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WOMEN'S WING CHAIRPERSON
Sejal Goradia

To,

Shri Eknath Shinde

Hon'ble Chief Minister &

Minister for Environment and Climate Change

Government of Maharashtra

Mantralaya, Mumbai - 400032

मध्यवर्ती टपाल केंद्र

मुख्यमंत्री सचिवालय

महाराष्ट्र शासन

मंत्रालय, मुंबई ४०० ०३२

Sub: Non-applicability of Air Act and Water Act to residential buildings...

Ref: 1. Judgment dated 30/09/2010 the Ld. Single Judge of the Delhi High Court in Splendor Landbase Ltd vs Delhi Pollution Control Committee being W.P.(C) 543/2008

2. Judgment dated 23/01/2012 the Ld. Division Bench of the Hon'ble Delhi High Court in LPA 895/2010 Delhi Pollution Control Committee v. Splendor Landbase Ltd and other connected matters.

3. Order dated 28/01/2013 the Hon'ble Supreme Court in the case of DPCC V. Lodhi Property Co. Ltd. and other connected matters.

Respected Sir,

We would like to inform you that the applicability of The Air (Prevention and Control of Pollution) Act, 1981 and The Water (Prevention & Control of Pollution) Act, 1974 (hereinafter called it Air Act and Water Act respectively) to residential buildings has now been decided by the Hon'ble Delhi High Court. This lays significance to residential projects where there was a mandate to get Consent to establish and Consent to operate from the competent authority for the purposes of complying with provisions of the said acts. However as explained the sequence of orders stated hereinbelow, the need for taking consent to establish and consent to operate will not apply to residential buildings.

SINGLE JUDGE

The issue that arose for consideration before the Ld. Single Judge of the Hon'ble Delhi High Court in the case of Splendor Landbase Ltd vs Delhi Pollution Control Committee being W.P.(C) 543/2008 and other connected cases was whether a commercial or residential complex, a separate consent to establish under the Water Act and a consent to operate under the Air Act would nevertheless be required to be obtained from the Pollution Control Committee. By judgment dated 30/09/2010 attached as Annexure-I the Ld. Single Judge of the Delhi High Court held as under:

(i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of Section 25(1)(a) of the Water Act and apply to the Pollution Control Board for prior consent to establish. The judgment does not say that this requirement is only for constructions above 20,000/- Sq. Mts.

Maharashtra Chamber of Housing Industry

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.
Tel: 42121421, Fax: 4212 1411/407 Email: secretariat@mchi.net Website: www.mchi.net

(ii) Where the built-up area is more than 20,000 sq. m., the requirement of obtaining an Environment Clearance for such activity is mandatory. The mere fact that an Environment clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the Pollution Control Board for a consent to establish under the Water Act.

(iii) The requirement of obtaining prior consent to operate under Section 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of industrial plant under Section 2(k) of the Air Act. However, on the present wording of Section 21(1) Air Act, there is no such requirement as regards a residential complex.

DIVISION BENCH

The aforesaid judgment of the Ld. Single Judge came to be challenged before the Division Bench of the Hon'ble Delhi High Court by both the Parties i.e. the DPCC and the Builders/Developers.

By judgment dated 23/01/2012 attached as Annexure-II the Ld. Division Bench of the Hon'ble High Court in the case of LPA 895/2010 Delhi Pollution Control Committee v. Splendor Landbase Ltd and connected cases was pleased to hold as under:

- (i) The view taken by the learned Single Judge pertaining to shopping malls and commercial shopping complexes on the applicability of the Water Act is upheld and the view taken pertaining to the *applicability of the Water Act to residential housing complexes is incorrect.*
- (ii) prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, prior consent under the Air Act would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

SUPREME COURT

The judgment of the Division Bench came to be challenged before the Hon'ble Supreme Court by the DPCC in the case of DPCC V. Lodhi Property Co. Ltd. and other connected matters. The Hon'ble Supreme Court vide order dated 28/01/2013 attached as Annexure-III granted leave in the matter and admitted the appeals. By way of interim order, the Hon'ble Court has observed that the Penalty amounts paid by the Respondents in the Appeal shall be refunded with interest as determined by the Court in case the Appeals are dismissed. By order dated 28/01/2013 the Hon'ble Supreme Court has not granted any stay of the judgment of the Division Bench of the Delhi High Court. The Appeals are still pending consideration before the Hon'ble Supreme Court.

Thus in the light of the various orders in regards to the applicability of Air Act and water Act on residential buildings/complexes, it appears that the Hon'ble Delhi High Court order dated 30/09/2010 the Ld. Single Judge of the Delhi High Court in Splendor Landbase Ltd vs Delhi Pollution Control Committee being W.P.(C) 543/2008 and subsequently confirmed by the order dated 23/01/2012 the Ld. Division Bench of the Hon'ble Delhi High Court in LPA 895/2010 Delhi Pollution Control Committee v. Splendor Landbase Ltd and other connected matters today holds the field as there is no stay/interim order from the Hon'ble Supreme Court on the applicability of the said two orders of the Hon'ble Delhi High Court.

We therefore humbly request you to kindly desist on seeking for consent to establish and consent to operate or taking any coercive steps on the same regarding residential buildings/complexes until the matter is finally decided by the Hon'ble Supreme Court of India.

Thanking you,

Yours sincerely,
For **CREDAI-MCHI**

Domnic Romell
President

Dhaval Ajmera
Hon. Secretary

CC:

(1) Shri Pravin Darade (I.A.S)

Principal Secretary
Environment & Climate Change D
2nd Floor, R.No.217,
Annex Bldg., Mantralaya,
Mumbai - 4000325

10/7/23
लिपिक,
प्रधान सचिव कार्यालय,
पर्यावरण व वातावरणीय बदल विभाग,
मंत्रालय, मुंबई-400 032.

✓ **(2) Shri Avinash Dhakane (I.A.S.)**

Member Secretary
Maharashtra Pollution Control Board
Kalpataru Point, 3rd Floor,
Opp. Cine Plannet, Sion-E-
Mumbai - 400013

Recd
9/10/23

महाराष्ट्र प्रदूषण नियंत्रण मंडळ
कल्पतरु पॉइंट, २ रा मज्जा, सायन सर्कल,
सिनेप्लनेट समोर, सायन (पूर्व),
मुंबई - ४०० ०२२.
फोन :- २४०९०४३७ / २४०२०७८९
Website www.mpcb.gov.in

About CREDAI

The Confederation of Real Estate Developers Associations of India (CREDAI) is the apex body of private Real Estate developers in India, established in 1999, with a vision of transforming the landscape of Indian Real Estate industry and a mandate to pursue the cause of Housing and Habitat. Today, CREDAI represents 13000+ Developers across 230 city chapters in 21 states and plays an important role in policy formulation by representing the views of its members to various Ministries at regular intervals.

CREDAI strives to make the Real Estate industry organized and progressive by working closely with all stakeholders: Government representatives, policy makers, investors, finance companies, consumers, and real estate professionals. CREDAI is a recognized partner for the Government and is represented on several committees working in policy formulation. CREDAI engages in policy advocacy with the Government including Ministry of Housing and Urban Affairs, Ministry of Environment, Forests and Climate Change, Ministry of Finance, Ministry of Civil Aviation, Ministry of Skill Development & Entrepreneurship, Ministry of Labour & Employment and with agencies like Bureau of Indian Standards (BIS), Bureau of Energy Efficiency (BEE), NITI Aayog and others.

About CREDAI-MCHI

CREDAI-MCHI is an apex body consisting of members from the Real Estate Industry from the Mumbai Metropolitan Region (MMR). With a strong Membership of over 1800+ leading Developers in MMR, CREDAI-MCHI has expanded across MMR, having its own units in the region of Thane, Kalyan-Dombivli, Mira-Vihar, Raigad, Navi Mumbai, Palghar-Boisar, Bhiwandi, Uran-Dronagiri, Shahapur-Murbad and recently had announced units in Alibag, Karjat-Khalapur-Khopoli, Pen. CREDAI-MCHI is the only Government recognized body for private sector developers in MMR and consistently working to make the industry more organized and progressive. CREDAI-MCHI under the aegis of CREDAI National which is an apex body of 13000 developers from across the nation had developed into a preferred platform with regard to a regional discourse on housing and habitat through its close and deep networking with the Government.

Ref: 1

Delhi High Court

Splendor Landbase Ltd vs Delhi Pollution Control ... on 30 September, 2010

Author: S. Muralidhar

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 543/2008 with

2714/08, 2771/08, 2772/08, 3815/08, 7081/08, 8143/08, 8144/08, 8145/08, 8146/08, 8147/08, 8148/08, 8149/08, 9040/08, 464/09, 465/09, 508/09, 509/09, 510/09, 511/09, 525/09, 794/09, 7575/09, 8208/09, 8751/09, 10860/09, 3095/08, 4319/08, 4321/08, 4322/08, 4323/08, 4330/08, 4333/08, 3905/08, 8789/08, 8901/08, 9128/09 & 1391/2010

Reserved on: 11th August 2010

Decision on: 30th September 2010

SPLENDOR LANDBASE LTD

..... Petitioner

Through Mr. Soli J Sorabjee, Senior Advocate with Mr. B.B. Gupta and Mr. B. Mohanty, Advocates for Petitioners in WP (C) 543/08, 3095/08, 3905/08, 4319/08, 4321/08, 4322/08, 4323/08, 4330/08, 4333/08.

Mr. Sanjay Goswami with Mr. H.K. Balajee, Advocates for WP (C) Nos. 2714/08, 2771/08, 2772/08, 7081/08, 3815/08, 8143/08, 8144/08, 8145/08, 8146/08, 8147/08, 8148/08, 9040/08, 508/09, 509/09, 510/09, 511/09, 794/09, 8208/09, 8751/09, 10860/09.

Mr. Amit Sood, Advocate for Petitioner in WP (C) 7575/09.

Mr. Prem Kumar with Mr. Girish Kumar, Advocate for Petitioner in WP (C) 465/09.

Mr. Gaurav Gupta, Advocate for Petitioner in WP (C) 8149/08.

Mr. Sanjay K. Shandilya with Ms. Ekta Mehta, Advocate for Petitioner in WP (C) 8789/08.

Mr. Deepak Khurana with Mr. Shobhit Chandra, Advocate for Petitioner in WP(C) 1391/10.

Ms. Urvi Kuthiala, Advocate for Petitioner in WP(C) 9128/09, 464/09, 8901/08, 525/09.

versus

DELHI POLLUTION CONTROL COMMITTEERespondent

Through Mr. Sudhir Chandra, Senior Advocate with Mr. C. Mohan Rao, Advocate for Respondent/DPCC.

Mr. Satya Sehrawat with Ms. Rashmi Bansal, Advocate for R-1 in WP(C) 508/09 509/09, 510/09, 511/09 and 794/09.

Mr. Neeraj Chaudhari, Advocate for UOI in WP (C) 794/09.

Mr. Manish with Ms. Sadhna, Mr. Rajesh Pratap, Advocates for UOI in WP (C) 8143/08, 8144/08, 8145/08, 8146/08, 8147/08, 8148/08.

W.P. (C) No. 543/2008 batch

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Mr. Darpan Wadhwa with Ms. Divya Jha, Advocate for GNCTD in WP(C) 543/08, 2714/08, 7081/08, 8148/08.

Mr. Baldev Malik, Advocate for R-3 in WP (C) 9040/08.

Mr. N. Waziri, Standing Counsel with Mr. Shoaib Haider, Advocate for GNCTD in WP (C) 8751/09, 10860/09.

Mr. Atul Nanda with Mr. Sumeer Sodhi and Mr. Gaurav Gupta, Advocates for UOI in WP (C) 7081/08, 508, 510, 511 and 8751 of 2009.

Mr. Ravinder Aggarwal, Advocate for UOI in WP (C) 901/08.

Mr. Ajay Verma, Advocate for the DDA in WP(C) 8901/08.

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of the local news papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT

30.09.2010 Introduction 1.1 These are 38 writ petitions filed by builders of various properties in the National Capital Territory of Delhi (NCT of Delhi) who have been issued show cause notices and also directions by the Respondent Delhi Pollution Control Committee (` DPCC) for alleged violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 [hereafter `the Water Act] and Sections 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981 [hereafter `the Air Act]. Barring two petitions where the buildings constructed are residential complexes, in each of the other petitions the building constructed is a commercial shopping complex or a shopping mall.

1.2 The show cause notices have been issued on the ground that these Petitioners had not, prior to commencing construction, applied to the DPCC for and obtained from it the „consent to establish under Section 25 of the Water Act or the DPCC s „consent to operate under Section 21 of the Air Act.

1.3 Some of the petitioners have constructed commercial complexes or shopping malls of a built up area of over 20,000 sq.m. They were therefore required to comply with the environment impact assessment (EIA) notifications in terms of the Environment (Protection) Act, 1986 (EPA). The EIA norms with which they are expected to comply are set out in the EIA notification dated 27th January 1994 as further amended on 7th July 2004 and 14th September 2006. The issue that arises in some of these petitions, where the commercial or residential complex is of a built up area of over 20,000 sq.m, is whether independent of the EIA clearance obtained by such petitioners from the Government of India in the Ministry of Environment and Forests (` MoEF), a separate consent to establish under the Water Act and a consent to operate under the Air Act would nevertheless be

required to be obtained from the DPCC. 1.4 Another issue common to some of these petitions is the validity of the levy by the DPPC of penalties, fines and environment damages in the form of fixed sums of monies or by requiring the Petitioners to furnish bank guarantees as a condition to the grant of consent under the Air Act and the Water Act.

2. The case of the Petitioners broadly stated is that the residential and commercial shopping complexes and shopping malls are not covered under either the Water Act or the Air Act. Therefore there was no need for any of these Petitioners to have obtained from the DPCC either prior consent to establish under Section 25 of Water Act or prior consent to operate under Section 21 of the Air Act. The case of the DPCC is that the activity of construction of commercial complexes, shopping malls and even residential complexes is covered under both the Air Act and the Water Act and the failure to obtain prior consent to establish or prior consent to operate makes the petitioners liable under either or both Acts. For complexes where the built up area is over 20,000 sq.m, the stand of the DPCC is that the mere obtaining by such builders of EIA clearance from the MoEF will not obviate the need to obtain separate prior consents from the DPCC under the Water Act and Air Act.

Background to the Water Act and amendments

3. The first issue to be considered is the applicability of the Water Act to the complexes in question. Emphasis has been placed by both sides on the background to the enactment of the Water Act. The Statement of Objects and Reasons (`SOR `) to the Water Act as it was first enacted on 23rd March 1974 referred to a Committee set up in 1962 to draw up a draft enactment for the prevention of water pollution. The SOR noted that "the problem of pollution of rivers and streams has assumed considerable importable and urgency in recent years as a result of the growth of the industries and the increasing tendency to urbanization." The Report of the Committee was circulated to the State Governments and was also considered by the Central Council of Local Self-Government. Based on the recommendation of the Central Council a draft bill was prepared. The Bill was passed by both the Houses of Parliament and received the assent of the President in 1974.

4. The Water Act underwent further changes in 1978 and thereafter in 1988. Section 25 of the Water Act in its present form was a result of certain extensive amendments made to it in 1988. Para 2 of the SOR of the Amendment Act No. 53 of 1988, which is relevant for the present purposes, reads as under:

"2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties. The State Legislatures of Himachal Pradesh, Manipur and Tripura have passed resolutions under Article 252(2) of the Constitution authorizing the Parliament to amend the provisions of the Water Act to give effect to those amendments."

5. Thereafter in Para 3(iii) and 3(vi) of the SOR, it was explained that the Bill inter alia sought to make the following amendments to the Act, namely:

"(iii) it is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board for establishing or taking any steps to establish any industry, operation or process which is likely to cause pollution of water and also to empower the Boards to limit their consents for suitable periods so as to enable them to monitor observance of the prescribed conditions;

(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure on regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity"

6. It is plain, therefore, that the amendments made in 1988 were with a view to making it obligatory on the part of the person taking any steps to establish "any industry, operation or process which is likely to cause pollution of water...." to obtain the prior consent of the State Pollution Control Committee (PCC).

Position under the Water Act

7. To recapitulate, one of the central issues in these petitions is whether there is statutory requirement in terms of Section 25(1) (a) of the Water Act for persons establishing a commercial shopping complex or shopping mall or a residential complex to obtain prior consent to establish from the DPCC. Section 25 of the Water Act which mandates such requirement reads as under:

"25. Restrictions on new outlets and new discharges. (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, --

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub- section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub- section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may-

(a) grant its consent referred to in sub-section (1),subject to such conditions as it may impose, being-

(i) in cases referred to in clauses (a) and (b) of sub- section (1) of section 25,conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorized by him in this behalf and

the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30-

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge."

8. For further understanding the scope of the expressions used in Section 25 (1) of the Water Act, the definitions therein of the terms "outlet"

occurring in Section 2(d)(d), "sewage effluent" under Section 2(g) and "trade effluent" under Section 2(k) are relevant. They read as under:

"2 (dd) "outlet" includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;

.....

2 (g) "sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

.....

2 (k) "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage."

9. One of the submissions made by Mr. Sorabjee, learned Senior counsel on behalf of the Petitioners is that the requirement of obtaining prior consent to establish in terms of Section 25 (1) (a) of the Water Act arises only where the activity in question is to establish an „industry, operation or process which in turn discharges „trade effluent . The argument is that a residential complex cannot produce „trade effluent . It can only produce domestic sewage which the legislature has consciously excluded from the expression „trade effluent . It is further urged that what takes place in a commercial shopping complex or shopping mall is mere retail sale of goods and services. There is no „industry, operation or process that goes on inside a commercial shopping complex or mall that discharges „trade effluent . On behalf of the Petitioners, it is sought to be contended that the above provision was never intended to cover shopping complexes, malls or the residential complexes. Mr. Sorabjee submitted that the words "operation or process or any treatment and disposal system or any system of extension or addition thereto" following the word "industry" have to be read ejusdem generis the word "industry" and therefore was not meant to cover an activity which is not an industrial activity. It is contended that there is no industrial activity that takes place in a shopping complex or mall or a commercial complex. In other words, only industries such as chemical industries, metallurgical industry, engineering industry and so on are meant to be covered by the Water Act. Consequently, it is argued that Section 25 (1) of the Water Act is not attracted in any of the present cases.

10. It must be noticed that the definition of „trade effluent under Section 2(k) underwent a change with the Amendment Act No. 53 of 1988. The definition of „trade effluent in the unamended Section 2(k) contained the words "carrying on any trade or industry" following the words "...any premises used for.." This was replaced by the words "...from any premises carrying on any industry, operation or process, or treatment and disposal system." The idea was to expand the use of the premises and not limit it to an industry but also any process or treatment and disposal system. What stood excluded from the definition of „trade effluent was "domestic sewage". The word `sewage itself has been defined under Section 2(g) to mean effluent from any sewerage system or sewage disposal works and includes sullage produced from open drains. The word `sewage when qualified by the word `domestic should necessarily mean sewage produced from premises used for domestic purposes. The word "domestic" when contra-distinguished from the expression "trade" could mean a place used for residence rather than for business or trade.

11. However, the above definition of „trade effluent does not take a residential complex or even a commercial shopping complex or shopping mall out of the purview of Section 25 (1) of the Water Act. A careful reading of Section 25 (1) of the Water Act would show that it is intended to cover not just „industry which discharges „trade effluent but any „process or operation that results in a discharge of „sewage not limited to trade effluent. The expression „sewage or trade effluent in Section 25 (1) (a) Water Act which follows the words „operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge.. is wide enough to cover all kinds of sewage and not just „trade effluent . Likewise, the expressions „process and „operation is not meant to be confined to „industry but to all kinds of processes and operations including those that take place in kitchens and bathrooms of residential complexes and retail sales in shops and restaurants and activities in the rest rooms of commercial shopping complexes and malls.

12. The definition of the words "operation" and "process" as occurring in the New Shorter Oxford English Dictionary (Leslie Brown Ed.) are as follows:

operation: An action, deed; exertion of force or influence;

working, activity; an act of a practical or technical nature, esp one forming a step in a process
process: The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end.

13. Under Section 25(1) (b) Water Act if the operation, process or the process that is proposed to be established brings into use "any new or altered outlet for the discharge of sewage" then Section 25(1) will stand attracted. The proviso to Section 25(1) states that where the steps to establish an industry, operation or process have already commenced before the commencement of the 1988 Amendment Act, such steps may continue for a period of three months and if, the person who has taken such steps makes an application for consent within that period, till the disposal of such application. The proviso underscores the mandatory nature of the requirement of even an ongoing construction to obtain prior consent to establish from the State PCC.

14. When the Water Act was first enacted in 1974, the scale of both commercial and residential shopping complexes as a result of urbanization was perhaps not anticipated. There has been a dramatic increase in the number of residential and commercial shopping complexes that have come up in urban metropolises in the recent past. More significant is the size of such commercial/shopping complexes. Having huge shopping malls having a built up area of 20,000 sq. m. is not an unusual feature as is evident in seven cases in the present batch of writ petitions. The volume of sewage that such residential and commercial complexes and shopping malls are likely to discharge into the sewage system would indeed be enormous. The recognition of the need to have the regulatory authority, in these cases the DPCC, to be approached by the builders of such complexes and malls for prior consent to establish under the Water Act is consistent with the object of the Water Act as amended in 1988. The ultimate object is to ensure that there is effective prevention and control of pollution.

Purposive construction

15. In the considered view of this Court, it is not possible to place a narrow construction on the words "operation" and "process" occurring in Section 25(1) of the Water Act. The words "operation or process" occurring in Section 25(1) (a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of ejusdem generis is therefore inapposite in the context. On the other hand the principle of purposive construction commends itself for application. In *Anderton v. Ryan* (1985) 2 All ER 355, it was explained that: "Statutes should be given what has become known as the purposive construction, that is to say the Courts should identify the „mischief“ that existed before passing of the statute and then if more than one construction is possible, favour that which will

eliminate the mischief so identified." In *Pepper v. Hart* (1993) 1 All ER 42, it was held: "The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted." This has been consistently followed by our Supreme Court in *New India Assurance Co. Ltd. v. Nusli Neville Wadia* (2008) 3 SCC 279; *Tanna and Modi v. CIT* AIR 2007 SC 2301 and recently in a decision dated 31st August 2010 in Civil Appeal No. 5842 of 1998 (*Grid Corporation of Orissa Ltd. v. Eastern Metals and Ferro Alloys*).

Position of residential complexes under the Water Act

16. While it is clear that commercial shopping complexes and shopping malls would stand covered under Section 25 (1) (a) of the Water Act, the position vis-à-vis residential complexes is examined next. The DPCC is right in its contention that residential complexes where there are a large number of residential apartments would also be within the purview of Section 25(1) (a) of the Water Act. The residential complexes are likely to discharge large volumes of "sewage" as distinguished from „trade effluent . Section 25(1) (a) of the Water Act envisages any "operation or process" which is likely to discharge "sewage". The collective operation or processes that take place within a residential complex is likely to discharge large volumes of sewage into the municipal sewerage system. To repeat, these processes or operations may take place within the toilets and bathrooms and kitchens of a residential complex. They could also take place as a result of any treatment of such sewage collected in some effluent treatment plant within a residential complex. Then there is the watering of the lawns and plants in such residential complexes. Large volumes of water may be used for central air-conditioning or cooling. There can be many activities in a residential complex which result in the use of water, generation and discharge of sewage and the carrying of such sewage into main sewerage system for further treatment. In the circumstances, it is difficult to accept the contention of the Petitioners that residential complexes would fall outside the purview of Section 25(1) (a) of the Water Act.

17. The question whether the construction of a single-storeyed residential building of insubstantial dimensions would attract Section 25(1) (a) of the Water Act need not be answered in these petitions since none of them concerns such a situation. As far as the present cases are concerned, the two residential complexes which have been constructed have a built up area of 23,281 sq.m and 10,733 sq.m respectively. It is not possible therefore to underestimate the impact that the discharge from such residential complexes of large volumes of sewage would have on water pollution in general particularly when such sewage joins the main sewerage system.

18. It was urged that as long as the municipal sewage system is being treated in effluent treatment plants, and the discharged sewage from these complexes joins such systems, there is no need for each of these complexes to obtain a prior consent to establish from the DPCC under the Water Act. This argument although attractive does not account for the mandatory nature of the requirement to obtain consent to establish under the Water Act. It also does not account for the fact that at the stages of pre-construction, during construction and post-construction these complexes would continue to attract the provisions of the Water Act. The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal

sewerage system which may or may not be treated in keeping with the water pollution norms.

Water pollution during the construction phase

19. At this juncture it is important to understand the impact that the activity of construction of a commercial shopping or residential complex or a shopping mall is likely to have on water pollution. This court wishes to draw a distinction between the pre-construction stage when Section 25 (1) Water Act is attracted and a prior consent to establish is mandated and the construction phase itself which can also result in pollution being caused. For instance during construction, water is drawn from bore wells dug in the property itself or water is brought in through water tanks. Large quantities of water are used during construction and used water is also discharged. If unregulated, this could have an adverse impact on the neighbourhood, the ground water and generally on the municipal sewerage system.

20. The pollution that can possibly be caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase would attract the various provisions of the Water Act. Even after completion of construction a functional residential or commercial complex will have to abide by the water pollution norms stipulated by the Water Act. The DPCC has been constituted under Section 4(4) of the Water Act. Section 9 of the Water Act permits the constitution of committees by the DPCC. Under Section 11A the DPCC can delegate its powers to its Chairman. Section 16 of the Water Act sets out the functions of the Central Pollution Control Board (CPCB). Section 21 of the Water Act empowers the DPCC or any of its officials to take samples of water "from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well" for the purposes of analysis. The word „sewage“ in this context would include „domestic sewage“ as well. Section 23 gives the DPCC power of entry at any time any place for the purposes of performing any of the functions entrusted by the DPCC to such officer for the purposes of determining "whether and if so in what manner, any such functions are to be performed or whether any direction or authorization served, made, given, or granted under this Act is being or has been complied with." Section 24 of the Water Act prohibits the use of a stream or well for disposal of polluting matters. Consequently, all of the above provisions of the Water Act get attracted when an activity, including an industrial, trade, commercial or domestic activity, causes pollution. This power can be exercised by the DPCC at any time during the construction phase and after the completion of construction when the complex in question becomes functional.

Applicability of Section 25 (5) Water Act to the cases on hand

21. While this Court accepts the contention of the DPCC that Section 25(1) (a) stood attracted in these cases, the DPCC for some reason did not act at a time when the construction of these residential and commercial complexes had either not commenced or having commenced, had not been completed. In other words, in most cases, as will be seen in the discussion of the individual petitions, the DPCC did not issue a show cause notice at a time when the constructions had either not begun or were in progress. The show cause notice was invariably issued by the DPCC after the construction had been completed and in many cases after the completion certificate was issued. In

such a situation, to require the builder of such complex to obtain „prior consent to establish under Section 25 (1) (a) of the Water Act was a direction that was not capable of being complied with. Unfortunately, this was the only provision invoked by the DPCC in each of the cases to pass consequential orders of either imposition of fine or damages or order closure.

22. It appears to this Court that with the buildings in question having already been constructed without obtaining prior consent to establish, the DPCC ought to have fallen back on the legislatively envisioned „Plan B . What ought to have been done by the DPCC was to invoke Section 25 (5) of the Water Act. Section 25(5) talks of a situation where an industry operation or process has already been established or the steps for establishment have already been taken without obtaining the prior consent of the State PCC. In such an event the State PCC has to serve, on the person who has established or taken steps to establish, a notice imposing any such conditions as it might have imposed if an application had been made for its consent "in respect of such establishment, such outlet or discharge."

23. The DPCC ought to have proceeded on the premise that each of the buildings of the petitioners were constructed without its prior consent to establish and then should have invoked its powers under Section 25(5) of the Water Act. What the DPCC has however done in each of the cases is invoke Section 25 (1) and therefore require the petitioners to apply at that stage to it for consent to establish. While the DPCC was armed with sufficient powers under Section 33A of the Water Act to issue directions, such directions must be such as are capable of being complied with.

24. It was urged by Mr. Sudhir Chandra, learned Senior counsel for the DPCC that by letting off the petitioners who had admittedly acted in violation of section 25 (1) (a) of the Water Act a wrong message would be sent and a premium placed, as it were, on brazen violations of the Water Act. Such submission, in the considered view of this Court, does not reflect the correct legal position. If for some reason the DPCC has failed to take action against those who have established commercial or residential complexes without obtaining prior consent to establish, then it is not as if no action can at all be taken against the builders, owners or occupiers of such complexes. Section 25 (5) has been enacted precisely for such a contingency. Section 26 of the Water Act further arms the DPCC with review and monitoring powers and to change the conditions imposed if they are found to be not effective. The DPCC can even after the construction is complete, proceed to act in exercise of its powers under Section 25 (5) of the Water Act. In other words, the legislature expects that the DPCC will act vigilantly at all times to ensure that no violator escapes legal liability under the Water Act.

25. There is another aspect to the matter. There was no clarity about the correct legal position till now even as far as the DPCC was concerned. These cases were for the DPCC, in a sense, test cases. Section 25 of the Water Act was perhaps not invoked by the DPCC earlier and in any event not on this scale against commercial or residential complexes. Not having acted at a time when it should have under Section 25 (1) of the Water Act and having allowed the construction of the complexes to be completed, it would not be reasonable for the DPCC to insist that these petitioners must go back to the stage of obtaining „prior consent to establish . If after a show cause notice is issued under Section 25(5) of the Water Act and within the time stipulated, the corrective measures are not put in place by the person who has established the shopping mall or residential complex, then it would be

open to the DPCC to take further steps in accordance with Section 33A of the Water Act. As long as the power to take action under Section 25(5) of the Water Act remains, there need not be any apprehension of any wrong message being given to those who failed to obtain consent of the DPCC prior to establishing the complexes. Multiplicity of authorities does not render exercise of powers under the Water Act illegal

26. It was argued on behalf of the Petitioners that under Schedule XII to the Constitution of India, read with Article 243W thereof, the powers, authority and responsibility in relation to water and water treatment is exclusively vested in the municipalities, i.e., in this case the Municipal Corporation of Delhi (‘MCD’). It was further submitted that under the Delhi Municipal Corporation Act, 1957 (‘DMC Act’) the powers to grant permission and regulate constructions of buildings in Delhi are exclusively vested with the MCD. Reference is also made to the provisions of the Delhi Jal Board Act (Delhi Water Board Act). The submission is that there cannot be a multiplicity of authorities over the same subject matter and that if the control and regulation of water and sewage is within the exclusive domain of the MCD then the DPCC cannot also exercise such powers in relation to the same subject matter under the Water Act.

27. This Court is unable to agree with the above submission. The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water. For instance, the MCD may have the power to levy tariffs for the use of water. That does not mean that the DPCC cannot issue directions in regard to the prevention and control of pollution of water. They operate in separate fields and both sets of regulations and norms will have to be complied with. Incidentally Entry 5 in Schedule XII reads: "water supply for domestic, industrial and commercial purposes". It obviously does not cover the entire field of the use of water and treatment and discharge of sewage.

Deemed consent in terms of Section 25(7) Water Act

28. The Court would like to observe that when an application is made by a project proponent for consent to establish under the Water Act, the DPCC has to process and decide such application within four months in terms of Section 25(7) of the Water Act. As will be presently seen while discussing the individual cases, there has been no answer by the DPCC to the factual assertion in some of these cases that despite applying twice for the consent to establish under Section 25(1) of the Water Act, no response was received from the DPCC for well over four months after the making of such application. Consequently, where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. If thereafter DPCC finds that any activity in the building which has already been constructed attracts the provisions of the Water Act then it will have to proceed in accordance with other provisions of the Act to prevent or control such polluting activity. Section 25(1) of the Water Act cannot obviously be enforced if the DPCC has allowed the four months’ period after the making of an application for consent to establish, as envisaged under Section 25(7) of the Water Act, to elapse. Summary of the position under the Water Act

29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

- (i) Section 25 (1) of the Water Act is intended to cover not just „industry which discharges „trade effluent but any „process or operation that results in a discharge of „sewage not limited to trade effluent.
- (ii) The words "operation or process" occurring in Section 25(1)
 - (a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of ejusdem generis is therefore inapposite in the context.
 - (iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25 (1) (a) of the Water Act.
 - (iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.
 - (v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.
 - (vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25 (5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.
 - (vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.
 - (viii) Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced.

Position under the Air Act

30. Next for consideration are the provisions of the Air Act and the validity of the action taken thereunder by the DPCC. It requires to be first noticed that the definitions of the different terms under the Air Act are not identical to the corresponding terms in the Water Act. The words "air pollutant" or "air pollution", "emission", "industrial plant" occurring in Section 2(a), 2(b), 2(j) and 2(k) respectively of the Air Act read as under:

"(a) "air pollutant" means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant."

.....

(j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere"

31. The requirement of obtaining from the DPCC a prior consent to operate flows from Section 21(1) of the Air Act which reads as under:

"21. Restrictions on use of certain industrial plants. (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, operate any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application."

32. After its amendment in 1988, the essential definitions remained unchanged. The consent to establish or operate had to be obtained only where it was concerning "any industrial plant in an air pollution control area". It appears to this Court that as far as the Air Act is concerned, the emphasis was only on consent to operate having to be obtained for establishment of an industrial plant. Section 2(k) defines industrial plant to mean "any plant used for any industrial or trade purpose and made any area pollutant into the atmosphere". In the instant case, the expression "trade purposes" therefore have to be distinguished from the industrial purposes. The word "trade" could have a wide

meaning. It could include the transaction that takes place within a commercial shopping complex or a shopping mall. The word "air pollutant", as defined in Section 2(a), means the presence in the atmosphere "in such concentration as may be or tend to be injurious to the atmosphere or the other breeding creatures or plants or property or environment". Therefore the activity has to be such that it results in the establishment of an industrial plant in an air pollution control area. Air pollution, in terms of Section 2(b) is "presence in the atmosphere of any air pollutant".

33. A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act. Mr. B.B. Gupta, learned counsel for some of the Petitioners drew the attention of the Court to the Air (Prevention and Control of Pollution) Union Territory Rules, 1983 (UT Rules). He submitted that Rule 2 (h) of the UT Rules is the only provision which defines the word "premises" which has been defined to mean "any building constructed or already used for industrial or commercial purposes". Far from supporting the submission of Mr. Gupta, this definition suggests that even a building used for commercial purposes would be covered by Section 21(1) of the Air Act. Likewise, Rules 9 and 10 of the UT Rules and the forms thereunder do not exclude a commercial/shopping complex from the applicability of the Section 21 of the Air Act.

34. One of the submissions on behalf of the DPCC was that in most of these buildings, whether it was a commercial shopping complex or a residential complex, there would be a 24-hour power back-up diesel generator set (DG set) that was likely to cause air pollution and attract the provisions of the Air Act. This submission was sought to be countered by the Petitioners by pointing out that only such DG sets that satisfy the pollution control norms would be used by the Petitioners and that this is an event that was likely to take place after the building was commissioned and not at the stage of consent to operate.

35. Here the Court would like to make two observations. The position of the applicability of Section 21 (1) of the Air Act to commercial shopping complexes and shopping malls is different from its applicability, to residential complexes. This will be discussed in some detail shortly hereafter. Secondly, these cases are concerned with the applicability of Section 21 (1) of the Air Act at a stage when construction of the building in question has not commenced. The position of the applicability of the Air Act to any on-going construction and to any building complex which is functional is again different.

36. As far as commercial shopping complexes or shopping malls are concerned, it might be difficult to anticipate, even before the start of construction, what would be the extent of use of DG sets. In any event this need not be the only factor that will determine whether Section 21 (1) Air Act applies to commercial shopping complexes or shopping malls. Given the definition of „air pollutant“ under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade or commercial activity, is sufficient to attract the provisions of Section 21(1) of the Air Act. Whether or not the use of a DG set will attract the provisions of the Air Act is a separate matter. It is obvious as and when the building begins to get used for a trade or commercial purpose and DG sets are used therein, if such DG sets do not comply

with the pollution control norms, a separate cause of action arises for the DPCC to take action.

37. Next the position vis-à-vis residential complexes may be examined. Since Section 21(1) of the Air Act only talks of obtaining prior consent to operate where the air pollution is likely to be caused as a result of the operation of any "industrial plant for the purpose of any industry specified in the Schedule", there is no possibility of expanding the meaning of the word "industrial plant", even on a purposive construction, to include a residential complex. Reliance was placed by learned Senior counsel for the DPCC on the judgment of the Karnataka High Court in *Nitin Majumdar v. State of Karnataka* 2007 (4) Kar LJ 569. That case concerned a place used for storage, which was held to be covered under the definition of „plant . It is not possible to stretch the meaning of the word „plant to include a residential complex. The ratio of the said decision is therefore inapplicable to a complex used only for residential purposes. The contrast with the corresponding words in Section 25 (1) (a) of the Water Act is indeed striking when one examines Section 21 (1) of the Air Act. The crucial words "operation or process" inserted into Section 25 (1) (a) of the Water Act after the 1988 amendment do not find place in Section 21 (1) of the Air Act. The resultant position is that as far as a purely residential complex is concerned, on the present wording of Section 21 (1) of the Air Act, there is no requirement of obtaining the prior consent of DPCC to operate.

38. It was further contended on behalf of the DPCC that the construction activity itself could cause both air and water pollution. One of the purposes of requiring the obtaining of prior consents, as noticed by the Supreme Court in *T.N. Godavarman Tirumulpad v. Union of India* 2006 (10) SCALE 246 (the Vasant Kunj Ridge matters) is the inevitable use of reinforced cement concrete (RCC) mix during construction. There is a likelihood of air pollution being caused due to use of loose cement during construction activity. Clearly, therefore, it is anticipated that the very activity of construction is likely to cause both air and water pollution. This can be appreciated in more than one context. Where what is being constructed is a building that has to be used for the purposes of a commercial complex or shopping complex or shopping mall, then apart from obtaining the consent to establish under the Water Act and consent to operate under the Air Act, after the construction activity commences such activity will have to nevertheless comply with the pollution control norms that would give rise to a separate cause of action to the DPCC for the applicability of the provisions of the Water Act and the Air Act.

39. Where it is a residential complex, while there may be no need to obtain prior consent to operate under Section 21 (1) of the Air Act, once the construction activity commences, that activity has to be in consonance with the provisions of both the Air Act as well as the Water Act. Needless to mention, once the complex, whether commercial or residential or a shopping mall, is functional, the norms under both the Air Act and the Water Act, or for that matter the EPA or any other environmental law, will have to be complied with.

40. The position where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate is examined next. In such event, unlike the fall back plan of action under Section 25 (5) of the Water Act, the course of action available to the DPCC would be to inspect the building in exercise of its powers under the Air Act and the Rules thereunder and then issue a show cause notice requiring the builder or the owners or

occupiers as the case may be to comply with the conditionalities imposed by it under the Air Act within a specified time frame, failing which the DPCC can issue further directions under Section 31A Air Act.

Summary of the position under the Air Act

41. The position under the Air Act may be summarized:

- (i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.
- (ii) The definition of „air pollutant“ under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21 (1) of the Air Act
- (iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.
- (iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.
- (v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31-A Air Act.

The position under the EPA

42. The EIA Notification dated 14th September 2006 requires the obtaining of a prior EIA clearance for "new projects or activities listed in the schedule to this notification." The schedule includes, inter alia, building/construction projects/area development projects and townships. Serial 8(A) concerns building and construction projects. In column 4 it is stated that where the extent is of equal to or more than 20,000 sq.m. and less than 50,000 sq.m. of built up area, the EIA clearance is mandatory.

43. The appendix to the above EIA Notification sets out the format in which an application has to be made for an EIA clearance. The second part of the format concerns "use of natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any

resources which are non-renewable or in short supply)". Serial No. 2.2 asks for details about "Water (expected sources & competing users)". Appendix 2 sets out the exclusive requirement for construction projects. In para 2 there is a detailed checklist concerning „Water Environment . Para 2.1 requires the applicant to "give the total quantity of water requirement for the proposed project with the breakup of requirements for various users". In particular, the following questions are asked:

"2.9. What the impacts of the proposal on the ground water? (Will there be tapping of ground water give the details of ground water table, recharging capacity, and approvals obtained from competent authority, if any) 2.10. What precaution/measures are taken to the prevent the run-off from construction activities polluting land & aquifers? (Give details of quantities and the measures taken to avoid the adverse impacts) 2.11. How is the storm water from within the site managed? (Since the provisions made to avoid flooding of the area, details of the drainage facilities provided along with a site layout indication contour levels) 2.12. With the deployment of construction labourers particularly in the peak period lead to unsanitary conditions around the project site (Justify with proper explanation) 2.13. What on-site facilities are provided for the collection, treatment & safe disposal of sewage? (Give details of the quantities of wastewater generation, treatment capacities with technology & facilities for recycling and disposal) 2.14. Give details of dual plumbing system if treated waste used is used for flushing of toilets or any other use."

44. As regards „Air Environment para 5 of the form lists out the various questions that have to be answered by the applicant. The questions read as under:

"5.1. Will the project increase atmospheric concentration of gas & result in heat islands? (Give details of background air quality levels with.....based for dispersion models taking into account the increased traffic generation as a result of the proposed constructions) 5.2. What are the impacts on generation of dust, smoke, odours, fumes or other hazardous gases? Give details in relation to all the metrological parameters. 5.3. Will the proposal create shortage of parking space for vehicles? Furnish details of the present level of transport infrastructure and measures proposed for improvement including the traffic management at the entry & exit to the project site.

5.4. Provide details of the movement patterns with internal roads, bicycle tracks, pedestrian pathways, footpaths etc., with areas under each category.

5.5. Will there be significant increase in traffic noise & vibrations? Give details of the sources and the measures proposed for mitigation of the above.

5.6. What will be the impact of DG sets & other equipment on noise levels & vibration in & ambient air quality around the project site? Provide details."

45. The contention of those Petitioners who have obtained EIA clearance for their projects is that by requiring them to again approach the DPCC for consent to establish under the Water Act and

consent to operate under the Air Act, the same exercise is being unnecessarily asked to be repeated by the DPCC. It is further submitted that once the MoEF has already given clearance, it would not be open to the DPCC to again examine those very issues and refuse either the consent to establish under the Water Act or the consent to operate under the Air Act.

46. In reply it is pointed out by the DPCC that under most of the EIA clearances, one of the conditionalities imposed is that the applicant has to obtain consent to establish under the Water Act and consent to operate under the Air Act respectively from the DPCC. Additionally, reference is made to a Circular dated 21st November 2006 issued by the MoEF clarifying that an NOC from the State Pollution Control Board („SPCB) and its consent to establish are "separate legal requirements, any project proponent has to fulfil." It is clarified that "NOCs are required under Water and Air Acts are mandatory requirement under those Acts and will have to be taken as required and do not require to be intended as environmental clearance". The DPCC has also pointed out that there is no question of repugnancy between the Air and Water Acts on the one hand and the EPA on the other. To be fair to the Petitioners, it was not their case that there is any repugnancy between the statutes in question. Their submission is that once they have obtained EIA clearance under the EIA Notification dated 14th September 2006, they do not have to again go before the DPCC for a separate consent to establish and consent to operate.

47. This Court finds that there is indeed an element of overlap between some of the aspects examined by the MoEF while granting EIA clearance, and those aspects on which the DPCC grants either consent to establish or consent to operate or both. At the same time, the need to separately obtain consent to establish under the Water Act and consent to operate under the Air Act from the DPCC is mandatory as clarified by the MoEF in its Circular dated 21st November 2006. As explained by the Supreme Court in *State of Bihar v. Kedar Sao* (2004) 9 SCC 344, it is possible that more than one enactment applies to the same facts and circumstances and it is possible that the applicant may have to get clearances from different agencies for the same activities. The mere fact that an EIA clearance has been obtained from the MoEF cannot be a ground to seek exemption from obtaining consent to establish under the Water Act and consent to operate under the Air Act.

48. A possible balance that can be struck with a view to avoiding duplication is to hold that when a holder of an EIA clearance applies to the DPCC for either consent to establish under the Water Act or consent to operate under the Air Act, it would be incumbent on the DPCC to ascertain the aspects that have already been examined by the MoEF in granting the EIA clearance. Those aspects need not be again examined by the DPCC. There is usually a role assigned to the SPCB under the EIA notifications. Even assuming that the position in Delhi is different and the DPCC does not come into the picture when an EIA clearance is granted by the MoEF, it would nevertheless be necessary for the DPCC to avoid repeating the same exercise which has been performed by the MoEF in granting the EIA clearance. Therefore, to the extent that certain aspects have not been covered by the EIA clearance, it would certainly be open for the DPCC to examine those aspects and decide whether or not to grant consent to establish under the Water Act and consent to operate under the Air Act.

Who should apply for consent?

49. It was submitted on behalf of the Petitioners that after the completion of the construction in terms of validly sanctioned plans the ownership of the property, or portions thereof, usually changes hands. The question posed is, in such event, who should apply for consent to establish or to operate and who should be called upon to comply with the environmental norms?

50. It is not as if the person who originally applied for EIA clearance or the consent to establish or consent to operate would have nothing to do with the property in question once the construction is complete. There may indeed be multiple owners in a constructed building. In such event, if the builder already knows who they are, even before construction commences, then the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners. If the building has been completed without obtaining prior consent to establish under Section 25 (1) (a) of the Water Act it would be incumbent upon the person receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. Notices can then be issued to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be liable to answer the show cause notice and to explain why he should not be proceeded against for the violations of the Water Act. The position would be more or less similar under the Air Act. In any event, since under the Rules under both the Water Act and the Air Act there is a requirement that the DPCC should conduct an enquiry or investigation before issuing a show cause notice, that might reveal the names of the persons to whom the notices should be issued.

The ambit of DPCC's powers under Section 33A Water Act and Section 31A Air Act

51. This brings up the next question as to the scope of the powers of the DPCC under Section 33A of the Water Act and Section 31A of the Air Act which are more or less identically worded. Section 33A of the Water Act reads as under:

"33A. Power to give directions. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation-For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

52. The above provision opens with a non obstante clause. However, it is subject to the other provisions of the Water Act. It gives the DPCC the power to issue directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. The directions would include the power to order closure prohibition or regulation of any "industry, operation or process" or the "stoppage or regulation of supply of electricity, water or any other service". The power of the DPCC under Section 33A Water Act is indeed wide. It implies within it the requirement of following the principles of natural justice before the exercise of such power. On a collective reading of Sections 25 and 33A, the legislative scheme appears to be that where there is a failure by a person to comply with either Section 25(1)(a) or Section 25(5) of the Water Act then it would be open to the DPCC to exercise its powers under Section 33A of the Act. Without giving any show cause notice under Section 25(5) in the instant case and without waiting for the expiry of the time within which the corrective steps have to be taken, it will not be open to the DPCC to straightway invoke its power under Section 33A to order closure of the shopping mall or commercial or residential complex concerned. That would make such exercise of power vulnerable to invalidation on the grounds of arbitrariness and unreasonableness. The position as regards Section 31A of the Air Act is no different. That power too cannot be exercised to straightaway order closure of a building without giving the person concerned a prior show cause notice consistent with the procedure outlined under the Rules under the Air Act.

Validity of the levy of penalties and environmental damages

53. The powers of the DPCC to levy environmental damages and seek the furnishing of bank guarantees as a pre-condition to the grant of consents are examined next. Connected with this issue is the question whether the Chairman of the DPCC had the power to constitute a Consent Management Committee („CMC ") which proceeded to levy environmental damages, penalties, fines and require the furnishing of bank guarantees in some of these cases.

54. Section 15 of the Air Act provides for delegation of powers stating that a State Board may, by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board, its powers. Under Section 12(3B) of the Water Act, a similar power has been conferred on the State Board to delegate its powers.

55. It is pointed out by the Petitioners that the DPCC has, contrary to the relevant provisions of the Water Act and Air Act, delegated its powers with regard to granting prior consent to establish or consent to operate and to issue directions under Section 31A of the Air Act and Section 33A of the Water Act to the Chairman and Member-Secretary. It is stated that the Chairman DPCC is also the Chairman of the CMC which deals with the aspect concerning consent. It is accordingly sought to be contended that there can be no sub-delegation by the Chairman of his powers to the CMC and the decision taken by the Chairman with the assistance of the Members of the CMC is invalid.

56. If indeed it was the Chairman alone who was acting in exercise of the powers delegated to him under Section 31A of the Air Act and Section 33A of the Water Act, then the final decision to either agree to or to refuse the consent to establish or consent to operate should have been taken independently by the Chairman. The minutes of the meetings, however, show that this was the

decision of the CMC. Although the Chairman of the DPCC may be the Chairman of the CMC, he is but one member in the CMC. There is nothing to indicate that the decision of CMC was unanimous or by majority or that it was the decision only of the Chairman. There is no power under the Water Act or the Air Act given to the Chairman to further sub-delegate his powers in regard to consent to establish or consent to operate to the CMC. Such sub-delegation was obviously bad in law. Unless it is shown, and it is not, that the other members of the CMC apart from the Chairman were performing a mere advisory role and had nothing to do with the actual grant or refusal of the consent to establish or consent to operate, such decision by the CMC is clearly ultra vires the Air Act and Water Act.

57. In the instant case, this Court is unable to find any justification for the CMC to itself take decision as regards the grant and refusal of the consent to establish under the Water Act and consent to operate under the Air Act. Secondly, even where it agreed to grant consent to establish, the CMC imposed a pre-condition that the applicant should pay a penalty or fine or furnish a bank guarantee or in some cases all or some of them. There is no statutory basis for such a direction to be issued by the CMC, or for that matter by even the Chairman of the DPCC. The grant of the consent to establish or consent to operate ought not to be made conditional upon payment of some fine or penalty or furnishing of bank guarantee. Given the object of the Water Act and the Air Act, which is the prevention and control of pollution, the mere payment of fine or penalty or furnishing of bank guarantee is unlikely to prevent and control the likely pollution that can be caused. The basic approach adopted by the CMC where such penalty or fine has been levied or bank guarantee secured appears to be faulty.

58. The decision to levy environmental damages and to seek the furnishing of bank guarantees has been sought to be justified by the DPCC with reference to Section 31A of the Air Act and Section 33A of the Water Act. As already noticed, Section 31A of the Air Act is more or less similarly worded as Section 33A of the Water Act and both provisions have been inserted by the 1988 Amendments. A reference has already been made to Section 33A of the Water Act. The power under the said provision includes the power of the DPCC to issue "any directions in writing to any person". The `Explanation` to the provision clarifies that the power to issue directions includes the power to direct "closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service". Yet, this power has to be one coupled with a duty to act reasonably and fairly. It cannot be stretched to include a power to levy a penalty.

59. In the considered view of this Court, the power to levy a penalty on any party is in the nature of a penal power. It is settled law that unless there is a specific power in the statute enabling the authority to do so, it cannot levy penalties or damages with reference to the general power under Section 31A of the Air Act or Section 33A of the Water Act. The decisions in *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra* (1975) 2 SCC 22, *J.K. Synthetics Limited & Birla Cement Works v. Commercial Taxes Officer* (1994) 4 SCC 276 and *India Carbon Ltd. v. State of Assam* (1997) 6 SCC 479 are relevant in this regard. In *Khemka & Co.*, the question was whether an assessee under the Central Sales Tax Act 1956 could be made liable for penalty under the provisions of the Mysore Sales Tax 1957 when there was no provision in the Central Act for imposition of penalty for default in payment of tax. Answering the question in the negative, the opinion of Ray CJ,

writing for the majority explained (SCC, p.31):

"25. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to Section 28 of the Indian Income-tax Act, 1922 where penalty is provided for concealment of income. Penalty is in addition to the amount of income-tax. This Court in *Jain Brothers and Ors. v. Union of India* [1970] 77 ITR 107(SC) said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax."

60. In his concurring opinion Beg, J. (as His Lordship then was) observed (SCC@ p.35):

"39. On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the law. The machinery or procedure for its realization comes into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. It is a well settled canon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability. But, I do not think that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realization of tax. It is more than that. Such liabilities must be created by clear, unambiguous, and express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good government of laws. It is implied in the Constitutional mandate found in Section 265 of our Constitution: "No tax shall be levied or collected except by authority of law"."

61. Later in *India Carbon Ltd.*, the question arose whether sales tax authorities in the States could charge interest when collecting and enforcing payment of central sales tax. Following the decision in *Khemka* it was held that absent a substantive provision in the central Act requiring the payment of interest on central sales tax, the authorities in the states could not charge interest thereon. The resultant position is that there being no specific provision in the Water Act or Air Act empowering the DPCC to levy penalties, fines or environmental damages, or to require the furnishing of bank guarantees, no such order or direction can be issued by the DPCC, much less the CMC, in exercise of the general powers to issue directions under Section 33 A Water Act and Section 31 A Air Act.

62. The DPCC has placed reliance upon the decision of the learned Single Judge of this Court dated 16th January 2009 in Writ Petition (C) No. 7516 of 2007 (*Regent Automobiles Pvt. Ltd. v. GNCTD.*)

The Court in Regent Automobiles was interpreting the provisions of the Delhi Common Effluent Treatment Plants Act, 2000 (DCETP Act). Section 11 of the DCETP Act which contains a specific provision for penalty reads as under:

"11. Penalty for non-payment within the specified time. If any amount payable by any person is not paid within the date specified in the order it shall be deemed to be in arrears and the appropriate authority may after such inquiry as it deems fit, impose on such person a penalty not exceeding the amount in arrears."

63. Section 16 of the DCETP Act reads as under:

"16. Power to give directions- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, the appropriate authority may, in exercise of its powers and performance of its functions under this Act, issue any directions in writing to any occupier, society, person, officer or authority, and such occupiers, society, person, officer or authority shall be bound to comply with directions.

Explanation- For the avoidance of doubts, it is hereby declared that the power to issue directions under this Clause includes the power to direct-

(a) the closure, prohibition or regulation of any industry, establishment, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

64. Further Section 17 DCETP Act spells out the consequences of failing to comply with the direction issued by the authority. It enables the authority to levy a further penalty in the event of such failure. In addition, Section 18 DCETP Act talks of penalty for certain kinds of acts. Section 19 DCETP Act provides for residual penalty for contravention of certain provisions of the Act. It was noticed by learned Single Judge that, "but for Section 16 it can be argued that the entire range of sanctions including penalties have been specifically provided by various provisions such as Section 11, 18, 19 & 20." It was in the above context that the question posed by the learned Single Judge was "whether the general power to issue directions comprehends the power to require bank guarantees to be furnished?" After referring to certain decisions which explained that "everything necessary to carry out the purposes of the grant can be done by the authority entrusted with the power", the learned Single Judge came to the conclusion that the "court cannot limit the options available to statutory authorities to meet emerging challenges, towards ensuring compliance with the provisions." Yet, even in that case the Court accepted the contention of the Petitioners that in the show cause notices, preceding the impugned orders, there was no mention about the possibility of issuance of orders requiring bank guarantees to be furnished. Further the orders did not indicate the application of mind to what existed on site, and what was the standard required to be complied with. Therefore while the challenge on account of lack of power failed, the impugned orders were held not sustainable in law and set aside.

65. In the considered view of this Court, the above decision in Regent Automobiles is of no assistance to the DPCC in the present case. The provisions of the DCETP Act are different from the provisions of the Air Act and Water Act particularly with reference to the penalty provisions. In the DCETP Act, Sections 11, 17, 18 and 19 talk of penalties and it is in that context it was held that the power under Section 16 of that Act includes power to require furnishing of bank guarantee. Neither in the Water Act nor in the Air Act is there any provision that permits DPCC to levy a penalty. That power is with the courts and that too after returning a conviction. Chapter VI of the Air Act and Chapter VII of the Water Act talks of penalties which result from a conviction for violation of the provisions. Clearly, the penalties envisaged under the Air Act and the Water Act can be levied only at the end of judicial proceedings before a criminal court. That power cannot be exercised by the DPCC. There is no provision either under the Water Act or under the Air Act that empowers a State Board to levy penalties or environmental damages, much less require the furnishing of a bank guarantee.

66. This Court has, therefore, no hesitation in coming to the conclusion that orders issued by the CMC or even the DPCC in the instant case levying penalty and requiring furnishing of bank guarantees and making the grant of consent to establish under the Water Act and consent to operate under the Air Act conditional upon payment of such penalties and furnishing of such bank guarantees are entirely without the authority of law and require to be set aside.

Procedural violations by the DPCC

67. This Court finds that the procedure adopted in the instant case by the DPCC in levying the damages and requiring the Petitioners to furnish bank guarantees was not consistent with the requirements of the Rules under the Air Act and Water Act. Under Rule 20A(3) of the UT Rules the requirement is of serving a copy on the alleged violator of the proposed directions and being given an opportunity of not less than 15 days from the date of service of a notice to file objections to the proposed directions. Where the direction is for the stoppage or regulation of electricity or water or any other service then under Rule 20A(4) copy of the proposed direction should be endorsed to the occupier of the industry, operation or process. After the receipt of the objection and within 45 days from that day, the DPCC should give an opportunity to the person to file objections and after considering the objections and for reasons to be recorded in writing, either confirm, modify or decide not to issue such directions. Where the DPCC decides that it is not expedient to provide such an opportunity on account of a likelihood of grave injury to the environment, it should record an opinion to that effect.

68. Rule 33 of the Water (Prevention and Control of Pollution) Rules, 1975 („Water Rules) spells out the procedure for making an inquiry into application for consent. The said Rule reads as under:

"33. Procedure for making inquiry into application for consent-(1) On receipt of an application for consent under Section 25 or Section 26, the Central Board may depute any of its Officers, accompanied by as many assistants as may be necessary, to visit the premises of the applicant, to which such application relates, for the purpose of verifying the correctness or otherwise of the particulars furnished in the application

or for obtaining such further particulars or information as such officer may consider necessary. Such officer may, for that purpose, inspect any place where water or sewage or trade effluent is discharged by the applicant, or treatment plants, purification works or disposal systems of the applicant and may required the applicant to furnish to him any plans, specifications and other data relating to such treatment plants, purification works or disposal systems or any part thereof, that he considers necessary.

(2) Such officer shall before visiting any premises of the applicant for the purpose of inspection under sub- rule (1) above, give notice to the applicant of his intention to do so in Form XIV. The applicant shall furnish to such officer all facilities that such officer may legitimately require for the purpose.

(3) An officer of the Central Board may, before or after carrying out an inspection under sub-rule (1) above, required the applicant to furnish to him, orally or in writing such additional information or clarification, or to produce before him such documents, as he may consider necessary for the purpose of investigation of the application and may, for that purpose, summon the applicant or his authorised agent to the office of the Central Board."

69. This Court finds that in none of the cases the above procedure has been followed by the DPCC. This would be discussed in greater detail while dealing with the individual cases. This Court would like to emphasise the power of the DPCC under Section 31A of the Air Act and 33A of the Water Act, which is indeed a coercive power, has to be exercised with caution and after complying with the due process requirements. The Rules under both statutes have to be mandatorily followed while exercising such powers.

Conclusions

70. The summary of the conclusions of this Court are set out hereunder. It is clarified that these summary conclusions have to be read with the specific conclusions under different sub-topics already set out hereinbefore.

(i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of Section 25(1)(a) of the Water Act and apply to the DPCC for prior consent to establish.

(ii) Where a person has already established a commercial shopping mall or shopping complex or residential complex and has not been issued any show cause notice till the completion of such building then it would be pointless to require such person to thereafter comply with the requirements of Section 25(1) of the Water Act. The available course to the DPCC in such event is to invoke the powers under Section 25(5) of the Water Act and set out a time limit for such person to comply with the requirements of the Water Act. Upon failure to comply with the requirements as specified by the DPCC, it would be open to the DPCC to invoke its powers under Section 33A of the

Water Act after complying with the due process outlined under the Water Rules.

(iii) Where a person has made an application for consent to establish and four months have elapsed during which the DPCC has not communicated to him its decision thereon, then in terms of Section 25(7) Water Act consent to establish will be deemed to have been granted. In such event the question of the person being thereafter required to apply for consent to establish does not arise.

(iv) Where the built up area is more than 20,000 sq.m., the requirement of obtaining an EIA clearance for such activity is mandatory. The mere fact that an EIA clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the DPCC for a consent to establish under the Water Act.

(v) Where an EIA clearance has already been granted by the MoEF, and the DPCC is thereafter approached for grant of prior consent to establish or prior consent to operate, it would be incumbent on the DPCC to avoid re-examining those aspects that have been examined by the MoEF while granting EIA clearance. The DPCC will examine other aspects not covered by the EIA clearance.

(vi) The requirement of obtaining prior consent to operate under Section 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of „industrial plant“ under Section 2(k) of the Air Act. However on the present wording of Section 21(1) Air Act, there is no such requirement as regards a residential complex.

(vii) The requirement of having to obtain the consent to operate under Section 21 of the Air Act does not get obviated only because the person has an EIA clearance under the EPA.

(viii) The DPCC when approached with an application for consent to operate by a person who has already obtained an EIA clearance, will examine only those aspects not covered by the EIA clearance.

(ix) During the phase of construction, and post-construction, the provisions of the Water Act, the Air Act and the EPA and other environmental statutes will apply to all types of buildings and activities.

(x) Without issuing a show cause notice and without giving an opportunity to the alleged violator to rectify the defects detected during an inspection of the premises carried out in accordance with the relevant rules, the power to order a closure under either Section 33A Water Act or 31A Air Act should not generally be straightway invoked.

(xi) There is no power vested in the Chairman of the DPCC, either under the Water Act or under the Air Act to further sub-delegate the powers delegated to him by the DPCC as regards granting or refusing consent to establish or consent to operate under the Water Act and the Air Act respectively. Any Committee established by the Chairman of the DPCC like the CMC has no power to itself decide whether to grant or refuse the consent to establish or consent to operate. Such decision can be taken either by the DPCC itself or by its delegate i.e. the Chairman DPCC and no one else.

(xii) The decisions by the CMC or even by the Chairman, DPCC to levy penalty or environmental damages and insist on furnishing of bank guarantees as a condition for grant of consent to establish or consent to operate are without the authority of law. There is no power under the Air Act or the Water Act which enables the DPCC or its Chairman, much less the CMC, to pass such orders. Absent specific provisions under the Water Act and Air Act which permit the DPCC or its Chairman to levy and collect penalties, environmental damages or to pass orders for furnishing of bank guarantees, the general power to issue directions under Section 31A of the Air Act and Section 33A of the Water Act cannot be invoked for such purpose.

(xiii) Where there are multiple owners in a constructed building, the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners or occupiers. If the building has been completed without obtaining prior consent to establish under Section 25 (1)

(a) of the Water Act it would be incumbent upon the person first receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. The position is more or less similar under the Air Act. Notices can then issue to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be answerable under the Water Act and/or the Air Act.

70.1 This Court would like to end this part of the judgment, before commencing to examine the individual petitions, with the observation that the DPCC should take proactive steps to make the correct legal position publicly known not only through its website, but act in coordination with the governmental and municipal agencies, the planning authorities, the construction industry, consumer associations as well as civil society groups involved in issues of environmental protection. Not only should DPCC reorganize itself as a vigilant regulator but seek the active cooperation of all of the above interested parties. Also, to avoid any criticism of selective application of law, the DPCC should ensure that the law applies and is enforced in a uniform, predictable and certain way, while ensuring that action taken is within the four corners of the law.

Consideration of individual petitions

71. The individual petitions are now taken up for consideration W.P. (C) No. 2714 of 2008 (Vardhman Properties Ltd.)

72. The building in this case is a shopping-cum-office complex built on a commercial plot. The total built up area is 7700 sq.m. The show cause notice was issued by the DPCC on 13th February 2008 asking the Petitioner to explain why it should not be proceeded against for its failure to apply for a consent to establish under Section 25 of the Water Act and consent to operate under Section 21 of the Air Act. The show cause notice further stated with reference "you are proposing to construct/have started construction activities without obtaining prior „Consent to Establish under Air & Water Act from DPCC". The Petitioner was asked to show cause why "prosecution proceedings

should not be initiated against you and/or your establishment should not be closed under the appropriate provisions of the Acts for contravention of the provisions of the aforesaid Acts".

73. By the time the above show cause notice was issued, the building had already been constructed. In fact, construction commenced on 7 th June 2005 in terms of the sanctioned building plan and was completed on 25 th June 2007. The Petitioner replied to the above notice on 18th February 2008. Inter alia, it was pointed out that an application was made on 3 rd September 2007 under the Right to Information Act, 2005 („RTI Act) on the exact criteria adopted by the DPCC for identifying commercial complexes for the purposes of consent under the Air Act and the Water Act. The DPCC had replied that commercial/residential buildings not generating trade effluent are required to discharge their sewage into sewage system maintained by Delhi Jal Board/MCD/DDA which in turn was responsible for treating the sewage in the sewage treatment plant as per the norms prescribed under the pollution control laws and in such event consent was not required for the said commercial/residential buildings.

74. On 18th March 2008, an order was passed by the DPCC noting that a reply had been filed by the Petitioner to the show cause notice on 18 th February 2008 that "no application has been made till date". The case was then placed before the CMC (Orange). It was decided by the CMC to direct the Petitioner to apply for consent to establish and submit "Environmental Clearance obtained from MoEF, Govt. of India" and an "affidavit indicating date of start of construction and completion of construction, approved architectural drawing and completion certificate within 15 days from the issue of this letter".

75. The challenge in the present petition is to the aforementioned order dated 18th March 2008.

76. As already held by this Court hereinbefore that there was no question of the Petitioner having to apply for environmental clearance from the MoEF in terms of the EIA Notification dated 14 th September 2006 since the built up area was not above 20,000 sq.m. In the present case the built up area was 7700 sq.m. The categorization of an industry as Orange, Red or Blue appears to that of the DPCC. It is not found either under the Air Act or under the Water Act. Nevertheless, a commercial shopping complex required prior consent to establish prior to commencement of construction. But once the construction was already complete, then it was pointless to require the Petitioner to apply thereafter for consent to establish.

77. Thirdly, the Petitioner s reply dated 18th February 2008 has been noticed but not discussed by the DPCC in the impugned order. In particular, the Petitioner s response to the reply received by it under the RTI Act has not been adverted to at all. Although it is possible that the sewage generated by the shopping complex will join the main sewage system which is being taken to the effluent treatment plant of the DJB, that by itself will not obviate the need to obtain consent to establish from the DPCC.

78. It appears that DPCC itself was not very clear about the legal position and, therefore, the above reply was given under the RTI Act. It cannot be said that the DPCC estopped from rectifying its position or correcting its understanding of the law.

79. Inasmuch as the building already was constructed on 25 th June 2007, by the time the show cause notice dated 13 th February 2008 was issued, the direction issued by the DPCC requiring the Petitioner to thereafter apply for a consent to establish under the Water Act and consent to operate under the Air Act was a direction which was incapable of being complied with.

80. This is, however, not the end of the matter. The DPCC can still proceed under Section 25(5) of the Water Act requiring the Petitioner to comply with the pollution control norms under the Water Act. This it can do after following the procedure under Section 25(5).

81. As far as Air Act is concerned, the DPCC can inspect the premises to ascertain what is the extent of the air pollution caused, if any, and then issue notice to the Petitioner.

82. The direction issued in the impugned order dated 18 th March 2008, requiring the Petitioner to apply for consent to establish and consent to operate, is for the aforementioned reasons not sustainable in law. While setting aside the impugned order dated 18th March 2008 for the aforementioned reasons, this Court leaves it open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. If it finds after an enquiry or investigation that the use of the premises is causing either water or air pollution, and corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act.

83. The writ petition is disposed of with the above directions. W.P. (C) No. 2771 of 2008 (Vardhman Properties Ltd.)

84. The total built up area in the present case is to an extent of 6131.22 sq.m. The building has been constructed on a commercial plot. The building is a shopping complex. Like in Writ Petition (C) No. 2714 of 2008, a show cause notice was issued by the DPCC on 13th February 2008 requiring the Petitioner to apply for prior consent to establish and consent to operate under the Air Act and the Water Act respectively. A similar response was received from the Petitioner on 18 th February 2008 and a similar order as in Writ Petition (C) No. 2714 of 2008 was passed by the DPCC on 18th March 2008.

85. Here again the construction commenced on 15 th February 2005 and was completed on 4th December 2006 i.e. much prior to the issuance of the show cause notice. For the reasons already explained in Writ Petition (C) No. 2714 of 2008, the impugned order cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter, it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions. W.P. (C) No. 2772 of 2008 (Vardhman Properties Ltd.)

86. The building in this case is a shopping complex built on a commercial plot. The total built up area is 5907.25 sq.m. The facts are identical to the facts in Writ Petition (C) Nos. 2714 and 2721 of 2008. The date of completion of the building is 14th December 2006.

87. For the reasons already stated hereinbefore, the impugned order dated 18th March 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 7081 of 2008 (Pankaj Buildwell Ltd.)

88. The total built up area in this case is 1593 sq.m. The building is a shopping complex and is built up on a commercial plot. The completion certificate was obtained on 2nd June 2008 itself. It is only thereafter on 14th February 2008 that the standard show cause notice was issued by the DPCC which was identically worded as the show cause notice dated 13th February 2008 in the cases of Writ Petition (C) Nos. 2714, 2771 and 2772 of 2008. The impugned order is dated 9th September 2008 which is again identically worded.

89. The decision taken by the CMC on 3rd September 2008 has been placed on record. It shows that apart from the Chairman, DPCC there were three other members along with the Executive Engineer, Assistant Executive Engineer and Joint Executive Engineer of the CMC. As regards the Petitioner, its contention that it had no DG set and no bore well and there was no effluent were noted. The decision was to let the unit file its application to the DPCC and its case would be considered by the CMC on 30th September 2008. The above decision of the CMC was communicated to the Petitioner on 9th September 2008 asking it to file an application for consent to establish. This is the decision which has been challenged in the writ petition.

90. For the reasons already stated hereinbefore, the impugned order dated 9th September 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 3815 of 2008 (Vardhman Properties Ltd.)

91. The building in question has a total built up area 4735.62 sq.m. and is on a commercial plot. The construction of the building commenced on 27th November 2003 and was completed on 2nd

December 2004. A show cause notice was issued on 24th April 2008 requiring Petitioner to apply for consent to establish. It was at this stage that the present writ petition was filed challenging the said show cause notice. An interim order was passed by this Court on 19th May 2008 directing the Respondent not to take coercive action pursuant to the abovementioned notice dated 24th April 2008.

92. In the reply filed to the petition, a reference is made by the DPCC to the Petitioner's response dated 6th May 2008 to the show cause notice in which it was mentioned that the DDA has already issued a completion certificate. It appears that the DPCC undertook an inspection of the site on 1st July 2008 and confirmed that the built up area was 4735.62 sq.m., and that the completion of the construction took place on 2nd December 2004. The inspection team was also informed that the building was under occupation since 1st April 2005 and the occupancy was to the extent of 50 to 60 persons. There was one DG set of 140 KVA along with two more DG sets located at the terrace, there was no information about their KVA. Sewage connection was available and the estimated waste water generation was 11.2 KLD. It was informed that the CMC was yet to take any decision on the said report.

93. This Court finds that the built up area being 4735.62 sq.m., there was no question of the Petitioner having to obtain an EIA clearance in terms of the EIA Notification dated 14th September 2006. The construction having already been completed on 2nd December 2004, the direction to the Petitioner to apply for consent to establish which had to happen prior to commencement of construction was incapable of being complied with.

94. The impugned orders dated 24th April 2008 of the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8143 of 2008 (Manish Buildwell Pvt. Ltd).

95. The total built up area of the commercial complex in the present petition is 2160 sq.m. Construction of the building commenced sometime in May 2007 and was completed in May 2008. A show cause notice was thereafter issued on 6th June 2008. On 16th October 2008, a direction was issued by the DPCC requiring the Petitioner to apply for consent to establish. This is identically worded as the direction issued by the DPCC on 10th September 2008 in Writ Petition (C) No. 7081 of 2008.

96. For the reasons already explained hereinbefore, the directions contained in the order dated 10th September 2008 and 16th October 2008 passed by the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with

Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8144 of 2008 (Vardhman Properties Ltd.)

97. The total built up area of the commercial complex constructed on a commercial plot in the present petition is 18,250 sq.m. Construction of the building was completed on 14th September 2007. An order was passed on 24th October 2008 by the DPCC in terms of the decision of the CMC at its meeting on 7th October 2008 asking the Petitioner to apply for consent to establish and also give para wise reply to the observation made by the special inspecting team on the inspection that was carried out on 3rd September 2008.

98. For reasons already mentioned, the direction to the Petitioner to apply for consent to establish is now incapable of being complied with inasmuch as construction was already completed on 14th September 2007. It is not clear if the due process requirement of a prior show cause notice was complied with by the DPCC before issuance of the above direction. While setting aside the impugned order dated 24th October 2008, this Court leaves it open to the DPCC to initiate appropriate proceedings in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/ investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions. W.P. (C) No. 8145 of 2008 (Sachdeva Buildcon Pvt. Ltd.)

99. The total built up area of the commercial shopping complex constructed on a commercial plot in the present petition is 2407.7 sq.m. Construction of the building commenced sometime in January 2005 and was completed in May 2006. It appears that on 28th April 2008 and 29th May 2008 the DPCC passed orders directing the Petitioner to apply for consent to establish.

100. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/ investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions. W.P. (C) No. 8146 of 2008 (Rajesh Projects India Pvt. Ltd.)

101. The total built up area of the building constructed on a commercial plot in the present petition is 5000 sq.m.(approx). Construction of the building commenced on 5th July 2005 and completed in April 2007. A show cause notice was issued on 24th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

102. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/ investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions. W.P. (C) No. 8147 of 2008 (Rajesh Projects India Pvt. Ltd.).

103. The total built up area of the shopping mall constructed on a commercial plot in the present petition is 3990 sq.m. Construction of the building commenced on 27th February 2003 and was completed on 27th July 2006. A show cause notice was issued on 24 th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

104. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/ investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions. W.P. (C) No. 8148 of 2008 (Manish Buildwell Pvt. Ltd.)

105. The total built up area of the building constructed on a commercial plot in the present petition is 8485.75 sq.m. Construction of the building commenced on 15th June 2005 and was completed on 22nd May 2007. A show cause notice was issued on 13th February 2008 and a direction was issued asking the Petitioner to apply for consent to establish.

106. For the reasons already explained hereinbefore, this Court finds that the impugned directions dated 18th March 2008 and 29th May 2008 are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8149 of 2008 (Fargo Estates Pvt. Ltd.)

107. The total built up area of the building constructed on a commercial plot in the present petition is 10,100 sq.m. Construction of the building commenced on 2nd May 2004 and was completed sometime in May 2006. A show cause notice was issued on 21st May 2007 and an order was passed on 31st October 2008 requiring the Petitioner to pay environmental damages of ` 40 lakhs and furnish bank guarantee of ` 95 lakhs.

108. The above directions were stayed by this Court by an order dated 17th November 2008.

109. For the reasons already explained hereinbefore, the impugned order dated 31st October 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/ investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

110. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 9040 of 2008 (Home Linkers Pvt. Ltd.)

111. The total built up area of the building constructed on a commercial plot in the present petition is 3,526.83 sq.m. Construction of the building commenced on 11th November 2004 and was completed on 7th June 2006. A show cause notice was issued on 14th February 2008 and orders were passed on 18th March 2008 and 19th September 2008 requiring the Petitioner to apply for consent to establish.

112. For the reasons already explained hereinbefore, the impugned orders dated 18th March 2008 and 19th September 2008 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No.464 of 2009 (Vardhman Land Developers Pvt. Ltd.)

113. The Petitioner purchased a commercial plot measuring 5112 sq.m. in Raja Garden, New Delhi in an open auction held by the MCD on 6th May 2002 and a perpetual lease deed was executed and

building plans were sanctioned by the DDA on 24th March 2004. A completion certificate was issued on 31st January 2005.

114. The Petitioners pointed out that although they did not consider it necessary to apply for consent to establish, they nevertheless did apply on 22nd November 2007 with the DPCC. A show cause notice was issued on 5th December 2007 which was replied to on 13th December 2007 informing the DPCC that the application seeking „consent to establish“ was already pending. No reply was received from the DPCC. The DPCC again sent a notice dated 14th March 2008 requiring the Petitioner to submit environmental clearance, approved architectural drawings and the completion certificate. Thereafter the DPCC sent a letter dated 26th May 2008 informing the Petitioner that its case was being placed before the CMC.

115. At its meeting on 21st August 2008, the CMC took note of the fact that the total project cost is ` 44.14 crores and that in similar cases the CMC has levied damages of 1% of the project cost and 2% of the project cost for bank guarantee which in the present case worked out to damages as cash penalty of ` 44 lakhs and bank guarantee of ` 88 lakhs. The aforesaid damages as cash penalty and bank guarantee valid for three years was asked to be furnished by 17th September 2008. The Petitioner then made a representation which was again considered by the CMC in its meeting held on 7th October 2008. The CMC now reduced the penalty amount to ` 40 lakhs and bank guarantee amount to ` 85 lakhs and asked the unit to comply with the directions of 6th July 2008.

116. It was at that stage that the Petitioner filed the present writ petition in which by an order dated 27th January 2009 an interim order was passed restraining the Respondents from taking any coercive action against the Petitioner.

117. As explained hereinbefore, the DPCC had no power to require the Petitioner to pay environmental damages or to furnish bank guarantee and, therefore, the impugned direction is wholly unsustainable in law and is hereby set aside. If indeed the Petitioner had already filed an application for consent to establish on 22nd November 2007, then in the absence of any reply thereto by the DPCC in terms of Section 25(7) of the Water Act such consent is deemed to have been granted.

118. This will, in any event, not preclude the DPCC from taking action against the Petitioner after an inspection undertaken by it of the premises hereafter. If the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act, the DPCC can proceed to take action but only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions. W.P. (C) No. 543 of 2008 (Splendor Landbase Ltd.)

119. The property in question is an office complex-cum-shopping mall on Plot No.3, District Centre, Jasola, New Delhi known as Splendor Forum. The area of the plot is about 5704 sq. m. It was purchased from the Delhi Development Authority for commercial purposes in an open auction. The Petitioner states that all the necessary permissions from all authorities concerned including the municipalities, electricity department, Chief Fire Officer, Delhi Urban Art Commission, and Airport

Authority of India were taken. The construction of the building started in March 2004 and the construction up to the plinth level was completed in December 2005. The EIA Notification dated 7th July 2004 brought within its fold construction activity. The Petitioner states that in terms of the said EIA Notification where construction was complete till the plinth level, no environmental clearance was necessary. However, since DDA insisted on the Petitioner producing the EIA clearance certificate in order to process its case for additions, alterations and modifications, the Petitioner applied and was granted EIA clearance by the MoEF on 2nd November 2007.

120. In response to a notice dated 20th/21st August 2007 from the DPCC, the Petitioner applied for consent to establish under Section 25 (1) (a) of the Water Act on 5th September 2007. A reply to the notice dated 20th/21st August 2007 was also sent to the DPCC by the Petitioner. The aforesaid application for consent dated 5th September 2007 was never formally rejected by the DPCC. However, an order dated 31st December 2007 was passed by the DPCC issuing directions under Section 31A of the Air Act and Section 33A of the Water Act primarily on the ground that the construction was started and completed without first obtaining consent to establish. It was also alleged that there were certain violations of the conditions of the EIA clearance although according to the Petitioner this was outside the scope of the powers of the DPCC. By the impugned order dated 31st December 2007, the Petitioner was asked to pay fine and furnish a bank guarantee. The Petitioner submits that said order was passed without complying with the principles of natural justice and was contrary to the procedure under the Rules. The premises was inspected by MoEF. It is stated that in its report dated 5th May 2008 the MoEF recorded that there has been satisfactory compliance of most of the conditions laid down in the EIA clearance. It was concluded that the commencement of construction by the Petitioner in March 2004 could not be treated as a violation of the EPA. Hence no legal action was recommended by the MoEF against the Petitioner under the EPA.

121. The directions issued by the DPCC on 31st December 2007 have been assailed as being ultra vires the powers of the DPCC under the Air Act and the Water Act. The said order is also challenged on the ground of non-compliance with the applicable Rules and further that DPCC cannot take action for alleged non-compliance with the conditions forming part of the EIA clearance.

122. In its counter affidavit dated 31st January 2008 the DPCC contended that the Petitioner initially did not apply to the DPCC for prior consents under either the Water Act or the Air Act. It was only after a formal notice was issued to the Petitioner in August 2005 that on 5th September 2007, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act. According to the DPCC the Standing counsel of the GNCTD advised it that it could not initiate actions under Sections 15, 16 and 19 of the EPA. An inspection was carried out in the premises on 23rd December 2007 and the deficiencies noted at that time have been listed out in the counter affidavit. The conditions imposed by the amended clearance dated 10th February 2007 and the status of compliance was also set out in detail in the counter affidavit. It is stated that the CMC at its meeting on 26th December 2007 and 28th December 2007 deliberated upon the matter considering the facts and circumstances including the representation dated 27th December 2007 made by the Petitioner. Thereafter the impugned order dated 31st December 2007 was passed under Section 31A of the Air Act and Section 33A of the Water Act asking the Petitioner to pay 0.5%

of the project cost of ` 65 crores as fine, which was required to be deposited in the DPCC's account within 30 days. The DPCC's stand is that "any smaller amount of fine will only mean that a non-deserving Petitioner with no bonafides of commitment to preserving clean air and water in his environment, would not work towards a correction. Surely environment deserves 1/2 % of his total project cost to make him realize the degree of his callousness." A detailed parawise reply to the writ petition has also been given by the DPCC.

123. In its rejoinder filed on 6th February 2008, the Petitioner pointed out that it had in fact obtained EIA clearance. A reference was made to the website of the DPCC where under the caption „frequently asked questions“ under the sub-heading „consent procedure“ the following questions and answers appear:

"Q. I am involved in trading activity, Do I need to apply for consent?

Ans. At present, consents are not required for enterprises engaged only in trading activities.

Q. I have an office and have installed a D.G. Set. Do I need to take consent from DPCC?

Ans. DPCC does not issue consent for offices. For D.G. Sets you are required to install acoustic enclosure meeting the prescribed norms/standards for noise for D.G. Sets."

124. It is pointed out that it is only by the amendment with effect from 7th July 2004 that construction activity came to be added to the EIA Notification and again it was clarified that such amendment would not apply to "any construction project falling under entry 31 of Schedule-1 including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs. 50,00,000/- (Rupees Fifty Lakhs) or below." The Petitioner proceeded on the assumption that the term „investment“ in the said Notification would include the amount invested in construction and raising the super-structure and since that was around ` 34 crores, no EIA clearance was required. Thereafter when a further modified EIA Notification was issued on 14th September 2006, the Petitioner applied to the MoEF for EIA clearance on 12th March 2007. Time was granted by a Circular dated 21st November 2006 of the Central Government up to 30th June 2007 for applying for EIA clearance.

125. It is not the submission of learned counsel for the Petitioner that there is any repugnancy between the EPA and the Air Act and the Water Act. On the other hand, it is not denied that the EPA would apply and that in the Petitioner's case, the EIA clearance would have to be obtained. What is contended is that once EIA clearance has been obtained, there is no occasion to again apply to the DPCC under the Air Act and the Water Act for consent to operate and consent to establish respectively. Further, it is submitted that there are many aspects of the EIA clearance which include water and air pollution and, therefore, the exercise would become repetitive and cumbersome.

Thirdly, it is sought to be contended that the jurisdiction as regards the EIA clearance is of the Central Government and not of the DPCC particularly with reference to the National Capital Territory of Delhi.

126. The stand of the Respondents, on the other hand, is that consent under the Air Act and the Water Act are independent of the EIA clearance and that although the DPCC may have no jurisdiction as regards the EIA clearance, to the extent that such EIA clearance itself mandates that the person in whose favour such clearance has been granted has to obtain consent under the Air Act and the Water Act, the DPCC's jurisdiction will stand attracted. It is further submitted that the parameters that would weigh with the DPCC in processing an application for consent under the Air Act and the Water Act might be different from those which would weigh with the MoEF in granting EIA clearance.

127. This Court has considered the above submissions. In view of the built up area of the building being over 20,000 sq.m., an EIA clearance is mandatory. For the reasons already discussed, it must be held that the requirement of obtaining consent to establish under the Water Act and consent to operate under the Air Act is independent of the EIA clearance obtained in respect of the Petitioner's shopping complex or shopping mall. But this requirement would have applied at the stage when construction had not commenced.

128. However, in this case at the time when the Petitioner applied for and obtained the EIA clearance, the construction of the building was complete. There was no show cause notice issued to it by the DPCC from the time it commenced construction sometime in March 2004 till it completed its construction in December 2005. Clearly, the DPCC woke up very late. The first show cause notice was issued sometime in August 2007. Even then the show cause notice was issued to M/s. G.S. Developers & Contractors Pvt. Ltd. who were only contractors whereas the whole shopping complex was built by the Petitioner. Be that as it may, for the reasons already discussed the course open to the DPCC was to invoke Section 25(5) of the Water Act to require the Petitioner to rectify any deficiency that must have been noticed on the inspection of the premises. Even under the Air Act, there is no question of now requiring the Petitioner to apply for „prior consent to operate“ since the construction of the building is already complete.

129. There are enough provisions in both the Air Act and the Water Act to deal with a situation where without obtaining prior consent a building been constructed and has become functional. As already pointed out the action under Section 31A of the Air Act and Section 33A of the Water Act will have to be exercised reasonably after complying with the rules envisaged under both these Acts. The exercise should not be a mechanical one. Since this is a building which has been granted EIA clearance, the DPCC should find out first whether there are other aspects, not covered by the EIA clearance that require to be rectified by the Petitioner both under the Water as well as the Air Act. In other words, the exercise to be undertaken by the DPCC ought not to be repetitive of the exercise undertaken by the MoEF while granting EIA clearance.

130. Thirdly, there is no legal basis for the DPCC to impose penalty and environmental damages on the Petitioner or require it to furnish a bank guarantee. For the reasons already discussed, such

orders are plainly outside the powers of the DPCC under the Water Act and the Air Act and cannot be sustained in law.

131. The DPCC has relied upon an order dated 14th October 2003 passed by the Supreme Court in Writ Petition (C) No. 657 of 1995 (Research Foundation for Science Technology and National Resource Policy v. Union of India) where in para 70.6 an observation was made to the following effect:

"MoEF should consider making a provision for bank guarantee being given by importer while seeking permission to import used oil, furnace oil and zinc wastes to be released only on the imported consignment being found to be in conformity with the declared item of import. After taking a decision, affidavit shall be filed within four weeks".

132. The above observation of the Supreme Court does not by any means imply that an SPCB like the DPCC can begin to levy penalties and fines and environmental damages or require bank guarantees to be furnished in exercise of its powers under Section 31A of the Air Act and Section 33A of the Water Act. The above contention is accordingly rejected.

133. Reliance has been placed by the DPCC on an order dated 17 th October 2006 passed by the Supreme Court in the Vasant Kunj Ridge matters. The above order was passed in an application filed seeking acceptance of the report of the Expert Committee relating to violation of environmental norms by certain parties who had constructed shopping malls or hotel complexes in the Vasant Kunj Ridge area. After referring to the earlier orders dated 19th August 1997 and 8th March 2004, the Supreme Court observed "that the parties were not aware that they had to take EIA clearance in terms of the amended EIA Notification dated 7 th July 2004. It was then observed as under:

"The confusion arose because DDA all through all through gave an impression to the parties participating in auction that all requisite clearances had been obtained. Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. Some of the allottees are the National Book Trust, School of Planning or Architecture, Shri Ram Vithala Sikha Seva Samiti, International Centre for Alternate Dispute Resolution and Institute for Studies and Industrial Development. In most of these cases the constructions are already complete and have become functional."

134. Consequently, the following directions were issued:

"10. In view of what has been stated above, the MoEF has now to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the stands projected by the Respondents. We are prima facie satisfied about the bona fides of the Respondents but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site for auction where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken".

135. The position as far as the present set of cases is concerned, is not very different. The DPCC appears to have woken up after the construction of the shopping-cum-commercial complexes/malls was completed. Therefore as far as the present cases are concerned, the above orders do not come to the aid of the DPCC for seeking to proceed against the Petitioner for failing to obtain prior consent to operate under the Air Act and prior consent to operate under the Water Act. As already clarified, this would not preclude the DPCC from proceeding under the Air Act and Water Act in the manner already discussed hereinbefore.

136. The understanding of the law by the DPCC as reflected on its website should not be taken to be determinative. There is no estoppel against law. The position depicted by the DPCC on its website will be obviously subject to and in consonance with the correct legal position. There has been a lack of clarity even within the DPCC on whether the provisions of the Water Act and the Air Act apply to construction activity. Hopefully that confusion should not remain any longer.

137. For the aforementioned reasons, this Court while setting aside the order dated 31st December 2007 passed by the DPCC permits it to proceed in accordance with law against the Petitioner in terms of Section 25(5) of the Water Act and the relevant provisions of the Air Act.

138. A point has been urged by the Petitioner that substantial portions of the complex have been sold/leased out to different persons and, therefore, the complex is no longer in the control of the Petitioner. As and when a fresh show cause notice is issued to the Petitioner by the DPCC, it will be open to the Petitioner to furnish to the DPCC the names of the individual owners of the different portions who might be liable to the extent of their respective portions. This by no means will absolve the Petitioner of its liability which is joint and several with such individual owners/lessees. It will be for the DPCC to decide who should be made liable for complying with the various provisions under the Water Act and the Air Act.

139. The writ petition is accordingly disposed of with the above directions.

W.P. (C) No. 3095 of 2008 (DLF Ltd.).

140. The case of the Petitioner is that a plot of land admeasuring 15659.50 sq.m. situated at District Centre, Saket, New Delhi with an attached general parking plot admeasuring 14072.48 sq. m. was purchased in an auction from DDA to be used as retail/office/multiplex/ service apartment purposes. Although according to the Petitioner no formal consent was required, to avoid any hyper-technical objection and impediment at a later stage and without prejudice to its rights, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act on 3rd June 2005. The first of the applications has not till date been formally rejected and thus shall be deemed to have been granted on 2nd October 2005 in terms of Section 25 (7) Water Act.

141. The Petitioner applied on 2nd December 2005 seeking EIA clearance under the EIA Notification as amended on 7th July 2004. As per the requirement of the said Notification, a no objection certificate and public hearing was to be afforded by the public hearing panel of which the representative of the DPCC was a member.

142. The Petitioner states that all necessary permissions for commencement of construction including those from the MCD, Fire Department, Electricity Department, Airport Authority of India and Delhi Urban Arts Commission were taken. The MoEF granted EIA clearance to the Petitioner on 15th January 2007. DPCC wrote to the Petitioner on 20th and 30th August, 2007 that the earlier application filed by it for consent on 3rd June 2005 has been forwarded to the Government of India and that it should file a fresh application.

143. A fresh application for consent to establish was filed by the Petitioner with the DPCC on 25th/26th September, 2007. The said application was not disposed of or rejected within a period of four months thereafter. Thus consent was deemed to have been granted on 25th January 2008 in terms of Section 25 (7) Water Act. Nevertheless, the DPCC issued the impugned order dated 4th April 2008 and directed the Petitioner to pay fine and furnish a bank guarantee. This has been challenged in the present writ petition.

144. The stand of the DPCC is no different from its stand in W.P.(C) No. 543 of 2008 (Splendor Landbase).

145. For the reasons already discussed, the need for the Petitioner to apply under the Air Act and the Water Act did not get obviated on account of the fact that it had an environmental clearance. However, here the construction was already complete. 50% of the construction was complete by end of 2006 and no show cause notice was issued to the Petitioner. An order was straightway passed requiring the Petitioner to pay penalty and furnish a bank guarantee. Such a direction is, for reasons already stated, ultra vires the powers of the DPCC under the Water Act and the Air Act and is unsustainable in law.

146. For the aforementioned reasons, the impugned order dated 4th April 2008 is set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/ investigations into the matter, it

finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions. W.P. (C) No.4319 of 2008. (DLF Ltd.).

147. The Petitioner is the owner of a residential plot at W-Block, Greater Kailash-II, New Delhi. It purchased the property from a private individual in terms of Sale Deed dated 31 st March 1959. The Petitioner proposed to construct a residential housing complex. The Petitioner filed an application on 23rd February 2007 with the MoEF for EIA clearance, which was granted on 26th December 2007. Without prejudice to its rights, the Petitioner applied to DPCC for consent to establish on 8th March 2007. The application remained pending and was not rejected for over four months thereafter. Consequently consent to establish was deemed to have been granted on 7th July 2007 in terms of Section 25 (7) Water Act.

148. The Petitioner had not started the construction till the filing of this petition. Reminders dated 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 were sent to DPCC but to no effect. DPCC wrote to the Petitioner on 3rd April 2008 seeking to take action against the Petitioner for not taking the prior consent before commencement of construction. By letters dated 20th and 30th August 2007, the DPCC wrote to the Petitioner asking him to apply afresh as the earlier application had been forwarded to Central Government. During the course of hearing in other cases of group companies, it was explained that the project is for residential group housing and not for trade, commercial or industrial purposes; environment clearance had been granted and there was a deemed consent in view of the fact that their application dated 8th March 2007 was not rejected for over four months thereafter.

149. Feeling aggrieved by the threatened action of the Respondent, inter alia, of closure, imposition of penalty and bank guarantee, the Petitioner filed the present petition. It is further pointed out that during the present petition the DPCC has granted consent to establish. There is no denial by the DPCC of the above assertions by the Petitioner.

150. Even if the building had an EIA clearance, the provisions of the Water Act would continue to apply for the reasons already explained by this Court hereinbefore. However, considering that it is a residential complex the Petitioner was not required to obtain consent under the Air Act. The Petitioner has already been granted EIA clearance on 26 th September 2007. The order passed by the DPCC directing the Petitioner to apply for consent to establish does not survive since consent to establish has been granted to the Petitioner. Any violations of either the Water Act or Air Act detected hereafter by the DPCC will obviously be actionable but only after the DPCC follow the due process requirements of the law.

151. The writ petition is disposed of.

W.P. (C) No. 4321 of 2008 (Paliwal Developers Ltd.)

152. The Petitioner purchased a plot of land admeasuring about 5495 sq.m. situated at Mayur Vihar Phase-I Extension, Delhi in an open auction from the DDA for constructing a shopping complex. According to the Petitioner, since the built up area proposed was 12325 sq.m no environment clearance was considered necessary. All the necessary permissions for construction were granted by the MCD and other authorities. On 5th September 2006, an application for consent to establish was filed with the DPCC. The application remained pending and was not rejected for over four months thereafter. The Petitioner's case is that consent to establish should be deemed to have been granted on 4th January 2007. Reminders were sent on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 to avoid any difficulty at a later stage but to no effect. DPCC wrote to the Petitioner on 2nd November 2007, 14th March 2008 and 21st April 2008 for taking action for not taking prior consent to establish and prior environment clearances. The Petitioner replied to these letters. The DPCC by letters dated 20th and 30th August 2007 asked the Petitioner to apply afresh as its earlier application dated 5th September 2006 had been sent to the Central Government. Another application for consent to establish was filed by the Petitioner with the DPCC on 8th February 2007. This was also not disposed of within four months. Consequently the Petitioner contends that for a second time consent to establish should be deemed to have been granted on 7th June 2007. After about one year of the filing of the second application, the DPCC asked the Petitioner to file an affidavit of compliance, which was complied with. It was explained that no environment clearance was necessary as the built up area was less than 20,000 sq.m. In any event consent to establish should be deemed to have been granted. Yet, the DPCC insisted and threatened to take legal action including levying a penalty, asking for a bank guarantee and ordering closure. In the circumstances, the present writ petition was filed.

153. The DPCC has not denied the above contentions of the Petitioner. In particular there is no denial of the assertion that the application for consent to establish filed by the Petitioner on 5th September 2006 should be deemed to have been granted on 4th January 2007. Therefore, in this case even the proceedings under Section 25(5) of the Water Act cannot be initiated by the DPCC. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules.

154. The impugned orders passed by the DPCC on 2nd November 2007, 14th March 2008 and 21st April 2008 directing the Petitioner to apply for consent to establish are hereby set aside. The writ petition is disposed of with the above directions.

W.P. (C) No. 4322 of 2008 (DLF Ltd.)

155. The Petitioner states that it is the owner of a residential plot at E- Block, Greater Kailash-II, New Delhi having purchased the same from a private individual in terms of Sale Deed for the purpose of construction of a residential complex. According to the inspection report dated 2nd June 2008, the total built up area is 14,246.918 sq.m. As such, no environment clearance was necessary under EIA Notification. All necessary permissions to construct a residential housing complex were granted on 22nd August 2007. Before commencement of construction, the Petitioner filed an

application dated 14th May 2007 with the DPCC, complete in all respects, seeking consent to establish. The said application was not rejected for over four months thereafter. The Petitioner submits that in the circumstances, in terms of Section 25 (7) Water Act, consent to establish shall be deemed to have been granted on 13th September 2007. However, to avoid any difficulty at a later stage, reminders were sent to the DPCC by the Petitioner on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008. The DPCC threatened to take action against the Petitioner by its letters dated 3rd March 2008 and 2nd May 2008 for not taking prior consent and prior environment clearance. The Petitioner explained the entire position to the Respondent. By letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh as its earlier applications had been forwarded to the Central Government. During the course of hearing before the CMC, it was explained that the project was for residential group housing and not for trade, commercial or industrial purposes; no environment clearance was necessary and consent to establish should be deemed to have been granted since the Petitioner's application dated 14th May 2007 for consent to establish had not been rejected even four months thereafter. Feeling aggrieved by the threatened action of the DPCC of directing closure, imposition of penalty and requiring the furnishing of bank guarantee, the present petition was filed.

156. The facts of this case are no different from the facts in W.P.(C) No. 4319 of 2008 except that the construction commenced on 5th March 2008 and the construction was proposed to be completed in 3 years from the date of its commencement. Further, the total built up area is 14,246.918 sq.m. and, therefore, there was no requirement for obtaining EIA clearance. The DPCC is not disputing that the Petitioner had filed an application on 14th May 2007 which was not disposed of within four months thereafter. In terms of Section 25(7) of the Water Act, therefore, the consent to establish must be deemed to have been granted. This being a residential complex, there was no need to obtain consent to operate under the Air Act.

157. Consequently, the impugned orders dated 2nd November 2007, 3rd March 2008 and 2nd May 2008 passed by the DPCC directing the Petitioner to apply to the DPCC for consent to establish are hereby set aside. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P.(C) No. 4323 of 2008 (DLF Retailer Developers Ltd.)

158. The Petitioner purchased two plots of land bearing No. A-1 and P- 2B Saket Place, New Delhi admeasuring about 9492 sq.m. and 8775.92 sq.m. respectively from the DDA in an open auction for the purpose of shopping-cum-commercial complex. EIA clearance was granted on 15th January 2007. According to the Petitioner, all necessary permissions from the MCD and other authorities were granted in November 2006. On 1st June 2006, the Petitioner applied to DPCC for consent to establish. The application remained pending and was not rejected for over four months thereafter. The Petitioner's case is that consent to establish is deemed to have been granted on 30th September 2006. However, to avoid any difficulty at a later stage, reminders were sent by the Petitioner to the

DPCC in March/April 2008 but to no avail. During the course of hearing concerning other projects of the group companies, it was explained to the CMC that EIA clearance had been granted and that consent to establish should be deemed to have been granted. By its letters dated 20th and 30th August 2007 DPCC asked the Petitioner to apply a fresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner with the DPCC on 25th September 2007. This too was not rejected for over four months thereafter. According to the Petitioner, for a second time consent to establish should be deemed to have been granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file the affidavit of compliance. This was done by the Petitioner. Nevertheless, the DPCC threatened to take action against the Petitioner by ordering closure, imposing a penalty and/or requiring the furnishing of a bank guarantee on the ground that the Petitioner had commenced construction without prior consent to establish and without prior EIA clearance. In the circumstances, the present petition was filed.

159. The construction commenced in February 2007 and was completed in December 2008. The Petitioner obtained EIA clearance on 15th January 2007. The Petitioner applied to the DPCC for consent to establish on 1st June 2006 and there was no decision thereon for over four months thereafter. The consent to establish should be deemed to have been granted under Section 25(7) of the Water Act on 13th September 2006. The subsequent letters dated 20th and 30th August 2007 written by the DPCC requiring the Petitioner to apply afresh were without the authority of law. Nevertheless, even the fresh application filed on 25th September 2007 for consent was not rejected within four months thereafter. Therefore the Petitioner should be deemed to have been granted consent to establish on 24th January 2008 as well.

160. With the DPCC having failed to act upon the Petitioner's application for consent to establish, there was no legal basis for its orders dated 20th and 30th August 2007. They are accordingly set aside. This will not preclude the DPCC in any event from taking any action against the Petitioner upon any inspection undertaken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 4330 of 2008 (DLF Commercial Developers Ltd.)

161. The Petitioner purchased a plot of land bearing No. 10-11 at Jasola, New Delhi, measuring 12,880 sq.m. in an open auction held by DDA. The land was to be used for construction of a commercial and retail centre. The total built up area of the proposed building was 47603.461 sq.m. The Petitioner was granted EIA clearance on 16th May 2007. The Petitioner states that all necessary permissions to construct from the municipal and other authorities were granted. On 6th September 2006/14th October 2006, the Petitioner applied to the DPCC for consent to establish. The application was not rejected for over four months thereafter and in terms of Section 25 (7) of the Water Act it was deemed to have been granted on 13th February 2007. Reminders were sent by the Petitioner to the DPCC in March and April 2008 to avoid any difficulty at a later stage but to no avail. DPCC sent notices dated 18th March 2008 and 30th April 2008 and threatened to take action

against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that environment clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC, this was reiterated. Nevertheless by its letters dated 20th and 30th August 2007, the DPCC required the Petitioner to apply afresh as the earlier application had been forwarded to the Central Government. A fresh application was filed on 8th February 2007. This too was not rejected for over four months thereafter. The Petitioner contends that for a second time, the consent to establish should be deemed to have been granted on 7th June 2007. On one of the visits to the office of the DPCC, the Petitioner was directed to file the affidavit of compliance. This was done. Nevertheless, the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had commenced construction without obtaining prior consent to establish and without prior environment clearance. In the circumstances, the present writ petition was filed.

162. The total built up area here is 47603.46 sq.m. The EIA clearance was obtained on 16th May 2007. The Petitioner commenced construction sometime in December 2006/January 2007 and completed it in August 2008. The letters received by the Petitioner on 20th August 2007 and 30th August 2007 asking it to apply for consent to establish were, in fact, to no effect since application had been filed earlier on 6th September 2006 and 14th December 2006 which were not rejected within four months thereafter. Again on 8th February 2007 a fresh application was filed. Therefore these two show cause notices were to no effect. The subsequent letters dated 18th March 2008 and 30th April 2008 asking the Petitioner again to apply were also to no effect. The said two letters are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking action against the Petitioner if upon any inspection undertaken hereinafter, the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions. W.P. (C) No. 4333 of 2008 (Galleria Property Management Services Pvt. Ltd.)

163. The Petitioner purchased a plot of land at Shalimar Bagh, New Delhi admeasuring 14145.040 sq.m. in an open auction held by the DDA. The plot of land was to be used for construction of a shopping centre. The Petitioner was granted EIA clearance on 15th January 2007. All necessary permissions to construct from the municipal and other authorities were granted. On 5th April 2005, the Petitioner applied to the DPCC for consent to establish. The application was not disposed for over four months thereafter. According to the Petitioner, consent to establish should be deemed to have been granted in terms of Section 25 (7) Water Act on 4th August 2005. The DPCC sent notices dated 14th March 2008 and 9th May 2008 and threatened to take action against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that EIA clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC this was reiterated. By its letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application was filed on 25th September 2007. This too was not rejected for over four months. According to the Petitioner for a second time consent to establish should be deemed to have been

granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file an affidavit of compliance, which it did. Nevertheless the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had not obtained consent to establish prior to commencement of construction. In the circumstances, the present writ petition was filed.

164. This shopping complex has a total built up area of 34895.55 sq.m. The Petitioner obtained EIA clearance on 15th January 2007. The letters received by the Petitioner from the DPCC on 14th March 2008 and 9th May 2008 asking him to apply for prior consent is to no effect since the Petitioner had applied as early as 5 th April 2005 to DPCC which was not rejected within four months thereafter. A fresh application was filed on 25th September 2007 and that too was not rejected for over four months thereafter. Thus, for the second time, consent should be deemed to have been granted under the Water Act on 24th January 2008.

165. The orders dated 14th March 2008 and 9th May 2008 of the DPCC are accordingly set aside. It is made clear that this will not preclude the DPCC from taking action against the Petitioner upon any inspection undertaken hereinafter and if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions. W.P. (C) No.3905 of 2008 (Regency Park Property Management Services Pvt. Ltd.).

166. The Petitioner states that in an auction held on 15th December 2003, the Petitioner purchased a commercial Plot No. 4 in the layout plan of Shopping Mall, Vasant Kunj, New Delhi admeasuring about 15300 sq. m. The necessary permissions from municipal authorities, Electricity, Airport Authority of India, Fire Services and Delhi Urban Art Commission were obtained. On 27th April 2005, an application for consent to establish was filed by the Petitioner with the DPCC. The DPCC was a party to the proceedings before the Supreme Court of India in W.P. (C) No. 202 of 1995 titled as T.N. Godavarman Thirumulpad v. Union of India. The Supreme Court, by an order dated 20th March 2006, took note of the ongoing construction and directed that as a special case, all permissions and clearances in the present case would be dealt with by the Central Government. The DPCC was directed to forward all the papers to the Central Government. The DPCC did so. A public hearing was organized to which a Member, DPCC was a party. One of the requirements of the public hearing was the grant of a No Objection Certificate by the DPCC, which apparently was granted or was deemed to have been granted by the DPCC before conducting the public hearing. The EIA Notification 1994 as amended on 7th July 2004 was replaced by a Notification dated 14th September 2006. Certain clarificatory Circulars dated 13th October 2006 and 21st November 2006 were issued by the Central Government permitting the existing projects to continue. EIA clearance was granted by the MoEF on 24th November 2006. The application for consent to establish filed by the Petitioner with DPCC on 27th April 2005 remained pending. A reminder was sent by the Petitioner on 16th July 2007 to know the fate of their application. By letters dated 20th and 30th August 2007, the DPCC directed the Petitioner to file a fresh application for consent as the earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner on 21st /25th September 2007 but this too was not rejected

within four months. For a second time, the consent to establish was deemed to have been granted on 24th January 2008. It was for the first time on 18th March 2008 that the DPCC asked for certain documents. These were supplied. The CMC insisted on levying a penalty on the Petitioner apart from requiring the furnishing of a bank guarantee.

167. The total built up area is 59731.67 sq.m. The construction commenced in September 2005 and was completed on 17th August 2008. EIA clearance was granted on 24th November 2006. On 27th April 2005, application for consent was filed. Fresh applications were filed on 21st/25th September 2007 and no rejection order was passed for at least four months thereafter. The Petitioner is right in its contention that consent under the Water Act must have been deemed to be granted on 24th January 2008. On 18th March 2008, DPCC asked for documents and these were supplied.

168. The order dated 18th March 2008 of the DPCC imposing environmental damages and requiring the Petitioner to furnish a bank guarantee are, for the reasons already explained, unsustainable in law. The said order is hereby set aside. It is made clear that this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions. W.P. (C) No.8789 of 2008 (Laxmi Buildtech Pvt. Ltd.)

169. The Petitioner states that EIA clearance had been granted to the Petitioner by the MoEF under the EPA on an application filed by it on 28th March 2007 i.e. much before it commenced construction. The very basis on which penalties are sought to be imposed on the Petitioner under the Air and Water Acts do not per se amount to acts of pollution much less industrial pollution or air pollution or water pollution as contemplated by the said acts. This fact is not denied by Respondent No. 1 in its pleadings.

170. The case of the Petitioner is that the CMC or the DPCC has no power to impose environmental damages and/or seek bank guarantee under either the Water Act or the Air Act. It is submitted by the Petitioner that the „precautionary principle and/or the polluter pays principle are being misconstrued and misused by Respondent No. 1. Fee and fines/penalties are two totally different concepts in law. While a fee or a levy can be collected under an appropriate statute by way of a statutory interdict and used for the purpose for which it has been imposed, a fine or penalty cannot be collected and used for discharging governmental obligations or meeting expenses of the government. It is submitted that the actions of the Respondent in imposing and collecting penalties are ultra vires their powers under the Air Act and Water Act and beyond the powers vested in the said Respondent under the said Acts.

171. This is a commercial plot over a total built up area of 27,667.288 sq.m. EIA clearance has been granted on 31st January 2008. The date of commencement of construction was sometime in March 2007 and it was proposed to be completed in June 2009. It appears, that by a letter dated 7th December 2007, the Petitioner was asked to apply for consent to establish which it disputed. The impugned order dated 15th October 2008 was passed imposing environmental damages and

requiring the furnishing of bank guarantee and also directing the Petitioner to obtain consent to establish.

172. For the reasons already discussed, the order imposing environmental damages to the extent of `40 lakhs and requiring the Petitioner to furnish a bank guarantee are unsustainable in law and hereby set aside. The direction that the Petitioner should now apply afresh for consent to establish is also not capable of being complied with. The said order is hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions. W.P. (C) No.8901 of 2008 (Brightways Housing and Development Ltd.)

173. A commercial plot No. 7, Non-Hierarchical Commercial Centre, Jasola, New Delhi, measuring 5198 sq.m. was purchased by the Petitioner in an open auction of the DDA on 7th July 2004 for a total consideration of ` 33,07,50,000/-. A perpetual Lease Deed was executed in favour of the Petitioner on 29th September 2005 and the actual, physical possession of the said plot was also handed over on the same date. Building plans for raising construction on the said plot were sanctioned by the DDA on 7th February 2006. The Petitioner states that although no EIA clearance was required for raising construction on the said plot, either prior or subsequent to the raising of construction, but to avoid precipitate action, the Petitioner filed an application dated 1st September 2007 with Respondent No.3 for EIA clearance and also submitted the requisite documents.

174. The Petitioner filed an application dated 25 th October 2007 with the DPCC for consent to establish. A notice dated 18th March 2008 was received by the Petitioner from the DPCC alleging that the Petitioner had commenced construction without obtaining prior consent to establish. A reply dated 27th March 2008 was sent by the Petitioner informing that its application seeking consent to establish was already pending with the DPCC. The DPCC sent a notice dated 30th April 2008 requiring the Petitioner to submit an EIA clearance, approved architectural drawing and completion certificate. Thereafter the DPCC sent a letter dated 1st July 2008 informing the Petitioner that its case was being placed before the CMC. The Petitioner submits that after exchange of correspondence and certain meetings held, the CMC in its meeting held on 28 th August 2008, without appreciating the case of the Petitioner and without any authority imposed a penalty of ` 1 crore and further called upon the Petitioner to furnish a bank guarantee of ` 2 crores.

175. The MoEF intimated the Petitioner of the creation of a States Committee for obtaining environmental clearance. As a result the Petitioner applied afresh to the State Committee of the MoEF for an EIA Clearance by way of application dated 2nd September 2008. No decision was however taken on the said application. On a representation made by the Petitioner to the DPCC on 16th September 2008, the CMC of the DPCC in a meeting held on 24th November 2008 reduced the penalty to ` 72 lakhs and required the Petitioner to furnish a bank guarantee in the sum of ` 1.5 crores considering an amount of ` 28 lakhs had been earlier paid by the Petitioner to the DDA.

176. This Court finds that the impugned order imposing the penalty has not been issued by DPCC but by the CMC, which is a Committee constituted by the Chairman, DPCC by an office order dated 28th December 2006. First, no power vests with the Chairman, DPCC under the Water Act or the Air Act to further delegate his powers to the CMC. Therefore CMC had no authority to conduct any proceedings for imposing penalty on the Petitioner. In any event, even the constitution of the CMC was solely for the purpose of granting/refusing/revoking of consent to establish. It had no power delegated to it to impose any penalty or seek bank guarantee or order closure of the premises or recommend prosecution. For the aforesaid reasons, the impugned order dated 24th November 2008 of the CMC imposing environmental damages to the tune of ` 72 lakhs and requiring the Petitioner to furnish a bank guarantee in the sum of ` 1.5 crore is unsustainable in law and is hereby set aside.

177. The construction commenced in June 2005 and was completed in June 2007. It is only thereafter that an impugned notice dated 18 th March 2008 was issued by the DPCC asking the Petitioner to apply afresh for consent to establish. For the reasons already mentioned, such a direction was not capable of being complied with. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and relevant provisions of the Air Act but only after following the due process of law. If, after making its enquiry/investigations into the matter, the DPCC finds that the use of the premises is causing either water or air pollution, then it can proceed thereafter in accordance with law. It may be observed that EIA clearance was required for the project of the Petitioner since the total built up area is 21096.513 sq.m. It is not clear whether the MoEF has taken a decision on the Petitioner s application dated 2nd September 2005.

178. The writ petition is disposed of with the above directions. W.P. (C) No.1391 of 2010 (R.C. Sood and Co. Pvt.Ltd.)

179. The Petitioner is stated to be the owner of Plot No. 10, Shivaji Palace District Center, Shivaji Palace, Raja Garden, New Delhi. The size of the plot is 5,832 sq.m. The plot was purchased from the MCD through a tender process on 30th July 2004. The Petitioner was granted the requisite permission to construct a shopping-cum-residential complex by the DDA. The Petitioner, on 7th September 2006, applied to the MoEF for EIA clearance. The Petitioner resumed the construction of the shopping complex in accordance with the notifications and circulars.

180. The Petitioner states that it proceeded on the basis that it was not required to obtain consent to establish or consent to operate under the Water Act and Air Act respectively. However, since the Petitioner did not want any impediment in its project, it made an application dated 11th September 2006 to the DPCC seeking consent to establish along with requisite documents. The Petitioner alleges that the DPCC erroneously forwarded the said application of the Petitioner to the MoEF for issuance of a „No Objection Certificate under the 2006 Notification. The Petitioner claims to have been surprised to receive a notice dated 15th January 2007 from the DPCC to show cause why prosecution proceedings should not be initiated against it and why the establishment should not be closed down as the Petitioner had started construction without obtaining prior consent to establish under the Water Act and prior consent to operate under the Air Act. The Petitioner replied to the show cause notice on 28th February 2007 stating that it was the DPCC itself which had forwarded the application of the Petitioner to the MoEF. Nevertheless, as a measure of caution, the Petitioner

re-submitted the application along with all requisite documents to the Respondent on 27th February 2007.

181. The Petitioner states that after an inordinate delay, DPCC replied to the Petitioner on 5th December 2007 by directing the Petitioner to first pursue its application for obtaining EIA clearance from the MoEF and thereafter forward a copy of the said EIA clearance to the DPCC for consideration of its application. The Petitioner was granted the EIA clearance by the MoEF on 26th March 2008 which the Petitioner forwarded to the DPCC on 27th March 2008. Thereafter the DPCC by letter dated 28th April 2008 directed the Petitioner to submit an affidavit giving item-wise compliance of all the conditions laid down in the EIA clearance. It is submitted that although the DPCC had no role in the matter of EIA clearance, the Petitioner, with a view to avoiding controversy, submitted the said affidavit under cover of its letter dated 10th June 2008.

182. The Petitioner was called for a hearing before the CMC of the DPCC on 17th September 2008. During the course of the hearing, it appeared that the Petitioner had been called for the purposes of deciding on the imposition of penalty and requiring the furnishing of a bank guarantee for the purported violation of the Water Act and Air Act on part of the Petitioner. Ultimately, the CMC imposed a penalty of ` 59 lakhs and directed the Petitioner to furnish a bank guarantee for ` 1.18 Crores for a period of three years.

183. On 28th November 2008, the Petitioner received a letter from the DPCC alleging that the Petitioner had commenced construction activities without obtaining prior consent under the aforesaid Acts and therefore had violated the provisions of the aforesaid Acts. It was further alleged that certain deficiencies were noted in the project/building of the Petitioner. On 3rd December 2008, in another meeting called by the DPCC, the Petitioner tried to explain to the DPCC that it had not committed any violation of any of the laws, rules, regulations. On this, the DPCC made a marginal reduction of the penalty from ` 59 lakhs to ` 50 lakhs and of the bank guarantee from ` 1.18 crores to ` 1 crore. In response to the letter dated 28th November 2008 of the Respondent, the Petitioner filed an affidavit on 30th January 2009 claiming that the deficiencies pointed out by the DPCC in its letter dated 28th November 2008 had been duly rectified.

184. The Petitioner states that after the completion of construction it let out the building to M/s. Shoppers Stop Ltd. and executed a sub-lease dated 11th May 2007 for running a shopping mall in the said building. Shopper s Stop took possession of the building in June 2007. The DPCC in its meeting held on 23rd December 2008 directed Shoppers Stop Ltd. to apply for consent to operate.

185. The Petitioner states that it received another letter from the DPCC on 3rd March 2009 referring to the inspection conducted by "Special Inspection Team" of the DPCC on 16th January 2009 wherein certain deficiencies were noted by SIT in the premises of the Petitioner. On 23 rd May 2009, the Petitioner clarified to the Respondent that it had already rectified the deficiencies pointed out by the SIT. The Petitioner states that it was given a hearing on 21st January 2010. According to the Petitioner, the DPCC at this meeting took a decision to launch prosecution against the Petitioner. The Petitioner received a letter dated 11 th February 2010 from the DPCC stating that its earlier application of 11 th September 2006 had become infructuous. With the Petitioner s

representation dated 26 th February 2010 to the DPCC eliciting no response, the present writ petition was filed challenging the minutes of the CMC s meetings dated 17th September 2008, 3rd December 2008 and 21st January 2010.

186. The decision dated 17th September 2008 of the CMC of the DPCC imposing environmental damages to the tune of ` 59 lakhs and requiring the Petitioner to furnish bank guarantee in the sum of ` 1.18 crores is for reasons already discussed unsustainable in law and is hereby set aside. The subsequent decisions dated 3rd December 2008 and 21st January 2010 are also without the authority of law and are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 9128 of 2009 (Ridge View Construction Pvt. Ltd.)

187. A commercial plot measuring 2500 sq.m. being Plot No. D-2, District Centre, Saket, New Delhi was purchased by the Petitioner in an open auction conducted by DDA on 29th September 2003 for a total consideration of ` 43,41,00,000/- and the possession of the said plot was handed over to the Petitioner soon thereafter. A perpetual lease deed dated 1st July 2004 was subsequently executed by the DDA in favour of the Petitioner. The DDA handed over to the Petitioner the architectural conditions and controls which enabled the Petitioner to raise construction as per the control drawings. Construction was thus raised by the Petitioner on the plot till the plinth level much before 7th July 2004.

188. The Petitioner filed an application with the MoEF seeking EIA clearance on 2nd September 2008. The Petitioner also filed an application dated 2nd September 2008 with DPCC for consent to establish. The Petitioner states that it was surprised to receive a notice dated 9th August 2008 issued by the DPCC to M/s. Taneja Developers and Infrastructure Limited (`TDIL) wherein it was alleged that the construction of a retail- cum-office complex was being carried out by TDIL. The Petitioner states that on various occasions it clarified to the DPCC that the said commercial complex was being developed by the Petitioner. However the show cause notices continued to be issued to TDIL. Subsequently, the CMC by an order dated 15th October 2008 issued directions for closure of the Petitioner s retail-cum-office complex immediately and further asked the electricity distribution companies to disconnect the electricity supply and the DJB to disconnect the water supply.

189. Aggrieved by the impugned order dated 15th October 2008, the Petitioner filed W.P.(C) No. 7850 of 2008. This Court stayed the operation of the impugned order. Another show cause notice dated 10th November 2008 was issued by the DPCC. This Court at the next hearing held that on account of issuance of the fresh show cause notice nothing survived in the said writ petition.

190. The Petitioner replied to the fresh show cause notice on 21st November 2008. Thereafter, the DPCC issued a letter dated 8th May 2009 directing the Petitioner to close its commercial building

immediately and further directing the NDPL/BSES to disconnect the electricity supply and the DJB to disconnect the water connection to the said building. The said directions were purportedly as a result of a decision taken by the CMC on 23rd April 2009 and an inspection carried out at the site on 8 th April 2009.

191. The Petitioner submitted that no EIA clearance was required since the built up area of the premises (19,227.15 sq.m.) was less than 20,000 sq.m. The Petitioner had installed a Sewage Treatment Plant (STP) of 56 KLD capacity which was fully operational prior to 8th April 2009 and for which an adequacy report/certificate had also been granted by a recognised institute nominated by the DPCC itself. Regarding no permission having been obtained from the DJB for extraction of ground water from bore well, it is submitted that the Petitioner has already obtained permission from the concerned authorities. The Petitioner states that it is not utilizing the water from the bore well and it has deployed tankers for fulfilling its requirements of water in the complex. The Petitioner alleges that when its representative went to the DPCC to submit an application for consent to operate, the application was refused.

192. In the above circumstances, the present writ petition was filed challenging the closure order dated 23rd April 2009 communicated to the Petitioner on 8th May 2009.

193. For the detailed reasons already discussed, the question of the DPCC taking action for the Petitioner not having obtained EIA clearance does not arise. In any event, the Petitioner with the built up area being less than 20,000 sq.m., there was perhaps no requirement to obtain such EIA clearance. If this was one of the reasons for the closure order then such closure order is unsustainable in law. As regards the other deficiencies pointed out, and the Petitioner's claim to have cured them, they involve disputed questions which this Court cannot possibly go into. Nevertheless, it appears to this Court that the procedural requirement to be followed by the DPCC prior to passing such closure order was not complied with by the DPCC in the instant case.

194. For the aforementioned reasons, this Court sets aside the closure order dated 23rd April 2009 communicated to the Petitioner on 8 th May 2009. However, this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 465 of 2009 (Prosperous Estates Pvt. Ltd.)

195. The total built up area of the building constructed on a commercial plot in the present petition is 14,850.227 sq.m. Completion certificate was granted on 12th October 2006. No show cause notice was issued. On 5th December 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 23rd December 2008. On 23rd December 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish.

196. For the reasons already explained hereinbefore, the impugned order dated 23rd December 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 508 of 2009 (Best Realtors India Pvt. Ltd.)

197. The total built up area of the building constructed on a commercial plot in the present petition is 9171.63 sq.m. The construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

198. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 509 of 2009 (Nirvan Hire Purchase Ltd.)

199. The total built up area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

200. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC

to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 510 of 2009 (Maitri Mutual Benefits Ltd.)

201. The total built up area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced sometime in January 2007 and was completed in November 2008. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

202. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 511 of 2009 (A.S. Buildwell Pvt. Ltd.)

203. The total built up area of the building constructed on a commercial plot in the present petition is 989.548 sq. m. Construction of the building commenced sometime in January 2006 and was completed in October 2007. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

204. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into

the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 525 of 2009 (ESS CEE CEE and Associates (India) Pvt. Ltd.)

205. The total built up area of the building constructed on a commercial plot in the present petition is 15883.097 sq. m. Construction of the building commenced on 10th January 2005 and was completed on 23rd February 2007. A show cause notice was issued on 5 th December 2007 and an order was passed on 12th August 2008 requiring the Petitioner to pay environmental damages of ` 20 lakhs and furnish a bank guarantee of ` 1 crore.

206. For the reasons already explained hereinbefore, the impugned order dated 12th August 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 794 of 2009 (Nipun Builders and Developers Pvt. Ltd.).

207. The total built up area of the building constructed on a commercial plot in the present petition is 2802 sq. m. Construction of the building commenced on 10th September 2004 and was completed on 24th March 2005. A show cause notice was issued on 28th April 2008 and an order was passed on 6th November 2008 requiring the Petitioner to pay environmental damages of ` 2 lakhs and furnish a bank guarantee of ` 4 lakhs.

208. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 7575 of 2009 (Jindal Biochem Pvt. Ltd.)

209. The total built up area of the building constructed on a commercial plot in the present petition is 3290 sq. m. Construction of the building commenced on 2nd February 2005 and was completed on 31st May 2006. A show cause notice was issued on 27th June 2008 and an order was passed on 6th November 2008 requiring the Petitioner to pay environmental damages of ` 2 lakhs and furnish a bank guarantee of ` 4 lakhs.

210. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 8208 of 2009 (Best City Developers (India) Pvt. Ltd.)

211. The total built up area of the building constructed on a commercial plot in the present petition is 1066 sq. m. No show cause notice was issued. On 7th January 2009, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 21st January 2009 an order was passed requiring the Petitioner to pay environmental damages of ` 1 lakh and furnish a bank guarantee of ` 1 lakh. This order was communicated to the Petitioner on 27th March 2009 and the Petitioner was asked to take necessary action to comply with the said order.

212. For the reasons already explained hereinbefore, the impugned order dated 21st January 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No.8751 of 2009 (Vardhman Properties Ltd.)

213. The total built up area of the building constructed on a commercial plot in the present petition is 5461 sq. m. Construction of the building commenced on 10th September 2007 and was completed in April 2009. An order was received by the Petitioner on 3rd January 2009 directing the Petitioner to obtain consent to establish. Another show cause notice was issued on 9th March 2009 to apply for consent to establish. On 30th April 2009, an order was passed directing closure of the Petitioner's building.

214. For the reasons already explained hereinbefore, the impugned orders dated 3rd January 2009 and 30th April 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 10860 of 2009 (Manish Buildwell Pvt. Ltd.).

215. The total built up area of the building constructed on a commercial plot in the present petition is 8478.27 sq. m. A show cause notice was received by the Petitioner on 13th February 2008 alleging that he had completed construction without obtaining the consent to establish. An order dated 18th March 2008 was passed directing the Petitioner to obtain consent to establish. On 24th July 2009 an order was passed directing the closure of the Petitioner's building.

216. For the reasons already explained hereinbefore, the impugned orders dated 13th February 2008, 18th March 2008 and 24th July 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

S. MURALIDHAR, J.

SEPTEMBER 30, 2010 dn

Ref: 2

Delhi Pollution Control ... vs Splendor Landbase Ltd. on 23 January, 2012

Delhi High Court

Delhi Pollution Control ... vs Splendor Landbase Ltd. on 23 January, 2012

Author: Pradeep Nandrajog

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : 16th January 2012
Judgment Pronounced on: 23rd January, 2012

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LPA 895/2010

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through: Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

SPLENDOR LANDBASE LTD Respondent
Through: Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 1/2011 & CM No.6781/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

SACHDEVA BUILDON PVT LTD & ORS Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 6/2011 & CM No.6779/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

LPA 895/2010 & connected matters
versus

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VARDHMAN PROPERTIES LTD & ORS Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 7/2011 & CM No.6780/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant

Delhi Pollution Control ... vs Splendor Landbase Ltd. on 23 January, 2012

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS Respondents

Through Mr.Sanjay Goswami, Advocate for R-1

LPA 8/2011 & CM No.6782/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS Respondents

Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala, Ms.Praneeta Vir and Mr.Sanjay
Goswami, Advocates

LPA 9/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS Respondents

Through Mr.Sanjay Goswami, Advocate for R-1

LPA 895/2010 & connected matters

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LPA 10/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS Respondents

Through Mr.Sanjay Goswami, Advocate for R-1

LPA 11/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN LAND DEVELOPERS PVT

LTD & ANR

..... Respondents

Through None

LPA 22/2011 & CM No.6824/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE

..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

PANKAJ BUILDWELL LTD & ORS

..... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 23/2011 & CM No.6832/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE

..... Appellant

LPA 895/2010 & connected matters

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Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS. Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 24/2011 & CM No.8168/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE

..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST REALTORS (INDIA) LTD & ORS

..... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 25/2011 & CM No.6828/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE

..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,

Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST CITY DEVELOPERS (INDIA) PVT LTD.

& ORS

..... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 895/2010 & connected matters

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LPA 26/2011 & CM No.6831/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE

..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

HOME LINKERS PVT LTD & ORS

..... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 27/2011 & CM No.6833/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE

..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS

..... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 28/2011 & CM No.6826/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE

..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS.

..... Respondents

LPA 895/2010 & connected matters

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Delhi Pollution Control ... vs Splendor Landbase Ltd. on 23 January, 2012

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 45/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

JINDAL BIOCHEM PVT LTD & ORS Respondents
Through Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 46/2011 & CM No.8164/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

AS BUILDWELL PVT LTD & ORS Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 47/2011 & CM No.6825/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

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MAITRI MUTUAL BENEFITS LTD & ORS Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 48/2011 & CM No.6823/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,

Advocates with Mr.Dinesh Jindal, L.O.

versus

NIRVAN HIRE PURCHASE LTD & ORS Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 50/2011 & CM No.6827/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

NIPUN BUILDERS & DEVELOPERS PVT

LTD & ORS Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 51/2011& CM No.6829/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

LPA 895/2010 & connected matters

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versus

VARDHMAN PROPERTIES LTD & ORS Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 53/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

ESS CEE CEE & ASSOCIATES (INDIA) PVT LTD .. Respondent

Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala, Ms.Praneeta Vir and Mr.Sanjay
Goswami, Advocates

LPA 54/2011 & CM No.6004/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

FARGO ESTATES PVT LTD Respondent
Through Mr.Ankit Jain, Advocate

LPA 58/2011& CM No.6830/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

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VARDHMAN PROPERTIES LTD & ORS Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 94/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF RETAILER DEVELOPERS LTD Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 95/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

LAXMI BUILDTECH PVT LTD & ANR Respondents
Through Mr.Kailash Vasdev, Sr. Advocate with
Ms.Neoma Vasdev Gupta, Ms.Ekta Mehta
and Ms.Joanne Pudussery, Advocates for
respondent No.1.
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 96/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,

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Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 97/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

BRIGHTWAYS HOUSING & DEVELOPMENT
LTD & ANR Respondents
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala and Ms.Praneeta Vir, Advocates
for R-1.
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 98/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF COMMERCIAL DEVELOPERS LTD Respondent

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Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 99/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

GALLERIA PROPERTY MANAGEMENT
SERVICES PVT LTD Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 100/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

PROSPEROUS ESTATES PVT LTD Respondent
Through None

LPA 101/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

REGENCY PARK PROPERTY MANAGEMENT
SERVICES PVT LTD Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

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LPA 102/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

PALIWAL DEVELOPERS LTD Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 103/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant

Delhi Pollution Control ... vs Splendor Landbase Ltd. on 23 January, 2012
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

RIDGE VIEW CONSTRUCTION PVT LTD Respondent
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala and Ms.Praneeta Vir, Advocates.

LPA 104/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

RC SOOD & CO PVT LTD Respondent
Through Mr.Shobhit Chandra, Advocate

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LPA 709/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

LODHI PROPERTY CO LTD Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 710/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

BHARTI REALTY LTD Respondent
Through Mr.Dushyant Manocha and Ms.Tarunima
Vijra, Advocates

LPA 866/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

ANUSH FINLEASE & CONSTRUCTION PVT
LTD Respondent
Through Mr.Ajay Kumar and Mr.Naveen Tayal,
Advocates

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LPA 867/2011

DELHI POLLUTION CONTROL COMMITTEE Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

TIRUPATI INFRAPROJECTS PVT LTD Respondent
Through Mr.Ajay Kumar and Mr.Naveen Tayal,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal(s).
2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take action afresh and guided by the decision of the learned Single Judge.
3. The buildings with respect where to action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a „consent to establish as required

under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as „the Water Act) and „consent to operate as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as „the Air Act).

4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.

5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under:-

"2. Definitions.- In this Act, unless the context otherwise requires,-

(a)

(b)

(c)

(d)

(e)

(f)

(g) „sewage effluent means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) „sewer means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h)

(i)

(j)

(k) „trade effluent includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.

25. Restrictions on new outlets and new discharges.-

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b)

(c)

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2)

(3)

(4)

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6)

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8)

33A. Power to give directions.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and

performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under:-

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) „air pollutant means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j) „emission means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) „industrial plant means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

21. Restrictions on use of certain industrial plants.- (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2)

(3)

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5)

(6)

(7)

31A. Power to give directions.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, office or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and with reference to the Statement of Objects and Reasons of the Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression „establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent being

discharged but would also encompass if „sewage effluent“ was discharged and with reference to the definition of „sewage effluent“ as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of „trade effluent“ as per Section 2(k) of the Water Act. Noting the definition of the words „operation“ and „process“ in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that collective operation or process of bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes. This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of „trade effluent“ as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.

9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.

10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided in Sub-Section 5 of Section 25 of the Water Act.

11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge, with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under:-

"29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

(i) Section 25 (1) of the Water Act is intended to cover not just „industry“ which discharges „trade effluent“ but any „process or operation“ that results in a discharge of „sewage“ not limited to trade effluent.

(ii) The words „operation or process“ occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of ejusdem generis is therefore inapposite in the context.

(iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.

(iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

(v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.

(vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.

(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced."

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre- amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.

14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word „establish“ and had only the word „operate“ in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is

needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.

15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under:-

"41. The position under the Air Act may be summarized:

(i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.

(ii) The definition of „air pollution“ under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21(1) of the Air Act.

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act."

16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, „no person could establish or take any steps to establish any industry, operation or process,..... which is likely to discharge sewage or trade effluent“. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.

17. But, what would encompass „any industry, operation or process“ ?

18. The Water Act does not define, „industry , „operation or „process . As held in the decisions reported as 1993 (3) SC 2529 Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co. and 2010 (320) ITR 420 (Delhi) Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax, the ordinary dictionary meaning of „industry or an „industrial undertaking would not include the activity of construction. The word „operation is defined, as noted by the learned Single Judge, in the New Shorter Oxford English Dictionary (Lesie Brown Ed.) as follows:

"operation: An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, esp one forming a step in a process."

19. The same dictionary defines „process , as noted by the learned Single Judge, as under:-

"process : The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end."

20. As noted herein above, applying purposive construction, the learned Single Judge has held, in para 15, that the two words „operation and „process have to be given their widest amplitude and meaning. The purposive construction applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.

21. The error committed by the learned Single Judge is to mechanically note the definition of „operation and „process , and ignore the sweep of the span of the two words. We do so. Operation is defined as an activity or an act of a practical or technical nature, with emphasis of the acts forming „a step in a process . The word „process is a going on action or a continuous series of actions „directed at a particular end . Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression „establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.

23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason

they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.

24. With respect to the decisions reported as 1993 (3) SC 2529 Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co. and 2010 (320) ITR 420 (Delhi) Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax, where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.

25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of „environment therein being defined to include water, air and land and the inter relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.

27. To summarize the position under the Water Act the position may be summarized thus: „Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where

manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.

29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any industrial plant in an Air Pollution Control Area. Section 2(k) defines an „industrial plant“ to mean any plant used for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words „establish or“ have been inserted prior to the word „operate“, we need to re-look into the issue.

31. Highlighting the definition of the words „industrial plant“ as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words „industrial plant“ to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.

32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression „industrial plant“, which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the

expanded definition of the expression „industrial plant . But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of „to operate is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.

36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 Khemka & Co. (Agencies) Pvt. Ltd. vs. State of Maharashtra, 1994 (4) SCC 276 J.K.Synthetics Ltd. & Birla Cement Works vs. Commercial Taxes Officer and 1997 (6) SCC 479 India Carbon Ltd. vs. State of Assam to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.

38. We would be failing not to note that on the issue of a delegatee not being empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.

39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to

be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to be got sanctioned under the Air Act.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 *Mafatlal Industries Ltd. & Ors. vs. UOI & Ors.*, under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned

decisions where penalty levied has been directed to be refunded are upheld.

43. The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.

44. We leave the parties to bear their own costs.

45. All interim orders stand vacated.

(PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE JANUARY 23, 2012 dk

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ITEM NO.28 COURT NO.4 SECTION XIV
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013
CC 1842-1845/2013

(From the judgement and order dated 23/01/2012 in LPA Nos.709,710,866,
and 867 of 2011 of the HIGH COURT OF DELHI AT NEW DELHI)

DELHI POLLUTION CONTROL COMMITTEE Petitioner(s)

VERSUS

LODHI PROPERTY CO. LTD. ETC. Respondent(s)

IA Nos. 1-4 (With appln(s) for c/delay in filing SLP and office report)

Date: 28/01/2013 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s)
Mr. D.N. Goburdhan, Adv.
Mr. Ayush Chandra, Adv.
For Respondent(s)
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Pravin Bahadur, Adv.
Ms. Mallika Joshi, Adv.
Mr. Amit Agarwal, Adv.
Mr. Rajan Narain, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.
Leave granted.
Hearing expedited.

In case the writ petition fails, the appellant shall be
liable to refund the penalty amount deposited by the respondent,
along with interest at a suitable rate, as may be determined by
the Court.

| (N.S.K. Kamesh)

| | (Sneh Bala Mehra)

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|Court Master

| |Court Master

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