

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI**

**APPEAL NO. 10 OF 2021 (SZ) &
ORIGINAL APPLICATION NO. 91 OF 2021 (SZ)**

G.Devarajan
Son of Govindappa Naidu
15, Gandhi Nagar, 2nd Street
Reliance Backside
Arumbakkam, Chennai -600 106

...Appellant cum Applicant

Versus

1. The State of Tamil Nadu
Rep. by the Chief Secretary to Government
Secretariat, Fort St. George
Chennai – 600 009.
2. State of Tamil Nadu,
Rep. by the Principal Secretary to Government
Public Works Department
Secretariat, Fort St. George
Chennai – 600 009
3. Tamil Nadu Housing Board Rep.
by the Principal Secretary to Government
Housing and Urban Development Department
493, Anna Salai, Nandanam
Chennai – 400 035
4. State Level Environment Impact
Assessment Authority Rep.
by the member secretary
SEIAA, 3rd Floor, Panagal Maaligai,
No.1, Jessy Road, Saidapet
Chennai – 600 015
5. M/s.V.SATHYAMOORTHY & CO.,
No.40-D, 6/276 Surya Garden
Trichy Road
Namakkal – 637001
Represented by its Managing Partner
Shri.S.Anandavadivel
(Impleaded as 5th Respondent as per the order of this Hon'ble Tribunal dated
06.01.2022 in I.A.No.199 of 2021 in Appeal No.10 of 2021 & in I.A.No.200 of 2021
in O.A.No.91 of 2021 &)

...Respondents

For V. SATHYAMOORTHY & Co.


Managing Partner

COMMON REPLY STATEMENT FILED BY 5TH RESPONDENT

I, S.Anandavadivel, aged about 44 years, son of Shri.V.Sathyamoorthy, I am the Managing Partner of our firm M/s.V.Sathyamoorthy & Co., and I am residing at Door No.50/20, Casa Major Road, Egmore, Chennai – 600 008 and I do hereby solemnly affirm and state as follows:

1. I do state that the Applicant has filed this application under Section 14(1) read with Section 18(1) of the National Green Tribunal Act, 2010, for the following relief:

"A. Declare the actions of the State of Tamil Nadu in implementing the proposed project, in contravention of the applicable laws and being devoid of merits, as illegal and violative of the Environment (Protection) Act, 1986;

B. Direct the Respondent Nos 1 & 3 to not undertake any construction activities until this Application is dismissed;

C. Direct the Respondents herein to restore the area where there has been any illegal construction work;

D. Direct the Respondents to assess the damage caused due to the illegal construction and use the same to restore the area;

E. Impose exemplary costs as environmental compensation charge for the damages done to the land in question;

F. Direct Respondents No.1 to initiate prosecution under the Environment Protection Act, 198 against Respondent Nos. 2 & 3 and the respective officials, for permitting and commencing the project activities in violation of the law; and

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G. Pass such further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case"

2) I do state that the Appellant filed an Appeal in Appeal No.10 of 2021 (SZ) seeking the following relief:

A. Declare as illegal and set aside the Environmental Clearance granted by Respondent No.4 to the proposed Project vide Letter No.SEIAA-TN/F No.7627/EC/8 (a)/739/2020 dated 23.01.2021 for being contravention of the orders of this Hon'ble National Green Tribunal in light of the encroachments to the flood plains and the Baby Canal of Cooum River and due to the blatant contraventions specified by Respondent No.2 in its NOC.

B. Pass such further or others orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

3. I humbly state that I deny each and every averment in both Appeal No.10/2021 (SZ) and O.A. No.91/2021 (SZ) which is contrary to and/or inconsistent with what is stated in this statement, as if the same were specifically traversed.

4. I crave leave of this Hon'ble Tribunal to file common reply statement for both Appeal No.10/2021 (SZ) and O.A.No.91/2021 (SZ).

5. I do state that V.Sathyamoorthy & Co., is by status Class I Contractor in building and engineering and has been in the domain of construction for more than three decades and has been accomplished several housing projects and other commercial projects both for the Government and its agencies and for the corporates and notable among few are the Court complexes at Tiruchy and housing projects for poor people in Ambattur and the housing projects for the

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people affected by Tsunami in Manali near Chennai and all these projects have been executed with care and passion and won appreciation of one and all.

6. I do state that we are awarded a Contract by the Tamil Nadu Housing Board who are the 3rd respondent herein to build 304 HIG MSB residential (2B+stilt+19 Floors) at S.No.2 Block No.4 of Arumbakkam Village, Egmore, Nungambakkam Taluk Chennai vide Agreement No.09/2020-21 and file No.CC/DB/328/2020 executed on 30.07.2020 at the cost pegged at Rs.178,58,42,986.00.

7. I do state that the site was handed over to us on 04.01.2021 and we have cleared the site from bushes and other things and made clear the site for construction. I do state that my employer being the Tamil Nadu Housing Board who is 3rd respondent secured the Environmental Clearance Certificate from the State Level Environment Impact Assessment Authority, Tamilnadu by its certificate bearing reference Letter No.SEIAA-TN/F.No.7627/EC/8 (a)/739/2020 dated 23.01.2021 and in accordance with the said approval, the construction came to be proceeded with.

8. I do state that the project site was originally comprised within a larger area under the Survey Numbers viz. 249/1,249/2,249/3,249/5,250/1-8,251 and 252/2A to a total extent of 8.49 acres which was later assigned to Survey No.2.

9. I do state that this Survey No.2 came to be trifurcated as S.Nos.2/1,2/2 & 2/3. Among these three survey numbers only the S.No.2/1 comprising an extent of about 24750 sq.m. is taken to put up the project and the S.No.2/2 comprising

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an extent of about 6008 sq.m. was allotted to National Highways Authority of India (NHAI) for their elevated corridor and the S.No.2/3 comprising an extent of about 2242 sq.m. is dedicated for water way.

10. I do state that I do learn from the records that our Employer, TNHB acquired this land out of proceedings taken under Land Acquisition under Award No.14 & 15/1966 for a total extent of 9.41 Acres out of which 92 cents was excluded and the remaining land measuring an extent of about 8.49 acres came to be in the possession of TNHB and the same is proposed for housing project to cater to the policies of the Government vide its Board Resolution No.4.03 dated 24.07.2018 and the Government of Tamil Nadu accorded its approval - for the construction of the commercial cum residential flats in a total extent of 7.14 Acres- vide G.O.No.185 dated 26.12.2018. And TNHB undertook a field survey with the PWD officials on 10.09.2020 to ascertain the ownership of the extent of the land.

11. The subject land was acquired by the 3rd respondent, my employer, under the Land Acquisition proceedings and under awards as aforesaid and this has been done under the provisions of the 1894 Land Acquisition Act and in its statutory scheme of the said Act, the land to the extent of 7.29 acres and as well 2.12 acres or thereabouts came to be acquired only after Sec.4/1 Notice and under declaration under Section 6 thereunto. It is a Patta land. And section 9 of the Act 1894 was followed. And the Special Deputy Collector for Land Acquisition, State Housing Board Schemes, Madras has clearly stated in the Award in inner page 3, to quote,

"The undersigned certified that:

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- a) Notices have been promulgated or served in accordance with Section 9 of the Land Acquisition Act and that evidence of such promulgation or service forms part of the record.
- b) There is before him a plotted plan of the land or lands to be acquired.

And the contents found in the Award also speak about the structures in S.No.249/3 and it speak about two gate pillars in S.No.252/2A and some brick walls and wells in S.No.249/1 and it speaks of one old round well in S.No.250/1, 10 feet depth dilapidated parapet wall and it also speaks about velikathan trees in S. No.250/1 in S.No.249/3 and other trees. And the Award traces the title to S.No.250 which in effect does mean that it is a private land. It also traces the title in S.No.250/2,249/4, 249/5,249/7,250/3,250/5 and the Award speaks about the extents of the land and respective compensation and it also traces the title to S.No.251/A, 252/2A and there is no reference to existence of coovum river in these survey numbers which is the subject matters of acquisition.

12. I do state that the 3rd respondent while taking possession has put a possession Note and there is a reference to encroachment and eviction.

13. I do state that the Awards indicate that there was no poromboke land and there is no reference of porompoke land in the Award. I do further state that the subject land was acquired under the aforesaid Land Acquisition Proceedings from Private Pattadhars and the land usage of the subject land remained as mixed residential. The Master Plan for Chennai Metropolitan Area for Village No.107 - Arumbakkam clearly demarcates the subject land as 'MIXED RESIDENTIAL' and the subject land is under Block No.4 and bounded North by Naduvakkarai Village; East by S.Nos.1/1,1/2 & 1/3; South by Poonamallee High Road; West by S.No.1.

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 Managing Partner

14. I am advised to state that the facts of the present case is distinctly different from the facts of the case covered in "Mantri Techzone Pvt Ltd" reported in (2019) 18 SCC 494. In "Mantri" there was a 'conversion of land' from 'Protected Zone to Residential Sensitive Area", whereas in the case on hand, there is no conversion and indeed the subject land is stated as 'mixed residential' in the Chennai Metropolitan Development Area's Master Plan for Chennai Metropolitan Area (CMA) wherein the subject land is depicted in Block No.4 duly bounded by the areas supra stated in the preceding para and as such the ratio held in 'Mantri' may not hold water in so far as the case on hand is concerned.

15. I do state that the said dispute land is in an irregular shape abutting Poonamallee High Road on its southern side, and the construction land is situated on the Northern side of Poonamallee High Road and southern side of Block No.6 of Naduvakkarai village meant for Cooum River. The Tamil Nadu Housing Board has proposed to construct a multi-storied building on this portion of land in T.S.No.2, Block No.4 of Arumbakkam Town.

The four side boundaries of the said land are as follows:

North By : Block No.6 of Naduvakkarai Village meant for Cooum River

South By : Poonamallee High Road

East By : T.S.Nos.1./1, .1/2 and 1/3 of Block No.5 of Arumbakkam Town

West By : T.S.No.1 of Block No.4 of Arumbakkam Town

16. I do state that the project is being carried out more than 15 metres away from this river bund and the factual status of this being recorded by the official

For K. BATHYAMOORTHY & CO.

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respondents viz. PWD and TNHB and these official respondents have marked the boundary stones afresh.

17. I do state that the nature of the river mother is sanctum and it is neither encroached nor violated for the purpose of this housing project and the water way is secluded from the project and the construction is carried beyond 15 metres from river bund.

18. I do state that the project is designed in such way that it has a retaining wall as the outer wall on the northern boundary and this acts as a ring fencing and it is designed to built to the height of 7.20 metre.

19. I do state that the apprehension of flood entering into the project site from the coovum river is completely addressed by the enhanced height of the river bund to the maximum of 3.5 metres and the retaining wall of 7.20 metres and the project is further designed to have 2 basements exclusively for vehicle parking alone and thus the fear and contingent apathy about the flood entering and affecting the habitants once the project is housed by the allottees is practically and pragmatically addressed and the flood in the recent incessant rain did not come over the river bund and water level in the coovum river on all the rainy days reached upto only the half of the height of the river bund.

20. I do state that I am taking all efforts in the ground zero to ensure the compliances of all parameters and the construction have been carried out by the approved plan and design and under the supervision of the official respondent.

21. I do humbly state that the project is being built with stilt floor-level as 13.800 metre with retaining wall at 14.80 metres with pile foundation and the basement level is above 11.375 metres and there has been the provision for

For V. SATHYAMOORTHY & Co.


Managing Partner

internal drain not less than 1.50 X 1.20 m as peripheral and 0.90 X 75 m as lateral drain to drain the water.

22. I do state that the Appellant cum Applicant has come to this Hon'ble Tribunal without any substantiated proof and it is the trite law that one who alleges should carry the burden to prove the allegations. The instant appeal and Original Application do not contain any proof and as such, this Hon'ble Tribunal may please be kind enough to notice the absence of the burden of the Appellant cum Applicant to prove and this Hon'ble Tribunal may please render justice.

23. I do state that the Public Works Department does not have the ownership in Arumbakkam village and the subject survey lands where the impugned project is coming up is under the undisputed ownership of my employer, 3rd respondent, Tamil Nadu Housing Board.

24. I do state that when this is the case of the rival title between Public Works Department and Tamil Nadu Housing Board, it is a civil dispute and under the guise of these appeal and application, the rivalry of the ownership is being tried to be resolved and this Hon'ble Tribunal may please take note of it since giving a resolution for the rival title or resolving the dispute of a Title as to who is the owner of the land, does not under the ambit and purport of this Hon'ble Tribunal.

25. I do state that there cannot be a fight between government departments and Hon'ble Supreme Court has laid down ratio in its judgement reported in 2003 (3) SCC 472.

26. I do state that the Building Rules which is published in the Tamil Nadu Government Gazette Extraordinary and under Part VI under the caption of Development Regulations and under Rule 27, it is stated that the minimum 15

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Managing Partner

metres should be done away from a site from water course or river for the purpose of preventing any contamination of or any risk of the drainage of building passing into such river or water course.

27. I do state that no such eventuality does arise touching upon this project since state of the art technology is being employed for treating the drainage water by setting up Sewerage Treatment Plant (STP) and therefore the question of contaminating the river does not arise and as such the yardstick of 15 metres may please be addressed taking this absence of 'drainage contamination' in this project.

28. I submit that as far as grounds of this appeal and application is concerned, all the grounds are rebutted and answered in the above paragraphs, and I crave leave of this Hon'ble Tribunal to consider the same in order to avoid repetition of addressing the same issues.

For the reasons stated above, it is therefore humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the Appeal No.10 of 2021(SZ) & Original Application No.91 of 2021(SZ) as devoid of merits and thus render justice.

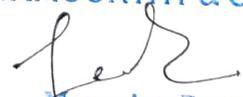
Dated at Chennai on this the 3rd day of March 2022



Counsel for 5th Respondent

5th Respondent

For V. SATHYAMOORTHY & Co.



Managing Partner

VERIFICATION

I, S.Anandavadivel, aged about 44 years, son of Shri.V.Sathyamoorthy, I am the Managing Partner of our firm M/s.V.Sathyamoorthy & Co., and I am residing at Door No.50/20, Casa Major Road, Egmore, Chennai - 600 008, do hereby verify that the contents of Paragraph Nos.1 to 34 are true to the best of my knowledge and paragraph Nos.1 to 34 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this the 3rd day of March 2022

For V. SATHYAMOORTHY & Co.


5th Respondent

**BEFORE THE HON'BLE
NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE BENCH AT
CHENNAI**

APPEAL NO. 10 OF 2021 (SZ) &

ORIGINAL APPLICATION NO.

91 OF 2021 (SZ)

G.Devarajan
Son of Govindappa Naidu
...Appellant/Applicant

Vs

The State of Tamil Nadu
Rep. by the Chief Secretary
to Government & 4 others
...Respondents

**COMMON COUNTER FILED BY
5TH RESPONDENT**

Counsel for 5th Respondent
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