

Item No.2:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

(Through Video Conference)

**Appeal No.05 of 2022(SZ) &
I.A. Nos.194 to 196 of 2022 (SZ)**

IN THE MATTER OF:

Shaji A.K.
Aged 49 years,
S/o. Kuryakose,
Arakkal House, Perinkari PC,
Kannur District.

...Appellant(s)

With

- 1) **Ministry of Environment, Forests & Climate Change**
Indira Paryavaran Bhawan,
Jor Bagh, Ali Ganj,
New Delhi - 110 003.
Represented by its Secretary
- 2) **State Environmental Impact Assessment Authority**
KSRTC Bus Terminal Complex, 4th Floor,
Thampanoor, Thiruvananthapuram,
Kerala - 695 001
Represented by its Member Secretary
- 3) **State Level Expert Appraisal Committee**
KSRTC Bus Terminal Complex, 4th Floor,
Thampanoor, Thiruvananthapuram,
Kerala - 695 001
Represented by its Member Secretary
- 4) **The Administrator**
State Environmental Impact Assessment Authority,
KSRTC Bus Terminal Complex, 4th Floor,
Thampanoor, Thiruvananthapuram,
Kerala - 695 001
Represented by its Chairman
- 5) **M/s Calicut Landmark Builders and Developers of (India)
Pvt. Ltd.**
Landmark World, N H 17 Bypass,
Kozhikode, Kerala- 673 014
Represented by its Director Anwar Sadath.

...Respondent(s)

For Appellant(s): Mr. Harish Vasudevan.

For Respondent(s): Mrs. Me. Sarashwathy for R1.
Mr. S. Saravanan and Mr. Karthikeyan represented
Mrs. Vidyalakshmi Vipin for R2 to R4.
Mr. B.G. Bhaskar and
Mr. K.R. Harin for R5.

Judgment Reserved on: 18th April, 2023.

Judgment Pronounced on: 11th September, 2023.

CORAM:

HON'BLE Smt. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by Justice Pushpa Sathyanarayana, Judicial Member

1. The above appeal is directed against the grant of Environmental Clearance issued by the 2nd Respondent/ State Environmental Impact Assessment Authority, Kerala (for short "SEIAA - Kerala") on 12.03.2020 in favour of the Project Proponent/Respondent No.5 viz., M/s. Calicut Landmark Builders & Developers (India) Private Limited who is involved in the business of real estate, building projects and town area development projects in various parts of Kerala.
2. The appellant is a resident of the Perinkari area in Kannur District and a social activist involved in activities of protection and improvement of the environment.
3. According to the appellant, the Project Proponent has proposed to construct two residential towers (210) units, studio apartment (204 unit), Business park, 70 key hotel with restaurant facility and 500 pax convention centre and a club house. The total plot area of the project is 3.309 Hectares and the total built-up area

is 81,589 Square Meters, and the total project cost is Rs.350 Crores. The Project Proponent had filed an application dated 27.11.2018 before the 2nd Respondent/SEIAA – Kerala in Form – IA. It is the main contention of the appellant that the Project Proponent had furnished incorrect information about the nature of the lands, its ecological features, specialities and the presence of flora and fauna.

4. The Project Proponent also suppressed the fact that the plot is having water channels and agricultural landscape which was mined out for construction. It is further alleged that the SEAC – Kerala and SEIAA – Kerala had not considered the application in its proper perspective.
5. The appeal is filed on several grounds which are as follows:-
 - (i) The Environmental Clearance issued by the SEIAA – Kerala is without any authority or power as the SEIAA – Kerala has got no power to give post facto Environmental Clearance for building / township area project which is constructed for more than 20,000 Square Meters prior to obtaining the Environmental Clearance.
 - (ii) The Project Proponent ought not to have started the construction even before obtaining the Environmental Clearance as per the EIA Notification, 2006.
 - (iii) Admittedly, the Project Proponent started the construction in the year 2016 without obtaining Environmental Clearance and completed the same in the year 2017 itself before the impugned Environmental Clearance was granted.
 - (iv) The SEIAA – Kerala had taken the decision without any proper appraisal of the recommendation of the SEAC – Kerala with specific conditions.
 - (v) The SEAC – Kerala had conducted the site inspection and imposed conditions after the Environmental Clearance was issued are arbitrary and procedure not known to law and the same is without any authority.
 - (vi) The SEIAA – Kerala sought a clarification from the MoEF&CC on the procedure to be followed in case of violation since the said Notification has got only a window period of six months.

- (vii) Even before obtaining the said clarification, at the request of the Project Proponent, the SEIAA – Kerala had decided to issue the Environmental Clearance considering the same as an expansion project that too without any appraisal by the SEAC – Kerala.
- (viii) The SEIAA – Kerala has imposed a condition that the SEAC – Kerala should inspect the site for compliance with the conditions imposed in the Environmental Clearance.
- (ix) On the date of issuance of the Environmental Clearance, 90% of the project was completed defeating the requirement of prior Environmental Clearance.
- (x) As post facto Environmental Clearance is not recommended under the environmental laws, issuing an Environmental Clearance for a project which is already commenced is without any authority and issued in violation of the environmental laws, which is an unfair practice.
- (xi) The decision of the SEIAA - Kerala to treat the project as an expansion project is against the EIA Notification, 2006. It is settled law that a piecemeal approach to avoid the clutches of EIA Notification, 2006 is to be defeated.
- (xii) After the commencement of the construction, altering the land and environment fully by a project that is less than the threshold limit of the EIA Notification and later tagged the same as an expansion project would defeat the very purpose of the EIA Notification and its process. As the acts of the project proponent are against the '*Precautionary Principle*' and '*Sustainable Development*', the Environmental Clearance granted is sought to be set aside.

6. The 1st Respondent which is Ministry of Environment, Forests and Climate Change (MoEF&CC) has filed a reply to the appeal stating that the EIA Notification, 2006 regulates developmental projects in respect of construction of new projects/ activities/ expansion or modernization of existing projects in different parts of the country. The said notification covers more than 39 projects, including infrastructure projects i.e. Airports, Ports, Highways, Building and Construction Projects, etc. All new projects/ activities listed in the Schedule to the EIA Notification, 2006 require prior Environmental Clearance. The

'Construction Projects' and 'Township and Area Development Projects' are covered under entries 'A' and 'B' of the Schedule to the EIA Notification, 2006 and any Project Proponent is required to obtain prior Environmental Clearance if the project falls within any of these categories covered under the EIA Notification, 2006.

7. In the **reply filed by Respondents No.2 to 4**, it is stated that the Project Proponent on 24.11.2018 had made an application seeking Environmental Clearance for the proposed Mixed-use Township Development Project 'Landmark Trade Centre' in Sy. Nos.27/1, 30/4C, 31/4, 7, 8, 9, 32/4, and 351 B of Pantheerankavu Village, Kozhikode Taluk, Kozhikode District, State of Kerala. The said project comes under Category – B of Schedule 8 (a) to the EIA Notification, 2006. Admittedly, the built-up area is 81,589 Square Meters spread over an extent of 3.309 Hectares. It is stated that it was considered in the 89th Meeting of the SEAC – Kerala on 04.12.2018, and after scrutiny, certain particulars were sought for from the Project Proponent. Once again, the same was placed in the 95th Meeting held on 27th & 28th March 2019.

8. In the reply, it is specifically stated that the Project Proponent had started the land development and construction even before receiving the Environmental Clearance and permit from the Local Self Government. On 22.05.2019, the SEAC – Kerala decided to recommend the SEIAA – Kerala for initiating action against the Project Proponent for violating the relevant rules and regulations for issuance of Environmental Clearance. Accordingly, the SEIAA – Kerala, on 30.05.2019, had directed the District Collector and the Secretary – Kozhikode Corporation to issue a stop memo and report compliance for initiating violation proceedings against the Project Proponent as per the EIA Notification, 2006. The Project Proponent had submitted a representation dated 12.06.2019, contending that the project does not come under the purview of the violation proceedings. Again, in the 95th Meeting of the SEIAA - Kerala, the request was considered and once again, the SEIAA – Kerala recommended the District Collector to issue a stop memo and report compliance. Once again, the Project Proponent had informed that as per the Judgment of the Hon'ble

Supreme Court in *T.N. Godavarman Thirumulpad's* case, no Environmental Clearance is required from the SEIAA – Kerala for the building of township below the area of 1,50,000 Square Meters and requested the SEIAA – Kerala to consider their application. The said letter was considered by the SEIAA – Kerala on 24.09.2019. It was noted by the SEIAA – Kerala that the building permit was granted by the Olavanna Grama Panchayat on 26.10.2017 and noted that this project is basically a township development project but covered under Category B – 8 (a) of the Schedule, as the built up area is 81,589 Square Meters, which is less than 1,50,000 Square Meters required for considering the project under 'Township and Area Development Projects'. In view of the magnitude of the project which is likely to have an environmental impact, the SEIAA – Kerala decided to consider the same as a violation category since the construction commenced before obtaining the Environmental Clearance. While so, the project proponent requested vide Letter dated 26.08.2019 for withdrawal of violation proceedings relying on the Hon'ble Supreme Court's Judgment. However, the SEIAA – Kerala found that this judgment relates to a different project in the State of Uttar Pradesh, specific to that project under the given circumstance of the case and the same may not be made uniformly applicable to other projects in the whole of the country. The SEIAA – Kerala further noted that the project is covered under Schedule 8(a) and there is no ambiguity on that account and the proposal was processed accordingly from the beginning. The SEIAA – Kerala also sought for clarification from the MoEF&CC on the procedure to be followed in respect of the violation category. But before the clarification was issued by the MoEF&CC, based on the further representation made by the project proponent, the proposal was considered by SEIAA – Kerala on 23.12.2019. The project proponent had represented before the SEIAA – Kerala that the construction work of only one building with a built-up area of less than 20,000 Square Meters was commenced, for which, no Environmental Clearance is required and that they have wrongly stated that the project is totally a new project and represented that the project is an expansion of existing building and they have made a mistake in Form – I by not mentioning it as it is and requested to treat their

application as an application for expansion of existing building of area less than 20,000 Square Meters. The SEIAA - Kerala also noted all the developments that had taken place after the submission of the application for Environmental Clearance and held that there have been no violations of the EIA Notification, 2006. The Project Proponent also stated that since it was only a mistake and the construction activity was taken up only after getting permission from the Local Authority viz., Olavanna Grama Panchayat, the Project Proponent also had given a written statement in this regard. As the Project Proponent had given an undertaking that no further construction would be taken up in excess of 20,000 Square Meters without taking prior Environmental Clearance, the SEIAA - Kerala decided to give approval for the project considering the same as an expansion subject to the conditions mentioned therein. Accordingly, the Environmental Clearance was issued in favour of the Project Proponent which is now under challenge.

9. **The 5th Respondent (M/s. Calicut Landmark Builders & Developers (India) Private Limited) who is the Project Proponent** had filed its counter in the appeal. According to the Project Proponent, the Hon'ble Supreme Court had held that Environmental Clearance is not required for a township project if the threshold limit is not met as in the *Noida Park* case. The said contention was also alleged to have been raised before the SEIAA - Kerala. However, the same was negated holding that the project comes under Item 8 (a) and not under Item 8 (b). The Project Proponent reiterated that the project comes only under Item 8(b) and not under Item 8 (a) if it is viewed in the light of the Hon'ble Supreme Court's ruling. Even if it is assumed that there is a violation of the rules due to the commencement of the construction prior to the grant of Environmental Clearance, it can only invite appropriate action for the breach provided in the relevant law and should not cast any shadow on the consideration of the application for grant of Environmental Clearance.

10. The Project Proponent further stated that the SEIAA – Kerala cannot cancel the clearance granted, as the same has not resulted in any environmental damage. The Sub-Committee of the SEAC – Kerala which visited the site saw a part of the building covered by the Panchayat permit with just one floor and unfinished roof, and misconstrued it as part of the building, for which, the Environmental Clearance was filed. The idea of expanding the intended building construction into a township arose later and the EIA Notification, 2006 expressly encompasses the expansion of a building project and is not restricted to a new project alone. Expansion necessarily implies the existence of a structure before the filing of the application. The trade centre project, for which, the prior Environmental Clearance was sought was intended as a 'Township' with a built-up area of 81,589 Square Meters comprising different types of buildings such as residential towers, studio apartments, hotel and convention centre, club house and business park. The 508.84 Square Meters building which was seen by the Sub-Committee members is not integrated into the hotel and convention centre part of the township and explained the same to the SEIAA – Kerala. Only after the SEIAA – Kerala was convinced that there was no violation before the sanction of the project and after detailed deliberations, the Environmental Clearance was granted. The advertisements referred to in the appeal, which have not been exhibited, cannot and do not relate to the building, for which, the Environmental Clearance was given and it is claimed that the appellant is attempting to mislead the Tribunal.

11. It is further contended in the reply that the allegation that the properties are marshy and low-lying land on one side and hillock on the other end and that hillock is removed, red earth removed, water channels and water table have been seriously affected are all baseless and false. It is suspected that the present appellant is pawn in the hands of some vested interests who are inimical to the project proponent and it is also to be noted that no one from the entire Kozhikode Corporation has chosen to file any complaint to this Tribunal. The appellant is a resident of

Kannur with a perfunctory acquaintance of the area of operation and the accusation of the appellant is unfounded.

12. From the above pleadings, the questions that arise for consideration are:-

(I) Whether the Environmental Clearance granted to the Project Proponent by the SEIAA – Kerala without any appraisal by the SEAC – Kerala is liable to be set aside?

(II) Whether a project with 81,589 Square Meters of built-up area if named as a 'Mixed-use Township Project' does not require prior Environmental Clearance?

Issue No.1:-

13. The learned counsel appearing for the appellant contended that the project is a building construction project which is evident from the basic information provided in Form – I Application by the Project Proponent. As the total built-up area exceeds 20,000 Square Meters, the Project Proponent shall obtain a prior Environmental Clearance before the construction work or preparation of land by the project management. The Project Proponent had clearly mentioned in Form – I that it is a new project by mentioning 'Building and Construction Project' with a built-up area of 81,589 Square Meters which falls under Item 8 (a) category. Since the Project Proponent had clearly mentioned that the proposed project was coming within the Category 8 (a), it should be viewed only as it is and the same cannot be changed. The Project Proponent also obtained a building permit for 57,443.6 Square Meters built-up area on 30.05.2020. Therefore, it is evident from the building permit dated 30.05.2020, the entire construction is designed as a single building construction project for the purpose of obtaining a

building permit under the local laws. The EIA Notification, 2006 does not provide a definition for building construction.

14. It is stoutly denied by the appellant that the project is only an area development project as claimed by the Project Proponent. They should have applied only for a land development permit and not a building permit from the local panchayat.
15. The building permit obtained from the panchayat is for more than 20,000 Square Meters which would clearly indicate that the Project Proponent was proposing only a building construction project and not an area development project and it comes under Item 8 (a) category, as rightly mentioned by the Project Proponent in Form - I. Even in the impugned Environmental Clearance, it is mentioned only as a project coming under the Category 8 (a) which is not challenged by the Project Proponent at any time. Therefore, the argument of the Project Proponent that this is not a building construction project is unacceptable and it is only a building construction project.
16. The next ground raised by the appellant is that the Project Proponent had suppressed the material fact in Form - I and Form - IA. It is stated that there are wetlands, paddy lands, and water streams near the project site which are to be revealed in Form - I, as the presence of paddy lands, wetlands and water streams are critical information and matters for the appraisal of the project. The Project Proponent had deliberately concealed the information which is vital for the Environmental Impact Assessment.
17. In this regard, it would be appropriate to advert to the Annexure - A15 which is the proceeding of the Sub Collector - Kozhikode dated 02.12.2019. This is a proceeding for the conversion of land as per the Kerala Conservation of Paddy Land and Wetland Act, based on the application submitted by Mr. C. Anwar Sadath who is the Director of the 5th Respondent unit. In the above said proceedings, conversion was granted on the condition that "(1) *The construction shall be done without causing any damage to the nearby water streams/ wetlands/ nearby agricultural lands.*

(2) Applicant is duty bound to pay additional fees if any error is found in the calculation of the fair value, on a later point of time".

- 18.** From the above document, it is evident that the Project Proponent had applied for the conversion of paddy lands subsequent to the application made for Environmental Clearance. Therefore, even on the ground of suppression of material facts, the SEIAA – Kerala ought to have recalled the Environmental Clearance granted.
- 19.** The learned counsel for the appellant invited our attention to Clause 8 (vi) of the EIA Notification which provides for the rejection of the application and/or cancellation of the prior Environmental Clearance granted on the basis of the deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application.
- 20.** It is pointed out that even though there is a statutory duty imposed on SEIAA – Kerala to reject the application or cancel the Environmental Clearance for furnishing wrong / false / misleading information, the SEIAA – Kerala has not done the same till now.
- 21.** When the Project Proponent had commenced its construction and made alterations in the land by laying roads, removing of earth and levelling the same, the prior Environmental Clearance should have been obtained. Even before obtaining the Environmental Clearance, the above mentioned works were commenced by the Project Proponent.
- 22.** The Project Proponent ought to have obtained prior Environmental Clearance before any construction work or preparation of the land on the project site. After commencing the same, the Project Proponent has made an application before the SEIAA – Kerala for obtaining Environmental Clearance. When it is specifically found by the SEIAA – Kerala that the project/activity has started in violation of the EIA Notification,

the application filed by the Project Proponent should have been rejected on the very same ground and initiated violation proceedings for commencing the activity before obtaining the Environmental Clearance. The SEAC – Kerala had not made any recommendation for grant of Environmental Clearance. The recommendation of the SEAC – Kerala is that the project is being constructed prior to the grant of Environmental Clearance and the same has to be considered as a violation category, besides initiating action for the violations was accepted by the SEIAA – Kerala in its 93rd, 95th, 97th and 100th Meetings held on 30.05.2019, 29.07.2019, 24.09.2019 and 23.12.2019 respectively. Whereas, the SEIAA – Kerala, based on the representation made by the Project Proponent had suddenly changed its stand and granted the impugned Environmental Clearance in its 101st Meeting held on 17th & 18th January 2020.

23. The above sequence of events and the records also clearly reveal that the SEIAA – Kerala had granted the Environmental Clearance without the recommendation of the SEAC – Kerala which is in gross violation of the procedures prescribed in the EIA Notification, 2006.

24. In this regard, the relevant provisions of the EIA Notification, 2006 can be usefully referred to:-

"8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be

simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days."

25. The above provision makes it very clear that the appraisal and specific recommendation of the SEAC is mandatory for consideration by the SEIAA for the grant of Environmental Clearance. The SEAC and SEIAA being the regulatory bodies, the decision making process of these authorities must be transparent. It is a bounden duty of the SEAC and SEIAA to draw a balance between the need for development on the one hand and the protection of environment on the other hand.
26. In the instant case, though the SEAC – Kerala had not recommended the project, the SEIAA – Kerala had gone ahead in issuing the Environmental Clearance at the instance of the Project Proponent is vitiated in the eye of law. It only reflects on the SEIAA – Kerala that it is lacking in a transparent and responsible decision making process.
27. Therefore, on what basis, the SEIAA - Kerala had considered the project as an expansion project and granted Environmental Clearance in gross violation of the rules in force is not known. It is also contrary to the application submitted for a new project by the project proponent which raises doubt about the transparency and accountability of the decision making process of the SEIAA – Kerala.
28. It is also to be noted that as per Annexure A7, which is the Minutes of the 97th Meeting of the SEIAA - Kerala, it is recorded that when the expert team of SEAC visited the project site for field verification, the team noticed that the constructions had already started without obtaining the Environmental Clearance and hence, there was a violation. The SEAC – Kerala accepted the Sub-Committee's report and recommended the SEIAA – Kerala for initiating violation proceedings. Accordingly, vide

Letter dated 27.08.2019, the SEIAA – Kerala directed the District Collector – Kozhikode to issue a stop memo and report compliance at the earliest.

29. The said decision dated 24.09.2019 has also not challenged by the Project Proponent till date and the decision has also not been withdrawn by the SEIAA – Kerala yet. The above observations only confirm that the project is a case of violation and the SEIAA – Kerala is empowered to initiate action against the Project Proponent.
30. For the above said reasons, we hold that the issuance of the Environmental Clearance dated 12.03.2020 is without jurisdiction and without following the prescribed procedures and is liable to be set aside. Accordingly, the Environmental Clearance is set aside.

Issue No.2:-

31. Regarding the issue of whether the project in question requires prior Environmental Clearance, admittedly, the permit granted by the Local Grama Panchayat is for 57,443.6 Square Meters. Even according to the permit and plan issued by the Local Grama Panchayat, it is not a mere area development project but a building construction project. In this regard, it is submitted that the EIA Notification, 2006 applies to all projects with built-up area of greater than 20,000 Square Meters irrespective of the nature of the project/activity.
32. In this regard, the learned counsel for the appellant places his reliance on **2014 SCC Online Del 3264 (Maruthi Suzuki India Limited Vs. MoEF&CC and Ors.)**

"13. In rejoinder, the petitioner submits that the circular clearly pertains to SEZs and does not in any way, support the respondent No.2's view that all projects and activities having a built-up area of >20,000 sq. mts., irrespective of the nature of the project or activity, would require EC.

14. Having heard learned counsel for parties, this Court is of the view that the EIA Notification 2006 applies to all projects with a built up area of > 20,000 sq. mts. irrespective of the nature of the project or activity. Omission of some words/expressions from the draft EIA Notification 2006, which are superfluous, would not assist the petitioners. Moreover, deletion of words/expressions from a draft Notification is not equivalent to a deletion of words/expressions from an existing statute or Notification. Also internal notings of Government officials cannot be a guide to interpretation when the Notification is otherwise free from ambiguity."

33. Though in the above referred case, after holding so, the Hon'ble High Court had permitted the issuance of post facto clearance. It was categorically held that the present order was passed on the peculiar facts and circumstances of the case and the same shall not be treated as precedent.

34. The learned counsel for the Project Proponent contended that the project does not require prior Environmental Clearance since the total built-up area is only 81,589 Square Meters which is less than 1,50,000 Square Meters and the project is coming under 'Mixed-use Township Project'. Therefore, the township projects only fall under Item 8(b) and not under Item 8(a) of the EIA Notification, 2006. Since the threshold limits were not reached, their project does not require a prior Environmental Clearance and it was not by mistake, the Project Proponent had applied for prior Environmental Clearance and obtained the same.

35. The relevant provisions of the EIA Notification, 2006 in Item 8 are as follows:-

8(a) – Building and Construction projects, for which, prior EC is required for built-up area of greater than 20,000 Square Meters. For the project between 20,000 Square Meters to 1,50,000 Square Meters will be considered as 'B' Category projects and prior EC is to be granted by the SEIAA.

8(b) – Townships and Area Development projects. For projects with built-up area of greater than 1,50,000 Square Meters and less than 3,00,000 Square Meters or covering an area greater than or equal to 50 Hectares and less than 150 Hectares will be considered as projects falling under 'B' category, for which, EC is to be granted by the SEIAA. In case the project has a built-up area of greater than or equal to 3,00,000 Square Meters or covering an area of greater than or equal to 150 Hectares, the project will be treated as 'A' category and EC is to be granted by the MoEF&CC.

36. From the above, it can be seen that any project having a built-up area of more than or equal to 20,000 Square Meters requires prior Environmental Clearance, whether it is a standalone building project or a component of a township. Building projects having less than 1,50,000 Square Meters but more than or equal to 20,000 Square Meters even if they are not a part of the township will require prior Environmental Clearance under 8(a) and if the built-up area is more than 1,50,000 Square Meters it will be considered as Township under 8(b).

37. The reliance of the Respondent on the orders of the Hon'ble Supreme Court in **In Re: Construction of park at Noida near Okhla Bird Sanctuary - Anand Arya & Anr. / T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (I.A. Nos.2609-2610 of 2009 in Writ Petition (CIVIL) No.202 of 1995)** reported in (2011) 1 SCC 744 needs to be examined.

38. The impugned project in the above case is a recreational park involving the construction of a national memorial, commemoration plaza, larger than life-size statues, pedestrian pathways, boundary wall, hard landscape, soft landscape, etc.

39. In the above referred *Noida Park* case, it was held by the Hon'ble Supreme Court that

"55. It is extremely difficult to accept the contention that the categorization under items 8 (a) and 8 (b) has no bearing on the nature and character of the project and is based purely on the built up area. A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project. Further, an area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park."

40. It was also held by the Hon'ble Supreme Court that

"57. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the "Common Parlance" test, i.e. how

a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres."

- 41.** From the above, it is very clear that the order pertains to a project where the 'dominant purpose' is that of an 'Area Development Project' and not that of a 'Building and Construction Project'. In the instant case, the project is primarily a 'Building and Construction Project' in a small area of 3.309 hectares and the built-up area (covered area) is 81,589 Square Meters consisting of 2 residential towers (210 units), studio apartment (204 units), Business park, 70 key hotel with restaurant facility and 500 pax convention centre and a club house which reveals that the project is primarily a 'Building and Construction Project' which requires prior Environmental Clearance in view of the huge environmental impact the project is likely to have both during construction and operation phase of the project. Therefore, we do not see any inconsistency in the findings of the SEIAA - Kerala that the project requires prior Environmental Clearance though we do not agree with the treatment of the project as an expansion project by the SEIAA - Kerala.
- 42.** Merely naming a project as a 'Mixed-use Township Project' will not make it a project under Item 8 (b). If the contention of the project proponent is accepted, it will be open for any project proponent to name their project as 'Township' and propose a built-up area that is just less than 1,50,000 Square Meters and claim that prior Environmental Clearance is not required. On the other hand, the projects which are having a nomenclature of 'Building projects' with a built-up area of more than or equal to 20,000 Square Meters will require prior Environmental Clearance to assess the environmental impact and impose necessary conditions to protect the environment.

43. The intention of the legislature cannot be to assess a project having a built-up area of more than or equal to 20,000 Square Meters for a grant of prior Environmental Clearance and by a mere change in nomenclature to Township, projects with a built-up area of greater than 20,000 Square Meters but less than 1,50,000 Square Meters be exempt from the EIA Notification, 2006.

44. In the instant case, it is also to be noted that the built-up area of the project is 81,589 Square Meters, which will have a huge environmental impact in that area not only during the construction phase but also post-completion of the project, impacting the environment in the following aspects: -

(a) Change in habitat in the project area as well as in the neighbourhood which can have deleterious impacts on the fauna.

(b) Likely pollution and absence of appraisal and stipulation of mitigation measures can have a serious bearing on soil, air (both air quality and noise pollution), and water bodies.

(c) The presence of a large number of dwelling units (210 + 204 = 414 units) will itself generate huge quantities of both solid and liquid waste which requires critical scrutiny and imposition of conditions to mitigate the impacts of solid and liquid waste generated on a daily basis.

(d) In view of the massive project, it is evident that the traffic in the area will increase significantly which also requires technical analysis for imposing necessary conditions to prevent air pollution viz., both air quality and noise levels.

45. From the above, it is evident that the project of a size of 81,589 Square Meters will require a detailed environmental impact assessment in order to protect the environment and ensure that there is no adverse impact on the environment in the project

area as well as in the neighbourhood. Any interpretation as contended by the project proponent will lead to gross misuse of the provisions of the EIA Notification, 2006, leading to serious environmental impact in the project area as well as in the surrounding areas.

46. It is also to be noted that the Hon'ble Supreme Court in **Keystone Realtors Private Limited Vs. Shri Anil V Tharthare & Ors. [Civil Appeal No. 2435 of 2019]** reported in **(2020) 2 SCC 66** has held that

"The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernization of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact has been assessed and approved by the grant of an EC."

47. It was also observed by the Hon'ble Supreme Court that

"19. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or the SEAC, as applicable."

48. The Hon'ble Supreme Court has also held categorically that even with respect to expansion projects, it cannot be done incrementally in a manner that will prevent the officials from examining the environmental impact and evaluating it holistically considering all the relevant factors, including air and water availability, pollution, management of solid and liquid waste and the urban carrying capacity area.

49. The claim of the project proponent that the project does not require Environmental Clearance is not sustainable and having claimed the project is a new project and applied before the SEIAA – Kerala for Environmental Clearance, it is purely an afterthought to claim that they have made the application by mistake and this being 'Mixed-use and Township Project' does

not require Environmental Clearance is rejected since the 'dominant purpose' or 'dominant nature' of the project is 'Building and Construction Project'. Therefore, we hold that the project requires prior Environmental Clearance under Item 8 (a) of the EIA Notification, 2006.

50. We also hold that the proceedings in the name of Administrator SEIAA is in violation of the EIA Notification. The Environmental Clearance shall be granted only by the SEIAA as proceedings of the SEIAA and at best, the Environmental Clearance can be signed by the administrator on behalf of the SEIAA. But certainly, it cannot be the proceedings of the administrator, since the EIA Notification, 2006 stipulates that the prior Environmental Clearance shall be granted by the SEIAA based on the specific recommendation of the SEAC.
51. It is high time, the officers who are part of the SEIAA – Kerala are made to realize that it is their bounden duty to protect the environment as per the procedures prescribed in the EIA Notification, 2006 and the grant of Environmental Clearance cannot be left to the whimsical discretion of the members of the SEIAA.
52. For the violation of commencing the project prior to securing prior Environmental Clearance, the project proponent is liable for payment of environmental compensation. Normally, the options before the Tribunal are to pull down the structure for having violated the environmental laws or impose environmental compensation which will act as a deterrent for the prospective builders from undertaking constructions without obtaining prior Environmental Clearance. Since the project is not in a very highly eco-sensitive zone (i.e. CRZ, Wetland, Water body, etc.) and is nearing completion, we feel that the ends of justice will be met by imposing appropriate environmental compensation by the Kerala State Pollution Control Board within a period of 3 (Three) months subject to the approval of this Tribunal.

53. In view of the detailed discussions made above, we

- I.** Set aside the Environmental Clearance dated 12.03.2020 granted by the SEIAA - Kerala.
- II.** The SEIAA – Kerala is directed to stop the project with immediate effect and we direct the project proponent to make an application within 2 (Two) months which shall be examined by the SEIAA or MoEF&CC, as the case may be, on merits and as per rules in force.
- III.** When the application is considered, it can be considered only after assessing the damage that might have been caused to the environment due to the construction and also assessing the mitigation / remediation measures that will have to be undertaken prior to consideration of the application. The amount required for remediation and mitigation measures shall be recovered from the Project proponent. In view of Para (52), the environmental compensation to be imposed on the Project Proponent will be considered by the Kerala SPCB appropriately within a period of 3 (Three) months which will be subject to the approval of this Tribunal.
- IV.** The environmental compensation shall be paid to the Kerala SPCB for being deposited in an interest bearing account in a Nationalized Bank and the interest shall be utilized for restoration of wetlands and removal of water hyacinths from the major waterways and water bodies of Kerala State and for utilization of the removed water hyacinth for energy generation/composting or producing a value added product.
- V.** A Committee comprising of the (i) Additional Chief Secretary – Department of Environment – Directorate of Environment and Climate Change (DoECC), (ii) Additional Chief Secretary – Irrigation Department, (iii) Principal Chief Conservator of Forests (Head of Forest

Force)/Chief Conservator (Wetlands), and (iv) Chairman – Kerala State Pollution Control Board headed by the Chief Secretary – State of Kerala shall consider the projects received for sanction of funds from the interest income.

VI. In view of the gross violations made out, we recommend the Secretary – MoEF&CC to initiate action after due enquiry against all the members of SEIAA who were party to the decision.

VII. In case the same members are continuing as members of SEIAA, pending enquiry all the proposals for prior Environmental Clearance may be referred to a new set of members.

VIII. The Additional Chief Secretary – Department of Environment, Directorate of Environment and Climate Change (DoECC), State of Kerala shall report compliance in 6 (Six) months to this Tribunal.

54. As a corollary, the Interlocutory Applications [I.A. Nos.194 to 196 of 2022 (SZ)] are also disposed of.

Sd/-

Smt. Justice Pushpa Sathyanarayana, JM

Sd/-

Dr. Satyagopal Koriapati, EM

Internet – Yes/No
All India NGT Reporter – Yes/No

Appeal No.05/2022 (SZ)
I.A. Nos.194 to 196/2022(SZ)
21st September 2023. Mn.

Item No.2:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

(Through Video Conference)

Appeal No.05 of 2022(SZ)

IN THE MATTER OF:

Shaji A.K.

...Appellant(s)

With

**Ministry of Environment, Forests & Climate Change
New Delhi and Ors.**

...Respondent(s)

Date of Order: 11.09.2023.

CORAM:

HON'BLE Smt. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

ORDER

1. After pronouncing the Judgment, Mr. K.R. Harin, the learned counsel appearing for Respondent No.5 requested for the stay of the operation of the order, which this Tribunal refused. It is open to him to work out his remedy in the appropriate forum.

Sd/-

Smt. Justice Pushpa Sathyanarayana, JM

Sd/-

Dr. Satyagopal Korlapati, EM

Appeal No.05/2022 (SZ)
11th September 2023. Mn.