

NATIONAL GREEN TRIBUNAL

Principal Bench, New Delhi

Appeal No. 37/2012
Wednesday, 3rd of October, 2012

Quorum:

1. Hon'ble Shri Justice V. R. Kingaonkar
(Judicial Member)
2. Hon'ble Shri Dr. Devendra Kumar Agrawal
(Expert Member)

BETWEEN:

Real Gem Buildtech Pvt. Ltd.
Gen. A. K. Vaidya Marg,
Goregaon East, Mumbai – 400 063 ... Appellant

AND

State of Maharashtra
Through the Environment Department
Member Secretary Environment
217, Mantralaya, Mumbai. ... Respondent

(Advocates appeared: Mr. Girish Godbole and Mr. Pankaj Rajmachikar
for Appellant, Mr. Mukesh Verma for Respondent)

ORAL ORDER (BY BENCH)

We have heard learned Counsel for the parties. We are inclined to dispose of the appeal finally in view of the fact that the question involved is rather short and can be addressed without any discussion of environmental issues.

2. The appellant sought the Environmental Clearance for a Housing Project. The Environmental Appraisal Committee (EAC) considered the proposal on 26.05.2010 for the first time. The appellant had sought construction of 3,67,044 sq.mtrs area including that of three basements. It is not necessary to elaborately state the facts of the matter, because later on the total area to be constructed was reduced by the appellant. The appellant also reduced the number of basements from 3 to 2. The appellant was granted permission to construct 3 basements by the Competent Authority under DCR Rule 33(24). It appears that previously the State Authority declined to grant Environmental Clearance. The appellant had therefore preferred an appeal to this Tribunal. This Tribunal in that appeal (Appeal No.1/2012) observed that the order of the State Authority was rendered beyond its jurisdiction. Yet the appellant was granted liberty to make a representation for consideration of the request seeking the EC for the project. The appellant made a representation and sought the EC. The EC has now been granted vide impugned order dated 24.02.2012. The appellant is aggrieved only in respect of the part of the order whereby the request of grant of EC for three basements is rejected and the EC is granted only in respect of two basements as per the earlier Minutes of Meeting.

3. The appellant submits that already three basements have been constructed in view of the permission accorded by the Competent Municipal Authority. The appellant had not then obtained necessary EC

from the respondent. It is thus; amply clear that one basement is additionally constructed without prior EC.

4. Perusal of the impugned order will make it clear that the request for grant of one additional basement has been rejected for the reason that reduction of three basements to the two was done as indicated by the appellant (Project Proponent). Another reason ascribed by the respondent is that each project is to be considered in totality not just by looking one of the components.

5. Upon hearing learned Counsel for the parties, it is amply clear that the impugned order does not reflect as to whether rejection of the EC for three basements was done on ground of any adverse environmental impact. In fact, we find that no environmental issue is involved in the matter. The material on record does not show that the third basement is likely to cause any serious impact on the environment. The Counsel for the respondent submits that the question of proper muck disposal, the disposal of debris and the disposal of earth excavation from the building and basement is also required to be considered. He submits that proper disposal of such waste material has to be ensured from the appellant. He further submits that if the third basement has been constructed without the EC then the appellant is liable for appropriate penalty under Section 15 of The Environment (Protection) Act, 1986.

6. Considering the fact that the impugned order does not reflect rejection of the request of the appellant on the ground of any environmental damage and same has been rejected only because of the earlier statement of the appellant that he would reduce the request for three basements to two, we deem it proper to hold that the impugned order suffers from deficiency because the relevant adverse impact on environment is not the reason for rejection of the request.

7. In view of the discussion made herein above, we are inclined to set aside the impugned part of the order and remit the matter to the State

Authority for reconsideration of the issue. It will be open for the State Authority to regularize three basements on certain conditions as may be imposed, inclusive of the direction to remove the muck, earth excavation and debris within a specific period and also to impose fine/penalty as may be deemed proper. We further make it clear that the appellant shall not make any change in design and will not be permitted to carry out any further construction beyond the permission granted by the State Authority, only on the ground that the request for third basement is being reconsidered. The State Authority to decide the matter afresh, to the extent of EC for the third basement, within a period of two (02) months hereafter, as far as possible.

The appeal is accordingly disposed of. No Cost.

(Dr.Devendra Kumar Agrawal)
Expert Member

(Justice V.R. Kingaonkar)
Judicial Member

