

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Review Application No. 01 of 2023 (SZ)

In

Original Application No. 03 of 2022(SZ)

IN THE MATTER OF

KMK Developers Private Limited.

Through its Authorised Representative,
Mr. Murali Krishna Kottu, 5AC-510,
HBR Layout, 2nd Laout Kalyan Nagar,
Outer Ring Road, Bangalore- 560 043.

...Review Applicant(s)

Versus

1. Jagan Kumar, J.

S/o. Sri Jayaraman.K.,
Aged about 41 years,
C/o The Renaissance Foundation, No. 529,
4th Cross, K.S.M Enclaves, Banjara Layout,
Horamavu Post, Bangalore- 560 113.

2. The Chief Secretary to Government,

Room No. 320, 3rd Floor,
Vidhanasoudha,
Bangalore- 560001.

3. The Additional Chief Secretary to Government,

Urban Development Department,
Room No. 436, Vikasa Soudha,
Bangalore- 560001.

4. The Principal Secretary to Government,

Rural Development and Panchayat Raj,
3rd Gate, 3rd Floor,
MS Building,
Bangalore- 560001.

5. The Principal Secretary to Government,

Revenue Department,
Room No. 505, 5th Floor, Gate-3,
MS Building,
Bangalore- 560001.

6. The Additional Chief Secretary to Government,

Forest, Envrioment & Ecology Department,
Room No. 447, 4th Floor, Gate No.2,
MS Building,
Bangalore- 560001.

7. The Principal Chief Conservator of Forests (Wildlife)

4th Floor, Aranya Bhavan,
Malleshwaram,
Bangalore- 560012.

8. The Member Secretary,

SEIAA Karnataka,
Forest, Ecology & Environment Department,
MS Building,
Bangalore- 560001.

9. The DGP & DG of Fire and Emergency Services,

No.1 Annaswamy Mudaliar Rd, Hermit Colony,
Sivchetti Gardens,
Bangalore- 560042.

10. The Chairman,

Karnataka State Pollution Control Board,
Parisara Bhavan, No. #49, Church Street,
Bangalore- 560001.

11. The Senior Environmental Officer,

Bangaluru City,
Nisarga Bhavan, 3rd Floor,
Thimmaiah Road,
Bangalore- 560010.

12. The Commissioner,

Bangalore Development Authority,
Kumaran park West, T. Chowdaiah Road,
Bangalore- 560020.

13. The Managing Director,

BESCOM, Corporate Officer, K.R. Circle,
Bangalore- 560001

14. The Deputy Commissioner,

Bangalore Urban District,
D.C. Office Building, Behind Kandhaya Bahvana,
Bangalore- 560009.

15. The Panchayat Development Officer,

Seegehalli Grama Panchayat,
Kannamangala Post,
Bangalore- 5600067.

16. Bruhat Bangalore Mahanagara Palike,

Hudson Circle,
Bangalore- 560002.

...Respondent(s)

Date of Order: 8th February, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

IN CHAMBER BY CIRCULATION

ORDER

1. This is a peculiar case where the review applicant, who is listed 16th respondent in the Original Application No. 03 of 2022, is

seeking to review the order of withdrawal by the applicant of his Original Application.

2. Under Rule 22 of the National Green Tribunal (Practice and Procedure) Rules, 2011, it is the discretion of the Tribunal to consider the matter in open court if there are materials for detailed hearing and if not the same can be decided on circulation. Since, this Tribunal felt that there is nothing to be argued in detail, the same was decided to be disposed of on circulation as provided under the Rules.
3. The applicant on 17.10.2022 had filed a memo dated 12.04.2022 seeking permission to withdraw the Original Application with a liberty to file a fresh Original Application along with documents and adding some of the respondents on the same cause of action. While he was permitted to withdraw his case, the other respondents did not have any objection as has been recorded in the original order. However, the review has been filed by the 16th respondent stating that the report filed by the Bangalore Development Authority (BDA) was not mentioned in the order while allowing the withdrawal of the Original Application and therefore the order has to be reviewed.
4. It is quite common that very often after the Original Application is heard for some time, the applicant or the Learned Counsel finds that the application may not be admitted or allowed and request for leave of the Court to permit the applicant to withdraw the application with or without seeking liberty to institute a fresh application. In this case, the applicant has specifically sought for permission to institute a fresh application on the same cause of action within the period of limitation by adding new respondents and filing few more documents. This Tribunal also had granted liberty to file a fresh application and allowed the applicant to withdraw the Original Application. It is clear that when once the application is withdrawn by the applicant himself by reserving the right to file a fresh application, the review applicant cannot have any grievance.

5. We are of the view that the principle underlying Rule 1 of Order XXIII of Code of Civil Procedure should be extended in the interest of the administration of justice to the cases of withdrawal of Original Application also not on the ground of the *res judicata* but on the ground of public policy. Since the applicant had specifically sought for liberty to file a fresh Original Application, he was permitted to withdraw.
6. Now the question is whether the 16th respondent, who is the project proponent, can seek the review of that order. The power of the Court to review an order has been considered in various Judgements by the Hon'ble Supreme Court as well as the Hon'ble High Courts. A review is provided to correct accidental mistakes or any error apparent on the face of the record. Yet in the limb of law, the Courts and even the statutes may lean strongly in favour of finality of the decision legally and properly made. This is because to avoid any abuse of process or miscarriage of justice. It is a settled principle that an error which is not self evident and has to be detected by a process of reasoning can hardly be an error apparent on the face of record justifying the exercise of review. It should be remembered that a review application has a limited purpose and cannot be allowed to be an appeal in disguised.
7. In this case, it is only the grievance of the review applicant that the report filed on behalf of the BDA had not been mentioned in the order. It is the applicant who had invoked the jurisdiction of this Tribunal had withdrawn his case and the review applicant cannot have any grievance. Therefore, we see no merits in the review application and the same is dismissed.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

R.A. No. 01/2023(SZ)in
O.A No. 03/2022(SZ)&
8th February, 2023. (AM)

**Before the National Green
Tribunal
Southern Zone (Chennai)**

R.A. No. 01 of 2023(SZ)

KMK Developers Pvt. Ltd
Vs.
Jagan Kumar and Ors.



R.A. No. 01/2023(SZ)in
O.A No. 03/2022(SZ)&
8th February, 2023. (AM)