
(2021) 10 KL CK 0105
In the High Court Of Kerala
Case No : Revision Petition No. 469 Of 2021

Green Vistas Infrastructure Projects

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 20-10-2021

Acts Referred:

Citation : (2021) 10 KL CK 0105

Hon'ble Judges : P.B.Suresh Kumar, J

Bench : Single Bench

Advocate : Haridas P.Nair, G.G. Manoj, M.P.Sreekrishnan

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J.

1. Petitioner in the writ petition is the review petitioner. They are a joint venture constructing a residential complex within the limits of the sixth respondent Municipality. When the petitioner proposed to develop the lands belonging to them for the said purpose during early 2006, the Kerala Municipality Building Rules, 1999, was not implemented in Thrikkakkara Grama Panchayat, which was later upgraded as the sixth respondent Municipality. The proposal of the petitioner was for construction of 500 residential apartments in 5 blocks. The practice prevailing then in Thrikkakkara Grama Panchayat for construction of buildings in the nature of one proposed by the petitioner was to obtain a No-objection Certificate from the Panchayat for the said purpose. The petitioner, in the circumstances, obtained Ext.P1 Certificate from Thrikkakkara Grama Panchayat on 04.02.2006 to the effect that permission of the Panchayat is not necessary for the construction proposed by them. On the strength of Ext.P1 Certificate, the petitioner commenced the construction of the first two blocks of the project. While the construction of the first two blocks was proceeding, on 14.09.2006, the Central Government issued Environmental Impact Assessment Notification, 2006 (EIA Notification) under the Environment (Protection) Act,

1986. As per the EIA Notification, prior environmental clearance is required for building projects involving built up area exceeding 20,000 square meters. According to the petitioner, the requirement in the EIA Notification does not apply to their project since they have commenced the construction of the project before 14.09.2006. It is stated that nevertheless, with a view to give confidence to the investors and potential buyers of residential apartments in the project, the petitioner preferred Ext.P6 application on 31.07.2012 in terms of the EIA Notification before the State Environment Impact Assessment Authority (SEIAA) for environmental clearance for their project. On Ext.P6 application, the State Level Expert Appraisal Committee (SEAC) took the view that the petitioner should have obtained environmental clearance before commencing the construction and they are, therefore, to be proceeded against for having committed violation of the EIA Notification and made a recommendation to that effect to the SEIAA. On the said recommendation, the SEIAA has decided to proceed against the petitioner for having violated the EIA Notification and to suspend the construction activities undertaken by the petitioner till environmental clearance is issued for the project.

2. While so, the Central Government issued Ext.P23 notification under the Environment (Protection) Act, 1986 on 14.03.2017, providing that where projects or activities requiring prior environmental clearance in terms of the EIA Notification are brought for environmental clearance after commencement of the construction work, appraisal of the same for grant of environmental clearance shall be considered only by the Expert Appraisal Committee at the central level. It is stated that though the petitioner was not obliged to obtain environmental clearance for the project in terms of the EIA Notification, with a view to resolve the issues relating to the project, they preferred a fresh application for environmental clearance before the Expert Appraisal Committee at the Central level in terms of Ext.P23 notification. On the said application, as per Ext.P24 order, the Expert Appraisal Committee confirmed the case of the petitioner to be one of violation of the EIA Notification and directed that action shall be taken against the petitioner. In Ext.P24, it was also ordered that there shall be an environmental impact assessment and an environment management plan for the project of the petitioner and the environmental clearance shall be granted for the project only after successful implementation of the environment management plan. Ext.P23 notification, in terms of which Ext.P24 order was passed, was subsequently amended on 08.03.2018 by Ext.P25 notification issued by the Central Government, as per which the SEAC was authorised to deal with the application submitted by the petitioner for environmental clearance again.

3. Pursuant to Ext.P25 notification, the SEAC took up the application of the petitioner for environmental clearance for decision. In the meanwhile, the sub committee constituted by the SEAC reported that the petitioner continued the construction while the application for environmental clearance was pending and completed almost even the fourth block and started the land development for the fifth block. In the light of the said report, on 14.01.2020, the SEAC decided to

recommend the SEIAA to issue stop memo to the petitioner and also to initiate proceedings against the petitioner for violation of EIA Notification and the said recommendation of the SEAC has been accepted by the SEIAA.

4. In the meanwhile, on 10.02.2020, the petitioner instituted the writ petition alleging, among others, that insofar as the petitioner commenced construction of the project based on Ext.P1 certificate issued before the EIA notification, they are not required to obtain environmental clearance for the project. It was also alleged by the petitioner in the writ petition that since the petitioner was not communicated the decision on Ext.P6 application preferred by them for environmental clearance on 31.07.2012 within 105 days as provided for in clause 8 of the EIA Notification, they are deemed to have been granted the environmental clearance sought for. The relief sought by the petitioner in the writ petition, in the circumstances, was for a declaration that they are not obliged to obtain environmental clearance for the project. Alternatively, the petitioner also sought a declaration that since no decision was communicated on their application for environmental clearance within 105 days as prescribed by clause 8 of the EIA Notification, the petitioner is deemed to have been granted environmental clearance.

5. After hearing the learned counsel for the parties, the following questions were formulated for decision in the writ petition:

(i) Whether the petitioner was required to obtain environmental clearance for their project in terms of the EIA Notification?

(ii) Whether the petitioner is deemed to have been issued environmental clearance in terms of clause 8 of the EIA Notification? and

(iii) Whether respondents 3 and 4 are justified in initiating proceedings against the petitioner for violation of the EIA Notification?

6. This Court found that there is nothing on record to indicate as to whether the petitioner has commenced construction in connection with the project before 14.09.2006. It was also found by this Court that even if it is found that the petitioner has commenced the construction of the first two blocks of the project before 14.09.2006, insofar as the petitioner themselves have applied for environmental clearance after completing the first two blocks, for the remaining three blocks of the project, they cannot be heard to say that EIA Notification does not apply to the project, especially since the last three blocks of the project by itself was a project for which environmental clearance was required in terms of the EIA Notification. It was observed by this Court in the judgment sought to be reviewed that the said view is taken since environmental clearance is required in terms of the EIA Notification even for expansion of the existing projects which would cross the threshold limits given in the schedule of the Notification after the expansion. Despite the findings aforesaid, this Court disposed of the writ petition directing respondents 3 and 4 to dispose of finally the application of the petitioner for environmental clearance, having regard to the present stage of

construction. According to the petitioner, the judgment rendered in the writ petition is vitiated by errors apparent on the face of the record and hence, this review petition.

7. Heard the learned counsel for the review petitioner as also the learned Standing Counsel for respondents 3 and 4.

8. The learned counsel for the review petitioner submitted that the report submitted by the seventh respondent, the Kerala State Remote Sensing and Environmental Centre, pursuant to the direction issued by this Court on 12.08.2020 would clearly establish that the petitioner has commenced the construction of the project during 2005-2006 itself and the finding to the contrary rendered by this Court without taking note of the said report is vitiated, and warrants interference in exercise of the review jurisdiction of this Court. According to the learned counsel, in the light of the said report of the seventh respondent, this Court ought to have held that the EIA Notification does not apply to the project of the petitioner. It was also submitted by the learned counsel that the project of the petitioner from the very inception was for construction of five blocks of residential apartments and insofar as the materials on record would show that the petitioner has commenced the construction of the first two blocks atleast before the EIA Notification, the view taken by this Court that the last three blocks of the project is liable to be treated as expansion of the completed blocks for the purpose of the EIA Notification, is unsustainable in law. According to the learned counsel, a project implemented in two phases shall be regarded as one project and the phase of the project which is not completed, cannot be regarded as an expansion of the completed project for the purposes of the EIA Notification.

9. I have examined the arguments of the learned counsel for the petitioner.

10. It is seen that on 12.08.2020, this Court directed the seventh respondent to file a report making available the satellite imagery showing the nature and lie of the land of the petitioner (i) as on 14.09.2006, the date on which the Environment Impact Assessment Notification, 2006 came in force; (ii) as on 06.11.2006, the date on which the State Government extended certain provisions of the Kerala Municipality Act, 1994 and all the provisions of the Kerala Municipality Building Rules, 1999 to the erstwhile Thrikkakkara Grama Panchayat; and (iii) as on the date of commencement of the construction of each block in that project. In response to the said interim order, the seventh respondent has filed a report on 17.09.2020 and it was placing reliance on the said report that the learned counsel for the petitioner argued that the finding of this Court that there is nothing on record to indicate that the petitioner has commenced the construction of the project prior to the EIA Notification is vitiated by errors apparent on the face of the record. The observations and conclusions made by the seventh respondent in the report filed on 17.09.2020 based on the satellite data referred to therein read thus:

"OBSERVATIONS & CONCLUSION

As per the Survey of India toposheet of year 1967, the survey plot 359/3 was observed as paddy land. The available satellite data sets analyzed are of 08/12/2005, 11/12/2006, 06/01/2008 and 18/03/2020. The imagery available for the year 2006 in public domain is on 11/12/2006, so not able to produce the imagery of 06/11/2006.

The plot was observed under fallow land towards south and with exposed soil towards north in the data of 08/12/2005. In the imagery of 11/12/2006, the south part was also observed partially under exposed soil, with construction activities towards north and southwest and central part. In imagery of 06/01/2008, more construction activities were observed towards north and southern part with soil exposure/construction materials. The imagery of 18/03/2020 shows more buildings/structures towards south and north part.

As per the order of the Hon'ble Court dated 18/06/2020, the available satellite imagery is for 11/12/2006 (Figure.4). Therefore the requirement in No. (i) & (ii) in para 11 of the order dated 18/06/2020, the analysis has been carried out with imagery dated 11/12/2006 as satellite imagery as on 06/11/2006 is not available. In respect of requirement No. (iii), it is respectfully brought to the notice of the Honourable Court that exposed soil observed in northern part in 08/12/2005 data. Construction activities observed in northern part and exposed soil in south in 11/12/2006 data. The data of year 2008 shows more construction activities towards north and south part. The data of year 2020 shows more buildings/structures towards south and north part.

This report is being submitted in compliance with the direction in order dated 18/06/2020 in W.P(C) No.3870/2020."

As evident from the extracted portion of the report, the satellite imagery of the land of the petitioner as on 06.11.2006 was not available with the seventh respondent. Instead, the two satellite imagery of the land of the petitioner which were available with the seventh respondent were that of 08.12.2005 and 11.12.2006. It was placing reliance on the finding in the report that exposed soil was visible in the data of 08.12.2005 that the learned counsel for the review petitioner argued that it shall be inferred that the petitioner commenced the construction of the work before 14.09.2006. I do not find any substance in the said argument, for the petitioner has not even obtained the Certificate of the Grama Panchayat as on that day. Ext.P1 certificate of the Grama Panchayat was obtained by the petitioner only much later on 04.02.2006. Coming to the imagery of the land dated 11.12.2006, as noted, the EIA Notification came into force in the meanwhile on 14.09.2006. In other words, the report submitted by the seventh respondent on 17.9.2020 does not improve the case of the petitioner that they have commenced the construction of the project prior to 14.09.2006. In the absence of any material to indicate that any construction whatsoever has taken place in the land prior to 14.09.2006, it is unnecessary to consider the

arguments advanced by the learned counsel that the construction of the last three blocks of the project cannot be treated as an expansion of the construction of the first two blocks.

The review petition, in the circumstances, is without merits and the same is, accordingly, dismissed.