

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

APPLICATION No. 175 OF 2015 (SZ)

Applicant(s)

Namma Bengaluru
Foundation, Koramangala,
Bangalore

Vs.

Respondent(s)

State of Karnataka
Vidhana Soudha
Bangalore and 6 others

Legal Practitioners for Applicant(s)

M/s. Samvad Partners

Legal practitioners for Respondent(s)

Mr. Devaraj Ashok for R-1
Mrs. Me. Sarashwathy
for R-2 & R-3
Mr. Thirunavukarasu for R-4
M/s. J. Anandhavalli, G. Sumitra &
P. Kavitha for R-5
Mr. T.V. Sekar for R-6
M/s. D. Ravichander, Amarnath,
Saritha & DineshKumar for R-7

Note of the Registry	Orders of the Tribunal
Order No.	<p>Date: 8th February, 2016.</p> <p>1) The applicants in their main application sought for a direction to refrain the respondents from further construction, pending investigation by the appropriate authorities of the permissibility of construction upon the mentioned Schedule property and for other reliefs.</p> <p>2) At the time of admission, an interim order was granted restraining the 7th respondent, project proponent from carrying on any construction activities or connected activities to the project until further orders. All the respondents have entered appearance.</p>

The 7th respondent filed its reply on 27.11.2015 and from that date onwards, the 7th respondent was insisting for vacating the interim order of injunction restraining them from carrying on any construction activities, on the grounds set out in their reply.

3) The only question that arises for consideration is whether the interim order of injunction restraining the 7th respondent from carrying on any construction activities or connected activities to the project already granted, has to be vacated. For the sake of convenience, contentions put forth by the Learned Senior Counsels for both sides on the last date of hearing are reproduced herein:

“Advancing the arguments the Senior Counsel appearing for the 7th respondent, Project Proponent put forth his submissions in respect of the grounds on which he seeks to vacate the interim order originally granted by this Tribunal on 26.10.2015. The Senior Counsel would submit that the entire case has been put forward by the applicant as if there is a serious violation of environmental laws which is totally unfounded and the applicant has obtained an interim order from this Tribunal on 26.10.2015 restraining any more constructional activities by the 7th respondent. He argues that in view of the revised plan and EC granted by the authorities, the main application itself has got to be dismissed. He further stated that the 7th respondent made an application before the 5th respondent in the year 2013 for raising the construction and after getting necessary permission from the 5th respondent the matter came up for consideration before the 3rd and 4th respondents. Accordingly, they have given the EC and consent thereon though originally no EC was applied for. The plan was approved for construction of 5 towers and one tower has been raised up to 10 floors and the remaining 6 floors are yet to be constructed. In so far

as the remaining 4 towers, construction only up to the ground floor is completed and not proceeded further as the injunction was granted by this Tribunal. It is submitted that the continuance of the interim order would cause immense hardship and financial loss to the 7th respondent and hence it has got to be vacated and at least the tower built up to 10 floors may be allowed to be completed.

In response, opposing the vacation of injunction the Senior Counsel for the applicant would submit that there are two Rajakaluves (storm water drains) and it is not clear from the approved plan which is the one going to be affected, and if the shifting of the same is permitted on the basis of the EC and plan approved which is without any consideration, it would cause degradation of environment and ecology. The 7th respondent made an application for modification of the earlier plan approved. Without any consideration and without looking into any aspects, the 5th respondent has granted the modification of the development plan and even a plain reading of the permission given to the 7th respondent clearly indicates the non-application of mind and not caring about ecology and environment. He further argued that after considering the issue the Tribunal has granted the interim order and there is no necessity to vacate the same. The Senior Counsel for the applicant further argues that for ascertaining the existence of the current scenario on the ground a committee needs to be appointed.”

4) The applicant has sought for the relief alleging that the 7th respondent, project proponent is involved in real estate development and undertaken construction of project for residential development named as “*Shriram Chirping Woods*” consisting of several blocks of apartments spread across 16 acres of land in Kasavanahalli Village, Varthur Hobli, Bangalore East Taluk, Bangalore. The site where the proposed construction is situated, is

located in the midst of ecologically sensitive area comprising of valley and buffer zones, between the Kasavanahalli Lake (also known as Haralur Lake) and Kaikondaranahalli/Kaikondanahalli Lake in Varthur Hobli, Bangalore.

5) It is well admitted even in the application that the 7th respondent made an application before the 5th respondent, Bangalore Development Authority (BDA) in the year 2013 for raising construction in 15 acres 33 *guntas* of land and permission was also accorded. Thereafter, the 7th respondent has obtained Environmental Clearance (EC) from the 3rd and 4th respondents. From these averments made in the application, it is clear that the construction activities were commenced by the 7th respondent only after getting the necessary permission from the BDA and also EC from the 3rd and 4th respondents. But, the applicants have not chosen to challenge either the permission granted by the 5th respondent or the EC granted by the 3rd and 4th respondents. But they have brought forth this application seeking to restrain only the construction activities of the 7th respondent on the ground *inter alia* that those permissions and EC granted is without application of mind and also the area is located in the midst of water bodies which would adversely affect the ecology and environment.

6) The Respondents have stoutly opposed the above contentions by stating that the 7th respondent applied for sanction of the development plan which was duly accorded by the 5th

respondent. The 7th respondent has scrupulously followed the terms and conditions attached with that plan. Only after obtaining No Objection Certificates from the Bangalore Electricity Supply Company Limited (BESCOM), Bharat Sanchar Nigam Limited (BSNL) and Bangalore Water Supply & Sewerage Board (BWSSB) and EC from the 3rd respondent, SEIAA, the 7th respondent has begun the construction activities. The 7th respondent has also obtained the Consent to Establish from the 4th respondent, Karnataka State Pollution Control Board. The above factual position is not disputed by the applicant and thus it would be quite evident that the 7th respondent has commenced and was proceeding with the construction work on the basis of all the requisite statutory permissions which were necessary at that stage. It is true that the respondents have applied for modified EC and CTE from the authorities. The question as to the validity of whether both the sanctions accorded by the BDA and also the EC and CTE granted by the 3rd and 4th respondents and also whether the site is located in the midst of a water body affecting the ecology and environment in the area, can be gone into on the merits of the matter at the time of final disposal of the application.

7) Admittedly, as per the original plan approved and EC granted in favour of the 7th respondent, approval was given for construction of 5 towers with 16 floors each. It is contended on the side of the 7th respondent that, out of the approval for 5 towers,

only 1 tower has been raised up to 10 floors and the remaining 6 floors are yet to be constructed and in so far as the remaining 4 towers are concerned, construction only up to the ground floor was completed and at that stage, interim order restraining the 7th respondent from further construction was granted which caused immense hardship and financial loss to them. The applicants also contend that subsequent to the original approval for 5 towers, only 1 tower up to 10 floors was constructed and remaining 6 floors are yet to be done. The interim orders were obtained by the applicants during the construction of the first tower which was in the midway up to 10 floors and the remaining 6 floors were yet to be completed. Needless to say, the pendency of the interim order for a number of months would have certainly caused much hardship and financial loss not only to the 2nd respondent but also to the third parties who have directly created interest over the same. It is not the case where the 7th respondent proceeded with the construction without obtaining necessary approval/sanction/consent/ license/NOC's from the authorities. The construction activities were commenced by the 7th respondent only after obtaining all the approvals but the applicants have chosen not to challenge any one of them. It is seen that till the completion of 10 floors in one tower and the construction of ground floor in all the remaining 4 towers, the applicants who claim to be organisations situated in the Bangalore City, have been passive spectators and brought forth this application only in the

month of October, 2015 to restrain further activities.

8) Hence, in appraisalment of the facts and circumstances as recorded above, it would be fit and appropriate to permit the 7th respondent to proceed with the construction activities to complete the construction of the first tower by adding the remaining 6 more floors as per the original plan, keeping it open for the parties to put forth their contentions both on fact and on law at the time of final disposal of the application. Hence, the earlier order restraining the 7th respondent from constructing any further activities is modified by permitting the 7th respondent, project proponent to complete the construction of the first tower by constructing 6 more floors as per the original plan. In all other respects, the earlier Order of the Tribunal dated 26.10.2015 will hold good until further orders.

9) In so far as the request made by the Senior Counsel for the applicant for appointing an Expert Committee to ascertain the current scenario, the Tribunal is of the view that it can be considered only after the remaining respondents file their respective replies.

The matter is adjourned to 25.02.2016.

P.S. Rao
(Expert Member)

Justice M. Chockalingam
(Judicial Member)