctions of the

local body i.e., PMC. PP has followed all the directions given by the PMC in its sanction /approval.

a. The Respondent No. 14 has extracted ground water through drilling bore in the ground. While doing so the Respondent No. 14 has not taken any prior permission nor as has applied for appropriate authority. The Respondent No. 14 has overlooked upon the norms laid down by the water authorities, which are essential and critical for the extraction of Ground Water. The Respondent No. 14 has also violated the rules which are laid down by the authority for extraction of ground water. The Respondent No. 14 has acted beyond the law and has crossed all the limit and has gone up to the extent of extracting ground water without the permission of the water authorities. The best example of the violation of the permissions rules, norms and regulations, in the said project is carrying on construction in the said project without Consent to Establish, Consent to Operate and Environment Clearance Permission. This acts of the Respondent No. 14 has resulted in excessive and extreme use of groundwater resource, by the Respondent No. 14, which can have serious concern, such as uplifting and seismic activities, ecological environment deterioration, land subsidence. Similarly, the nearby rural areas where there is a shortage of water, the livelihood for the rural people and food security will have large implications.

Reply: Yes, the Project has an existing borewell and PP does not have CGWA permission. But PP has applied for the same on 23.02.2023.

PP has already replied to MPCB letter on the issue of 'Consent to Establish' and the EC.

b. The Respondent No. 14 did not carry out plantation as per the guidelines by the appropriate government authority but the Respondent No. 11 has not planted trees and is misleading the appropriate government authorities. Thereafter the Respondent No.14 was to submit the exact location of the plantation of trees. The Respondent No. 14 has utilized all the possible area and has used the remaining areas construction of amenities in the said project. In this pandemic of Covid - 19, allergies and diseases tend to send at a faster rate. Further, after perusal of the Minutes, the authorities have not granted the

permission for the amenities. Hence, considering the situation of Covid - 19, the Respondent No. 14 was to submit the details of collection, segregation and disposal plan of used mask and gloves, etc. as precautions being biomedical waste. Similarly, the water extraction or the water use permission also has not been granted by the water authorities. The best example of the violation of the permissions rules, norms and regulations, very well presented by the Respondent No. 14 were it has carried out illegal construction in the said project, without Environmental clearance permission. The Respondent No. 14 has acted beyond its capacity and in order to attract more and more customers for its scheme and sale of its flats and shops, the Respondent No. 14 is illegally providing facilities to innocent people. The amenities will unnecessary consume humongous metric tons of water and extracting the water from the ground will result in nearby rural areas where there is a shortage of water, the livelihood for the rural people and food security will have large implications.

Reply: For the use of groundwater, PP has already submitted his reply in above point. During the construction of first two buildings, the groundwater and tanker water was used. As per the CGWA Rules, PP is willing to pay the penalty towards the groundwater used.

c. Considering the shortage and limited resources available to the Respondent No. 14 for the water, the Respondent No. 14 has failed installing Rain Water Harvesting System. The Respondent No. 14 is only focusing on carrying out illegal construction in the said project and thereafter Respondent No. 14 is building towers after towers but is lacking with basic water facility. All the necessary dimensions have been provided by the authorities in the minutes and thereafter the Respondent No. 14 has failed implementing the same, in the said project. The Respondent No.11 is having destructive approach towards the environment. In the minutes, it also clearly directs the Respondent No. 14 for making provisions for Underground Water Tank. The Respondent No.11 providing no heed to the permissions and direction of the authorities, the Respondent No. 14 has utilized the said area for expansion of its parking area. The connected storage for the accumulation of water is the storm water

drainages. No outlet have been designed or compartments have been made available for the drains. Instead the areas and the compartments had been utilized in the development of internal roads and foot-paths in the premises in order to increase the reachability. The Respondent No.14 is not bothered towards conserving and saving the environment, but the Respondent No. 11 is give importance to making money and is seeing to make maximum margins out of the scheme. Hence the Respondent No. 14 is cutting down the crucial environment components and replacing the area of those components in making money.

Reply: Yes, rainwater harvesting pits are not constructed yet. The building plan sanction doesn't have such condition. The project is under construction and the EC is in process. PP will provide the rainwater harvesting pits as per the direction of SEIAA and as stipulated in EC. PP on his own has proposed 7 Nos. of recharge pits, which would be completed along with the project.

Also, PP denied the allegation made by the applicant regarding the use of the area demarcated for the underground tank for the expansion of the parking. The joint committee in its report has clarified that ***"Parking was not observed at the location of underground water tank"***. [■ Page No. 51, Point No. 3.4]

There is no deviation in the PMC sanction and the site construction

d. In the said project, the Respondent No. 14 doesn't have the Sewage, Waste Water Management Systems and Pollution Monitoring Systems. In the Minutes, the technology to be used for the Sewage Treatment is mentioned but the Respondent No. 14 violating the stipulated direction of the authorities have acted in contravention and have overlooked upon the implementation of the facility. Also it is observed the Respondent No. 14 has not made any setup for

the segregation. Similarly, the Solid Waste Management is also not organized by the Respondent No. 14. The Solid waste is not segregated and is not bifurcated into Biodegradable waste, Non-Biodegradable waste, E-waste, etc. All types of solid wastes are dumped together without segregation. The waste if not separated it will affect the Environment and also the wastes can affect the health and well-being in many ways. Also for the removal of the derbies the Respondent No. 14 was directed to submit the details of the plot where excess derbies are to be removed along with the area of the plot, its capacity to absorb the quantity and the ownership documents, were to be submitted to the government authority for the Consent to Establish, Consent to Operate and Environment Clearance Permission. The Respondent No. 14 is carrying out illegal activates such as illegal dumping and exporting them, which is resulting in damaging the environment.

Reply: Allegation is denied. PP has provided the STP with a capacity 150 m³/day. **The present STP is operational. The finding of the JC is incorrect. This fact can be verified by visiting the site anytime.** The excess treated water has been connected to the existing drainage line of the PMC as per the NOC dated 23.03.2016 provided by the PMC.

PP segregates the solid waste per the category like biodegradable and non-biodegradable waste. The generated solid gets handover to the PMC-approved third party which disposed of it as per the prescribed guideline.

This fact is recorded in the Joint Committee Report. [■ Page No. 51, Point No. 3.5]. No solid waste remains unattended.

e. Further the Common Areas and Facilities and the Amities area, the Respondent No. 14 was supposed to plant several trees in its surroundings. But the Respondent No. 14 has not-considered tree plantation as important and has further dedicated the space required for the plantation for development roads

in the premises and has made Jogging and Cycling Tracks, in order attract more and more customers and increase it sales. The Respondent No. 14 has violated and has acted in contravention of the minutes. The Respondent No. 14 and cut-down many trees which were there on the project site in order to start the construction work, in the said project. The Respondent No. 14 as per law was to plant the trees against the trees which were cut-down by the Respondent No. 14. The Respondent No. 14, till date has not planted any trees for the trees which are cut-down by the Respondent No. 14. The Respondent No. 14 has given priority to its profit margins and has over looked upon the Environment Hazardous. The reserve areas for tree plantation have been utilized by the Respondent No. 14 for setting up Electricity Generator Sets I Units. The Respondent No.14 has installed the higher loads of power supply than prescribed in the Consent to Establish, Consent to Operate and Environment Clearance Permission. Thereafter Solar PV Panels were prescribed by the government authorities, but the Respondent No. 14 thereafter failed installing the panels. Further the Respondent No.14 is not following the rules, regulations and guidelines laid by the authorities. The Respondent No. 14 has not installed any Solar Panels, in the said project. As per the guidelines from the appropriate government authorities, it is mandatory to install the solar units with the project premises to conserve maximum energy and to increase the use of renewable energy. This can lead to environmental damage. The Respondent No. 14 has acted in contravention of the Rules and Guidelines laid down in the Consent to Establish, Consent to Operate and Environment Clearance Permission and has not bothered to respect the guidelines laid down by the various addressed authorities which are for the well being of the environment. The best example of the violation of the permissions rules, norms and regulations, very well presented by the respondent No. 14 its illegal construction

Reply: PP has already explained the status of the plantation in point no. ____.

No trees were cut during the construction of the 2 buildings. The PP has provided road, pathway, electrical generator, etc. as per the requirement.

➔ **Allegation Page No: 15 Point No: 23**

The Applicant submits that form such a massive violation of the illegal construction, without Consent to Establish, Consent to Operate and Environment Clearance Permission and other necessary permission, it can be anticipated that the Respondent No. 14 is grave offender of the environmental laws and has the unjustified interest in violating the laws, laid down by the authorities, for the welfare of the people. The Consent to Establish, Consent to Operate and Environment Clearance Permission are not being issued to the Respondent No. 14, for commencement of work or any Civil works for the rest of its project. The Respondent No. 14 is a repeated offender and is deliberately acted beyond law. The Applicant submits that completed the construction work and the Respondent No. 14 has sold out the flats to the desired buyers. The Respondent No. 14 has completed the construction in the said project by violating the Environmental laws and also is not having valid Consent to Establish, Consent to Operate and Environment Clearance Permission

Reply: PP has not applied for 'Consent to Establish' or 'Consent to Operate'. PP also agreed that PP has started the construction during the pendency of the EC application. **The 'total covered built-up construction area including FSI and non-FSI' is only 12177.37m².** As per the various High Court Judgements, the violation is there when construction exceeds 20,000m². **[Ax. R-2 from Page No.159 to 186] ■**

PP's EC application is in process. After getting the EC, PP will apply for the 'Consent to Establish'. PP is willing to pay the MPCB Penal fee as per the Circular dated 12/07/2022 and the calculation done by the SEIAA at the time of the appraisal of the project against the damage caused to the environment.

➔ **Allegation Page No: 16 Point No: 24**

The Applicant submits that the Respondent No. 14 has not complied with all the compulsory conditions and directions as per law, for obtaining the Consent to Establish, Consent to Operate and Environment Clearance Permission and other necessary permission. The Respondent No. 14 has committed a serious offense and knowing the offenses; the Respondent No. 14 has continued to committing the same, repeatedly and regularly and further through its actions has showed disrespect and has insulted the appropriate government authorities. From the actions of the Respondent No. 14, it can be seen that the Respondent No. 14 is not following the principles of Sustainable Development, therefore, it is right to say that the Respondent No. 14 is a Habitual Environment Polluter.

Reply: PP denies the allegation. PP is not a habitual environmental polluter. PP started the construction as per the PMC sanction.

PP on his own has submitted the application for Environmental Clearance under violation Notification 14/03/2017 and during the window period.

➔ **Allegation Page No: 16 Point No: 25**

The Applicant submits that the disputed illegal construction is being carried out, by the Respondent No. 14 without any mention and in contravention to the Consent to Establish, Consent to Operate and Environment Clearance Permission. The Respondent No. 14 is not having Consent to Establish, Consent to Operate and Consent to Establish, Consent to Operate and Environment Clearance Permission and the construction of the same is neither recorded in the sanctioned layout plan, issued by the planning authority and thereafter the Respondent No. 14 in order to wind-up the work, the Respondent No.14 did wait for the Consent to Establish, Consent to Operate and Consent to Establish, Consent to Operate and Environment Clearance Permission. The Respondent No. 14 has continued the construction and completion of the work in the said scheme without having the Consent to Establish, Consent to Operate and Environment Clearance Permission.

Reply: As submitted above PP has constructed on 12177.37m² till date. Therefore, the factual/on-site violation in terms of the construction has not taken place.

➔ **Allegation Page No: 17 Point No: 26**

The Applicant submits that the Respondent No. 14 is a repeated, brutal, and a habitual Environment Polluter also it is seen that the Respondent No. 14 has violated the Environmental Laws, caused damage to the Environment and risking the life of innocent people

Reply: PP already replied the same in above points.

➔ **Allegation Page No: 17 Point No: 27**

The Applicant is residing within the territorial limits of this Hon'ble National Green Tribunal and the Respondents are the authorities within the territorial limits of the jurisdiction of this Hon'ble National Green Tribunal and therefore this Hon'ble National Green Tribunal is having jurisdiction to try and entertain and decide the present.

Reply: Nothing to say

**POINTWISE REPLY TO
JOINT COMMITTEE REPORTS :**

CONCLUSION

■ Page No. 52, Point No. 4.0]

➔ **Allegation Page No: 52 Point No: 4.1**

Two buildings (B & C) with configuration-BP+P+P+11 each, foundation and column of building-A found to be constructed. The PP has made construction of TBUA: 12457.37 sq.m (i.e. Building- B: TBUA- 4777.63 sq.m, Building-C: TBUA- 4332.30 sq.m & Utility & Services: TBUA- 347.44 sq.m). No construction work was found during the visit. Possessions of Some flats in Building B & C were handed over to flat owners. PP has not yet obtained Completion Certificate.

Reply: The project is under construction and yet to complete. As per Joint Committee Report, PP has constructed only 12457.37m². The PP has not applied for the completion certificate. PP yet to be received the part completion certificate from PMC.

➔ **Allegation Page No: 52 Point No: 4.2**

PP has started of construction without obtaining EC from Environment Department, Government of Maharashtra, violating the provisions of EIA Notification, 2006.

Reply: Yes, as the actual construction area was restricted to under 20000m².

➔ **Allegation Page No: 52 Point No: 4.3**

PP has started development/construction of the project without obtaining CTE from MPCB and violated provisions under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981

Reply: PP has now submitted an application for the 'Consent to Establish' and will pay the penal fees as per MPCB circular dated 12/07/2022.

As per CPCB classification of 2016 also, there is no requirement for 'Consent to Establish' OR 'Consent to Operate' from MPCB, for the residential project, when the 'total covered built-up construction area including FSI and non-FSI' is <20,000m². Unlike the EIA Notification of 14/09/2006, there is no need of "prior" Consent, in the Water Act or when and as long as the project area is <20000m². This is by plain and simple reading of the CPCB Classification of industries.

➔ **Allegation Page No: 52 Point No: 4.4**

PP has started operations of the project without obtaining CTO from MPCB and violated provisions under section 26 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981'.

Reply: PP has not applied for the 'Consent to Establish'. But now submitted an application for the same when the area is going to be above 20,000m².

➔ **Allegation Page No: 52 Point No: 4.5**

MPCB has filed complaint on 05.11.2015 under Section-15 r. w. Section-16 of the Environment (Protection) Act, 1986 and the EIA Notification, 2006 in the Court of Chief Judicial Magistrate (CJM) at Pune for carrying out construction by PP without obtaining Environment Clearance (EC), Consent to Establish (CTE) & Consent to Operate (CTO) from the Board i.e. Criminal Court Case vide no. 0404255 of 2015. The case is still pending. The next date of hearing is 24.08.2022.

Reply: Yes, said the case is pending before Hon'ble Chief Judicial Magistrate (CJM) at Pune.

➔ **Allegation Page No: 53 Point No: 4.6**

PP has a bore well and still extracting groundwater from the borewell, without obtaining NOC from CGWA. STP is installed, however. not in operation and owe for solid waste is not provided and handing over the dry and wet waste to Swacha Pune Seva Sahakari Sanshta Ltd, for further disposal

Reply: PP has already replied to this point. PP has submitted an application to CGWA.

RECOMMENDATIONS OF JOINT COMMITTEE REPORT

➔ **Allegation Page No: 53 Point No: a**

Environment Department, Govt of Maharashtra, may take appropriate actions as per the Standard Operating Procedure (SoP) issued by the MoEF&CC vide Office Memorandum (OM) F. No. 22-21/2020-IA.III dated 07/07/2021 for dealing with EC violation cases as the PP has started construction without obtaining EC in consideration with already filed complaint by MPCB under Section-15 r.w. Section-16 of the Environment (Protection) Act, 1986 and the EIA Notification, 2006 in the Court of Chief Judicial Magistrate (CJM) at Pune (Criminal Court Case vide no. 0404255 of 2015).

Reply: PP's application under Violation Notification 14/03/2017 window for the EC is in process. The damage assessment is yet to be calculated on scientific grounds and as per the SOP 07/07/2021.

PP is willing to submit the BG asked by the SEIAA at the time of the appraisal.

MPCB also filed a complaint before CJM Pune u/s 15 r.w.16 of Environment (Protection) Act, 1986 which is yet to decide.

➔ **Allegation Page No: 53 Point No: b**

Central Ground Water Authority (CGWA) may take necessary action for extraction ground water from the bore well, without obtaining NOC.

Reply: PP already submitted an application to CGWA and is ready to pay the charges and penalty directed by CGWA against this application.



Place: **Pune**
Date: **08 May 2023**

Rameshwar Khune
Respondent No. 14



National Green Tribunal



Case Title	Shashikant Vitthal Kamble Vs. MINISTRY OF ENVIRONMENT AND FOREST AND CLIMATE CHANGE (MOEF & CC) NEW DELHI
Miscellaneous No.	2704138014472021/12
Transaction id	2700410060372023
Bank Transaction id	0805230046788
Payment Date	2023-05-08 00:00:00.0
Amount	100 Rs.
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S. No.	File Name	Party Name	Location	Document Type
1	2023-05-08 OA 105 R-14 Aurangabad Point-wise Reply to JCR.pdf	AURANGABAD HOLIDAY RESORTS	PUNE (WESTERN ZONE BENCH)	Reply