

Amit Maru vs The Secretary Ministry Of Environment ... on 29 September, 2023

Item No.6

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

[Through Physical Hearing (with Hybrid Option)]

APPEAL NO.71 OF 2016 (WZ)

Amit Maru

.... Appellant

Versus

Secretary, MoEF&CC & Ors.

.... Respondents

Date of hearing : 27.09.2023

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Appellant : Mr. Aditya Pratap, Advocate

Respondents : Mr. Raghvendra Kulkarni, Advocate holding for
Mr. Rahul Garg, Advocate for R-1
Mr. R.B. Mahabal, Advocate for R-2, R-3 & R-4
Mr. Sameer Khale, Advocate for R-5
Mr. Piyush Raheja, Advocate for R-6

ORDER

1. This appeal has been preferred challenging the order dated 19.09.2016 passed by respondent No.2 - Principal Secretary, Environment Department, Govt. of Maharashtra, whereby the proposed directions under Section 5 of the Environment (Protection) Act, 1986 read with EIA Notification dated 14.09.2006 have been withdrawn holding that the project in question does not require Environmental Clearance (EC) under the provisions of EIA Notification dated 07.07.2004 and that there was no case of violation under the Environment (Protection) Act as well as EIA Notification 2006 and directed to obtain EC from the Competent Authority for any new/further construction to be carried out at site in question.

2. Mr. Aditya Pratap, learned counsel for the appellant has drawn our attention to the three grounds on which he has assailed the impugned order, namely-

(i) that, the EIA Notification, 2006 states that in case of change in scope of the project, fresh clearance would be required, while in the case in hand, the Project

Proponent has been given a clean chit despite the fact that the project was revised several times after the cut-off date 07.07.2004;

(ii) that, the conclusion drawn that 75% of the work of the project was completed before 07.07.2004 is factually incorrect as there is evidence on record to the contrary and for this, he drew our attention to Annexure-A-1 to the appeal memo (pages 45 to 47 of the paper-book), which is a letter dated 07.04.2016 written by the Deputy Chief Engineer (Building Proposal), Western Suburbs-II addressed to the Law Officer, Environment Department regarding project in question, wherein in table "I", total 50 buildings constructed by the Project Proponent are shown to have FSI of 2,70,182.20 sq.mtrs which were constructed by it prior to cut-off date i.e. 07.07.2004, while after that cut-off date, the area which has been built is given in table-"II" and table-"III", which comprise 12 buildings in table-II consisting of total FSI of 1,41,350.75 sq.mtrs. and 06 buildings contained in table-III consisting of total FSI of 1,49,276.43 sq.mtrs. Thus, the work approved before the cut-off date was 2.70 lakh sq.mtrs while after the cut-off date, it was 2.90 lakh sq. mtrs. In view of this, it is argued that the above finding that 75% of the project was completed prior to 07.07.2004 is erroneous; and

(iii) that, the project was expanded substantially after it was originally envisaged but no EC has been taken.

Therefore, the impugned order deserves to be set aside.

3. From the side of respondent No.6 - Project Proponent, learned counsel Mr. Piyush Raheja has argued that a show-cause notice dated 02.12.2015 was issued by the Additional Chief Secretary, Environment Department to the Project Proponent - respondent No.6 (annexed at page 451 of the paper-book), mentioning therein that respondent No.6 had applied for EC for expansion of the project in question in 35th meeting of SEAC-II held on 11th to 13th August, 2015 and the learned counsel i.e. representative of the Project Proponent had submitted list of buildings for which plinth was completed after 07.07.2004 but prior to 14.06.2006 to the Committee and also stated that a total plot area is 8,52,476.80 sq.mtrs., net plot area in residential zone is 2,35,205.30 sq.mtrs. and total construction area of the project is 2,62,050.66 sq.mtrs. and the Committee has observed that respondent No.6 had carried out construction at the site without prior EC, which may amount to violation of the EIA Notification 2006. Hence, respondent No.6 should show cause as to why the construction activity be not stopped forthwith.

4. The learned counsel for respondent No.6 thereafter has drawn our attention to the reply to the show-cause notice (annexed at pages 452 to 456 of the paper-book), wherein respondent No.6 gave detailed reply stating therein that out of 79 buildings, which are proposed as per layout, 50 buildings were already granted occupation certificates by the MCGM from time to time till 07.07.2004 and that there was no change in the said layout. Therefore, the provisions of EIA Notification, 2006 would not be applicable and show-cause notice should be withdrawn. The matter was considered in the personal hearing meeting of the Environment Department held on 15.01.2016 (minutes of which are annexed at pages 502 to 504 of the paper-book), in which certain information was directed to be

submitted by the Project Proponent - respondent No.6, which is contained in clauses (a) to (i) under the head "Decision", which was furnished by respondent No.6 through their letter dated 09.02.2016 (annexed at pages 505 to 507 of the paper-book), which also contained several other annexures.

5. Our attention is also drawn by the learned counsel for respondent No.6 to the letter dated 22.03.2016 written by respondent No.6 to the Additional Chief Secretary, Environment Department, Maharashtra, wherein detailed information of the break-up of the land use, plot development details, total BUA of the buildings already constructed along with all details had been provided. Further, our attention is also drawn to Circular dated 21.11.2006 (annexed at pages 372 to 373 of the paper- book), issued by the Additional Director of MoEF, based on which it is argued that since the Consent to Establish had been granted to respondent No.6 on 28.12.2005, the Project Proponent - respondent No.6 would stand exempted from the application of EIA Notification, 2006. It is argued by the learned counsel that after these considerations, the impugned order has been passed granting exemption, which has already been considered by us above.

6. From the side of respondent No.1 - MoEF&CC, learned counsel Mr. Raaghvendra Kulkarni, holding brief of learned counsel Mr. Rahul Garg has appeared.

7. From the side of respondent No.2 - Principal Secretary, Environment Department, Maharashtra, respondent No.3 - Member Secretary, SEIAA and respondent No.4 - Member Secretary, SEAC-II, learned counsel Mr. R.B. Mahabal has appeared.

8. From the side of respondent No.5 - the Executive Engineer, Building Proposal Department (Western Suburbs), Municipal Corporation of Greater Mumbai (MCGM), learned counsel Mr. Sameer Khale has appeared.

9. We have heard the arguments of the learned counsel for the parties.

10. Reserve for Judgement.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM September 27, 2023 APPEAL NO.71/2016(WZ)
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