

APPROVED 10/4

Exp. C.A. No. 3500/17

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,

DIST: NAGPUR

SUMMARY CRIMINAL CASE NO. 13066 OF 2015

22/5/15  
NAGPUR

Maharashtra Pollution Control Board )  
 3<sup>rd</sup> and 4th Floor, Kalpataru Point Building, )  
 Sion (East), Mumbai- 400 022 )  
 (Represented by Shri. A. D. Mohekar )  
 Regional Officer, Nagpur )  
 Maharashtra Pollution Control Board, )  
 having his office at Udyog Bhavan, )  
 5<sup>th</sup> Floor, Near Sales Tax Office, )  
 Civil Line, Nagpur-440 001 )

The application submitted  
 presented by applicant / Complainant  
 is hereby registered as case No. 13066 of 2015  
 B.C.C./S.C.C. No. 13066/2015

22/5/15  
 JUDICIAL MAGISTRATE  
 NAGPUR

---Complainant

Versus

1) M/s. Nagpur Housing & Area Development Board )  
 (A MHADA Unit) )  
 Gruh Nirman Bhavan, Civil Lines, )  
 Nagpur-440 001 )  
 (Summons to be served upon )  
 2) Shri Pradipkumar Dange, Chief Officer, )  
 M/s. Nagpur Housing & Area Development Board )  
 (A MHADA Unit) )  
 Gruh Nirman Bhavan, Civil Lines, )  
 Nagpur-440 001 )



22/5/15  
 2

Handwritten signature or mark.

order

- 1) Paused complaint and the documents filed in support.
- 2) Heard the Ed-Advocate representing the complainant.
- 3) It appears that the accused have carried out this conspiracy activity at the site without compliance without obtaining Environmental clearance which is mandatory under the EIA Notification, 2006. Thus prima facie it appears that the accused have committed offence u/s 15 of the Environment (Protection) Act, 1986. Hence I pass following order

Issue process against the accused for offence punishable u/s 15 of the Environment (Protection) Act 1986, dated 25/08/2016.

→ K. S. S. S.  
12/08/2016

Sri Arun Raghunath Borse, )  
Executive Engineer-I, )  
M/s. Nagpur Housing & Area Development Board )  
(A MHADA Unit) )  
Gruh Nirman Bhavan , Civil Lines, )  
Nagpur-440001 )

--Accused



*[Handwritten mark]*

Complaint under section 15 and 16 of the Environment (Protection)

Act, 1986 r/w the Environment Impact Notification, dtd 14/9/2006.

MAY IT PLEASE YOUR HONOUR:

1. The Complainant above named is the Maharashtra Pollution Control Board constituted under Section 4 of the Water (Prevention & Control of Pollution) Act, 1974 and shall be deemed to be the State Board for the Prevention & Control of Air Pollution under the provisions of the Air (Prevention & Control of Pollution) Act, 1981. (Herein after referred to as "the said Board" for the sake of brevity). The Board is further entrusted with the implementation of the Environment (Protection) Act, 1986 and Rules made there under. (Herein after referred to as "the said Acts" for the sake of brevity). The Board is a Body Corporate constituted by the State Government under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, having perpetual succession and a common seal with the power to sue or be sued. Being statutory authority, the Board is represented by Shri. A.D. Mohekar, who is the Regional Officer at Nagpur for the Maharashtra Pollution Control Board, under whose jurisdiction the activities of the Accused Nos.1 to 3 are situated. He is a Public Servant under Section 50 of the Water (Prevention & Control of Pollution) Act, 1974, under Section 44 of the Air (Prevention & Control of Pollution) Act, 1981 and under Section 21 of the Environment (Protection) Act, 1986. He is overall responsible for the implementation of the above Acts and Rules made there under in order to secure the compliances of the provisions of the said Acts.

It is submitted that the Complainant-Board has authorized the Regional Officers of the Board for the purposes of visit, inspection and sampling under the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 respectively. The Ministry of Environment & Forests, Govt of India by S.O.394(E) Notification dtd 16/4/1987, as amended from time to time, authorized the Regional Officers of the State

Authority before starting any construction work or preparation of land by the Project Management except for securing the land. Similarly, for expansion and modernization of existing projects or activities listed in the Schedule under the Notification with addition of capacity beyond the limits specified for the concerned sector, which cross the threshold limits given in the Schedule after expansion, shall obtain prior Environmental Clearance from the competent authority.

The said activity of the Accused falls under category No. 8(a) under Schedule in the said Notification. A copy of the said Notification dtd.14/09/2006 is enclosed and marked as an **Annexure-B**.

5. The then Addl. Chief Secretary, Environment Dept., Govt. of Maharashtra by letter dtd. 20/12/2014 had issued Proposed Directions to the Accused No.1 for carrying out the construction activity without obtaining prior Environmental Clearance from the Govt. of Maharashtra, thereby violated the provisions of EIA Notification, 2006. The Accused were directed to submit a reply within 15 days time from the date of receipt of the proposed directions.

6. The Accused had submitted their reply dtd.07/02/2015, wherein it was informed that the building plan for plot no.5 & 6 were approved by the Town Planning, Nagpur on 20/09/2010 respectively and they had applied for EC on 21/10/2014 for proposed total BUA of 2,05,306.06 sqmtrs.

7. Thereafter, the Principal Secretary, Environment Dept. had extended personal hearing to the Accused No.1 on 09/04/2015. During the course of hearing, it was observed that the Accused had first sanctioned the plans from the Nagpur Municipal Corporation for construction at Plot Nos. 5 & 6 on 20/09/2010 for proposed total BUA of 58955.559 sqmtrs and subsequently amended the plans for Plot Nos. 5 & 6 on 31/07/2012 for proposed total BUA of 72921 sqmtrs. It was further observed that the Accused had applied for EC on 21/10/2014 for proposed total BUA of 2,05,306.06 sqmtrs. The Accused had carried out



6

Pollution Control Boards, whom the powers have been delegated under Section 20, 21 and 23 of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 within the area laid down under their jurisdiction to take cognizance of the offences punishable under the provisions of the Environment (Protection) Act, 1986 and Rules made there under. A copy of the said Notification dtd 16/4/1987 published in the Official Gazette of the Central Government is enclosed and marked as an **Annexure-A**.

2. The Accused No.1 is a Company constituted under the provisions of the Company Act. The Accused No.1 is a Developer of the existing /proposed construction of Residential Apartment scheme at Plot No. 1 to 6, CTS No.101, 154, 155 & 159, Sheet No.227 & 233, Mouza Nagpur, Tehsil Nagpur, District Nagpur, who is represented by Accused No.2, Shri Pradipkumar Dange, the Chief Officer and Accused No.3, is Shri Arun Raghunath Borse the Executive Engineer-I of the Accused No.1 for the execution of the construction work at the said site. The Accused No.2 & 3 are directly incharge of and responsible to the Company for the conduct of business of the Company as well as the Company and responsible for the above project and compliance of various provisions of the above environmental laws including the EIA, Notification, 2006.

3. The Complainant states that the Central Government in exercise of the powers conferred upon it by sub-section (1) and Clause (v) of the sub section (2) of Section(3) of the Environment (Protection) Act, 1986 r/w Clause (d) of Sub-Rule 3 of Rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the earlier EIA Notification dtd 27/1/1994 has issued the EIA, 2006 on 14/9/2006, amended from time to time. It is obligatory on the projects or activities mentioned in the Schedule there under, to obtain prior Environmental Clearance from the concerned Regulatory Authority for the matters falling under Category 'A' in the Schedule from the Ministry of Environment & Forests, Govt of India and for Category 'B' in the Schedule from the State Environment Impact Assessment

construction of total BUA admeasuring 49,837.56 sq. mtrs. (i.e exceeding 20,000 sq. mtrs.) at site, without obtaining prior.EC, which is violation of the provisions of the EIA Notification,2006.

8) The Principal Secretary, Environment Dept., Govt. of Maharashtra issued directions vide letter dtd. 20/04/2015 u/s 5 of the Environment (Protection) Act, 1986 r.w. EIA Notification, 2006 to the Accused No.1, to stop the construction work till obtains the Environmental Clearance from the competent authority. The Principal Secretary, Environment Dept., Govt. of Maharashtra by the directions dtd. 20/04/2015 also directed the Member Secretary, Maharashtra Pollution Control Board to file the case for the offences committed by the Accused No.1, under Section 15 of the Environment (Protection) Act, 1986 r/w EIA Notification, 2006 before the appropriate Court of Law, so as to comply with the Office Memorandum issued by the Ministry of Environment & Forests, Govt. of India for initiating credible action against the Accused No.1. An original direction issued to the Member Secretary, MPCB dtd. 20/4/2015 alongwith the office copies of the directions issued u/s 5 to the project proponent and copy to the Member Secretary, MPCB dtd. 20/04/2015, Proposed Directions issued to the project proponent dtd 20/12/2014 and reply thereto dtd.7/2/2015 are enclosed as an Annexure-C, D, E & F respectively.

9. The Complainant therefore states that the Accused have committed offence punishable under Section 15 of the Environment (Protection) Act,1986 r/w the Environment Impact Assessment Notification, 2006 for carrying out the construction activity at the aforesaid site without obtaining Environment Clearance as obligatory under the EIA Notification, 2006. Thus, the Accused have committed the offence in the jurisdiction of this Hon'ble Court and therefore, the present complaint has been filed by the Complainant for issuance of process against all the Accused. Since the punishment prescribed under the Section 15 of the Environment (Protection) Act, 1986 is imprisonment for a term which may

8

extend to 5 years or with fine which may extend to Rs.1 Lakh or with both, this Hon'ble Court has jurisdiction to try this offence punishable under the provisions of the Environment (Protection) Act, 1986.

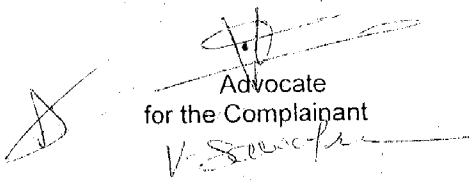
**It is humbly pray that:-**

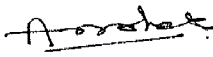
1. It is prayed that the process may kindly be issued against all the Accused and they may be tried as per provision of the Law.
2. To stop the construction work till obtains the Environmental Clearance from the competent authority.
3. Accused have committed the offence in the jurisdiction of this Hon'ble Court and therefore, the present complaint has been filed by the Complainant for issuance of process against all the Accused. Since the punishment prescribed under the Section 15 of the Environment (Protection) Act, 1986 is imprisonment for a term which may extend to 5 years or with fine which may extend to Rs.1 Lakh or with both, this Hon'ble Court has jurisdiction to try this offence punishable under the provisions of the Environment (Protection) Act, 1986.

Dated this

day of May, 2015 at

For Maharashtra Pollution Control Board

  
Advocate  
for the Complainant


  
(A.D. Mohekar)  
Regional Officer-Nagpur

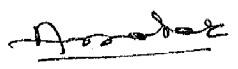


SOLEMN AFFIRMATION

I, Anil s/o D. Mohekar, Regional Officer, M.P.C. Board, Nagpur aged about 54 years, do hereby take oath and state on solemn affirmation that the averments contained in paras 1 to 9 are drafted by our counsel as per our instructions. I say that the contents thereof are true to our personal knowledge and belief and records available with my office. Hence verified and signed at Nagpur on this the \_\_\_ day of May 2015.

I know & identify the complainant

  
Advocate  
V. Sawade

  
Complainant  
Regional Officer  
M.P.C. Board, Nagpur

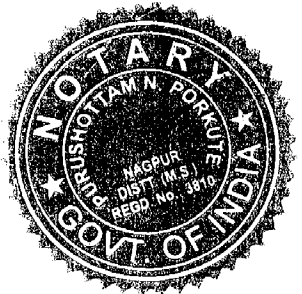


Stamp: 21/5/2015

SWORN & affirmed  
by Anil Mohekar  
Adv. V. Sawade  
21st  
day of May  
2015



Advocate  
21/5/2015



NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

SCC. No.13066/2015  
Maharashtra Pollution Control Board-Vs-  
M/s. Nagpur housing & area Develop  
and Board (A MHADA Unit)

ORDER BELOW EXH.1

(Passed on 30.03.2017)

1] Present complaint is filed by Maharashtra Pollution Control Board (herein after referred as "the complainant Board") through its regional officer for offence punishable U/s 15 of the Environment (Protection) Act 1986, allegedly committed by the accused no. 1 to 3. The complainant Board is a body corporate constituted under the provisions of the Water (Prevention & Control of Pollution) Act 1974 and the Air (Prevention & Control of Pollution) Act 1981 for necessary implementation of the Environment Protection Act 1986 & the Rules framed thereunder. The accused No.1 M/s. Nagpur Housing & Area Development and Board (A MHADA Unit) is the Company constituted under the provisions of Company Act. The accused No.2 is the Chief Officer and the accused No.3 is the Executive Engineer of the accused No.1 Company and both are directly responsible for the business and day to day working of accused no. 1 Company.

2] Complaint further shows that the Central Government for proper implementation of the Environment (Protection) Act, on 14.09.2006 issued a notification and made it obligatory/ mandatory for the construction projects or activities mentioned in the scheduled to obtained prior Environmental Clearance (EC) from the concerned authority, in case where the total construction is more than 20,000 sq.



(11)

ans. The accused no. 1 Company, which is in the business of developing townships and building projects, had started construction of residential apartment scheme on plot No. 1 to 6, CTS No. 101, 154, 155, 159, sheet No. 227 & 233, Mouje Nagpur, Tah. and Dist. Nagpur and the total construction was more than 20,000/- sq. mtrs.. It is specifically alleged that the accused No.1 Company was carrying out construction activity on above plots in violation of the notification of year 2006 without obtaining prior EC from the complainant board. On 20.12.2014 a notice was issued to the accused. Thereafter, the Principal Secretary, Environment Department had extended personal hearing to the accused. During that, it was observed that the accused has first sanctioned the plans from the Nagpur Municipal Corporation for the construction of plot 5 and 6 on 20.09.2010 for total proposed BUA of 58955.559 sq. mts. and subsequently amended the plans on 31.07.2012 for proposed total BUA of 72921 sq. mtrs.. As the construction was already started without obtaining EC, the accused on 21.10.2014 has applied for EC for proposed total BUA of 205306.06 sq. mtrs.. However, the construction of total BUA, admeasuring 49837.56 sq. mtrs. i.e. exceeding 20,000 sq. mtrs. was already completed without obtaining prior EC and there was violation of the notification of year 2006. It is further alleged that the accused was bound to obtain prior EC as per the notification of year 2006 and since EC was not obtained, the accused has committed offence punishable U/s 15 of Environment (Protection ) Act 1986. This has constrained the complainant to file present complain against the accused No.1 Company and the accused No. 2 and 3.

3] Process was issued against the accused for offence

punishable U/s 15 of Environment (Protection) Act 1986 and the accused appeared before the court. Subsequently, the complainant moved application Exh. 15 to try the case as Regular Criminal Case as it was initially filed and registered as Summary Criminal Case. Court has called say of the accused on said application. The accused in their say have prayed to pass suitable order on it. The offence U/s 15 of Environment (Protection) Act is punishable with imprisonment up to 5 years or fine upto Rs. 1,00,000/- and Act do not provide that the offences under it should be tried summarily. Therefore, considering the seriousness of offence and the punishment prescribed for it, Court has allowed the application Exh. 15 and tried the case as Regular Criminal Case. As the accused were already before Court, matter was thereafter fixed for recording evidence of the complainant before Charge as per Sec. 244 of Cr.PC..

4] The complainant has examined only one witness, Nagesh Lohalkar (PW-1), its Regional Officer at Exh.16. This witness was cross-examined by the defence side. After examining the complainant has filed pursis Exh. 17 on record and closed its evidence. Now the matter is posted for framing of charge against the accused.

5] Heard both sides.

6] Now, before framing of Charge, it is necessary for the Court to consider whether the evidence available on record is sufficient to show prima facie involvement of the accused in the alleged offence and whether any offence is made out against the accused or not. If the record is lacking of such incriminating material

against the accused, Magistrate can discharge the accused U/s 245 of Cr.P.C.. In this case, it is alleged that the accused have not obtained EC from the complainant for the alleged construction which was carried out by it on the plot No. 5 and 6. The accused had already started construction and exceeded the limit of 20,000 sq. mtrs. without obtaining prior EC and thereby committed breach of the notification of year 2006. I have gone to the notification dated 14.09.2006 issued by Ministry of Environment and Forest which makes obligatory to obtain EC, when the construction is more than 20,000/- sq. mtrs. Further the accused has also filed on record the amended notification of dated 04.04.2011. By amendment, the basement area, which was excluded in the original notification of 2006, was also included in the construction area.

7] Now the question is whether the accused were bound to obtain prior EC before starting construction on the plot No.5 and 6 or not. For that purpose it will be necessary to see the evidence of Nagesh (PW-1). During examination in chief this witness has narrated in respect of the notification of year 2006 and the amendment made in the notification in year 2011. Further, the witness has disclosed that the accused had sanctioned the map from NMC on 20.09.2010 in respect of plot No. 5 and 6 and after 04.04.2011 the accused applied to the complainant for EC. On perusal of examination in chief it is clear that NMC has sanctioned the plan in respect of plot No. 5 and 6 without EC this means the total construction area of plot No.5 and plot No.6 must be less than 20,000 sq. mtrs. Further, during cross-examination this facts was admitted by Nagesh (PW-1).

On perusal of complaint, the notification of year 2006, the amended notification of year 2011 and the evidence adduced by Nagesh (PW-1), it is clear that when the NMC has issued sanction of building and commencement certificate to the accused in year 2010, the total construction area of plot No.5 and construction area plot No. 6 was less than 20,000/- sq. mtrs. The admission given by Nagesh (PW-1) is sufficient to prove above fact. Subsequently, the notification of year 2010 was amendment in year 2011 and the basement area was included in the 20,000 sq. mtrs. Because of this amendment only, the construction of plot No.5 as well as plot No.6 exceeded the limits of 20,000 sq. mtrs. and therefore, the accused have applied to the complainant for EC. This means when the NMC has issued commencement certificate to the accused to carry out construction activity on plot No. 5 and on plot No. 6, on that day the accused was not bound to obtain EC from the complainant. However, because of the amendment which was carried out in year 2011, it becomes necessary for the accused to get clearance from the complainant. In such circumstance it can not be said that the accused had committed any breach of the notification issued by Central Government by not obtaining any prior permission for the alleged construction work which was initiated and carried out by it on the plot No. 5 and Plot No.6. In such circumstance it can not be said that the accused have committed breach of notification of year 2006 and thereby they have committed offence punishable under the provisions of Environment Protection Act. It appears that the complainant is trying to give retrospective effect to the amendment which is not permitted in law.



9] Considering above observation, it can not be said that the

accused have committed any offence as alleged by the complainant. The evidence of Nagesh (PW-1), the Regional Officer of the complainant, itself shows that no case is made out against the accused and there was no such breach of any notification as alleged in the complainant. Further, Sec.245(1) of Cr.P.C. provides that "if, upon taking all the evidence referred to in Sec. 244 the Magistrate considers, for the reason recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him". After considering evidence recorded U/s 244 of Cr.P.C. I do not find any material on the record on basis of which charge can be framed against the accused. In such circumstance it will be better to discharge the accused as per Sec. 245 of Cr.P.C. and hence, I am passing following order.

**ORDER**

- 1] The accused No. 1 to 3 are hereby discharged vide Sec. 245(1) of Cr.P.C.
- 2] The surety bonds of the accused persons stands canceled.

Date: 30.03.2017  
Nagpur

*J.R. Ghadge*  
( J. R. Ghadge )

J.M.E.C. ( Court No. 6 ), Nagpur



**True Copy**  
*[Signature]*  
15/11/17  
Asstt. Supdt.  
C. J. M. Court  
Nagpur,

The date on which copy applied for... 19/06/17  
the date on which the application is completed in all respect... 25/07/17  
the date given to the applicant for taking delivery... 15/09/17  
the date on which the copy was ready for delivery... 15/09/17  
the date on which it was delivered... 03/10/17

*[Signature]*  
Asst. Supdt. Record Keeper  
C.J.M. Court Nagpur

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