

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

APPLICATION NO.76 OF 2013 (SZ).

IN THE MATTER OF:

M. Murugan,
S/o. Muthu Chettiar,
5/3, Sundaram Chetty Street,
Shevapet,
Salem – 636 002.

.. Applicant

Versus

1. Maravar Mahajana Sangam
A Trust represented by its President Sri.Tiruvengadam,
Old No.35/1, New No.2/1, Sundaram Chetti Street,
Shevapet,
Salem – 636 002.
2. District Collector
Salem – 636 001.
3. The Commissioner
Salem Corporation,
Salem – 636 001.
4. The Health Officer
Salem Corporation,
Salem – 636 001.
5. The Officer-in-Charge of Pollution Control
Siva Towers,
Meyyanur Road,
Salem – 636 004.
6. The Town Planning Officer
Salem Corporation,
Salem – 636 001.

7. The Superintending Engineer
Tamil Nadu Electricity Board,
Salem Distribution Circle,
Bye Pass Road,
Udayapatti,
Salem – 636 014.
8. The Assistant Engineer
Salem Electricity Distribution,
Arunachala Asari Street,
Fort Main Road,
Salem – 636 001.
9. C. Palanisamy
S/o. Chinnakannu,
Old No.35/1, New No.2/1, Sundaram Chetti Street,
Shevapet,
Salem – 636 002.
10. M. Kalidas
S/o. Muthu,
Old No.35/1, New No.2/1, Sundaram Chetti Street,
Shevapet,
Salem – 636 002.
11. Jayaprakash
Old No.35/1, New No.2/1, Sundaram Chetti Street,
Shevapet,
Salem – 636 002.
12. Chandiran,
Old No.35/1, New No.2/1, Sundaram Chetti Street,
Shevapet,
Salem – 636 002. .. Respondents

Counsel appearing for the Applicant : Shri K.Raman Raj

Counsel appearing for the Respondents : Shri V.G. Suresh Kumar for Respondent No.1; Shri M.K.Subramanian and M.R.Gokul Krishnan for Respondent Nos. 2, 4, 7 and 8; Shri Abdul Saleem for Respondent No.3 and 6; Smt.H.Yasmeen Ali for Respondent No.5; Shri K.Vasu Venkat for Respondent No. 9, 11 and 12.

ORDER

PRESENT:

1. **Hon'ble Shri Justice M. Chockalingam**
Judicial Member
2. **Hon'ble Shri P.S.Rao**
Expert Member

सत्यमेव जयते

Dated, 13th October 2015.

1. Whether the judgment is allowed to be published on the internet. Yes / No
2. Whether the judgment is to be published in the All India NGT Reporter. Yes / No

1. The applicant has filed this application to restrain the respondents 1, 9, 10, 11 and 12 from carrying on building and manufacturing silver articles which is adversely affecting the environment and health of the residents in Shevpet area, Salem.

2. The applicant along with his family is residing at Sundaram Chetty Street, Shevapet, Salem, a residential area, for more than five generations. The 1st respondent was maintaining a *Nandavanam* (garden) for supplying flowers and meeting the needs of the Vinayagar temple maintained by it and about in 2009, put up constructions in the trust property and leased it to 9th and 10th respondents who are using the buildings to manufacture silver articles. The 9th and 10th respondents brought in heavy machinery powered by electric motors to forge and work on silver items and have erected chimney and burn enormous amount of cow dung cakes to make fire and melt silver to cast and mould the

silver into bars, rods and other items. The 9th and 10th respondents are running and operating an industrial foundry to manufacture silver items and operate the unit round the clock engaging more than 14 employees and labourers. This causes unbearable noise, air pollution and water pollution in utter violation of the laws and regulations and affects the health of adults and children of the said area and the applicant, his wife and children are affected severely due to it.

3. The Applicant sent a representation dated 12.06.2009 to the District Collector, Salem, the Health Officer, Salem Corporation and the Officer-in-Charge of Pollution Control, Tamil Nadu Pollution Control Board, Salem, the respondents 2, 4 and 5 respectively herein who did not take any action. The Applicant sent further representations dated 07.01.2010, 28.03.2012 and 22.02.2013 to the respondents 2 to 8 against the illegal activities of the respondents 1 and 9 to 12, but so far, no action has been taken to control or check the illegal activities of the respondents 1, 9 and 10. The 1st respondent has now allowed the 11th and 12th respondents for illegal construction of non-residential buildings for carrying on their business and manufacturing activities in the *Nandavanam* of the 1st Respondent. The Applicant understands that the Respondents 11 and 12 intend to carry on silver dyeing units in the said space after completion of the illegal building construction.

4. The Respondents 1, 9 and 10 are carrying on their business in manufacturing and forging silver bars, rods and other such items without obtaining consent orders, clearance, No Objection Certificate and necessary

statutory permission and approval from the Tamil Nadu Pollution Control Board (TNPCB) and the 11th and 12th respondents intend to start and commence silver dyeing units without obtaining necessary statutory permission and approval from the TNPCB according to the applicant. The cause of action is continuous and recurring as the Respondents 1, 9 and 10 are carrying on their manufacturing and forging activities constituting a continuous wrong and the 11th and 12th respondents are taking steps to run a silver dyeing unit without obtaining consent of the TNPCB. The Respondents 1, 9, 10, 11 and 12 have not obtained any statutory permission for putting up non-residential buildings and the illegal constructions cannot be used for illegal purposes. The Respondents 1, 9 and 10 are not entitled to supply of electrical energy for their illegal manufacturing activities.

5. The Applicant states that the respondents 1, 9 and 10 ought not to be allowed to carry on their illegal operations in utter violation of the Pollution control laws and their units should be closed and shut down. The 11th and 12th respondents should be prevented from starting or operating silver dyeing units without any permission or approval from statutory authorities. The 1st respondent cannot be permitted to convert a *Nandavanam* dedicated to serve the Vinayagar Temple and ought to be directed to restore the *Nandavanam* to its natural beauty, environmental freshness, peace and calm of the residential locality. The Applicant has no other alternative remedy other than approaching this Tribunal for redressal of the grievances narrated herein above.

6. The 1st respondent has filed its reply stating that the application is not maintainable as it is barred by limitation. The 'continuous cause of action' principle put forth by the applicant is not relevant as the cause of action arose in 2009. The building space was rented out by the 1st respondent to the respondents 9 and 10 in 2009 and they have been carrying on the impugned activities for the past 5 years. The respondents are not using cow dung cakes to make fire and there is no heavy machinery in the premises. Though chimney is available there is no need to use the same and the chimney is not being used at all. The respondent's buildings are assessed to property tax. The area that this respondent and other private respondents are residing is called Shevapet which has a Geographical Indication (GI) tag for manufacturing silver anklets. The applicant has not complained about any noise or air pollution by the similar activities being carried in other premises in the same street. According to this respondent, question of obtaining consent from the TNPCB does not arise and contends that there is no merit in the application and it has to be dismissed.

7. The 5th respondent's reply which is also adopted by the 2nd and 4th respondents put forth that the 9th and 10th respondents have installed facilities in the building leased out by the 1st respondent to manufacture silver jewellery. The process involves heating the silver rods, pressing them into required shape by die casting and assembling of various parts to manufacture the jewellery. Heating, pressing and moulding are carried out using electric power. The 11th and 12th respondents are in the process of installing required machines and all

these units come under tiny sector having an operational area of size 12 × 10 feet size (or) in otherwise the above units are silver smithy shops. Based on the Petition submitted by the applicant to the District Collector dated 22.02.2013, the units of the 9th and 10th respondents were inspected on 01.03.2013 and they have been instructed to carry out work during 6 AM-8 PM only. Also the 11th and 12th respondents have been addressed to install the smithy facilities after obtaining the license from the local body.

8. The 9th respondent's reply which is filed on behalf of himself and also on behalf of the 11th and 12th respondents stated that the application is not maintainable in law and on facts and it deserves to be dismissed *in limine*. They have established and are running their micro units with license from Salem Municipal Corporation to carry on a traditional trade. The volume of the work done by them is too small to cause any environmental pollution and heavy machineries are not being used by them. The respondents are using electric heaters which do not emanate any smoke and also they are not into manufacturing of silver bars or rods. The respondents' activity cannot be construed as an industrial activity or industrial project and hence does not require Environmental Clearance (EC).

9. On the pleadings, the following questions were formulated for consideration:

- i) Whether it is necessary to restrain respondents 1, 9, 10, 11 and 12 from carrying on building and manufacturing activities in the property mentioned in the application since they have not obtained consent from the TNPCB and also to order closure of the units;
- ii) Whether a direction has to be issued to respondents to disconnect the electric service connection given to respondents 1, 9 and 10 for the said premises;
- iii) Whether a direction has to be issued to restore the *Nandavanam* to its original condition; and
- iv) To what relief the applicant is entitled to.

10. Heard the learned counsel for the applicant, Shri K.Ramanraj and also for all the respondents and perused all the materials made available. As seen from the pleadings of the applicant, it could be seen that the 1st respondent, a trust managing Maravar Mahajana Sangam was maintaining a *Nandavanam* and in that site, the 1st respondent raised constructions and the buildings which were leased out to different tenants including respondents 9-12. The applicant has specifically asked for a direction to the 1st respondent to restore the *Nandavanam* to its original condition and that it would be quite evident that the applicant is more aggrieved by the conversion of *Nandavanam* into constructions. The powers and jurisdictions vested on the Tribunal is only to settle the civil disputes arising out of a case wherein there exists a substantial question relating to environment and ecology that too which warrants a decision

falling under any of the provisions of the enactments specified under Schedule-I annexed to the National Green Tribunal Act, 2010. The

allegations raised against the 1st respondent, the trust management is that it converted the *Nandavanam* into buildings and has raised buildings where originally the *Nandavanam* existed and no allegations are made against the 1st respondent complaining of any pollution and thus it would be quite clear that the application which is filed without any cause of action against the 1st respondent and it requires an order of dismissal.

11. It is the pleaded case of the applicant that the 9th and 10th respondents were using the buildings to manufacture silver articles and for that purpose they have brought in heavy machinery powered by electric motors to forge and work on silver items and also have erected chimney and burn enormous amount of cow dung cakes to make fire and melt silver to cast and mould the silver into bars, rods and other items and by doing so they have been causing enormous noise, air and water pollution in utter violation of law and the activities of the respondents have caused health hazards since they are draining sewage water into the open ditch on the sides. The smoke emanated therefrom has been causing suffocation and breathing problems too.

12. The contesting respondents flatly denied all the allegations made against them. At the earliest, it was contested by the TNPCB that there was a *Nandavanam* located opposite to the applicant's house which was maintained by the 1st respondent and after making constructions on the said place, the same

was let out on lease to the respondents 9-12. It was also contended that the 9th and 10th respondents have installed facility to manufacture silver jewellery which involves the process of heating the silver rods into the required shape by die casting and assembling of various parts to manufacture the articles. It was also made clear by the Board that the said process was done by the respondents by using only electric power and thus it was noticed that the case of the applicant that the 9th and 10th respondents have erected chimney and burn enormous amount of cow dung cakes for the said process and causing air pollution was totally unfounded and thus consequently the case of the applicant that the activities of the 9th and 10th respondents have caused health hazards because of air pollution was only imaginary. At this juncture, it is pertinent to point out that the 11th and 12th respondents were taking steps to install machinery to manufacture silver jewellery. It was contended by the counsel for the contesting respondent that the application is filed with ulterior motive and invented reasons of pollution while there was no pollution of any kind and respondents 9-10 have been carrying on and 11th and 12th respondents are intending to carry on the silver smithy in small tiny shops of 12×10 feet size.

13. In view of the controversy raised, the Tribunal issued a direction on 28.10.2014 to the concerned District Environmental Engineer (DEE) of the Board to make the inspection of the units and file a status report in respect of the noise pollution. Pursuant to the direction, the DEE made an inspection of the units of the 9th and 10th respondents on 28.11.2014 and filed a status report. A

perusal of the report makes it clear that the 9th respondent purchases silver rods from outside and processes them into required shape by heating by electric heater followed by pressing. The said unit was operated using Drawel Machines-4 Nos. and Shining Machine-2 Nos. with total capacity of 9 HP motor. During noise level survey, it was noticed that the noise levels are within the prescribed limits as per the Noise Pollution (Regulation and Control) Rules, 2000 (Noise Pollution Rules, 2000) and did not exceed ambient noise standards by 10 dB (A) and the ambient noise standards for residential area is 55 dB (A). Equally, at the time of inspection of the unit of the 10th respondent, it was noticed that the unit was manufacturing silver jewellery using silver rods purchased from outside and processed into required shape by heating and pressing. The unit was operated by Drawel machines-3 Nos. and Shining machines-2 Nos. with total capacity of 9 HP and 2 HP motors. Here also the noise level survey found the noise within the limits prescribed as per Noise Pollution Rules, 2000 since it did not exceed the ambient noise standards by 10 dB (A) and the ambient noise standards for residential area is 55 dB (A). Equally, during the inspection of the units of the 11th and 12th respondents it was noticed that after purchase of the silver rods from outside they were carrying on the silver jewellery manufacturing by shaping them by hand press. It was also noticed that the noise levels in both the units of the 11th and 12th respondents units were within the prescribed standards under the Noise Pollution Rules, 2000 as they did not exceed the ambient noise standards. It is pertinent to point

out that the noise level survey was conducted by the Advance Environmental Laboratory, TNPCB, Salem and also after giving notice and in the presence of the complainant/applicant. It remains to be stated that at the time of inspection nothing was noticed in respect of collection of sewage or draining the sewage into any ditch outside as contended by the applicant.

14. The applicant took nearly two months time for filing objections to the status report submitted by the Board. Finally, he filed objections to the status report on 12.03.2015 which according to the contesting respondent and the Board were found to be thoroughly untenable. Since, it was contended by the counsel for the applicant that at the time of inspection, the unit of the 11th respondent was not in operation the status report of the DEE should not be relied for any purpose. Pointing to the report, the counsel for the Board submitted that the inspection was done for the units from 6 AM- 8 PM for the whole day and the unit of the 11th respondent was under operation during those hours.

15. In view of the controversy after hearing both the sides, the Tribunal appointed an Advocate Commissioner on 07.05.2015 with a direction to inspect the unit of the 11th respondent during hours of operation and file a report in respect of the noise level in order to decide the issue. On the date of next hearing on 09.07.2015, the Advocate Commissioner reported that after all the arrangements were made for conducting the inspection a memo dated 01.07.2015 was served upon her by the counsel for the applicant not to make the

inspection stating that a request is being made to the Tribunal to modify the order dated 07.05.2015 and appoint an Advocate Commissioner within the local limits of Salem. When the memo was placed before the Tribunal, the same was rejected. The counsel for the applicant sought 4 weeks time to cooperate with the already appointed Advocate Commissioner to execute the operation of the work. On the adjourned day, instead of extending cooperation to the Advocate Commissioner to execute the commissioned work the counsel for the applicant submitted that the Commission was not necessary and he would make the submissions.

16. Both the sides are permitted to put forth their respective cases as discussed above. The applicant could not maintain the application as against the 1st respondent. In so far as the complaint of air and water pollution made against the respondents 9-12, they were thoroughly unfounded. In so far as the alleged noise pollution by the silver manufacturing units of the respondents 9-12 as pointed out above, at the time of inspection the noise level was found within the limits prescribed under Noise Pollution Rules, 2000 and did not exceed the ambient noise standards. No reason or circumstance is noticed to take any different or contra view to the contents of the status report filed by the DEE who made inspection in the presence of the applicant. Having agreed for the appointment of the Advocate Commissioner and necessary preparations made for the inspection of the Advocate Commissioner the applicant has not extended his co-operation for the same which would be clearly indicative of the fact that

if a report is filed by the Advocate Commissioner after making survey of the noise level it would be against the applicant's case. Hence, in order to avoid the same, after lapse of a number of months, the applicant even came forward with a request that the inspection of the Advocate Commissioner was not pressed and thus the entire allegations of air, water and noise pollution made against the respondents 9-12 are thoroughly unfounded and the application is devoid of any merits whatsoever.

17. The Tribunal feels that though the allegations of air, water and noise pollution made against the respondents are unfounded certain other issues raised by the applicant in the application have got relevance here as they may affect/ degrade the environment such as allowing the construction of buildings in the *Nandavanam* which as per the applicant is against the law. These new constructions for the installation of smithy facilities for carrying out the activities of the 11th and 12th respondents may lead to a possible increase in the noise levels in the area having cumulative impact and therefore the TNPCB has to monitor the same and in case such new constructions are against law it is for the respondents 1,2 and 6 to look into the matter whether granting permission for the construction in the *Nandavanam* can be allowed as per law, if not they should be stopped.

18. The activities in the Shevpet area of Salem city with regard to making traditional silver articles though going on for a long period and even got recognition in the international arena by getting GI tag under Intellectual

Property Rights, it is necessary to look into the matter as to whether such commercial activities though they are small scale in nature but which install and operate electric motors, machinery and equipment for smithy operations in such residential localities, can be allowed to be continued without formulating necessary siting guidelines. In a case of similar nature involving small scale commercial activities of making sweets and *Kaaram* and bakery products dealt in O.A.No. 118/2014(SZ), this Tribunal in its order dated 02.09.2015 by disposing the application, held as follows:

But it is always necessary for PCB to frame appropriate guidelines by fixing norms for such small scale commercial activities in residential areas with reasonable restrictions and prescribing the standards so that no pollution is caused and the business activities of such small traders who have got a Fundamental Right to carry on their business as per the Constitution, go unhindered without affecting their livelihood. Such regulatory measures by the PCB are quite necessary in such cases as no standards are prescribed in the notification under the Environment (Protection) Act, 1986 given by the Ministry of Environment and Forests and Climate Change (MoEF&CC) and one cannot come to a definite conclusion to the understanding of the issue.

19. Therefore the PCB has to take the above directions into account and formulate and issue suitable guidelines, if not yet issued. Apart from the above, the respondents 2-4 and 6-8 should also examine whether the installation and operation of electric motors up to 9HP capacity in residential localities is permissible as per law and take further necessary action, if required to restrict the capacity of the motors.

20. The applicant may lodge complaint with the concerned authorities notified under the Noise Pollution (Regulation and Control) Rules, 2000 if he feels so, in case the notified ambient noise levels exceed the prescribed limits for day time as well as night time.

21. With the above observations and directions, the application stands disposed of. No costs.

(Justice M. Chockalingam)
Judicial Member

(Shri P.S. Rao)
Expert Member

Chennai.

Dated, 13th October, 2015.

NGT