

Item No. 01

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Appeal No. 123/2018
(Earlier Appeal No. 14/2014) (WZ)

Santosh Daundkar

Appellant(s)

Versus

Secretary, MoEF & Ors.

Respondent(s)

Heard on : 22.02.2019

Uploaded on: 08.05.2019

CORAM: **HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**
 HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
 HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
 HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Appellant(s): Mr. Aditya Pratap, Advocate

For Respondent (s): Ms. Prachi Sawant and Mr. Rahul Garg,
 Advocates for R- 1
 Mr. Swayamprabha and Ms. Supriya Dangare,
 Advocates for R-2&3
 Mr. Deepak Gupta, Advocate R-4
 Mr. Devansh Mohta, Mr. Aftab Diamond, Mr.
 Devendra Patankar, Ms. Sheetal Agne and Mr.
 Pradeep Jain, Advocates R-10

ORDER/JUDGEMENT

Per Justice S.P. Wangdi, Judicial Member

1. The Appellant who claims himself to be a keen environmentalist has preferred this Appeal under section 16 National Green Tribunal Act, 2010 assailing the Environmental Clearance (EC) dated 25.04.2014 issued by the State Environment Impact Assessment Authority (SEIAA), Maharashtra, for proposed 'Slum Rehabilitation Scheme' on Plot bearing CTS No. 811A/7(pt), 814A/1 to 814A/4, 821, 824, 825(pt) and 844 of Village Malad (E) Mumbai' in favour of M/s. Omkar Realtors and Developers Pvt. Ltd., the Respondent No. 10 (hereinafter referred to as the Developer).
2. The Slum Rehabilitation Scheme envisages construction of free houses for slum dwellers for which purpose the plot is divided into 2

parts. On one such part, houses measuring 269 Sq. feet plus other free FSI are constructed to be provided free for rehabilitation of slum dwellers. On the 2nd part the Developer gets commensurate quantum of additional Floor Space Index (FSI) on which he could construct free sale apartments.

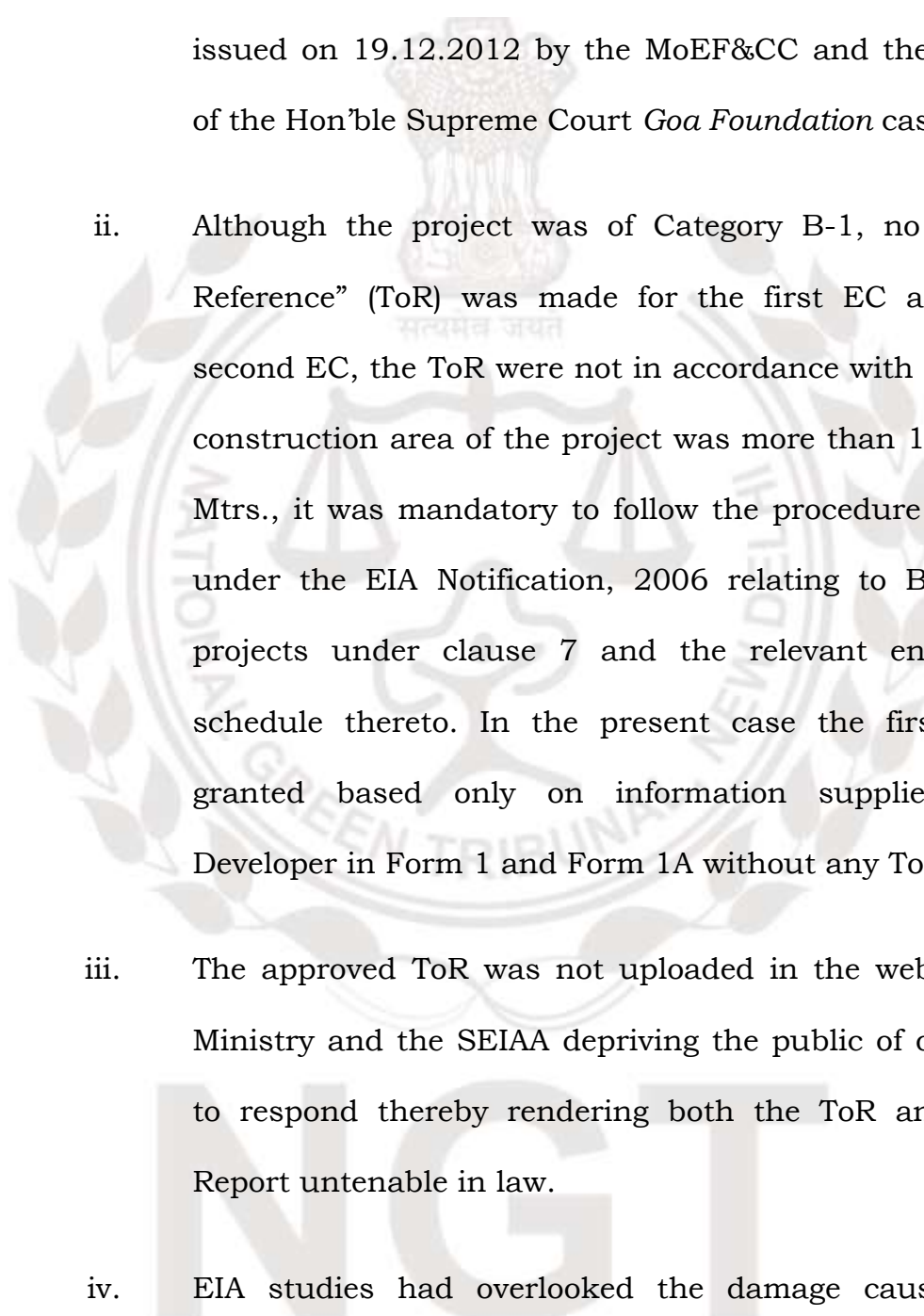
3. The Appellant’s case is that the Developer had initially obtained an Environmental Clearance (EC) for the project on 10.11.2010. After that although there was a fundamental change in the entire planning layout of the project for which a fresh EC was required, the Developer proceeded with the construction without bothering to do so. It was only after substantial construction had been carried out that the Developer obtained the impugned EC.
4. The Appellant contends that the initial parameters for the project according to the first EC was as follows:

Plot Area	:	34,444 Sq. Mtrs.
Total Construction Area	Built-up :	2,74,372 Sq. Mtrs.
<u>No. of Buildings</u>	:	
<u>Rehabilitation Component</u>	:	
Rehabilitation Building No. 1	:	G + 22
Rehabilitation Building No. 2	:	G +19
Rehabilitation Building No. 3	:	G + 22
Rehabilitation Building No. 4	:	G + 6
<u>Sale Component</u>	:	
Sale Building No. 1	:	G + 69
Sale Building No. 2	:	G +7
Sale Building No. 3	:	G + 7
Sale Building No. 4	:	G + 7
Sale Building No. 5	:	G + 7

5. The above parameters were revised later and altered fundamentally in the following manner:

Plot Area	:	46,993 Sq. Mtrs. (i.e., Plot Area increased by 12,459 Sq. Mtrs.
Total Construction Area	Built-up :	4,89,475 Sq. Mtrs. With Rehabilitation Building Area being about 1.53 Lakh Sq. Mtrs. and Sale Building Area being about 3.36 Lakh Sq. Mtrs.
<u>No. of Buildings</u>	:	
<u>Rehabilitation Component</u>	:	
Rehabilitation Building No. 1	:	G + 23
Rehabilitation Building No. 2	:	G +22
<u>Sale Component</u>	:	
Sale Building No. 1	:	Lower Ground + G + 5 Podium + Stilt + 39
Sale Building No. 2	:	Lower Ground + G + 5 Podium + Stilt + 1
Sale Building No. 3	:	Lower Ground + G + 5 Podium + Stilt + 55
Sale Building No. 4	:	Lower Ground + G + 5 Podium + Stilt + 54

6. The Appellant contends that the scope of the work having been changed so drastically transforming it to a new plan altogether, no construction ought not to have been permitted without first obtaining 'prior EC' as required under the Environment Impact Assessment Notification of 2006 (EIA Notification, 2006 for short). It was only after the construction had progressed substantially with all the rehabilitation building completed and made ready and, much of the works in respect of the Sale buildings had reached an advanced stage, that the Developer approached the SEIAA for the revised EC. The SEIAA, instead of proceeding against the Developer in accordance with the Ministry of Environment Forest and Climate Change (MoEF&CC) Office Memorandum dated 12.12.2012 and 27.12.2013, 27.06.2013 that provide for cases of violation, straight away proceeded to grant EC.
7. The Appellant has raised the following as grounds of Appeal:

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- i. Clearance was not obtained from the Standing Committee of the National Board for Wildlife (NBWL) despite the fact that the project falls within the Eco-Sensitive Zone (ESZ) of the Sanjay Gandhi National Park and in fact is almost overlooking this park. This was in violation of “Guidelines for Taking Up Non-Forestry Activities in Wildlife Habitats” issued on 19.12.2012 by the MoEF&CC and the directions of the Hon’ble Supreme Court *Goa Foundation* case.
 - ii. Although the project was of Category B-1, no “Terms of Reference” (ToR) was made for the first EC and for the second EC, the ToR were not in accordance with law. As the construction area of the project was more than 1.5 lakh Sq. Mtrs., it was mandatory to follow the procedure prescribed under the EIA Notification, 2006 relating to B1 category projects under clause 7 and the relevant entry in the schedule thereto. In the present case the first EC was granted based only on information supplied by the Developer in Form 1 and Form 1A without any ToR.
 - iii. The approved ToR was not uploaded in the website of the Ministry and the SEIAA depriving the public of opportunity to respond thereby rendering both the ToR and the EIA Report untenable in law.
 - iv. EIA studies had overlooked the damage caused to the environment by the first EC granted without ToR and no measures had been suggested for its mitigation.
 - v. The EIA studies were carried out in violation of the Central Pollution Control Board (CPCB) guidelines in as much as 12

months’ data had not been collected as the report was prepared in about 2 months.

- vi. Recreation Ground has been provided in the podium when it ought to have been at the ground level in violation of the order of the Hon’ble Supreme Court dated 17.12.2013 in Civil Appeal No. 11150 of 2013 in the matter of *Municipal Corporation of Greater Mumbai vs. M/s. Kohinoor Mills*.
- vii. Parking figures has been inflated to enhance pollution load for gaining false FSI to facilitate extra construction.
- viii. Condition for maintaining green area around the periphery of the project has been violated as no place has been left for the purpose.
- ix. Permission was illegally granted for construction of 7 podiums when it was permissible only for 1 or 2 under the Development Control Regulations of Greater Mumbai, 1991.

Based on the above, it is inter prayed that the impugned EC be set aside.

8. The Respondents No. 2, 3 and 4, i.e., the Secretary Environment, Government of Maharashtra, SEAC-II and SEIAA respectively have filed a joint affidavit in reply to the Appeal denying all material allegations contained in the Appeal. A resume of the various proceedings in respect of the impugned EC have been set in a table which is reproduced below:

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Date	Progress	Annexure
	Submission	
2009.Oct.26/27/28/29	SEAC 18 th meeting	Annexure ‘A’
2010.Jan.04	SEAC 21 st meeting	Annexure ‘B’
2010.Sept.24	SEIAA 28 th meeting	Annexure ‘C’
2010.Nov.10	EC granted (Original Project)	Annexure ‘D’

	<i>Application for expansion:</i>	
<i>2013.Mar.14/15/16</i>	<i>SEAC-II 10th meeting</i>	<i>Annexure 'E'</i>
<i>2013.Jun.20/21</i>	<i>SEAC-II 14th meeting</i>	<i>Annexure 'F'</i>
<i>2013.July.4/5</i>	<i>SEIAA 62nd meeting</i>	<i>Annexure 'G'</i>
<i>2013.Dec.23/24</i>	<i>SEIAA 65th meeting</i>	<i>Annexure 'H'</i>
<i>2014.Feb.28</i>	<i>SEIAA 68th meeting</i>	<i>Annexure 'I'</i>
<i>2014.April.25</i>	<i>EC granted (expansion</i>	<i>Annexure 'J'</i>
<i>2014.April.28</i>	<i>Published on website</i>	

”

9. Dealing with the procedure involved in such cases, it is stated as per current practice, the Developer presented their case through authorised representatives in the form of Power Point presentation in detail covering all issues related to environment applicable to the project and the likely causes of significant impact. Since the case was for expansion, earlier EC was also submitted in the SEAC-II meeting. Necessary queries were raised by the SEAC members which were answered. The details of the deliberations in the meeting are not recorded except where additional data is required or where queries remain unresolved. The experts from the SEAC have gone through all information submitted by the project proponent in Form 1 and Form 1A, conceptual Plan, EIA study report and the power point presentation.
10. The issues that are not causing impact on environment are not within the jurisdiction of the SEAC/SEIAA but is clarified by clause 8(v) of EIA Notification, 2006 and MOEF OM dated 19.06.2013. Thus, any other permission, approvals, consents, sanctions required under other Acts and Rules or Notifications are to be obtained by the Developer. SEAC does not ask for those unless sequentially dependant.

- 11.** In substance, it is the case of these Respondents that the impugned EC had been granted lawfully after following all the procedures.
- 12.** In the reply filed on behalf of the Respondent No.10, the Developer, apart from taking preliminary objections on the ground of limitation and locus standi of the Appellant, it is stated that EC was granted on 10.11.2010 and the order dated 25.04.2014 is a continuation of the previous EC. Challenge to the EC dated 25.04.2014 is not maintainable without challenge to EC dated 10.11.2010 which having not been challenged, is barred by limitation, delay and laches. EIA Notification, 2006 did not make the General Condition applicable to Building/Construction Project/Area Development Project/Township and, therefore, approval from the Standing Committee of NBWL was not necessary. As the EC dated 25.04.2014 was a continuation of EC dated 10.11.2010 and the guidelines requiring approval of NBWL for taking up non-forestry activities in wildlife habitat came into force in 2012, seeking such approval was not necessary even on that account. Even otherwise, ESZ around the Wildlife Sanctuary/ National Park has already been demarcated according to which the project falls outside such zone.
- 13.** The Respondent No. 10 further goes on to state as follows:
- i. The Respondent was appointed as a Developer by 3 Societies in respect of implementation of Slum Rehabilitation Scheme on plot bearing CTS No. 812 (pt), 813 and 813 (pt) in Village Mallad (East) which is referred to as “the said Plot No.1”. The Respondent submitted a proposed Slum Rehabilitation Scheme through its architect before the Slum Rehabilitation Authority (SRA) who by letter dated 05.07.2008 sanctioned the scheme on the said plot no.1 on prescribed terms and conditions.

- ii. As per the Letter of Intent (LoI), it is required of the Respondent 10 to provide rehabilitation free of costs to 1139 of eligible slum dwellers. Clause 40 of the LoI made it obligatory for the Respondent to re-house all additional hutment dwellers, if found eligible. In order to ensure compliance of the LoI, the Respondent was required to prepare plan for construction of Rehab-Building in respect of total slum dwellers who would become eligible subsequent to the issuance of the LoI. Accordingly, the Respondent No. 10 prepared a conceptual plan taking into consideration various factors such as fluctuation of the FSI index due the continuous process of declaring eligibility of slum dwellers, providing refuge area, etc. The conceptual plan depends upon the utilisation of full consumption of anticipated maximum permissible FSI and was required to be prepared in terms of EIA Notification, 2006.
- iii. After issuance of LoI dated 05.07.2008, 3 more plots were acquired by the Respondent No.10 bearing Nos. 811 A/7 (pt), 821 (pt) and 844 in Mallad referred to by the Respondent as the said Plot No. 2 pursuant to which application was made to the SRA for inclusion of the said plots under the Slum Rehabilitation Scheme.
- iv. Applications in Form 1 and Form 1A along with all requisite documents were submitted to SEIAA for obtaining EC in respect of both Plot No. 1 and Plot No. 2 which together has been referred to as the Plot. After deliberations by the SEAC and its recommendations, the SEIAA issued EC on 10.11.2010 in respect of the Plot which the Respondent refers to as the First EC. The plot area of the project measured

34,444.09 Sq. Mtrs. details of which need be gone into as it has been reproduced while dealing with the case of the Appellant.

- v. The LoI dated 15.06.2011 was revised by the SRA twice in the first instance by increasing the number of slum dwellers from 1646 to 1882 and thereafter on 21.12.2011 from 1882 to 2290 as a consequence of inclusion of two more Slum Rehabilitation Societies. This led the Respondent to make an application dated 17.11.2011 before the SEIAA for revised EC to the revised plans. After deliberations in its 62nd, 65th and 68th meeting, the SEIAA granted Revised EC on 25.04.2014 which is referred to as the Second EC.
- vi. The Second EC dated 25.04.2014 pertains to plots bearing CS No. 811 A/7 (pt), 812, 813, 814 A/1 to 814 A/14, 821, 824, 825 (pt) and 844 in village Mallad (East) with total area increased to 46,999.89 Sq. Mtrs. with net plot area of 45,243.82 Sq. Mtrs. plan approved by the SEIAA by the Second EC having already been set out earlier, we may deal with again for the sake of brevity.
- vii. The ongoing constructions on the project are strictly in accordance with and in compliance of the various redevelopment permissions and the EC and are within the area sanctioned under the EC dated 10.11.2010.

- 14.** It is reiterated that after obtaining the first EC, work had been commenced but in the midst several more plots were acquired by the Respondent which were amalgamated in the slum scheme necessitating amendments in the plans which thereafter were submitted before the SEIAA for obtaining Revised '*prior* EC'.

However, the constructions were carried on within the parameters of the area sanctioned in the first EC dated 10.11.2010. The Second EC having been granted by the SEIAA after considering various permissions and the provisions of the development, the Respondent had not violated the provisions of the EIA Notification, 2006.

- 15.** It is contended that Maharashtra Government has framed guidelines for declaration of ESZ around National Park and Wild life sanctuary and according to the demarcation the project lies far from the ESZ and, therefore, no clearance was necessary from the NBWL. It is stated that '*prior EC*' was granted by the SEIAA in terms of the EIA Notification, 2006. Application for the First EC was made on 05.03.2009 along with EIA Report which would suggest ToR. The EC was granted on 10.11.2010 wherein the EIA Report is considered as approved ToR.
- 16.** In view of the above facts, all allegations contained in the Appeal have been denied and disputed by the Respondent.
- 17.** Affidavit has also been filed on behalf of Respondent No. 7, the Additional Principal Conservator of Forests (Wildlife) who confining himself only to the matter relating to the Sanjay Gandhi National Park (SGNP), has stated that he along with the Department's Surveyor, had taken the longitude and latitude readings in respect of the project *vis-a-vis* its distance from the boundary of the SGNP. The Thane Division of the Forest Department has prepared a proposal for demarcation of an ESZ around the entire SGNP Forest Division which varies from 100 mtr to 2 km depending upon the area of Mumbai and Thane cities located around the SGNP Division. It is stated that while this proposal is still pending approval and acceptance, the location of the project in question in Malad would

fall squarely within the proposed ESZ. He further states that SGNP Division office was never called upon to give any information to the NBWL about the proximity of the park boundary of the project site.

18. In their oral arguments, the Learned Counsel for both the sides presented their cases in terms of the averments contained in the respective affidavits and also sought to rely upon additional documents in the form of illustrative tables and maps. On behalf of the Appellant, it is strongly argued that the impugned EC dated 25.04.2014 had been issued only after the entire project work had been completed. The exercise of making the ToR, the EIA report and its consideration by the SEAC and the decision of the SEIAA to grant EC were exercise in futility as it did not satisfy the necessity requirement of 'prior EC'. Defending the impugned EC, the Learned Counsel for the Respondent No. 10, the developer, submitted that the facts and circumstances involved in the present case had to be considered keeping in view its peculiarity. Although the first EC had been granted on 10.11.2010 for a plot area of 34,444.09 Sq. Mtrs. With construction area of 2,74,372.7 Sq. Mtrs., involving plots bearing CTS No. 812 (pt), 813, 814 (pt), 811 A/7 (pt), 821(pt) and 844, Clause 40 of the LoI made it obligatory on the part of the Respondent to re-house all additional eligible hutment dwellers. This necessitated preparation of a plan for construction of Rehab-Building to accommodate total slum dwellers who may become eligible for the issuance of the LoI. A conceptual plan was thus prepared taken into consideration various factors regarding which we have already dealt with in para 13 (ii) above.

19. It is also contended that LoI dated 15.06.2011 got revised by the SRA twice increasing the number of slum dwellers, details of which we have discussed in para 13(v) above. Application for revised EC to

the revised plan was submitted on 17.11.2011 before the SEIAA which ultimately granted revised EC on 25.04.2014. The revised EC (the impugned EC), relates to larger number of plots bearing CS No. 811 A/7 (pt), 812, 813, 814 A/1 to 814 A/14, 821, 824, 825 (pt) and 844 with the increased area of 46,999.89 Sq. Mtrs. It is submitted that the construction that was going on in the project are strictly in terms of the various re-development permissions and the EC confined to the area sanctioned earlier under EC dated 10.11.2010. The Respondent No. 10 strongly urges that the project has been undergoing several changes as per requirement and need that arose as it progress. He submits that as and when the changes were made, EC was obtained. According to him the project is organic undergoing variations during the construction phase. General Conditions applicable to Building/Construction Project/ Area Development Project/Township did not attract application of the General Conditions under the EIA Notification, 2006 and therefore, approval of the Standing Committee of NBWL was not necessary. Moreover the Government of Maharashtra having framed the guidelines for declaration of the ESZ around National Parks and Wildlife Sanctuaries, maintenance of 10 km radius as ESZ laid down by the Hon'ble Supreme Court in *Goa Foundation* case did not apply. According to the guidelines of the Government of Maharashtra, the project did not fall within the ESZ.

- 20.** Upon consideration of the various pleadings contained in the affidavits filed on behalf of the parties and upon hearing the learned counsel, we find that the question for determination in the present case is as to whether the project is compliant of the EIA Notification in its letter and spirit. It would be necessary for us in this context to examine as to whether the expansions to the project were

undertaken after following the mandatory procedure laid down in the EIA Notification, 2006.

- 21.** It is pertinent to note that the Respondents had raised preliminary objections to the maintainability of Appeal by filing M.A. No. 108/2014 and M.A. No. 125/2014, specifically on the questions of (i) jurisdiction of the Tribunal in hearing the appeal; (ii) bar of limitation and (iii) the question of *locus standi* of the Appellants in filing the Appeal. M.A. No. 125/2014 in the present appeal along with M.A. No. 108/2014 in a connected Appeal being Appeal No. 9/2014 were heard and disposed of separately *vide* order dated 04.05.2016 rejecting the preliminary objections.
- 22.** The present Appeal seeks to assail the EC dated 25.04.2014 issued by the SEIAA revising the original EC dated 10.11.2010 as having been issued without following the requisite procedure laid down under the EIA Notification, 2006 besides the fact that clearance had not been obtained from the Standing Committee of the NBWL having regard to the fact that it was in close proximity of the Sanjay Gandhi National Park.
- 23.** The facts emerging from the material on record have been succinctly set out in the order dated 04.05.2016 which is reproduced below:

“a) M/s. Omkar Realtors and Developers Pvt. Ltd, referred for brevity as Project Proponent is arrayed as Respondent No.10 in the Appeal has undertaken developing a large extent of land under the Slum Rehabilitation Scheme in Mumbai covering 4.89 sq.mtrs. The details of the project are found in the impugned Environmental Clearance letter with the summary sheet by the Appellant as Annexure-“A1”. The scheme envisages slum rehabilitation on the land to grant free houses to the slum-dwellers. The plot was divided into two parts. The first part is earmarked for slum-dwellers with built-up area of 269 sq.fts plus other free FSI. The second part of the plot is retained by the Developer and he gets it as commensurate quantum of additional Floor Space Index (FSI). He could construct free sale apartments on such other part of the plot and appropriate for itself the money so generated.

b) Appellant contentions is that the price of real estate in Mumbai has reached greater heights as the developers in collusion with the authorities, are obtaining approved plans for the illegal constructions by illegally utilizing FSI. The project that appears to be for the benefit of slum-dwellers but is converted by the Developer as a gold mine for

making a huge profit. The reason is the cost of rehabilitation is merely locality-neutral cost of construction for the tenement of the slum-dwellers whereas the free sale component gets huge revenues as the market price of the sale of building of free sale is enormously high. It is about Rs.15,000/- to Rs.20,000/- per sq. feet where as the cost of construction of residential unit for slumdwellers is only Rs.2000/- per sq.feet. By this method, the Developers utilize higher FSI for free sale components and construction of houses for slum-dweller is on negligible extent of law.

c) The Appellant's case, therefore, is that financial dynamics are so fluid that the Developers indulge in speculation, violation of all laws specifically to such Slum Rehabilitation Scheme. Concomitantly it adversely affect the environment and infrastructure already stretched to breaking point by imposing an Floor Space Index of '3' in a Slum Rehabilitation Scheme gets higher against normal zonal FSI of '1'.

d) The malpractices are, therefore, indulged into at each stage from the time the project is conceived and during course of its implementation several negotiations are affected in the construction in utter disregard to environmental laws and the laws specifically to the cause.

e) The Appellant has relied on the Architect's letter received by Rehabilitation Authority on 21st October, 2011 seeking several waivers from the application of law for the project. Assertively, it is stated that most of such waivers are accorded by the Slum Rehabilitation Authority in unmindful of the severe impact on the environment, the local area as well as in the entire city of Mumbai.

f) The Appellant claims to be responsible citizen and an environmentalist assigned of his duties enshrined in Article 51A(g) of the Constitution of India.

g) Thus, urging several grounds he has sought to quash the impugned Environmental Clearance dated 25.04.2014 granted to by 1st Respondent to the 10th Respondent and as consequential relief sought an order to declare that the Environment Impact Assessment Report is not in accordance with EIA Manual of the MoEF and the EIA study having not being done with the Central Pollution Control Board guidelines. It is not sanctioned in the eyes of law.

h) Imposition of the cost on the Project Proponent on the principal of Polluter Pay is invoked and direction is sought against SEIAA to take all requisite steps in terms of the Office Memorandum of the MoEF dated 12th December, 2012 and the Office Memorandum of the MoEF dated 27th June, 2013 for the act of the Project Proponent.

i) Action under Section 5 of the Environmental Protection Act, 1986 is sought to be taken by SEIAA."

24. There are also other grounds urged in support of the Appeal but we do not deem it necessary to deal with those as being peripheral to the core question of validity of the EC dated 25.04.2014.

25. While dealing with this, it is relevant to note that the parameters of the project provided in the first EC dated 10.11.2010 have been substantially altered in the impugned EC dated 25.04.2014. We have noted that the Respondents No. 2, 3 and 4, i.e., the Secretary Environment, Government of Maharashtra, SEAC-II and SEIAA

respectively in their joint affidavit have stated that the procedure in vogue had been duly followed by the Respondent No. 10 and, while considering the proposal for expansion, the Experts in the SEAC had gone through all information submitted by the project proponent in Form 1 and Form 1A, conceptual plan, EIA study report and the power point presentation submitted by the authorized representatives of the Respondent No. 10. It was thus contended that the impugned EC had been granted to the project proponent lawfully.

- 26.** So far as, Respondent No. 10 is concerned while arguing elaborately, it was contended by the learned Counsel for the said Respondent that the impugned order dated 25.04.2014 has to be read as a continuation of the original EC dated 10.11.2010. General Condition prescribed in the EIA Notification, 2006 was not applicable to Building/Construction Project/Area Development Project/Township and, therefore, approval from the Standing Committee of NBWL was not necessary. The Slum Rehabilitation Scheme sanctioned by the SRA by order dated 5.07.2008 contained various terms and conditions. The Letter of Intent (LoI) for the project required the Respondent No. 10 to provide rehabilitation free of cost to 11319 eligible slum dwellers but by Clause 40 thereof, it was made obligatory to re-house all additional hutment dwellers who may become eligible subsequent to the LoI. It is further stated that the Respondent No. 10 prepared a conceptual plan taking into consideration the fluctuation of FSI due to the continuous process of declaring eligibility of slum dwellers. It is an admitted position that three more plots were acquired by the Respondent No. 10 after issuance of the LoI dated 05.07.2008 that were infused in the project. As per the Respondent No. 10, applications in Form 1 and Form 1A were submitted to SEIAA for obtaining EC in respect of the

additional plots for which EC was granted on 10.11.2010. The plot area of the project thus measured 34,444.09 Sq. Mtrs. LoI was later revised by the SRA which had led the Respondent No. 10 in submitting an application dated 17.11.2011 before the SEIAA for revision of the original EC in terms of the revised plans which were granted on 25.04.2014. The total area covered by the EC dated 25.04.2014 had increased to 46,999.89 Sq. Mtrs. The Respondent No. 10 asserts that although the work had commenced in terms of the first EC, several more plots were acquired by the Respondent in the midst of such works which would amalgamated in the slum scheme necessitating amendments in the plans which was thereafter submitted before the SEIAA for obtaining revised '*prior EC*'.

- 27.** The fundamental allegation of the Appellant is that the EC dated 25.04.2014 was obtained by the Respondent No. 10 after completion of the works envisaged in the expansion and, therefore, was violative of the EIA Notification, 2006. There is also allegation to the effect that the SRA had been granting waivers at the request of the Respondent No. 10, overlooking the severe impact on the environment.
- 28.** A careful examination of the facts and the voluminous documents placed before us reveals that *vide* letter dated 17.11.2011, ¹ a revised application for EC was submitted by the Respondent No. 10 (project proponent) for the proposed 'Slum Rehabilitation Scheme' on Plot bearing CTS No. 811A/7(pt), 812(pt), 813, 821, 824 and 844 to the SEIAA, Maharashtra along with application in Form 1 and Form 1A² accompanied by necessary plans, drawings and annexures. The original LoI of the project had been duly revised by the SRA *vide* its

¹ Page 11 of the SEIAA records

² Page 103-153 of the SEIAA records

letter dated 15.06.2011.³ Record reveals that the SEIAA had taken up the proposal for consideration based on the draft ToR submitted by the project proponent and all issues related to environment, including air, water, land, soil, ecology and biodiversity and social aspects were discussed. The ToR was thus approved subject to the condition that they should *inter alia* submit details of the earlier EC and changes proposed as the proposal was for expansion of the project. The copy of the 10th meeting of the SEAC-II⁴ held on 14th, 15th and 16th March, 2013 substantiates this fact.

- 29.** From the records of the proceedings of the SEIAA, the ToR⁵ and EIA Report⁶ submitted before the Tribunal pursuant to order dated 23.03.2017, we find that on 02.12.2013 the project proponent had submitted its compliance along with requisite plans and non-FSI calculations on 05.08.2013 in terms of the decision taken by the SEAC-II in its 62nd meeting held on 05.07.2013 and further requested the SEAC-II to take up the proposal in question. Copy of minutes of the 64th meeting⁷ of the SEIAA, Maharashtra held on 23rd-24th December, 2013 substantiates the fact that the SEIAA in its 62nd meeting had requested the project proponent to reduce the non-FSI areas drastically, as it was found to be on the higher side by about 400% of the FSI. This was found to have been complied with as would appear from the minutes of the 64th meeting of the SEIAA and the letter dated 15.04.2014⁸ submitted by the project proponent to the SEIAA, Maharashtra. The Consolidated Statement on various Environmental Aspects for Construction Projects submitted by the project proponent along with their letter dated 01.04.2014⁹ *inter alia*

³ Page 83-97 of SEIAA records

⁴ Page 503 of SEIAA records

⁵ Page 144-301 of SEIAA records

⁶ Page 455-653 of SEIAA records

⁷ Page 655 of SEIAA records

⁸ Page 657 of SEIAA records

⁹ Page 671 -675 of SEIAA records

mentions that 'slum structures under expansion plot have been evacuated and work has been initiated as per the EC dated 10.11.2010'. The summary of project proposal¹⁰ indicates the plot area admeasuring 46,993.89 Sq. Mtrs. with total built up area proposed at 4,89,475.51 Sq. Mtrs. Affidavit filed on behalf of Respondent Nos. 2, 3 and 4, Respondent No. 3 being the SEIAA, Maharashtra and Respondent No. 4 the SEAC, Maharashtra indicates that before granting the impugned EC all information submitted in Form 1, Form 1A, conceptual plan, EIA study report, had been duly examined by the SEAC-II, Maharashtra in its 14th meeting under screening category 8(b) B1 as per EIA Notification, 2006. Based on the facts and circumstances and the material before it, the SEIAA had accorded approval for grant of EC on the recommendation of the SEAC, Maharashtra. The table of the minutes of meetings reproduced earlier¹¹ would show that the application for expansion of the project had been considered by the SEAC in its 10th, 14th, 62nd, 65th and 68th meetings held on 2013.Mar.14/15/16, 2013.Jun.20/21, 2013.July.4/5, 2013.Dec.23/24 and 2014.Feb.28 respectively and had finally culminated in the grant of impugned EC on 25.04.2014 which was published on the website of the SEIAA on 28.04.2014.

30. The above said facts and circumstances clearly reveal that the concern raised by the Appellant do not appear to be well founded. The principal contention that there was no valid '*prior* EC' obtained before commencement of the expansion does not appear to be correct. The contention thus stands rejected.

31. The other aspect is with regard to the waivers granted by the SRA overlooking the environmental concerns. This contention in our view

¹⁰ Page 683 of SEIAA records

¹¹ Para 8 of this order/judgement (supra)

also do not hold water as 'prior EC' had been obtained for all the changes made in the original proposal based on the change in the LoI. The aspect of the approval of the Standing Committee of the NBWL having not been obtained in view of the proximity of the project to the Sanjay Gandhi National Park also do not bear any substance now in view of the MoEF&CC Notification dated 05.12.2016 notifying the Eco-Sensitive Zone of the National Park declaring area to an extent of 100 meters to four kilometres from the boundary of Sanjay Gandhi National Park as the Eco-Sensitive Zone for the said National Park and the specific averment made in the additional affidavit of the Respondent No. 10 that the project in question did not fall within the Eco-Sensitive Zone. This averment has not been controverted and, therefore, is presumed to be correct.

- 32.** For the aforesaid reasons, we do not find any merit in the Appeal and is accordingly stand dismissed.
- 33.** Before parting, we may, however, observe that the impugned EC has not been granted *carte blanche* but under strict terms and conditions laid down under Clause 3 thereof and other General Conditions in Clauses 4, 5, 6, 7, 8 and 9. Under Clause 6, the MoEF&CC has reserved its right to add any stringent condition or to revoke the clearance if conditions stipulated are not implemented to the satisfaction of the Department or for any other administrative reason. Under Clause 8, it has been made obligatory on the part of the project proponent to make a fresh reference to the Department in case of any deviation or alteration in the project proposed from those submitted to the Department for clearances to assess the adequacy of the conditions imposed and to incorporate additional environmental protection measures required, if any.

- 34.** We, thus, find that there are adequate safeguards prescribed for ensuring that there is no environmental damage and, the anticipated damages noted in the terms of EIA studies have been found to be duly taken care of in the specific conditions under Clause 3 of the EC.
- 35.** Notwithstanding the above condition, we find that there is a lacuna in the EC in as much as no monitoring authority has been provided to ensure that the conditions of the EC are strictly followed by the project proponent during the course of the construction.
- 36.** We, therefore, direct that an additional clause be inserted in the EC providing for a Monitoring Committee comprising of (i) a competent officer from the Regional Office of the MoEF&CC; (ii) a competent officer from the 'Slum Rehabilitation Authority' and (iii) a senior Scientist/Engineer from the Maharashtra State Pollution Control Board. The Committee shall be headed by the Regional Office of the MoEF&CC. The responsibility of the Committee shall be to monitor the ongoing project periodically for which purpose they shall undertake site visits.
- 37.** With the above observations and findings the Appeal is disposed off.
- 38.** No order as to costs.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

8th May, 2019
Appeal No. 123/2018
avt