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Crl.O.P.No.19523 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.19523 of 2016
and Crl.M.P.Nos.9145 & 9146 of 2016

1. M/s. SSM Builders and Promoters
K.Santhanam, SSM Nagar
(Adjacent to SSM School)
Puthur Road, Alapakkam,
New Perungalathur,
Chennai – 600 063.

2. K.Santhanam

...Petitioners

Vs.

The Tamil Nadu Pollution Control Board,
Rep. by its District Environmental Engineer,
R.Kannan, Maraimalai Adigalar Street,
Maraimalai Nagar,
Kancheepuram District.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the complaint in C.C.No.347 of 2015 on the file of the Chief Judicial Magistrate, Chengleput and quash the same.

For Petitioner : Mr.S.Kothandaraman

For Respondents : Mr.R.Shunmugasundaram
Advocate General
Assisted by Ms.R.Shanmugavalli
Standing Counsel for TNPCB



Crl.O.P.No.19523 of 2016

WEB COPY

ORDER

This petition has been filed to quash the proceedings in C.C.No.347 of 2015 on the file of the learned Chief Judicial Magistrate, Chengleput, thereby taken cognizance for the offence under Section 15 r/w 16 & 19(a) of the Environment (Protection) Act, 1986, as against the petitioners.

2. The respondent filed complaint as against the petitioners for the offence punishable under Section 15 r/w 16 & 19(a) of the Environment (Protection) Act, 1986 alleging that first the petitioner/accused is a company running under the name and style of M/s. SSM Builders & Promoters and is involved in the construction of building. The second petitioner/accused is the Managing Partner of the first accused and he is responsible for the conduct of its day to day affairs of the first accused company.

3. The Ministry of Environment and Forest, Government of India vide its environment impact assessment notification dated 14.09.2006, mandates that on and from the date of publication, the



Crl.O.P.No.19523 of 2016

required construction of new projects or activities or the expansion of modernization of existing projects or activities listed in the Schedule of its notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environment clearance from the Central government or as the case may be, by the State level environment impact assessment authority.

4. The petitioners involved in project of constructing residential building area of more than 20,000 square meters. Therefore, it requires prior environmental clearance, as per the notification which is categorized as category B project as per schedule 8(a) of the above said notification. The accused project falls under category B Project and they have to obtained prior the environment clearance from the Tamil Nadu State Level Environment Impact Assessment Authority (SEIAA).

5. The petitioners submitted application on 24.07.2013 for obtained environment clearance for the proposed project. While it was pending, the petitioner had commenced and made substantial progress in its construction activity without any prior environment clearance. It is in violation of the provision of the notification and they are guilty of having



Crl.O.P.No.19523 of 2016

committed offence under Section 15(1) r/w Section 16(1) of the Environment (Protection) Act, 1986.

6. The learned counsel appearing for the petitioners submitted that admittedly, the petitioners applied for prior environment clearance on 24.07.2013 and it was pending. Further, the respondent is not competent to file the present complaint. To initiate prosecution, the petitioners were not served with show cause notice. They were fined by the National Green Tribunal, New Delhi, for the very same set of allegations that they have commenced construction without prior environment clearance. Therefore, the complaint is hit by doctrine of double jeopardy.

6.1. He further submitted that the notification dated 12.12.2012 and subsequent notification dated 27.06.2013 were challenged before the National Green Tribunal and both the notification were declared as *ultra vires*. Therefore, the prosecution initiated under the above notifications also cannot be sustained, since already the notification itself declared as *ultra vires*. Hence, he prayed to quash the present proceedings.



Crl.O.P.No.19523 of 2016

7. The learned Advocate General appearing for the respondent submitted that admittedly the petitioner violated the provisions and without getting prior environment clearance, they put up the construction. Therefore, they were also fined by the National Green Tribunal, New Delhi. It is no way connected with the criminal prosecution, since it would not amount to doctrine of double jeopardy and they are completely different.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. On perusal of records revealed that the petitioners are arrayed as A1 & A2. They are builders and promoters and they involved in the construction of housing project called SSM Nagar Housing Complex, a township near Perungalathur. In the course of their business of construction of township and housing complexes, promoted a scheme of ownership flats in an area of 49.28 acres with a super build up area of 2,89,171,63 square meters comprised in several survey numbers viz., 310/1, 310/2 etc., situated at No.9, Nedungundram Village, Puthur Road, Alapakkam, near New Perungalathur.



Crl.O.P.No.19523 of 2016

10. The proposed construction is more than 20,000 square meters and therefore, it requires prior environment clearance from the appropriate authorities under the provisions of the environment impact assessment notification issued in the year 2006, by the Ministry of Environment and Forest, dated 14.09.2006. Further, the said project comes under the categorized as Project-B of the Schedule 8(b) of the environment impact assessment notification of 2006. Though the petitioners applied for prior environment clearance on 24.07.2013, it was pending while the petitioners commenced the construction and substantial progress have been made without prior environment clearance.

11. Therefore, the respondent made inspection on 11.07.2014 and confirmed the construction put up by the petitioners without prior environment clearance. It is violative of provision under Section 15(1) r/w 16(1) of the Environment (Protection) Act. Therefore, the petitioner were served with show cause notice dated 15.07.2014. Thereafter, the respondent initiated prosecution by private complaint under Section 200 or Cr.P.C., for the offence under Section 15 r/w 16 & 19(a) of the Environment (Protection) Act, 1986.



Crl.O.P.No.19523 of 2016

WEB COPY

12. That apart, the National Green Tribunal, Principal Bench, New Delhi, declared the notifications dated 12.12.2012 & 27.06.2013 as ultra vires on the ground that they suffer from the infirmity of lack of inherent jurisdiction and authority. However, the prior environment clearance is pertaining to the official memorandum dated 14.09.2006. It was issued by the Ministry of Environment and Forest, Government of India, under the powers conferred upon its by sub-Section (1) and clause (v) of sub Section (2) of Section 3 of the Environment (Protection) Act. As per the provisions of the notification, the project or activities falling under category A of the Schedule require prior permission from the Central Government while projects and activities falling under category B require prior permission from the State Government. These permissions are to be obtained before any construction work or preparation of the land by the project management except for securing the land is started on project or activity.

13. Subsequently, another notification was issued on 12.12.2012 by the Ministry of Environment, Forest and Climate change, superseding the notification dated 16.11.2010. However, in that notification it was



Crl.O.P.No.19523 of 2016

stated that in case of violation in respect of notification dated 14.09.2006, it will proceed to verify the veracity of the complaint through the regional offices and upon such verification, the explanation of project proponent will be asked for. If the Ministry is satisfied that it is a case of violation, then before proceeding any further, the authorities would require the project proponent to submit its environment related policy, plan of action and a written commitment to ensure that violation will not be repeated within 60 days in terms of the office memorandum dated 12.12.2012.

14. Therefore, the said order of the National Green Tribunal is no way connected with the earlier notification dated 14.09.2006. In fact, for the violation committed by the petitioners, they had paid fine amount and it is nothing to do with the criminal prosecution initiated by the respondent for the offence under Section 15 r/w 16 & 19(a) of the Environment (Protection) Act, 1986. Therefore, it would not be presumed that the criminal prosecution is hit by doctrine of double jeopardy.



Crl.O.P.No.19523 of 2016

15. That apart, the grounds raised by the petitioners are mixed question of facts and law and it requires detailed trial as such, the entire proceeding cannot be quashed under Section 482 of Cr.P.C. All the grounds can be considered only before the trial Court during the trial by let in evidence. Hence, this Court is not inclined to quash the proceeding. The trial Court viz., the learned Chief Judicial Magistrate, Chengleput, is directed to complete the trial in C.C.No.347 of 2015 and dispose the same, as early as possible, if not already disposed of.

16. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

19.10.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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Crl.O.P.No.19523 of 2016

G.K.ILANTHIRAIYAN. J.

rts

To

1. The Chief Judicial Magistrate,
Chengleput.
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Maraimalai Adigalar Street,
Maraimalai Nagar,
Kancheepuram District.

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