

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**  
**SOUTHERN ZONAL BENCH AT CHENNAI**  
**ORIGINAL APPLICATION No.149 OF 2016**

**IN THE MATTER OF:**

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

... Applicant

**-VERSUS-**

Union of India  
MOEF&CC, Government of India,  
New Delhi & Others

... Respondents

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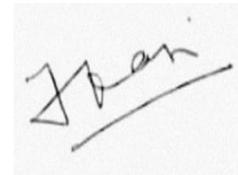
**DATE: 21.02.2022**

**PLACE: NEW DELHI**

**DRAWN AND FILED BY:**



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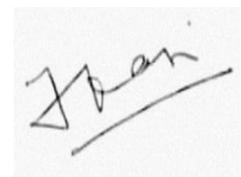
Union of India  
Represented by its Secretary  
MOEF&CC, Government of India,  
New Delhi & Others

... Respondents

**REJOINDER ON BEHALF OF RESPONDENT NO. 9 - M/S BAHRI ESTATES PVT. LTD. TO THE REPLY DATED 04.01.2017 OF THE RESPONDENT NO. 3 - PRINCIPAL CHIEF CONSERVATOR OF FORESTS (PCCF) AND CHIEF WILDLIFE WARDEN (CWW)**

**MOST RESPECTFULLY SHOWETH:**

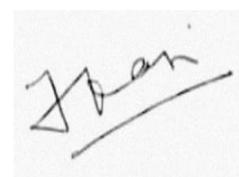
1. It is submitted that the Applicant filed the Original Application praying for the following directions;

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- a. *“To direct the 4th Respondent to not concede the application for environment clearance, submitted by the 9th Respondent,*
- b. *To direct the 1st Respondent and 7th Respondent to prosecute the 9th Respondent for violation of Environment Protection Act;*
- c. *To direct the 9th Respondent to take steps towards compensating and remedying the social and environmental damage caused;*
- d. *To direct the 9th Respondent to restore the natural streams as it existed prior to the commencement of the project;*
- e. *Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case. “*

2. That in pursuance of notice issued by this Hon’ble Tribunal on 14.07.2016, the answering Respondent filed its Reply to the Original Application on 03.08.2016. That subsequently on 08.08.2016 and 08.12.2016, the Hon’ble Tribunal granted opportunity to Respondents 1-8 to file their Reply to the present OA. Accordingly, on 04.01.2017, the Principal Conservator of Forest (hereinafter ‘PCCF’) and Chief Wildlife Warden (Hereinafter ‘CWW’) filed their Reply on 04.01.2017, and the answering Respondent, through the instant pleading, seeks liberty to file a statement of objections to the Reply of PCCF and CWW.

3. That it is also pertinent to mention that in pursuance of Orders of this Hon’ble Tribunal, a Joint Committee was constituted which has submitted three reports. That the answering Respondent has also filed his

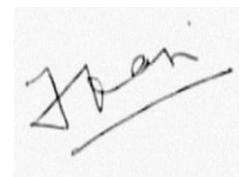
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Objections to the First Report of the Joint Committee on 25.08.2020, to the second Report of the Joint Committee on 19.12.2020 and to the Third Report of the Joint Committee on 03.02.2022.

4. That at the outset, the answering Respondent denies each and every averment made in the Reply of the PCCF as being wrong, false and devoid of any merit, save what are matters of record. It is submitted that no part of the Reply of PCCF will be deemed to be accepted for the lack of a specific denial. Further, the contents of the Objections to the Third Committee Report filed on 03.02.2022 are reiterated as true and correct and are not being repeated for the sake of brevity.
5. That before averting to the para-wise Reply on merits, the answering Respondent seeks to place certain preliminary objections which are vital for a holistic adjudication of the matter.

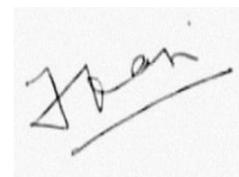
### **Preliminary Objections**

6. It is submitted that the 3rd Respondent has wrongly concluded that the Project of the answering Respondent requires Environment Clearance, though it is a known fact that the layout development is 49.31 Ha which does not mandate prior Environment Clearance.

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7. It is necessary to state that the present Respondent had entered into a development agreement with five business associates on 12.11.2007, for promoting lands as plots. It is necessary to state that, though the five associate companies own several lands in the village in question and also in other villages, this Respondent entered into agreement for promoting an extent of 121.84 Acres (49.31 ha) only. The list of survey numbers that are covered in the said agreement are detailed in the Schedule of the Agreement. True Copy of the Development agreement dated 12.11.2007 is marked and annexed as **ANNEXURE R/3 (Page 66)** of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022. The said agreement got further fortified under the General Power of Attorney which was executed on 26.03.2010 for the same area of land which is 121.84 acres. True Copy of the General Power of Attorney dated 26.03.2010 is marked and annexed as **ANNEXURE R/4 (Page 80)** of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022.

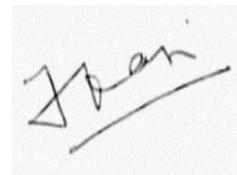
8. It is submitted that on 17.01.2008 this Respondent, applied for No objection Certificate (Hereinafter 'NOC'), for developing many projects,

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such as plots, farmlands, planting Pathimugam and other trees, from the Forest Department, on behalf of various entities namely 1) Bahri Estates Pvt. Ltd. 2) Sushma Sales Pvt. Ltd. 3) Anpra Farms Developers Pvt. Ltd. 4) M/s Bahri Cusines Pvt. Ltd. 5) M/s Suprava Agro Estates Pvt. Ltd.

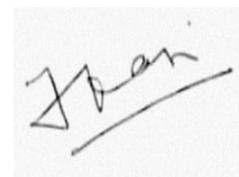
9. The said application of this Respondent had a list of survey numbers, however, few of which were not owned when the application was made. The reason for which this Respondent approached the forest department, was only for seeking a clarification, as to whether the lands in the list are forest lands or patta lands and the NOC from a forest department for a non-forest land would ascertain the fact that no forest land is being used for non-forestry purpose. That the True copy of the application dated 17.01.2008 is annexed as **ANNEXURE R/5 (Page 31)** of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022.

10. In furtherance to the application by this Respondent the Divisional Forest Officer (Hereinafter 'DFO'), Kodaikanal on 24.01.2008, approved his No Objection Certificate (hereinafter referred as 'NOC') for only developing Agricultural farms to the lands for which the application was made, in an area of 51.82 ha, including the Survey Nos. 426,428,429 and 441 which



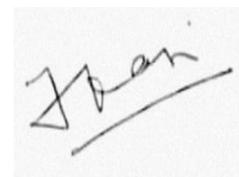
had not been procured/bought at that time. That the True Copy of the NOC dated 24.01.2008 alongwith its English translation is appended as **ANNEXURE R/6** of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022.

11. It is further submitted that the above said lands were not intended to be added to the proposed plotted development project. That without the said survey numbers, the total area was admeasuring to be 49.31 ha which in reality was the position of ownership of the land. It is also pertinent to highlight that at the time of submission of the Application for Forest NOC, the Tahsildar Certificate dated 22.02.2008 was also enclosed for certifying that the present Respondent owned only 49.31 ha of land and had no ownership of the survey Nos 426, 428, 429 and 441. That the true copy of the Tahsildar Certificate dated 22.02.2008 certifying the land owned by the present Respondent enclosed while submitting Application for Forest NOC on 17.01.2008 is marked and annexed as **ANNEXURE R/7 (Page 103)** of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022.

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12. Further, the encumbrance certificate of the survey Nos 426, 428, 429 and 441, would show a fact that this Respondent did not own the said survey numbers and the same had been purchased only after four years from the date of approval of the plotted development project. It is also necessary to mention that the said lands are kept still unused and separate for the project till date. The True Copy of the photograph of the said area where fencing has been done is marked and appended as **ANNEXURE R/8** of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022. This Respondent is also open for inspection to the said four parcels of lands which shall clarify the factual position whether the lands in survey Nos. 426, 428, 429 and 441 are part of the 9th Respondent's project.

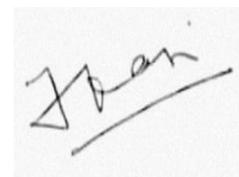
13. It is necessary to state that while granting the NOC, the Forest Department had not verified the ownership of the lands for which application was made. Though the answering Respondent had made an application for NOC to the forest department for various projects such as agro-business, layout development, Pathimugam plantation, etc. and obtained NOC for promoting farmlands, ultimately, the development of

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layout project alone was executed after obtaining District Town and Country Planning (DTCP) permission for the same.

14. That, therefore, the said Survey Numbers which were not owned by the present Respondent but were made part of the NOC granted by the Forest Department, does not imply that the same becomes a part of the plotted development project when the permission of the same stands on a different footing – namely the approval given by the DTCP for township development on 49.31 ha. Moreover, the Forest Department was never the land-owning agency for the project in question. Thus, any NOC, irrespective of the area in question, and the purpose for which it was applied for, only amounts to the legal factum that the said land does not include forest land for which a separate set of forest laws are triggered.

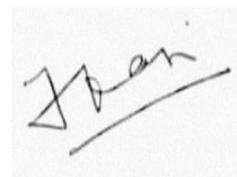
15. It is necessary to state that, though this respondent had made application for NOC to the forest department for various projects such as agro-business, layout development, Pathimugam plantation, etc., and obtained NOC for promoting farmlands, this Respondent had executed the development of layout project alone. The application for layout

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development was made on 14.02.2008 to the 8<sup>th</sup> Respondent for promoting the owned piece of 49.31 Ha of lands as “plotted layout”.

16. That as a result, on 09.03.2009 the DTCP approval was only granted for 49.31 ha of lands. The said approval excludes the contested Survey numbers. The same has been reaffirmed by Respondent No. 8 (DTCP) in their Reply dated 15.03.2018 before this Hon’ble Tribunal. It is pertinent to mention that nowhere has the DTCP in its approval conditions directed present Respondent to acquire prior EC under EIA, 2006. That the True English Translation of the DTCP approval and layout conditions dated 09.03.2009 along with the approved map dt. 18.03.2009 is marked and annexed as **ANNEXURE R/9** of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022.

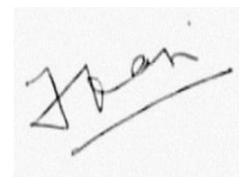
17. It is submitted that the application for layout development was made on for promoting the owned piece of 49.31 Ha of lands as “plotted layout”. That as a result, on 09.03.2009 the DTCP approval was only granted for 49.31 ha of lands. It is humbly submitted that the area of the project of

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the answering Respondent was limited to 49.31 ha and the PCCF had considered the area of 51.82 ha granted under the Forest NOC as the final area of the project and hence wrongly concluding it to be more than 50 ha.

18. Though this Respondent had obtained NOC from the 3rd Respondent for 51.82 Ha for promotion as agricultural lands, this Respondent had not dropped the said project and had only promoted 49.31 Ha as plotted layout, and hence made an amendment application to the 3rd Respondent vide communication dt. 14.07.2021. That in fact, the PCCF himself has now forwarded the same to the DFO vide its letter dated 12.08.2021 with direction to take necessary action in this regard. That this Hon'ble Tribunal may take note of the changed stance of the PCCF requesting the DFO to take necessary action implying thereby to take corrective measures for amending the Forest NOC dated 24.01.2008 to 49.31 ha.

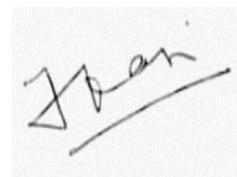
**The Project of the answering Respondent does not require recommendation of the Standing Committee for National Board of Wildlife and has not violated the Wildlife Protection Act, 1972, as the extent of 49.31 Ha of lands does not attract under any of the schedules in the EIA**

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**Notification, 2006 and moreover the Sanctuary did not exist when the approval of the said project was obtained.**

19. That the PCCF has relied on the decision of the Hon'ble Supreme Court dated 04.12.2006 passed in the matter titled Goa Foundation Vs Union of India & Ors. (W.P.(C) 460/2004), mandating that clearance from the SC NBWL for projects which require EC under the EIA Notification 2006 and falling within 10 kms of wildlife sanctuaries is required. A Copy of the said order has been annexed as Annexure R/1 – Page 37-39 of the Objections of the answering Respondent to the Third Report of the Joint Committee dated 03.02.2022.

20. That it is pertinent to note that the Project of the answering Respondent for plotted development began in the year 2009 after the DTCP approval was obtained. That the project was completed in the year 2011. The answering Respondent has also obtained the completion certificate from the District Collector on 15.09.2011 categorically affirming to the completion of the plotted development project having 49.13 ha . The Completion Certificate of the District Collector has been submitted

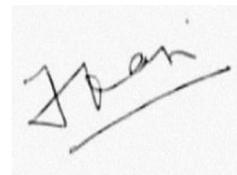
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before this Hon'ble Tribunal as **Annexure I (Page 21)** of the Objections to Joint Committee Report dated 08.10.2020.

21. That in fact, on 12.07.2011 the DFO, Kodaikanal Division, based on the physical inspection made along with the Ganguvarpatty Forest Assistants, had clarified that the project of the answering Respondent has not impact the nearby forest ecology or wildlife:

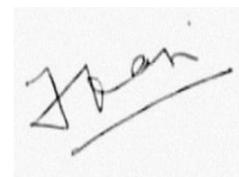
- a. No land encroachment of forest area
- b. No Barrier for wild animal corridor was done and there is no man - animal conflict
- c. The entrance made in Kodaikanal to Batalagundu road beyond 300 feet from forest area there is no wild animal passing through this area and there is no damage to eco system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

22. That it was only on 20.09.2013, almost two years after the project of the answering Respondent had been completed, the Kodaikanal Wildlife Sanctuary was declared under section 26(A) of the Wildlife Protection Act, 1972. Thus, the Order of the Hon'ble Supreme Court dated

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04.12.2006 could not have been given effect to until the sanctuary was declared. That since the project of the present Respondent had already been completed, the requirement of SC NBWL clearance cannot be retrospectively applied to the project of the answering Respondent.

23. That it is further submitted that the order dated 4.12.2006 of the Hon'ble Supreme Court is applicable to project that - First, fall within the Eco-sensitive zone of Wildlife Sanctuaries and - Second, the said projects require prior EC under EIA, 2006. Thus, project which do not require EC and are located within the ESZ, continue to remain exempted from obtaining permission of SC NBWL and from the ambit of the said direction passed under order dated 04.12.2006 passed by the Hon'ble Supreme Court. That the said fact can be substantiated by various Office Memorandums (OMs) of MoEF&CC issued overtime dated 27.02.2007, 02.12.2009, 20.08.2014, 04.09.2014, 26.09.2014, 30.03.2015, 01.05.2015, 08.08.2019 & 16.07.2020 for executing of order dated 04.12.2006 of the Hon'ble Supreme Court mentioned above wherein a requirement of recommendation of SCNBWL has been mandated only for projects which require EC and not otherwise. That the said OMs are annexed collectively as Annexure R/2 at Page 40-65 of the Objection of

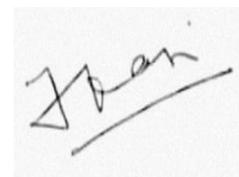
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present Respondent dated 03.02.2022 filed against the third report of the Joint Committee. That given the fact that the project of the present Respondent does not require EC therefore applicability of the said order of the Hon'ble Supreme Court is not applicable to the project of the answering Respondent and as stated earlier, the approvals came even before the Sanctuary was declared and therefore clearly no retrospective effect can be given in terms of requirement of NBWL approval.

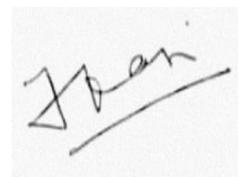
24. That further, all constructions being undertaken subsequent to the declaration of the wildlife Sanctuary in 20.09.2013, have been done by residents in their individual capacity as the owners of the respective plots, either on their own or through any constructors, in accordance with law.

### **Para-Wise Reply on Merits**

1. The contents of the corresponding paragraph are matters of record and do not merit any response.
2. The contents of the corresponding paragraph are matters of record and do not merit any response.
3. The contents of the corresponding paragraph are matters of record and do not merit any response.

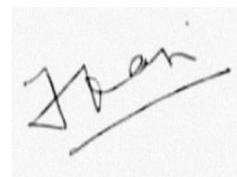
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4. The contents of the corresponding paragraph are matters of record and does not merit any response. However, this Hon'ble Tribunal may take note of the fact that the PCCF categorically submits that the Kodaikanal Wildlife Sanctuary came into existence on 20.09.2013 which is after the project of the answering Respondent was completed in the year 2011. That therefore, the applicability of the order dated 04.12.2006 of Hon'ble Supreme Court came into effect only post the existence of the sanctuary and infact after the completion of the project in question and the same therefore would not be applicable retrospectively.
  
5. The contents of the corresponding paragraph describe the flora and fauna of Kodaikanal Wildlife Sanctuary and to that extent do not merit a response from the answering Respondent. It is pertinent to state that the project of the answering Respondent does not fall within the Kodaikanal Wildlife Sanctuary. Further, the DFO in his letter dated 12.07.2011 has confirmed that the project of the answering Respondent has not encroached the forest area neither created barriers or impacted the wildlife and fauna of the area. In fact, this setting

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would provide senior citizens a good quality of life in the last leg of their life.

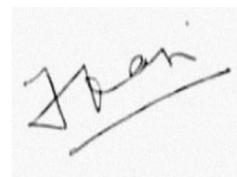
6. That the contents of the corresponding paragraph do not merit any response as it is a matter of record .
7. That the contents of the corresponding paragraph do not merit any response.
8. That the contents of the corresponding paragraph do not merit any response as it is a matter of record.
9. That the contents of the corresponding paragraph do not merit any response. It is however pertinent to note that the Order of the Hon'ble Supreme Court dated 04.12.2006 states that only those projects which require EC and are located within 10 kms of the Wildlife Sanctuaries require prior clearance from Standing Committee for National Board of Wildlife. In the present case, at the time of commencement of the project in 2009 and even completion of the project in 2011 of the answering Respondent, when the Kodaikanal Wildlife Sanctuary was not even declared as a Sanctuary. Thus, answering Respondent cannot be asked to obtain SC NBWL clearance for a project that was completed much before the Kodaikanal Wildlife Sanctuary came into

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existence. Further, the project of the answering Respondent does not require EC as it is less than 50 ha and hence would also not require SC NBWL clearance also as explained above.

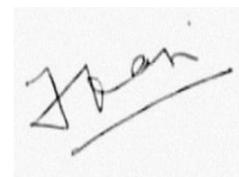
**10.** That the contents of the corresponding paragraph are matters of record and do not merit any response. It is reiterated that the judgement is only applicable on areas around wildlife sanctuaries in existence and which require prior EC. That project of the answering Respondent having been established much before the Kodaikanal Wildlife Sanctuary came into existence and thus the same cannot be applied retrospectively. Further, under the corresponding paragraph, the Respondent no. 3 themselves agrees that under the order dated 04.12.2006 of Hon'ble Supreme Court the clearance from SC NBWL is only needed in case where EC is needed, therefore the same is not applicable to the project of the present Respondent. The contents of para 9 may also be read with this para.

**11.** That the contents of the corresponding paragraph are wrong, false and devoid of any merit. There was no requirement for application to the State Board for Wildlife or the NBWL since no wildlife sanctuary existed at the time the answering Respondent was undertaking his

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plotted development project from the year 2009 to 2011. Further, the clearance from SC NBWL is only required if the project needs a prior EC. That given the fact that no EC is required for the project in question, therefore no clearance from SC NBWL is required.

- 12.** That the contents of the corresponding paragraph talk about the relevance of Eco-sensitive zones and to that extent does not merit any response. It is however important to state that the project of the answering Respondent which now falls within the eco-sensitive zone due to declaration of the sanctuary in 2013 and the ESZ notification dated 23.01.2020 has not impacted the flora or fauna of the region as noted by the DFO in his letter dated 12.07.2011.
- 13.** That the contents of the corresponding paragraph are matters of record and to that extent do not merit any response. It is however submitted that the project of the answering Respondent was completed in the year 2011 much before the Wildlife Sanctuary came into existence.
- 14.** That the contents of the corresponding paragraph to the extent of the date of application of forest NOC and date of grant of Forest NOC are matters of record and do not merit any response. It is pertinent to note that layout development in the area for which Forest NOC was

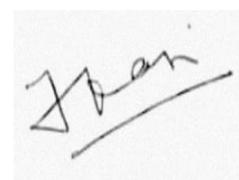
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obtained was undertaken as a matter of abundant precaution. That the land being patta land only required the permission of DTCP for undertaking plotted development and no permission is required to be obtained from the Forest Department. That further, it is pertinent to mention that the District Forest Officer vide its letter dated 12.07.2011 has considered the layout plan of the project in question and has accepted that the land in question may be used for any work.

**15.** That the contents of the corresponding paragraph pertaining to the existence of palani hills southern slope reserved forests, pattarai parai saragam are matters of record and to that extent does not merit any response. It is however submitted that the project of the answering Respondent has not impact any flora, fauna in the adjacent forest and neither has encroached the forest land as has been confirmed by the DFO in his letter dated 12.07.2011.

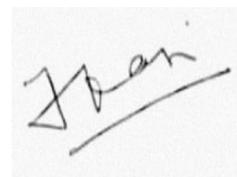
**16.** That the contents of the corresponding paragraph are matters of record and do not merit any response.

**17.** That the contents of the corresponding paragraph are matters of record and do not merit any response. However, the same does not apply to the present project as it is below 50 ha.

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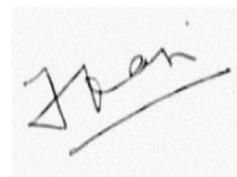
**18.** That the contents of the corresponding paragraph is wrong, false and devoid of any merit as the answering Respondent does not need to obtain EC being a project of 49.31 ha . The contents of paragraph 6 to 10 of preliminary objections may be read in response to the contents of the corresponding paragraph. Further, this is confirmed by the written submissions of SEIAA dated 11.09.2021.

**19.** That the contents of the corresponding paragraph is incorrect. It is submitted that the answering Respondent had approached SEIAA due to a misplaced understanding of law, caused due to wrongful condition imposed by the Tamil Nadu Pollution Control Board for obtaining prior EC while rejecting the Application for Consent to Establish made by the present Respondent for the construction of the Club House within the said plotted development project. However subsequently, the present Respondent had withdrawn the said application which did not need any EC in the first place as the project is of 49.31 ha and is within 50 ha threshold. Moreover, the clubhouse construction too did not require Consent to Establish as per the CPCB/ TNPCB classification of industries which mandates that only those buildings and constructions which are beyond 20,000 sq mt would

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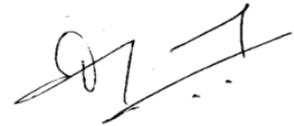
require such consents. Further, SEIAA in its written submission dated 11.09.2021 has also clarified that the project of the answering Respondent being limited to 49.31 ha does not require prior EC.

**20.** That the contents of the corresponding paragraph are wrong, false and devoid of merit. That the project of the answering Respondent being less than 50 ha (viz. 49.31 ha) does not require prior EC and the PCCF has erroneously concluded that the project area is above 50 ha. That further, the work which has been undertaken under the plotted development project is done by third parties to whom different plots carved under the project have been sold for construction of their villas. That the ownership of such plots which are sold to the third party through sale deed gets transferred to third parties and with the same, the rights and responsibility on the said area also gets transferred. That therefore such plots get deduced from the total area of 49.31 ha of the present Respondent as and when they are sold. The further, contents of paragraph 6 to 18 of preliminary objections may be read in response to the contents of the corresponding paragraph and are not being repeated for the sake of brevity.

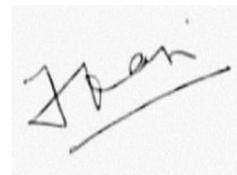
A handwritten signature in black ink, appearing to read 'J. Pan', is written over a horizontal line.

21. That the contents of the corresponding paragraph are wrong, false and devoid of any merit. That the project was developed between 2009 to 2011, much before the wildlife sanctuary came into existence, and hence the concept of ESZ cannot be applied retrospectively. Further, the project of the answering Respondent being less than 50 ha would continue to be exempted from the requirement of SC NBWL even if it falls within the ESZ. The contents of the para 11 and 16 of the Preliminary Objections may be read in response to the contents of the corresponding paragraph.

**DRAWN AND FILED BY:**



**Sanjay Upadhyay, Kamlesh Kannan, Saumitra Jaiswal,  
Mansi Bachani & Nitya Tadakmalla**  
Advocates for the Applicant  
29, Presidential Estate  
Nizamuddin East  
New Delhi -110013



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI**

**O.A.No.149 of 2016 (SZ)**

**IN THE MATTER OF:**

V. Ramasubbu

.... Applicant

Versus

1. Union of India

Rep. by its Secretary

MOEF & CC, Government of India,

New Delhi & Others.

... Respondents

**AFFIDAVIT**

Hemant Bahri, S/o Late J.N. Bahri, aged about 58 years old, am the Managing Director of M/s Bahri Estates Private Limited, having office at Jamals Nainar Enclave, 2nd Floor, 44, Eldams Rd. Alwarpet, Chennai, Tamil Nadu 600018, do hereby solemnly affirm and declare as under:

1. That I am well conversant with the facts and circumstances of the case and duly authorized to sign the present affidavit on behalf of Respondent No. 9 and hence competent to swear this affidavit.
2. That the contents of the accompanying rejoinder are true and correct to my knowledge based on the records available and the same has been drafted under my instructions.
3. That the Annexures in the accompanying Rejoinder on behalf of Respondent No. 9 are true and correct to the best of my knowledge.



DEPONENT

**VERIFICATION**

I, the above- named deponent, do hereby solemnly affirm and verify that the contents of the above paras of the Affidavit are true and correct to the best of my knowledge and belief, and that nothing has been concealed therefrom.

Verified at Chennai on 21<sup>st</sup> day of February, 2022.



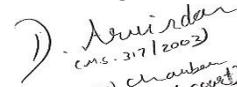
DEPONENT

Solemnly affirmed

on this the 21<sup>st</sup> day of February, 2022,

at Chennai

BEFORE ME



(104, Law chamber  
Meda 04 High court)  
ADVOCATE