

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

[Through Physical Hearing (with Hybrid Option)]

**ORIGINAL APPLICATION NO.34 OF 2023 (WZ)
WITH
I.A.NO.228/2023 IN O.A. NO.34/2023 (WZ)**

Sandeep Prakash Parkar & Anr.

.... Applicants

Versus

Member of Secretary, SEIAA, Env't. Dept. & Ors.

.... Respondents

Date of hearing : 05.12.2023

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

Applicants

: Mr. Aditya Pratap, Advocate

Respondents

: Mr. Aniruddha Kulkarni, Advocate for R-1
Ms. Girish Utangale, Advocate for R-2
Mr. Prakash Shejal, Advocate for R-3 and R-4
Mr. Pinaki Misra, Senior Advocate i/b and with
Mr. Aditya Shiral, Advocate, representing M/s
Wadia Ghandy & Co., for R-5
Mr. Rohan Cama, Advocate for deleted R-6

ORDER

I.A. No.228/2023 (WZ) :

1. This I.A. has been filed pursuant to our order dated 05.09.2023 seeking deletion of respondent No.6 – Mssrs. Oberoi Realty Limited from the array of the parties. It is also prayed in this I.A. that the applicant be allowed to add Oberoi Constructions Ltd as respondent No.6. We allow the application (I.A.) partly to the extent of deletion of respondent No.6 – Mssrs. Oberoi Realty Limited. Let the amendment be carried out today only.

2. With regard to prayer clause (C) of I.A., by which the applicant has sought impleadment of Oberoi Constructions Ltd. We direct the applicant to provide sufficient evidence as to what role have they (Oberoi Constructions Ltd.) got in the present Original Application, what relief is being prayed against them. In this regard, the learned counsel for the applicants states that he will convince this Tribunal on the basis of the Agreement of Sale executed by respondent No.5, copy of which has not been annexed/produced before us today. We direct him to file a copy of the said Agreement of Sale within a week.

3. Mr. Rohan Cama, learned counsel, who was so far representing M/s Oberoi Realty Limited, which has now been deleted, wants to file reply on behalf of Oberoi Constructions Ltd. against its proposed impleadment. We direct that a copy of the Agreement of Sale shall also be served by the learned counsel for the applicant upon the learned counsel for deleted respondent No.6, who may file objection against this I.A. within two weeks.

4. From the side of respondent No. 5 in O.A. – M/s Skylark Buildcon Pvt. Ltd., learned senior counsel Mr. Pinaki Misra has appeared and states that the prayers A, B and C made by the applicant are absolutely vague. In fact, in the present case, the grievance appears to be regarding the trees. He has drawn our attention to the substantial questions related to the environment, which are mentioned in para 1.8 of the application, whereat under clause “A”, a reference is made of Section 19 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and states that no Occupancy Certificate can be given without compliance of the trees specific conditions and whether the Slum Rehabilitation Authority (SRA) can grant such Occupancy Certificate without statutory mandatory compliance. Another substantial question under clause “B” mentioned in the application is that if the mandate of

the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 was to plant 1591 trees and its reflection was apparent in the Environment Clearance (EC) conditions, was it not mandatory for the Project Proponents to have carved out conducive spaces so that 1591 trees would have been planted.

5. Having drawn our attention to above two substantial questions, the learned counsel has also drawn our attention to pages 64 to 65 of the paper-book, which is an order dated 30.11.2009 issued by the Superintendent of Gardens and Tree Officer of Municipal Corporation of Greater Mumbai (MCGM) to respondent No. 5 – M/s Skylark Build, and states that the said order directs the Project Proponent to plant 32 trees in the property in question within 30 days in accordance with the provision under Section 8(5) of the said Act and intimate the Tree Officer about the action taken. According to the learned senior counsel, the said compliance has been done by respondent No.5. It is further mentioned in the said letter/order in page 65 of the paper-book as follows:

“Further in accordance with the provision under section 11(1) of the Act, you are hereby directed to plant requisite number of trees as per the norms of the Tree Authority i.e. in open spaces two (2) trees per 100 sq.mtr. and in R.G. area Five (5) trees per 100 sq.mtr. and care should be taken so that tree grows properly and give a report to the Tree Officer about the condition of these trees once in six months for a period of 3 years.

As per provision under section 19(b) you are directed to obtain the N.O.C. of the Tree Officer for planting of trees in open spaces as well as in R.G. Area as per the norms of Tree Authority before getting occupation/completion certificate of the newly constructed building.”

6. The learned senior counsel for respondent No.5 states that this order could have been challenged by the applicants under Section 14 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, as an appeal would lie to the Tree Authority against the said order, but it has not been done and instead, the present application has been filed erroneously.

7. In rebuttal, from the side of the applicants, the learned counsel has stated that he would not be required to file an appeal against the order of Tree Authority, rather he wants execution of the same. He states that in compliance of the said order, the Project Proponent – respondent No.5 ought to have planted as many as 1591 trees, details of which are given at page 15 in para 3.1 (B). We find that this is the calculation made by the applicants themselves and the learned counsel emphasizes that he wants execution of that order of the Tree Authority and therefore, there was no need to challenge the same in an appeal.

8. Rejoinder to the reply of respondent No.5, if any may be filed by the applicants before the next date.

9. We direct the Registry to place this matter for hearing and disposal of I.A. No.228/2023 on 31.01.2024.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

December 05, 2023
Original Application No.34/2023(WZ)
npj