* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : 16th January 2012*
Judgment Pronounced on: 23rd January, 2012

LPA 100/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

PROSPEROUS ESTATES PVT LTD ..... Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

For orders see LPA No.895/2010.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 23, 2012
dk

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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\+ **LPA 895/2010**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through: Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

SPLENDOR LANDBASE LTD ..... Respondent
Through: Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 1/2011 & CM No.6781/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

SACHDEVA BUILDON PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 6/2011 & CM No.6779/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 7/2011 & CM No.6780/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 8/2011 & CM No.6782/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi Kothiala, Ms.Praneeta Vir and Mr.Sanjay Goswami, Advocates

LPA 9/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 10/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 11/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN LAND DEVELOPERS PVT LTD & ANR ..... Respondents
Through None

LPA 22/2011 & CM No.6824/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

PANKAJ BUILDWELL LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 23/2011 & CM No.6832/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS. ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 24/2011 & CM No.8168/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST REALTORS (INDIA) LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 25/2011 & CM No.6828/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST CITY DEVELOPERS (INDIA) PVT LTD. & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 26/2011 & CM No.6831/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

HOME LINKERS PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 27/2011 & CM No.6833/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 28/2011 & CM No.6826/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS. ..... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 45/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

JINDAL BIOCHEM PVT LTD & ORS ..... Respondents
Through Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 46/2011 & CM No.8164/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

AS BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 47/2011 & CM No.6825/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

MAITRI MUTUAL BENEFITS LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 48/2011 & CM No.6823/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

NIRVAN HIRE PURCHASE LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 50/2011 & CM No.6827/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

NIPUN BUILDERS & DEVELOPERS PVT
LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 51/2011& CM No.6829/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 53/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

ESS CEE CEE & ASSOCIATES (INDIA) PVT LTD .. Respondent
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala, Ms.Praneeta Vir and Mr.Sanjay
Goswami, Advocates

LPA 54/2011 & CM No.6004/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

FARGO ESTATES PVT LTD ..... Respondent
Through Mr.Ankit Jain, Advocate

LPA 58/2011& CM No.6830/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 94/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF RETAILER DEVELOPERS LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 95/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

LAXMI BUILDTECH PVT LTD & ANR ..... Respondents
Through Mr.Kailash Vasdev, Sr. Advocate with
Ms.Neoma Vasdev Gupta, Ms.Ekta Mehta
and Ms.Joanne Pudussery, Advocates for
respondent No.1.
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 96/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,

Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 97/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

BRIGHTWAYS HOUSING & DEVELOPMENT
LTD & ANR ..... Respondents
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala and Ms.Praneeta Vir, Advocates
for R-1.
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 98/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF COMMERCIAL DEVELOPERS LTD ..... Respondent

Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 99/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

GALLERIA PROPERTY MANAGEMENT SERVICES PVT LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 100/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

PROSPEROUS ESTATES PVT LTD ..... Respondent
Through None

LPA 101/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

REGENCY PARK PROPERTY MANAGEMENT SERVICES PVT LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 102/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

PALIWAL DEVELOPERS LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 103/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RIDGE VIEW CONSTRUCTION PVT LTD ..... Respondent
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi Kothiala and Ms.Praneeta Vir, Advocates.

LPA 104/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RC SOOD & CO PVT LTD ..... Respondent
Through Mr.Shobhit Chandra, Advocate

LPA 709/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

LODHI PROPERTY CO LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 710/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

BHARTI REALTY LTD ..... Respondent
Through Mr.Dushyant Manocha and Ms.Tarunima Vijra, Advocates

LPA 866/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

ANUSH FINLEASE & CONSTRUCTION PVT LTD ..... Respondent
Through Mr.Ajay Kumar and Mr.Naveen Tayal, Advocates

LPA 867/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

TIRUPATI INFRAPROJECTS PVT LTD ..... Respondent
Through Mr.Ajay Kumar and Mr.Naveen Tayal, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal(s).

2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take

action afresh and guided by the decision of the learned Single Judge.

3. The buildings with respect whereto action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a *'consent to establish'* as required under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Water Act') and *'consent to operate'* as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act').

4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.

5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under:-

> "2. **Definitions.– In this Act, unless the context otherwise requires,–**
> (a) .....
> (b) .....
> (c) .....
> (d) .....
> (e) .....
> (f) .....

(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h) .....
(i) .....
(j) .....

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.

25. Restrictions on new outlets and new discharges.–

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,–

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) .....

(c) .....

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act,

1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) .....

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) .....

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) .....

33A. Power to give directions.– Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.– For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct–

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under:-

2. Definitions.– In this Act, unless the context otherwise requires,–

(a) 'air pollutant' means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) 'emission' means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) 'industrial plant' means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

21. Restrictions on use of certain industrial plants.– (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

> Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order

in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) .....

(6) .....

(7) .....

31A. Power to give directions.– Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, office or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.– For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct–

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and with reference to the Statement of Objects and Reasons of the Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression *'establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent'* in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent being discharged but would also encompass if 'sewage effluent' was discharged and with reference to the definition of 'sewage effluent' as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of 'trade effluent' as per Section 2(k) of the Water Act. Noting the definition of the words 'operation' and 'process' in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that *collective operation or process of*

bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes. This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of 'trade effluent' as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.

9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.

10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided

in Sub-Section 5 of Section 25 of the Water Act.

11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge, with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under:-

> "29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:
>
> (i) Section 25 (1) of the Water Act is intended to cover not just 'industry' which discharges 'trade effluent' but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.
>
> (ii) The words 'operation or process' occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.
>
> (iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.
>
> (iv) The liability under the Water Act does not get exempted only because the sewage

discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

(v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.

(vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.

(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot

obviously thereafter be enforced."

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre-amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.

14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word 'establish' and had only the word 'operate' in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.

15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under:-

> "41. The position under the Air Act may be summarized:
>
> (i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.

(ii) The definition of 'air pollution' under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21(1) of the Air Act.

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act."

16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, '*no person could establish or take any steps to establish <u>any industry, operation or process,</u>..... which is likely to discharge sewage or trade effluent*'. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any

industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.

17. But, what would encompass *'any industry, operation or process'*?

18. The Water Act does not define, 'industry', 'operation' or 'process'. As held in the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax*, the ordinary dictionary meaning of 'industry' or an 'industrial undertaking' would not include the activity of construction. The word 'operation' is defined, as noted by the learned Single Judge, in the New Shorter Oxford English Dictionary (Lesie Brown Ed.) as follows:

> "**operation:** An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, *esp* one forming a step in a process."

19. The same dictionary defines 'process', as noted by the learned Single Judge, as under:-

> "**process** : The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end."

20. As noted herein above, applying purposive construction, the learned Single Judge has held, in para 15, that the two words 'operation' and 'process' have to be given their widest amplitude and meaning. The purposive construction

applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.

21. The error committed by the learned Single Judge is to mechanically note the definition of '*operation*' and *'process'*, and ignore the sweep of the span of the two words. We do so. Operation is defined as an *activity or an act of a practical or technical nature*, with emphasis of the acts forming *'a step in a process'*. The word *'process'* is a going on action or a continuous series of actions *'directed at a particular end'*. Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression *'establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent'* would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining

to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.

23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.

24. With respect to the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax,* where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.

25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of 'environment' therein being defined to include water, air and land and the inter relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or

process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.

27. To summarize the position under the Water Act the position may be summarized thus: 'Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.

29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any

industrial plant in an Air Pollution Control Area. Section 2(k) defines an 'industrial plant' to mean any plant used for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words 'establish or' have been inserted prior to the word 'operate', we need to re-look into the issue.

31. Highlighting the definition of the words 'industrial plant' as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words 'industrial plant' to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.

32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression 'industrial plant', which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act

would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression 'industrial plant'. But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of 'to operate' is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.

36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 *Khemka & Co. (Agencies) Pvt. Ltd. vs.*

State of Maharashtra, 1994 (4) SCC 276 *J.K.Synthetics Ltd. & Birla Cement Works vs. Commercial Taxes Officer* and 1997 (6) SCC 479 *India Carbon Ltd. vs. State of Assam* to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.

38. We would be failing not to note that on the issue of a delegatee not being empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said

position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.

39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution

Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings

would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to be got sanctioned under the Air Act.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 *Mafatlal Industries Ltd. & Ors. vs. UOI & Ors.*, under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied

without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.

43. The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.

44. We leave the parties to bear their own costs.

45. All interim orders stand vacated.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 23, 2012
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