

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....
M.A. No. 18 of 2018

In

**Original Application No. 676 of 2017
(Earlier O.A. No. 37/2015)**

IN THE MATTER OF:

S.P. Muthuraman
S/o. Ponnusamy,
No. 204, Railway Feeder Road,
Sankar Nagar Post – 627 357
Tirunelveli Distict.

.... Original APPLICANT

Versus

1. Union of India

Rep. by the Secretary to Government,
Ministry of Environment and Forests,
Government of India, Paryavaran Bhavan,
New Delhi – 110003

2. The State of Tamil Nadu

Rep. by the Secretary to Government,
Ministry of Environment and Forests,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 003

...RESPONDENTS

AND

M/s. SSM Builders & Promoters

SSM Nagar, Puthur (Mappedu Road)
Alapakkam
Chennai – 600 063
Tamil Nadu
Through its Partner
M. Karthikeyan

..... Applicant / Respondent No. 6

1. Union of India

Through its Secretary,
Ministry of Environment & Forest
Paryavaran Bhawan,
CGO Complex, Lodi Road
New Delhi

2. Tamil Nadu Pollution Control Board,

Through its Member Secretary,
76, Mount Salai, Guindy,
Chennai – 600 032

3. State Environmental Impact Assessment Authority,

Panagal Building
Saidapet
Chennai – 600 015

..... Respondents

COUNSEL FOR APPLICANTS:

Mr. Pinaki Misra Sr. Adv and Mr. R. Chandrachud, Mr. Karna
Sharma, Adv

COUNSEL FOR RESPONDENTS :

Mr. Rahul Praap, Adv
Ms. Sakshi Popli and Mr. Riitesh Kumar, Advs, For SEIAA TN
Mr. Subramaniam Prasad, AAG and Mr. R. Rakesh Sharma, Advs,
for the State of Tami Nadu and CMDA

JUDGMENT

PRESENT:

Hon'ble Mr. Justice U.D. Salvi (Acting Chairperson)

Hon'ble Dr. Nagin Nanda (Expert Member)

Per. U.D. Salvi J.

Reserved on: 6th February, 2018
Pronounced on: 13th February, 2018

1. The Respondent No. 6 (M/s SSM Builders and Promoters) in Original Application no. 37 of 2015 (S.P. Muthuraman Vs. Union of India &Ors) has moved this application for direction to refund the amount of Rs. 36 crores deposited by it with Respondent no. 2 (TNPCB) along with the interest accrued thereupon.
2. Original Application no. 37 of 2015 titled as S.P. Muthuraman Vs. Union of India &Ors and Original Application no. 213 of

2014 titled as Manoj Mishra Vs. Union of India&Orsalongwith Miscellaneous Applications filed therein were disposed off with the following directions vide Judgment and order dated 07.07.2015 :

“163. In view of the above detailed discussion, we pass the following order and directions:

- 1) We hold and declare the office memoranda dated 12th December, 2012 and 27th June, 2013 as *ultra vires* the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memoranda.
- 2) Consequently, the above office memoranda are held to be ineffective and we prohibit the MoEF and SEIAA in the entire country from giving effect to these office memoranda in any manner, whatsoever.
- 3) We hold and declare that the resolution/orders passed by the SEIAA, de-listing the applications of the Project Proponents, do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and Notification of 2006 and do not call for interference.
- 4) We hereby constitute a Committee of the following Members:
 - a) Member Secretary of SEIAA, Tamil Nadu.
 - b) Member Secretary, Tamil Nadu Pollution Control Board.
 - c) Professor from Department of Civil Engineering, Environmental Branch, IIT Bombay.
 - d) Representative not below the rank of Director from Ministry of Environment and Forest (to be nominated in three days from the date of pronouncement of this judgment).
 - e) Representative of Chennai Metropolitan Development Authority.
- 5) Member Secretary of Tamil Nadu Pollution Control Board shall be the Nodal Officer of the Committee for compliance of the directions contained in this judgment.
- 6) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. This comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would

- further deal with the installation of STP's and other antipollution devices by the Project Proponents, including the proposed point of discharge of sewage and any other untreated waste. The Expert Committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically and environmentally sensitive areas and details of alteration of and its effect on the natural topography, the natural drainage system etc. The Committee shall also examine the adequacy of rainwater harvesting system and parking area and if at all they have been provided. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.
- 7) The Committee shall further report if the conditions stated in the planning permission and other permissions granted by various authorities have been strictly complied with or not.
 - 8) The Committee shall also report to the Tribunal if the suggestions made by the SEIAA in its meetings adequately takes care of environment and ecology in relation to these projects.
 - 9) What measures and steps, including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?
 - 10) All the Project Proponents shall pay environmental compensation of 5 per cent of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the Respondents is as follows:

Mr. Y. Pondurai.: **Rs. 7.4125 crores.**

M/s Ruby Manoharan Property Developers Pvt. Ltd.: **Rs. 1.8495 crores.**

M/s Jones Foundations Pvt. Ltd.: **Rs. 7 crores.**

M/s SSM Builders and Promoters: **Rs. 36 crores.**

M/s SPR and RG Construction Pvt. Ltd.: **Rs. 12.5505 crores.**

M/s Dugar Housing Ltd.: **Rs. 6.8795 crores.**

M/s SAS Realtors Pvt. Ltd.: **Rs. 4.5 crores.**

- 11) The compensation shall be payable to the Tamil Nadu Pollution Control Board within three weeks from the date of the pronouncement of this judgment. The amounts shall be kept in a separate account and shall be utilised by the Boards for the above stated purpose and subject to further orders of the Tribunal.
- 12) The above environmental compensation is being imposed on account of the intentional defaults and the conduct attributable only to the Project Proponents. We direct that the Project Proponents shall not pass on this compensation

to the purchasers/prospective purchasers, as an element of sale.

- 13) After submission of the report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.
- 14) All the project proponents are hereby prohibited from raising any further constructions, creating third party interest and/or giving possession to the purchasers/prospective purchasers without specific orders of the Tribunal, after submission of the report by the Expert Committee.

The report shall be submitted to the Registry of the Tribunal within a period of 45 days from the date of pronouncement of this judgment. Thereupon, the Registry would place the matter before this Tribunal for further appropriate orders and directions.

Liberty to the parties to move the Tribunal for any further directions and/or clarifications, if they so desire.”

3. The applicant original Respondent no. 6 (M/s SSM Builders and Promoters) withdrew the Civil Appeal Nos. 9124 – 9125 of 2015 preferred against the said Judgment / Order dated 7.07.2015 before the Hon'ble Supreme Court of India on 4th March, 2016 and had deposited the said amount of Rs. 36 crores with original Respondent to TNPCB.
4. Admittedly, the applicant original respondents no. 6 (M/s SSM Builders and Promoters) after obtaining planning approval from Chennai Metropolitan Development Authority, Chennai (CMDA) on 05.08.2013 had commenced and partly carried out construction of housing complex having built up area of 37.84 lakh sqft over an area of 48.29 acres of land without obtaining the environmental clearance necessary therefor; and following the order dated 18.02.2016 passed by us directing SEIAA, Chennai to consider the applicant's application dated 24.07.2013 for grant of environmental clearance, the SEIAA,

Chennai had considered the said application and granted *post facto* environmental clearance to the said project on 26.02.2016. It is revealed that the direction / order dated 18.02.2016 to SEIAA was passed upon considering the Expert Committee's Inspection Report filed before us in December, 2015. However, on our directions passed in M.A no. 189 of 2016 moved by the applicant in O.A No 37 of 2015, the project was again inspected by a subcommittee consisting of Members from the State Expert Appraisal Committee (SEAC) as formed by SEIAA and the environmental clearance dated 26.02.2016 was further modified on 04.04.2016; and only thereafter M.A No. 189 of 2016 moved by the applicant for directions to proceed with the further constructions of the project was then allowed vide order dated 24.04.2016. A direction was also passed that once the construction was completed the same shall be inspected by the joint inspection team consisting of representatives from MoEF, SEIAA Chennai and TNPCB and the Report thereof be placed before us for our satisfaction before handing over its possession to the buyers vide order dated 22.04.2016 passed in M.A no. 189 of 2016.

5. On completion of the construction, a joint inspection of the applicant's project was carried out in terms of the order dated 22.04.2016 passed in M.A No. 189 of 2016 and a report dated 10.10.2017 was filed before us; and on consideration of the said report, we had permitted the applicant to deal with its projects in accordance with law free from all fetters subject to

an undertaking to comply with various conditions and directions issued by us vide order dated 2.11.2017.

6. Learned Counsel appearing on behalf of the applicant submitted that the direction to deposit 5 % of the project cost (Rs.36 crores) in the order dated 7.07.2015 passed in Original Application no. 37 of 2015 was not final and the applicant is entitled to refund of the said amount in view of the various Expert Committee Reports establishing that there is no adverse impact on environment or ecology with no consequent damage thereto. He invited our attention to direction at para no. 163 (10) passed in Judgment dated 7.07.2015 in Original Application no. 37 of 2015 which reads as under :

“ All the Project Proponents shall pay environmental compensation of 5 % of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the Respondents is as follows:

.....”

7. Learned Counsel appearing on behalf of the applicant further invited our attention to material observation at serial no. 24 in Third Expert Committee Report dated 10.10.2017 in terms of the order dated 22.04.2016 passed by us. He pointed out therefrom that during the construction phase no damage was caused to the ecology and environment and all the directions / instructions as per the stipulations to ensure proper safety against environment / ecology loss were followed by the

Project Proponent. In view of this, he submitted that the applicant is entitled to refund of the amount deposited by it with TNPCB alongwith interest.

8. In response to these submissions, learned counsel appearing on behalf of the State submitted that the environmental compensation of 5 % of the project value was imposed tentatively on two counts- firstly, for restoration and restitution of the environmental of the ecology, and, secondly to meet the liability arising from impacts of the illegal and unauthorized constructions carried out by the Project Proponents and rationale therefor finds expression in Para Nos 152 to 160 of the Judgment dated 7.07.2015
9. It is very clear from the text of the direction at para no. 163 sub clause (10) that the environmental compensation of 5 % of the project value was tentatively imposed on account of not only to secure the restoration and restitution of the environment and ecology but also on account of the liability arising from the impact of the illegal and unauthorized construction carried out by the Project Proponent without prior environmental clearance. Prior environmental clearance is mandated by law under Environmental Clearance Regulation 2006, in order to prescribe the safeguards and prevent damage to the environment which would otherwise be caused without such safeguards in place.
10. It may be that no environmental damage was detected by the 3rd Expert Committee after construction was completed but the

fact remains that the construction was commenced and carried out without their being prior Environmental Clearance thereby exposing the environment to adverse impacts. Such exposure to the adverse impacts is bound to cause damage to the environment which may remain latent on account of nature's ability to correct itself over a passage of time leaving no detectable foot prints of it behind.

11. Essence of the rationale leading to the said directions is found in para 160 of the Judgement which is reproduced hereunder:

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or noncompliance. The authorities have already initiated action against three of the Project Proponents and have taken proceedings in the Court of competent jurisdiction under Act of 1986. However, no action has been taken against other four Project Proponents as of now. Penalties can be imposed for violation in due course upon full trial. What requires immediate attention is the direction that Tribunal should pass for mitigating as well as preventing further harm. As far as further remedial measures, alterations, demolition or variation in the existing structure in the interest of environment and ecology which is required to be taken to preserve the 196 environment are to be suggested by the Committee that we propose to constitute. However, as far as damage that has already been caused to the environment and ecology by the illegal and unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

12. Environment is seamless and repercussions of the adverse impacts on the environment due to anthropogenic activities are far and wide. Keeping this in mind we had further directed the Tamil

Nadu PCB to utilise the amount of the compensation so received for restoration and restitution of the environment generally.

13. Considering the default and conduct of the applicant-project proponent in commencing the construction without obtaining prior Environmental Clearance and the latent damage caused by such default/conduct we finally impose environmental compensation of Rs. 24 crores (i.e. 2/3rd amount of the 5 per cent of the project value i.e. 36 crores) on the applicant-respondent no. 6-M/s SSM Builders & Promoters and permit refund of Rs. 12 crores to the applicant- respondent no.6.

14. Respondent no.2-Tamil nadu PCB is directed to refund an amount of Rs. 12 crores with the interest accrued thereon to respondent no. 6-M/s SSM Builders & Promoters.

15. Respondent no. 2- Tamil Nadu PCB is permitted to utilise the said amount of Rs. 24 Crores with the interest accrued thereon lying in the separate account for restoration of the environment within the Chennai Metropolitan area.

16. M.A. No. 18 of 2018 stands disposed of accordingly.

U.D. Salvi
Acting Chairperson

Dr.Nagin Nanda
Expert Member

New Delhi
13th February, 2018