

Item No.3

(Pune Bench)

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

[Through Physical Hearing (with Hybrid Option)]

**ORIGINAL APPLICATION NO.02 OF 2020 (WZ)
WITH
I.A.NO. 204 OF 2023 IN O.A. NO.02 OF 2020**

Vaibhav Tapkir & Anr.

.... Applicants

Versus

Ms. Tanish Associates & Ors.

.... Respondents

Date of hearing : 19.10.2023

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

Applicants : Mr. Tanaji Gambhire, Advocate along with
Mr. Omkar Wangikar, Mr. Vijay Mhaske and Ms.
Kajal Mandge, Advocates

Respondents : Mr. Saurabh Kulkarni, Advocate for R-1
Ms. Manasi Joshi, Advocate for R-2
Mr. D.T. Devale, Advocate for R-3 and R-5
Ms. S.B. Vaidya-Pandit, Advocate for R-4

ORDER

I.A. NO.204 OF 2023 (WZ) :

1. This application (I.A.) has been filed by the applicants seeking impleadment of the Ministry of Environment, Forest and Climate Change (MoEF&CC), Union of India, the State Environment Impact Assessment Authority (SEIAA), State of Maharashtra and Tanish Shrushti Co-operative Housing Society (Tanish Shrushti CHS) as respondents in the Original Application on the ground that the demolition of the nalla which is found to be an encroachment would require Tanish Shrushti CHS to be

impleaded and heard as the same would be necessary party. The said Society has already been formed. Further ground set up for impleadment of MoEF&CC and SEIAA is that this Tribunal has already opined in order dated 09.03.2022 that the project in question has been split into three parts and this has also been affirmed by the Joint Committee in its report dated 21.04.2023. The total built up area would exceed 20,000 sq.mtrs and hence, the same would require Environmental Clearance (EC). On these grounds, the MoEF&CC and SEIAA are required to be impleaded in the O.A.

2. From the side of respondent No.1 – Project Proponent, this application (I.A.) has been opposed by filing counter affidavit dated 18.10.2023 stating that the applicants have restricted their prayer only to two issues i.e. discharge of sewage effluent into nalla and encroachment on the nalla and now the reliefs are being expanded which are time barred as well. Respondent No.1 has handed over the Sewage Treatment Plant (STP) to the society i.e. Tanish Shrushti CHS. Therefore, the said society is responsible for taking care of the STP. The applicants cannot be allowed to improve the case set up earlier. This Tribunal, while passing the orders dated 17.08.2020 and 09.03.2022, did not deem it appropriate to appoint the aforesaid parties, which are sought to be impleaded as respondents, as members of the Joint Committee and those orders have not been challenged so far by the applicants. Hence, this application having been filed with delay needs to be rejected.

3. It has been orally argued by the learned counsel for respondent No.1 that Survey No.504 was not originally mentioned in paragraph No.3 of the Original Application as forming part of the land on which the project in question was constructed. He also pointed out that the work as per admission of the applicants did not start in 2011 and now in 2023, scope of the relief is being expanded, which is time barred.

4. Having heard both the sides, we are of the view that the applicants originally had not prayed for demolition to be ordered of the project in question because no EC was taken nor was it stated that EC has been tried to be avoided deliberately as the project in question has been split into three separate parts. But this opinion has been expressed by the predecessor Bench of this Tribunal because of which scope of this O.A. has been expanded. We do not hold the applicants responsible for the expansion but since that matter has been raised by the applicants, we have to scrutinize the Joint Committee report and the replies filed by the respondents. Since this would involve assessment by us as to whether the project in question was deliberately split into three parts to avoid EC, it would be essential for us to have replies of the MoEF&CC and SEIAA. As regards impleadment of Tanish Shrushti CHS, since it has already been formed and respondent No.1 has handed over the Sewage Treatment Plant (STP) to the society, which is responsible for taking care of maintenance of the STP, we are of the view that Tanish Shrushti CHS appears to be necessary party in this case. We direct the applicants that above three parties i.e. MoEF&CC, SEIAA and Tanish Shrushti CHS be added as respondent Nos.6, 7 and 8, respectively in the Original Application within a week and amended copy of the memo of Original Application may be placed on record. Copy of the same shall also be served on other parties/respondents. After impleadment of the newly added respondent Nos.6, 7 and 8, the Registry shall issue notice to them, returnable within four weeks, directing them to file their respective reply-affidavits.

5. The applicants are directed to provide copies of the amended memo of Original Application and annexures thereto to the newly impleaded respondents, within a week.

6. The applicants are also directed to take necessary steps for service upon the newly impleaded respondents by both ways and also through available e-mail.

7. Accordingly, I.A. No.204/2023 is allowed.

O.A. No.02 of 2020 :

9. We would like to have definite reply from the side of SEIAA to be included in their affidavit to be filed as to whether the construction of the buildings “A” to “J” will be considered as a single project. We would also like to have a reply from MoEF&CC and SEIAA whether any policy is laid down by them to check the device adopted by the Project Proponent to split one bigger survey number/project into parts for raising construction below 20,000 sq.mtrs in order to obviate the need of prior EC.

10. Put up this matter (O.A.) for next consideration on 05.02.2024.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 19, 2023
O.A. No.02/2020(WZ)
npj