

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

[Through Physical Hearing (With Hybrid Option)]

ORIGINAL APPLICATION NO.07 OF 2022 (WZ)

Shashikant Vitthal Kamble Applicant

Versus

MoEF&CC & Ors.Respondents

Date of hearing : 20.02.2024

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

Applicant : Mr. Viraj Pawar, Advocate

Respondents : Mr. Rahul Garg, Advocate for R-1 and R-3
Mr. A.J. Pathak, Advocate for R-2
Mr. Aniruddha Kulkarni, Advocate for R-4, R-5 and R-6
Mr. Yaashwant Dhanegave, Advocate for R-7
Ms. Manasi Joshi, Advocate for R-8 and R-9
Mr. R.B. Mahabal, Advocate for R-13

ORDER

1. Learned counsel for the applicant seeks time for arguing the matter, by way of last opportunity, after having wasted at least one hour of this Tribunal which was allowed to him to argue his case. He states that he was not prepared today for making his argument as he was under impression that respondent No.12-PMRDA would be filing its reply-affidavit and thereafter he would be asked to argue in the matter. Today, none has appeared from the side of respondent No.12-PMRDA nor any reply has been filed from its side till now.

2. We cannot allow this matter to be prolonged because of the fact that reply is yet to be filed from the side of respondent No.12-PMRDA. Moreover, we find that no relief has been claimed against the said respondent/Authority. If any document applicant wanted to rely upon,

he could have applied for obtaining the said document under Right to Information Act and placed it before this Tribunal, but he has not chosen to do so and filed this Original Application without the document/s he wanted to rely upon.

3. Today, during argument, the learned counsel for the applicant has relied upon Office Memorandum (O.M.) dated 05.05.2022, issued by respondent No.1 – MoEF&CC, particularly paragraph No.5 thereof, which provides that *“any change in configuration/planning/design of the appraised building project for which EC was granted shall not require amendment of EC, subject to no change in (i) Built Up Area, (ii) Floor Area Ratio (FAR) (iii) change in exterior spaces/green belts.....”*. Relying on this, the main argument is made by him that there is no change in Total Built-Up area, but the Project Proponent – respondent No.13 has made changes in exterior spaces. When we enquired from the learned counsel as to where is the evidence with respect to changes of the building in question, he drew our attention to the Joint Committee report, which is annexed at pages 129 to 143 of the paper-book, wherein in paragraph No.6.0, recommendations are given, wherein it is recorded that *“(A) in view of the violation w.r.t. PP obtaining plinth check certificate dated 22/02/2022 for building A3 & B3 and obtaining completion certificates dated 28/07/2021 & 06/12/2021 for building B1 & A1, as per sanction plan dated 02/06/2021 for TBA of 65439.02 sq.m, which is exceeding the present TBA of 51,587.80 sq.m as per earlier EC dated 18/07/2016.....”*

Having drawn our attention to above recommendations, it has been tried to establish by the learned counsel that the Joint Committee report itself speaks of exceeding the present total Built-Up Area (TBA) of 51,587.80 sq.mtrs as per earlier EC dated 18.07.2016. This point was not raised by the learned counsel for the applicant during his argument and he has relied on the O.M. dated 05.05.2022, relevant part of which has been

already cited by us above and as per which, we had directed the learned counsel to show changes made by the Project Proponent in exterior spaces of the building, but he could not show the same. In the recommendations made by the Joint Committee, quoted above, mention has been made to the document i.e. Plinth Check Certificate dated 22.02.2022 in respect of buildings A3 and B3 and completion certificates dated 28.07.2021 and 06.12.2021 for buildings B1 and A1 as per sanctioned plan dated 02.06.2021. Upon making query to the learned counsel in respect of these documents, he could not show those and started fumbling with the file. We cannot tolerate this kind of conduct of the learned counsel for the applicant. When the matter was listed for final arguments/hearing, he should have come prepared for the argument and instead of that, he is seeking further time on the pretext that one of the respondents has not filed reply-affidavit. This matter being a civil proceeding, it cannot be kept pending and it would go ahead *exparte* against respondent No.12 and therefore, we would not want to take any coercive measure such as issuance of warrant as this is a civil proceeding.

4. From the side of the applicant, time till tomorrow is prayed so that the learned counsel for the applicant gets himself prepared for argument. Accordingly, we grant time to him till tomorrow for making his arguments. This matter would be taken up for final arguments after the admission matters are over.

5. From the side of respondent No.13 – Project Proponent, learned counsel Mr. R.B. Mahabal has appeared and a summary has been provided to us of the Environmental Clearances (ECs), which are four in number, granted to respondent No.13 from time to time as well as the details of Consent to Establish and Consent to Operate and Occupancy Certificate in tabular form in order to assist us. A copy of this summary

shall also be provided to the learned counsel for the applicant and we expect that the learned counsel for the applicant would provide us the details against the same, if he wants to point out. If the same is not submitted before us by tomorrow, we would treat the said summary submitted on behalf of respondent No.13 to be correct.

6. We have downloaded O.M. dated 05.05.2022, referred above, copy of which is taken on record.

7. Learned counsel for respondent No.13 – Project Proponent has stated that at no point, did the Project Proponent exceed the Total Built-up Area (TBA), hence with respect to the area, there was no violation committed by the Project Proponent throughout the construction project and that only buildings A3 and B3 are left to be completed.

8. From the side of respondent Nos.8 and 9 – MPCB, learned counsel Ms. Manasi Joshi has appeared and states that she has filed the reply and that there is no gap found in the grant of Consent to Establish and Consent to Operate. She has also apprised us that only Waste Water Treatment Plant has been set-up by the Project Proponent which is not as per the consent letter of MPCB and there is no other objection from the side of MPCB.

9. From the side of respondent No.2 – CGWA, learned counsel Mr. A.J. Pathak has appeared and again seeks time to file the reply-affidavit. Vide our order dated 27.07.2023, we had granted the time to respondent No.2 to file the reply-affidavit within two weeks from the date of passing of the said order and till today i.e. 20.02.2024, he has not filed the reply-affidavit. Today, only with a view to delay the hearing of the matter, the learned counsel is again seeking time to file the same. If he desires to file the reply-affidavit, he may file the same today only and a copy of the same shall be served upon the learned counsel for the applicant through

e-mail today only, who may respond thereto, if so required today by filing rejoinder, as the matter is kept for final argument/hearing tomorrow.

10. From the side of respondent Nos.1 and 3, learned counsel Mr. Rahul Garg has appeared.

11. From the side of respondent nos.4, 5 and 6, learned counsel Mr. Aniruddha Kulkarni has appeared.

12. From the side of respondent No.7, learned counsel Mr. Yashwant Dhanegave has appeared.

13. Put up this matter for final argument/hearing on 21.02.2024.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 20, 2024
O.A. No.07/2022 (WZ)
npj