

## Tanaji Balasaheb Gambhire vs Union Of India on 28 April, 2023

Item No. 4

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE  
(WITH HYBRID OPTION)

Appeal No. 110/2017(WZ)

Mr Tanaji Balasaheb Gambhire

.....Appellant

Versus

UOI through Secy., MOEF&CC & Ors.

....Respondent(s)

Date of hearing: 28.04.2023

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

Appellant	:	Applicant in-person along-with Mr. Vijay Mhaske and Mr. Ratan Bhingardive, Advocates
Respondent(s)	:	Mr. Rahul Garg, Advocate for R-1/MoEF&CC & R-9 & 10/PMC Mr. Aniruddha S. Kulkarni, Advocate for R-3/Env't. Deptt, R-4/SEIAA & R-5/SEAC Mr. Saket Mone along-with Mr. Abhishek Salian, Advocates for R-11/PP

### ORDER

1. From the side of Appellant, Appellant in-person has appeared, who has filed a copy of final order/Judgment passed in Civil Appeal No. 10854 of 2016 (M/s. Goel Ganga Developers India Pvt. Ltd. vs. Union of India through Secretary, Ministry of Environment and Forests & Ors.) with Civil Appeal No. 10901 of 2016 & Civil Appeal No. 5157-5158 of 2018 dated 10.08.2018 and some other documents today, a copy of the same has already been provided to all other learned Counsel for the parties.

2. From the side of Respondent No. 1/MoEF&CC, for Respondent Nos.

9 & 10/PMC, learned Counsel Mr. Rahul Garg has appeared.

3. From the side of Respondent No. 3/Environment Department, for Respondent No. 4/SEIAA and for Respondent No. 5/SEAC, learned Counsel Mr. Aniruddha S. Kulkarni has appeared.

4. From the side of Respondent No. 11/Project Proponent, learned Counsel Mr. Saket Mone has appeared. He has sent us an e-mail dated 27.04.2023, where-with he has annexed copy of the same Judgment, which has been filed by the Appellant today.

5. The Appellant has drawn our attention to para nos. 22 & 23 of the said Judgment of the Hon'ble Supreme Court in above-mentioned Appeal numbers, where-in following is held:-

"Environment Clearance dated 20.11.2017

22. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20.11.2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that the SEIAA has laid down general conditions for pre- construction phase and the first condition is as follows :-

"(1) This environmental clearance (EC) is issued for total built up area of 147219.45 m<sup>2</sup> as approved by local planning authority. It is noted that the total proposed construction area is 147219.45 m<sup>2</sup> which includes the area of previous EC (dated 04.04.2008) 57,658.42 m<sup>2</sup> and the proposed expansion area of 89,561.03 sq.m.

However the above area of 147219.45 sq.m. is notional as the NON FSI area component of the previous EC is not included in 1,47,219.45 m<sup>2</sup>. After considering the NON FSI area of the previous EC the total built up area becomes 1,81,230.94 m<sup>2</sup>. SEIAA has also taken note of the clarification issued by MOEF and CC vide office memorandum dated 7th July, 2017, stating the definition of built up area will be assessed as per the building bye- laws or DCR of the local authorities in the states." The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 04.04.2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq. mtrs., and non-FSI area measuring 46,088.47 sq. mtrs.. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq. mtrs.. In Plot No. 2 the construction raised on an FSI area is 630.55 sq. mtrs. and on the non-FSI area is 4,858.57 sq. mtrs. and, therefore, the total construction already raised in Plot No. 2 is 5,489.12 sq. mtrs.. The total construction raised by the project proponent is 1,00,002.25 sq. mtrs. against the built up area of 57,658.42 sq. mtrs. mentioned in the EC of 04.04.2008. This could not have been ignored by the SEIAA.

23. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq. mtrs. and if the area of the proposed construction is added then the project will fall in B1 category and, therefore, the SEIAA had no authority to grant EC by treating the project as falling under Category B2. Furthermore, the EC dated 20.11.2017 is also illegal as the same has been granted on the

presumption of the order dated 31.05.2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31.05.2016 was quashed and set aside by the NGT in its order dated 27.09.2016. We may note that the official who passed the order on 31.05.2016 was the same official, who held the office of Member Secretary of SEIAA, which granted environmental clearance on 20.11.2017. Therefore, the EC dated 20.11.2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside."

6. Based on this, he has argued before us that in the present appeal, prayer is made to quash the environmental clearance dated 20.11.2017, which was granted by the Respondent No. 4/SEIAA, Maharashtra to Respondent No. 14 and that the same has already been quashed by the Hon'ble Supreme Court in their Judgment dated 10.08.2018 passed in above-mentioned Civil Appeal Numbers, which was preferred against the Judgment passed in Original Application No. 184/2015 (Tanaji Balasaheb Gambhire Vs. Union of India through MoEFCC & Ors.)

7. The learned Counsel for the Respondent No. 11/Project Proponent has also relied on the same Judgment, therefore, we find that the prayer, which is made before us in this appeal, already stands granted to the Appellant, therefore, this appeal has become infructuous and is disposed of accordingly as infructuous.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM April 28, 2023 Appeal No. 110/2017(WZ) P.Kr