BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE

APPEAL No.38/2014(WZ)

CORAM:

Hon'ble Shri Justice U.D. Salvi
(Judicial Member)

Hon'ble Dr. Ajay A. Deshpande
(Expert Member)

In the matter of:

Anil M. Khedekar
E-10, Flat No.403, Shanti Vihar,
Mira Road, (E),
Dist: Thane, - 401107.

……**Appellant**

Versus

1. **Secretary, Ministry of Environment and Forests,**
   Paryavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi – 110 003.

2. **Secretary,**
   Environment Department,
   Government of Maharashtra
   Mantralaya, Mumbai - 400 032.

3. **Member Secretary,**
   State Level Expert Appraisal Committee
   Environment Department,
   Mantralaya, Mumbai – 400 032.

4. **Member Secretary,**
   State Level Environment Impact Assessment Authority
   Environment Department
   Mantralaya, Mumbai – 400 032.

5. **Assistant Conservator of Forests**
   Sanjay Gandhi National Park
   Borivali, Mumbai.

6. **Vice-Chairman**
Maharashtra Housing and Area Development Act
Bandra East, Mumbai 500 051.

7. **Deputy Chief Engineer**
Building Proposal Department (Western Suburbs – II)
Municipal Corporation of Greater Mumbai
Municipal Godown Bldg., 90 ft.D.P. Road,
Sanskruti Thakur Complex, Kandivali (E), Mumbai – 400 101.

9. **Member Secretary,**
National Board of Wildlife
Office of the Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi.

10. **Central Ground Water Authority**
West Block 2, Wing 3, Sector 1,
RK Puram,
New Delhi – 110 066.

11. **Central Ground Water Authority**
State Unit Office, 217/11,
Kendriya Sadan
'B' Wing, GPOA, First Floor, Akurdi,
Pune – 411 044.

12. **Mssrs. SD Corporation Pvt. Ltd.**
70, Nagindas Master Road
Fort, Mumbai – 400 023.

13. **Mssrs. Ultra Tech Environmental Consultancy & Laboratory**
Unit No.2006, 224, 225 Jai Commercial Complex
Eastern Express Highway,
Opp. Cadbury Factory, Khopat
Thane West – 400 601.

14. **The Secretary**
Samta Nagar Co-operative Housing Society Union Ltd.
25/486 Vishwa Darshan,
Samta Nagar, Kandivali East, Mumbai – 400 101.

(Respondent No.8 is missing from the array of parties as per Appeal Memo)

.....Respondents

Counsel for Appellant:

Mr. Anil Khedekar (In person)

Counsel for Respondents:
Mr. Rahul Garg, Advocate for Respondent No.1
Mr. R.B. Mahal, Advocate a/w Mr. Deepak M. Gupte, Advocate and Mrs. Supriya Dangare for Respondent Nos.2, 3 and 4
Mr. Girish Utangale, Advocate a/w Mr. Vinay Bhonge, Advocate for Respondent No.6
Mr. Sameer Khale, Advocate a/w Mr. Makarand Rodge, Advocate for Respondent No.7
Mr. Saurabh Gupte, Advocate for Respondent No.10
Mr. T.N. Subramanian, Sr. Advocate a/w Mr. Saket Mone, Advocate for Respondent Nos.12 and 14.

Date: 14th July, 2017

JUDGMENT/ORDER

1. The Appellant Mr. Anil Khedekar has invoked the provisions of Section 16 of the National Green Tribunal Act, 2010 to challenge the Environmental Clearance (EC) granted by the State Level Environmental Impact Assessment Authority, Maharashtra (SEIAA) for the construction project of Respondent No.12, vide letter dated 10th November, 2014. The project, in question, is a redevelopment project of a colony situated at Poisar Village, Mumbai bearing CTS No.837 and 840 which is popularly known as "Samta Nagar", originally developed by Maharashtra Housing and Area Development Authority (MHADA). The said colony comprises of 160

buildings, having land area of 2,13,867 sq.mtrs. The impugned environmental clearance is for proposed expansion of the redevelopment project which was originally granted environmental clearance on 28th December, 2011. The proposed built-up area of the project is 3,02,876.28 sq.mtrs.

2. Shorn of unessential, the grounds raised by the Appellant for challenging the impugned environmental clearance are as under:

Ground 1 – SC order violated – Despite this mammoth project overlooking the National Park no PRIOR mandatory clearance from the Standing Committee of National Board of Wildlife was taken.

Ground 2 - As per EIA Notification 2006, a prior "Terms of Reference" has to be drafted by SEAC by full application of mind and then the said "Terms of Reference" have to be placed in the website of SEIAA procedure flouted.

Ground 3 – Material information that work had not started suppressed by Project Proponent when the First EC was granted – the Second EC ought to have taken cognizance of the damage done for reason of such material suppression.

Ground 4 – Even though the Project Proponent started construction as per the expansion revised layout without EC and even though this fact was brought to the notice of SEIAA, yet OM's for taking action not invoked.

Ground 5 – EIA studies were mechanical in nature devoid of empirical specifically – EIA study conducted in violation of CPCB guidelines.

Ground 6 – Recreation Ground not provided as per SC orders.

Ground 7 – No place for green belt since recreation is on podium.

Ground 8 – EIA Report cannot be done for the part of the plot.

Ground 9 – EIA Report cannot be done for the part of the plot.

Ground 10 – No statutory permission taken for withdrawal of groundwater during the course of construction of 2 level basements.

Ground 11 – (Added by way of an Affidavit dated 1st September 2015) without registered Power of Attorney, Respondent No.12 is not entitled to obtain any permissions and all permissions obtained by Respondent No.12 on the basis of Power of Attorney are invalid.

3. On filing of this Appeal, all the Respondents except Respondent Nos.7, 9 and 13 have entered their appearances. The Ministry of Environment and Forests (MoEF) which is the parent Ministry of Respondent No.9 – National Board of Wildlife has filed an affidavit but the Respondent No.13 – Mssrs. Ultra Tech Environmental Consultancy & Laboratory against whom specific allegations have been made in the Appeal have chosen to remain absent and did not participate in the proceedings. The Respondent Nos.2, 3 and 4 are the main contesting parties as the impugned order has been issued by Respondent Nos.2, 3 and 4 i.e. State Environment Department, State Level Expert Appraisal Committee (SEAC) and State Level Environment Impact Assessment

Authority (SEIAA), Maharashtra to the redevelopment project of Respondent No.12 – Mssrs. SD Corporation Pvt. Ltd., the developer.

4. Respondent Nos.2, 3 and 4 initially filed an affidavit of Mr. A.R. Parshurame dated 13th February, 2015 and submitted that the impugned environmental clearance is for the expansion of the earlier approved redevelopment project and all necessary procedure and formalities have been adequately followed before the grant of environmental clearance. He further submits that in the pretext of challenging the 2014 environmental clearance the Appellant is indirectly challenging 2011 environmental clearance which is strictly barred by limitation. It is submitted that the earlier environmental clearance was for FSI of about 84023 sq.mts and the total construction area of 1,92,096.14 sq.mtrs and in the expansion project the environmental clearance has been granted to the overall built-up area of 3,02,876.28 sq.mtrs. It is further submitted that the scoping was not required as per the Notification for Category 8 project at the time of appraisal of earlier EC but by O.M. dated 26th February, 2014 such scoping has now been made mandatory and accordingly, the procedure has been followed as per Notification and the O.M. for the appraisal of the present expansion project. It is further submitted that there is no prescribed or mandatory procedure in the

Notification to call the complainant for the personal hearing. Still however, the complaint received from the Appellant was placed before the SEAC and proper verification of the issues raised was done through the concerned local authorities and only after, the report from such local authorities, the project was further apprised. And, therefore, the allegation of Appellant that there is no application of mind is incorrect and baseless. It is further submitted that the environmental clearance appraisal process mainly comprises of environmental issues and focus is mainly on the environmental concerns which arise on the development envisaged in the project. However, various issues within the functional domain of the local authorities are addressed by those authorities only, though it can always be contended that at the end of any development activity, there are some environmental impacts.

5. The Respondent Nos.2, 3 and 4 have filed additional affidavit on 28th October, 2015 and submitted that SEAC in its 26th Meeting dated 28th to 30th April, 2014 had recommended the proposal for prior EC to State Environment Impact Assessment Authority (SEIAA). The SEIAA considered the project in its 72nd Meeting dated 21st and 22nd July, 2014 and decided to grant environmental clearance to the project. It is further submitted that the general conditions referred in the

Environmental Clearance Regulations, 2006 are not applicable for Item No.8 of the Schedule as such mandatory reference to the general conditions applicability has not been referred in the Schedule and, therefore, all the general conditions which are listed at the end of the Schedule are not applicable in the present case. And, therefore, the SEIAA is the competent authority to consider and grant the prior environmental clearance to the project in question.

6. Respondent Nos.2, 3 and 4 further submits that in order to avoid the delay in the processing the environmental clearance applications, the MoEF has issued O.M. on 19th June, 2013 directing the SEIAA to strictly focus on the thrust area of Environmental Sustainability while appraising the construction project. SEIAA and SEAC have been suggested not to focus on the other issues which are normally looked after by the local authorities or the other departments and, therefore, SEIAA and SEAC have appraised this project strictly within the contours of EIA Notification as well as all related OMs and have granted the EC. The Project Proponent will be responsible to adhere to all other statutory rules and regulations including that of local authorities - Pollution Control Board, Water Control Board and in case of non-compliance, these authorities are independently competent to take suitable legal action.

Such non-compliance of other regulations cannot have bearing on grant of environmental clearance.

7. The Respondent No.1 has filed an affidavit on 9th October, 2015 and submitted that Eco-Sensitive Zone of Sanjay Gandhi National Park has not been notified and, therefore, the permission of National Board for Wildlife (NBWL) is required prior to construction of the project, if the project location is falling within 10 km radius of Sanjay Gandhi National Park, Mumbai.

8. Respondent No.12 who is the project developer and the main contesting party, has filed detailed affidavit and also written submissions. Firstly, the Respondent No.12 has taken preliminary objection to the present appeal as according to the Respondent No.12, the EC granted on 10th November, 2014 being the EC for expansion project merges with the original EC of 28th December, 2011. Furthermore, the Respondent No.12 alleges that the Appellant under the guise of challenging the EC of 2014 is indirectly challenging the EC of 2011. Furthermore, the Respondent No.12 has submitted a detailed statement of various permissions received by Respondent No.12 for the project in question, right since February, 2008. Respondent No.12 further submits that this project is an ongoing project and likely to benefit about 2482 tenants who are members of 160 old and dilapidated buildings in the said area. This

redevelopment is being undertaken as per the provisions of Development Control Regulations, 1991. The said members of 160 buildings have reorganized themselves in 55 Co-operative Housing Societies who in turn have formed an Apex Body by the name "Samta Nagar Co-operative Housing Society Ltd."- Respondent No.14. It is submitted that Respondent Nos.12 and 14 entered into Development Agreement in the year 2007 and subsequent Deed of Confirmation dated 28th October, 2010 thereby registering the Development Agreement. Respondent No.12 has also entered into individual agreements with the Societies for redevelopment and executed agreements for Permanent Alternate Accommodation with the members so as to secure their rights in the redeveloped buildings. It is further submitted that the Appellant is one of beneficiaries of the present redevelopment, though it is alleged that he is disgruntled member of one Poisar Astavinayak CHS Limited which is member of Respondent No.14 and is under redevelopment. The Respondent No.12 alleges that the Appellant has made repeated attempts to scuttle the entire redevelopment of Respondent No.14 for the reasons best known to the Appellant. It is further alleged that there are several legal actions which have been initiated by both the parties and the matter was also taken to the Hon'ble High Court as well as Hon'ble

Supreme Court. Respondent No.12 submits that the redevelopment project and more particularly the demolition of the structure was challenged by the Appellant before the Hon'ble High Court of Bombay by way of ***Writ Petition (L) No.1278 of 2012*** which was rejected by the Hon'ble High Court on 8th May, 2012. Thereafter the appeal preferred against the said Order dated 8th May, 2012 was also rejected by Hon'ble Supreme Court in ***SLP No.17642 of 2012*** which was decided on 23rd May, 2012 and therefore, all issues vis-à-vis eviction, redevelopment permission and Development Agreement *qua* the Appellant came to be finally decided and attained finality in the law and, therefore, once this matter has been decided by the Apex Court, the Tribunal is not required to enter into this issue on the principles of *res judicata*. Furthermore, the Respondent No.12 submits that even otherwise the Tribunal cannot look into the issues of eviction, building permission, redevelopment, development agreement etc. as they do not fall within the jurisdiction of this Tribunal.

9. The Respondent No.12 has submitted detailed objections on the grounds raised by the Appellant challenging the EC. As regards to Ground No.1, it is submitted that the present ground do not survive now as the MoEF has issued Notification notifying the eco-sensitive zone around Sanjay Gandhi National Park on

5th December, 2016. According to the Notification, the area of the project in question is outside the eco-sensitive zone. Further Respondent No.12 submits that the condition of the NBWL has been stipulated through an O.M. which cannot be treated as a law. It is submitted that even otherwise, Hon'ble Supreme Court while dealing with Order dated 4th December, 2006 passed in ***WP (Civil) No.460 of 2004*** held that the Court did not pass any order for implementation of the decision dated 21st January, 2002 to notify areas within 10 kms of boundaries of National Parks or Wildlife Sanctuaries and therefore, interpretation of Respondent No.1 is incorrect. The Apex Court only directed MoEF to give final opportunity to all States to respond to the proposal for eco-sensitive zone around the Sanctuaries/National Parks and also refer to the Standing Committee of National Board for Wildlife, the cases in which the EC has already been granted within 10 kms from the boundaries around Wildlife Sanctuaries and National Parks. It is further submitted that the proposed project is not the freehold land project but actually a redevelopment of old and dilapidated buildings under the provisions of Development Control Regulations and for the benefit of more than 2480 tenants staying in existing 160 buildings which are damaged and in dilapidated

condition. Therefore, Respondent No.12 submits that Ground No.1 cannot sustain in the eyes of law.

10. As regards Ground No.2, it is submitted that originally the project was having FSI of 84023 sq.mt and the total construction area of 1,92,096.14 sq.mt. As FSI was less than 1.50 lakhs sq.mts, the application was apprised by the authorities strictly as per EIA Notification prevailing at that point of time and the prior EC was granted in 2011. Subsequently, the interpretation of the built-up area has been clarified by MoEF in pursuance to the directions of Apex Court and thereafter, the expansion project has been accordingly apprised based on the total built-up area. During the appraisal of the expansion project, the draft Terms of Reference were formulated by the Project Proponent along with documents which were duly processed and apprised by SEAC/SEIAA and the EC for the expansion, which is impugned in the Appeal, was granted. And, therefore, the Ground No.2 raised by the Appellant also did not survive.

11. As regards Ground No.3, the Respondent No.12 submits that the Appellant is indirectly challenging the first EC of 2011. Eviction and demolition of structures have been upheld by the Hon'ble Apex Court and thereafter, demolition was done in pursuance to the Order of the Hon'ble Apex Court dated 23rd May, 2012.

And, therefore, there is no illegality or irregularity in the work carried out by Project Proponent.

12. As regards Ground No.4 of the Appeal, the Respondent No.12 submits that the grounds raised are related to 2011 EC which are barred by the limitation. Furthermore, the allegations are made without any documentary proof and are baseless.

13. As regards Ground No.5, the Respondent No.12 only submits that the EIA report has been prepared as per the prevailing standards and the same were considered adequate by the authorities for grant of EC. Though, the Appellant has raised grounds particularly on non-submission of the dates and certain factual errors, there is no denial on these aspects from the Respondent No.12.

14. The Respondent No.12 has objected to the Ground Nos.6 and 7 on the ground that both these grounds are outside the jurisdiction of the Tribunal and furthermore, the Judgment of the Hon'ble Apex Court in the matter of Kohinor CTNL (decided on 17th December, 2013) applies only prospectively in cases where Commencement Certificate has not been granted to the project. In the present case, the Commencement Certificate was granted on 25th July, 2011 and 15th April, 2013 for Building Nos.1 and 2 respectively, which is well before the Judgment of the Hon'ble Apex Court.

15. Respondent No.12 denies allegations at Ground Nos.8 and 9 which are related to the EIA report. As regards Ground No.10, it is submitted that Respondent No.12 has not constructed basement in Building No.1 (rehab component) and the allegations are completely baseless and misconceived.

16. As regards Ground No.11, Respondent No.12 submits that the allegations raised do not fall within the scope of Section 16 of the National Green Tribunal Act, 2010 and the Tribunal cannot go into the question of registration of Power of Attorney. It is submitted that under Environment (Protection) Act, 1986 as well as the EIA Notification 2006, there is no requirement of having Power of Attorney registered for seeking environment clearance from the authorities. The O.M. dated 25th February, 2010 is related to the Consultants who represent the Project Proponent during SEIAA and SEAC meetings and further who submits the application for grant of environmental clearance. In the present case, the Project Proponent is the Respondent No.12 and no question of Power of Attorney between Respondent No.12 and 14 can be raised vis-à-vis O.M. dated 25th February, 2010.

17. The other Respondents have also filed their responses mainly relating on the procedures they have followed for grant of permission under their respective

jurisdiction. We are not much concerned with the procedure adopted by these authorities for granting permission under their relevant rules and therefore, it is not necessary to reproduce their submissions in the present case.

18. We have carefully gone through the pleadings and the arguments of the parties. We have also referred to the written submissions filed by the Appellant and the Respondent No.12. The present proceeding have been initiated by the Appellant under Section 16 of the National Green Tribunal Act, 2010 challenging the EC dated 10th November, 2014. It is a settled legal position that the appeal proceedings are required to be restricted to test the impugned EC on the touchstones of legality, reasonability, propriety and application of mind. Though Appellant has challenged the impugned EC but at the same time as a consequential relief has also sought certain action including initiation of the legal action against the consultants as well as issuance of directions under Section 5 of the Environment (Protection) Act, 1986.

19. At the threshold, it is necessary to deal with the preliminary objection raised by Respondent No.12 regarding maintainability of the Appeal. It is contended by the Respondent No.12 that the EC of 2014 being an EC for expansion of the earlier project which gets merged

in EC of 2011 and therefore, cannot be challenged. More particularly, it is alleged that the Appellant is aware of the development as well as his own legal rights, right from December, 2011 when the first EC was granted. He is in knowledge of the project activity. In other words, it is the contention of the Respondent No.12 that the impugned EC which is for expansion of the project which was originally granted EC in 2011 cannot be challenged at this stage.

20. We can conveniently refer to the Judgment rendered by this Tribunal in ***M.A. No.151/2014 and M.A. No.154/2014 in Appeal No.28/2014 (WZ) [Wireless Co-operative Housing Society Vs. Chaitrali Builders/Sumanshilp (P) Ltd & Ors].*** The relevant paragraphs are as under:

> *"**12.** The conjoint reading of the phrase "extension of validity" based on the simple construction would reveal that such extension will be necessarily a separate activity though linked with earlier EC and therefore, we are of the opinion that the extension of validity is a separate activity and process under the provision of EIA Notification 2006 though it is linked with the earlier EC. This would also be cleared from the provisions of the EIA notification itself wherein such validity has been prescribed for the environmental clearance granted under the Notification. The Legislature has thought it prudent and necessary to adopt the "precautionary approach" by not granting perpetual validity for the EC but to restrict such validity period by keeping a "proviso" for extension of the same, in order to ensure that the environmental*

compliance are made by the project proponent. It is clear from the language of the Notification that certain changes/modifications are expected over certain time and therefore, the clause 9 of NGT Act gives a liberty to the project proponent to file updated information. The legislature has also kept a provision which we think is essentially based on precautionary principal to refer the matter to SEAC by the SEIAA in such cases. However, at the same time as discussed above, though extension of validity is a separate activity/process, it is obviously linked with earlier EC. We are of the opinion that such extension of validity can be challenged before the Tribunal but at the same time it will not be proper and appropriate to open up a window of opportunity and litigation which will directly or indirectly challenge the original EC. The challenge to such "extension of validity" needs to be restricted only to such process wherein extension is considered and granted, nothing more and nothing less. This is necessary to protect the project proponent from the delayed litigations when certain investments have been made by the project proponent and substantial development might have been done. At the same time, as explained above, the environmental clearance itself is all pervasive document which imposes specific and general conditions during execution and operation the project, which project proponent is expected to adhere to, in the entire life cycle of the project.

13. *The Hon'ble Principle Bench of National Green Tribunal has also dealt on such aspect in "***Appeal No.1/2013 Ms. Medha Patkar Vrs. MoEF and others***", as under :*

> *16. The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their*

respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, this completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere noncompliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but it is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.

17. In a changing society and for progress and growth of the nation, development is necessary. The path of development must not lead to destruction of environment. There has to be a balance struck between the two. In other words, development and environment must go hand in hand to achieve the basic Constitutional goal of public welfare. It is often said that we cannot have development at the cost of environment but the corollary to it is also true that we cannot only have environment and no development. Development and environment need to be seen in

complementary and not in antagonistic terms. Inclusive development would not be possible without emphasis on environmental protection. If one reads Section 16 of the NGT Act in conjunction with the clauses of the notification of 2006, the obvious conclusion is that the period of limitation beyond 90 days is mandatorily non-condonable. The Tribunal appears to be vested with no jurisdiction to condone the delay beyond 90 days once the date on which the limitation has triggered is determined in accordance with the above principles. The provisions of Section 4 of the Land Acquisition Act, 1984 provide for different modes of publication of preliminary notification and also states that last of the dates of such publication and giving of such public notice would be the date upon which the period specified shall be computed. In contra to such legislative provisions, the provisions of the present Act are silent and do not intend to provide any advantage to the applicant on fulfillment of obligations by different stakeholders at different times. In such circumstances, the earliest in point of time would have to be considered as the relevant date for computation of limitation.

18. Another factor that would support such a view is that a person who wishes to invoke jurisdiction of the Tribunal or a court has to be vigilant and of his rights. An applicant cannot let the time go by without taking appropriate steps. Being vigilant and to his rights and alive and conscious to the remedy provided (under the law) are the twin basis for claiming a relief under limitation. Vigilantibus non dormantibus jura subvenient Now, we have to examine whether any of the stakeholders in the present case, has fully or completely discharged their obligations in terms of Section 16 of the NGT Act, read with Notification of 2006 and the Save Mon Region Federation judgment supra. As far as the project proponent is concerned, it has admittedly not discharged its obligations upon grant of environmental clearance on 16th October, 2012. It is pointed out that the project proponent, even till date, has not permanently put the said environmental clearance along with the environmental conditions and safeguards on its website. Neither did it publish the environmental clearance along with its conditions and safeguards; nor did it effect the publication in two newspapers having circulation in the area in which the project is located, one being in vernacular language. The project proponent only published intimation regarding grant of environmental clearance to it in the newspapers on 28th October, 2012. There is nothing on record to show that the project proponent has provided a copy of the EC to the Government

Departments, Panchayats, Municipality and/or local bodies in terms of clause 10 (i)(d) of the Notification of 2006 and those Departments have thereafter complied with the requirements of the notification. Thus in the case of the project proponent, it cannot be argued that limitation had started running against the applicant on 28th October, 2012 or any date prior thereto as it committed default of its statutory obligation and incomplete compliance cannot give rise to commencement of the period of limitation.

14. *Under these circumstances, we cannot allow the Misc. Application No. 154/2014 filed by the project proponent and direct that the Appeal will be heard, only to the limited points related to propriety, correctness and absence of arbitrariness of the process and procedure adopted for extension of validity of original EC and the original EC cannot be directly or indirectly challenged or litigated at the present stage.*

15. *We also have gone through the Misc. Application No.151/2014 for condonation of delay filed by the original Appellant. It is an admitted fact that the extension of validity was not published in the newspaper and Appellant got the knowledge through MPCB Affidavit on 17-7-2014 and therefore, considering the reasons submitted by the original Appellant, the Tribunal is of the opinion that the delay of 18 days can be condoned under the powers conferred upon Tribunal under Section 16 of the National Green Tribunal Act and accordingly, delay is condoned by allowing M.A. No. 151/2014."*

21. The present proceedings are on the same legal grounds and we do not see any reason to deviate from the stand taken by Tribunal in the above referred matter and, therefore, we hold that the present Appeal is maintainable but at the same time, we would like to clarify that this appeal action is restricted to the

impugned EC dated 10th November, 2014 and the original EC of 2011 cannot be, directly or indirectly, challenged or litigated at the present stage.

22. The important objection raised by the Appellant to the impugned EC relates to the absence of mandatory clearance from the Standing Committee of National Board of Wildlife. We have taken a judicial note of the O.M. issued by MoEF on 19th December, 2012 wherein following has been stipulated:

> **"3.5.1 Activities within 10 Kms from boundaries of National Parks and Wildlife Sanctuaries:**
> In pursuance to the order of Hon'ble Supreme Court dated 4th December, 2006 in Writ Petition (Civil) No.460/2004, in case any project requiring Environmental Clearance, is located within the eco-sensitive zone around a Wildlife Sanctuary or National Park or in absence of delineation of such a zone, **within a distance of 10 kms from its boundaries, the User agency/Project Proponent is required to obtain recommendations of the Standing Committee of NBWL".**

23. It is also noted that the MoEF has further specified the procedure for approval of the Standing Committee of NBWL by OM dated 20th August, 2014 as under:

> "With a view to facilitating early decision making by the Standing Committee of NBWL in respect of development projects requiring prior WC and located within 10 kms of PAs/within the ESZs around Pas, the following procedure has been decided:-
>
> (i) While prescribing TORs for such projects requiring prior EC, henceforth, additional TORs as per Annexure shall be mandatorily incorporated in the TORs.

(ii) Copies of TORs issued to such projects shall be endorsed to the Wildlife Division of the Ministry.

(iii) **After examining a proposal for EC, the concerned EAC would make appropriate recommendations and in case it recommends the proposal for EC, it would forward the case along with detailed information obtained from the Project Proponent on issues as brought out in the Annexure, to the Wildlife Division who would get the matter placed before the Standing Committee of NBWL for obtaining their recommendations on the proposal.** In the meetings of Standing Committee of NBWL wherein such proposals will be considered, the Standing Committee may invite the Chief Wildlife Warden of the concerned State to give views on the proposal in the meeting.

(iv) The wildlife Division may thereafter **record the recommendations of the Standing Committee of NBWL on the proposal and return the case to the IA Division for further processing and obtaining approval of the competent Authority on the issue of grant of EC to the project."** (Emphasis supplied).

24. According to the Respondent No.12, the OMs referred above cannot be construed as a law and have been issued by misconstruing the observations of the Apex Court. In the present case, the impugned EC is granted on 10th November, 2014. We have carefully gone through the provisions of EIA Notification, 2006 and could not find any pre-requisite of such a clearance from the NBWL in the Notification. The said OMs have been alleged to be issued in pursuance to the Hon'ble Apex Court Order and are subject to implementation under the relevant Act i.e. Wildlife Conservation Act. The case of

SEIAA is that they have stipulated necessary conditions in the EC and in case, the Project Proponent fails to comply with the O.M. of 19th December, 2012 read with O.M. of 20th August, 2014, the Project Proponent is independently liable for legal action from the competent authorities enforcing those OMs.

25. Respondent No.12 has taken a stand that no restriction can be imposed on the setting of a project or restricting any particular activity under a particular or otherwise, issuance of direction under Rule 5 of the Environment (Protection) Rules, 1986. It is further contended that the OMs are not the notifications issued under Rule 5 and cannot, therefore, restrict the activities and operations within 10 kms of the boundaries of the National Park. The EIA Notification, 2006 itself does not put any condition to obtain NBWL permission.

26. We may also reproduce the stand taken by the MoEF in this regard:

> "It is submitted that the Eco Sensitive Zone (ESZ) of Sanjay Gandhi National Park, Mumbai, Maharashtra has not been notified, therefore permission of Standing Committee of National Board for Wildlife (NBWL) is required prior to starting of construction work, if the project location is falling within 10 KM radius of Sanjay Gandhi National Park, Mumbai, Maharashtra."
> (emphasis supplied)

It can be seen that MoEF has not placed any restriction of any embargo for grant of EC, but has stipulated that Project Proponent needs to take permission of NBWL prior to construction of projects, in such cases. It is also

noted from the submissions of MoEF that the permission of NBWL, even if it is required based on the location of the project site, is not a condition precedent or a mandatory pre-requisite before the appraisal and grant of environmental clearance.

27. We are, therefore, inclined to accept the contention of the Respondent No.12 as regards to the fact that OMs, particularly in the context of provisions of Rule 5 read with Section 3 of the Environment (Protection) Act, 1986, unless such notification is issued by the Government of India, there cannot be blanket restriction on the development in a particular area. Still however, in the present case the question that we are dealing with is appeal against the impugned EC and, therefore, the main question which we have to answer is whether absence of such permission can invalidate the process of grant of environmental clearance or absence of such permission is violation of the present EC. This is important in view of the fact that first question will squarely fall under the appellate jurisdiction of the Tribunal but the second question will squarely fall under provisions of Section 14 of the National Green Tribunal Act, 2010. The SEIAA and SEAC are bound to follow the provisions of the Environment (Protection) Act, 1986 read with EIA Notification. The OMs are the administrative guidelines to bring consistency, transparency and accountability in the

entire process of grant of environmental clearance. Still however, they cannot have the force of law. The impugned EC has stipulated a condition related to obtaining the NBWL permission. It is, therefore observed that the SEIAA and SEAC have applied their mind and have reasonably incorporated a condition in this regard. Subsequently, the MoEF has issued Notification on 5th December, 2016 notifying the eco-sensitive zone around Sanjay Gandhi National Park and project in question, is admittedly outside the eco-sensitive zone. *Per se,* the issue does not survive at present but at the time of grant of EC, the SEAC/SEIAA had considered this aspect and therefore, mere absence of such permission from NBWL cannot vitiate entire appraisal process. In case, the Project Proponent has started work without obtaining such permission, it will be open for the Appellant or the authorities to take action for violation of the EC and/or the OMs under the relevant provisions of the Act. It is also not demonstrated by the Appellant with factual data as to how the absence of such permission weighs in the matter of grant of environmental clearance. In our considered opinion, therefore, absence of such permission prior to grant of EC cannot vitiate the entire appraisal process, particularly when such condition has been stipulated in the EC, and the stand taken by MoEF.

28. Another main ground is related to the EIA Report. The SEIAA has submitted that while apprising the project in 2011, the FSI was considered for deciding the procedure of grant of EC and as the FSI was less than 1.50 lakhs, the due procedure was followed. Subsequently, the MoEF has clarified the built-up area definition and accordingly in 2014, when the project was apprised for expansion, the total built-up area was considered for screening and scoping. The EIA Report was prepared based on the TOR submitted by the Project Proponent itself which according to the opinion of SEAC was not required to be amended or modified. The main contention of the Appellant is related to the inaccuracy and factual errors to the EIA Report which are not addressed by SEAC/SEIAA or Respondent No.12. The basic issues such as date of report, date of visits and monitoring etc. have not been adequately answered by Respondents. We are surprised with such uncontested submission of the Appellant particularly when the SEIAA/SEAC are required to carefully apprise the project. In fact, in order to remove such errors and to bring technical competence in the EIA process, the MoEF has initiated scheme for accreditation of consultants. But still however, we are not inclined to take these inadequacies or inaccuracies in the report as a strong reason to set aside the impugned EC but at the same time express our

displeasure that SEAC has not identified such issues in the appraisal process and taken corrective action. We also feel it necessary that SEAC shall now re-examine the claims or allegations made by the Appellant against the EIA Report and in fact, if such allegations are found to be correct, in terms of correctness of EIA Report then they shall send a report to MoEF for necessary actions against the consultants as per law.

29. Many of the grounds raised by the Appellant particularly related to non-provision of recreation ground, construction of podium and also sufficient margin from the boundary of the plot, area of ESW flats, etc., in our considered opinion falls within the domain of the Town Planning Act and the Appellant has not been able to demonstrate that there are violations on these issues raising substantial question of environment which were required to be scrupulously apprised by SEAC/SEIAA. We have noticed that the Appellant has made several complaints to the SEAC/SEIAA on all these above aspects and SEAC has considered the issues raised by the Appellant and in fact in 25th Meeting of SEAC held on 24th to 26th March, 2014 the proposal was deferred subject to the submission of the reports of the Local Planning Authority and the Project Proponent on the allegations made in the complaint. Thereafter, in its 26th Meeting held on 28th to 30th April, 2014 wherein the

responses of the Project Proponent along with documents to be relied were considered and thereafter, SEAC decided to recommend the project for grant of EC subject to following:

(i) Concern local planning authorities to verify allegations made in the complaint before issuance of Completion Certificate.

(ii) PP to leave clear cut side margin of 6 mts from the boundary of the plot and open space of non-paved RG area should be on the ground as per the orders of Hon'ble Supreme Court.

30. Thereafter, the said proposal was considered by SEIAA in its 72nd Meeting held on 21-22 July, 2014. Authorities considered the appraisal done by SEAC, more particularly, the visit reports of the SEAC Members and also the compliance of observations made by SEAC and thereafter the environmental clearance has been granted.

31. At the cost of repetition, we would like to reiterate that the present matter is an appeal proceeding against the impugned Order dated 10th November, 2014 granting environmental clearance for the expansion of the construction project. The Appeal has been filed under Section 16 of the National Green Tribunal Act, 2010 challenging the environmental clearance. Needless to reiterate, the scope of the present appeal before the Tribunal is very limited one and is restricted to validating the environmental clearance and its procedure on the yardstick of legality, reasonability and application of

mind. SEIAA is the authority competent to grant the environmental clearance under the provisions of Environmental Clearance Regulations, 2006 and there is no dispute on this particular aspect. The proposal of the Project Proponent for expansion of ongoing project has been dealt by SEAC as an expansion project for which originally the environmental clearance was granted on 28th December, 2011, considering the FSI of 84023 sq.mts though the total construction area of the project 1,92,096.14 sq.mts. This environmental clearance of 28th December, 2011 was not challenged by the Appellant at the relevant point of time and with the limitation that is in operation by the provisions of Section 16 of the National Green Tribunal Act, 2010, this environmental clearance of 28th December, 2011 cannot be directly or indirectly challenged before this Tribunal. The Tribunal is bound to strictly follow the limitation clause in Section 16 of the National Green Tribunal Act which is a special statute and the Tribunal which is creature of this special statute, is bound to follow the provisions of the National Green Tribunal Act, 2010 in letter and spirit. In view of this, the challenge referred to in the final written submission made by the Appellant for the environmental clearance dated 28th December, 2011 cannot be entertained by this Tribunal at this stage.

32. We have also noticed that the grievance raised by the Appellant in the complaint filed to SEAC/SEIAA were duly considered by these authorities irrespective of their jurisdiction, by calling the reports of the concerned local planning authorities. SEAC/SEIAA seem to have applied their mind to the issues raised by Appellant in addition to the environmental concerns that are required to be apprised for such projects and, therefore, we do not find that this is a case where lack of application of mind by concerned authority is established.

33. The only grey area which, in our opinion, is important is the quality of the visit report of the Expert Members of the SEAC-II. We have referred to the visit report of the Expert Members dated 12th March, 2014 conducted to verify the compliance of the earlier environmental clearance. The observations contained in the visit report are reproduced below:

"**Observations:**

1. Work in Rehab area as indicated in layout drawing is in progress.

2. Work of Buildings with Nomenclature D, E, F, G is in progress as per the approved drawings in IOD (EC granted for G+P+ E Deck+ 21 floors)
   I. D – 2 slab completed
   II. E – 3rd floor, completed
   III. F- 3rd floor, completed
   IV. G- 6 floor, completed
3. Copy of the drawing as submitted to MoEF as attached.
4. Copy of the drawing as per the IOD approval and Amendment proposal as attached.
5. Work of Bldg with nomenclature ABC in Rehab area is not yet started

6. Excavation in the middle portion of Rehab area is done for placing utilities
7. In sale area, No constructional activity has taken so far, only piling work at few places seen.
8. Excavation in some area for trial pit in some portion is taken up."

34. A mere perusal of the above Observations of the visit report would manifest that the Committee has not dealt with environmental issues which are associated with such large scale construction project more particularly Soil Management, Green Area Development, labour camp, dust control, noise so on and so forth. We express our displeasure on such cryptic visit report and record that such visit report by Experts of the SEAC is not befitting to the responsibility cast upon them as per EIA Notification. We, therefore, direct that in case of future visits the SEAC/SEIAA should formulate standard Visit Report Form for such visit to a particular activity so that all required areas of consideration are covered by the visiting team to avoid such incidence.

35. Still however, the short comings as referred above cannot be termed as compelling reasons to conclude that the proceedings of SEAC/SEIAA are arbitrary and unreasonable, particularly when the SEAC has considered all the grievances raised by the Appellant and more particularly when the issues related to demolition have already been settled by the Order of Hon'ble Apex Court. We, therefore, find no merit in the contentions raised by the Appellant challenging the EC

and, therefore, the Appeal fails and accordingly, the Appeal is dismissed.

36. However, in view of the discussions referred above, we propose to issue following directions for compliance by the Authorities:

(I) We form a Committee of Chief Engineer MHADA, Chief Engineer, MCGM, Director Environment Government of Maharashtra and In-charge Construction Project MPCB to verify whether any basement was already constructed by the Project Proponent in violation of the earlier EC. The Committee shall carry out physical inspection within next 04 weeks and the report be placed before the Tribunal within 04 weeks thereafter.

(II) The Appellant is at liberty to initiate legal proceedings for non-compliance of the EC conditions and/or other environmental issues as permissible by law.

37. Appeal No.38/2014 stands dismissed. No costs.

.., JM
(Justice U.D. Salvi)

..,EM
(Dr. Ajay A. Deshpande)

Date : 14th July, 2017
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