

# Environmental Protection & Research ... vs Ministry Of Environment Forest And ... on 29 October, 2021

**Bench: K. Ramakrishnan, K. Satyagopal**

Item No.11:

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

Original Application No. 205 of 2021 (SZ)

(Through Video Conference)

IN THE MATTER OF:

Environmental Protection &  
Research Council a Public Trust,  
Thiruvananthapuram.

... Applicant(s)

Versus

MoEF&CC, Through its Secretary,  
New Delhi and Ors.

... Respondent(s)

Date of hearing: 29.10.2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE Dr. K. SATYAGOPAL, EXPERT MEMBER

For Applicant(s):

Mr. Yeshwanth Shenoy

For Respondent(s):

Mrs. Vidhyalakshmi Vipin for R2.  
Mrs. V.K. Rema Smrithi for R3.  
Mr. Prabhu represented  
Mr. E.K. Kumaresan for R4, R5.  
Mr. S. Sai Sathya Jith for R6.

ORDER

1. As per order dated 22.09.2021, after admitting the matter, this Tribunal had appointed a Joint Committee to go into the question and directed them to submit the report and posted the case to today for appearance of parties, filing their independent respondent and also for consideration of report.

2. The office informed that the requisite for sending notice to the respondents has been received only yesterday evening. So, they could not send notice to the respondents.
3. Issue notice to the 1st Respondent/MoEF&CC by Registered post and also by e-mail immediately through this Tribunal, as necessary requisite has been submitted so as to complete the service.
4. The Joint Committee has filed the preliminary report dated 28.10.2021, e-filed on the same date and received today (i.e. 29.10.2021) stating that the inspection could not be conducted and they want some time.
5. The Kerala State Pollution Control Board has filed their reply in the form of report dated 28.10.2021, e-filed on the same day and received today (i.e. 29.10.2021) which reads as follows:-

"REPORT                      FILED                      BY                      THE                      ENVIRONMENTAL  
ENGINEER,                      KERALA                      STATE                      POLLUTION                      CONTROL

BOARD, DISTRICT OFFICE-1, ERNAKULAM, ON BEHALF OF 3rd RESPONDENT IN THE ABOVE APPLICATION Report filed by P. B. Sreelakshmy, W/o. J. S. Sajeew kumar, aged 39years, now working as Environmental Engineer, Kerala State Pollution Control Board, District Office-I, Ernakulam, on behalf of 3rd respondent

1. It is respectfully submitted that the OA is filed against the illegal construction of residential project by 6th respondent M/s Jain Housing & Constructions Ltd " M/s Tuffnel Gardens" situated in Sy. 485/1 of Kakkanadu Village, Thrikkakara Municipality, Kanayannur Taluk. The main allegation raised by the petitioner is that the builder had constructed the building on Paddy land (land classified as „Nilam ) and applied for Environment Clearance (EC) after starting construction. It is also alleged that the building is constructed above the built up area for which EC obtained. The Hon ble NGT had passed orders on 22.09.2021 and directed that "In order to ascertain the genuineness and allegations made in the application, and also the alleged violations, we feel it appropriate to appoint a Joint Committee consisting of (1) The District Collector, Ernakulam District or a Senior Officer deputed by him, not below the rank of Assistant Collector or Sub Divisional Magistrate, (2) a Senior Officer from the Ministry of Environment, Forest and Climate Change, Integrated Regional Office, Bangalore (3) a Senior Officer from Kerala State Environment Impact Assessment Authority (Kerala, SEIAA) (4) a Senior Officer to be deputed by the Chairman, Kerala State Pollution Control Board (KSPCB) to inspect the area in question submit a factual as well as action taken report if there is any violation found."

2. It is respectfully submitted that the Kerala State Pollution Control Board (Board) had received an application for Consent to Establish on 12.09.2012 in the name of "M/s Tufnel Park", for constructing a residential complex for a built up area of 51573.6 Sqm in 8 blocks with 1217 apartments. Based on the application, the Board had conducted an enquiry in the site on 07.03.2013. Based on the enquiry, a detailed clarification was sought from the applicant builder M/s Jain Housing & Constructions Ltd. The builder had failed to submit the clarification and hence, Board had not issued consent to establish to the project.

3. It is respectfully submitted that the builder later applied for Consent to Operate on 18.08.2016 for built up area of 34576 Sqm and for 304 apartments. The builder proceeded with the construction even without obtaining Board's Consent to Establish. The site was inspected on 02.09.2016 and noted that construction of 2 towers had completed and the construction of other buildings was progressing. Based on the application for Consent to Operate, a hearing was conducted by the Chief Environmental Engineer on 19.01.2021 to get clarification on construction of building without obtaining Board's consent to Establish. Meanwhile, a committee constituted by MoEF comprising officers from MoEF, KSPCB and KSEIAA inspected the project site. The committee noted that the most of the condition of EC is non complied. Hence, based on the committee report, this respondent had sought explanation from the builder on the non compliance of EC. The builder has not submitted reply to the Board's letter till date. This respondent, Board has not issued consent to Operate to the unit. The Board had inspected the unit on 16.10.2021 and found that occupancy is started in one block.

4. It is respectfully submitted that as per the order of the Hon'ble Tribunal, Joint Committee was constituted with the following members.

1. Sri. Vishnu Raj P. IAS, Sub Collector, Fort Kochi

2. Dr. Murali Krishna Chimata, Scientist „E , MoEF, Integrated Regional Office (Southern Zone)

3. Dr. Jude Emmanuel, Environmental Scientist, State Environment Impact Assessment Authority Kerala

4. Smt. Sreelakshmy P. B, Environmental Engineer, KSPCB, District Office-1, Ernakulam The first meeting of the joint committee was held on 18.10.2021 through video conference.

5. It is respectfully submitted that the Board had not issued either consent to establish or consent to operate to the unit. But even without obtaining statutory permissions as per Air (Prevention & Control of Pollution) Act 1981, Water (Prevention & Control of Pollution) Act 1974, Environmental (Protection) Act 1986, the builder had completed construction of four towers and started occupancy in one tower violating the Environmental Legislations.

6. It is respectfully submitted that this respondent Board will take appropriate action against the builder for non compliance of the Environmental Legislations.

All that is stated above is true to the best of my knowledge information and belief.

Dated this, the 28th day of October 2021."

6. Other respondents who have not filed their statement are directed to file their statement regarding the allegations made in the application before the next hearing date.

7. The 6th Respondent is also at liberty to file their objections (if any) to the report submitted by the Kerala State Pollution Control Board.

8. The Kerala State Pollution Control Board is also directed to file the further action taken report (if any) on the basis of the violations said to have been committed by the 6th Respondent before the next hearing date.

9. The Respondents as well as the committee are directed to submit their report as well as pleadings as directed on or before 10.12.2021 by e-

filing in the form of Searchable PDF/OCR Supportable PDF and not in the form of Image PDF along with necessary hardcopies to be produced as per Rules.

10. The Registry is directed to communicate this order to the members of the committee and also to the official respondents by e-mail immediately for their information and compliance of the direction.

11. For appearance of 1st Respondent, completion of pleadings and consideration of report, post on 10.12.2021.

Sd/-

.....J.M. (Justice K. Ramakrishnan) Sd/-

.....E.M. (Dr. K. Satyagopal) O.A. No.205/2021 (SZ), 29th October, 2021. Mn.