



2021 INSC 795

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 595 OF 2021

M/S. SAI BABA SALES PVT. LTD.

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5768 OF 2021

J U D G M E N T

Hrishikesh Roy, J.

1. Heard Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellant in Civil Appeal No. 595/2021. Mr. Lonkar Nitin representing the Original Applicant before the National Green Tribunal. Ms. Aishwarya Bhati, learned Additional Solicitor General of India appears for the Ministry of Environment & Forest.

The Government of Maharashtra and the State Pollution Control Board are represented by Mr. Rahul Chitnis and Mr. Mukesh Verma, learned counsel respectively.

2. These two appeals are filed under Section 22 of the National Green Tribunal Act, 2010 (for short "the NGT Act") assailing the judgment and final order dated 18.1.2021 in the OA No. 83/2019. Under the impugned judgment, the NGT held that further construction cannot be made without environment impact assessment, but protected the constructions already made by the appellant, M/s Sai Baba Sales Pvt. Ltd. ("Project Proponent") on the basis of the Environmental Clearance ("EC" for short) issued by the Pimpri Chinchwad Municipal Corporation ("PCMC" for short) as per the notification dated 9.12.2016. The Original Applicant, on the other hand, is aggrieved by the decision of the NGT to protect the standing construction and limiting the impact of the impugned judgment on further construction to be made by the project proponent.

3. The main issue that arises for consideration in these matters is whether the Project Proponent herein

possesses a validly granted Environmental Clearance (EC) under the Environmental Impact Assessment (EIA) notification dated 14.9.2006. The 2006 EIA notification provided that the projects above 20,000 sq. meter and below 1,50,000 sq. meter should obtain an EC from the State Environment Impact Assessment Authority (SEIAA) of the Ministry of Environment, Forest and Climate Change (MoEFCC).

4. For deciding the issue, the necessary facts in brief are that the Project Proponent initially conceived a project of 15,040 sq. mtrs. (below the EC threshold limit of 20,000 sq. mtrs.) and it approached the PCMC for a lay out order which was a prerequisite, to obtain an EC from the SEIAA of the MoEFCC. The application was processed and the Building Permission Department of the PCMC granted the commencement certificate to the Project Proponent for an area of 15,040 sq. mtrs. and approved the plan under the sanction letter dated 14.5.2013. With such permission, the Project Proponent could construct the permitted structures, and since the built up area was less than the threshold limit of 20000 sq. mtrs.,

the EC permission was not needed for the intended construction.

5. The Project Proponent builder then applied and was granted additional FSI as it intended to expand the project to one with built up area of 49,012 sq. mtrs. and for this they approached the PCMC for a lay out order, which as noted earlier was essential to obtain an EC from the SEIAA of the Ministry of Environment, Forest and Climate Change (MoEFCC). The required approval was issued by the Corporation on 28.11.2016.

6. Under the Ministry's notification dated 9.12.2016, the EIA regime was altered to indicate that the EC could be obtained from the Environmental Cell of a local authority, such as the PCMC. The State of Maharashtra opted for the new regime and adopted the environmental condition stipulated in the MoEFCC notification dated 9.12.2016. This was followed by the communication of the MoEFCC on 7.7.2017 which clarified that separate environmental clearance is not required for projects upto 1,50,000 sq. mtrs. built up area in respect of municipal corporations in Pune and Konkan division.

7. The Project Proponent then filed an application for EC under the 2016 notification which was considered by the Environmental Cell of the PCMC which appraised the project, as contemplated in the notification dated 9.12.2016. The necessary permission for construction to the builder was issued on 28.11.2017, stipulating the environmental conditions for buildings and constructions and this permission was accorded as per the amended regime under the notification dated 9.12.2016 of the MoEFCC and consequential one dated 13.4.2017 of the Maharashtra Government.

8. While the matter stood thus, the NGT while considering the challenge by certain applicants to the exemption from EC, in a batch matter, quashed certain portions of the MoEFCC notification dated 9.12.2016. The NGT in the analogous judgment dated 8.12.2017 in the OA No. 677/2016 (*Society for Protection of Environment and Biodiversity Vs. Union of India*) and other cases, directed the MoEFCC to revisit its notification dated 9.12.2016 and to take appropriate steps to amend/rectify

certain clauses in the Ministry's notification, in terms of the NGT's judgment.

9. Nearly two years after the Project Proponent secured construction permission on 8.12.2017 from the PCMC, the OA No. 83/2019 was filed by the Pune resident (respondent No. 10) with the allegation that the Project Proponent had made construction without obtaining any EC. In this proceeding the NGT constituted a three Member Committee comprising the SEIAA - Maharashtra, the State PCB and the Municipal Commissioner, Pune. The Committee, after spot verification, in its Report dated 18.8.2020 noted that construction of total built up area of 22930.17 sq. mtrs. is already completed for Building Nos. A,E,B,D and the Club House. Thereafter, the NGT considered the submission of the original applicant, who contended that while the authority to grant EC is SEIAA as per the EIA notification dated 14.9.2006, the EC for the project in question was granted by the PCMC. The NGT in its order on 17.11.2020, in the first round, opined that the constructions were irregular and

remedial measures were directed for the project in question.

10. The above order of the NGT was challenged before this Court and the Project Proponent's CA No. 3893/2020 was allowed on 11.12.2020 whereby, the NGT's order was set aside and the matter was remitted back to the NGT to afford hearing to the appellants and to pass a fresh order.

11. The case of the Project Proponent as can be seen from the pleadings was that he had initially commenced construction on 14.5.2013 with a sanction plan of 15040.05 sq. mtrs., which, being lesser than the threshold limit of 20,000 sq. mtrs, did not require a prior EC. Thereafter, for the proposed expansion of the project, for total constructed area of 49,012 sq. mtrs., the Project Proponent approached the concerned authority on 7.11.2016 for issuance of "*Proposed Development Certificate*", which is a prerequisite to apply for EC, and the said certificate was granted on 28.11.2016 for the purpose of obtaining the EC from the SEIAA. But at that stage, by virtue of the MoEFCC notification dated

9.12.2016, the concerned local authority was designated as the sanctioning authority for projects between 20,000 sq. mtrs. and 50,000 sq. mtrs. and accordingly under the changed regime the Project Proponent applied to PCMC on 10.7.2017 and was sanctioned EC by the competent local authority, on 28.11.2017.

12. It is the further contention of the Project Proponent that when the NGT on 8.12.2017 had invalidated certain portions of the 2016 notification, it did not issue any order nullifying those ECs which were granted by the local authority under the altered regime.

13. The original applicant on the other hand, contended that when the NGT struck down certain provisions of the MoEFCC's 2016 notification, the 28.11.2017 EC granted by the Municipal Corporation, would not legitimize the construction and therefore the Project Proponent should be prevented from proceeding with the construction and also be penalized for the unauthorized construction.

14. The NGT then observed that because of the invalidation of certain clauses in the 2016

notification, the EC obtained from the PCMC is unacceptable and accordingly rendered a finding that the Project Proponent had failed to obtain the valid EC. The maintainability challenge of the OA on the ground of limitation was however rejected by observing that the cause of action arose only in 2017 when the builder allegedly exceeded the threshold limit of 20,000 sq. mtrs. Accordingly, the authorities were directed to take coercive action against the Project Proponent for construction done after 8.12.2017, when the NGT's judgment was rendered in the OA No. 677/2016. However, even with such finding having regard to the regime that existed at the relevant time and adverting to the ratio in *Goan Real Estate and Construction Ltd. Vs. Union of India*,¹ the NGT held that the construction already raised should be protected. However, further construction should be permitted only after securing the EC from the competent authority, under the current regime.

15. The picture which emerges from the above discussion is that when the Project Proponent initially wanted to

¹ (2010) 5 SCC 388

apply for the EC it had obtained the requisite layout sanction for applying to the SEIAA. As such, it was operating well within the applicable procedure, prior to the amendment. After grant of such sanction, while the construction was underway, the amendment came about on 9.12.2016 whereby, the local authority such as the Municipal Corporation was made the competent authority to grant EC. In the changed circumstances, the Project Proponent necessarily had to apply to the PCMC as during the interregnum before the NGT's judgment on 8.12.2017, SEIAA was not the competent authority to consider application for EC. The Project Proponent was therefore, complying with the regime set out by the amended notification. It is apposite to note that the Committee appointed by the NGT, in its report dated 11.8.2020 had clearly indicated that when the Project Proponent had received the EC on 28.11.2017, the competent authority to issue the EC was the Environmental Cell of the PCMC. Thus, it is the discernible understanding as part of the NGT's own expert Committee that the Project Proponent had obtained

the EC from the competent authority of the relevant time i.e. the PCMC. Interestingly, the constituted Committee also included a member of the SEIAA.

16. Moreover, only after the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016, the State of Maharashtra issued a clarification on 29.1.2018 directing that the Municipal authorities should not process pending applications. But neither the decision of the NGT nor of the Maharashtra Government categorically gave any guidance as to the implication on the EC obtained by the Project Proponent, on the strength of which, a substantial measure of construction was already made. It is also necessary to note that in the subsequent notification issued on 14.11.2018 and 15.11.2018 by the MoEFCC, the power to grant EC continued to vest in the local authority such as the PCMC, with the only change being that it is the municipality itself and not its Environmental Cell which is empowered to grant the EC. For the sake of completion, it may be recorded that the said

notifications of the MoEFCC is stayed by the Delhi High Court on 26.11.2018 in the WP(C) No. 12517/2018.

17. It is important to bear in mind that the Committee constituted by the NGT to report on the building project did not underscore any major deviation but instead found that the Project Proponent had made substantial compliance by obtaining the EC from the competent local authority. Moreover the OA, neither before the NGT or this Court, ever contended that appraisal done by the PCMC's Environmental Cell was defective or any different from one done by SEIAA. Both processes are also similarly structured. This may be the reason why the NGT in the impugned judgment itself protected the already made construction. However, the Project Proponent was restrained from making any further construction without obtaining clearance from the statutory EC and adhering to the environmental norms.

18. The project of the appellant comprises six buildings of which three were constructed in full, and the super structure of the fourth building is completed and only the internal works remains to be done. In the fourth

building, 40 out of the 64 apartments have already been sold. In this context, it would be appropriate to advert to the submission of Ms. Aishwarya Bhati, the learned ASG who had clearly stated that at the relevant time, the competent authority to grant EC is the PCMC and not the SEIAA and therefore the internal works for the fourth constructed building, can be allowed to be completed.

19. Considering the above circumstances, the NGT rightly protected the already erected buildings and this protection in our view, should not be impacted by the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016 whereby certain portions of the MoEFCC's 9.12.2016 notification were invalidated and direction was issued to the Ministry to revisit the said notification. Importantly, neither the NGT's invalidation order nor the subsequent clarifications by the State of Maharashtra, have suggested any adverse action against the pre-existing structures. As the expert body exclusively occupying the environmental field, the NGT has assessed the factual circumstances to

consciously lean towards protecting the already constructed structures. Nothing more need be added on this aspect. It is also not necessary in this appeal to venture into the question of the retrospective implication of the invalidation of certain parts of the 2016 Notification for other project proponents, which may have gained their ECs in the interregnum.

20. In situations of this nature, the Doctrine of *Legitimate Expectation* is attracted. The principle of the rule of law as explained in *De Smith's Judicial Review*, such as, Regularity, Predictability and Certainty in Government's dealings with the Public, must operate in the present matter. The Project Proponent can legitimately expect a certain degree of stability in the manner in which environmental regime is set and how the applications are processed. The actions of the authorities are expected to adhere to the prevalent norms only, without the element of uncertainty for the executed project.

21. In the above context we may benefit by referring to the seminal case of *Attorney General of Hong Kong v. Ng*

*Yuen Shiu*², where Lord Fraser speaking for the Privy Council, appositely observed thus,

“... when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty.”

22. This Court in *Sethi Auto Service Station vs Delhi Development Authority & Ors*³, speaking through Justice D.K. Jain, has cited other opinions and elucidated on the concept of *legitimate expectation*, in the following manner,

“24. The House of Lords in *Council of Civil Service Unions & Ors. Vs. Minister for the Civil Service*, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. **Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either**

(a) **** **** **** **** ****

(b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decisionmaker that they

2 (1983) 2 AC 629 : (1983) 2 WLR 735

3 (2009) 1 SCC 180

will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn." (emphasis supplied)

23. The Doctrine of *Legitimate Expectation* is further explained in *Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries*⁴ where for a Three-Judge Bench of this Court Justice J.S. Verma observed thus: -

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

24. The more compelling public interest might possibly diminish the degree of *legitimate expectation* for a party but a balance has to be found. In the present

⁴ (1993) 1 SCC 71

matter the appellant has acted on the EC and made substantial investments. They cannot be pushed to a precipice and be made to fall. Doing so would be inequitable particularly when, the appellant has scrupulously adhered to the applicable legal framework during the concerned period. Moreover, third-party interests have also cropped up in the interregnum.

25. A Project Proponent is not expected to anticipate the changes in EC regimes, especially as a result of judicial interventions, and keep revisiting the sanctioned clearances by the competent authority or even raze down validly constructed structures. Neither can it be expected to knock the doors of an authority, not empowered at the relevant time, to process its applications. Such a scenario would render the process akin to a *Sisyphean task*, eternally inconclusive and never ending.

26. As seen, the NGT in the impugned judgment has protected the completed construction and, on this aspect, we deem it appropriate to endorse the same, by

accepting the submission of the appellant's Counsel and the learned ASG. The four constructed buildings are resultantly to be treated to be under a valid EC with all legal consequences. It is, however, made clear that if any further construction is proposed by the appellant with the sanctioned layout, the same should not be done on the strength of the EC granted on 28.11.2017 by the PCMC. In other words, if the Project Proponent wishes to construct the remaining buildings, they must secure fresh clearance from the competent authority, as per the currently applicable framework. It is ordered accordingly.

27. With the above order, the appeals are disposed of without any order on cost.

.....J.
[R. SUBHASH REDDY]

.....J.
[HRISHIKESH ROY]

NEW DELHI
NOVEMBER 26, 2021