

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL No. 72/2013**

CORAM:

**Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay.A.Deshpande
(Expert Member)**

B E T W E E N:

VIRANI CONSTRUCTION COMPANY
Ground Floor, Virani Plaza,
Next to Virani Petrol Pump,
Kausa, Thane-400612.

....Appellant

A N D

1. THE STATE LEVEL ENVIROMENTAL IMPACT
ASSESSMENT COMMITTEE (SEAC),
Maharashtra
C/o, Secretary Environment,
Room No.217, Mantralaya Annex,
Mumbai-400032.
2. THE STATE LEVEL ENVIROMENTAL IMPACT
ASSESSMENT AUTHORITY (SEIAA),
Maharashtra
C/o, Secretary Environment,
Room No.217, Mantralaya Annex,
Mumbai-400032.
3. GOVT. OF MAHARASHTRA
Environment Department

Secretary Environment,
Room No.217, Mantralay Annex,
Mumbai-400032.

.....Respondents

Counsel for Appellants:

Mr. R.B.Mahabal Advocate.

Counsel for Respondents:

Mr.D.S.Bhalerao for Respondent No. 1,

Mr. A.M. Pimparkar for Respondent No.2.

Date 26th September, 2013

J U D G M E N T

1. This is an appeal against decision taken by the State Environmental Assessment Committee (SEAC), in its meetings dated 22nd, 23rd and 24th of May, 2013. The appellant is a developer. The appellant has been authorized to construct buildings on the plots bearing Survey Nos. 36/4, 37/1 and 37/2, situated at village Kausa (district Thane).

2. It is not necessary to give a detailed account of the facts stated by the Appellant. Briefly stated, the Appellant initially proposed to carry out residential-cum-commercial construction project; having total construction area of 19,796.74 sq. meters on the above three plots. The appellant submitted plans to the Thane Municipal Corporation (TMC) for approval. The plans were approved. The TMC issued required commencement certificate dated 9th April, 2012. Subsequently, the Appellant decided to construct more area. Comprehensively, the total construction as

proposed was of 38,071 sq. meters. Since it was over and above 20,000 sq. meters, the appellant approached to the State Environmental Assessment Committee (SEAC) for grant of Environmental Clearance (EC), in accordance with the MoEF Notification dated 14th September, 2006.

3. The appellant, admittedly, constructed 5,965 sq. meters of built up area on the said plots before the grant of EC. The proposal was considered by the State Environmental Assessment Committee (SEAC) in the meetings held on 22nd, 23rd and 24th May, 2013. The SEAC held that the construction of 5968 sq. meters, built up area was done by the appellant in violation of the MoEF Notification dated 14th September, 2006, and hence, the State Environmental Impact Assessment Authority (SEIAA), after due verification may initiate credible action, in accordance with OM dated 12th December, 2012, issued by the MoEF. Thus, proposal was referred to the State Environmental Impact Assessment Authority (SEIAA). The State Environmental Assessment Committee (SEAC) observed that the proposal will be considered only after the State Environmental Impact Assessment Authority (SEIAA) will take appropriate action or will give further instructions in the matter.

4. We have heard the learned Counsel for the parties. We have perused the affidavit in reply filed on behalf of the Respondent Nos. 1, 2 and 3. The Respondents have justified their action taken by the State Environmental Assessment Committee (SEAC). The Respondents referred to various OMs. The

Respondents submitted that the question involved, is in the context of interpretation of the provisions contained in EIA Notification, as well as various OMs, coupled with the Orders passed by the Hon'ble High Court of Bombay.

5. We have heard learned Counsel for the parties. We have also perused the relevant OM dated 12th December, 2012. The learned Counsel for the Appellant invited our attention to the Judgments rendered by the Hon'ble High Court of Bombay in (1) WP.No.2809 of 2012, (2) WP Lodging No.470 of 2013, (3) WP No.654 of 2013, (4) WP (L) No.852 of 2013 and (5) WP (L) No.470 of 2013.

6. Learned Counsel for the Appellant argued that the SEAC, should have considered the proposal on its merits. He contended that the part of construction carried out by the Appellant is duly authorized in view of the Municipal permission. He argued that the Appellant approached to SEAC due to subsequent development, namely, decision to expand its original project. He argued that the construction done by the Appellant is legal one, because no EC was needed at the time the project was for area below 20,000 se. meters. It is argued that the Appellant cannot be penalized for the earlier construction and, therefore, the impugned decision of SEAC is bad in law.

7. Before we proceed to consider the appeal on merits, it may be noted that the prayers in the Appeal, clearly go to show that certain directions are sought against the SEAC, particularly, for consideration of construction proposal in full on environmental

aspects. Not only that but the Appellant seeks declaration that previous construction of 8083 sq. meters, does not amount to violation of provisions of the Regulations enumerated in the MoEF Notification dated 14th September, 2006.

8. The Appellate jurisdiction of this Tribunal is circumscribed under Clauses (h) and (i) of Section 16 of Environment (Protection) Act, 1986. It will be useful to reproduce the relevant part of Section 16 along with Sub clauses (h) and (i) of the National Green Tribunal Act, 2010 for ready reference. It reads as follows:

“16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,-

- | | | | | |
|---------|-----|-----|-----|-----|
| (a) xxx | xxx | xxx | xxx | xxx |
| (b) xxx | xxx | xxx | xxx | xxx |
| (c) xxx | xxx | xxx | xxx | xxx |
| (d) xxx | xxx | xxx | xxx | xxx |
| (e) xxx | xxx | xxx | xxx | xxx |
| (f) xxx | xxx | xxx | xxx | xxx |
| (g) xxx | xxx | xxx | xxx | xxx |

(h) *an order made, on or after the commencement of the National Green Tribunal Act,2010, granting environmental clearance in the area in which any industries, operations or recesses or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act,1986 (20 of 1986)*

(i) *an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act,1986 (29 of 1986);*

- | | | | | |
|---------|-----|-----|-----|-----|
| (j) xxx | xxx | xxx | xxx | xxx |
|---------|-----|-----|-----|-----|

(Emphasis Supplied)

9. A plain reading of above provision clearly shows that an Appeal can be entertained, if it is against the provisions issued under Section 5 of the Environment (Protection) Act, 1986, or order granting the EC, or refusing the EC. There appears no

escape from conclusion that the Appellate jurisdiction of this Tribunal, is not equivalent to the Writ jurisdiction available to the Hon'ble High Court, under Art.226 of the Constitution. It is obvious, therefore, that this Tribunal cannot grant any declaratory relief and cannot issue any direction in the manner as prayed by the Appellant. In other words, we cannot direct SEAC to consider the proposal of the Appellant in full, excluding the area of the construction which was done prior to submission of the proposal. We cannot direct SEAC to segregate the earlier construction from remaining part of development project. Needless to say, the Appeal is pre-mature and incompetent.

10. Perusal of the record shows that the Appellant has not given up the project for construction of more than 20,000 Sq. meters. The Appellant's proposal is for construction of 38,071 sq. meters. The MoEF Notification dated 14th September, 2006, is part and parcel of the act done in pursuance of delegated powers, under the provisions of Environment (Protection) Act, 1986. The relevant Clause in the said Notification reads as under :

“Requirement of prior Environmental Clearance (EC):-

The following Projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for and for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority

(SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity;

(i) All new projects or activities listed in the Schedule to this notification.

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization.

(iii) Any change in product, mix in an existing manufacturing unit including in Schedule beyond the specified range.”

(Emphasis supplied)

3. Relevant portion of the Schedule in Clause (2) of the Notification reads as under:-

Project or activity	Category with threshold limit			Conditions if any
	A		B	
8	Building/Construction projects/Area Townships			Development projects and
1	2	3	4	5
8(a)	Building and Construction projects		>20000 sq.mtrs and < 1, 50,000 sq. mtrs. Of built up area	The built up area for the purpose of this Notification is defined as 'the built up or covered area on all the floors put together including basement(s) and other service area, which are proposed in the building/construction projects'
8(b)	Township and Area Development projects		Covering an area >50 ha and or built up area > 1,50,000 sq. mtrs+ +	All projects under item 8(b) shall be appraised as Category B1

11. Considering the tenor of the Judgments, referred to by the learned Counsel for the Appellant, we are of the opinion that the Hon'ble High Court of Bombay, has not quashed the OM dated 12th December, 2012, issued by the MoEF. The MoEF Notification dated 14th September, 2006, which mandates EC, required prior to commencement of construction exceeding 20,000 sq. meters, is still not quashed or withdrawn by the MoEF. What we find from the reply given by the Appellant to the Show Cause Notice given by the SEIAA, vide letter dated 10th September, 2013, is that the Appellant gave following explanation *“After making available necessary finance and making of our mind to develop further beyond 20,000m, we applied for the environmental clearance for the area that is more than 20,000m. However to be fair to environment, we planned and provided for environment management plan for the entire project without omitting responsibility for even the earlier planned area under construction.”*

12. It is pertinent to note that the Appellant did not show as to when the construction of 5965 sq. meters was completed. In this context, the only explanation given by the appellant is that his project is standalone project, and therefore, it is not compulsory to construct all buildings simultaneously, as a part of the same project. It is stated in the reply (Para 7) thus:

“If there is no market demand or we don't have sufficient funds, we may not construct the total project.”

13. On careful consideration of the Judgments of the Hon'ble High Court of Bombay, we are of the opinion that the relief was granted to other Project Proponents like M/s Saumya Buildcon Pvt. Ltd, M/s Tridhatu Ventures Ltd and M/s Nahur Vikekanand Co-op. Housing Society Ltd and another, having regard to the facts of particular cases. It is important to note that in (WP No.654 of 2013, M/s Tridhatu Ventures Ltd V/s State of Maharashtra and others, the Hon'ble High Court permitted the Project Proponent to put up construction upto 19,000 sq. meters, including construction of 4935 sq. meters, which was already put up, subject to certain conditions. The conditions enumerated in para 17 of that **Judgment**, may be reproduced as follows:

“17. Having heard learned counsel for parties, and in the facts and circumstances of the case and particularly in the view of the fact that the width of the road is sufficient as required by the DCR 1991 and as far as OM is concerned, the same is treated as advisory and not mandatory and in the facts of the present case where the petitioner does not propose to make any further digging in the earth or laying any further foundation structure for the purpose of putting up construction upto 19,000 sq. mtrs. of built up area including 4935 sq. mtrs already put up by the petitioner, we are inclined to direct the respondent-Municipal Corporation to permit the petitioner to put up construction upto to 19,000 sq. meter including 4935 sq. meter already put up, subject to following conditions:

(i) that the petitioner as well as the Chairman of 'Sri Swati Co-operative Housing Society' shall file undertakings stating that the petitioner and the society shall not put up any construction exceeding 20,000 sq meter including the existing construction on the site being land CTS No.275,275/1 to 276/1 to 16 & 277 village of Borla, Govandi.

(ii) that the petitioner will be putting up construction of 19,000 sq. mtrs for the purpose of accommodation 75 or maximum 78 members of 'Sri Swati Co-operative Housing Society' whose flats have already been demolished in 2010 for the purpose of redevelopment and not for any other purpose.

(iii) that the petitioner shall not do any further digging on the ground for laying foundation and shall only continue with the construction on the existing construction by raising height of the building within the limits permissible as per the DCR 1991 and in accordance with plans which may be sanctioned by the Municipal Corporation.

(iv) that the petitioner will not claim equity on the basis of this order.

(Emphasis supplied)

14. In our opinion, the Judgments of the Hon'ble High Court of Bombay are rendered in peculiar circumstances of each case. The said Judgments do not give a go-by to the

requirements as enumerated vide MoEF Notification dated 14th September, 2006, nor OM dated 12th December, 2012, issued by the MOEF, has been quashed or held ultra vires. In fact, OM dated 12th December, 2012, brings about internal instructions given by the MoEF to the State Authority. The Appellant cannot, as a matter of right, challenge the impugned decision of SEAC. The prayer Clause in the Appeal Memo reads as follows:

- A. The SEAC be directed to hear the complete proposal as submitted by the appellant for grant of Environmental Clearance on merit, notwithstanding the independent action that may be taken by the SEIAA.
- B. Prior construction to the extent of 5,965m² is legal as it does not attract the provisions of EIA notification 2006, as it is lesser than 20,000m² does not attract the provisions of EIA notification 2006, as it is lesser than 20,000 sq. meters.
- C. There is no violation by the Appellant with respect to the construction of the appellant of 5965m² on the said plot.
- D. Any other relief as may be deemed fit in the interest of justice.

15. This Tribunal cannot declare that the construction to the extent of 5,965 sq. meters is legal one. This Tribunal cannot entertain the Appeal against the decision of SEAC, which is not a final order as such. The SEAC, by the impugned decision only referred the proposal for necessary action to SEIAA, and decided to consider the proposal after the necessary action, or any other instructions of the superior Authority. The impugned decision, therefore, does not trample any legal right of the Appellant. What we find from the nature of the pleadings and prayers indicated in the Appeal Memo, is that by filing this Appeal, the Appellant desires to regularize the illegal construction, which has been already done inspite of the fact that no EC is granted for the project, though the said construction is part and parcel of the said project.

16. Taking a stock of the foregoing discussion, we are of the opinion that the Appeal is not maintainable and is incompetent. We are of further opinion that the appellant filed the present Appeal with malafide intention to put pressure on SEAC and SEIAA, in order to escape from credible action contemplated against him. In this view of the matter, the Appeal is liable to be dismissed with exemplary costs. We accordingly dismiss the Appeal with costs of Rs.1,00,000/-(Rs.One Lac). The amount of costs shall be deposited by the Appellant within one month by sending D.D drawn in favour of Fund Manager, Environmental Relief Fund, as per MoEF, Notification GSR-768(E),dated 4-10-2008, notified under the provisions of Section 7(A) of the Public

Liability Insurance Act,1991, directly sent to the said Authority under Registered Post/acknowledgement due. The appellant shall produce copy of the D.D., copy of the acknowledgment of forwarding letter and receipt of payment to the said Authority, in the office of this Tribunal, within a period of one month (four weeks). In case of default of payment of the said costs, in the manner stated above, we will be constrained to direct attachment of the constructed building of the Appellant and may issue further directions to defer the proposal of the Appellant from consideration till the said amount is paid, or for any other coercive action, as may be permissible under the Law.

....., JM
(V. R. Kingaonkar)

....., EM
(Dr. Ajay.A. Deshpande)

NGT