

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1713 OF 2020

Wonder Projects Development Pvt. Ltd.
& Anr.

..Appellant(s)

Versus

Union of India & Ors.

..Respondent(s)

J U D G M E N T

1. The appellants are before this Court claiming to be aggrieved by the order dated 03.02.2020 passed by the National Green Tribunal, Principal Bench, New Delhi ('NGT' for short) in Appeal No. 54/2018. The appellants herein were arrayed as respondent Nos. 11 and 12 in the appeal before the NGT. By the order impugned herein, the NGT has set aside the Environmental Clearance ('EC' for short) issued by the State Environment Impact Assessment

Authority ('SEIAA' for short), Karnataka, in favour of the appellants through its order dated 10.01.2018.

2. The brief facts are that the appellants herein are undertaking the construction of New High Rise Residential Building. The project is being undertaken in Survey Nos.61/2, 62 and 63/2 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk, Bengaluru District. The construction is proposed on a plot area of 50,382.91 sq. m. with total built up area of 1,28,193.9 sq.m. In respect of the said project the appellants had sought for issue of EC from the SEIAA, Karnataka which is the Competent Authority in that regard. The SEIAA having considered the project report of the appellants has granted the EC through its order dated 10.01.2018. The respondent No.2 herein being aggrieved that the construction being undertaken by the appellants herein is in the buffer zone of the Kaikondarahalli Lake, apart from being on the primary and secondary Rajkaluve and, therefore, the area being eco-fragile had assailed the EC granted in favour of the appellants by filing the appeal before the NGT. The appellants herein had appeared and

filed their objection statements denying the allegations made in the appeal. In addition to the appellants being respondents in the said appeal, the Bruhat Bengaluru Mahangara Palike ('BBMP' for short) within whose jurisdiction the proposed project is being undertaken was also one of the respondents in the appeal. The BBMP had filed a detailed reply dated 05.09.2019 and had in fact contended that the project is illegal and they have also issued the 'stop work' notice to the project proponent on 13.07.2018 since there is violation of these Zoning Regulation of the Revised Master Plan – 2015.

3. Based on the pleadings since a factual determination was required to be made by the NGT, the NGT also constituted a Joint Committee comprising of the Central Pollution Control Board ('CPCB' for short), SEIAA, Karnataka, State Pollution Control Board ('KSPCB' for short) and the Ministry of Environment, Forest and Climate Change ('MOEF&CC' for short). The said Joint Committee was required to make a spot inspection and submit a report.

4. When this was the position the Joint Committee submitted one of its reports dated 23.09.2019 indicating the details of the property situate in the various Survey Numbers, the activity carried out therein and the remarks relating to the violation if any in the buffer zone. The NGT on taking note of the pleadings of the parties, more particularly the reply filed by the BBMP and the Joint Committee Report dated 23.09.2019 has in that background taken note of the decision rendered by this Court in the case of **Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors.** 2019 SCC Online SC 322 wherein it was ordered to restore the buffer zones in terms of the zonal plan. The NGT in that regard has also taken note that the original buffer zone as per zonal plan is 30 mtrs. around the lake and 50 mtrs. from middle of the Rajkaluves in the case of primary Rajkaluves and 25 mtrs. in the case of secondary Rajkaluves and 15 mtrs. in the case of tertiary Rajkaluves. Resultantly the NGT has arrived at the conclusion that the EC could not have been granted so as to permit construction in the buffer zone of the lake and drain by

imposing conditions. The appellants are therefore aggrieved.

5. Heard Dr. Abhishek Manu Singhvi, learned Senior Counsel for the appellants, Mr. N. Venkatraman, learned Additional Solicitor General, Mr. Darpan for respective respondents and perused the appeal papers.

6. While reiterating the grounds urged in the appeal the learned Senior Counsel for the appellants *inter alia* contended that the very manner in which the NGT has proceeded to decide the appeal is not justified. Apart from referring to the nature of the construction being put up by the appellants it was contended that though a Joint Committee had been appointed by the NGT and a report was sought, the appeal was considered and disposed of despite the report relating to the construction in the property in question not being available with the NGT. It was contended that as such the consideration made based on the report dated 23.09.2019 is not justified since the Committee had indicated that a separate report will be submitted in respect of the instant project. Though the

respective learned counsel for the respondents sought to justify the order of NGT on merits by seeking to contend that there is violation of the zoning regulation and the construction being put up by the appellants in the buffer zone cannot be permitted and the learned Senior Counsel for the appellants while seeking to controvert the said position sought to refer to the project details, we are of the opinion that the merits of the rival contentions relating to the permissibility or otherwise of the project need not engage our attention at this juncture. We are of the said opinion for the reason that the point which requires consideration at the outset at this juncture is as to whether the entire material including the report of the Joint Committee which was relevant to consider the case of the parties herein was available before the NGT and as to whether the NGT was justified in proceeding with the matter in the manner as it has presently done.

7. In order to consider this aspect, a careful perusal of the order dated 03.02.2020 impugned herein would disclose that the reply filed by the BBMP is extensively extracted. It

is no doubt true that contention has been urged by BBMP with regard to the project not being permissible. In the light of the rival pleadings since the tribunal was to render a factual finding the report by the Joint Committee after making a spot inspection was necessary so as to assist the NGT in arriving at a conclusion. As indicated above, the NGT has no doubt taken note of one of the reports submitted by the Joint Committee dated 23.09.2019. The said report has been extracted in the course of the impugned order which refers to the existing properties in Kaikondarahalli Lake buffer area and in the tabulated form the survey number, activity and violation of buffer if any is indicated as a remark. In respect of certain other properties, the remarks have been made either with regard to there being no violation or the activity not being a permitted activity. Insofar as the property bearing Survey No.62 of Kasavanahalli Village which is one of the survey numbers wherein the project of the appellants is being developed, a reference is made and in the remark; it is recorded as hereunder:

S.No	Activity	Violation of Buffer
62	Godrej by name "Wonder Projects Development Pvt. Ltd" have obtained Environmental Clearance from SEIAA and consent for establishment from KSPCB and for establishment of residential apartment in Sy Nos.61/2, 62 and 63/2. There is Nala within the project area which connects Kasavanahalli tank to Kaikondrahalli Tank. Project under construction.	Sy No.62 and 63 falls under Lake buffer area. <u>As there is separate O.A.602/2019 on this project, the same will be inspected by the committee as per the order dated 19.07.2019 and separate report will be submitted by the committee.</u>

(emphasis
supplied)

8. A perusal of the remark extracted and emphasised herein would indicate that a separate O.A. No.602/2019 is also filed in respect of the instant project and the Committee has indicated that a separate report will be submitted by it. The NGT in the course of the impugned order dated 03.02.2020 at para 7 has recorded that O.A. No.281/2019 and O.A. No.602/2019 which are also raised on an identical issue are being contemporaneously disposed of by separate orders. The same would disclose that as on the date when the appeal wherein the impugned order is passed was

disposed of along with O.A. No.602/2019 the report relating to the project of the appellant was not available on record before the NGT if the remarks extracted above are kept in view, since the Joint Committee was yet to complete the inspection.

9. In this regard it is to be noted that while ordering notice in this appeal on 02.03.2020 the parties were permitted to file the report in O.A. No.602/2019 in the Registry of this Court. The respondent No.7 herein along with the affidavit has filed the report of the Joint Committee, which at the outset indicates that it is with regard to the project relating to the appellants herein. Further on referring to certain aspects relating to the project the details of the inspection carried out by the Joint Committee is referred at Clause 6.0. It is indicated therein that in order to finalize the report the Joint Committee comprising of the members whose details are indicated made another round of inspection and meeting on 05.02.2020. It is thus evident that as on the date the impugned order was passed i.e. 03.02.2020 the final round of inspection had not been

completed and as such the NGT did not have the benefit of the final report by the Joint Committee for making a factual determination, to arrive at a conclusion keeping in view the legal position. Though the report of the Joint Committee is presently placed before this Court, it would not be appropriate for this Court to advert to the details of the report and in that background take note of the rival contentions on merits since first appellate authority, based on the same has not made a factual determination so as to consider the correctness or otherwise of the same in an appeal of the present nature.

10. Presently since the report of the Joint Committee is available in O.A. No.602/2019 relating to the same project, the said report is required to be taken as a part of the consideration of the Appeal No.54/2018 which is disposed of through the impugned order by the NGT and a factual determination in accordance with law is required to be made. To enable the same we find it appropriate to set aside the impugned order dated 03.02.2020 and restore Appeal No.54/2018 to the file of the NGT so as to enable it

to reconsider the appeal by taking into consideration the report of the Joint Committee prepared in O.A. No.602/2019, which shall be made available to the NGT by respondent No.7 herein. It is made clear that in the circumstances under which the order dated 03.02.2020 is set aside, the validity or otherwise of the EC will remain subject to the fresh decision that would be taken by the NGT and the EC shall not stand revived at this juncture. This Court has not expressed any opinion on merits and all contentions are left open.

11. Taking note of the urgency indicated by the learned Senior Counsel for the appellants we request the NGT to dispose of the appeal after reconsideration within a period of six weeks from the first date on which the parties appear before the NGT. For the said purpose the NGT shall on receipt of this order indicate a date for appearance which shall be voluntarily ascertained by the parties herein without expecting fresh notice to be issued by the NGT. The NGT shall also provide opportunity to all the parties to put forth any additional documents or objections if any to the

report and thereafter consider the matter in accordance with law.

12. In the result, the appeal is allowed in part. The order dated 03.02.2020 is set aside and the matter is remitted to the NGT to restore Appeal No.54/2018 and reconsider the same in the manner indicated above. No construction shall be put up in the meanwhile. There shall be no order as to costs.

13. Pending applications, if any, shall stand disposed of.

.....CJI.
[S.A. BOBDE]

.....,J.
[A.S. BOPANNA]

.....,J.
[V. RAMASUBRAMANIAN]

New Delhi,
August 11, 2020