

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

O.A. No. 149 of 2016 (S.Z)

V. Ramasubbu (Advocate)

Door No. 48/17, Theppakulam Street,

Srivaikundam

... Applicant

-vs-

Union of India

Rep.by.its Secretary

MOEF & CC , Government of India,

New Delhi & Others

... Respondents

Annexure No	Description	Page No
1	Affidavit of 9 th Respondent as Objections To The Second Report Of The Joint Committee	02
2	Photograph copies of Survey Numbers. 441, 426, 428 & 429	39
3	Overview of the Project and CSR activities	44

Certified that the above documents are true copies of the original

COUNSEL FOR THE 9TH RESPONDENT

M/S. S. SAI SATHYA JITH

& PON. VIVEKHA

COUNSEL FOR THE 9TH RESPONDENT

MOB :- 97890 52084; EMAIL ID :- taaurs@gmail.com

BAHRI ESTATES PVT. LTD.


Authorised Signatory

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

O.A. No. 149 of 2016 (S.Z)

V. Ramasubbu (Advocate)
Door No. 48/17, Theppakulam Street,
Srivaikundam

... Applicant

-vs-

Union of India
Rep.by.its Secretary
MOEF & CC , Government of India,
New Delhi & Others

... Respondents

**AFFIDAVIT OF NINTH RESPONDENT AS OBJECTIONS TO THE SECOND REPORT
OF THE JOINT COMMITTEE**

I, Hemant Bahri S/o (Late) Shri. J.N. Bahri, having office at No.44, 1st Floor, Jamal Nainar Enclave, Eldams Road, Alwarpet, Chennai 600 018, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Managing Director of the 9th Respondent and as such I am authorised to file the present affidavit. I am aware of the facts and circumstances of the case and I have read and understood the records and pleadings filed in the present case. I am filing the present affidavit in the nature of "objections" to the second report of the Joint Committee dated 19.12.2020. (hereinafter THE SECOND REPORT).
2. It is submitted that initially, as per order dated 08.01.2020, this Hon'ble Tribunal was pleased to appoint a joint committee to inspect the area in question and consider the question regarding environmental impact and whether the project developer started construction without getting Environmental clearance and also the applicability of EIA notification 2006 and other such matters.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

3. In compliance to the order, a Joint Committee was constituted by the Nodal agency i.e., the Tamil Nadu State Pollution Control Board comprising of 9 members as stated below:-
- (i). Er. S. Pandiarajan, DEE, TNPCB, Theni
 - (ii). Dr. R. Chandrasekaran, DEE, TNPCB Dindigul
 - (iii). Dr. M. Madhusudanan, Regional Director, CPCB, Chennai
 - (iv). Dr. M.T. Karupiah, Scientist – D, MoEF&CC, Regional Office, Chennai
 - (v). Shri. S. Karthikeyan, Scientist – C, Regional Directorate of CPCB, Bengaluru
 - (vi). Shri. Thejasvi, DFO & Wildlife Warden, Kodaikanal Wildlife Division
 - (vii). Shri. L. Eugene, Tahsildar, Nilakottai for and on behalf of District Collector, Dindigul
 - (viii). Shri. Mathimaran, Dy. Director, DTCP, Madurai Region
 - (ix). Shri. B. Rameshkumar, Member Secretary, Dindigul Local Planning Authority, Dindigul
4. The committee had submitted a report before this Hon'ble Tribunal dated 25.08.2020 (hereinafter THE FIRST REPORT). Pursuant to the same, this Hon'ble Tribunal permitted this Respondent to also file objections to the first report and accordingly detailed objections were filed by this respondent dated 08.10.2020.
5. In the next hearing on 13.10.2020, this Hon'ble Tribunal directed the Joint Committee to offer its remarks on the objections filed by this respondent and along with other directions. Thereafter, another inspection was conducted and the Second Report had been filed.
6. It is submitted that the Second Report has largely not denied the objections of this Respondent and has either dropped or unanswered several points of contention. In that aspect, the Second Report is largely in favour of the case of this respondent. However, by total non-consideration of the effect of the same, the Second Report had concluded against this Respondent and has also assessed and calculated Environmental Compensation as if the project was in violation of the laws.
7. It is submitted that the Second Report had also raised some fresh averments and allegations apart from producing new additional documents such as a recent proceeding of the District Forest officer dated 25.11.2020. Therefore, in order to point out the procedural and material

BAHRI ESTATES PVT. LTD.


Authorised Signatory

illegality in the conduct of the committee and also to submit a reply to all new points of contentions introduced by the Second Report, this Respondent is constrained to file the present affidavit.

8. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to accept and take on file the present affidavit filed by this Respondent and thus render justice.

PRILIMINARY OBJECTIONS TO THE SECOND COMMITTEE REPORT

9. At the outset, it is submitted that the impugned report is not maintainable either on law or on facts of the case. The committee has exceeded its jurisdiction and all known procedures of law and has gone even beyond the scope of the main litigation and as such is liable to be dismissed.
10. The committee has placed erroneous and wrong facts, materials which would only result in misleading and misguiding this Hon'ble Tribunal. The committee has not responded to a number of contentions which were raised by this Respondent, to justify the project, but on the other hand has introduced new materials to only confuse the issue further.
11. Thus, the conduct of the committee itself is not fair and it has acted with the purpose of finding some guilt or the other with this Respondent when none exists. Thus, the proceedings of the committee are contrary to principles of natural justice and fair treatment of law and thus liable to be set aside.

No opportunity of being heard by the full committee

12. The purpose of the constitution of committee was to inspect the site and answer this Tribunal on specific terms of reference issued by this Hon'ble Tribunal. However, the same was not complied by the Joint Committee. In fact, at the time of filing the second report, the committee has failed to even conduct a site inspection with all its members. It was only the District Environmental Engineer of TNPCB who had inspected the site whereas the other members had not inspected the site itself. Therefore, the present Respondent was deprived of an opportunity to present its case on the objections earlier filed to the earlier report to all members of the Committee, when a second inspection was deemed necessary.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

Further, in total contradiction to fair procedure, only the nodal agency had inspected and furnished reply for deliberation by the committee.

Modification of the members of the Committee without prior permission

13. That apart, it is crucial to point out that there is a gross violation of procedure, whereby the constitution of the committee itself was modified without obtaining prior permission from this Hon'ble Tribunal. The impugned project of this 9th Respondent falls within the jurisdiction of DTCP, Madurai region. Therefore, it was the Deputy Director of DTCP, Madurai region who was initially constituted as a member of the committee. However, at the time filing the 2nd Report, the committee had substituted the said member with the official from DTCP- Theni region. Even though the bifurcation of Madurai region into Theni region had happened recently, in any event, in so far as the report of the committee is concerned, it had to be appraised by the same members as per the orders of this Hon'ble Tribunal.
14. It is pertinent to point out that, the matter was placed before the Committee for the second time only to offer its remarks on the objections and in such a situation **to modify and incorporate a new member is highly irregular and in any event without informing or obtaining permission from this Hon'ble Tribunal.**
15. Thus, the entire conduct of the committee is irregular, not fair, biased and causes much prejudice to the 9th Respondent. That apart, the committee has raised fresh allegations even beyond the scope of the main litigation over which an adjudication has to be done only by a statutory process and thus the committees report is liable to be dismissed *in limine*.
16. The present Respondent denies every statement and allegation made by the committee report as erroneous and incorrect either on facts or on law. Without prejudice to the aforesaid contentions, the present Respondent submits the following to sustain and establish its case before this Tribunal and also by way of objections to the second report filed by the Joint Committee.

OVERVIEW OF THE PROJECT

BAHRI ESTATES PVT. LTD.



Authorised Signatory

17. The project of the 9th Respondent is a “**plotted layout development**”. The project and the layout are intended for purchase and utilisation as a senior citizen welfare plotted housing community. The plotted layout development of the project is for a total extent of 49.3 Hectares or 121.84 acres. Each and every inch of land that was utilised for the project after due approval is tabulated as below:

Survey No.	Extent (Hectare)		Survey No.	Extent (Hectare)
179B	0.50.0		405/1	0.57.0
209B/2 B	0.11.0		405/2	0.25.5
209B/ 3	0.11.5		406	0.60.5
210/2B	0.22.5		407	1.41.5
210/3	0.28.0		408	0.14.0
213	0.38.5		409	1.06.5
214	0.29.5		410/1	0.78.5
302/2	0.75.5		410/2	0.40.0
304	1.33.5		411	0.87.5
305/1	0.54.5		412	1.00.5
306/2	0.06.5		413	0.08.5
307	0.41.5		414/1	0.67.5
308	1.00.5		414/2	0.15.5
309	0.45.0		415	0.37.0
311/2A	0.64.0		416	0.84.0
311/2B	0.73.0		420	0.77.0
377	1.63.0		421/1	1.15.5
379	1.91.0		422	0.73.5
382	0.54.0		423	1.03.0
383	0.43.5		424	0.81.0
384	0.44.5		425/1	0.91.0
385/2	0.61.0		425/2	0.36.0
385/3	1.17.5		427	0.47.0

BAHRI ESTATES PVT. LTD.



Authorised Signatory

386	1.03.0		430	1.19.0
395/1	0.31.0		431	0.37.0
395/2	0.40.5		432	0.50.0
395/3	0.70.0		433	0.70.5
396	0.50.0		435	0.23.0
397/1	0.42.0		436/1	0.77.5
397/2	1.04.5		436/2	1.32.5
399/1	1.35.5		436/3	0.42.0
399/2	1.33.0		436/4	0.35.5
400	0.88.0		437	1.01.0
401/1	0.44.0		438/1	0.41.5
401/2	0.26.0		439/1	0.19.5
402	0.41.5		442/2	0.21.0
403	0.62.5		443/1	1.00.0
404	0.36.5		443/2	0.92.0

18. It is submitted and undertaken by the Respondent that not a single inch of land beyond what is stated above has been utilised or forms part of the project. This simple and basic fact is the entire case itself whereas bald allegations are made, contending that some other areas are also used for the project.

19. Further, it is submitted that after the development of the layout was complete in the year 2011, in the total approved 298 plots, about 172 plots have been sold. All the bonafide third parties who have purchased the plots are holding valid legal title and possession over the lands. They have also been assessed and regularly paying municipal and other taxes for the aforementioned lands.

Location of the project.

20. The present project is situated at the foot hills of Kodaikanal and falls within the village panchayat limits of G-Kallupatty. The entire extent of the lands in the project is classified as “**patta lands**”. The lands have not been utilised for any sort of agricultural activity for many decades. In fact, the entire village of G-Kallupatty has undergone massive

BAHRI ESTATES PVT. LTD.



Authorised Signatory

urbanisation and houses a population of more than 5000 to 10,000 people. It was a combination of the urbanisation of the village coupled with isolation from the hustles of a city that prompted the selection of the site for the project. It is both a developed area and at the same time a peaceful location which is ideal for the present project.

21. Most importantly, it is submitted that there are no notified eco- sensitive areas or eco sensitive zones within the entire village of G-Kallupatty and a lot of residential activity has been happening in the entire locality. In particular, it is submitted that the present project is situated within Ward No. 1 of the G-Kallupatty Village panchayat having a total of 12 wards. The plot owners of the project whoever has made any housing development on their plot are also assessed and have been paying property tax to the aforesaid local body as stated above.

Senior Citizens Lifestyle Plots

22. Initially, the project was envisaged from the year 2007 itself. The project which is a plotted layout development was proposed and styled as suitable for purchase senior citizen retirement community. The idea was to provide layout plots at the outskirts so that retired people and senior citizens can settle there for a peaceful life. This project is novel and has attracted accolades and awards from the real estate community. It is in those circumstances that the project has attracted many wrongful eyes who have continued to cause one problem or the other to the project.
23. **It is submitted that being a plotted layout development, the approval for the project has to be given by the DTCP as per the Town and Country Planning Act, 1990.** The present Respondent has undertaken the project on the basis of business understanding with land owners, agents, legal entities and other associated investors. There are independent agreements being entered into with such legal entities for the purpose of executing the project. However, as a part and parcel of business, the entire extents of lands were not purchased or vested with this Respondent in a single transaction. Simultaneously with the project proposal in hand, the Respondent had been approaching the authorities of DTCP to find out and comply on a step-by-step basis, the procedure to get the layout approval.

BAHRI ESTATES PVT. LTD.



Authorised Signatory

Grant of Clearances

24. It is submitted that it was at the advice of the DTCP and their insistence, that the project was required to obtain a NOC from the Forest department. **It is a matter of fact and record that the entire extents of land are private patta lands and as such there is no role for the forest department on these extents of lands.** However, due to the insistence of the DTCP, this Respondent did not find much harm in informing and obtaining a NOC from the forest department.
25. The project proponent is advised to state that **there is no concept of NOC under any of the forest laws and the jurisdiction of the forest department only arises when any portion of the land is a forest land.** It is not in dispute from any of the parties to the case or the members of the committee that there is no involvement of any forest land in the present project. In such a scenario, the jurisdiction and competence of forest department starts and ends with directives to maintain a buffer from the boundary of the forest for their purposes. It is not in dispute that the project proponent has left out the buffer area adequately as required by the authorities and thus in this scenario there was no role for the forest department.
26. However, at the planning stage of the project, as early as on 17.01.2008, this Respondent submitted a letter to the DFO of forest department informing of the project and disclosing that proper applications were being filed with the DTCP for a proposed plotted layout development project.
27. Interestingly, in the said letter, while attaching a list of lands covering the project, by oversight and by state of things as it stood then the Respondent had indicated the lands in Survey No. 426, 428, 429 & 441 as part of the project. It is a matter of record that while submitting the ownership records for the entire extents of lands, the records for the afore-stated four survey numbers were not produced for the simple reason that the ownership was not with this Respondent and the lands were only a business proposal which was in the stage of negotiation with the actual third-party land owners.

BAHRI ESTATES PVT. LTD.



Authorised Signatory

28. Accordingly, the forest department issued a letter dated 24.01.2008 which was styled as a NOC which consequently comprised of the said four survey numbers in 426, 428, 429 & 441.
29. However, at the time of finalising the project and approaching the DTCP for statutory clearance, the business deal could not be worked out with the owners of the aforesaid survey numbers and as such the lands had to be abandoned for the purpose of the project. This is evidenced from the statutory application made by this Respondent to the DTCP by letter dated 14.02.2008. In the said application the four survey numbers are not included and they are not part of the development. Thereafter, the Respondent was also necessitated to obtain statutory certificate from the Tahsildar which was also received on 22.02.2008 which also did not include the aforesaid four survey numbers.
30. Thereafter, in the year 2009, the DTCP had granted statutory approval for the plotted layout development by proceedings dated 09.03.2009. In the said approval also, the contested four survey numbers 426, 428, 429 & 441 are not included and accordingly they never formed a part of the project.
31. This obvious fact is overlooked by the Joint Committee and the project is alleged to be inclusive of the lands in the said four survey numbers only because they were initially a part of the forest NOC. The proceedings by the forest department do not have any statutory or legal competence and in any event all the subsequent approvals have left out the four survey numbers. In fact, even on ground realities the lands are totally vacant even as on date with no access and the issue is further dealt with in a detailed manner herein below.

Bonafides of the Project & CSR Activities

32. The implementation of the project has brought out much good to the entire locality. This Respondent is an honest and sincere citizen of this nation and has undertaken the project with socio-centric responsibility and total compliance to the law. As a part of implementing the project, this Respondent has in fact developed and improved the entire locality and has contributed to the overall upliftment of the entire village.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

33. This Respondent has, as a part of the CSR activities, sponsored and dedicated check post facilities to the local police department and the forest department. The same was done to assist and cooperate with the government to bolster the surveillance and security which will benefit the larger public also. In the same spirit, this Respondent submits with humility that the present project has been instrumental in meeting a major substantial portion of the water requirement for the village of G-Kallupatty. For the said purpose, as a CSR activity, on the request by the District Collector and the local panchayat officials and on the approval and supervision of the authorities, this Respondent completed a pipeline connection project from Man Jalur Dam to the village at the expense of the Respondent. It is pertinent to mention that there was no proper source of drinking water earlier and all the activities were done as a part of social responsibility by this Respondent.

34. Even in the present project, apart from the business of plotted layout development, the Respondent has, as per law and out of responsibility installed several infrastructural facilities for maintaining clean environment and for processing all waste generated therein.

Waste Disposal

35. It is submitted that, each plot is designed to have independent inspection chambers for any constructions, as and when, put up by the purchasers. The project also has centralised sewage chamber connecting each and every single plot whereby the sewage is collected and discharged into the central network. Thereafter the central network chamber flows into the collection tanks adequately installed for the purpose. From the collection tank, the sewage is disposed through authorised disposal agencies of the local body through tanker lorries.

36. Similarly, a coordinated and wholesome disposal system is installed for the solid waste as well. The waste collection is segregated at the source into wet waste, dry waste and sanitary waste. The dry waste is further segregated into plastic, metal, glass etc as recyclable and non- recyclable waste. The recyclable waste is then collected by a regular scrap dealer. The non- recyclable and sanitary waste are sent to municipal body for disposal with proper sanctions.

BAHRI ESTATES PVT. LTD.



Authorised Signatory

37. That apart, a community compost yard has also been set up within the project for utilising the wet waste produced to maintain the greenery belt in the project. The said activity is also utilised as a leisure and hobby activity by the senior citizen residents.
38. All of the aforesaid facilities have been provided, installed and completed in the year 2011 itself. This fact is evidenced from the proceedings of the District Collector who has certified the project as complete in terms of provision of all infrastructural facilities as per the approved layout conditions of the DTCP vide his proceedings dated 15.09.2011.
39. Thereafter, the Respondent continues to aid, assist and engage with the purchasers for the maintenance of all such facilities. It is pertinent to mention here, that as a part of the project, public roads and OSR were also gifted to the authorities which are also continuously maintained till date. The Respondent also engages with a lot of leisure activities for the senior citizens who are permanent residents in the project.
40. It is submitted that within the residence, there are people who have retired from high-ranking post both from private as well as governments sectors including retired officers of the defence forces. In fact, most of the residents are celebrated officers during their service and as such they are all knowledgeable persons contributing to the various activities as mentioned above.
41. That apart, this Respondent has also tied up with nearby hospitals to provide for ambulance and first aid facilities on the site. This also includes general health and leisure activities such as yoga, meditation and other health and spiritual activities. The Respondent also provides for social get together activities at the time of festivals and functions.
42. All these activities which do not require any permissions or sanctions are carried on by the Respondent through its subsidiaries as a service provider and offers solutions for a wholesome experience from the purchase of the plot to construction of houses on their behalf as contractor up to, day to day housekeeping needs etc.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

43. Thus, it is in the above indicated manner in which the Respondent has completed the project and maintained project but on the other hand by assumptions and presumptions, twisting of actual facts several allegations are made against the proponent from utilising land beyond 49.31 hectares and continuation project beyond the year 2011.

44. The Respondent submits and states that it has not utilised an inch of land beyond 49.31 hectares and the entire project as per DTCP approval was completed in the year 2011 as certified by the District Collector. All other confusions and allegations are explained in a more detailed manner hereunder.

FOREST NOC

45. It is submitted that, the core allegation in the entire case against this Respondent has its basis on a letter styled as a NOC issued by the forest department dated 24.01.2008. More particularly, the issue narrows down to the inclusion of four survey numbers that is S.Nos 426 (3.42 acre)
428 (1.41 acre)
429 (1.41 acre)
& 441 (1.90 acre) totalling an extent of 8.14 acres or 3.22 hectares.

46. Since, it was advised and understood by the project that the jurisdiction and competence of the forest department begins and ends with laying down conditions for maintenance of forest area and buffer, this Respondent did not further have anything to do with the forest department because the project is admittedly following the buffer norms and never caused any encroachment or violation of forest conditions. In that view of the matter, it was felt unnecessary to seek modification of the NOC dated 24.01.2008 since within the boundaries of the project, the forest department has no jurisdiction or competence to either approve, certify or grant sanction as per law.

47. Thereafter, it is a matter of fact and record that the four survey numbers were left out from the project as the business in incorporating them was not successful. The statutory application made with the DTCP and the statutory approval granted by the DTCP would

BAHRI ESTATES PVT. LTD.


Authorised Signatory

bear evidence to the fact that the four survey numbers were not included in the project. This clearance by the DTCP is alone to be considered as the legal and binding document since it is only the DTCP that can approve the project as per law. Further, the project has been completed only as per DTCP approved boundaries.

48. Thus, it is the submission of this Respondent that the project is only 49.3 hectares as per the DTCP approved plan and on the ground. All reliance upon the forest NOC is without any legal standing and contrary to the facts as narrated above and only to mislead this Hon'ble Tribunal.

49. Notwithstanding all of the above, the 9th Respondent for its part, made an application with the forest department to amend its proceedings to exclude the four survey numbers and submitted the approved DTCP plan for the reference and understanding of the forest department. However, it seems that the forest department had not corrected its records and the proponent did not pursue further since its duty to inform the department was duly done and since the forest department had no jurisdiction within the boundaries of the project, no further application was made by the project.

50. However, to the shock and surprise, after the completion of the project in the year 2011, the forest department issued a show cause notice dated 28.03.2011 alleging primarily that the land was not utilised for agricultural farm and there were construction of compound wall and formation of road etc. The Forest Department erroneously continued to include the four disputed survey numbers also, in their records, despite the representation of this respondent.

51. The 9th Respondent issued a detailed reply to the notice and submitted the DTCP approved plan to evidence its compliances. Thereafter, the forest range officer inspected the site and based on the inspection and the reply of the project, the show cause proceedings were dropped by only imposing a condition upon this Respondent to maintain the buffer zone as per the 2008 NOC. It is pertinent to state that while clearing the project, the forest department observed that the project had been completed as per law and there were no violations and made the following five specific observations:

BAHRI ESTATES PVT. LTD.


Authorised Signatory

- i. *No land encroachment of forest area.*
- ii. *No barrier for wild animal corridor was done and there is no man- animal conflict.*
- iii. *The entrance made in Kodaikanal to Batalagundu road beyond 300 feet from area there is no wild animal passing through this area and there is no damage to eco system of the natural forest, environment and wildlife.*
- iv. *The layout area is dry waste land. It is like "Clay Canker soil" having strength of concrete and no agricultural operation is possible.*
- v. *Roads formed are by gravel stones and it was not hindrance to forest and environment eco system.*

52. Therefore, it is obvious and clear that the role of the forest department was only to the extent of maintenance of forest regulations. It is also clear from the records of the forest department as stated above that the project is in total compliance to all the forest laws and regulations. **The mistake of the forest department in not updating and modifying its records as to the extent of the project despite the representation and production of the statutory DTCP approval cannot be put against the 9th Respondent.** As stated above, it is submitted that the reliance placed on the forest NOC to determine the extent of land is contrary to Section 2 of Forest Conservation Act, 1980 and unsustainable in law. It is only the statutory competent approval by the DTCP vide Approval Number 13/2009 that will prevail over and above everything else and the same is clear that the extent of the project is 49.3 hectares only.

SURVEY NUMBER 441 - now subdivided as 441/1 and 441/2

53. **The next allegation is that physically the project has utilised the disputed survey number 441 (now 441/1 and 441/2)** and thus it must be deemed as a part of the total extent of the project. The Respondent denies the averment as a mere fantasy and contrary to reality. It is submitted that the ownership of land in survey number 441 vests with third parties. The patta and land records would evidence that the title and possession belong to two different third parties and nowhere is the Respondent utilising the land. This Respondent is neither the owner nor in possession of the said lands nor it is the part of the project at any point in time.

54. Further, on ground reality, it can be seen that the survey number 441 is a vacant barren land even as on date and one look at the said land would make it obvious that it is untouched

BAHRI ESTATES PVT. LTD.



Authorised Signatory

and not used for any purpose. The photograph of the land is annexed and the very sight of the land would show that it is neither a part nor being utilised for the project.

55. In so far as the alleged activities such as brick manufacturing etc., this Respondent has responded in detail in its previous reply and the committee has not specifically denied any of the contentions. However, it is reiterated that the Respondent has nothing to do with these activities and by no stretch of imagination can these be called a part of the project and all averments are denied.

56. That apart, even otherwise the allegations were only for temporary usage of lands and that cannot contribute to the permanent affiliation as a project activity or project lands. Above all, the lands are not owned by the Respondent, not in possession, the activities were never taken part as a project activity and thus all allegations are denied.

SURVEY NUMBER 426, 428 & 429

57. It is submitted that the above three survey numbers were not a part of the project and included by the applicant only in an attempt to confuse and mislead because they found part in the original forest NOC. It is repeated that the DTCP approval does not contain the aforesaid three survey numbers. On that ground alone these are not liable to be considered as project lands.

58. It is submitted that the lands were dropped from the project since the purchase from its owners was not successful. It was much latter that is, after the approval / completion of the project that the Respondent was forced by circumstances to purchase the land. More elaborately, it is submitted that after the approval of the project, during executing the project up to completion in the year 2011, disputes arose with the owners of those lands to create a trouble. Ultimately, it was resolved through talks and from a pure business perspective of purchasing peace, the 9th Respondent had purchased the lands. This was stated in the earlier reply also and since the committee has not considered, the elaborate business reason is stated hereby.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

59. In any event, till date, the said lands in S. No. 426, 428 and 429 are untouched and remain in an "as is where is" condition and not utilised for the project. It is shocking that the committee has alleged some activities as going on in the lands as on today and the same is nothing but false. The photograph of the lands would clearly show that there is no activity whatsoever going on in the said lands.

60. Further, since the lands were never utilised and are never going to be utilised, this Respondent hereby states and undertakes as follows:

The Respondent undertakes that the lands in Survey Number 426, 428 & 429 has never been and will never be utilised for the project or any alleged allied activity.

The Respondent further undertakes to make more developments in the lands as a green belt cover and also undertakes to abide by any other condition that may be imposed by this Hon'ble Tribunal.

61. Therefore, in light of the above, it is submitted that neither the forest NOC nor the alleged activities are correct and true allegations and accordingly deserves to be rejected. Further the lands in their physical state and mere observation would evidence that no activity whatsoever has been carried on as a part of the project. The entire extent of the project is thus only 49.3 hectares and does not attract the EIA,2006.

WILDLIFE ISSUE

62. At the outset, it is submitted that once the project is not coming under the ambit of the EIA Notification,2006, no other allegations or clearances from NBWL are necessary. Without prejudice to the above, the following explanation is submitted.

63. It is submitted that the project is situated on private patta lands and within the village panchayat of G-Kallupatty and as such the wildlife laws and regulations are not attracted to the project. The project is situated on the southern boundary of the Palani hills and the hills near to the project has a natural steep slope and dry terrain. It is important to state that there are no notified or known animal corridor in this part of the hills or in the entire village of G-Kallupatty within which the project is situated in Ward 1.

BAHRI ESTATES PVT. LTD.



Authorised Signatory

64. In fact, the Manja Laru Dam and waterfalls are situated on diagonally opposite slope of the hills which is on the far side from the village and the project, whereby the animal movement can only be attracted to that part which is within the forest area. Thus, the project is situated within village limits where it is free from wildlife issues. In fact, in all these years since the project was completed in 2011 or for many decades in the village of G-Kallupatty, there is not a single reported incident of any wildlife issue and thus there is no applicability of wildlife regulations to the project.
65. It is submitted that the project is a plotted layout development. Thus, there is no statutory certificate of completion as in the case of buildings under the existing legal system. The project is thus completed in the eye of law when the development is complete with all infrastructure such as road, sewage, water supply, electricity etc., and as per the statutory conditions laid down in the approved DTCP plan including gifting of OSR and Public Roads to the local bodies.
66. In the instant case, it is the contention of this Respondent that the project was completed as per the stipulated conditions of the approved DTCP plan in the year 2011 itself. In order to evidence this, it is submitted that the proceedings of the District Collector and that of the forest department would certify on physical inspection that the project was complete.
67. It is submitted that pursuant to a show cause proceeding earlier, by way of a final order, the District Collector in his proceeding dated 15.09.2011 has stated on records that all facilities for housing layout has been completed and that on the said layouts the village panchayat can be permitted to grant building permissions. The District Collector has further stated that all compliances as required have been made and that the project has complied with and completed all the conditions of the approved DTCP plan. The District Collector has made the above order by comparing and referencing the compliance in accordance with the DTCP letter dated 09.03.2009 which is for an overall extent of 49.3 hectare and thus all of the above would clearly demonstrate that the project was completed only for 49.3 hectares and that the project was completed in the year 2011 itself. In fact, the sale of the plots had also commenced post these events, from the year 2011 onwards.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

68. It is submitted that it is an admitted fact that the Kodaikanal forest range was notified as a Wildlife Sanctuary only in the year 2013 that is on 20.09.2013 as per G.O. (Ms.) No.143. Therefore, all the regulations applicable with a wildlife sanctuary such as the eco sensitive zone restriction can apply to the Kodaikanal sanctuary only from the year 2013. The notification of the boundary and prohibition distance of the Sanctuary was done only in January,2020.
69. It is submitted that as demonstrated above, the project was completed in the year 2011 and thus the project is not attracted under the eco sensitive zone regulation. On the contrary what is alleged is that the construction of independent villas by individual plot owners has to be taken as a continuation of project activity and thus the project should be deemed to continue beyond the year 2013.
70. The above allegation is erroneous and unsustainable in law. It is undoubtedly a clear fact that the project is only a plotted layout development. Once the plots are purchased by individual land owners, they can choose to construct or not to construct any building. Even seen from the report of the committee, out of about 170 odd plots sold, only about 100 have been developed with buildings and the remaining are not. Therefore, the constructions made by them either by themselves or through contractor can bind only themselves and the same cannot be a part of the layout project.
71. It is submitted that the very purpose of a layout development project is to sell vacant plots along with common and municipal infrastructure facilities. Further, it is obvious that the purchase of vacant plots is for either holding it as an investment or for construction of building. It is submitted that any buildings if constructed by the plot purchasers cannot be called as a part of the original layout project. The statutory permissions are separate and independent of each other for the layout development and any building constructed thereafter. While the promoter such as the 9th Respondent obtains DTCP approval etc., to promote the layout with required infrastructure, it is always the individual plot owners who are liable under law to obtain permission and construct buildings if required.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

72. In the instant case, from a business perspective, the plots were marketed as senior citizen residence homes. Upon purchase of the plots, in some cases the Respondent by itself or through subsidiary also acted as a contractor to some of the plot purchaser to build their houses. It is paramount to point out here that the individual houses, its design and size is all decided by the plot owners subject to statutory regulations. Equally it is only for aesthetics that a common design is suggested and accepted by individual purchasers in terms of having equal ceiling etc. The same is a common business practice in luxury homes and the fact remains that the project is only a layout development project and the buildings are constructed by the individual plot owners which is sometimes contracted by the 9th Respondent. Some of the plot owners have constructed and some are in the process of constructing and some may construct in the future. The above fact cannot, as per law, mean and include that the layout development project is continuing only because the plot purchasers build houses at different points of time.

73. Therefore, it is submitted that the layout development project was completed in the year 2011 and thus the 2013 notification of Kodaikanal sanctuary has no application to the present project. In fact, the eco sensitive zone notification for the sanctuary of the year 2020 that is 23.01.2020 does not cover the entire village of G-Kallupatty and thus even as on date, there is no applicability of any restrictions to the project.

74. In arguendo it is submitted that the primary contentions are that since the project does not attract the EIA, 2006 as being only 49.3 hectares in extent, the ESZ or clearance from National Board for Wild Life does not apply to the project. It is only on false charges that the project is contended as exceeding 50 hectares and continuing beyond 2011 and all of that is denied and unsustainable as elaborated above. Thus, the project neither attracts the ESZ or the need for NBWL clearance.

CONSENT FROM TNPCB:

75. It is submitted that the 9th Respondent after the completion of the project in the year 2011 onwards had sold and handed over those plots to individual purchasers. Thereafter, this Respondent proposed to construct a club house to an extent of 4,000 sq. meters. The 9th

BAHRI ESTATES PVT. LTD.


Authorised Signatory

Respondent also applied and got approval from the DTCP vide order dated 27.05.2013 for the club house. Accordingly, along with taking steps for construction, the 9th Respondent also applied for consent from the TNPCB vide application dated 12.02.2014.

76. Thereafter, the application was returned by the TNPCB erroneously by relying upon the forest NOC dated 12.07.2011 and concluding that the project is beyond 50 hectares and thus attracts the EIA, 2006.

77. Consequently, it is a matter of fact that, at that point of time, the Respondent proposed to have an expansion of the layout project and subsequently dropped the same and the application was withdrawn. Thereafter it became necessary for the Respondent to approach the TNPCB again and explain that the project is only 49.3 hectares and that it does not require EC.

78. In the meantime, the TNPCB issued show cause notice dated 18.05.2016 for the club house of 4,000 sq. meter for not having obtained consent. It is a matter of fact that the club house is not fully constructed or operated on 18.05.2016 and it remains in the same state till today. In the mean time since the present application was filed and the entire matter is before this Hon'ble Tribunal, the 9th Respondent has not acted any further, awaiting the outcome of the present case.

79. Therefore, it is submitted that this Respondent has been only issued a show cause notice and that too only for the reason that the project exceeds 50 hectares by erroneously relying upon the forest NOC. It is within the rights of this Respondent to respond and submit explanations clarifying the same to the TNPCB for the said authority to decide and pass statutory order under Section 33A and Section 31A of the Water and Air Act respectively under which the show cause notice has been issued.

80. Therefore, the above issue has no relevance to the allegations contained in the present case and the reliance placed on the TNPCB proceedings are only to find some fault somehow on the project which only amounts to misleading this Hon'ble Tribunal.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

ENVIRONMENTAL IMPACT AND ENVIRONMENTAL COMPENSATION:

81. It is submitted that the present project is only a layout development project. The plot owners whoever has purchased and chosen to, have put up only residential buildings. There is no other industrial or commercial activity in the whole project site.
82. In so far as the layout development is concerned, the 1st report of the joint committee itself is evidence to the fact that there is no environmental disturbance or damage done by the project. More particularly, it is clearly recorded that the project has not disturbed or poses any danger to the existing land pattern, water streams, odai etc., The project was implemented by duly constructing channel and over bridge etc., to not disturb the existing ecology of the area.
83. It is submitted that even thereafter the only waste generation at the project is that of sewage and domestic waste. They are taken care of adequately by proper sewage and waste disposal system. It is not disputed that the waste disposal system is sufficient and efficient and the project maintains highest standards of eco- friendly living with pure air and total hygiene.
84. Therefore, it is submitted that there is no environmental damage that has been caused by the project and thus there arises no necessity for imposition of any environmental compensation on the project. Without noting the above and without establishing the manner in which any damage has been caused by the project, the committee has proceeded to assess the compensation. In fact, the committee ought to have filed a report if there were any damages and then proceeded for calculating compensation. However, by understanding the order of this Hon'ble Tribunal to assess damage and calculate compensation, if any, the committee in arbitrary and erroneous manner straight away assessed the compensation which is unsustainable in law.
85. The only other ground on which the compensation is assessed is that of non- obtainment of EC by supposing that the project is beyond 50 hectares. The same is erroneous as the project does not require EC as it falls below 50 hectares and does not attract the EIA, 2006.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

86. Nevertheless, the compensation and calculation were done without an opportunity being provided to this Respondent and as such the Respondent reserves recourse to statutory process before the imposition of environmental compensation.

PARAWISE REPLY

87. It is submitted that the report of the joint committee is from any angle erroneous and unsustainable in law and is denied on para wise basis hereunder.

Terms of reference(i):

To inspect the area in question and consider the question regarding the environment impact of the project in Eco- Sensitive area in forest wildlife and existing water bodies and whether the project developer had started their construction without getting environment clearance

Observations of the committee	Objections by the 9th Respondent	Remarks of the committee
<p>Regarding the eco-sensitive area: the project activity falls within 10 km of eco-sensitive zone (in the absence of delineation of Eco- sensitive Zone of Kodaikanal Wildlife Sanctuary prior to the Gazette notification dated 23/1/2020), it is mandatory requirement of getting Clearance from the Standing Committee of National Board for Wildlife (NBWL). Further, Govt. Of India vide S.O. 412(E) dated 23/01/2020 has notified the Kodaikanal Wildlife Sanctuary, wherein notified an area to an extent of 0 Km to 1.0 Km around the boundary of the Kodaikanal Wildlife Sanctuary as Eco-Sensitive zone.</p> <p>Whether the project developer had started their construction without getting environment clearance: As per the affidavit submitted by SEIAA and as per the records of TNPCB, it is observed that, the unit has</p>	<p>(a) It is submitted that the issue relating to the violation of Eco-Sensitive Zone regulation is unsustainable for the reason that the application of the said regulations applies only to projects that require Environmental Clearance. This proposition of law is established and settled by the orders of the Hon'ble Supreme Court in the landmark judgement in Goa Foundation v. Union of India and the resultant notification by the MoEF dated 02.12.2009. In the instant case, the project does not attract the EIA Notification 2006 and thus does not require EC as per EIA 2006. Therefore, the Eco-Sensitive Zone buffer regulations do not apply to the present project at all.</p> <p>(b) In arguendo, it is submitted that the approval for the project was granted much prior on 09.03.2009 itself before the ESZ regulations came into force which is on 02.12.2009 by a</p>	<p>Remarks on (a), (b), (c) and (d)</p> <p>It is submitted that, even though the DTCP approval obtained for 49.31 Ha for their project, the 9th respondent has obtained NOC on 24.01.2008 from Forest Department, Government of Tamil Nadu for the development of farming over an extent of land of 128 Acres (51.82 Hectares), which exceeds 50 Hacters. Though the proponent has obtained DTCP approval over an extent of 49.31 Hacters, it was ascertained from the records vide Tamil Nadu Forest Department letter dated 02/07/2011 that the project proponent retains the same area of 51.82 Hacters land for the township development project and thus the project activity attracts Environmental Impact Assessment Notification, 2006 as amended listed under category 8(b) of the Schedule. As per Honble</p>

BAHRI ESTATES PVT. LTD.



Authorised Signatory

<p>continued the project related activity without obtaining environmental clearance from SEIAA and consent from the TNPCB. The unit continues to violate the provisions of Water & Air Acts, as per the report submitted by TNPCB, DEE, Theni vide TNPCB, Theni letter No. F.0001 (N.A)/DEE/TNPCB/2016/ dated 06.10.2016. In this regard, TNPCB vide Proceeding dated 18/05/2016 issued Show cause Notice to the Unit.</p> <p>The Member Secretary, SEIAA vide letter dated 02.04.2014 instructed the Project developer not to commence any activity other than cleaning of the site, fencing the site and putting up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement.</p> <p>Though the project developer has obtained approval from DTCP, requisite Consent & Authorization has not been obtained from the TNPCB.</p> <p>Impact of the project in Eco- Sensitive area in forest wildlife and existing water bodies:</p> <p>The Committee has inspected various constructions of villas, Oddai (small seasonal streams) flowing through the project site, treatment system of sewage, solio waste disposal and distance between reserved forest and the project site.</p> <p>Committee has shown the records of Revenue for various oddai in the project site and verified the existence along with revenue officials. There are four oddais in the project site. Widths of the oddais are not altered in the site. However, bridges are constructed along the cross roads within the developed project area</p>	<p>notification of the MOEF and as such at the time of grant of approval, there was no regulations of eco-sensitive area.</p> <p>(c) Notwithstanding all of the above, it is pertinent to state that the Kodaikanal Wildlife Sanctuary itself was notified only on 2013. The buffer Eco-Sensitive Zone of the Sanctuary was fixed up to a distance of 1 km only during the year 2019. Even earlier, when the default buffer of 10Kms were made applicable procedure for such regulations were made by an Office Memorandum of the MOEF dated 02.12.2009 only. Thus, looking from any angle, the project is not covered under the ESZ regulations.</p> <p>(d) It is pertinent to state that the enforcement of ESZ, the notification of the Kodaikanal Sanctuary, the fixing of buffer zone can apply only prospectively and in the instant case, as explained herein above, the regulations cannot be retrospectively applied.</p> <p>Environmental clearance:</p> <p>(a) It is submitted that the entire extent of the project is 49.31 hectares and thus does not require environmental clearance as being less than 50 hectares as per Entry 8 of Schedule to the EIA notification 2006.</p> <p>(b) The observations of the committee are firstly that an extent of 7 acres of land in Survey Nos. 426, 428, 429 and 441/1 are also project lands over and above 49.31 hectares and as such the total land usage exceeds 50 hectares. The Committee came to the above conclusion based on the reason that the Survey</p>	<p>Supreme Court Order dated 04.12.2006 in W.P.No. 40 of 2006, MoEF&CC issued a public notice dated 01.01.2009 that "those projects/ activities which are located within ten kilometers of the boundaries of Sanctuary and National parks shall seek clearance under the Wildlife (Protection) Act, 1972'. As the 9,h respondent has obtained approval only after the said public notice, It is evident that the project needs to obtain approval from Standing Committee of National Board of wildlife. The 9,h respondent is carrying out activities such as construction of residences, construction of utilities such as club house, provided services like collection of sewage, solid wastes, etc, maintaining the common areas like roads and street lights even during the inspection made by the committee on 19.03.2020. It is evident from the above that the project development is still under progress and the 9th respondent cannot claim that the project activities are not covered under the Eco-Sensitive Zone regulations.</p> <p>* - The remarks of DFO and Wildlife warden, Kodaikanal on the objections filed by 94, Respondent was furnished vide his letter dated 25.11.2020 is annexed herewith vide Annexure I.</p> <p>Remarks on (a), (b), (c), (d), (e), (f), (g) and (h) of Environmental Clearance:</p> <p>The 9th respondent has obtained NOC from the Tamil Nadu Forest Department on 24/01/2008 over an extent of 51.82 Hacters (128</p>
--	--	---

BAHRI ESTATES PVT. LTD.



Authorised Signatory

<p>for free flow of water during monsoon. The Project Developer has left 35 meter buffer zone from the reserved forest.</p> <p>The sewage from the villas are collected and disposed periodically through tanlers authorized by local body. Also the unit is converting the Bio degradable solid waste through vermicomposting.</p>	<p>Numbers are a part of the NOC given by the Tamil Nadu Forest Department dated 24.01.2008 and 12.07.2011 which are not amended till date. Further certain activities of organic farming and brick manufacturing were carried on in 1 acre of land in Survey No.441/1 which makes it a part of the project activity.</p> <p>(c) It is submitted that the above findings of the Committee is erroneous because the committee has failed to compare the approved DTCP layout dated 09.03.2009 which forms the basis and describes the extent of the project. The Committee also failed to consider the proceedings of the</p> <p>dated 2011, which has observed the completion of the project as per the DTCP conditions which also points to only 49.31 hectares. All the activities are confined only to DTCP approved area only. Further, out of the 49.31 Hectares of land, almost 12.51 hectares is gifted for forming of roads to the local body as per DTCP norms who had taken charge and completed the same. The 9th Respondent is thus only having 36.8 hectares of land for the project area. In addition, the application for environmental clearance for Phase II of the project submitted by the Applicant clearly explained the confusion and recorded Phase I of the project to be 49.31 hectares which is the actual project size and the remaining extent of lands including the aforesaid Survey Numbers in 426, 428, 429 and 441/1 as proposed expansion areas. The expansion was also subsequently given up and the application for</p>	<p>Acres) of land. However, the 9th respondent made a claim that the project need not require Environmental Clearance under EIA Notification, 2006 as they have obtained: DTCP approval only: over an extent of 49.31 Hacters. The 9th. respondent cannot claim for the. exemption environmental clearance as the-proponent failed to include the lands in: the S.F.Nos. 426, 428 and 429 with: respect to the clearance obtained. from the Forest Department and the above said lands still' under possessions of 9th respondent. The 9th respondent cannot claim that their project area is reduced just because they handed over the land of 12.51 Ha to local body as per the DTCP guidelines, which is an integral part of the township development project. All allied activities includes vermi composting, organic farming activity, hollow block manufacturing facility, development of roads, street lightings covers the entire township development project/activity and hence, the proponent has to submit application for Consent of the TNPCB under red category.</p>
---	---	--

BAHRI ESTATES PVT. LTD.


 Authorised Signatory

expansion stands
withdrawn.

(d) Therefore, the committee has not considered the various statutory documents and has concluded only on the basis of the forest NOC which was an inadvertent mistake and not binding on the project since the lands are itself are not forest lands. Thus, the above findings of the Committee warrant revision and interference by this Hon'ble Tribunal.

(e) The 2nd observation of the Committee in Point No.(i) is that the project related activity such as nursery, composting yard, etc. are being undertaken in the aforesaid additional Survey Number and thus amounts to land utilised for the project. It is submitted that the referred activity is organic farming carried on in 1 acre of land in Survey No. 441/1. The said land is not owned by the 9th Respondent and as such is not a part of the project or a part of the DTCP approval.

(f) In fact, the activity is not a project activity since what has been implemented by the 9th respondent is only plotted layout development. The activity of organic farming does not find a part as a project activity in any permissions or clearances.

(g) It is understood by the respondents that it is only upon a request by the residents who are senior citizens, as a leisure activity, that they obtained consent and entered into agreement with the original landowner to carry out such activities which seems to be permitted by the landowner on a temporary basis until the lands are required by him. Therefore, an activity that is purely temporarily carried on by purchasers,

BAHRI ESTATES PVT. LTD.


Authorised Signatory

not promised as a project activity, in lands that are not owned by the 9th respondent, in lands that do not form part of the clearances are now portrayed on assumptions and presumptions to be that of the project. It is submitted that the Committee had not noticed this fact and the allegation that the activity is a project activity is without verification, perusal and assessment of the activities. Therefore it is submitted that the above are contrary to true facts and those facts cannot be denied on the basis of suspicions and presumptions.

(h) It is further submitted that with regard to the issue pertaining to hollow brick manufacturing which was noticed as undertaken in part of the lands in Survey No.441/1, the same was carried out by 3rd party agencies on a contractual basis to supply material for the project. The lands on which such units were established were never a part of the project nor owned by the 9th Respondent. The units are white category industries as per Type Code No.4016 in BP No.6 dated 2.8.2016 and as such the white category industries do not require consent from the TNPCB as per the guidelines of CPCB. These units are not in operation which were also confirmed by TNPCB in their reply to this Hon'ble Tribunal.

Environmental Impact:

(a) It is submitted that the report of the committee clearly establishes that there is absolutely no impact of the project in eco-sensitive area in forest wildlife and existing water bodies. The committee has also observed that the

BAHRI ESTATES PVT. LTD.



Authorised Signatory

	<p>sewage and solid waste are properly disposed. The committee has further observed that no water bodies or odai are disturbed by the project. The committee also observed that a 35 metre buffer zone is also left from the forest. Therefore, the committee has given a clean chit to the 9th respondent in terms of viability and impact of the project on the environment. Therefore, the entire issues only relate to procedural compliances by the 9th respondent.</p>	
--	--	--

Reply to Terms of reference(i)

88. It is submitted that the committee has only relied upon the NOC of the forest department dated 24.01.2008 and 02.07.2011 to show that the project retains 51.82 hectares of land. The committee has while noting that the DTCP approval is only for 49.3 hectares has not answered about the prevalence of DTCP approval over and above the forest NOC.
89. It is submitted that the committee has not dealt with the submission of the Respondent in terms of Section 2 of the Forest Conservation Act and how the jurisdiction of the forest department is restricted and it is only the DTCP approval that prevails over and above the forest NOC.
90. The committee has failed to note that the disputed survey number 426, 428, 429 & 441 has no activity or access even as on today and as such instead of reporting on the factual aspects has made a legal case by interpreting the forest NOC clearance.
91. It is submitted that the committee has in a shocking manner reported that collection of sewage, solid waste, maintain the common areas like road street light etc., as amounting to project under development. In such a case, if the report of the committee is to be accepted then the 9th Respondent has to be stop providing sewage and waste maintenance to the project.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

92. It is submitted that in so far as the construction of residences is concerned, the same is not a project activity as discussed in detail above and without referring to the objections already raised, the committee has brushed aside all the valid objections and merely reiterated the same findings.
93. In so far as the letter of the DFO dated 25.11.2020 given as Annexure 1 is concerned, it is submitted that the same is merely an extract of all existing notifications. The DFO has not objected or granted any explanation on the submission of the project with regards to Section 2 of the Forest Conservation Act. The DFO has further baldly stated that the project is ongoing without responding to the objections that the project is only a layout development and other construction of residence is by individual third party.
94. The arbitrariness and unreasonableness of the DFO is explicit from his blatant allegation that there is impact on the behaviour and movement of wildlife worsening the man animal conflict. At the outset, the DFO has not based the above contention on the basis of any record or document. Further, he has not stated which wildlife behaviour or pattern was affected. Further, the altered movement pattern or altered behaviour has not been stated on the basis of any record maintained by the forest department. That apart, the DFO has not even referred to any recorded instance of man animal conflict and any compensation paid there on not only in the project site but in the whole village of G Kallupatty.
95. The above statement of the DFO is a complete reversal of the clearance given by the same department and the same office to the same project at the same site in the year 2011 while it was cleared that there is no impact on forest and wildlife and that there are no man animal conflicts, while completely taking an opposite stand from his predecessor in office, the DFO in his letter has not relied on any records or documents.
96. It is submitted that since the project proponent has denied any environmental impact there arises no necessity for calculation of compensation. The committee without establishing any environmental damage has instead alleged that the proponent has not given any baseline data that too, when it was not even asked of the Respondent. The committee has failed to establish any environmental damage caused due to the project.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

Terms of reference(ii):

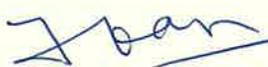
Whether the project proponent had started their construction without getting environment clearance and if so, what is the extent of construction made in that area covered for the project and also the applicability of EIA Notification 2006 for the project and if there is any violation.

Observations of the committee	Objections by the 9th Respondent	Remarks of the committee
<p>From the NOC and communication obtained from the Tamilnadu Forest Department, it has been observed that project developer has more than 50 Ha. Area in their possession from 2008 to 2011. Through the project developer claims that the total project area is less than 50 Ha., it is pertinent to mention here that in the absence of the ownership one cannot get the NOC. Further, the NOC obtained for 128 Acres (51.82 Ha.) from the forest Department has not been amended till date.</p> <p>During the visit, committee has observed few project related activities viz. Nursery, composting yard etc., are being undertaken in the adjoining area of the project, which is not part of the project area. But, considered to be activity area. Accordingly, it is observed that the area of layout development and allied activities exceeds 50 Ha., therefore obtaining Environmental Clearance under EIA Notification, 2006 is mandatory.</p>	<p>It is submitted that the observations in the above point are already discussed and replied to in the previous paragraph itself. It is only reiterated that the forest department's NOC is referred without context to the DTCP approval and ground reality. The alleged activities are not project activities, not carried on by the 9th respondent and not within the project site.</p>	<p>Remarks on (a)</p> <p>As submitted above, The 9th respondent cannot claim for the exemption of environmental clearance as the proponent failed to include the lands in the S.F.Nos. 426, 428 and 429 with respect to the clearance obtained from the Tamilnadu Forest Department and the above said lands still under possessions of 9th respondent. Further, all other allied activities are integral part of the township development projects, which is being carried out in the above said survey numbers.</p>

Reply to Terms of reference(ii)

97. It is submitted that the committee has stated that the proponent failed to include the lands in Survey number 426, 428 & 429 for the purpose of Environmental Clearance.

BAHRI ESTATES PVT. LTD.


Authorised Signatory

98. Firstly, the committee has given up the land in Survey Number 441/1 which was earlier alleged as a part of the project land. Now the committee is only concerned with 426, 428 & 429.

99. It is submitted that the same is not a part of the project and was shown to the committee on the site as isolated barren lands with no activity or no access. Without placing all that on record, the committee has simply alleged that the same was left out. It is indeed true that those lands were left out and intentionally so because those lands as a matter of record were purchased approval/completion of project. That apart, those lands were never a part of the project or connected in any manner with the project as seen from the DTCP approved layout. Therefore the 9th Respondent has intentionally and responsibly left out those lands and not utilised an inch of the same for the project till today.

Terms of reference(iii):

Area of construction and proximity of the project to the reserve forest and Kodaikanal Wildlife Sanctuary.

Observations of the committee	Objections by the 9 th Respondent	Remarks of the Committee
<p>Out of 298 allotted plots, 172 plots including undivided shares are solid out to the private individuals. Presently, 103 villas are constructed. Built up area of each villa is at about 950 Sq. ft (9093.86 m²). At present 40 villas are occupied by the owners and remaining villas have occasionally occupied.</p> <p>The project site is 35 m away from the boundary of the Kodaikanal Wildlife Sanctuary. Since the project activity falls within the 10 km of eco- sensitive zone (in the absence of delineation of Eco - Sensitive Zone of Kodaikanal Wildlife Sanctuary prior to the Gazette notification dated 23/01/2020), it is</p>	<p>(a) It is submitted that the reply and objections to this paragraph is already discussed under the heading "Eco-sensitive zone" and thus not repeated for the sake of convenience and brevity.</p>	<p>Remarks on (a) * It is submitted that, even though the DTCP approval obtained for 49.31 Ha for their project, the 9th respondent has obtained NOC on 24.01.2008 from Forest Department, Government of Tamil Nadu for the development of farming over an extent of land of 128 Acres (51.82 Hacters), which exceeds 50 Hacters, and thus the project activity attracts Environmental Impact Assessment Notification, 2006 as amended listed under category 8(b) of the Schedule. As per Honble Supreme Court Order dated 04.12.2006 in W.P.No. 40 of 2006, MoEF&CC issued</p>

BAHRI ESTATES PVT. LTD.


Authorised Signatory

<p>mandatory requirement of getting Clearance from the Standing Committee of National Board for Wildlife (NBWL). Further, Govt. of India vide S.O. 412 (E) dated 23/01/2020 has notified the Kodaikanal Wildlife Sanctuary, wherein notified an area to an extent of 0 km to 1.0 km around the boundary of the Kodaikanal Wildlife Sanctuary as Eco Sensitive Zone.</p>		<p>a public notice dated 01.01.2009 that "those projects/ activities which are located within ten kilometers of the boundaries of Sanctuary and National parks shall seek clearance under the Wildlife (Protection) Act, 1972" As the 9th respondent has obtained approval only after the said public notice, It is evident that the project needs to obtain approval from Standing Committee of National Board of wildlife. The 9th respondent is carrying out activities such as construction of residences, construction of utilities such as club house, provided services like collection of sewage, solid wastes, etc, maintaining the common areas like roads and street lights even during the inspection made by the committee on 19.03.2020. It is evident from the above that the project development is still under progress and the 9th respondent cannot claim that the project activities are not covered under the Eco-Sensitive Zone regulations. The entire project area is located 1 Km from the boundary of the Kodaikanal Eco-Sensitive Zone declared under Notification issued by Govt. of India vide S.O. 412(E) dated 23/01/2020 - The remarks of DFO and Wildlife warden, Kodaikanal on the objections filed vide by 9th Respondent was furnished vide his letter dated 25.11.2020 is annexed herewith vide Annexure I.</p>
---	--	--

BAHRI ESTATES PVT. LTD.


Authorised Signatory

Reply to Terms of reference(iii)

100. It is submitted that the committee has once again stated that because the forest NOC dated 24.01.2008 is 51.82 hectares, the project requires environmental clearance. The committee has not answered on the DTCP approval which is only for 49.3 hectares and the NOC by the Forest Department is only a mistake of record and in any event has no statutory backing in the project site as per Section 2 of the Forest Conservation Act.
101. **The committee has here given up and has not specifically alleged that any of the activity is carried on in 426, 428 or 429.** The committee only states that the lands are in possession of this Respondent. The committee has conveniently not answered the objection that the project was complete in 2011. It is submitted that the lands are not a part of the project and not used for the project. However, as owners of the lands, the possession is with the Respondent and in the event of them not being utilised for the project the committee has failed to point out the illegality in holding the possession.
102. The committee has given up and has now admitted that the land in survey number 441/1 is not a part of the project. It is in fact the same state with the other lands in survey number 426, 428 & 429 also.
103. It is submitted that since the project does not attract the EIA 2006 and was complete in the year 2011 as certified by the District Collector, the ESZ notification of Kodaikanal sanctuary does not apply to the project.

Terms of reference(iv):

Whether there is any water body available near and within the project area which requires preservation and protection

Observation by the committee	Objections by the 9th Respondent	Remarks of the committee
During the visit Committee observed there is no any water body available near and within the project area. Further, the natural drains/ oddais	a. It is submitted that as stated earlier, the observations of the committee establish the fact that no	Remarks on (a) It is submitted that during the inspection of the joint committee on 19.03.2020, it was observed that the drains/oddais available

BAHRI ESTATES PVT. LTD.


Authorised Signatory

<p>passing through the project area have been verified with the revenue authorities/ FMB and observed that the four existing natural seasonal drains/ oddais in the project area have not been realigned/ obstructed. Widths of the oddais are not altered. Further, M/s Bahri Estates Pvt. Ltd. Has constructed the bridge on the natural drains after obtaining requisite permissions from the Tamil Nadu Public Works Department.</p>	<p>environmental hazard or damage has been caused by the 9th respondent.</p>	<p>within the project area have not been realigned/obstructed. However, the 9th respondent shall not alter/ change/ modify the prevailing ecological conditions of within the project site including natural drain/oddais at all point of time.</p>
--	---	--

Reply to Terms of reference(iv):

104. It is submitted that the committee has given a clean chit to the 9th Respondent as having not caused any damage to the environment, specifically the drains and odais. The committee has further directed the 9th Respondent to not alter, change or modify the streams and the 9th Respondent accepts and undertakes for the same.

Terms of reference(v):

If there are violations, the committee may also specify the violation aspects and the extent of violation having impact environment and the action taken by the authorities for the said violation and submit a report.

Observations by the committee	Objections by the 9th Respondent	Remarks of the committee
<p>Based on the records made available during the visit, it has been observed that the unit continuing the construction activity without obtaining environmental clearance and Consent & Authorization from the authorities concerned. The unit violated the provisions of Air & Water Acts. In this regard, TNPCB, Theni vide Proceeding dated 18/05/2016 issued Show cause notice to the unit for continuing the project</p>	<p>(a) With respect to the notices issued by the TNPCB, it is submitted that the 9th respondent had approached the authorities only for consent for the construction of club house in a total built up area of 4000 sq.m. The show cause notice issued by the TNPCB have been complied with and reply along with applications have been made by the 9th Respondent. Thus, it is for the TNPCB to conclude the statutory process and pass final orders on the Show Cause notice after considering the reply given and the applications made by the 9th Respondent. It is submitted</p>	<p>Remarks on (a), (b), (c), (d), (e), (f), (g) and (h) Show cause notices was issued by TNPCB on 18/05/2016 as the unit fails to obtain consent of TNPCB as required under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended and under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 as amended for the entire township</p>

BAHRI ESTATES PVT. LTD.


Authorised Signatory

<p>activity without obtaining Consent from the board. Based on the direction of the Tamil Nadu Pollution Control Board, the developer vide their letter dated 02/04/2014 applied for Environmental Clearance before the State Level Environment Impact Assessment Authority- Tamil Nadu and it appears that the matter is still pending.</p> <p>SEIAA- Tamil Nadu vide letter dated 02.04.2014 instructed the developer not to commence any activity other than cleaning of the site, fencing the site and putting- up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement.</p> <p>MoEF&CC vide Notification No. S.O. 804 (E) dated 14th March 2017 provided a six month window for the entities not complying with environment regulations under Environment Impact Assessment Notification, 2006, i.e., those entities which did not obtain prior Environment Clearance to apply for grant of Environment Clearance in order to bring them under compliance with the prevalent environment laws.</p>	<p>that the same is a statutory process as per Section 25 of the Water Act and Section 21 of the Air Act by exercise of powers granted under Section 33-A and Section 31-A of the aforesaid acts respectively, where there are appeal remedies available to the 9th Respondent. Thus, without appreciating the above stated, the Committee had drawn conclusions on the notices issued by the TNPCB which is unsustainable.</p> <p>(b) In so far as the applications and withdrawals for EC are concerned, it is submitted that they were made only for a proposed expansion of about 31 Hectares of land as contained in the application dated 02.04.2014. The proposed expansion lands had no activity going on at the time application or even till date. When the expansion was proposed, the total extent of the project including the existing 49.31 hectares became liable for environmental clearance. Accordingly, the existing project was shown as Phase I with an extent of 49.31 hectares and proposed expansion was shown as Phase II with an extent of 31 hectares.</p> <p>(c) It is submitted that as explained above, the lands shown as Phase I had become liable for obtaining EC only due to proposed expansion activity. Therefore, as per the existing regulations and procedure the 9th respondent submitted the application for expansion and also subsequently submitted a letter of apology in so far as the construction in Phase I is concerned. Thereafter, the said application was delisted by the SEIAA.</p>	<p>development project including for all its allied activities. However, no application is received from the project proponent for the entire township project along with the environmental clearance obtained from the MoEF&CC/SEIAA. MoEF&CC vide its Notification dated 09.12.2016 stated that No consent to "Establish or Operate" under the Water (Prevention and Control of Pollution) Act, 1974 as amended and the Air (Prevention and Control of Pollution) Act, 1981 as amended will be required from the State Pollution Control Board for residential Buildings upto 1,50,000 square meters. However, Hon'ble NGT (PB) vide its Order dated 09/12/2017 in O.A.677 of 2016 directed MoEF&CC "to re-examine its Notification dated 9th December, 2016 and take appropriate steps to delete, amend and rectify the clauses of the said Notification" and the matter still under sub-judice.</p>
---	--	---

BAHRI ESTATES PVT. LTD.



 Authorised Signatory

(d) However, it is crucial to state that the project proponent thereafter could not pursue the proposed expansion due to failure to secure the land and due to economic situation and business-related reasons.

Therefore, the proposed expansion was given up by the 9th respondent and the application for EC was also withdrawn vide letter dated 03.09.2015.

(e) Thereafter, it has been clearly explained to the authorities that with the withdrawal of the proposed expansion, the project is confined only to 49.31 hectares and as such there is no violation as were before the application for expansion. In continuation to the same, the 9th respondent has also submitted such explanations to the TNPCB and EC authorities whenever called upon. With respect to the show cause notice received from the TNPCB, the 9th respondent complied with the same and applied for consent under Section 25(5) of the Water Act for the establishment of the Club House in a total built up area of 4000 sq.m which is unrelated to the issue of Environmental Clearance.

(f) Thus, the proceedings of SEIAA and TNPCB directing the 9th respondent to not commence the construction or permitting clearing the area, etc. were all made in the intervening time period starting from application for proposed expansion and withdrawal of that application. It is further submitted that the project of "Bahri Beautiful Country" which is a plotted layout development was completed in the year 2011 itself as evidenced by the proceedings

BAHRI ESTATES PVT. LTD.



Authorised Signatory

	<p>of the District Collector dated 15.09.2011.</p> <p>(g) Therefore, these correspondences are relied upon without context by the joint committee and based on observations in those correspondence, has concluded as if the authorities had found the 9th respondent to be a violator. Such findings are erroneous, unsustainable and perhaps made out of caution by the joint committee.</p> <p>(h) Finally, it submitted that it is a matter of fact and a matter of record that the project of the 9th respondent is only 49.31 hectares. Only that extent of lands were developed and completed in total compliance to the DTCP regulations. Infact the aforesaid possession was admitted by the DTCP authorities while granting layout approval and Environmental Clearance was also not insisted at the time of approval. Therefore, looking from any angle, the committee report is erroneous and unsustainable and contract to actual facts and circumstances.</p>	
--	---	--

Reply to Terms of reference(v)

105. It is submitted that the show cause notice was issued by the TNPCB only against the club house for total area of 4,000 sq. meters. In fact, the show cause notice of the TNPCB which is annexed to the committee report would only refer to survey numbers 400/6, 401/1, 401/2 which are the survey numbers for the club house alone.
106. The issue relating to the club house has been explained in detail above and the respondent is vested with the right to statutory process as per Section 33A and 31A of the Water and Air respectively.

BAHRI ESTATES PVT. LTD.



Authorised Signatory

ENVIRONMENTAL COMPENSATION

107. It is submitted that the issue with regards to the imposition of compensation is more elaborately explained above. It is thus submitted that the project is only 49.3 hectares and not requiring EC, the project was complete in the year 2011 and not attracted to any of ESZ notification and thus there arises no necessity for imposition of any environmental compensation. Further, as clear from the committee report, there is no damage caused to the environment as well and on that ground also the project is not liable for imposition of any environmental compensation

Therefore, it is respectfully prayed that this Hon'ble Tribunal maybe pleased to accept the present affidavit as objections on the record of this Hon'ble Tribunal and declare that there are no violations in the 9th Respondent project and thus render justice.

BAHRI ESTATES PVT. LTD.



Authorised Signatory

Solemnly affirmed on this the

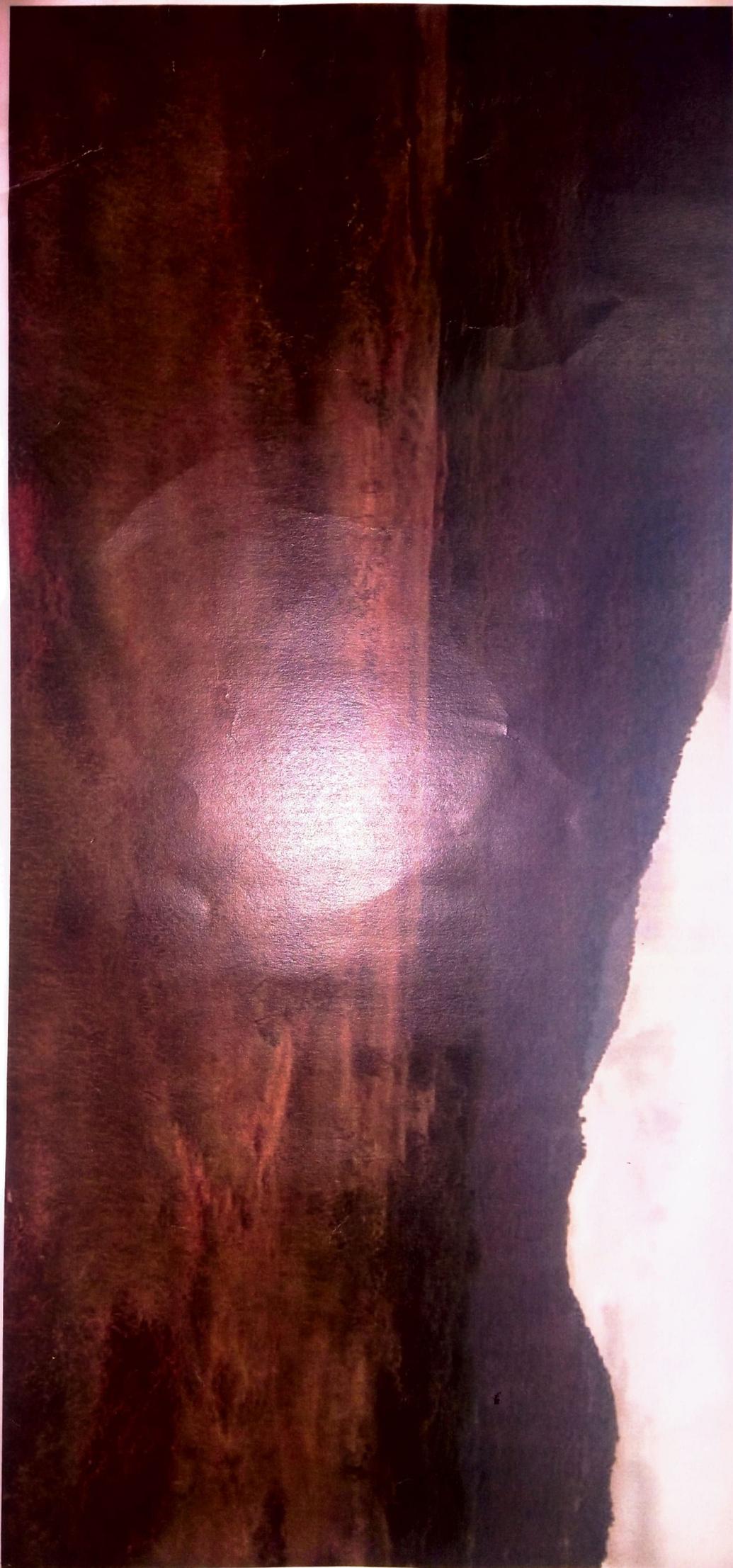
18th day of January, 2021 and signed

His name in my presence

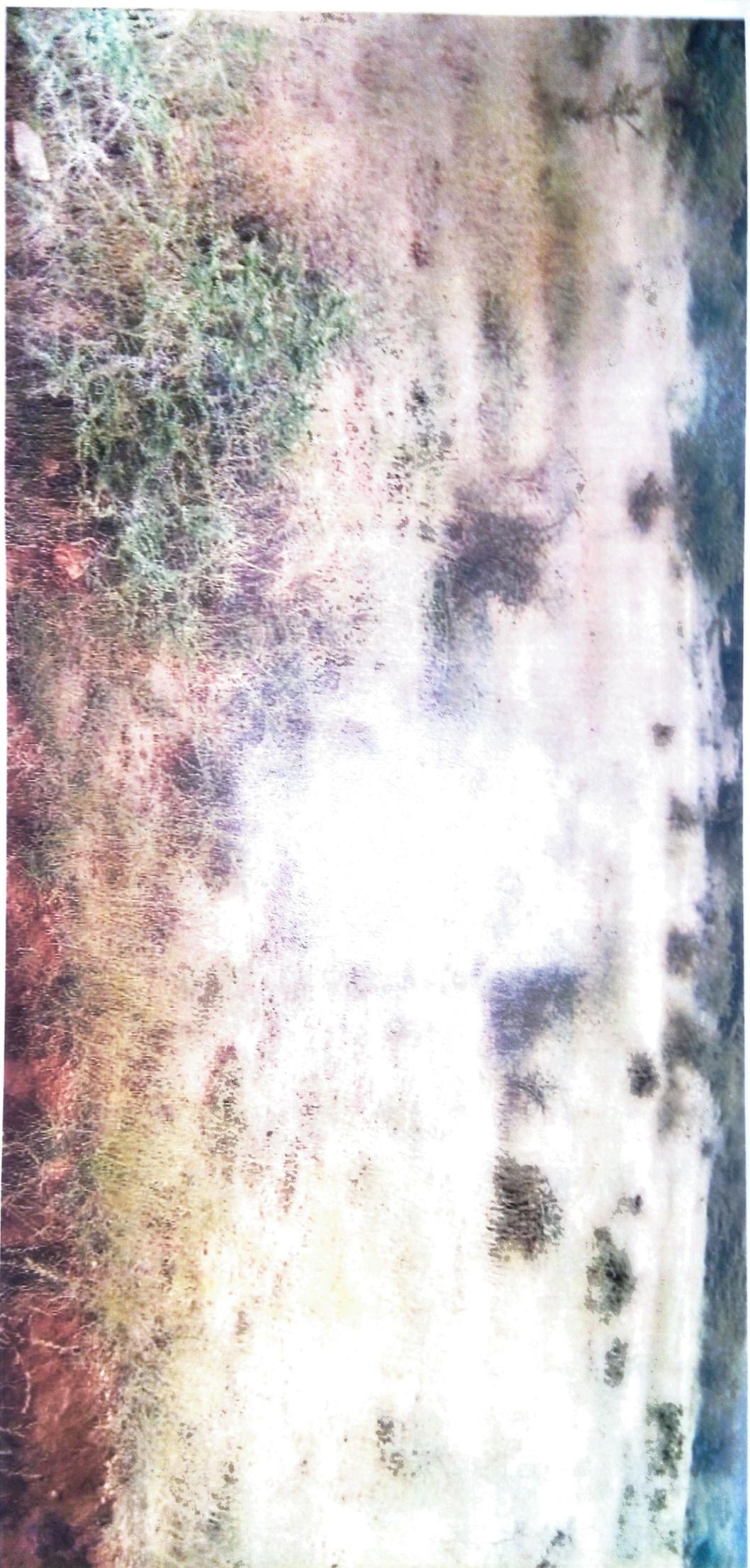
BEFORE ME

 . Arvidan Chambers
(104, New High Court Madras)
(ADVOCATE : CHENNAI)

SURVEY No. 441



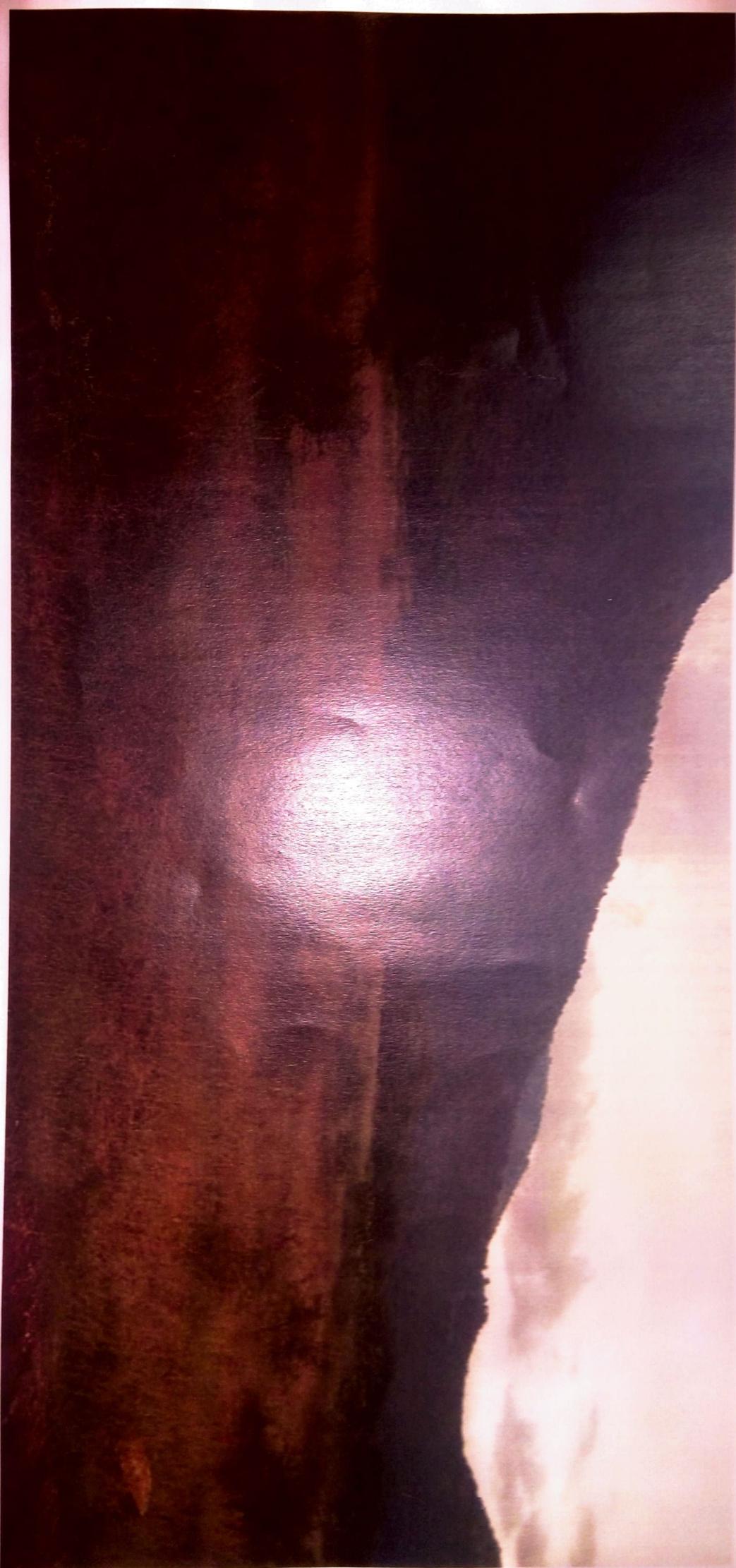
SURVEY NO. 441





SURVEY NO. 442

SURVEY NOS. 426, 428, 429



SURVEY NOS - 426, 428 & 429

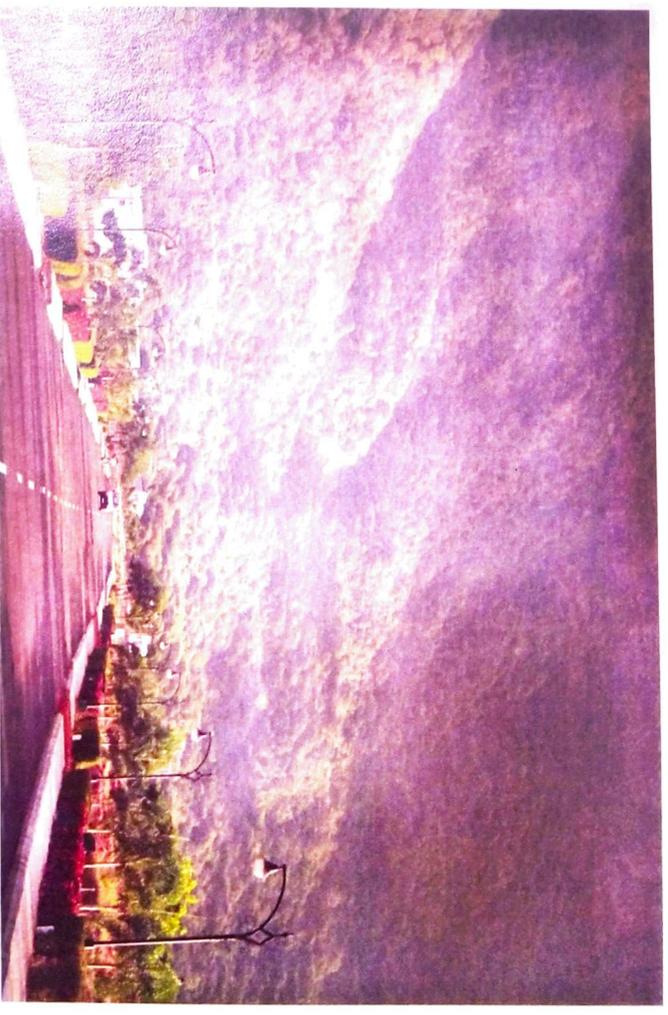


Bahri Beautiful Country

- "Bahri Beautiful Country" is a **plotted layout development**. The extent of the project is **49.31 hectares**.
- **Approved by DTCP** under the Town and Country Planning Act, Layout No. 13/2009 vide proceedings dated 09.03.2009.
- Project consists of **plots for retirement and are purchased and owned by senior citizens**. The allied activities are only additional services offered by the respondent considering the old age of the purchasers which may or may not be required by them.

Clean air Initiatives

- The plotted development at Bahri Beautiful Country has been planned in such a way where **more than 70% of the land area is open space.**
- **Landscaping and planting of trees** has been an **integral part of the development** and is continually being maintained professionally.
- There is very minimal vehicular movement within the development and **battery operated carts** are used by the residents to commute inside which is an **eco friendly mode of transport and does not cause any pollution.**

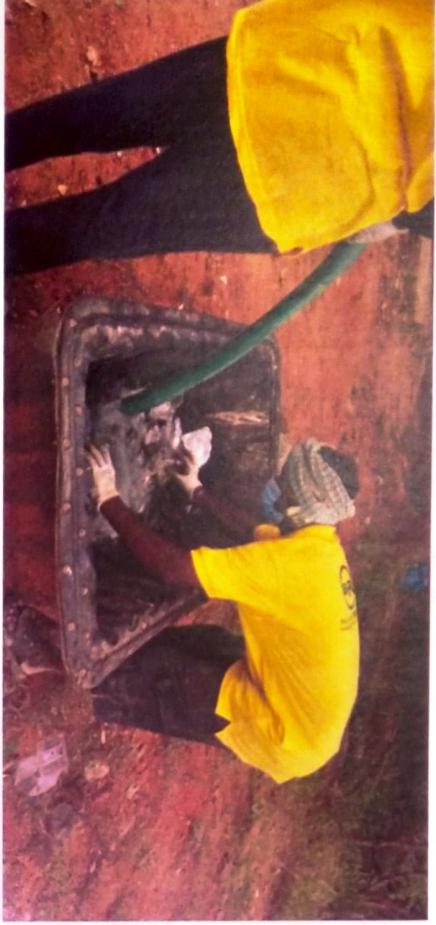
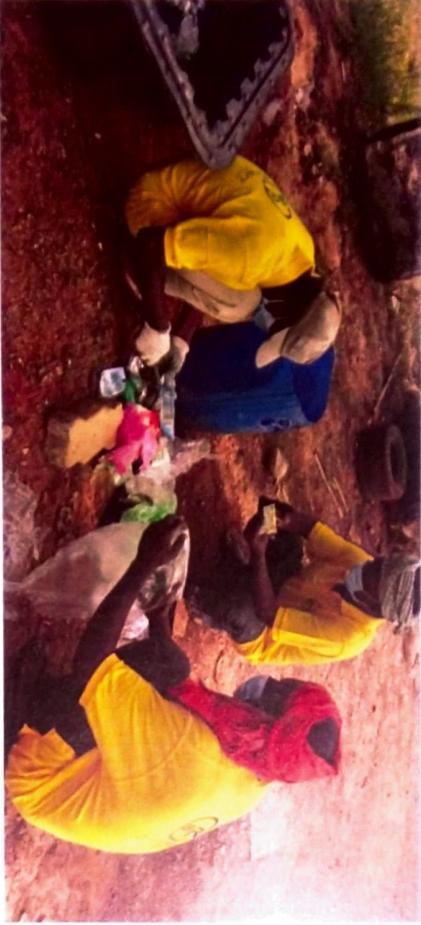


Solid Waste Management

- The individual villas constructed by plot owners are provided with **inspection chambers**. The effluents discharged then move to the **main chambers** at the boundary of the plot. **These are connected to network chambers from where the effluents flow into collection tanks** (system designed by consultants).
- The collection tanks are being emptied as on when required by tankers approved by local authorities and being disposed at government authorised treatment plants.
- The development has successfully implemented a **sustainable solid waste management system**.
- **Waste Collection and Segregation (Three bin system):** Collect and Segregate the waste generated in three separate streams namely
 - 1) Wet Waste (kitchen & garden waste)
 - 2) Dry Waste (paper, plastic, glass, metal, cloths, leather etc.)
 - 3) Sanitary Waste
- After collection the **dry waste is then segregated** at a separate yard where plastic, metal, glass etc. are sorted. **(i.e. All recyclables and non recyclables are separated)**
- All recyclables are then collected by a scrap dealer regularly
- All sanitary and non recyclable waste is sent to near by municipal body for further disposal and action
- A **community compost yard has been set up at the development**. Here all the wet waste is used to generate compost which is further being used to maintain the greens at the development. The Composting is done with the involvement of the residents. This process is supervised by qualified persons so that it is carried out properly and efficiently.

Waste Collection

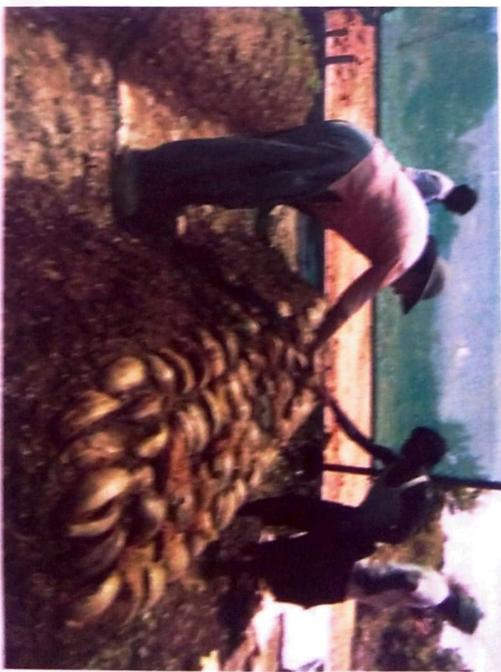
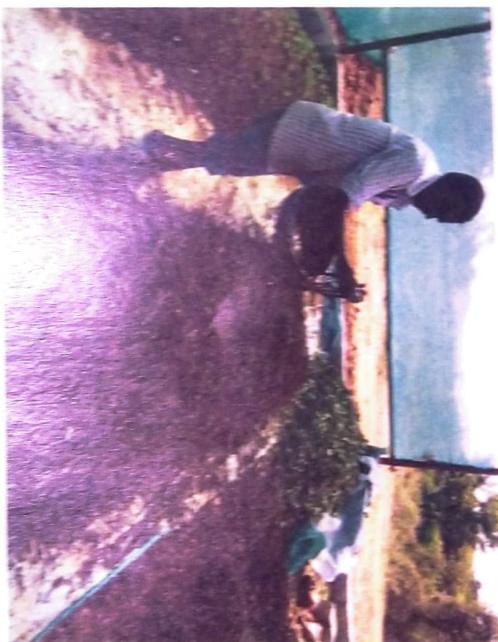




Dry Waste Segregation



Composting yard



Water Supply and Rain Water Harvesting

- The Water Supplied to the residents comes from the Manjalar Dam through panchayat supply system.
- Potable Water provided to senior citizens through the Water Treatment Plant and HNS.

RAINWATER HARVESTING

- The Planners conceptualised the storm water drainage at the development and designed it such that it uses the existing terrain of the land.
- The rain water falling from the adjacent catchment areas flows into collection basins provided at adequate intervals with connection to appropriate sizes of pipe lines that lead to the developed under ground open excavated pits at the desired location designed by consultants.
- The gradient of the roads are designed in such a way that the surface rain water flows in to the adjacent government owned natural streams inside the plotted development for many decades flowing towards the nearby village lakes. The water is being used for the cultivation of agricultural lands owned by the villagers.
- In addition many percolation pits are provided at the downstream areas to recharge the ground water table.

CSR Activities

BUILDING OF POLICE CHECK POST

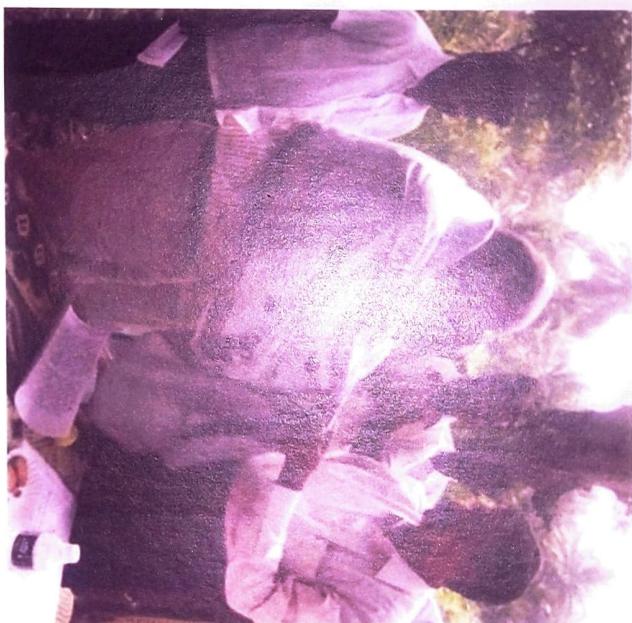
- To control unwanted and illegal activities a police check post has been built few meters away, before the main entrance of Bahri Beautiful Country.



CSR Activities

LAYING OF WATER PIPELINE TO THE VILLAGE

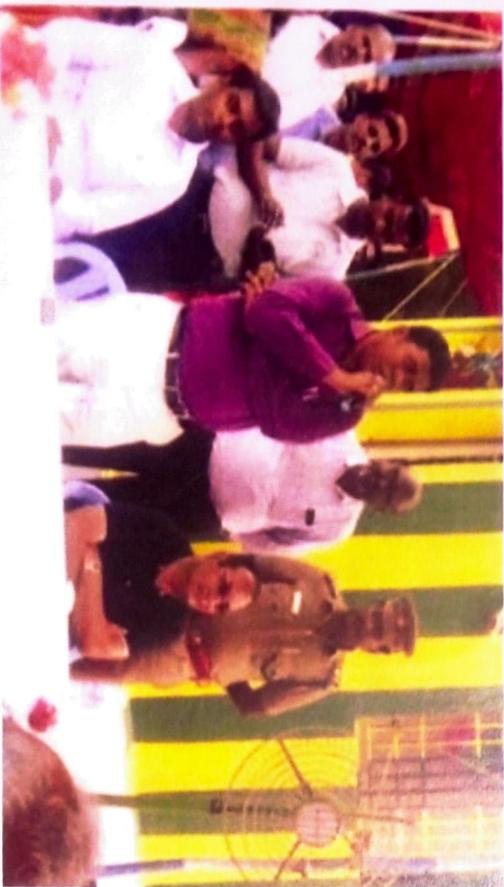
- The Company laid Water Pipeline to the village, since there was no source for Drinking Water.



CSR Activities

INAUGURATION OF FOREST CHECK POST SPONSORED BY THE COMPANY

- The In order to keep vigilance on the illegal activities in the Forest, the company has constructed a check post for the Forest Department near the site.

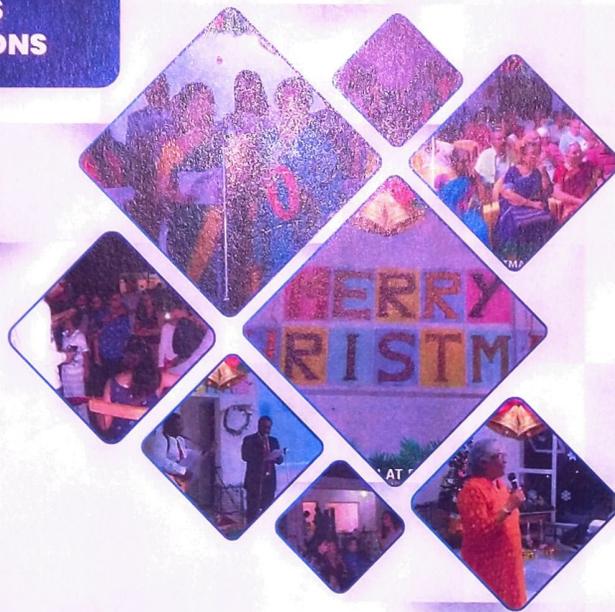




EVENTS FOR SENIOR CITIZENS AT COMMUNITY



CHRISTMAS CELEBRATIONS



 **DIWALI**



 **ELDER'S DAY**





GANESH CHATHURTHI



 **HEALTH CHECKUP**





LOHRI



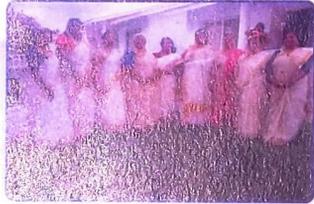
MOTHER'S DAY



NEW YEAR CELEBRATIONS



ONAM





PONGAL



 **REPUBLIC DAY**





TEACHER'S DAY



 **TREE PLANTATION**



VALENTINE'S DAY



 **WOMEN'S DAY**



 **YOGA**

