

Item No. 3

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 56/2019(WZ)

Mr. Mangesh Mahadev Parab

.....Applicant

Versus

M/s. New Monarch Builders & Contractors & Ors.

....Respondent(s)

Date of hearing: 17.11.2022

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

Applicant : Mr. Asim Sarode, Advocate

Respondent(s) : Mr. Saket Mone, Advocate for R-1
Mr. Aniruddha S. Kulkarni, Advocate for R-3/MPCB
Mr. Himanshu Raskar along-with Mr. Raghvendra Kulkarni
h/f Mr. Sameer Khale, Advocate for R-5/MCGM
Mr. R. B. Mahabal, Advocate for R-6/SEIAA

ORDER

1. From the side of Applicant- Mr. Asim Sarode, learned Counsel for the Applicant has appeared and argued that EC for the present project was required to be taken which has not been done by the Project Proponent i.e. Respondent No. 1/New Monarch Builders and Contractors. He has also pointed out the Joint Committee's report at page 340 of the paper book which contains the other violations done by the Respondent No. 1. It is because of these facts that he has sought relief before us that environmental cost be imposed upon the Respondent No. 1 on the basis of Polluter Pays Principle.

2. From the side of Respondent No. 1/New Monarch Builders and Contractors- Mr. Saket Mone, learned Counsel has appeared and has

drawn our attention to the letter dated 17.06.2017 written by the Addl. Chief Secretary, Environment Department addressed to the Respondent No. 1, where-in it is expressed that Environment Clearance (EC) is not required to the extent of the area approved in the 'Letter of Intent' issued by the Slum Rehabilitation Authority prior to the publication of the Environmental Assessment Notification dated 14.09.2006. In this letter, the opinion of Law and Judiciary Department is also quoted which states that admittedly the project of slum rehabilitation scheme under reference was started before issuance of Notification dated 07.07.2004 and also the work of rehabilitation up to 7th floor was completed before the amended provision of the Notification dated 07.07.2004 came into force. In this factual position and also in view of the clause 1 of the explanation given in para 3 of the Notification dated 07.07.2004, it is clear that the condition of Environment Clearance (EC) is required under Notification dated 27.01.1994 and 07.07.2004, may not be applicable in the case of slum rehabilitation scheme under reference. He has also drawn attention to the Letter of Intent dated 05.06.2003, where-in the total built up area of this project is recorded as 75603.55 sq. mtrs, therefore, it is argued that the entire project should be taken as a whole and in view of the letter dated 17.06.2017 issued by the Addl. Secretary, Environment Department, it is clearly established that there was no requirement of Environment Clearance (EC) for the present project.

3. Besides that it is further argued by the learned Counsel for the Respondent No. 1 that the present application is barred by limitation because the project in question was approved in the year 1996 pursuant to which the work of the project was commenced and first Intimation of Approval (IOA) and the plinth commencement certificate were issued by the Respondent No. 3 on 25.08.1998. The first part occupation certificate

in respect of the project in question came to be granted on 20.03.2003. Therefore, it is evident that the cause of action should be treated to have arisen in the year 1996 while the present application has been filed on 24.06.2019. Therefore, it should be dismissed on this very ground alone.

4. From the side of Respondent No. 3/Maharashtra Pollution Control Board (MPCB)- Mr. Aniruddha S. Kulkarni, learned Counsel has appeared and apprised that reply affidavit has already been filed. In the reply affidavit, it is submitted that Respondent No. 1 has constructed 56558.62 sq. mtrs. BUA on site till date which includes 6 nos. of Rehabilitation Building (901 flats) and 1 no. of sale building (595 flats). The total water consumption is about 1051.65 m³ and sewage generation is about 841.32 m³. The Respondent No. 1 has not provided STP for treatment of domestic sewage nor has it provided OWC for treatment and disposal of biodegradable waste because of which the Respondent Board has issued directions under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 33A of the Air (Prevention and Control of Pollution) Act, 1981. A show cause notice dated 14.11.2022 has been issued directing the Respondent No. 1 as to why the existing construction activity be not stopped and why the Competent Authority be not directed to disconnect water & electricity supply at the construction site because of the violations which have been recorded in the said notice.

5. From the side of Respondent No. 5/MCGM- Mr. Himanshu Raskar along-with Mr. Raghvendra Kulkarni holding brief of Mr. Sameer Khale, learned Counsels have appeared and prays that two weeks' time may be allowed to file the reply affidavit. Accordingly, the same is allowed.

6. From the side of Respondent No. 6/State Environment Impact Assessment Authority (SEIAA)- Mr. R. B. Mahabal, learned Counsel has

appeared and apprised that since he was member of the Joint Committee, hence no separate affidavit has been filed.

7. The Joint Committee’s report has clearly observed as below:-

“4. (i) After carrying out the site visit and observing various Intimation of Approval (IOA) and approved drawings, the approvals have been grouped in three sets three sets namely

- a) Before the date of EIA notification (14/09/2006),*
- b) Before the Office Memorandum explaining the total Built Up area (04/04/2011) and*
- c) From 04/04/2011 till today to understand whether the approval for the construction has crossed the lawful limit of 20,000 Sq.M and when the Project Proponent should have applied for Environmental Clearance.*

a)	Total BUA upto 13/09/2006						
Sr. No	Date of Plan Approval	Approval	Building Config.	FSI Area (Sq. mtr)	Non FSI Area	Total Area	Cumulative Area for EC
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
1	20.03.2003	Part OCC	Rehab Bldg. No	1085.24	425.80	1511.04	
2	17.02.2004	Part OCC	Rehab Bldg. No 1B(Gr+7)	1682.91	657.49	2340.40	
3	21.04.2006	Part OCC	Rehab Bldg. No	2852.91	911.33	3764.24	
			Total BUA	5621.06	1994.62	7615.68	
	Area Considered for EC					NIL	NIL
b)	Total BUA after 13/09/2006 to 03/04/2011						
							(D)<20000
4	28.08.2007	Full OCC	Rehab Bldg. No 5	41.69		41.69	41.69
5	08.11.2007	IOA	Sale Building (2B+Gr+6)	15527.70	9473.28	25000.98	15569.39 (4G+5D)
6	29.12.2007	IOA	Rehab Bldg. No	6331.31	6418.67	12749.98	21900.70 (5G+6D)
7	30.01.2008	Full OCC	Rehab Bldg. No	2824.14	941.86	3766	24724.84 (6G+7D)
8	16.05.2008	Full OCC	Rehab Bldg. No 4(Gr+7)	3360.80	1229.44	4590.24	28085.64 (7G+8D)
9	10.06.2008	Amended IOA	Rehab Bldg. No	2443.70	734.62	3178.32	30529.34 (8G+9D)
			Total BUA	30529.34	18797.87	49327.21	
	Area Considered for EC					30529.34	30529.34
c)	Total BUA after 13/09/2006 to 03/04/2011						
10	05.09.2018	Part OCC	Rehab Bldg. No	6468.58	5118.07	1 1586.65	42115.99 (9G+10F)
11	05.02.2018	Part OCC	Sale Building (3B+Gr+19)	24956.44	10516.18	35472.62	77588.61 (10G+11F)
			Total	31425.02	15634.25	47059.27	
						47059.27	77588.61

(ii) From the above-mentioned table, it is evident that the process of environmental clearance should have been started before 29.12.2007, wherein the FSI area appears to have exceeded the limit of 20000 Sq. Mtr.

(iii) In compliance of the Hon'ble NGT Order dated 15/11/2021, the Joint Committee representing member of SEIAA, Maharashtra State, BMC, Maharashtra Pollution Control Board and Slum Rehabilitation Authority, Mumbai has carried out further Joint Inspection of afore mentioned project on 11/5/2022 for preparing final report.

(iv). The SRA has submitted modified report with respect to earlier submitted interim report which is enclosed herewith as Annexure-1.

(v) Project proponent has submitted a letter dtd. 17/06/2017 regarding seeking clarification on applicability of E.C for ongoing S.R. Scheme u/s 33 (10) on property bearing CTS No.-7-6/2 to 8, 706/11, 706/14 to 16 & 706/22 of village Marol at Andheri (East), Mumbai-400059 for "Sagbaugh Sneha Sagar C.H.S. Ltd." Vide No. ENV-2017/Legal/CR-4, wherein it is stated that -Based upon the information provided by the Project Proponent, in view of the opinion preferred by the Law & Judiciary Department reproduced above, for the specific SRA project under reference above, Environment Clearance is not required to the extent of area approved in Letter of Intent issued by the Slum Rehabilitation Authority prior to the publication of Environment Impact Assessment Notification dtd. 14.9.2006. this answers your request for clarification." A copy of the letter dtd.17/6/2017 is enclosed as an Annexure-2.

5. *Project proponent has not obtained Environment Clearance and has not applied for Environment Clearance for this project after exceeded the limit of 20000 Sq. Mtr. till date.*

6. *Project proponent has also not obtained Consent to Establish and Consent to Operate from Maharashtra Pollution Control Board for this project till date.*

7. *Total water consumption for this project is approximately 1050 CMD and approximate sewerage generation is approximately 841 CMD.*

8. *Project proponent has not provided STP for treatment of Sewage generated from this project. The generated sewage is being disposed into BMC Sewer line.*

9. *Project Proponent has not provided OWC for treatment of Solid Waste from this project. MSW generated from this project is being given to BMC Collection System.*

10. *Project Proponent has not provided Solar photo voltaic system.*

11. *Project Proponent has provided 310 No. of parking for sale building.*

12. *Project Proponent has provided water harvesting system in Rehab Building 7 and Sale Building.”*

8. At point no. 5, it is clearly observed that the Project Proponent has not obtained Environment Clearance (EC) while the learned Counsel for the Respondent No. 6/SEIAA- Mr. R. B. Mahabal during argument, stated that in fact Environment Clearance (EC) is not required in the present case but when questioned as to why despite SEIAA being member of the Joint Committee which has observed that Environment Clearance (EC) was required, he is now taking a different stand, he could not make it clear. In view of this, we direct the learned Counsel for the SEIAA to make his stand clear by submitting an affidavit, particularly stating there-in as to whether in the present case, Environment Clearance (EC) was required to be obtained by the Respondent No. 1 or not. A copy of the said affidavit shall be served upon the learned Counsel for the Applicant in advance and thereafter, he may give reply of the said affidavit within a period of one week, if so required.

9. We direct the Registry to place this matter for final disposal and the remaining hearing on 12.01.2023

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

November 17, 2022
Original Application No. 56/2019(WZ)
P.Kr