

Item No. 02

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 222/2021
(I.A. No. 166/2021)

Sandeep Singh

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 13.09.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. A.R. Takkar and Ms. Shriya Takkar, Advocates

ORDER

1. Challenge in this application is to the legality of construction raised by Omex Ltd. and Omaxe Chandigarh Extension Developers Pvt. Ltd. (the project proponent – 'PP') by way of project "The Lake" at Village Kansal, Rani Majra, Dhode Majra, Rasoolpur in Mullanpur (LPA), District Mohali, in the vicinity of Chandigarh and also legality of other constructions by the same PP in projects – 'Ambrossia', 'Celestial Grand Floors', 'Celestial Royal Floors', 'Cassia Floors', 'Mulberry Villas', 'Silver Birch Floors' and on the newly added 7 parcels of land, as described in the application, without obtaining Environmental Clearance (EC).

2. Case of the applicant is that the said constructions are in violation of EIA Notification, 2006 as well as the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and the Environment (Protection) Act, 1986 (EP Act). Environmental Clearance

was granted on 23.05.2015 for total built up area of 2,89,325 sq.mtrs. In violation thereof, built up area of the project constructed is 3,04,049,154 sq.mtrs. Further, seven new parcels of the land, approximately 60 acres, have been added without EC. After the expansions in the projects, application has been filed for post construction EC, which have to be dealt with as violation cases. Environment impact assessment is required pre construction. Reliance has been placed on a recent order of this Tribunal, dealing with similar situation, being order dated 06.01.2021 in Appeal No. 19/2020, *M/s Janta Land Promoters Ltd. v. Punjab Pollution Control Board & Anr.*,¹ holding that grant of EC for a mega project does not obviate the need for EC for individual projects. Particular reference has been made during the hearing to following observations:

“1 to 13. xxxxxxxxx

14. From the above, it is clear that the **EC granted for the Super Mega Project does not, in any manner, cover the Falcon View Project.** Contention to the contrary is against the facts on record and has to be rejected. In spite of repeated directions of SEIAA and initiation of prosecution, the appellant has continued the constructions in utter disregard and defiance of the statutory norms and directions. The plea that a writ petition has been filed against order of SEIAA cannot in any manner justify continuing illegal constructions in violation of law for which there is no sanction in any of the orders of the High Court. **The appellant is trying to create irreversible situation by completing the constructions and creating third party rights which is not congenial to the enforcement of rule of law and protection of environment and public health.** There is no merit in the contention that EC issue being within the purview of SEIAA, the PCB cannot go into such question. CTE itself is subject to EC. The State PCB can thus enforce conditions of CTE. The impugned order is within the purview of PCB jurisdiction.

15. Learned Counsel for the Appellant submitted there are other projects with similar position. Reference has been made to order of SEIAA Punjab dated 19.03.2020 in respect of *M/s Emaar MGF Land Private Ltd. at Mohali* and order dated 13.11.2019 of SEIAA Maharashtra in respect of *M/s Indospace Industrial Park Badli Pvt. Ltd. in District Jhajjar, Haryana*. If it is so, action may have to be taken by the concerned authorities, on verification of facts. We may only say that one illegality does not justify the other and no parity can be claimed by law violators with violations by others.

¹ (2021 SCC Online NGT 20)

16. **Reference may be made to law laid down by the Hon'ble Supreme Court on the subject of requirement of prior EC. In Hanuman Laxman Aroskar v. Union of India², dealing with the significance of requirement of EC to give effect to Precautionary and Sustainable Development principles, it was observed that balancing of development and environmental concerns is necessary. There is no trade off between the two. In Alembic Pharmaceuticals v. Rohit Prajapati³, it was observed that commencement of a project without requisite EC has detrimental effect on environment and degradation is left unattended by legal consequences. In Keystone Realtors Pvt. Ltd. v. Anil v. Tharthare and Ors.⁴, it was observed that ex post facto EC deprives the statutory authorities opportunity to evaluate mitigation measures. In Goel Ganga Developers India Pvt. Ltd. v. Union of India⁵, it was held that normally 5% of the project cost has to be recovered as compensation or the project has to be demolished, if construction is without EC.”**

3. Further averments in the application are that initially EC was granted on 03.05.2012 for residential township on 461.675 acres. Thereafter, layout plan was approved for 592.463 acres on 10.06.2014. EC dated 25.03.2015 was then granted for 592.463 acres with total built up area 2,89,325 sq.m but actual built up area for the projects of the PP approved by GMADA is as follows:

“

S. No	Name of the project	Location in Omaxe Township	Total Built-Up Area (Sq. Mtrs.)
1	The Lake	Village Bharounjian	3,04,049.154
2	Silver Birch	Rani Majra & Kansala	1,19,644
3	Ambrossia	Rani Majra & Kansala	35,347
4	Cassia	Rani Majra & Kansala	92,290
5	Celestia Grand Floors	Rani Majra & Kansala	17,352
6	Celestia Royal Floors	Rani Majra & Kansala	58,023
7	Mulberry Villas	Kansala	21,806
TOTAL BUILT UP AREA			6,48,511.154

”

² (2019) 15 SCC 401 (paras 58, 88, 144, 169, 172 and 175)

³ 2020 SC Online 347 (paras 24, 26, 27)

⁴ (2020) 2 SCC 66 (para 21)

⁵ (2019) 18 SCC 257 (para 64)

4. Total built up area for remaining six projects - Silver Birch, Ambrossia, Cassia, Celestia Royal Floors, Celestia Grand Floors and Mulberry Villas when added together comes to 3,44,461 sq.mtrs, there has been no EC granted to the Builder for the said area in the project "The Lake". However, the Builder has carried out substantial construction of the project "The Lake". Subsequently to the grant of the EC dated 25.03.2015, the Respondent Builder got three layout maps approved from GMADA in the year 2017, 2018 and 2021. The details of these approvals are as given herein under:-

S. No	Year/Date of Revised Approval	Reference no. of Revised Approval	Scheme Area (Acres) of approved layout
1.	2017. 12.01.2017	176 CTP(PB) MPM-131	595.043
2.	2018. 06.08.2018	4866 CTP(PB)/MPM- 131	646.221
3.	2021. 04.02.2021	597/CTP(PB)/MPM-131	652.707

Almost 60 acres (652.707 - 592.463 = 60.244) of land has been added for development purpose by the PP. The lay out plan dated 06.08.2018 further substantiates the fact that almost 7 new project sites consisting of Group Housing, Stilt+4 floors, Commercial, Plotted Development, VILLAS etc. have been added by the PP to its integrated residential township after the EC was granted in the year 2015. 7 new project sights are not a part of 592.463 acres site approved by SEIAA vide letter no. SEIAA/2015/1878 dated 25.03.2015 and even till date no EC has been granted in respect of the increased area and the new project sites. Housing project Resort A and Resort B consist of 296 and 416 flats respectively and amounting to a total of 712 flats. The built-up area of Resort A is 56,914 sq. mtrs and that of Resort B is 80382 sq. mtrs

aggregating to 1,37,296 sq. mtrs. Resort A and Resort B are not a part of the 592.463 acres site for which the EC was granted on 25.03.2015. PP has constructed more than 8 towers of both Resort A and Resort B. PP was granted the renewed Consent to Operate on 08.09.2020 valid till 31.12.2020. Terms and conditions of renewed CTO dated 08.09.2020 included the condition that the promoter company shall not carry out any construction activity in the additional area above 592 acres, without obtaining revised EC. After having carried out substantial construction/development activities on the new project sites for which there was no EC, the PP applied for expansion of EC. As per letter dated 16.11.2020 being no. 5-704/2014/IRO/790 sent by the Ministry of Environment, Forest and Climate Change (MoEF&CC) to the State Level Environment Impact Assessment (SEIAA), it was stated that the PP has made an application for EC, pursuant to which a site visit was done on 26.10.2020 and during the visit no major non-compliance was observed. The PP submitted a proposal dated 08.12.2020 to the Ministry of Environment, Forest and Climate Change to prescribe the Terms of Reference (TOR) for undertaking detailed EIA study for obtaining EC. The fact relating to substantial construction having been already carried out before obtaining EC has not been disclosed to the authority for the purpose of obtaining the TOR. TOR was issued to the Respondent Builder, a detailed EIA report vide letter dated 24.03.2021 was submitted by the PP to the State Level Impact Assessment Authority. As per the application for expansion of EC submitted by the PP, the area will be 805.611 acres and built up area will increase by 18,84,325 sqm. Total built up area will become 21,45,325 sqm. As per the minutes of 204th SEAC Meeting, the PP has 3 operational Sewage Treatment Plants of 250 KLD (100+100+50) at different locations of its integrated residential township of New Chandigarh. Nowhere in the information submitted by

the PP for expansion of EC, there is a mention about STPs already installed on the project sites. Photographs of one of the Sewage Treatment Plant located in Phase-1 of the PP's township located at village Kansala, shows that the Sewage Treatment Plant is not operational. Since the Sewage Treatment Plant installed by the PP is not operational, sewage coming out of approximately 1500 residential apartments, Villas is being discharged into the River Siswan. Permission/approval is required prior to setting up of a Ready Mix Concrete Plant which has not been done. Construction material at any site has to be kept covered by the PP but in this case, it is very clear from a perusal of the pictures that the PP has not provided any cover on the construction material at site. The PP is carrying on construction without following any precautionary and preventive measures. The Applicant submitted a representation dated 07.08.2021 before the State Environment Impact Assessment Authority, raising objections against the application for expansion filed by the PP highlighting the illegal acts including but not limited to carrying on construction without obtaining prior EC. MoEF&CC issued notification dated 14.03.2017 to deal with cases of violation with the following guidelines:

"In case the project or activities requiring prior environmental clearance under EIA Notification 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization and change in product mix without prior EC, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the SEIAA constituted under sub-section (3) section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the central level."

5. We have heard learned Counsel for the applicant and considered the averments noted above. It appears to be necessary to ascertain the

factual situation as well as the stand of the statutory regulators and the PP. If the statutory regulators find that any remedial action is required, in exercise of their statutory powers, they ought to do so following due process of law. For this purpose, we constitute a five-member joint Committee comprising MoEF&CC, CPCB, SEIAA, Punjab, Punjab State PCB and District Magistrate, Mohali. CPCB and State PCB will be nodal agency for coordination and compliance. The joint Committee may meet within 15 days. It may undertake visit to the site and interact with the stakeholders, including the PP. The Committee will be free to consult any other expert/institution. The Committee may give its report within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF about the extent of constructions and legality thereof and if the report recommends any adverse action by this Tribunal against the PP, a copy of the report may be furnished to the PP also for its response, if any, before the next date. Apart from issues referred to earlier, the Committee may also give status on quantity of sewage and solid waste being generated and system to be or being followed for their management as per Consent and Authorization granted. Further, sources of water and the permissions granted may also be indicated.

The applicant may serve a set of papers on MoEF&CC, CPCB, SEIAA, Punjab, Punjab State PCB and District Magistrate, Mohali and file affidavit of service within a week.

A copy of this order be forwarded to MoEF&CC, CPCB, SEIAA, Punjab, Punjab State PCB and District Magistrate, Mohali by e-mail for compliance.

List for further Consideration on 04.01.2022.

I.A. No. 166/2021

This application seeks interim relief which we are not inclined to consider at this stage, without verification of facts in terms of the above order. However, the applicant is at liberty to make any appropriate prayer to the statutory authorities who, on verification of facts, may take such remedial measures as may be found necessary to give effect to law, in exercise of their statutory powers.

I.A. No. 166/2021 stands disposed of accordingly.

Adarsh Kumar Goel, CP

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

September 13, 2021
Original Application No. 222/2021
I.A. No. 166/2021
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