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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7750 of 2021
and Crl.M.P.Nos.5120 & 5121 of 2021

1.M/s.True Value Homes India Pvt. Ltd.,
No.1126, Aurora Township,
Trichy Road,
Singanallur,
Coimbatore - 641 005.

2.N.Ravichandran

Vs.

...Petitioners

The Tamil Nadu Pollution Control Board,
Rep. by its District Environmental Engineer,
P.Manimaran,
Tamil Nadu Pollution Control Board,
Coimbatore South,
Plot No.E-55A,
SIDCO Industrial Estate,
Pollachi Main Road,
Kurichi,
Coimbatore.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of private complaint in C.C.No.569 of 2021 on the file of learned Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioners : Mr.Sundarmohan for
Mr.S.Marisingh

For Respondent : Mr.C.Kasirajan

O R D E R

This Criminal Original Petition is filed to call for the records of private complaint in C.C.No.569 of 2021 on the file of learned Judicial Magistrate No.III, Coimbatore and quash the same.



2.The petitioners are A1 and A2 in C.C.No.569 of 2021 on the file of the Judicial Magistrate No.III, Coimbatore, who are facing trial for the offence under Section 15 r/w 16 and 19(a) of the Environment (Protection) Act, 1986 filed this quash petition.

3.The respondent is the District Environment Engineer, Tamil Nadu Pollution Control Board, Coimbatore.

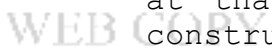
4.The gist the case of the complaint is that the petitioners are involved in construction of residential apartments at SF No.564/3 (p), 565/1 etc., Uppilipalayam Village, Coimbatore South Taluk, Coimbatore District. They constructed the residential apartments in the name and style of "TVH - Vista Heights" of morethan 20,000 sq. meters.

5.The Ministry of Environment and Forest, Government of India vide its Environment Impact Assessment Notification, 2006 [EIA] dated 14.09.2006 mandates that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to its notification, entailing capacity addition with change in process and or technology shall be undertaken in any part of India, only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority [Herein after referred as SEIAA].

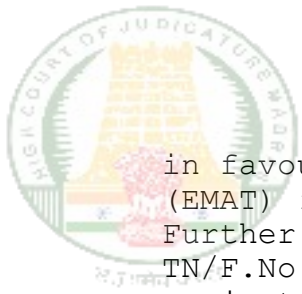
6.As per the notification the project is categorized as Category B, as per the Schedule 8(a) of the said Notification 2006. The accused had submitted an application to the SEIAA for obtaining Environmental Clearance, which was pending before the SEIAA as on 19.06.2014. The accused as per its own admission admitted that the substantial progress in its construction activity was without any prior Environmental Clearance.

7.On 17.11.2014, the respondent inspected the project at Uppilipalayam Village, Coimbatore, found despite the Notification 2006, the accused had commenced and completed two phase out of three phase of its construction activity of the aforesaid proposed project without getting any proper permission/clearance from SEIAA. Thus, the accused is in violation of the provisions of the Environment (Protection) Act and is guilty of having committed an offence under Section 15 (1) r/w Section 16(1) of the Environment (Protection) Act, 1986.

8.The contention of the petitioners is that on 26.05.2014 they made application for getting clearance with the SEIAA and the petitioners had already started construction and constructed the residential apartments of more than 20,000 Sq. metres in the



12. Further submitted that on the application of the petitioners dated 02.06.2018, the SEIAA meeting was held on 28.07.2018, the petitioners application was considered and followed it in the meeting held on 27.02.2019 by SEIAA. The petitioners application was accepted and recommendation by SEAC. The SEIAA directed the petitioners to furnish bank guarantee to Tamil Nadu Pollution Control Board. The amount prescribed for Ecological Remediation is Rs.52.40 lakhs, natural resource augmentation (Rs.20.95 lakhs) and Community resource augmentation (Rs.31.44 lakhs), totalling Rs.104.79 lakhs was ordered to be paid. Thereafter bank guarantee was submitted. The Demand Draft



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in favour of the Environmental Management Authority of Tamil Nadu (EMAT) for Rs.104.79 lakhs as prescribed by SEIAA was submitted. Further the environmental clearance issued vide Letter No.SEIAA-TN/F.No.445/EC/8(b)/748/2021 dated 16.03.2021 to the petitioners project "TVH-Vista Heights".

13.Further placed reliance on the decision of the Apex Court in the case of Hindustan Copper Limited Vs. Union of India reported in 2014 SCC Online Jhar 2157, following the same the Ministry of Environment, Forest and Climate Change issued notification dated 14.03.2017 and another notification dated 08.03.2018 issued, wherein, the project and activities, which are in violation as on the date of notification can apply for environment clearance, if it is within six months from the date of notification. Further the committee decided to recommend the proposal to SEIAA for grant of post construction environment clearance and the Tamil Nadu Pollution Control Board shall obtain bank guarantee prior to the grant of environment clearance and thereafter successful implementation of remediation plan, the clearance can be granted. There can be no condition of prior prosecution before regularising and giving environment clearance.

14.In this case, the petitioner had submitted their application on 26.05.2014 and claiming they are entitled for the benefit of notification. Following the same, the Environmental Clearance granted. In view of the same they prayed for quashing of the complaint.

15.The respondent filed its counter and submitted that the violation of Environmental Rules to be viewed seriously. The Apex Court, observed the power of Central Government includes the power to prohibit an activity, close an industry, direct to carry out remedial measures and wherever necessary impose the cost of remedial measures upon the offending industry. In this case the procedure laid down in notification dated 14.03.2017 not followed. The petitioners carried out the project under Category B. The Tamil Nadu Pollution Control Board by invoking the powers vested under Section 19 of the Environment (Protection) Act, 1986, filed the case before the Judicial Magistrate Court under Section 15 of the Environment (Protection) Act.

16.The chairman by Letter No.T2/TNPCB/F.6685/CHN/2020 dated 22.07.2020 addressed the Additional Chief Secretary to Government, Environment and Forests Department that the Government may direct the Member Secretary, SEIAA to take necessary action to apprise all the EIA violation projects and sent the list of projects which are only negative or closure of the project. The Member Secretary, SEIAA, Tamil Nadu requesting clarification to the MoEF on further course of action to be followed in this regard. The Member Secretary, Tamil Nadu



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Pollution Control Board by communication dated 14.12.2020 instructed the DEEs, TNPCB to take necessary action and file case in the concerned Judicial Magistrate Court. In view of the same the above complaint came to be filed and taken on file in C.C.No.569 of 2021. Further submitted that in this case, there is no bar for taking cognizance as per The Code of Criminal Procedure, section 15(1) of the Act, since the punishment prescribed is for five years. The petitioners without any prior environmental clearance from the concerned authorities, carried out the construction. On 17.01.2014, when the respondent issued a notice for violation of the provisions of Environment (Protection) Act, 1986. On 12.12.2014, the petitioner admitted that in anticipation of the early approvals it had unlawfully commenced construction activities and thereby admitted that they have committed offence under Environment (Protection) Act, 1986 and admitted the guilt. Hence, opposed the quash petition.

17.Considering the rival submissions and on perusal of the materials it is seen that it is not in dispute that the petitioners were putting up construction in the name and style of "TVH - Vista Heights" of more than 20,000 Sq. meters. For the same they had made an application to SEIAA on 26.05.2014. The said application for environment clearance was placed before the Environment Assessment Committee on 19.06.2014. The respondent had inspected the property and issued notice on 17.11.2014 and reply has been sent on 12.12.2014. The petitioners reply was forwarded to the Member Secretary, Tamil Nadu Pollution Control Board on 17.12.2014 and thereafter it has been kept pending. In the meanwhile, the petitioners were directed to give a bank guarantee followed with a direction dated 29.07.2020. Thereafter submitted the Demand Draft in favour of the Environmental Management Authority of Tamil Nadu (EMAT) for Rs.104.79 lakhs as prescribed by SEIAA. Thereafter the environmental clearance granted on 16.03.2021. Before according environment clearance the condition of payment for Ecological Remediation, natural resource augmentation and Community resource augmentation were confirmed.

18.The respondent was compelled to lodge a complaint since the subject was placed before the 389th Authority meeting held on 17.08.2020, after detailed discussion the authority decided to request the Member Secretary, SEIAA to furnish the details for credible action taken against the project proponent by the State Government/Tamil Nadu Pollution Control Board under the provisions of Section 19 of the E(P)A Act 1986 for violation of the EIA Notification 2006 as amended as per MoEF & CC Gol Lr.F.N.23-2017 I & III dated 10.04.2018 and after getting such details from the respondent, action has been initiated, after granting environment clearance is against the directions of the Supreme Court in the case of Hindustan Copper Limited Vs. Union



of India reported in 2014 SCC Online Jhar 2157, wherein it is held that condition stipulated under Para 5 (ii) violates the basic principle of rule of law. There is no procedure under the Environment (Protection) Act, 1986 or the Rules made thereunder which stipulates that the proposal for environment clearance would be considered only after the State Government provides evidence of the credible action taken against the alleged "violinator". In the first place, MoEF cannot compel the State Government to take action for alleged violation and secondly, action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent.

19. In this case, in violation of the Supreme Court order, prosecution launched. Hence, the continuation of the criminal proceedings would amount to abuse of process of law and miscarriage of justice and this Court is inclined to allow this Criminal Original Petition.

20. In the result, this Criminal Original Petition is allowed and as a sequel, the proceedings in C.C.No.569 of 2021 on the file of the Judicial Magistrate No.III, Coimbatore is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

The Judicial Magistrate No-III,
Coimbatore.

Crl.O.P.No.7750 of 2021
and
Crl.M.P.Nos.5120 & 5121 of 2021

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