

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Physical Hearing with Hybrid Mode)**

Original Application No. 92/2023/EZ

Dr. Ganesh Das & Ors.

Applicant(s)

Versus

M/s Arya Erectors India Pvt. Ltd. & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 19.07.2024

Date of pronouncement of order: 12.09.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

Applicant: Mr. Vikram Rajkhowa, Adv.

Respondent: Mr. Neelanjan Deka, Adv. (in Virtual Mode) a/w
Mr. Sibojyoti Chakraborty, Adv. for R-1,
Mr. Santanu Bora, Adv. (in Virtual Mode) a/w
Ms. Malabika Roy Dey, Adv. for R-2 & 4,
Ms. Amrita Pandey, Adv. for R-3,
Mr. Parswajyoti Das Nair, Adv. for R-5, (in Virtual Mode),
Mr. Surendra Kumar, Adv. for R-7

ORDER

1. This original application has been filed by the purchasers of houses (Villa/Flats) at Arya Smart Living in Abhaypur, North Guwahati, Assam, constructed by Respondent No. 1 - M/s. Arya Erectors India Pvt. Limited.

2. The grievance of the Applicants is concerning non-compliance with various conditions of Environmental Clearance (EC) dated 21.01.2014, issued to Respondent No. 1 and violation of provisions of EIA Notification of 2006.

3. The Applicants No. 1 to 4 had earlier filed OA No. 32/2023/EZ, raising the grievance against the project, which was disposed of by the Tribunal by order dated 24.03.2023, with a direction to Respondent No. 2-State Level Environment Impact Assessment Authority (SEIAA), Assam to consider and decide the representations dated 06.07.2022 and 20.10.2022 by a reasoned speaking order. Respondent No. 2 by order dated 09.05.2023 has disposed of the representations. The applicants in the OA rely upon various non-compliance and violations reflected in the order of Respondent No. 2 SEIAA, Assam dated 09.05.2023. The Applicants have detailed their grievance in paragraph 5 of the OA as under:

“5. xxxxxxxx

- (i) *After receiving Environmental Clearance dated 21.01.2014, the project proponent has not submitted any compliance report before the concerned authorities (till date), in gross violation of General Conditions mentioned in the said E.O as follows:*

"Part -B. General Conditions

1. *The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by email) to the SEIAA/Regional Office of MoEF.*
9. *The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the SEIAA and Regional Office of MoEF. The criteria pollutant levels namely PM₁₀, PM₂₅, SO₂, NO₂, etc. (ambient levels as well as stack emission) or critical sectoral parameters, indicated for the project shall be monitored and a record be maintained for the public domain.*
10. *The environmental statement for each financial year ending 31st March in Form-V as is mandate to be submitted by the project proponent to the SEIAA and State Pollution Control Board as prescribed under the Environmental (Protection) Rules, 1986, as amended subsequently and shall*

also be sent to the respective Regional Offices of MoEF by email."

- (ii) SEIAA admitted in their speaking order that the flood problem in the Arya Smart Living campus is a genuine one.

The project proponent submitted that-

- (a) the contour survey was done prior to the starting of project and same was approved by GMDA, and
- (b) the project was completed in 2018 and handed over in 2019 to the society.

The applicants beg to state in regard to the aforesaid contentions of respondent No. 1 that-

- (a) Firstly, the project proponent had only submitted the contour survey of the internal site area and not that of the external surrounding areas as required under the Specific Conditions at Part - A (I) (i) of E.C, i.e.,

"The storm water drainage shall be worked out after analysing the contour levels of the site and the surrounding area and the capacity of storm water drainage."

The flood problem in the Arya Smart Living township probably would not have happened, if only the project proponent had complied with the aforesaid Environmental Condition and worked out the storm water drainage after proper contour survey of both internal as well as the external surrounding areas. The suggestion of SEIAA to create a pond inside the township to fill storm water is not a feasible one for a long-term solution as the same is neither approved in the drawings and nor permission is granted for the same.

- (b) Secondly, it is not correct that the project has been handed over by the project proponent to the society. In fact a case is pending before the Hon'ble Gauhati High Court being numbered as W.P(C)/3654/2020, which is preferred by applicant No. 1 against order of the Registrar of Cooperative Societies, Assam, for overlooking the fact that the Director/s of respondent No. 1 company has made their own family members and partners as office bearer of the Arya Smart Living society, which is in conflict of interest, i.e., the project proponent is also the builder/developer as well as the office bearer of the society.

A copy order dated 30.01.2023 is herewith annexed as ANNEXURE — E.

- (c) *Thirdly, Real Estate Regulatory Authority, Assam vide an order dated 13.06.2022 observed that the promoter (respondent No. 1) will submit application in prescribed form regarding extension of project completion period. Furthermore, it is reflected in the said order that the representative of GMDA stated that no occupancy certificate has been issued to the promoter due to deviations in the approved plan.*

A copy of the REAT, Assam order dated 13.06.2022 is part of O.A No. 32/2023/EZ annexed as Annexure-A.

- (d) *The applicants beg to state that the project proponent is yet to complete the project and construction is still continuing without a valid E.O in violation of EIA Notification, 2006.*
- (iii) *The Operation Phase Conditions at Part-A.II.(i) of the E.O requires that-"The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the SEIAA before the project is commissioned for operation." But the SEIAA speaking order do not mention the submission of any report in this regard.*
- (iv) *The Operational Phase Conditions at A.II.(v) of the E.O requires that a peripheral green belt of 3 mtrs. width shall be developed all around the plot area and density preferably with local species along the periphery of the plot shall be raised so as to provide protection against articulates and noise. Be it stated that the project proponent has not maintained 3 mtrs. green belt all around the plot and in fact have constructed drains, pathways, etc., in the supposed green belt area. The project proponent is trying to mislead by claiming that the green belt is 9000 sq.m. by including common garden areas within the township. The requirement is of a 3 mtr. green belt all across the plot covering an area of 7484.96 sq.m., and same shall not include the other common areas like parks, lawns, etc. Unfortunately, SEIAA speaking order is silent on the issue of green belt.*
- (v) *The Operation Phase Conditions at A.II.(x) of E.O requires that-"a report on the energy conservation measures confirming to energy conservation norms finalized by Bureau of Energy Efficiency should be prepared incorporating details about building materials and technology, R& U factors, etc., and submit to SEIAA in three months." But the SEIAA speaking order do not mention the submission of any report in this regard. That according to the RTI*

response received earlier from SEIAA the report pertaining to aforesaid energy conservation measures etc. which was to be submitted in three months is not available.

- (vi) *Project proponent received E.O on 21.01.2014 with validity for a period of 5 years, i.e., till 21.01.2019. In the meantime, MoEF&CC vide O.M dated 12.04.2016 extended the validity of E.O of the projects, which had not completed five (5) years on the date of publication of Notification i.e., 29/05/2015 to seven (7) years. Accordingly, the E.O dated 21/01/2014 of project proponent also got automatically extended to 7 years, i.e., up to 21/01/2021. However, the project construction of project proponent is yet to be completed and therefore they were required to apply for the extension of E.O dated 21/01/2014 upon its expiry on 21/01/2021, but as highlighted RTI reply of SEIAA dated 28/12/2020 and 13/05/2022 the project proponent has not applied for extension of E.O dated 21.01.2014 till date, thereby operating without a valid E.O from 21/01/2021 onwards in violation of laws. In this regard the speaking order of SEIAA is silent and SEIAA seem to be accepting the contention of the project proponent on face value rather than on the basis of cogent materials.”*

4. The case of the applicants is that Specific Condition at part A(I)(i), and operation phase condition at part-A (II)(i), part-A(II)(v), part-A(II)(x) of EC have not been complied with and EC has expired on 21.01.2021, but the Respondent No. 1, in violation of EIA Notification, 2006 without getting the EC extended, is continuing with the construction of the project and that Respondent No. 1 has done expansion of project without EC appraisal.

5. The applicants have prayed for a direction to Respondent No. 1 to comply with the EC conditions, not to operate without valid EC and to initiate action against Respondent No. 1 for violation of EC conditions.

6. The Tribunal, after considering the grievance of the applicant in detail by order dated 22.08.2023, had issued notice to the respondents. Thereafter, reply and rejoinder have been filed.

7. Respondent No. 1 has filed the counter affidavit raising the preliminary objections of *res judicata*, limitation, and locus ie. the applicants are not the persons aggrieved. On merit also Respondent No. 1 has taken the plea that the flooding problem arose because of the construction of a new drain by the PWD with the raised level. The plea relating to the violation of EC condition has been denied and the conclusion of SEIAA in respect of non-submission of regular six monthly reports has been disputed.

8. Respondent No. 2, SEIAA, Assam by filing the counter affidavit has taken the stand that representations filed by Applicants No. 1 to 4 have been decided after giving an opportunity of hearing. Counter Affidavit also refers to the formation of a committee and the site inspection and the finding of that Committee. It discloses that for non-submission of half yearly compliance report, a written warning was issued by Respondent No. 2 SEIAA, Assam to Respondent No. 1.

9. Respondent No. 3, Ministry of Environment, Forest and Climate Change (MoEF&CC) by filing the reply has placed on record the EIA Notification, 2006, SOP issued vide OM dated 07.07.2021 for identification and handling of violation cases under EIA Notification, 2006 and the Notification dated 28.08.2014 authorizing SEIAAs constituted by Central Government under section 3(3) of the Environment (Protection) Act, 1986 (EP Act, 1986) and delegating the power under section 19 of the Act.

10. Respondent No. 7, Assam State Pollution Control Board (ASPCCB) has filed the reply disclosing that Respondent No. 1 had obtained CTO on 12.10.2022 which was valid up to 31.03.2023. Thereafter, Respondent No. 1 failed to apply for renewal of the CTO. The reply also discloses that

Respondent No. 1 had failed to obtain permission from the Central Ground Water Authority (CGWA) for extraction of groundwater and that during the inspection on 14.09.2023, the Sewage Treatment Plant (STP) was not found operational and that though the stormwater drainage system was found in place but the potential issues related to the proper gradient flow capacity of rainwater and the adjustment of carrying capacity with the final load bearing drainage system was found. The affidavit of Respondent No. 7 also mentions that during the inspection storm water drain exhibited a greyish to blackish colour indicating potential neglect in maintenance by the housing entity, possibly due to blocked outlets.

11. A separate reply on behalf of Respondent No. 4, Guwahati Metropolitan Development Authority (GMDA) (wrongly under the heading as “affidavit on behalf of Respondent No. 3”) has been filed without touching upon the environmental issues.

12. Applicant has filed the rejoinders to the above counter affidavits and controverted the plea.

13. We have heard learned Counsel for the parties at length and perused the record.

Preliminary Objections

14. Respondent No. 1 has raised a preliminary objection relating to the *resjudicata* on the plea that earlier OA No. 32/2023/EZ filed by the applicants has been decided by the NGT, therefor fresh OA by them is not maintainable and is hit by the principle of *resjudicata*.

15. Applicants No. 1 to 4 had earlier filed OA No. 32/2023/EZ. The said OA was disposed of by order dated 24.03.2023 by directing as under:

“6. *In this view of the matter, we dispose of this Original Application with the following directions: -*

(i) *The Respondent No.2, SEIAA, Assam, shall consider and decide the two representations of the Applicants dated 06.07.2022 and 20.10.2022, Annexures-N & O, to the Original Application as also the grievances raised in paragraph-9 and its sub-paragraphs of the Original Application.*

(ii) *The SEIAA, Assam shall decide the aforesaid representations by a reasoned and speaking order within a period of one month. Needless to say, before taking any decision the SEIAA, Assam shall also give opportunity of hearing and submission of written submissions, if any, to the Respondent No.1.*

7. *With the aforesaid directions, the Original Application No.32/2023/EZ is disposed of.*

8. *Interlocutory Applications, if any, stand disposed of accordingly.*

9. *There shall be no order as to costs.”*

16. While passing the above order the grievance of the Applicants on merit was not examined by the Tribunal. Hon’ble Supreme Court in the matter of *Daryo & Ors. vs. State of UP & Ors.*, AIR 1961 SC 1457 has expressed that the summary dismissal is not a dismissal on merit and will not constitute a bar of *res judicata*. Section 11 of the CPC containing the principle of *res judicata* prohibits a Court from trying any suit or issue in which the subject matter directly and substantially was in issue in a former suit between the same parties and has been heard and finally decided by such Court.

17. Since, in the present case, by order dated 24.03.2023 passed in OA 32/2023/EZ, NGT had not decided the issue on merits, therefore, *principle of res judicata* is not attracted. Thus, we do not find any substance in the preliminary objection relating to *res judicata* raised by Respondent No. 1.

18. Another preliminary objection raised by Respondent No. 1 is in respect of the limitation, on the plea that reliefs claimed in OA are barred by time.

19. Applicants in the present OA have sought compliance of the conditions of EC. They had earlier approached the Tribunal by filing OA No. 32/2023/EZ which was disposed of by order dated 24.03.2023 with a direction to the SEIAA, Assam to consider the representations of the Applicants dated 06.07.2022 and 20.10.2022 within one month. The SEIAA, Assam had decided the said representations by order dated 09.05.2023. Applicants, thereafter, have filed the present OA on 31.07.2023 under section 14(3) of the National Green Tribunal Act, 2010 (NGT Act). A limitation of six months has been prescribed for entertaining such application from the date of the first cause of action. The cause of action arose when SEIAA had passed the order dated 09.05.2023. This OA has been filed within six months from 09.05.2023. That apart, Applicants have raised the plea of continuous cause of action relating to violation of EC conditions by Respondent No. 1. An issue of subsequent expansion of the project by adding additional land of 2 bigha without obtaining EC has also been raised which gives a fresh cause of action. Hence, the OA is not found to be barred by time and cannot be rejected on that ground.

20. Respondent No. 1 has also submitted that the Applicants are not the persons aggrieved and has questioned their locus but such a submission cannot be accepted because the Applicants have purchased the houses/villa/flats in the project in question and they are directly affected by the non-compliance of EC conditions, alteration/expansion of the project and violation of environmental norms concerning the project.

21. Hence, no substance is found in the preliminary objections raised by Respondent No. 1, which are accordingly rejected.

On Merit

22. Arguing on merit, Counsel for the applicant has referred to the report of Respondent No. 7, ASPCB and has pointed out the violations noted therein. He has also submitted that the original EC was for 28 bighas of land but later on, there was an expansion of the project by including 2 bigha more but the Respondent No. 1 had not obtained the EC for expansion of the project. He has further submitted that on account of non-compliance of the EC conditions relating to gradient, the entire area is getting flooded during the rainy season. He has submitted that Respondent No. 1 has violated various EC conditions and that the issues that were raised by the Applicants in the representation have been dealt with by the SEIAA, Assam in a cryptic manner.

23. Learned Counsel for Respondent No. 1 opposing the OA on merit has submitted that there is no environmental issue involved in this OA. The grievance of the Applicants has already been considered by the SEIAA while deciding the representation and passing the order dated 09.05.2023. He has also submitted that the condition of filing six monthly reports was complied with, the Applicants are not the persons aggrieved, PWD had constructed the drain at higher gradient subsequently which leads to flooding of the area and that Respondent No. 1 had tried to construct the pond for collection of rainwater but that was opposed by the residents. He submits that the project was completed on 03.07.2018. Learned Counsel does not dispute that subsequently additional 2 bighas of land was included and a clubhouse and swimming

pool were constructed without reappraisal of the EC or without obtaining a fresh EC.

24. Learned Counsel appearing for Respondent No. 2, SEIAA, Assam has submitted that the representations submitted by Applicants have already been decided in terms of the direction of the Tribunal and that now the violations have come to the knowledge of SEIAA, therefore, action against Respondent No. 1 will be taken by SEIAA, Assam.

25. We have examined the record of the OA in the light of submission on merit made by Counsel for the parties.

26. The Ministry of Environment and Forests, Govt. of India exercising the power under sub-section (1) and clause (V) of sub-section (2) of section (3) of Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of EP Act, 1986 has issued the EIA Notification dated 14.09.2006 requiring the prior EC from the concerned regulatory authority. For matters falling under category-B of the schedule, the State Level Environment Impact Assessment Authority (SEIAA) is the regulatory authority for prior EC at the State level. The schedule of the notification contains a list of projects or activities requiring prior EC.

27. The EIA Notification, 2006 requires prior EC for the new scheduled projects and expansion and modernization of existing projects or activities listed in the schedule to the notification. Clause 2 of the EIA Notification provides that:

“2. Requirements of prior Environmental Clearance (EC):-
The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation

of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.”

28. The amended EIA Notification dated 2006 includes the following construction projects in clause 8 of the schedule:

“

xxx	xxx	xxx		
8		Building /Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		20000 sq. mtrs and <1,50,000 sq. mtrs. of built-up area#	#{built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects.		Covering an area 50 ha and or built up area 1,50,000 sq .mtrs ++	++All projects under Item 8(b) shall be appraised as Category B1

”

29. The above building projects are category-B projects under EIA Notification, 2006 and require appraisal by the State Level Expert Appraisal Committee (SEAC) and approval by the State Level Environment Impact Assessment Authority (SEIAA).

30. Paragraph 7(ii) of the EIA Notification, 2006 provides as under:

“7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert

Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.”

Thus, for expansion of a project or increase in the lease area consideration by EAC/SEAC and prior Environmental Clearance is required.

31. Under the Notification dated 28.02.2014, SEIAA has been authorized and delegated with the powers under section 19 of the Act to take necessary action against the violators.

32. Hon’ble Supreme Court in the judgment dated 03.12.2019 passed in Civil Appeal No. 2435/2019 in the matter of *Keystone Realtors Pvt. Ltd. vs. Shri Anil V. Tharthare and Ors.* has considered the issue of environmental impact on account of the increase in the size of the project and the requirements of EIA Notification on the expansion of the project by holding as under:

““xxxxxx.....xxx

16. *In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project’s environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or the SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a „marginal“ increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the government in its wisdom were to prescribe that a one-time „marginal“*

increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of their being a violation of the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in paragraph 7(ii).

17. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 square metres to 40,480.88 square metres. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under paragraph 7(ii) of the EIA Notification but rather sought an „amendment“ to the EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The „amendment“ to the EC dated 13 March 2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 square metres. The procedure set out under paragraph 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an „amendment“ to the EC without following the procedure set out in paragraph 7(ii) of the EIA Notification.
18. We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken. The NGT has already directed the appellant to deposit Rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the directions of the NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in the EC dated 2 May 2013 and also suggest the compensatory exaction to be imposed on the appellant.”

[Emphasis provided]

33. Thus, it is settled that evaluation of the environment impact prior to the execution of the construction project is essential. The same applies to the expansion of the construction project also and in case of violation, the Project Proponent is liable to pay penalty and environmental compensation.

34. In the above Civil Appeal No. 2435/2019, order of the NGT dated 11.02.2019 passed in Appeal No. 122/2018 (Earlier Appeal No. 9/2014) (WZ) in the matter of *Anil Tharthare v. The Secretary, Env't Dept. Govt. of Maharashtra & Ors.* was under challenge wherein the Tribunal while examining the issue of illegality in amending the EC on expansion of the project had considered the importance of the EIA Notification and the issue of amendment of EC without following the due process in case of expansion of the project and has held as under:-

“xxxxxx.....xxx

28. *As regards the question whether EIA is mandatorily required, it may be noted that EIA has been recognised as the most valuable, inter-disciplinary and objective decision-making tool with respect to alternate routes for development, process technologies and project sites. It is considered an ideal anticipatory mechanism allowing measures that ensure environmental compatibility in our quest for socio-economic development. In fact, the whole concept is based on jurisprudential principle of ‘Sustainable Development’ and ‘Precautionary Principle’ though statutory basis has been provided to the same for effective enforcement.*

29. *The projects covered by the Notification dated 14.09.2006 cannot be undertaken without environmental clearance. This may invite prosecution and punishment under section 15 of the Environment (Protection) Act, 1986 or other provisions. Mere fact that a project is not covered by the said notification is not conclusive to negate such requirement if impact on environment justifies it. One cannot ignore that impact assessment in all cases of potential impact is by itself a part of concept of sustainable development, which in turn is part of Article 21. Thus, even where notification does not require EIA, such requirement may apply by virtue of Article 21, if there is potential of impact on environment. In such a case the Court or Tribunal concerned with enforcement of principle of sustainable development can require this to be done, as mandatory condition, for continuing a project. In our jurisprudence, the*

protection of environment is fully ingrained. It is not only a part of Directive Principles under Article 48A and Fundamental Duties under Article 51A(g), but also inherent in the Fundamental Right under Article 21 of the Constitution. Principles of Sustainable Development, Precautionary Principle, and Intergenerational Equity are not only part of our jurisprudence, in terms of case law but also incorporated in Section 20 of National Green Tribunal Act, 2010. Needs for development have to be fulfilled consistent with these principles. There can be no development at the cost of environment.¹

30. *Environmental laws are required to be read into every activity adversely impacting environment. Grant of any permission or sanction by any authority has always to be read as subject to inherent limitation of the environment norms being maintained. Once pollution is being created, mere permission/ sanction by itself is no defense. While absence of a sanction may by itself be violation of law, even grant of sanction is never to be treated as unconditional and does not obviate the requirement to maintain environment norms. Adverse impact on environment is actionable in all situations. Accordingly, if there is an impact to the environment, there must be an Environment Impact Assessment. The fact remains that flats may have been allotted in which case it may be difficult to disturb or penalize such occupants who may not be party to violations. Still, the Tribunal cannot be mute spectator as far as the project proponent, respondent No. 6 is concerned. In this light, to uphold the Rule of Law, it is necessary that the violators are required to compensate for their illegal acts which may also act as a deterrent against those project proponents who circumvent the law to suit their convenience. This is also in conformity with 'Polluter Pays' principle.*
31. *By way of an interim arrangement, let the project proponent deposit a sum of Rs. 1 crore with the CPCB within one month towards interim cost of damage to the environment. The Committee which we propose may suggest the amount which should be recovered for such violation so that the amount can be deterrent and dissuade violators of law and also to cover the cost of restoration of the environment."*

35. Learned Counsel for the Applicants placing reliance upon the order of the Tribunal dated 01.02.2021 in OA No. 837/2018 in the matter of *Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors.* has submitted that there is a huge gap in effective monitoring

¹ Intellectuals Forum Vs. State of A.P - (2006) 3 SCC 549, Bombay Dyeing & Mfg. Co. Ltd. - (2006) 3 SCC 434, M.C. Mehta v. Union of India - (2004) 12 SCC 118, Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdar Protection Assn - (2009) 9 SCC 737, T.N. Godavarman Thirumulpad v. Union of India - (2000) 10 SCC 606, Narmada Bachao Andolan v. Union of India - (2000) 10 SCC 664, Vellore Citizens Welfare Forum Vs. Union of India and Ors. (1996) 56 SCC 647, N.D. Jayal and Ors. Vs. Union of India and Ors. (2004) 9 SCC 362, Lafarge Umiam Mining (P) Ltd., Vs. Union of India and Ors. (2011) 7 SCC 338, and G. Sundarrajan Vs. Union of India and Ors. (2013) 6 SCC 620

mechanism and in this regard, he has placed reliance upon para 3 of the said judgment wherein it has been held that:

“xxxxxx.....xxx

3. The matter has thereafter been considered on several dates including 29.04.2019, 23.07.2019, 22.11.2019 and 31.7.2020. It has been repeatedly found that the mechanism for monitoring environmental norms is inadequate, as a result of which there is rampant violation of Environmental Clearance (EC) conditions, as noted by this Tribunal in several cases. The Tribunal also noted the observations in the Judgments of the Hon’ble Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SCC 61 and Lafarge Umiam Mining Private Limited Vs. Union of India, (2011) 7 SCC 338 that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and **there is a need for effective monitoring mechanism**. The Hon’ble Supreme Court also observed that there is poor monitoring and there are huge gaps in laying down of conditions and enforcement thereof. Such observations have also been made by the Comptroller and Auditor General of India (CAG), pointing out deficiencies on this aspect.”

36. The submission of the parties needs to be examined in the light of the aforesaid legal position.

37. Environmental Clearance (EC) dated 21.01.2014 was issued to Respondent No. 1 in respect of the project involving the construction of Arya Smart Living at Abhaypur North, Guwahati on a plot area of 38,106 sq. m. It was specifically stipulated in the EC as under:

“xxxxxx.....xxx

2. It is inter-alia, noted that the project involves the construction of Arya Smart Living at Abhaypur North, Guwahati on a plot area of 38,106 sq. m. The total construction built up area proposed for the project is 62,133.036 sq. m. The Podium area 2886 sq. m. The paved area is 12989.4 sq. m. The building foot print area is 12709.6 sq. m. The basement area 5791.636 sq. m. The green belt area is 7484.96 sq. m. The complex will have Villas – Type A 08 units, Type B 08 units, Type C 108 units. Apartment units 156, Shops 6 and Retail outlet 4. The total water requirement of the project is estimated to be about 286.63 KLD. The capacity of STP is 230 KLD. The treated water will be used 194 KLD and for Flushing 91 KLD. There will be no discharged of waste water. Total solid waste generation for the project will be 1.13 Tones per day. The power requirement is 2385.17 KW. Total car parking proposed 516 nos. The total cost of the project is Rs. 72.2 Crores.”

It has not been disputed during the course of arguments that in Assam 1 Bigha equals 1346.42 sq.mt. Thus, the EC dated 21.01.2014 was for plot area of about 28.4 bigha.

38. The record further reflects that a complaint Petition was filed before the Real Estate Regulatory Authority (RERA), Assam making allegations against the promoter for occupying the building without obtaining a complete occupancy certificate, rejection of occupancy due to unauthorized construction, misrepresentation in respect of total land and that the joint inspection was got done. RERA, Assam in the order dated 13.06.2022 had recorded the details of the project area as under:

(d) Total area of land standing in the name of Arya Erectors India Pvt. Ltd. as per Land records

- i. *As per Chitha copy and Jamabandi copy of revenue village Abhaypur KP No. 198, the Arya Erectors India Pvt. Ltd. is the landholder of the following area as mentioned against each dag:*

*Dag No 884- 19 Bigha 0 katha 9 Lecha
Dag No. 885- 0 Bigha 01 Katha 11 Lecha
Dag No. 889- 03 Bigha 02 Katha 0 Lecha
Dag No. 890- 05 bigha 01 Katha 4 Lecha
Total 28 Bigha 0 katha 4 Lecha*

- ii. *As per Chitha copy and Jamabandi copy of revenue village North Guwahati Town KP no. 271, the Arya Erectors India Pvt. Ltd is the landholder of the following area as mentioned against the dag no. 764.*

*Dag No 764- **02 Bigha 0 katha 0 Lecha.**
Total area of land held by the Arya Erectors India Pvt. Ltd at Abhaypur and North Guwahati town under the project- **30 bigha 0 katha 04 Lecha(28B-0 K- 04 lecha + 2 B-0 K-0 L)***

(e) Status in the Field-Observation

*During joint visit, it is seen that the project is being implemented in the entire area of **30 Bigha 0 Katha 4 Lecha** (28Bigha 0 kitha4 Lecha of Abhaypur village plus 2 Bigha 0*

katha 0 Lecha of. North Guwahati town). However, the promoter has not yet submitted application for registration of the project being implemented at revenue village North Guwahati town over an area of 2 bigha covered by Dag No. 764 and KP No. 271 and also balance part of the project under GMDA measuring 4 Bigha 13 Lecha.”

39. Thus, Respondent No. 1 has implemented the project in the area of 30.4 bigha whereas the EC was obtained only for about 28.4 bigha. Hence, he has carried out construction on the area much more than the one for which environmental clearance was granted.

40. The order of the RERA, Assam dated 13.06.2022 also records the stand of GMDA that no occupancy certificate was issued to the promoter due to deviation in the approved plan and that the promoter had constructed some structures which were not approved by the GMDA.

41. It is undisputed that Respondent No. 1 had subsequently included about 2 bighas of land in the project and constructed a clubhouse and swimming pool on that land. Counsel for Respondent No. 1 during the course of the argument has candidly admitted the factum of adding 2 bighas in the project land and constructing club house and swimming pool thereon. Such additional inclusion of land and construction amounts to the expansion of the project for which in terms of clause 7(ii) of the EIA Notification of 2006, prior environmental clearance was required, which has not been obtained in the present case. The SEIAA was to examine beforehand the environmental damage, if any, and the extent of it, on account of the inclusion of the additional area in the project and the raising of construction on the additional area, which has not been done.

42. It is also the submission of the Applicants that the apartments for which the environmental clearance was granted were changed into villas

and the construction of retail outlet was given up. Hence, that also amounts to a change of scope of the project in addition to the issue of expansion of the project by inclusion of 2 bighas.

43. The General Condition No. 3 of the EC dated 21.01.2014 also clearly stipulates that:

“xxx.....xxx.....xxx

3. *In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by the SEIAA.”*

44. As per the said condition also in case of a change of scope of the project, the Project Proponent was required to have a fresh appraisal of environmental clearance.

45. Hence Respondent No.1 has not only violated the General EC condition No. 3 but has violated clause 7(ii) of the EIA notification, therefore, Respondent No. 1 is liable to pay environmental compensation for deviating from the original project, expanding the project without prior EC and causing damage to the environment. Considering the circumstances of the case, we are of the view that such environmental compensation in the present case should be levied @ 1% of the cost of expansion of the project.

46. The record further reflects that the EC issued to Respondent No. 1 on 21.01.2014 was initially valid for a period of five years till 21.09.2019 and its validity was automatically extended up to 21.01.2021 by virtue of the OM dated 12.04.2016. The communication dated 28.12.2020 issued by the SEIAA, Assam states that Respondent No. 1 thereafter did not apply for renewal of EC. Any construction carried on by the respondent thereafter is in violation of law.

47. There is also a violation in respect of renewal of CTO and in providing proper rainwater drain. Respondent No. 7, ASPCB has filed the report/affidavit dated 21.11.2023 mentioning the violations as under:

- “xxxxxx.....xxx
3. *That pursuant to the direction passed by this Hon'ble Court, an inspection was carried out on 14th September, 2023 of the residential Building Construction-62000 sq. mt. (built-up area). The unit had obtained Consent to Operate (CTO) on 12th October, 2022 which was valid till 31st March, 2023. The unit has failed to apply for renewal of the CTO. The unit has failed to obtain permission from Central Ground Water Board (CGWA) for extraction of ground water.*
4. *As per the inspection report dated September 20, 2023, there had been no record of rainfall in the locality since last four to five days till the date of inspection i.e.14/09/2023. Consequently, the investigation could not conclusively assess the occurrence of waterlogging. Notably, the Sewage Treatment Plant (STP) was found non-operational during the inspection. Upon inquiry, the project authority explained that the STP has a capacity of approximately 230 KLD and operates twice a week. While a stormwater drainage system is in place, the inspection highlighted potential issues related to the proper gradient, flow capacity of rainwater, and the adjustment of carrying capacity with the final load-bearing drainage system. It is essential to emphasize that the problem of waterlogging cannot be solely attributed to any single stakeholder if the design and coordination of these drainage systems are not appropriately managed at both micro and macro levels. During the inspection, the stormwater drain exhibited a greyish to blackish colour, indicating potential neglect in maintenance by the housing entity, possibly due to blocked outlets.”*

48. The above report reflects that the CTO has not been renewed after 31.03.2023, STP was found non-operational and there is improper gradient of the stormwater drain.

49. The EC dated 21.01.2014 was issued by SEIAA, Assam to Respondent No. 1 containing Specific and General Conditions and the conditions relevant for the present controversy incorporated in the said EC are as under:-

“PART – A. SPECIFIC CONDITIONS

I. Construction Phase

- (i) The storm water drainage shall be worked out after analysing the contour levels of the site and the surrounding area and the capacity of storm water drainage.

xxxxxx.....xxx

- (xvii) Permission for ground water use shall be obtained from the competent authority prior to construction / operation of the project.
- (xviii) Separation of grey and black water should be done by the use of dual plumbing line for separation of grey and black water.”

II. Operation Phase

- (i) The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the SEIAA before the project is commissioned for operation. Treated effluent emanating from STP shall be recycled/reused to the maximum extent possible Treatment of 100% grey water by decentralized treatment should be done. Zero discharge criteria should be met as agreed.

xxxxxx.....xxx

- (v) The peripheral green belt of 3 mtrs. width shall be developed all around the plot area and density preferably with local species along the periphery of the plot shall be raised so as to provide protection against particulates and noise.

xxxxxx.....xxx

- (ix) Traffic congestion near the entry and exit points from the roads adjoining the proposed project site must be avoided. Parking should be fully internalized and no public space should be utilized. Width of the internal road should be 7 mt. and 9 mts. in the project area.

- (x) A report on the energy conservation measures confirming to energy conservation norms finalized by Bureau of Energy Efficiency should be prepared incorporating details about building materials & technology, R&U Factors, etc. and submit to the SEIAA in three months time.

PART – B. GENERAL CONDITIONS

- (1) The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the SEIAA/Regional Office of MoEF&CC.

xxxxxx.....xxx

- (3) *In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by the SEIAA.”*

50. The applicant in the representations dated 06.07.2022 and 20.10.2022 had raised the specific grievance relating to violation of above EC conditions such as the STP, green belt, storm water etc. by Respondent No. 1 but without properly examining the same, SEIAA, Assam by order dated 09.05.2023 has rejected the representation by observing as under:-

“On Specific condition at part A(I) (i) of the EC

- *The respondents submitted that the contour survey was done prior to starting of the project. Submitted GMDA approved contour survey map.*
- *The project was handed over to the Arya Smart Living Society in 2019, being completed in all respect including the drainage system as per requirement.*
- *The water logging problem started after the improvement of road and construction of drain taken up by PWD during 2017 to 2020. A technical study of the Water logging problem in Arya Smart Living campus and its adjoining areas of Abhaypur, North Guwahati was taken up by IIT Guwahati on request from the ASL society. It revealed that the bed of the newly constructed drain along the road is at 15 cm higher than the internal drain. Supporting photographs were submitted.*

On Specific Condition A (I) (xviii) of EC

- *Dual Plumbing system was partially complied with e.g. at places i.e. Water fall at front, car washing etc.*

Operational phase Condition A(II) (i) of EC

- *The design and supply of STP was done by firms, expert in the relevant field of work.*

Operational phase Condition A(II) (v) of EC

- *The Green belt area is 9000 sq.m No of trees planted including hedges etc. shall be around 900. Green Belt also maintained all around the campus with exception of two corners.*

Operational phase Condition A(II) (vii) of EC

- The ground water level being high and also as existing low lying area which acts as a natural water reservoir, only roof and surface rain water runoff is collected in the installed water tanks of 5000 Its capacity around the campus.

Operational phase Condition A (II) (ix) of EC

- There is no traffic congestion both inside and outside the campus. One parking area in each villa has been given as approved by GMDA.

Operational phase Condition A (II) (x) of EC

- Energy conservation measures have been taken in the villas and all common areas. Heard and seen both verbal and written submissions of the representative of Arya Realtors India Pvt. Ltd.

Also perused the Final report of the Technical Study carried out by Indian Institute of Technology, Guwahati on request by Arya Smart Living Society.

The site visit was also done by team of experts which included.-

Name-

1. Shri Praydut Kr. Choudhury, Chairman SEIA
2. Shri Swapan Kr Seal Sarma, Chairman SEAC
3. Prof. Bhagawat Pran Duarah, Member SEAC
4. Prof.Sarat Phukan, Member SEAC
5. **Dr. Santanu Kr Dutta**, Secretary SEAC

As Both the representation 'N' & 'O' are identical except an additional clause at representation 'N'-(5) Therefore both are being disposed simultaneously.

Regarding allegation at SL (1) of representation 'N' & 'O'

- The flood problem in the ASL campus is a genuine one The Arya Erectors, India Pvt. Ltd. contended that the project was completed in 2018 and handed over in 2019 and that in the meantime development of road & drain was taken up. The submitted photographs by the respondent no.1 also reveals that the natural drainage at front has also been encroached by neighbors. The nearby areas being developed only a common approach involving the development departments and neighboring community can bring in a fruitful one time solution to the problem. In the meantime, the Arya Erectors India Pvt. Ltd. Shall create a pond in appropriate low lying area inside the campus with adequate capacity & with raised bank, railing all around for safety. The excess water to be pumped out to the drain along the road with approval from competent authority. This pond shall be so constructed so as to be filled by only the Storm water. Other activities can also be planned with the coordinated effort of all concerned.

Allegation at SI (3) of representation 'N' & 'O'

- *The design and supply of the STP was done by firms, experts in the field of works and stated to be functional at the time of handing over (supporting documents submitted). Therefore, ASL society has to keep it functional.*

Other matters,

- *The matter of non submission of six monthly compliance reports to SEIAA has been viewed seriously and a stricture in this regard shall be issued separately.”*

51. While examining the grievance in respect of non-compliance of the condition relating to the performance of STP, the SEIAA has only mentioned that “The design and supply of STP was done by firms, expert in the relevant filed of work”.

52. In respect of six-monthly reports, SEIAA in the order dated 09.05.2023 has found that six monthly reports were not submitted and it was viewed seriously but no action has been proposed or taken in this regard. Somewhat similar is the situation with respect to other grievances also.

53. The above order clearly reflects that the grievance raised by the applicant in the representation has not been properly considered by the SEIAA, Assam and representation has been rejected by a cryptic order.

54. We find that though the Applicants had raised the specific grievance about non-compliance with various EC conditions by Respondent No.1 in the representations dated 06.07.2022 and 20.10.2022 but SEIAA while passing the order dated 09.05.2023 has not properly applied its mind to the grievances raised.

55. In view of the above analysis and conclusions, we dispose of the OA by directing as under:-

- i. Since, Respondent No. 1 has expanded the project by including an additional about 2 Bighas of land and raising additional construction of a clubhouse, swimming pool etc., without getting reappraisal of the EC dated 21.01.2014 and without getting the environmental clearance for the additional area, therefore, the Respondent No. 1 has violated clause 2 and 7(ii) of the EIA Notification, 2006 and is liable to compensate for the damage caused to environment by depositing 1% of the project cost incurred in expansion with ASPCB as environmental compensation. The SEIAA, Assam and ASPCB will jointly workout the cost incurred in expansion of project and determine the environmental compensation.
- ii. Respondent No. 1 is also liable to carry out the remedial measures which will be worked out by SEIAA, Assam based on the damage assessment.
- iii. The order dated 09.05.2023 passed by SEIAA Assam is found to be bad in law and is hereby set aside. The SEIAA, Assam is directed to decide the representations dated 06.07.2022 and 20.10.2022 of the applicants afresh on other issues keeping in view the observations made above and take appropriate remedial action.
- iv. Since the grievance of the Applicants is that, in terms of the specific condition at Part-A (I)(i) of the EC, necessary steps to analyze the contour intervals of the site and surrounding areas and the capacity of stormwater drainage have not been taken done and steps are not taken to address the problem of waterlogging and flooding, therefore SIEAA will duly examine

the issue of non-compliance of above condition and take appropriate action.

- v. The SEIAA, Assam is also directed to take action against Respondent No. 1 for violation of the EC condition by complying with the *principles of natural justice*.
- vi. The ASPCB is also directed to take action for the violation of the environmental norms found on the spot and reflected in its report dated 21.11.2023.
- vii. Let the above exercise be completed by the SEIAA, Assam and ASPCB within a period of three months and an action taken report be filed before the Registrar, NGT, Eastern Zone Bench at Kolkata, immediately on completion of three months and if found necessary the matter will be listed for consideration before the Bench.

Prakash Shrivastava, CP

B. Amit Sthalekar, JM

Dr. Arun Kumar Verma, EM

September 12, 2024
Original Application No. 92/2023/EZ
avt...