

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI.**

ORIGINAL APPLICATION NO. 149 of 2016 (SZ)

V. Ramasubbu

...Applicant

Versus

Union of India
and others.

...Respondent(s)

S. No	Description	Page No.
1.	Joint Committee report in Compliance with the order dated 25.08.2020 & 13.10.2020 of Hon'ble NGT(SZ), Chennai in O.A.No. 149 of 2016 in the matter of Shri. V. Ramasubbu Vs Union of India and Others	1-25

**Filed by
Thiru. C. Kasirajan,
Advocate, Chennai.**

**Joint Committee report in compliance with the Order dated dated
25.08.2020 & 13.10.2020 of Hon'ble NGT (SZ), Chennai in O.A.
No.149 of 2016 in the matter of Shri. V. Ramasubbu Vs Union of
India & Ors.**

The Hon'ble National Green Tribunal, Southern Zone, has issued the following direction in the Order dated 25.08.2020 on the O.A. No.149 of 2016 filed by Shri. V. Ramasubbu against Union of India in the matter of development of township by M/s. Bahri Estates Pvt. Ltd. at S.F.No 179/B, 290/2B etc., in Genguvarpatty Revenue village, G. Kallupatti Panchayat, Periyakulam Taluk, Theni District.

“construction made by the proponent without getting Environment Clearance and against the permission granted by the Forest Department and no action was taken by the regulating authorities. Further, it has been stated that the committee has not assessed the environmental compensation which they were directed to assess if there is any violation.” and directed the joint committee “to assess the environmental compensation for the violation committed and submit a further report regarding the same.”

Subsequent to the objection filed by the 9th respondent on the report on the joint committee report, the Hon'ble National Green Tribunal, Southern Zone, in the Order dated 13.10.2020 has directed to consider the objections filed by the ninth respondent to their earlier report and also objection if any to be filed by the applicant to the objections filed by the ninth respondent and submit their view points on that aspect as well in the further report called for by this Tribunal, as modified by this Tribunal as per order in I.A.No. 74 of 2020 Dated 16.09.2020. The committee is directed to submit their further report on or before 26.11.2020 to this Tribunal by e-filing.

In pursuance to the above directions of Hon'ble National Green Tribunal, the Joint Committee meeting was held on 24.11.2020 at the O/o the District Environmental Engineer, Tamilnadu Pollution Control Board,

Dindugal. Based on the deliberations, the following facts to the objections of 9th respondent is furnished under

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 23/01/2020), 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 affidavits submitted by SEIAA and</p>	<p>a) It is submitted that the issue regarding to the violation of Eco-Sensitive Zone regulation is unsustainable for the reason that the application of the said regulation 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 judgment 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</p>	<p>Remarks on (a), (b), (c) and (d) * 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.</p> <p>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</p>

<p>as per the records of TNPCB, it is observed that, the unit has continued the project related activity without obtaining environmental clearance from SEIAA and consent from the TNPC Board. 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 25/05/16 & F.0002/DEE/TNPCB/Theni/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>prior on 09.03.2009 itself before the ESZ regulations came into force which is on 02.12.2009 by a 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 2020. Even earlier, when the default buffer of 10 kms were made applicable procedure for such regulations were made by on 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>and thus the project activity attracts Environmental Impact Assessment Notification, 2006 as amended listed under category 8(b) of the Schedule.</p> <p>As per Hon'ble 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".</p> <p>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.</p> <p>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</p>
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<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, solid 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</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,</p>	<p>common areas like roads and street lights even during the inspection made by the committee on 19.03.2020.</p> <p>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 9th 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 Acres) of land. However, the 9th respondent made a claim that the project need not require Environmental Clearance under EIA Notification, 2006 as</p>
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<p>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 for free flow of water during monsoon. The Project Developer has left 35 meter buffer zone from the reserved forest. The sewage from the villas are collected and disposed periodically through tankers authorized by local body. Also the unit is converting the Bio degradable solid waste through vermicomposting</p>	<p>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 Number Except 441/1 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 were carried on in Survey No.441/1 and some other activities of brick manufacturing in some other land 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 District Collector date 2011, which has observed the</p>	<p>they have obtained DTCP approval only over an extent of 49.31 Hacters.</p> <p>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 Forest Department and the above said lands still under possessions of 9th respondent.</p> <p>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.</p> <p>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>
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	<p>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 additions, 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 expansion stands withdrawn.</p>	
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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 observations 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 utilized 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 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

	<p>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.</p> <p>g) it is understood by the respondents that is only upon a request by the residents who are senior citizens, as a leisure activity, that they obtained consent and had an arrangement with the original land owner to carry out such activities which seems to be permitted by the land owner on a temporary basis until the lands are required by him. Therefore, an activity that is purely temporarily carried on by purchasers, not promised as a project activity, in lands that do not form part of the clearance are now portrayed on assumptions and presumptions to be that 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,</p>	
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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 land 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 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 9 th respondent in terms of viability and impact of the project on the environment. Therefore, the entire issues only related to procedural compliances by the 9 th respondent.	Remarks on (a) of Environmental Impact : * The 9 th respondent has not furnished any base line data in respect of water quality, air quality to assess the environmental impact due to ongoing project activities and also not furnished any Environmental Impact Assessment carried out as per the Standard Terms of Reference applicable for construction and township projects. * - The remarks of DFO and Wildlife warden, Kodaikanal on the objections filed by 9 th Respondent was furnished vide his letter dated 25.11.2020 is annexed herewith vide Annexure I.
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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. of area in their possession from 2008 to 2011. Though 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 can not 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.,</p>	<p>a) 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.</p> <p>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>

therefore obtaining Environmental Clearance under EIA Notification, 2006 is mandatory.		
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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 9th Respondent	Remarks of the Committee
<p>Out of 298 allotted plots, 172 plots including undivided shares are sold out to the private individuals. Presently, 103 villas are constructed. Built up area of each villa is at about 950 Sq. ft. Total built up area of the villas is around 97850 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 10 km of eco-sensitive zone (in the absence of delineation of Eco-sensitive Zone of Kodaikanal Wildlife</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) *</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 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.</p> <p>As per Hon'ble 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 "<i>those projects/ activities which are located within ten kilometers of the boundaries of Sanctuary and National parks shall seek clearance under</i></p>

<p>Sanctuary prior to the Gazette notification dated 23/01/2020), 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><i>the Wildlife (Protection) Act, 1972</i>".</p> <p>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.</p> <p>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.</p> <p>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 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</p> <p>* - The remarks of DFO and Wildlife warden, Kodaikanal on the</p>
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		objections filed vide by 9 th Respondent was furnished vide his letter dated 25.11.2020 is annexed herewith vide Annexure I.
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Terms of Reference (iv) :

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

Observations of the committee	Objections by the 9th Respondent	Remarks of the Committee
During the visit Committee observed that there is no any water body available near and within the project area. Further, the natural drains / oddais passing through the project area have been verified with 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 Tamilnadu Public Works Department.	a) It is submitted that as stated earlier, the observations of the committee establish the fact that no environmental hazard or damage has been caused by the 9 th respondent.	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 within the project area have not been realigned/obstructed. However, the 9 th respondent shall not alter/change/modify the prevailing ecological conditions of within the project site including natural drain/oddais at all point of time.

Terms of Reference (v) :

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

Observations of the committee	Objections by the 9th Respondent	Remarks
<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 Showcause Notice to the unit for continuing the project activity without obtaining Consent from the Board.</p> <p>Based on the direction of the Tamilnadu Pollution Control Board, the developer vides their letter dated 02/04/2014 applied for Environment Clearance before the State Level</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 constructions 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 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,</p>	<p>Remarks on (a), (b), (c), (d), (e), (f), (g) and (h)</p> <p>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 development project including for all its allied activities.</p> <p>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.</p> <p>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</p>

<p>Environment Impact Assessment Authority-Tamilnadu and it appears that the matter is still pending.</p> <p>SEIAA-Tamilnadu 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 regulation under Environment</p>	<p>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 31.02 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 31.02 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</p>	<p>required from the State Pollution Control Board for residential Buildings upto 1,50,000 square meters.</p> <p>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>
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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.

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 constructions 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 plotted layout development was completed in the year 2011 itself as evidenced by the proceedings of the District Collector dated 15.09.2011.

g) Therefore, these correspondent are replied 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>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. In fact 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>	
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The Hon'ble NGT(SZ) Order dated 13/10/2020 in O.A. 149 of 2016 has directed to assess the environmental Compensation if there is any violation. The environmental compensation is arrived as per the methodology derived by the Central Pollution Control Board.

Based on the calculations prescribed, the proponent has to remit the environmental compensation of Rs. 991.2 lacs.

The formula and details of calculation on arriving above compensation is stated below –

“Report of the In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund” has given the following formula to access the environmental compensation to be levied for the industrial sectors as

$$EC = PI \times N \times R \times S \times LF$$

Where, EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

Note :

- a. The pollution Index (PI) of industrial sector is 80, 50 and 30 for Red, Orange and Green category industries respectively
- b. R is a factor of rupees to be taken as Rs. 250 for violation cases.
- c. The Scale factor, S is 0.5, 1.0 and 1.5 for small, medium and Large scale industries respectively.
- d. Location Factor, LF is 1.0 for industries located more than 10 Kms away from any city or City/town having population less than 1 million and LF is 2.0 for the notified ecological sensitive areas.

In the case of M/s Bhari Beautiful Country, township project, as per B.P.No.6 dated 02.08.2016, it is a Red category, Large scale project, which situated near to Kodaikanal sanctuary Eco-Sensitive Zone.

Hence, Pollution Index, PI = 80

Scale factor, S = 1.5

Location Factor, LF = 2.0

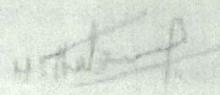
The unit has first issued with Show Cause Notice of TNPCB vide Proc. dated 18/05/2016 based on the inspection carried out on 17/05/2016. Hence, number of days(N) from 17/05/2016 to 24/11/2020 is 1652 days.

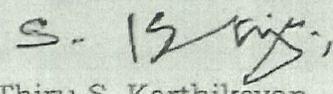
Therefore, the Environmental compensation would be as,

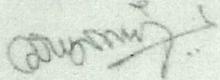
$$\begin{aligned} \text{EC} &= \text{PI} \times \text{N} \times \text{R} \times \text{S} \times \text{LF} \\ &= 80 \times 1652 \times 250 \times 1.5 \times 2.0 \\ &= \text{Rs. } 99120000, \text{ i.e. } 991.2 \text{ laks.} \end{aligned}$$

By considering all the above facts, the Hon'ble Tribunal may pass appropriate Orders(s)/Directions(s) as deemed fit.

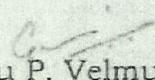
(Retired from the services)
Dr. M. Madhusudhanan
Regional Director
Central Pollution
Control Board, Chennai

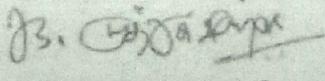

Dr. M. T. Karuppiah,
Scientist - E, MoEFCC,
Regional Office,
Chennai

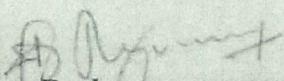

Thiru S. Karthikeyan,
Scientist - C, Central
Pollution Control Board,
Regional Directorate,
Bangaluru

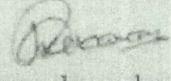

Thiru L. Eugene
Thasildar, Nilakottai
For and on behalf of
District Collector,
Dindugal

Thiru S.N.Thejasvi
I.F.S.
DFO and Wildlife
Warden,
Kodaikanal Wildlife
Division


Thiru P. Velmurugan,
Assistant Director,
Directorate of Town and
Country Planning,
Theni


Thiru A. Muthukrishnan,
Member Secretary,
Dindugal Local
Planning Authority,
Dindugal


Dr. R. Jayamurugan,
District Environmental
Engineer(i/c), Tamil
Nadu Pollution Control
Board, Theni


Dr. R. Chandrasekaran,
District Environmental
Engineer, Tamil Nadu
Pollution Control Board,
Dindugal

Annexure I

TAMIL NADU FOREST DEPARTMENT

From
Thiru.S.N.Thejasvi IFS.,
District Forest Officer &
Wildlife Warden
Kodaikanal Forest Division
Kodaikanal – 624 101.

To,
District Environmental Engineer
Tamilnadu Pollution Control Board
SAR Complex, Door.No.15-4 A3
Theni – 625 531.

C.No.1192/2011/D1, Dated.25.11.2020

Sir,

Sub: TNPC Board, Theni - Hon'ble NGT (SZ) Order dated 25.08.2020 in O.A.149 of 2016 - M/s.Bhari Esates Pvt.Ltd - Meeting Proposed to be held on 24.11.2020, at Dindigul - Communicated - Reg.

Ref: 1) District Environmental Engineer, Tamil Nadu Pollution Control Board
Ltr.No.NGT /DEE / TNPCB / Theni / 2020 dt.19.11.2020.
2) District Environmental Engineer, Tamil Nadu Pollution Control Board,
Theni. Email message, Dated: 25.11.2020.

With the reference to the above subject, the remarks for the objections raise by the 9th respondent i.e., Bhari Estate Pvt.Ltd, Genguvarpatty village, Periyakulam Taluk, Theni District enclosed for kind perusal and subsequent incorporation of the details into the report of the joint committee.

Encl: As stated above

Yours faithfully

[Signature]
District Forest Officer &
Wildlife Warden
Kodaikanal Division
Kodaikanal

[Date]
25/11/20

Remarks for the objection raised by 9th respondent

Term of reference (i) (a), (b), (c), (d) and Term of reference (iii)

The Bhari Estate Pvt.Ltd, Genguvarpatty village, Periyakulam Taluk, Theni District applied to Tamil Nadu Forest Department for obtaining no objection certificate for developing residential layout in an extent of 128.77 Acres spreading in 71 different survey numbers. Subsequently, The District Forest Officer issued no objection certificate for developing only the agricultural farm in the above said land vide C.N.No.10772/2007 D1 dt.24.01.2008. Later series of notices were issued to the Bhari Estate Pvt.Ltd to stop the construction work in violation of NOC issued in C.N.No.1492/2011/D1 dt.28.03.2011, 12.07.2011, 07.12.2016 etc. The project site is located at about 35 meters to 50 meters all along the boundaries of Palani Hill Southern Slope Reserve Forest at various points which now forms a part of Kodaikanal Wildlife Sanctuary. The Commercial and construction activities adjacent to Reserve Forest itself is adversely affecting the behavior and movement pattern of the wildlife worsening the already existing the man animal conflicts. The above construction activities were carried out illegally without any proper sanction from the concerned authority in total violation. The Bhari Estate Pvt.Ltd authority never bothered to reply to the show cause notices which were issued.

The Kodaikanal Wildlife Sanctuary was notified as a Sanctuary vide Government order No.143 Environment and Forests (FR-V) Department dt.20.09.2013. Later the Ministry of Environment, Forest and Climate change published notification on eco sensitive zone of Kodaikanal Wildlife Sanctuary on 23.01.2020. The clause 4 of the gazette notification states that *"All activities in the Eco Sensitive Zone shall be governed by the provisions of the Environment Act and the rules made there under including the Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927, the Wildlife (Protection) Act, 1972 (53 of 1972), and amendments made thereto and be regulated in the manner specified."* Further, The clause 4 (B) (8) of the Gazette notification states the *"No new commercial hotels and resorts shall be permitted within one kilo meter of the boundary of the protected area or upto the extent of Eco-Sensitive Zone, whichever is nearer, except for small temporary structures for eco-tourism activities."* Further it also states in clause 4 (B) (9) that *"new commercial construction of any kind shall not be permitted within 1 km from the boundary of the protected area are upto the extent the Eco Sensitive Zone whichever is nearer"*.

About a length of 0.91 kms has been notified as Eco Sensitive Zone on South East direction from the boundaries of Kodaikanal Wildlife Sanctuary. This particular project site is found falling well within the Eco Sensitive Zone of the Kodaikanal Wildlife Sanctuary.

Moreover, the project is found to be an ongoing activities right from the year 2009 and still not yet completed. The construction activities which were carried out in the project area after the formation of Kodaikanal Wildlife Sanctuary i.e., 20.09.2013 mandatorily requires clearance from the standing committee constituted by National Board for Wildlife as per the direction of the Hon'ble Supreme Court of India. Hence, the activities which were carried out after the notification of the Kodaikanal Wildlife Sanctuary are illegal and without any proper sanction of the competent authority. The project proponent Bhari Estate Pvt.Ltd., has never submitted any proposal for obtaining clearance from the standing committee constituted by the National Board for Wildlife for carrying out the above activities in the project area.

The objection raised by the Bhari Estate Pvt.Ltd that the provision of Eco Sensitive Zone are applicable only to the projects that requires environmental clearances is false and misleading. The provisions of the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act, 1972 (53 of 1972), and amendments made are all applicable for the implementation of Eco Sensitive Zone notification as explained above. Further, the regulations under Eco Sensitive Zone notification are clearly applicable for all the project activities on or after 20.09.2013 when Wildlife Sanctuary was constituted. Therefore, the Bhari Estate Pvt.Ltd needs to obtain mandatory clearance from the competent authority as the project site falls well within the defined Eco Sensitive Zone of Kodaikanal Wildlife Sanctuary.

Term of reference (i) / Environmental impact

The Commercial and construction activities in the Eco Sensitive Zone is adversely affecting the behavior and movement pattern of the wildlife worsening the already existing the man animal conflicts.


District Forest Officer &
Wildlife Warden
Kodaikanal Division
Kodaikanal
25/11/20

**BEFORE THE HON'BLE NATIONAL
GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI.**

**ORIGINAL APPLICATION NO. 149 of
2016 (SZ)**

V. Ramasubbu

...Applicant

Versus

Union of India
and others.

...Respondent(s)

**Joint Committee report in Compliance
with the order dated 25.08.2020 &
13.10.2020 of Hon'ble NGT(SZ), Chennai
in O.A.No. 149 of 2016 in the matter of
Shri. V. Ramasubbu Vs Union of India
and Others**

Advocate for Respondent: TNPCB
Thiru. Kasirajan
Advocate, Chennai.

Date: 17.02.2021

Date of Hearing: 17.02.2021

