BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

REVIEW APPLICATION NO. 20 OF 2015
IN
ORIGINAL APPLICATION NO. 37 OF 2015
AND
REVIEW APPLICATION NO. 21 OF 2015
IN
ORIGINAL APPLICATION NO. 37 OF 2015
AND
(M.A. NOS. 696/2015, 697/2015, 723/2015, 729/2015 & 879/2015)
IN
ORIGINAL APPLICATION NO. 37 OF 2015
AND
REVIEW APPLICATION NO. 24 OF 2015
(M.A. NOS. 809/2015)
IN
ORIGINAL APPLICATION NO. 37 OF 2015

IN THE MATTER OF:

S.P. Muthuraman
S/o. Ponnusamy,
No. 204, Railway Feeder Road,
Sankar Nagar Post–627 357
Tirunelveli District

.....Applicant

Versus

Union of India & Ors.

..... Respondents

WITH ALL OTHER CONNECTED MATTERS

COUNSEL FOR APPLICANTS:

Mr. Pinaki Misra, Sr. Advocate with Mr. R. Saravankumar, Advocate and Mr. Pawan Duggar, MD for Applicant in R.A. No. 20
Mr. Rajiv Mehta, Sr. Advocate, Mr. R. Jawaharlal, Advocate with Mr. Saravana Kumar and Mr. Hitesh MD of SPR & RG for Applicant in RA No. 21
Mr. Vivek Chib, Mr. Ankit Prakash and Mr. Rishabh Kapur, Advocates for Respondent No. 1.
Mr. Abdul Saleem, Advocate for Respondent No. 2.

Mr. Ashwini Kumar, Sr. Advocate along with M/s R. Mohan and V. Balaji& C. Kannan for Respondent No. 3.
Mr. Kailash Vasudev, Sr. Advocate along with M/s R. Mohan and V. Balaji & C. Kannan for Respondent No. 4
Mr. Amit Singh Chadha, Sr. Advocate and Mr. K.S. Mahadevan Krishnakumar RS and Mr. Vijay Anand Advocates for Jones Industries; Mr. Amit S. Chadha, Sr. Advocate and Mr. R. Chandrachud, Adv. in M.A. No. 723 / 2015 for Respondent No. 5

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Mr. M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on: 25th August, 2015
Pronounced on: 1st September, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this order we would dispose of Miscellaneous Applications Nos. 696, 697, 723, 729 and 879 all of 2015, Review Application 20 and 21 of 2015, all filed by different Project Proponents seeking Review/Modification/Clarification of the judgment of the Tribunal dated 7th July, 2015, in Original Application No. 37 of 2015 to the extent that the Environmental Compensation imposed by the Tribunal vide its judgment dated 7th July, 2015 be reduced and/or waived completely. Along with them, a Review Application No. 24 of 2015, is also filed by the applicant in Original Application No. 37 of 2015 seeking review and further directions in terms of the said judgment of the Tribunal praying that the authorities be directed for demolition of the projects in question.

2. The applicant in O.A. No. 37 of 2015 has approached this Tribunal with a prayer that the Office Memorandums issued by the MoEF on 12th December, 2012 and as amended by another Office Memorandum dated 27th June, 2013 were liable to be quashed and the respondent should be directed to take proper action including prosecution against the Project Proponent as mandated by law. They had not only started construction but, in fact, had practically completed the project without even applying for any permission required by them in law and in any case before obtaining the Environmental Clearance under the provisions of the Environment Protection Act, 1986 (for short 'Act of 1986'), Environment (Protection) Rules, 1986 (for short 'Rules of 1986') and Environmental Clearance Regulations of 2006 (for short 'Notification of 2006'). The application was vehemently contested by the Project Proponents and the applicant before the Tribunal on these issues. The Tribunal pronounced a detailed judgment dated 7th July, 2015 quashing these Office Memoranda.

3. The Tribunal while quashing the Office Memoranda in the said judgment while declined demolition of the structures raised by the Project Proponents and passed certain directions. It will be useful to refer to the relevant extracts of the judgment of the Tribunal dated 7th July, 2015.

> "158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle

in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert major environmental problem before the most serious consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigors particularly when the faults or acts of omission, commission are attributable to the Project Proponent.

The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgment of the Supreme Court in the case of *M.C. Mehta and another vs. Union of India and others*, JT 1987 (1)SC 1, *Vineet Narain and Ors. vs. Union of India (UOI) and Anr.*, JT 1997 (10)SC 247 and *University of Kerala vs. Council, Principals', Colleges, Kerala and Ors.*, JT 2009 (14)SC 283.

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the

environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or non-compliance. The authorities have proposed action against three of the Project Proponents and have taken proceedings in the Court of competent jurisdiction under Act of 1986. However, no action has been taken against other four Project Proponents as of now. Penalties can be imposed for violation in due course upon full trial. What requires immediate attention is the direction that Tribunal should pass for mitigating as well as preventing further harm. As far as further remedial measures, alterations, demolition or variation in the existing structure in the interest of environment and ecology which is required to be taken to preserve the environment are to be suggested by the Committee that we propose to constitute. However, as far as damage that has already been caused to the environment and ecology by the illegal and unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

161. We may specifically notice here that all the Project Proponents had filed contentions and documents in support of their respective case. They addressed the Tribunal at length on factual matrix of the case as well as on law. Various contentions and claims raised by the Project Proponents before the Tribunal have been deliberated in detail.

162. In all cases, SEIAA has passed an order directing delisting of applications for Environmental Clearance which is sought to be questioned by the Project Proponents. We do not find any fault on the part of SEIAA and other official Respondents in delisting the applications for obtaining Environmental Clearance. Just one reason is enough to de-list and to reject these applications which is that they started construction of their respective projects without obtaining Environmental Clearance and in some cases without even applying for grant of Environmental Clearance. All of them violated the direction of SEIAA as well as their own undertaking and apology to SEIAA that they would not raise construction till grant of

Environmental Clearance. There is more than ample evidence on record that such violations have been committed. Projects are squarely covered under the Notification of 2006 and therefore, we find no infirmity in the order of SEIAA in delisting applications of Project Proponents for grant of Environmental Clearance.

163. In view of the above detailed discussion, we pass the following order and directions:

1) We hold and declare the office memoranda dated 12th December, 2012 and 27th Jun3e, 2013 as *ultra vires* the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memorandums.
2) Consequently, the above office memoranda are held to be ineffective and we prohibit the MoEF and SEIAA in the entire country from giving effect to these office memoranda in any manner, whatsoever.
3) We hold and declare that the resolution/orders passed by the SEIAA de-listing the applications of the Project Proponents do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and Notification of 2006 and do not call for interference.
4) We hereby constitute a Committee of the following Members:

a) Member Secretary of SEIAA, Tamil Nadu.
b) Member Secretary, Tamil Nadu Pollution Control Board.
c) Professor from Department of Civil Engineering, IIT, Environmental Branch.
d) Representative not below the rank of Director from Ministry of Environment and Forest (to be nominated in three days from pronouncement of this judgment).
e) Representative of Chennai Metropolitan Development Authority.

5) The Member Secretary of Tamil Nadu Pollution Control Board shall be the Nodal Officer of the Committee for compliance of the directions contained in the judgment.
6) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. The comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would further

deal with the installation of STP's and other anti-pollution devices by the Project Proponents including proposed point of discharge on sewage and any other untreated waste. The Expert committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically environmentally sensitive areas and details of alteration of the natural topography and its effect on the natural topography, the natural drainage system etc. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.

7) The Committee shall further report if the conditions stated in the planning permission, and permissions granted by other authorities have been strictly complied with or not.

8) The Committee shall also report to the Tribunal if the suggestions made by SEIAA in their meetings adequately takes care of environment and ecology in relation to these projects.

9) What measures and steps including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?

10) The report should be submitted to the Tribunal within 45 days from the date of pronouncement of this judgment.

11) All the Project Proponents shall pay environmental compensation of 5 per cent of project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal illegal and unauthorized construction carried out by them. They shall deposit this amount at the first instance and subject to further adjustment. Liability of each of the Respondents is as follows:

Mr. Y. Pondurai: **7.4125 crores.**

M/s Ruby Manoharan Property Developers Pvt. Ltd.: **1.8495 crores.**

M/s Jones Foundations Pvt. Ltd.: **7 crores.**

M/s SSM Builders and Promoters.: **36 crores.**

M/s SPR and RG Construction Pvt. Ltd.: **12.5505 crores.**

M/s Dugar Housing Ltd.: **6.8795 crores.**

M/s SAS Realtors Pvt. Ltd.: **4.5 crores.**

12) The compensation shall be payable to Tamil Nadu Pollution Control Board within three weeks from the day of the pronouncement of the judgment. The amounts shall be utilised by the

Boards for the above stated purpose and subject to orders of the Tribunal.

13) After submission of the Report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.

The reports shall be submitted to the Registry of the Tribunal within a period of 45 days from the pronouncement of the judgment. Thereupon the Registry would place the matter before the Tribunal for further appropriate orders and directions.

164. The above appeal and applications are accordingly disposed of, however, in the facts and circumstances of the case, we leave the parties to bear their own cost."

4. All the Project Proponents before the Tribunal in Original Application No. 37 of 2015, except M/s. SAS Realtors Pvt. Ltd. (who, as we are informed, have preferred the statutory appeal before the Hon'ble Supreme Court of India), have filed the present applications for Review/Modification/Clarification of the judgment dated 7th July, 2015.

5. When these applications came up for hearing before the Tribunal on 5th August, 2015 the learned counsel appearing for the applicant/review applicants submitted that though they have taken many grounds and claimed different reliefs in their applications but they have instructions to make a statement that the scope of their review applications would be limited only to the extent of waving and/or reducing the Environmental Compensation awarded in the judgment dated 7th July, 2015. Thus vide order dated 5th August, 2015 the Tribunal directed that the hearing of the review application

would be limited in scope as prayed by the applicants. Accordingly, the parties were heard only on that issue.

6. During the course of hearing on 21st August, 2015 the learned counsel appearing for the applicant in the O.A. No. 37 of 2015 produced certain photographs and contended that the specific orders of the Tribunal prohibiting the Project Proponents from carrying-out construction in the said project in terms of the judgment dated 7th July, 2015 were being violated with impunity by the Project Proponents. He contended that one of the Project proponents, i.e., M/s. Dugar Housing Ltd. had even constructed two floors despite prohibitory orders by the tribunal. It was also contended that M/s. Y Pondurai has also violated the orders of the Tribunal and is also carrying on construction even on the date of hearing of the review applications.

By that date of hearing most of the Project Proponents have not even paid the Environmental Compensation in terms of the judgment of the Tribunal dated 7th July, 2015 and were again defaulting parties in terms of the judgment. However on behalf of M/s. SSM Builders and Promoters (which was wrongly spelt as M/s. SPR & RG Construction Pvt. Ltd. in the order dated 21st August, 2015) it has been submitted that they had offered payment of Rs. 7.2 Crores as a part payment towards their liability of Rs. 36 Crores in terms of the judgment of the Tribunal, however, the board declined to except such part payment. Consequently, the Tribunal directed the board to

accept the part payment without prejudice to the rights and contention of the parties.

7. Further, vide same order, Tribunal directed the Chennai Metropolitan Development Authority and the Tamil Nadu Pollution Control Board that if they found that any construction activity was being carried on, or any interior or exterior finishing work has been done after filing of the reports by these authorities on 15th April, 2015, then such buildings would be sealed. The matter was adjourned to 25th August, 2015, when the final arguments were heard. Till this date complete and comprehensive report by the authority in terms of the order of the Tribunal dated 21st August, 2015 was not submitted. However, this report was submitted on 25th August, 2015 itself. It was stated in this report that the buildings of the four Project Proponents, i.e., M/s. Y Pondurai, M/s Dugar Housing Ltd., M/s. SPR & RG Construction Pvt. Ltd. and M/s. Jones Foundations Pvt. Ltd. have been sealed. M/s. Y Pondurai has filed an application M.A. No. 879/2015 praying that their premises be de-sealed. Even the other Project proponents have also made similar prayers during the course of the arguments. Thus, we also propose to dispose of all these applications by this common order. The review application filed by the Project Proponents or the applicant in O.A. No. 37/2015 are opposed by the respondents in the respective applications on the ground that the review petitions are beyond the scope of Order XLVII Rule 1 of the Code of Civil Procedure, 1908 as these applications tantamount to rehearing the matter on the same issue. Such contention as raised in

these applications ought to be raised in an appeal and cannot be subject matter of review jurisdiction of this Tribunal. The other contention that is required to be considered by the tribunal is whether in the facts and circumstances of the case the tribunal should reduce the amount of Environmental Compensation imposed upon the respective Project Proponents in terms of the judgment dated 7th July, 2015 and or direct de-sealing of the projects of these Project Proponents. This Tribunal has been specifically conferred with the power of review under Section 19(4)(f) of the National Green Tribunal Act, 2010 (for short 'Act of 2010'), though in terms of Section 19(1) of the Act of 2010, the Tribunal is not bound by the provisions laid down by the Code of Civil Procedure, 1908 and is to be guided by the principles of natural justice. Furthermore, Section 19(2) of the Act of 2010 confers the power upon the Tribunal to regulate its own procedure. To put it simply, the provisions of the Code of Civil Procedure, 1908 are *stricto sensu* not applicable to the Tribunal but it would be guided by the applied principles of the Code of Civil Procedure, 1908. Thus, when one has to examine the power of the Tribunal to review its decisions, it would be guided by the Principles underlining Order XLVII Rule 1 of the Code of Civil Procedure, 1908. In this context it becomes necessary for us to examine the scope of review jurisdiction of the Tribunal as guided by the provisions of Order XLVII of the Code of Civil Procedure, 1908. The Supreme Court of India in the case of *State of West Bengal and Ors v. Kamal Singh and Anr*, (2008) 8 SCC 612 while examining the identical provisions existing in the Central Administrative Tribunal Act which are *pari*

materia to Section 19 of the Act of 2010. The Hon'ble Supreme Court held as under:

> "11. Since the Tribunal's power to review its order/decision is akin to that of the Civil Court, statutorily enumerated and judicially recognized limitations on Civil Court's power of review the judgment/decision would also apply to the Tribunal's power under Section 22(3)(f) of the Act. In other words, a Tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 is available. This would necessarily mean that a Tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision.
> …
> 15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision.
> …
> 19. In *Moran Mar Basselios Catholicos and Anr. v. The Most Rev. Mar Poulose Athanasius and Ors.* 1995 (1) SCR 520, this Court interpreted the provisions contained in Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:
> Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII , Rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used

> therein. It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, or least analogous to those specified in the rule."

8. There are limitations on exercise of Review Jurisdiction of the Courts or Tribunal. A review is by no means an appeal in disguise where by an erroneous decision can be guided. An error which is not self evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record. Besides this, the court has also stated that there is clear distinction between the erroneous decision and an error apparent on the face of the record. The first can be corrected by the higher forum while the latter can only be guided by exercise of Review jurisdiction (Refer: *Tungabadra Industries v. Government of Andhra Pradesh,* [964] 5 SCR 174, *Parsion Devi & Ors v. Sumitri Devi and Ors,* (1997) 8 SCC 715.

9. After the amendment of Order XLVII the expression “any other sufficient reason” had been added. This expression appearing in Order XLVII Rule 1 means a reason sufficiently analogous to those specified in the Rule. Any other attempt except an attempt to correct an error apparent or an attempt not relatable to any ground set-out in Order XLVII, would amount to the abuse of the liberty given to the Tribunal under the Act of 2010. (Refer: *Ajit Kumar Rath v. State of Orissa and Ors*, AIR 2000 SC 84). It is also a stated principal of

review jurisdiction that it is wide power vested in the Tribunal. It is intended to correct the error or a mistake apparent on the face of record but for which the Court would not have passed the order. If such error is persisted with or its perpetration shall result in miscarriage of justice then alone the Court would interfere. It has to prevent irritable justice but a review application cannot be considered favourably merely on the ground that a different view was probable and could have taken by the Tribunal. This power cannot be exercised for correction or mistake or to substitute a view. The review is not rehearing of an original matter in its expended form. A repetition of old over ruled arguments for submissions with a greater emphasis on hardship or financial constraints is not enough to reopen concluded adjudications. Where an applicant virtually seeks the same relief which had been sought at the time of arguing the main matter and had been negated the review would be not maintainable as it would amount to rehearing the matter as opposed to the concept of finality. (Refer: *Ms. Medha Patkar v. Ministry of Environment & Forests,* 2013 ALL (I) NGT REPORTER NEW DELHI 174, *Jain Studios Ltd. v. Shin satellite Public Co. Ltd.,* (2006) 5 SCC *501 and Kamlesh Verma v. Mayawati,* (2013) 8 SCC 320).

10. In light of the above principles we would now revert to examine whether these applications filed by the Project Proponents as well as the main applicant in the Original Application No. 37 of 2015 satisfy the essence of exercise of Review Jurisdiction. The main applicant in Review Application No. 24 of 2015 prays that as a result of quashing

of the Office Memoranda, the Tribunal ought to have directed the demolition of the structures as it would be the only consequence thereof. According to this applicant this is an error apparent on the face of the record. While the Project Proponents for various reasons have prayed that the Environmental Compensation awarded in the judgment be completely waived or be reduced. According to them this is an error apparent on the face of the record and in any case is a sufficient reason for reviewing the judgment to that extent.

11. We are of the considered view that the contentions of both these review applicants are without merit. It is neither an error apparent on the face of the record nor a reason sufficient enough to call for review. In the judgment dated 7th July, 2015, the Tribunal had considered in detail the respective contentions raised by the parties in regard to these matters in issue. The Tribunal held that it would not be proper at this stage to direct demolition and that it was not an unexceptional corollary to quashing of Office Memoranda that the demolition should be directed. The Tribunal appointed a committee to report on various environmental aspects including if there was any requirement for demolition of the structure or a part thereof. Directions if any, in this regard are to be passed only when the report of the committee is received.

12. As far as the fixation of Environmental Compensation directed to be paid by the Project Proponents is concerned, the Tribunal has heard the parties at length. The contentions of accrued interest, liability of the Project Proponents to the financial institutions, 3rd

party interest and other contentions sought to be raised now were considered by the Tribunal and finally direction for payment of Environmental Compensation in terms of paragraph 163 were passed. If any of these parties are aggrieved from the findings recorded in the judgment of the Tribunal then they had the remedy available to file a statutory appeal before the Hon'ble Supreme Court of India. These applicants have not only stated that they have not filed any appeal, but even that, they do not challenge the findings in the judgment except praying for reduction of the amount of the Environmental Compensation. This, in our considered view, cannot be a ground that would fall in any of the class of cases contemplated under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. It is exactly a case of arguing a review petition under the guise of an appeal.

13. All these applications are beyond the purview and scope of review as contemplated under Order XLVII, as they amount to re-agitating the issues already argued and decided by the Tribunal. Re-agitating same grounds under the guise of sufficient reason is impermissible in law. 'Any other sufficient reason' has to be sufficiently analogous to the principal grounds of Order XLVII, i.e., the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within the knowledge or could not have been produced by him at the time when the decree was passed or the order was made or on account of some mistake or error apparent on the face of the record. These grounds have not even been pleaded by the applicants in their respective review applications.

Consequently, we have no hesitation in concluding that these review applications are beyond the purview and scope of Order XLVII in so far as they pray for alteration of the judgement of the Tribunal dated 7th July, 2015.

14. Despite having held as above, we will still proceed to examine the merits of the other contentions raised by the parties before us. In terms of the directions contained in the judgment of the Tribunal dated 7th July, 2015, all the Project Proponents were required to pay five per cent of the project cost as Environmental Compensation. None of the Project Proponents have paid the entire amount due from them and in any case within the time stipulated in the judgment of the Tribunal dated 7th July, 2015. M/s. Y. Pondurai has deposited a sum of Rs. 1.5 Crores as against Rs. 7.4125 Crores payable by them. M/s. SSM Builders and Promoters have deposited Rs. 7.2 Crores as against Rs. 36 Crores, payable by them. M/s. Jones Foundations Pvt. Ltd. have not deposited any sum till 25th August, 2015, the date when the application was reserved for judgment, however, they made a statement that they will deposit Rs. 50 lakhs during the same day as against their liability of Rs. 7 Crores. M/s. Dugar Housing Ltd. had not deposited anything till the date of hearing but they have also stated that they would deposit Rs. 1 Crore against their liability of Rs. 6.8795 Crores within two weeks time. M/s. SPR & RG Construction Pvt. Ltd. have deposited nothing against their liability of Rs. 12.5505 Crores but they have also stated that they would deposit a sum of Rs. 1 Crore within two weeks time. M/s. Ruby Manoharan Property

Developers Pvt. Ltd. has deposited a sum of Rs. 40 lakhs as against their liability of Rs. 1.8495 Crores.

15. The plea of economic and business hardship has been taken up by all of these Project Proponents as a primary ground, while praying for complete waiver and/or reduction of the Environmental Compensation which is required to be paid in terms of the judgment dated 7th July, 2015. It has also been contended, particularly, in support of R.A. No. 20 & 21 of 2015 that they have taken loans from financial institutions and have to discharge their liability. In M.A. No. 729 of 2015, an additional ground has been taken that applicant has to pay a sum of Rs. 63 lakhs as EMI component, which comes out to be Rs 27 Crores, only on account of interest. Also, the Environmental Compensation should be computed and imposed upon the profits of the project and not its cost.

16. According to the applicant in R.A. No. 24 of 2015, the Project Proponents cannot claim any relief either in equity or in law. Their conduct as even noticed in the judgment would disentitle them from claiming such relief. Furthermore, they have not complied with the directions issued by the Tribunal in its judgment dated 7th July, 2015 and in fact, have further raised construction subsequent to pronouncement of the judgment. It is further submitted that in fact, two of the Project Proponents M/s. Ruby Manoharan Property Developers Pvt. Ltd. and M/s. Dugar Housing Ltd. have even filed a petition before the Southern Bench of the NGT, praying for issuance of directions to the authorities to grant them Environmental Clearance.

This fact was not even disclosed by the respective Project Proponents while the Original Application No. 37 of 2015 was heard at length before the Principal Bench of the Tribunal.

17. The Project Proponents have apparently not complied with the directions issued by the Tribunal in its judgment and the present applications even lack *bona fides*. The Project Proponents started their construction work without complying with laws and in fact, had even practically completed their projects without obtaining prior Environmental Clearance. They have also failed to deposit the environmental compensation, as stated above. Some of them have raised constructions after 7th July, 2015, even when the judgment contained specific prohibitions for not carrying on any construction or finishing activity, internal or external work, without specific orders of the Tribunal. It was only, keeping in mind the principal of sustainable development as envisaged in Section 20 of the Act of 2010 and the doctrine of balancing of interests that the Tribunal had passed the directions as contained in paragraph 163 of the judgment, instead of directing demolition of the properties forthwith. Some of the applicants have certainly taken undue advantage of the judgment of the Tribunal and have tried to overreach the process of law and justice both. Serious violators of law in all respects can hardly take the plea of financial hardship at this stage. Even if they have taken financial assistance from the institutions, they should have required the Project Proponents in normal course to strictly comply with the laws rather than offend them. Profit cannot be the basis for

imposition of the Environmental Compensation as contemplated under Section 15 and 17 of the Act of 2010. Profit of the project may be a relevant consideration for other laws like taxation but would hardly be of any relevance in the facts and circumstances of the present case. Here the whole project has come up in an unauthorized and illegal manner. There is no dispute that the Project Proponents before the Tribunal started the project without grant of Environmental Clearance and, in fact, even without applying for the same. The authorities concerned have now declined to grant Environmental Clearance to them and have even de-listed their projects. It is the entire project which requires prior Environmental Clearance and therefore, it has to be the cost of the project and not the mere profit of the project which should be the relevant consideration for the Tribunal to pass the orders in terms of Environmental Compensation to be imposed.

18. M.A. No. 879 of 2015 has been filed with a prayer for de-sealing the properties that were sealed by the authorities, in furtherance to the order of the Tribunal dated 21st August, 2015. Mainly four Project Proponents were stated to be carrying on the construction or the finishing activities despite the clear prohibitory orders under clause 14 of Para 163 of the judgment dated 7th July, 2015. The photographs filed on record show that in the case of M/s. Y. Pondurai, there is some variation in the construction as on 15th April, 2015, when the site was inspected by the Committee and the photographs have taken in August, 2015. The allegations are that there are trucks standing in

front of building and if minutely examined, it can be seen that the Project Proponent has constructed some wooden counters on one of the floors. We do not think that there is sufficient material before us to conclude that there has been any actual construction i.e. interior or exterior, by this Project Proponent. However, final report of the Committee is still awaited in this regard. Pollution Control Board and other authorities, though, have sealed this building and have even filed the compliance report before this Tribunal, however, they had not stated any such fact in their report. Thus, we direct this building be de-sealed for the time being and subject to further orders of the Tribunal. However, we make it clear that this Project Proponent would strictly adhere to the directions contained in para 163 of the judgment dated 7th July, 2015.

19. In relation to M/s. Ruby Manoharan Property Developers Pvt. Ltd. there is no definite documentation before the Tribunal to show that the building should remain sealed. In regard to M/s. Jones Foundations Pvt. Ltd. nothing has been stated by the authority in its compliance report about the additional construction carried out by this Project Proponent. However, we direct that building of this Project Proponent may also be de-sealed subject to further orders of the Tribunal which would be based upon the submission of the final report by the Committee. This Project Proponent shall now strictly comply with all the directions contained in para 163 of the judgment dated 7th July, 2015.

20. M/s. Dugar Housing Ltd. has constructed two floors after April, 2015, when the interim report by the authority was submitted before the Tribunal. They have also completed the exterior work of the two blocks. Normally, we would have overlooked any minor exterior work, required for maintenance of the structures as had been claimed by the Project Proponent before the Tribunal. But the construction of two floors which is clear from the photographs placed on record cannot be overlooked and thus we cannot permit this building to be de-sealed. This Project Proponent has violated the prohibitory orders issued by the Tribunal and has also not deposited the requisite amount till date. In light of the contemptuous conduct of this Project Proponent, we decline the request for de-sealing of this building and direct that it would remain sealed till further orders of the Tribunal.

21. M/s. SPR & RG Construction Pvt. Ltd. has carried out construction and finishing works and the photographs placed before us show a crane lift in which men are at work. The explanation on behalf of the Project Proponent that the Project Proponent had already finished the project and that the persons shown in the photograph were involved in maintaining the building, does not aspire confidence and thus not acceptable. Therefore, we also decline the request of this Project Proponent for de-sealing the building. The building would remain sealed subject to further orders of the Tribunal, which would be passed upon submission of the final report by the high powered committee, appointed by the Tribunal. One of the contentions raised was that the counsel once appearing for the appellant has filed a

personal affidavit in the proceedings before the Tribunal and thus the averments made therein should not be taken notice of. However, on behalf of applicant it was submitted that it was due inevitable circumstances and limitation of the applicant that affidavit had to be filed by the counsel who thereafter has not appeared as counsel for the applicant in this case. We would not like to deliberate on this issue any further as we are taking into consideration other materials available on record for passing the present order. Lastly, it was contended on behalf of the Project Proponent that they could not deposit the Environmental Compensation due to financial limitations. Normally we would have declined any extension to these applicants but in the interest of justice we would extend the time for depositing the Environmental Compensation in terms of para 163 of the judgment of the Tribunal by two weeks and by way of last opportunity. If the Project Proponents, now, fail to deposit the same amount, the Tribunal would pass such necessary orders as are permissible in accordance with law. This is the last opportunity being granted to the Project Proponents.

22. We may also notice here that in the judgment, the Tribunal has also constituted a high powered expert committee under paragraph 163 (4). An application was moved for substitution of the Members of the Committee. In place of Member Secretary, SEIAA, Tamil Nadu who had demitted office, the Director, Environment, Tamil Nadu was proposed. Vide order dated 21st July, 2015, Mr. H. Malleshappa, was included as Member of the committee. Vide order dated 17th August,

2015 Mr. J.S. Kamyotra, Director and Ex-Member Secretary, Central Pollution Control Board was inducted as a nominee of the Member Secretary of the Central Pollution Control Board in place of Member Secretary, Tamil Nadu Pollution Control Board. Keeping in view the dimensions of the tasks that are required to be performed by this committee and the fact that there have been substitutions of two senior members of the committee by persons of not equal status, we direct that Mr. A.K. Mehta, Jt. Secretary, MoEF & CC shall be the Chairperson of this committee and will oversee the entire work of the committee and submission of the final report of the Tribunal. The report shall be signed by all the members including the Chairperson.

23. In view of above discussion, we dispose of all these applications with the following order:

a). We hold that the Review Applications filed by the respective parties are patently beyond the purview and scope of Order XLVII Rule 1 of the CPC read with Section 19(4) of the Act of 2010.

b). *Dehors* the above and in any case, we decline to reduce and/or waive the liability of the Project Proponents on account of environmental compensation, as directed in terms of the judgment of the Tribunal dated 7th July, 2015.

c). However, we extend the time for payment or remainder thereof, payable by each of the Project Proponents by a further period of two weeks. This shall be computed from the date of this order and not

from the date on which the period for payment lapsed in terms of the Judgment dated 07th July, 2015.

d). We direct that the buildings belonging to the two Project Proponents, M/s. Y Pondurai and M/s. Jones Foundations Pvt. Ltd., shall be de-sealed, while the projects of the other two Project Proponents, M/s. Dugar Housing Ltd. and M/s. SPR & RG Construction Pvt. Ltd. would remain sealed, till further orders of the Tribunal, which would be passed upon submission of the final report by the Committee.

e). The committee constituted under the judgment now chaired by Jt. Secretary, MoEF&CC shall submit its final report to the Tribunal at the earliest. The members of the committee are as follows:

1. Mr. A.K. Mehta, Joint Secretary, MoEF & CC (Chairperson of this committee).
2. Mr. H. Malleshappa, Director Environment, SEIAA.
3. Mr. J.S. Kamyotra, Director, Central Pollution Control Board.
4. Professor from Department of Civil Engineering, Environmental Branch, IIT Bombay.
5. Representative not below the rank of Director from MoEF & CC.
6. Representative of Chennai Metropolitan Development Authority.

f). We direct the Chairperson of the Committee to take immediate steps to ensure submission of the complete and comprehensive report to the Tribunal in terms of the judgment dated 7th July, 2015 without any further delay.

g). We decline the relief of demolition prayed for in R.A. No. 24 of 2015, at this stage. Further direction in that behalf shall also be passed by the Tribunal upon submission of the final report by the Committee.

24. With the above directions all these applications are disposed of, however, without any order as to costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Justice M.S. Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Mr. Ranjan Chatterjee
Expert Member

New Delhi
1st September, 2015