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Crl.O.P.No.14657 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.06.2023

Pronounced on : 14.06.2023

CORAM:

THE HON'BLE Mr. JUSTICE SUNDER MOHAN

Crl.O.P.No.14657 of 2021
and Crl.M.P.Nos.7984 and 7986 of 2021

1.M/s. Voorna Property Developers Private Limited,
Represented by Mr.Pavan Voora,
R S No.4061/4 of Block No.78,
Old S.Nos.3761, 3762 &
3763 of Tondiarpet Village,
Tondiarpet Taluk,
Chennai District.

2.Mr. Pavan Voora,
The Director & Authorized Signatory,
M/s.Voora Property Developers Pvt. Ltd,
Voora J.K.Tower, 4th Floor, No.28,
Bazullah Road, T.Nagar,
Chennai – 600 017.

...Petitioners

Versus

The Tamil Nadu Pollution Control Board,
Rep. By Mr.R.Umaiyakunjaram,
District Environmental Engineer,
950/1, Poonamallee High Road,
Arumbakkam,
Chennai – 600 106.

... Respondent



Crl.O.P.No.14657 of 2021

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the proceedings in C.C.No.1199 of 2020 pending on the file of the XV Metropolitan Magistrate, George Town Court, Chennai and quash the same as illegal and without jurisdiction.

For Petitioners : Mr.Sharath Chandran
For Respondent : Mr.R.Shunmugasundaram
Advocate General
assisted by
M/s.R.Shanmugavalli Sekar

ORDER

The petition is to quash the complaint filed by the respondent herein for the alleged offences under Sections 15 r/w 16 and 19 (a) of the Environment (Protection) Act, 1986.

2. The crux of the allegation is that the petitioners had started a construction project without prior Environmental Clearance by flouting the EIA notification issued under the Environment (Protection) Act, 1986; that the petitioners had commenced a project which falls under Category B as per the aforesaid notification; that as on 27.05.2020, application for Environmental Clearance was pending before the Tamil Nadu State Level Environment Impact Assessment Authority (hereinafter referred to as 'SEIAA' for the sake



of convenience); that a show cause notice was issued to the petitioners on 20.05.2020; that the petitioners had sent a reply on 21.05.2020 stating *inter alia* that they had applied for Environmental Clearance on 01.04.2019 and they had to do some preliminary preparatory construction to overcome the monsoon season; that since the petitioners themselves had admitted that they had started the offending construction and they are liable for the offence under Section 15 of the Environment (Protection) Act, 1986.

3. Mr.Sharath Chandran, the learned counsel for the petitioners submitted that the Environmental Clearance was accorded to them on 23.10.2020 by the SEIAA based on the recommendation of State Expert Appraisal Committee (hereinafter referred to as “SEAC” for the sake of convenience); that the petitioners had paid the compensation amount for the construction activity; that a petition was filed by a third party by the name K.R.Selvaraj Kumar alleging that the petitioners were proceeding with a B Category project without Environmental Clearance and sought for appropriate action against the petitioners; that the National Green Tribunal (hereinafter referred to as “NGT” for the sake of convenience) had fixed a compensation Rs.20,00,000/- (Rupees Twenty Lakhs only) as revised



compensation amount as against Rs.12,37,500/- (Rupees Twelve Lakhs Thirty Seven Thousand Five Hundred only) fixed by the Committee; that the petitioners had also paid the said compensation; that initially they had paid Rs.12,37,500/- (Rupees Twelve Lakhs Thirty Seven Thousand Five Hundred Only) and thereafter, they paid Rs.7,62,500/- (Rupees Seven Lakhs Sixty Two Thousand Five Hundred only) on 24.12.2020; that in similar circumstances, based on the Review Note **No.CMN/TNPCB/F.27092/2019**, dated 26.08.2020 sent by the Chairman of the Tamil Nadu Pollution Control Board (hereinafter referred as “TNPCB” for the sake of convenience) to all the officials of the TNPCB, this Court had quashed the proceedings in **TRIL Info Park Limited vs. Tamil Nadu Pollution Control Board** reported in **2002 SCC Online Mad 3850**. The said note stated that if the finding of the SEAC is in favour of the project Proponent and they had paid the compensation amount, the prosecution under Section 15 of the Environment (Protection) Act, 1986 does not arise. Hence, he prayed for quashing the proceedings against the petitioners.

4. Per Contra, Mr R.Shunmugasundaram, the learned Advocate General



submitted that admittedly, the petitioners had commenced the construction in violation of the EIA notification 2006, which provided for obtaining prior Environmental Clearance before commencing a project; that though the respondent/complainant is aware of the fact that subsequently, the Environmental Clearance was accorded and the petitioners had paid compensation, it would not obliterate the offences committed by the petitioners; that the order of this Court in ***TRIL Info Park Limited vs. Tamil Nadu Pollution Control Board*** reported in ***2022 SCC online Mad 3850*** might not be applicable to the facts of the case since in that case, the project proponent had made expansion without Environment Clearance when there was clearance for the original plan; that in the instant case, there was no Environment Clearance; and that in any event that the points raised by the petitioners have to be adjudicated only before the trial Court and hence, he prayed for dismissal of the quash petition.

5. The short question that arises for consideration in the instant quash petition is whether the petitioners can be prosecuted under Section 15 of the Environment (Protection) Act, 1986, when their project had been accorded Environmental Clearance subsequently and they had paid compensation as



per the remediation plan. It is the case of the learned Advocate General that mere payment of compensation or subsequent grant of Environmental Clearance would not render the complaint which discloses the offences liable to be quashed. The admitted facts are that the petitioners had commenced construction without Environmental Clearance while their application was still pending. Subsequently, the petitioners obtained Environmental Clearance on 23.10.2020 based on the recommendation of the SEAC. The petitioners were directed to be paid a compensation of Rs.12,37,500/-. The NGT, in a petition filed by a third party praying for action against the petitioners, held that the petitioners can proceed with the project after obtaining Environmental Clearance. However, the NGT had enhanced the compensation payable by the petitioners to Rs.20,00,000/-. It is also admitted by the respondent that the petitioners had paid the said compensation amount. This Court, while considering a similar quash petition, had quashed the proceedings based on a Review Note sent by the Chairman of the TNPCB to its officials. This Court held as follows:

12. Considering the above aspects and total cost of Rs. 8.58 Crores was imposed for remedial measure for environmental clearance and the



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same was paid, the Order recording the completion certificate by the CMDA shows that the statutory authorities have given permission for construction of the building. Admittedly, the applications for environmental clearance was pending with the State Committee from the year 2013 and finally environment clearance was given only on 30.09.2021 and proper remedial cost also imposed. The Circular dated 26.08.2020 Issued by the Tamil Nadu Pollution Control Board in respect of Environmental Clearance violence cases it is stated held as follows:

“(1) In case of Category B projects, all the violation cases shall be first appraised by the SEAC (State Environmental Appraisal Committees. If the findings of the SLAC are negative (are those constructed at a site which under paling are not permissible (CRZ, National Parks, Encloglos Sensitive Areas etc) and expansion has been done which cannot run sustainably under the compliance of Environmental norms with adequate Environmental safe guards), and closure of the project, then cognizance of offence action shall be taken against the project proponent by the TNPCB by invoking the powers vested under section 10 of the Environment (Protection) Act, 1968 by filling a case in the Judic Magistrate Court under



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Section 15 of the Environment (Protection) Act, 1980

(2) If the findings of the SEAC are affirmative (constructed at a site which under prevailing laws is permissible and expansion has been done which can run sustainably under compliance of environmental norms with adequate environmental safeguards), the SEAC may proceed to consider for granting Environmental Clearance by issuing TOR as per the procedure laid down in ELA Notification 2000. Further the SBAC shall issue a specific TOR per pars 13 15) of the notification dated 14.3.2017] for the project on assessment of ecological damage, remediation plan and natural and community resources augmentation plan. Based on the plan, the SEAC shall impose suitable conditions in the Environmental clearance. The project proponent shall subm Bank Guarantee equivalent to the amount of remediation plan and Natural and Community Resources Augmentation plan to TNPCB. This BG shall be deposited prior to the grant of EC. After successful implementation of action plan, the BG shall be released. In this case, the filing of case against the project proponent under the provisions of section 15 of the Environment (Protection) Act 1986, by the TNPCB does not arise.

13. The very circular itself makes it clear that after remedial measures assessed and damages and remediation plan is taken and



sufficient bank guarantee have been given and cost imposed, the filing of the case against the project opponent under Section 15 of the Environment (Protection) Act by the Tamil Nadu Pollution Control Board does not arise. The circular is of the year 2020. Admittedly, in this case, environmental clearance was given by the Respondent viz., The Tamil Nadu Pollution Control Board and they imposed cost of Rs. 8.58 Crores under various heads towards social fulfillment of social responsibilities. The above payment said to have been made. Therefore, initiating the prosecution for mere violation once again even after imposed the cost is contrary to the own circular.”

The above observations squarely apply to the facts of the instant case. This Court is of the view that the said circular, which states that if the findings of SEAC are in favour of the project Proponent and they had paid the compensation, then their prosecution does not arise, is applicable to all constructions. In the case of B Category Projects, it applies to violations whether it is made at the initial stage or while there is an expansion in this project. The observation of this Court extracted above does not suggest that



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there is any distinction between a violation in the construction made initially and that which is made while there is an expansion in the project. Thus, this Court is of the view that the impugned complaint is liable to be quashed.

6. For the above reasons, the Criminal Original Petition is allowed.

Consequently, the connected miscellaneous petitions are closed.

14.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case: Yes/No
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To

1.Mr.R.Umaiyaakunjaram,
District Environmental Engineer,
The Tamil Nadu Pollution Control Board,
950/1, Poonamallee High Road,
Arumbakkam,
Chennai – 600 106.

2. The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN, J.

dk

Pre-delivery order in
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