



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1021 OF 2019**

M/s. G.K.Associates and Ors. ... Applicants
versus
The Maharashtra Pollution Control Board and Anr. ... Respondents

Mr. Niranjan Mundargi with Mr.Sidharth Karpe with Ms. Minal chandnani, for Applicants.

Mrs. Jaya J. Bagwe, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

**CLOSED FOR ORDERS ON : 15 JANUARY 2024
PRONOUNCED ON : 24 APRIL 2024**

ORDER :

1. The legality, correctness and propriety of an order dated 24 March 2015 passed by the learned Chief Judicial Magistrate, Pune in Regular Criminal Case No.4660 of 2014 for the offences punishable under Sections 15 and 16 of the Environment (Protection) Act, 1986 read with Environment Impact Assessment (EIA) Notification, 2006 is called in question in this application under Section 482 of the Code of Criminal Procedure, 1973.

2. The application arises in the backdrop of the following facts :

2.1 M/s. G.K.Associates – applicant No.1, is a proprietary concern of the Applicant No.2. Applicant No.3 is the Environment Officer of M/s. G.K.Associates. A project ‘Rahadki Greens’ situated at Survey No.30/1+2+3, 32/2D/3 at Rahatani, Tal. Haveli, Dist. Pune was to be developed by the applicant. On 27 July 2012, the

Collector, Pune, vide NA Order granted permission for non-agricultural use of the land admeasuring 19500 sq. meters. The Pimpri Chinchwad Municipal Corporation (PCMC), the planning authority, had issued commencement certificate for starting construction activity at the said project to the extent of 16,887.50 sq. meters.

2.2 On 24 February 2014, the Respondent No.1 issued a notice purportedly under Section 5 of the Environment (Protection) Act, 1986, alleging violation of EIA Notification, 2006. It was, inter alia, alleged that though the applicant had applied for environment clearance for the proposed project, yet it was observed that the applicant had commenced the construction activity without obtaining prior environmental clearance and that constituted a violation of the EIA Notification, 2006.

2.3 The Respondent No.1 submitted a reply on 1 March 2013, wherein it was pointed out that the application for environment clearance was submitted on 4 May 2012. The planning authority had sanctioned the plan for construction of the building for an area of 16887.50 sq. meters only. Since the construction was initiated as per the sanctioned plan, and the total built up area was less than 20,000 sq. meters, prior permission was not required.

2.4 The Respondent No.1 did not find the explanation satisfactory and lodged a complaint being Regular Criminal Case No.4660 of 2014 alleging, inter alia, that the applicants-accused were engaged in the development of construction project 'Rahadki Greens' with a total built up area of 36306.65 sq.meters, much above the

threshold of 20,000 sq. meters, and, though, they had applied for grant of environment clearance, yet commenced construction without obtaining prior environment clearance, and, thus, the applicants-accused committed offences punishable under Sections 15 and 16 of the Environment (Protection) Act, 1986 read with EIA Notification, 2006.

2.5 The learned CJM was persuaded to record a finding that a prima facie case for the offences punishable under Sections 15 and 16 of the Environment (Protection) Act, 2006 read with EIA Notification, 2006 was made out, and, therefore, the process was issued.

3. Being aggrieved by the aforesaid order, the applicants have preferred this application. When the application was listed before this Court on 20 September 2019, this Court was persuaded to grant ad-interim relief in terms of prayer clause (c) of the Application.

4. An affidavit in reply is filed on behalf of the Respondent No.1. The substance of the resistance put forth by the Respondent is that the total built up area was 36306.65 sq. meters, much above 20,000 sq. meters, and, therefore, the applicants were enjoined to obtain prior environmental clearance under the provisions of EIA Notification, 2006. The development activity which the applicants had undertaken falls in category No.8(a) of Schedule to the EIA Notification, 2006. Under the terms of the said Notification, the project proponent was required to obtain prior

environment clearance from the concerned Regulatory Authority before carrying out out any construction work or preparation of land for the purpose of construction. The Respondent No.1 further contends the extent of the construction carried out by the Applicants when the notice was issued by the Respondent No.1, would be a matter for evidence at the trial. Therefore, the said question cannot be decided in this application under Section 482 of the Code, as it is rooted in facts.

5. I have heard Mr. Niranjan Mundargi, learned Counsel for the Applicants and Mrs. Jaya Bagwe, learned Counsel for Respondent No.1 at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings and the material on record.

6. Clause 2 of EIA Notification dated 14 September 2006 issued by the Central Government in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act,, 1986, read with clause (d) of sub-Rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification dated 27 January 1994, inter alia, provides that the projects or activities falling under category 'B' in the Schedule appended to the said Notification shall require prior environmental clearance from the State Environment Impact Assessment Authority (SEIAA) before any construction work or preparation of land by the project management, except for securing the land, is started on the project of activity. Under clause 8(a) of the Schedule dealing with the building

and construction projects / area development project and township, such prior environmental clearance is required if the project exceeds 20000 sq. meters of built up area.

7. The thrust of the submission on the part of the applicants was that the commencement certificate dated 10 May 2012 was issued by the planning authority. The then proposed total area was 16887.50 sq. meters. Thus, at that point of time, prior environmental clearance was not required. Attention of the Court was drawn to the order dated 27 July 2012 issued by the District Collector, Pune (Exhibit B), whereby the permission to make the non-agricultural use of the area admeasuring 19500 sq. meters, covered by Survey Nos.30/1, 30/2, 30/3, 32/2D/3 was granted. One of the conditions incorporated in the aid order was that the construction shall be carried out in accordance with the building plan approved by the PCMC on 10 May 2012.

8. I have perused the commencement certificate dated 10 May 2012. It indicates that the PCMC had approved the plan on 10 May 2012. The area statement indicates that the total area of the plot was 19500 sq. meters and the total proposed built up area to be constructed was 16887.50 sq. meters. It further appears that on 4th May 2012, the applicant No.1 had resubmitted the proposal to the Secretary, SEIAA with the assertion that the project proponent had submitted an application for environmental clearance on 24 October 2011. In the meanwhile, there were a lot of

changes in the project planning, and, hence, revised proposal for environment clearance was submitted.

9. It is in this context, the notice dated 24 February 2014 is required to be appreciated. It records that the applicant No.1 had applied for environment clearance for proposed residential and commercial project on the subject plots and during the 4th meeting of SEIAA held on 29 January to 1 February 2014, it was observed that the applicants had started construction activity without prior environment clearance, and, thus, violated the EIA Notification 2006.

10. In reply thereto (page 76), the applicant No.1 asserted that the proposal for environment clearance was submitted on 4 May 2012 itself and the applicants had got sanctioned from the planning authority on 10 May 2012 plan for construction of built up area to the extent of 16887.50 sq. meters only, and, therefore, prior environment clearance was not required.

11. Prima facie, it appears that the Collector had granted NA use permission in respect of the subject plots for an area admeasuring 19500 sq. meters. Prior thereto, the applicants had obtained the commencement certificate with the approved building plan from the planning authority. The then total proposed built up area was 16887.50 sq. meters. However, it seems, the plans were subsequently revised and the applicants proposed to develop built up area of 36306.65 sq. meters, for which prior environment clearance was required.

12. The controversy thus lies in a narrow compass as to whether there was a breach of EIA Notification, 2006 when the applicant had commenced the construction.

13. Mr. Mundargi, learned Counsel for the Applicants, submitted that the controversy is no longer *res integra*, and is covered by one Division Bench order and two orders passed by the learned Single Judges of this Court. Reliance was placed on an order passed by the Division Bench of this Court in the case of **Vardhman Developers Ltd. V/s. Union of India and Ors.**¹ and the orders by learned Single Judges in the cases of M/s. **Suncity Corporation and Anr. V/s. Maharashtra Pollution Control Board and Anr.**² and **M/s. Sancheti Properties and Ors. V/s. Maharashtra Pollution Control Board and anr.**³

14. In the case of **Vardhaman Developers Ltd. (Supra)**, the Division Bench took a view that if the construction proposed in the first phase was below the threshold of 20000 sq. meters, prior environmental clearance was not required. The observations of the Division Bench in paragraph 12 read as under :

“12. Having heard the learned Counsel for the parties, we are of the view that since what the Petitioner proposes to construct in the first phase is only about 11,000 sq. meters of built up area and that too only construction of a municipal school buildings, to be provided free of costs to the Municipal Corporation, construction of municipal staff quarters, to be provided free of costs to the Municipal Corporation and rehabilitation

1 WP 1916 of 2012 dt. 24 Sept. 2012

2 APL 732 of 2016 dt. 26 July 2017

3 WP 3607 of 2018 dt. 24 October 2018

building for municipal tenants and eligible slum dwellers, all aggregating to about 84, free of costs and also payment of pro-rata amount to the Municipal Corporation out of Rs.51.33 crores, no prejudice will be caused to any of the respondent-authorities or to any public interest if the petitioner is permitted to put up above construction of about 11,000 sq. meters in the first phase, before the Petitioner's application for prior environmental clearance is considered by Respondent No.3 Authority. As already indicated above, prior environmental clearance is required only where the proposed construction exceeds 20,000/- sq. meters."

15. Following the aforesaid decision, in the case of **M/s. Suncity Corporation and Anr. (supra)**, a learned Single Judge in an almost identical fact situation, quashed the order of issue of process as the built up area was below the threshold of 20000 sq. meters. The Court also noted that the environmental clearance was subsequently obtained in respect of the entire project.

16. Likewise, in the case of **M/s. Sancheti Properties and Ors. (supra)**, another learned Single Judge of this Court, following the decision in the case of **Vardhaman Developers Ltd. (supra)**, quashed the order of issue of process as the competent authority had approved the construction upto 13027.37 sq. meters and 14750 sq. meters area was constructed. The Court also noted that the environmental clearance was granted subsequently for construction upto 38983.59 sq. meters. In these circumstances, the Court ruled that in a project where the construction is carried out in a phased manner with the permission of the competent planning authority and the construction in the first phase is less than 20000 sq. meters, prior

environmental clearance may not be required.

17. Ms. Bagwe, learned Counsel for the Respondent No.1 submitted that the extent of the construction then carried out by the applicants is a question of fact, to be decided at the trial.

18. I am not persuaded to accede to this submission. There is material to indicate that the applicant had obtained building permission from the planning authority for an area admeasuring 16887.50 sq. meters. On the basis of the said building permission, the Collector had granted non-agricultural use with a clear stipulation that the construction shall be carried out in accordance with the said building plan only. To add to this, there is material to indicate that the applicants had submitted revised proposal for environmental clearance on 4 May 2012. Eventually, the planning authority approved revised building plan and issued revised commencement certificate on 11 March 2013 for a total built up area of 19468 sq. meters. Post revised commencement certificate, the applicants claimed to have commenced the construction.

19. In the aforesaid view of the matter, the order passed by the Division Bench in the case of Vardhaman Developers Ltd. (supra), and the orders passed by the learned Single Judges referred to above, govern the facts of the case. It is not a case that the applicants had commenced construction without submitting a proposal for environmental clearance. The record indicates that when the construction was

commenced on the basis of the sanction by the planning authority, the proposed construction did not exceed the limit of 20000 sq. meters. Moreover, SEIAA eventually granted environmental clearance for the development exceeding 20,000 sq meters . These aspects were not considered by the learned Chief Judicial Magistrate, while issuing process.

20. In these circumstances, it cannot be said that the offences punishable under Sections 15 and 16 of the Environment (Protection) Act, 1986 have been prima facie made out. Resultantly, the prosecution of the applicants may amount to abuse of the process of the Court.

21. Hence, the following order :

ORDER

- (i) The Application stands allowed in terms of prayer clause (b).
- (ii) No costs.

(N.J.JAMADAR, J.)