

Item No. 10

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Appeal No. 19/2020

(With response dated 28.09.2020, 13.10.2020 and 27.10.2020)

M/s Janta Land Promoters Ltd.

Appellant

Versus

Punjab Pollution Control Board & Anr.

Respondent(s)

Date of hearing: 04.01.2021

Date of Uploading of order: 06.01.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. This Appeal has been preferred under Section 16 (c) of the NGT Act, 2010 against order dated 20.07.2020 passed by the Punjab Pollution Control Board (PPCB) directing stopping of construction activity of the appellants under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and passing other incidental directions. It was held that the appellant did not have the requisite EC under the EIA Notification dated 14.09.2006 and the Consent To Establish (CTE) under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 (Air and Water Acts).

2. On 14.08.2020, the Tribunal sought response from SEIAA, Punjab and the State PCB with the following observations:-

“2. Learned counsel for the appellant submits that the findings in the impugned order are erroneous. He has made a reference to order dated 16.12.2015 whereby SEIAA, Punjab granted EC for “Super Mega Mixed Use Integrated Industrial Park” at Sector 82, 83 & 66A, SAS Nagar, Mohali. He has further referred to order of the Punjab State PCB dated 04.01.2013 granting NOC/Consent to Establish. Learned counsel for the appellant has also referred to statement made on behalf of SEIAA before the High Court of Punjab and Haryana in CWP No. 21351 of 2016 that separate permission was not required for construction within the project already sanctioned. He has also submitted that MoEF&CC has filed an affidavit dated 03.01.2017 in above proceedings before the High Court to the effect that separate EC was not required for the residential pockets in question.”

3. Accordingly, response has been filed by the SEIAA, Punjab on 28.09.2020 and by the State PCB on 13.10.2020. The appellant filed rejoinder on 27.10.2020. The appellant also filed an application to file additional documents on 15.09.2020 with additional documents. Reference to the above will be made in due course.

4. We have heard learned Senior Counsel for the Appellant and learned Counsel for the State PCB and perused the material on record with the assistance of learned Counsel.

5. Learned Senior Counsel for the Appellant has reiterated the contentions noted in the order dated 14.08.2020 summed up as follows:

- EC granted for Super Mega Mixed Use Integrated Industrial Park covered seven residential projects, which were part of the Mega Project, including the Falcon View Project.
- The State PCB had already granted CTE in 2013 which could not be discontinued on the ground of absence of EC as concern of the State PCB was compliance of norms under the Water and Air Acts and EC was governed by notification dated 14.9.2006 under which SEIAA was the designated authority.
- Writ Petition against order of the SEIAA dated 29.08.2016 to the effect that separate EC is required for the Falcon View Project, even after EC dated 16.12.2015 granted for the Mega project, covering Falcon View Project was already pending before the Punjab and Haryana High Court and thus the matter was sub-judice.

6. Opposing the above submissions, the learned Counsel for the State PCB has pointed out that factually no EC has been granted for the Falcon View Project. The EC for the Mega Project does not cover the Falcon View Project. This has been so held by SEIAA also. In absence thereof, construction activities of the Appellant are illegal. The CTE was conditional subject to EC with further condition that no construction can be undertaken without EC. Prosecution of the Appellant for initiating and continuing construction inspite of being required not to do so is pending. The High Court has not granted any interim order. The PCB is thus statutorily liable to enforce the rule of law and to prevent irreversible damage by illegal constructions.

7. Thus, the question to be determined is whether the impugned order passed by the State PCB is legally sustainable.

8. We may refer to the impugned order first. It refers to order dated 05.03.2015 passed by the SEIAA under Section 5 of the Environment (Protection) Act, 1986 directing stopping construction activities till grant of EC for the Falcon View Project. Reference is then made to the initiation of prosecution by the State PCB for continuing construction in violation of the said order, in the concerned Trial Court under Section 15/19 of the EP Act, 1986. Further reference has been made to the letter of SEIAA dated 27.09.2016 under Section 5 of the EP Act, 1986 prohibiting construction activity and creating third party interest till grant of EC and second prosecution filed on 06.03.2017 for continued illegal construction. Since the construction continued, the SEIAA, Punjab gave further letter to the State PCB on 22.08.2019 for initiating remedial action against illegal construction, without EC. Reference has also been made to the inspection of the site on 30.12.2019 by the officers of the

State PCB (along with the Monitoring Committee constituted by this Tribunal to monitor compliance of Solid Waste Management Rules, 2016 in O.A. No. 606/2018, *Compliance of Municipal Solid Waste Management Rules, 2016*). During the visit, violation of environmental norms was noticed for which proceedings were initiated. Finally, the State PCB held that continuing of construction activity by the Appellant was illegal and against the conditions of CTE. The operative part of the order is as follows:-

“.....further noted that for the violations of EIA notification dated 14.09.2006, SEIAA Punjab has already taken action by issuing directions u/s 5 of the Environment (Protection) Act, 1986 to the project proponent for stopping the construction activities without obtaining the Environmental Clearance. Further, legal action for starting the construction activities without obtaining Environmental Clearance has been taken twice by the Punjab Pollution Control Board against the project proponent and responsible persons by filing criminal complaint u/s 15, 16 read with 19 of the Environment (Protection) Act, 1986. But, the project proponent continues to violate and even allow the occupancy in the project resulting in the operation of its outlet without obtaining the mandatory clearances under the Environmental Laws viz-a-viz consent to operate under the Water Act, 1974, the Air Act, 1981 & authorization under HWM Rules, 2016. The mandatory environmental clearance required under the EIA Notification dated 14.9.2006 and the consent to establish / operate required under Water Act, 1974 and Air Act, 1981 are two separate entities and are being issued by two separate authorities viz SEIAA, Punjab and Punjab Pollution Control Board, respectively. The project proponent should have discontinued the construction activity upon the receipt of the directions from the SEIAA, Punjab and upon the refusal of consent to establish (NOC) of the Board. However, it continues to carry out the construction and has even allow the occupancy in the project without obtaining consent to operate from the Board as required under the provisions of Water Act, 1974. Hence, the project proponent failed to fulfill its mandatory obligations under the Environmental Laws.

After hearing the officers of the Board and the representatives of the promoters company, the Chairman of the Board decided as under:

1. Necessary directions u/s 33-A of the Water Act, 1974 as amended from time to time be issued including the following:

- a) The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and till it have valid Consent to Establish (NOC) from the Board under the Water Act, 1974 & the Air Act, 1981, with immediate effect.**
- b) GMADA / concerned authorities that have issued the licence / LoI and approved the building / layout plans for the development of the project shall take necessary action to stop the further construction activities related to the project till the project proponent obtains environment clearance under EIA Notification dated 14.09.2006 and till it have valid Consent to Establish (NOC) from the Board under the Water Act, 1974 & the Air Act, 1981, with immediate effect.**
- c) The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project, with immediate effect.**
- d) The Revenue Authorities shall not to register any sale deed related to any plot / flat / house/shop / any other component of this project, with immediate effect.**
- e) The PSPCL authorities shall not to release any electric connection for this project or any of its components, with immediate effect.**
- f) For its present occupancy, the project proponent shall continue to operate its sewage treatment plant (STP) regularly and efficiently, so as to achieve the standards prescribed disposal. The Company shall utilize the treated effluents for plantation/flushing.**

.....”

9. The response filed by the SEIAA includes a chart with relevant information to show how the EC for the Super Mega View Project does not cover the Falcon View Project as follows:-

“18. That SEIAA has submitted various written statements by way of affidavits from time to time in said CWP and some of the important facts submitted before the Hon'ble court are submitted as under: -

- (i) A comparison of some of the activities of the applications submitted by the project proponent for area development project namely "Super Mega Mixed Use Integrated Industrial Park" and group housing project namely "Falcon View is as under:*

Sr. No.	Activity	Area development project namely "Super Mega Mixed Use Integrated Industrial Park" at Sector 82, 83 & 66A, SAS Nagar, Mohali	Group Housing project namely Falcon view " at Sector 82, 83 & 66A , SAS Nagar, Mohali	Remarks
1.7	Temporary sites used for construction works or housing of construction workers?	Number of workers will be 250 out of which 75 workers will reside at the site during peak construction activity.	Number of workers will be 200 out of which 80 workers will reside at the site during peak construction activity	This clearly reflects that if 250 workers are for area development project than 200 workers cannot be only for group housing project. This means that the area development project does not include any details of individual group housing project. Also, 80 workers have been shown to be residing at the site for a part of the township, i.e. Falcon View, whereas for the whole township only 75 workers have been shown to be residing at site.
1.17	New road rail or sea traffic during construction or operation?	During construction phase, movement of 30 vehicles at the maximum be there for supervision the work or ferrying the construction material.	During construction phase, movement of 30-40 vehicles at the maximum be there for supervising the work or	This clearly reflects that if 30 vehicles are for area development project then how 30-40 vehicles can be there for group housing. This

			<i>ferrying the construction material.</i>	<i>means that the area development project does not include any details of vehicles in case of individual group housing project.</i>
2.4	<i>Construction material – aggregates sand/ soil (expected source – MT)</i>	<i>The construction material shall be procured from authorized outlets in and around Chandigarh and the quantities are as under: Aggregates@ 2,20,000 cum, Cement bag @ 60,000 and sand @ 1,10,000 cum</i>	<i>The construction material shall be procured from authorized outlets in and around Chandigarh and the quantities are as under: Aggregates @ 2,24,000 cum, Cement bags @ 2,40,000 and sand @ 1,80,000 cum</i>	<i>This clearly reflect that if the volume of 2,40,000 cum as aggregate is for one group housing project then the volume of 2,20,000 cum as aggregate cannot be for an entire area development project which is claimed to include other group housing projects as well by the appellant. Same is the position in case of cement bags and quantity of sand. This means that the area development project does not include any details of aggregates, cement bags and sand required in the case of individual group housing project.</i>
5.1	<i>Emissions from the combustion of fossil fuels from</i>	<i>The appellant has proposed to install 4 no. of DG sets of capacity 50 KVA, 1 no. of DG set of</i>	<i>The appellant has proposed to install 25 no. DG sets of capacity 320</i>	<i>There is no reference of the DG set of capacity 320 KVA in</i>

	<i>stationary or mobile sources.</i>	<i>capacity 125 KVA and 18 no. of DG sets or capacity 500 KVA in the project.</i>	<i>KVA in its project.</i>	<i>application form of area development project. It may also be observed that the total number and capacity of DG sets in the one group housing project is much more than the number & capacity of DG sets in the entire area development. This means that area development project does not include any details of DG sets to be installed in individual group housing project.</i>
<i>Form IA 2.7</i>	<i>Give details of the water requirements met from water harvesting? Furnish details of the facilities created.</i>	<i>The appellant has proposed to install 5 no. of harvesting pits in its project</i>	<i>The appellant has proposed to install 17 no. of harvesting pits in its project.</i>	<i>This clearly reflects that if 5 nos. of rainwater harvesting pits are for area development project and 17 nos. of rainwater harvesting pits area for group housing project than area development project does not include any details of rainwater harvesting pits of individual group housing project.</i>

From the above, it could be well established that various activities & consumption of resources such as the type of building materials to be used, water

conservation, storm water management within the Group Housing Project, traffic management, etc. that can have an impact on the environment due to construction of individual group housing /building construction project, quantification thereof and Environment Management Plan suggesting mitigation measures, etc. were not included in the environmental clearance application of "Super Mega Mixed Use Integrated Industrial Park".

As such, environmental impacts of all the activities of building construction projects have not been included by the appellant while assessing the impact of area development project i.e. Super Mega Mixed Use Integrated Industrial Park.

- ii) **It is also important to look into the cost aspects of various activities to be taken for the component of main projects, which were submitted by the appellant at the time of submission of the environmental clearance applications of the sub-projects. The cost of the various projects is summarised as under: -**

Table 1.0

Sr No.	Name of the project	Type	Project Cost in Crores	Remarks
<i>Area Development Project</i>				
1.	<i>Super Mega Mixed Use Integrated Industrial Park</i>	<i>Area Development project for which EC obtained by the Appellant</i>	1059.39	<i>As per the application form</i>

Table 2.0

Sr No.	Name of the project	Type	Project Cost in Crores	Remarks
<i>Components of Area Development Project</i>				
1	<i>Galaxy Heights</i>	<i>Group Housing project for which separate EC was obtained</i>	98.77	<i>As per the application form</i>
2	<i>IT Twin Tower</i>	<i>Group Housing project for which separate EC was obtained</i>	112.1	<i>As per the application form</i>
3	<i>Sky Gardens</i>	<i>Group Housing project for which separate EC was obtained</i>	103.92	<i>As per the application form</i>

4	Falcon View	Group Housing project for which petition filed before the Hon'ble High Court by the Appellant with a prayer that separate EC is not required	759.50	As per the application form
Total cost of the sub-components of the Area Development Project			1074	

The proposal of area development project namely 'Super Mega Mixed Use Integrated Industrial Parks' included 273 industrial plots, 7 residential pockets (group housings), 7 institutional pockets, and 4 commercial pockets and the project cost is Rs 1059.39 Crores and whereas the cost of mere four groups Housing Projects namely Galaxy Heights, IT Twin Tower, Sky Gardens and "Falcon View", which constitute a small part of the main area development project namely 'Super Mega Mixed Use Integrated Industrial Park' project, is Rs 1074.29 Crores. which is more than 1059.39 Crores. The cost of the four sub-projects cannot be more than the main development project. Besides this, the cost of the development of the area and other components such as industrial plots, institutional pockets, commercial pockets, and remaining group housings projects, is yet to be considered.

- iii) Not only the "Falcon View" group housing project, rather all the other building construction/group housing projects whose all the activities were not included in the main project and having a built-up area of 20,000 sqm or more, were required to obtain prior environmental clearance. **As of now, four group housing projects namely Galaxy Heights, IT Twin Tower & Sky Gardens & Falcon View having built-up area more than 20,000 sqm had applied separately for obtaining environmental clearance in area development project 'Super Mega Mixed Use Integrated Industrial Park', out of which three group housing projects namely Galaxy Heights, IT Twin Tower & Sky Gardens have already been granted Environmental Clearance, but the case of Falcon View is still pending due to the reason that appellant has not submitted the revised EIA report in compliance to the Terms of Reference (TOR) issued vide letter no 609 dated 11.05.2018 by SEIAA in consonance with the MoEF&CC Notification dated 14.03.2017 and its amendment dated 08.03.2018.**
- iv) That the Hon'ble High Court passed an order dated 25.07.2017 and the para no.3 of the said order is reproduced as under: -

"During the course of hearing it is conceded by Mr. Nitin Kaushal, advocate that Environment Impact Assessment (EIA- for short) notification dated 14.09.2006 (Annexure P-2) does not provide that one has to obtain separate permission within an already sanctioned project. **This, however, is subject to the condition that the applicant has taken into account the total environmental impact of all the activities undertaken within the project.**"

It is worth to mention here that **the impact on the environment due to construction of the various projects including Falcon View project, quantification thereof and Environment Management Plan suggesting mitigation measures, etc. (Rainwater Harvesting, energy-saving details, Parking requirements, etc.) were not included in the application for obtaining environmental clearance of "Super Mega Mixed Use Integrated Industrial Park" due to which separate environmental clearances were obtained by the Appellant for some of its projects as mentioned in the Table 2.0 above.**

- v) That as per the affidavit submitted by the Joint Director/Scientist in Regional Office, (Northern Zone), Chandigarh of the **Ministry of Environment, Forest & Climate Change**, it has been categorically stated that **'Super Mega Mixed Use Integrated Industrial Park'** comes under the ambit of the EIA Notification, 2006 and Environmental Clearance for the project was granted by SEIAA, Punjab based on the recommendations of the SEAC in the State. The project envisages the development of 273 industrial plots, 7 residential pockets, 7 institutional pockets, and 4 pockets commercial pockets in a total area of 1065861 sqm at Sector 82-83 and 66A SAS Nagar in Mohali, Punjab. This should not be considered contrary to the stand of SEAC & SEIAA due to the following reasons:

(a) The project 'Super Mega Mixed Use Integrated Industrial Park' is allowed for the development of the area in terms of earmarking various plots and pockets in the total area of the project by providing various facilities such as roads, sewer lines, water lines, electricity lines, and other common facilities.

(b) **The appellant has not taken into account the total environmental impact of all the activities of the various projects including Falcon View in the main application of "Super Mega Mixed Use Integrated Industrial Park."**

- vi) That SEIAA has rightly decided that Appellant was required to obtain separate Environmental Clearance for its project Falcon View, which relied upon clarification sought from the MoEF&CC in a similar

application of Environmental Clearance of "Savitry Towers" having a built-up area more than 20,000 sq.m., which was a part of a separate area development project namely Janta Township Project (sector 9091), Mohali and it has been clarified by the MoEF&CC that the building construction Project "Savitry Towers" will require separate environmental clearance from SEIAA. Punjab under the EIA Notification, 2006. A copy of the letter seeking clarification and the reply thereto by the office of Ministry of Environment and Forest, Chandigarh dated 31.03.2011 is annexed as Annexure-R1 and Annexure-R-1A, respectively.

- vii) *That in compliance with the orders dated 14.03.2018 of this Hon'ble Court, the MoEF&CC transferred the record file of the project to SEIAA, Punjab vide letter No. 19-184/2017-IA.III (Pt.) dated 26.03.2018. **The pending case of the Falcon View transferred by the MoEF&CC, New Delhi, was considered by the SEAC in its 164th meeting held on 10.04.2018 and the SEAC recommended the case to SEIAA with the recommendation to issue additional specific TOR in consonance with the notification dated 14.03.2017 as amended on 08.03.2018.***
- viii) *The case was considered by the SEIAA in its 131st meeting held on 04.05.2018, wherein the Appellant submitted a new representation to SEIAA. **The SEIAA observed that the representation needed a thorough examination before taking any decision on the same and decided to defer the case and to take up the same in its next meeting. The case was again considered by the SEIAA in its 132nd meeting held on 10.05.2018, wherein it was observed that the contention of the Appellant that the Group Housing Project namely "Falcon View" being a component of the main area development project namely 'Super Mega Mixed Use Integrated Industrial Park project', did not require Environmental Clearance, had already been deliberated in depth by the SEAC & SEIAA in its various meetings i.e. 149^m meeting of SEAC held on 29.08.2016 & 115th meeting of SEIAA held on 23.09.2016 respectively. The request for withdrawal of application for environmental clearance of 'Falcon View' on the plea that no separate environmental clearance was required to this project, being part of the area development project namely Super Mega Mixed Use Integrated Industrial Park project, had already been rejected by SEIAA in the 115th meeting held on 23.09.2016. After detailed deliberations upon the matter, SEIAA decided as under:***
- a) *To accept the recommendations of SEAC and to issue the specific Terms of Reference (TOR) as recommended by the SEAC.*

- b) *The pending application of 'Falcon View' for obtaining environmental clearance will be appraised and decided after the receipt of the revised EIA report incorporating the compliance of specific TOR under the provisions of EIA notifications dated 14.03.2017 and its amendment dated 08.03.2018 issued by the MoEF&CC, New Delhi.*
- ix) *That SEIAA vide letter no. 610 dated 11.05.2018 issued the additional specific TOR as recommended by SEAC as under: -*

"The project proponent shall make an assessment of ecological damage done and economic benefit derived due to violation and prepare a remediation plan and natural & community resource augmentation plan and it shall be prepared as an independent chapter in the environmental impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act. 1986, or an environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment. A revised EIA/EMP report incorporating the compliance of aforesaid specific ToRs should be prepared and submitted to SEIAA, Punjab. The pending application of 'Falcon View' for obtaining environmental clearance will be appraised and decided after the receipt of the revised EIA report in accordance with the provisions of EIA notifications dated 14.03.2017 and amendment dated 08.03.2018 issued by the MoEF&CC, New Delhi."

However, the Appellant has not submitted the revised EIA report in consonance with the aforesaid TORs till date.

- x) *That the Appellant submitted another online application vide proposal no. SIA/PB/NOP/30759/2019 on 17.01.2019 for issuance of Terms of References (TORs) for obtaining environmental clearance for the expansion of Super Mega Mixed Use Integrated Industrial Park, Sector-66A, 82 & 83, District SAS Nagar (Mohali), Punjab. **The new application of the appellant for expansion of Super Mega Mixed Land Use Integrated Industrial Park (submitted on 17.01.19), was considered by SEIAA in its 162nd meeting held on 19.03.2020 and decided that application for issuance of Terms of References (TORs) for obtaining environmental***

clearance for the expansion of Super Mega Mixed Use Integrated Industrial Park, Sector- 66A, 82 & 83, District SAS Nagar (Mohali), Punjab submitted by M/s Janta Land Promoters Limited. (Proposal No SIA/PB/NCP/30759/2019) be rejected due to the following reasons:

a) Application of expansion of "Super Mega Mixed Land Use Integrated Industrial Park" submitted on 17.01.2019 includes the group housing project namely "Falcon view" as one of the components. "Falcon view" project (a component of Super Mega Mixed-Use Industrial Park) is a violation case and thus, the expansion of Super Mega Mixed Land Use Integrated Industrial Park project for which fresh application submitted will also be considered as a violation case.

b) MoEF&CC vide OM dated 09.09.2019 has clarified that only those violation proposals may be taken up for consideration under the provisions of Ministry's Notification, dated 14.03.2017 and 08.03.2018, which had been submitted to SEAC during the window (14.03.2017 to 13.09.2017 & 14.03.2018 to 13.04.2018) or prior to it. The Appellant has failed to submit the case in the prescribed window as the application was filed on 17.01.2019.

c) M/s Janta Land Promoters Ltd. has not stopped the construction of group housing project "Falcon View" in spite of directions issued u/s 5 of the Environment (Protection) Act, 1986 by the SEIAA vide letter no. 1388 dated 05.03.2015 to the effect that:

i) The project proponent shall not carry out any further construction activity at its project site namely "Falcon View" at Sector-66 A, Distt. Mohali, till it obtains environmental clearance under EIA notification dated 14/9/2006.

ii) The project proponent shall not create any third-party interest in the project till the environmental clearance under EIA notification dated 14.09.2006 is obtained.

d) The Appellant vide letter no. JLPL/82/2 019 /3875 dated 16.12.2019 (Annexure-R3) informed that no further action was solicited on the SEIAA letter no.609-611 dated 11.05.2018 instead of submitting the EIA report in compliance to the specific Terms of Reference issued vide SEIAA letter no 609-611 dated 11.05.2018.

e) Submission of Fresh application for expansion of Super Mega Mixed Use Integrated

Industrial Park, is an action through which the Appellant wants to regularize the group housing project "Falcon view" through back door entry, which cannot be considered as the case is sub-judice in the Hon'ble High Court. Accordingly, SEIAA vide letter no 1594 dated 20.05.2020 rejected the fresh application submitted vide Proposal No SIA/PB/NCP/ 30759 /2019 on 17.01.2019 for issuance of Terms of References (TORs) for obtaining environmental clearance for the expansion of Super Mega Mixed Use Integrated Industrial Park, Sector-66A, 82 & 83, District SAS Nagar (Mohali), Punjab.

- xi) The appellant has not approached the Appellate Authority (Hon'ble NGT) as specified in section 5A of the Environment (Protection) Act, 1986.**
- x) That Hon'ble High Court, Chandigarh was prayed by SEIAA as under:-**
 - i) The Civil Writ Petition may kindly be dismissed as the appellant is required to obtain separate environmental clearance for its Falcon View project.**
 - ii) Present Petition may be dismissed as an appeal against the directions issued of u/s 5 of the Environment (Protection) Act, 1986 lies with the Hon'ble National Green Tribunal.**
 - iii) Appellant may be directed to stop the construction work of the group housing project Falcon View & not create any third-party interest in the project till he obtains the Environmental Clearance under the EIA Notification, 14.09.2006.**

19. That from the above, it is evident that the construction activities in both the projects i.e. area development project namely "Super Mega Mixed Use Integrated Industrial Park" and group housing project namely "Falcon View" was started without obtaining environmental clearance and were in violation of provisions of EIA notification dated 14.09.2006. However, the appellant obtained the environmental clearance in one case "Super Mega Mixed Use Integrated Industrial Park" after a complaint case was filed by PPCB in the court of CJM as per prevailing law and whereas fails to obtain the environmental clearance for the Falcon View project as appellant is continuously violating the provisions of EIA Notification dated 14.09.2006 by carrying out construction activities even after the issuance of directions u/s 5 of Environment (Protection) Act, 1986 which restrain him to carry out further construction activities till it obtains the environmental

clearance due to the reason that appellant has not submitted the revised EIA report in compliance to the specific Terms of Reference issued vide SEIAA letter no 609-611 dated 11.05.2018.”

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9. That within the Township/ Area Development Project, there are inter-alia 7 Group Housing Projects. The appellant, JLPL is the Promoter/Developer of the Group Housing Projects and has applied separately for 4 Group Housing Projects that are covered under the EIA Notification, 2006. The detail of projects along with the date of receipt of application and status of the same is as under:

Sr. No.	Name of the project	Type of Project	Date of Receipt of application for obtaining Environmental Clearance	Status of the application for obtaining Environmental Clearance	Application submitted by / name of promoter
1	Super Mega Mixed Use Industrial Park	Township Area Development project	17.10.2013	Granted on 16.12.2015	Janta Land Promoters Ltd.
2	Sky Gardens	Group Housing Project	28.04.2014	Granted on 04.02.2016	Janta Land Promoters Ltd.
3	Galaxy Heights	Group Housing Project	20.04.2015	Granted on 16.12.2015	Janta Land Promoters Ltd.
4	IT Twin Tower	Group Housing Project	24.01.2014	Granted on 04.02.2016	Janta Land Promoters Ltd.
5	Falcon View	Group Housing Project	22.11.2013	Pending due to the reason that appellant has not submitted the revised EIA report in reference to the TORs issued vide letter no. 609 dated 11.05.2018 by SEIAA in consonance with the MoEF&CC Notification dated 14.03.2017 and its amendment	Janta Land Promoters Ltd.

				<p><i>dated 08.03.2018. Request for withdrawal of application for EC in this case was rejected by SEIAA vide letter no 1594 dated 20.05.2020</i></p>	
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From the above, it is evident that environmental clearance was granted to the components of Super Mega Mixed Use Integrated Industrial Park namely Galaxy Heights on 16.12.2015 on the same day on which environmental clearance was granted to Super Mega Mixed Use Integrated Industrial Park and to Sky Gardens and IT Twin towers on 04.02.2016 i.e. very much after the environmental clearance granted to Super Mega Mixed Use Integrated Industrial Park. Thus, the Appellant is misleading the court by stating that he could not withdraw the applications for environmental clearance to the above-said components as EC was already granted for these projects also by the time the environmental clearance was granted to the Township project.”

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... Further, SEIAA has also relied upon the clarification sought from the MoEF&CC in a similar application of Environmental Clearance of “Savitry Towers” having a built-up area more than 20.000 sqm, which was a part of a separate area development project namely Janta Township Project (sector 90-91), Mohali and it has been clarified by the MoEF&CC that the building construction project “Savitry Towers” will require separate environmental clearance from SEIAA, Punjab under the EIA Notification, 2006.”

10. We may now refer to the CTE issued by the State PCB vide letter dated 26.02.2013 as follows:-

“The promoter shall obtain environmental clearance under the provisions of the EIA Notification dated 14/09/2006 before starting any development / construction activities.

This residential group housing complex shall be a part of “Super Mega Mixed Use Integrated Industrial Park” being developed by the promoter, for which NOC has been granted by the Board.

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11	Noise pollution study	For the whole Super Mega project	For specific Falcon View project
12	Soil investigation	For the whole Super Mega project	For specific Falcon View project
13	Water balance	For the whole Super Mega project	For specific Falcon View project

13. The rejoinder further shows that the built up area of the Super Mega Project is 53,04,490.30 sqm., while as per Form 1, which is an application for EC, the proposed built up area is 11.27 lakhs sq. mtrs. approximately, out of which the residential area is 2.55 lakhs sq. mtrs. As stated by the SEIAA in its response quoted above, the EC was earlier granted for limited purpose of “earmarking various plots and pockets in the total area of the project by providing various facilities such as roads, sewer lines, water lines, electricity lines and other common facilities”, without considering the impact of all the activities of the Mega Project. Even in the application, the Project Proponent did not mention the extent of covered area, which has been later on sought to be developed.

14. From the above, it is clear that the EC granted for the Super Mega Project does not, in any manner, cover the Falcon View Project. Contention to the contrary is against the facts on record and has to be rejected. In spite of repeated directions of SEIAA and initiation of prosecution, the appellant has continued the constructions in utter disregard and defiance of the statutory norms and directions. The plea that a writ petition has been filed against order of SEIAA cannot in any manner justify continuing illegal constructions in violation of law for which there is no sanction in any of the orders of the High Court. The appellant is trying to create irreversible situation by completing the constructions and creating third party rights which is not congenial to the enforcement of rule of law and protection of environment and public

health. There is no merit in the contention that EC issue being within the purview of SEIAA, the PCB cannot go into such question. CTE itself is subject to EC. The State PCB can thus enforce conditions of CTE. The impugned order is within the purview of PCB jurisdiction.

15. Learned Counsel for the Appellant submitted there are other projects with similar position. Reference has been made to order of SEIAA Punjab dated 19.03.2020 in respect of M/s Emaar MGF Land Private Ltd. at Mohali and order dated 13.11.2019 of SEIAA Maharashtra in respect of M/s Indospace Industrial Park Badli Pvt. Ltd. in District Jhajjar, Haryana. If it is so, action may have to be taken by the concerned authorities, on verification of facts. We may only say that one illegality does not justify the other and no parity can be claimed by law violators with violations by others.

16. Reference may be made to law laid down by the Hon'ble Supreme Court on the subject of requirement of prior EC. In *Hanuman Laxman Aroskar v. Union of India*¹, dealing with the significance of requirement of EC to give effect to Precautionary and Sustainable Development principles, it was observed that balancing of development and environmental concerns is necessary. There is no trade off between the two. In *Alembic Pharmaceuticals v. Rohit Prajapati*², it was observed that commencement of a project without requisite EC has detrimental effect on environment and degradation is left unattended by legal consequences. In *Keystone Realtors Pvt. Ltd. v. Anil v. Tharthare and Ors.*³, it was observed that ex post facto EC deprives the statutory authorities opportunity to evaluate mitigation measures. In *Goel Ganga*

¹ (2019) 15 SCC 401 (paras 58, 88, 144, 169, 172 and 175)

² 2020 SC Online 347 (paras 24,26,27)

³ (2020) 2 SCC 66 (para 21)

Developers India Pvt. Ltd. v. Union of India⁴, it was held that normally 5% of the project cost has to be recovered as compensation or the project has to be demolished, if construction is without EC.

17. Thus, we do not find any merit in this appeal which stands dismissed.

18. Before parting with the order, we may also observe that apart from initiating prosecution, stopping illegal construction activities, undertaking mitigation/restoration measures and other steps for enforcement of rule of law, it may be necessary to assess the extent of damage to the environment and to recover compensation on 'Polluter Pays' principle, following due process of law.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

January 06, 2021
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⁴ (2019) 18 SCC 257 (para 64)