

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE AT CHENNAI

I.A. No. 181 of 2021

In

Original Application No. 21 of 2021

BETWEEN

Dr. Anupkrishnan. V,
Flat 7173, Tower 7, Prestige Bella Vista,
Ayyappanthangal Village, Mount Poonamallee Road,
Kanchipuram District, Chennai - 600056

... APPLICANT

v.

Ministry of Environment, Forest and Climate Change,
Represented by its Director, MOEF&CC RO (SEZ),
HEPC Building, No.34, Cathedral Garden Road,
Nungambakkam, Chennai - 600034
& Others

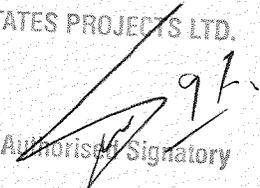
... RESPONDENTS

**COUNTER STATEMENT FILED ON BEHALF OF THE FOURTH AND FIFTH
RESPONDENTS**

I, C. Nagaraj, S/o. Mr. C.R. Narasimhan, aged about 53 years, the Head – Business Operations (TN) and Authorised Signatory of the Fourth and Fifth Respondents herein (“**the Answering Respondents**”), having office at Prestige Polygon, Top Floor, 471, Anna Salai, Nandanam, Chennai 600, do solemnly affirm and sincerely state as follows:

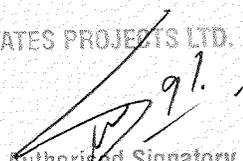
1. I am the Head – Business Operations (TN) and Authorized Signatory of the Answering Respondents and hence well-acquainted with the facts of the case. I am also duly authorized to file this affidavit on behalf of the Answering Respondents.
2. I have perused the above Interlocutory Application filed on behalf of the Applicant and deny all the averments and allegations contained therein, except to the extent specifically admitted herein. The Answering Respondents put the Applicant to strict proof of all averments and allegations that are not expressly admitted herein.

For PRESTIGE ESTATES PROJECTS LTD.


Authorised Signatory

3. At the very outset, it is submitted that the relief sought by the Applicant in the abovementioned Application is frivolous and unsustainable under the law, for the following reasons:
- (i) CMWSSB owns a piece of land adjacent to the Project, through which the pipelines of CMWSSB pass through. The said land is strategically located such that the Project could be accessed from either side (Phase 1 to Phase 2 and vice-versa) through these lands. Accordingly, based on mutual discussions, the Answering Respondents have obtained a No-Objection Certificate (NOC) from CMWSSB to construct a culvert over the said land to facilitate the residents/ owners as well as the Answering Respondents to have easy access/ pass over within the Project. Therefore, by way of the NOC granted by CMWSSB, the Answering Respondents acquired the right to construct and use the culvert for the Project purposes.
 - (ii) The NOC only stipulates that the Answering Respondents do not have any rights to claim ownership over the lands owned by the CMWSSB. However, the Answering Respondents have not claimed any ownership over the CMWSSB's land. The NOC grants permission to the Answering Respondents to construct the culvert over its land and the Answering Respondents have a right to use/ way over the culvert as per the NOC issued by the CMWSSB. Such right of usage is not fettered and the Answering Respondents can use the culvert in any manner whatsoever, including assigning car parking spaces. Accordingly, Answering Respondents have allotted a few cars on the culvert which is not in violation. The Answering Respondents have allotted 16 cars parking spaces over the culvert. This is not in violation of any environmental laws, or the conditions set out in the EC/ CTE.
 - (iii) The Answering Respondents have constructed the said culvert with 18 meters width, and hence the access over the culvert is not hampered/ obstructed due to parking of vehicles on either side.
 - (iv) The CMWSSB's land does not fall within the Project. The land neither forms part of the common area nor does the owners of the apartments within the Project, including the Applicant herein, has any undivided share (UDS) over

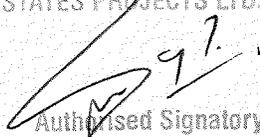
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it. Hence, the Applicant has no locus to raise any allegation or seek reliefs in relation to the allotment of car parking on the culvert, which has been constructed above the said land.

- (v) Without prejudice to the Answering Respondents' submission that there has been no violation of any provisions of the law and/ or the NOC granted, the usage of the culvert (over the CMWSSB's land) for car parking would at best only raise a dispute *inter-se* between the Answering Respondents, the CMWSSB (which is not a party to these proceedings) and the 16 allottees. Such dispute, if arises, would not fall within the jurisdiction of this Hon'ble Tribunal. Furthermore the Applicant is not concerned with the said dispute and lacks any *locus* to agitate the issues sought to be raised in the present Application. Hence, the Applicant is precluded from seeking such plea/reliefs before this Hon'ble Tribunal.
- (vi) The purported interim reliefs sought by the Applicant in the instant Application are mala fide, frivolous and vexatious; the interim relief sought herein are beyond the scope of the main relief sought by the Applicant in the main application. and has no material relevance or nexus to the case at hand.
4. Without prejudice to the abovementioned objections, the Answering Respondents craves leave to traverse the averments in the instant interim application under reply, paragraph-wise.
5. The contents of Paragraph 1 merely set out the relief sought by the Applicant in the instant Application and hence requires no specific traversal. However, for the reasons aforementioned, the Application is unsustainable.
6. The contents in Paragraphs 2 and 3 of the Application are based on pleadings on record and hence require no traversal. However, it is clarified that the Answering Respondents are ready and willing to handover the management and maintenance of the Project to the duly formed association.
7. In response to the averments made in Paragraph 4, it is vehemently denied that the Answering Respondents connived with the Seventh and Eight Respondents or committed any perjury, as alleged by the Applicant. In fact, the Answering

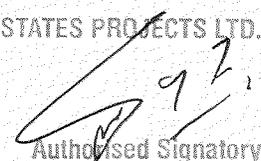
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Respondents monitor and regulate the parking and flow of traffic within the Project premises. As one of the various measures taken to prevent unauthorized parking, the Answering Respondents, as a deterrent mechanism, lock vehicles which are not duly parked in the allotted spaces and further impose fine on unauthorized parking. The culvert land of CMWSSB is not a public road or pedestrian pathway and hence there is no false statement made by the Answering Respondents before this Hon'ble Tribunal, as incorrectly alleged. Therefore, it is specifically stated that there was no perjury committed by the Answering Respondents. Furthermore, as stated above, the allotment of car parking on the culvert land does not infringe or violate any environmental laws or EC/ CTE conditions.

8. In response to the averments made in Paragraph 5, it is stated that the Answering Respondents have provided adequate drainage and pumping facility in place to drain rainwater. However, given the incessant rains and the unprecedented quantum of rainfall, the rainwater entered the lower basement (LB) or Basement 2, by about 3 inches, which was also pumped out every day. These are admittedly unforeseen force majeure events that are beyond the control of the Answering Respondents. In fact, during these rains, the entire city of Chennai, including Ayyapanthangal (where the Project is located) was heavily flooded. Be that as it may, according to the Applicant, such instances do not last for more than 2-3 days.
9. In response to the averments made in Paragraph 6, it is specifically denied that Basement 2 started flooding on 07//11/2021. As stated above, the water enters Basement 2 only by about 3 inches even during incessant rains. Be that as it may, the Applicant's car was rightly locked and fine was imposed as he had parked his car in an area that was not earmarked / allotted to him. The Applicant, having himself violated the parking norms within the Project, has approached this Hon'ble Tribunal with unclean hands. Further, the Answering Respondents are unaware of the discussion that the Applicant allegedly had with the owner of the car parking at the adjacent slot.
10. As regards the averments made in Paragraph 7, it is true that the Applicant had issued two mails viz. dated 08/11/2021 and 12/11/2021. However, the Answering Respondents are not privy to the discussions of the Applicant with the service provider (PPMS) and the Respondent No. 7 respectively. The Answering Respondents are also not aware of the personnel from the service provider whom

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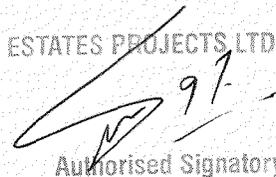


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the Applicant had allegedly contacted. The averment regarding the purported risk to life and car of the Applicant due to the aforesaid rains in 2021 is also highly exaggerated and baseless and has been raised in a feeble attempt to prejudice the Hon'ble Tribunal.

11. In response to the averments made in Paragraphs 8 to 10 of the Application, the Answering Respondents state that there are neither inadequate parking spaces nor traffic violations, as falsely alleged by the Applicant. The Answering Respondents have also duly complied with all CTE conditions, including Special Conditions 29 and 30 thereof. The Answering Respondents reaffirm that there is no violation of any CMDA norms or violations in respect of allotment of car parking spaces. The Applicant has made unwarranted and erroneous averments in this regard and the Answering Respondent takes serious exceptions to such irresponsible allegations leveled against them.
12. Furthermore, the averments regarding the alleged accidents are also unsubstantiated. In any event, reasons for such alleged accidents are not attributable to the Answering Respondents and the Applicant is put to strict proof of the allegations made to the contrary. In fact, all these averments and allegation have been raised by the Applicant, in a mala fide manner, for the first time and as an after-thought merely in a bid to harass the Answering Respondents and unjustly enrich himself.
13. As regards the averments made in Paragraph 11 of the Application, it is true that the then elected members of the Association had filed a civil suit inter-alia objecting to the multi-level car parking system that was earlier proposed by the Answering Respondents. The then elected members of the Association had also filed a writ petition before the Hon'ble Madras High Court seeking mandamus against the Third Respondent to consider their representation. Both these cases are pending adjudication before the respective courts. As on date, there is no interim direction/ stay operating against the Answering Respondents in these cases. As the matters are sub-judice, the Answering Respondents do not wish to raise any submissions on merits of these cases. It is further pertinent to state that the Applicant is not a party to any of these legal proceedings.
14. The contents of Paragraphs 12 and 13 of the Application are facts on record and hence require no traversal. The Answering Respondent has neither claimed any

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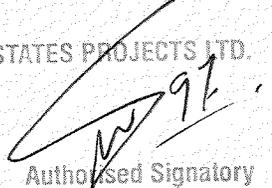
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ownership of the land of CMWSSB nor violated any other terms of the NOC. It is specifically denied that the culvert is encroached by the Answering Respondents. Consequently, the averments made in Paragraph 14 are denied as false and baseless.

15. I state that the Answering Respondents have a strong case on merits and the balance of convenience rest in their favour. It is further submitted that the instant interim Application has been preferred by the Applicant without any locus, in a feeble attempt to harass and unjustly enrich itself from the Answering Respondents. Hence, grave prejudice and injury will be caused to the Answering Respondents if the reliefs sought by the Applicant is granted. On the other hand, the Applicant has failed to make out any case and further failed to plead and demonstrate either balance of convenience or prejudice / injury that will be caused to him if the relief is not granted. In fact, the Applicant has approached this Hon'ble Tribunal with unclean hands and the instant Application is an abuse of the due process of law. Most significantly, as stated above, the reliefs sought by the Applicant is totally untenable and unsustainable under the law. The allegations raised and the reliefs sought by the Applicant in the above interim Application is ill-motivated, frivolous and an abuse of the due process of law.

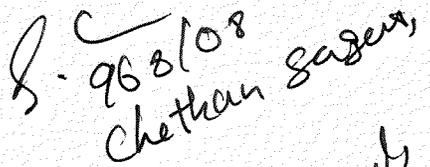
For the reasons stated above, it is respectfully prayed that this Hon'ble Tribunal be pleased to dismiss the instant Application, with exemplary costs, and thus render justice.

For PRESTIGE ESTATES PROJECTS LTD.


Authorized Signatory

Solemnly affirmed at Chennai on this the 04th
day of April 2022 and signed in my presence.

BEFORE ME


S. 968/08
Chethan Sagar,
ADVOCATE, CHENNAI
32, V.V.N. Road,
T. Nagar, Ch-17

**BEFORE THE NATIONAL GREEN
TRIBUNAL
SOUTHERN ZONE, CHENNAI**

**IA No. 181 of 2021
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Dr. Anupkrishnan. V

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Vs.

Ministry of Environment,
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Rep by its Director, MOEF & CC RO(SEZ)
Cathedral Garden Road,

HEPC Building, No. 34,

Nungambakkam,
Chennai – 600 034

And 5 others

... Respondents

Counter Affidavit

S. Arjun Suresh

B. Kishore

Raghavendra Ross Divakar

Apoorva Vinjamur

Gautham Balaji

of M/s. Dua Associates, Advocates

COUNSEL FOR THE 4th & 5th RESPONDENT