



Crl.O.P.No.7775 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.7775 of 2022
and
Crl.M.P.Nos.4495 & 4496 of 2022

1. M/s. Casa Grande Coimbatore LLP

2. Arun M.N.
Managing Director,
M/s. Casa Grande Coimbatore LLP

3. Senthil Kumar D,
Director,
M/s.Casa Grande Coimbatore LLP

... Petitioners

Versus

The Tamil Nadu Pollution Control Board,
rep. by its District Environmental Engineer
D. Jeyalakshmi,
Tamil Nadu Pollution Board,
Coimbatore North, No.5, Ramasamy Nagar,
Kavundampalayam, Coimbatore – 641 030.

... Respondent



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PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.944 of 2021 on the file of Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioners : Mr.G.Murugendran

For Respondent : Mrs.Shanmugavalli

ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C. No. 944 of 2021 on the file of Judicial Magistrate No.II, Coimbatore.

2. Heard both sides.

3. The petitioners are arrayed as accused in the complaint in C.C.No.944 of 2021 filed under Sec.200 of Cr.P.C. by the respondent for an offence punishable under Sec.15 r/w 16 and 19 (a) of the Environment (Protection) Act, 1986. According to the respondent, the petitioners are



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running a company under the name and style of M/s. Casa Grande Coimbatore LLP and it was involved in the construction of residential project consisting of Block 1 to 6 – Stilt floor + 4 floors + terrace and Number of dwelling units is 364 with total built up area 33779.39 sq.m. at S.F. Nos. 171/1A1, 172/3A, 177/3 A2, 177/2B, 177/3A3B, 177/3A3C in Vilankurichi village, Coimbatore North Taluk, Coimbatore District. In the course of business, the said company submitted an application to the Tamil Nadu State Level Environment Impact Assessment Authority (SEIAA) on 03.12.2018 for obtaining environmental clearance for the proposed project. While being so, the respondent inspected the premises and found that the compound wall was constructed with hollow blocks on all the four sides of the site and provided diesel generator of 62.5 KVA of the aforesaid project without getting any proper permission/clearance from the State Level Environmental Impact Assessment Authority of Tamil Nadu. Therefore, the petitioners have committed violation of provision of Environment Impact Assessment Notification 2006 and guilty of offence under Sec.15(1) read with 16(1) of Environment Protection Act. In view of that violation, a show cause notice was issued on 28.05.2020, for that they have given a reply.



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Having not satisfied with their reply, the respondent presented the complaint. Accordingly, the trial court taken cognizance of offence and taken the case on file in C.C.No. 944 of 2021. Challenging the said charge sheet, the accused approached this court praying to quash the said complaint.

4. The learned counsel for petitioners would submit that the trial court without adopting proper procedure took the cognizance of complaint erroneously and impugned complaint does not constitute an offence under Sec.15 r/w 16 of the said Act for the reason that the Environmental Impact Assessment Notification 2006 stipulates that before securing the land is permissible to safeguard against wrong doers and trespassers. For which, the learned counsel relied on the notification No.S.O. 1533 (E) issued by the Ministry of Environment and Forests dated 14.09.2006, wherein he has relied particularly Rule 2, which reads as follows :-

*“2. Requirements of prior Environmental Clearance (EC) :
The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for*



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matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity.”

By relying the aforesaid Rule 2, learned counsel for petitioners would submit that for securing the land, they are entitled to put up a compound wall. Therefore, the alleged construction would not cause any violation as alleged by the respondent and prayed to quash the proceedings initiated against them.

5. By way of reply, learned counsel for respondent would submit that before obtaining environmental clearance, they have started to put up a construction and even they are not entitled to put up a compound wall, besides the compound wall, they have also erected generator. Therefore, they have violated the rules and prayed to dismiss this petition.

6. Furthermore, learned counsel for petitioner would submit that the Tamil Nadu Pollution Control Board initiated proceedings for the construction of compound wall without environmental clearance on



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14.08.2020 and they have passed an order imposing penalty of Rs.12,42,000/- and the same was paid by way of demand drafts dated 17.08.2020 and to that effect, the xerox copies demand drafts enclosed in the typed set of papers.

7. Records perused. As rightly pointed out by the learned counsel for respondent, mere paying penalty would not prevent the respondent from prosecuting the offence for gross violation of rules. But, the fact reveals that before obtaining environmental clearance certificate, they have put up a compound wall to safeguard the subject land and in order to help the labours temporary tanks for storage of water were used and they have fixed temporary diesel generator, except that they have not put up any construction. Considering submission on the side of petitioners, it reveals that they are entitled to put up a compound wall with hollow blocks by relying Rule 2 of Environment Impact Assessment, 2006, except that there is no gross violation on the face of materials submitted by them. Furthermore, the learned counsel for petitioners would submit that as an abundant caution, they have filed an undertaking affidavit stating that they would not commit any mistake in future and they would abide all the



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procedures and due process of law before putting up construction in the said land. The said undertaking affidavit is recorded. As rightly pointed out by the respondent, the petitioners are the known building contractors and they are having various branches. So, they are directed to abide all the procedures before putting up construction in future. Accordingly, this court is inclined to quash the proceedings. However, it would not be deemed as precedent, if the petitioner and others violates the rule, the respondent would initiate proceedings under this Act. With the said observation, this Criminal Original Petition is allowed and the proceedings initiated in CC.No.944 of 2021 on the file of Judicial Magistrate No.II, Coimbatore is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

22.03.2024

Index: Yes/No

Internet: Yes/No

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To

1. District Environmental Engineer
The Tamil Nadu Pollution Control Board,
D.Jeyalakshmi, Tamil Nadu Pollution Board,
Coimbatore North, No.5, Ramasamy Nagar,
Kavundampalayam, Coimbatore – 641 030.



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2. The Public Prosecutor, High Court, Madras.

T.V.THAMILSELVI, J.

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