

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI**Application No. 239 of 2021**

Navroz Kersasp Mody & Anr ... Applicants

Vs

The Auroville Foundation & Ors ... Respondents

WRITTEN SUBMISSIONS FILED BY THE APPLICANTS**INDEX**

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a. Introduction

1. Auroville is a unique experiment in human unity based on the philosophy of Sri Aurobindo. It was inaugurated in 1968 and was envisaged as a universal town where people from every part of the world come together to live in harmony. From a barren landscape – eroded by water and wind, the lands of Auroville have been transformed into an oasis due to the tireless efforts of residents of Auroville. Auroville residents have planted roughly 30,00,000 trees in the last 5 decades.
2. The Aurobindo society's assets and trusts pertaining to Auroville were taken over by the Central Government by way of the Auroville Act, 1988 and were thereafter vested in a body corporate created under Section 10 of the Act with

three constituent authorities – namely the Residents Assembly, the Governing board and the International advisory council.

3. A perspective plan, titled the Auroville Universal Township Master plan (Perspective 2025), henceforth referred to as the Master Plan, was formulated in 1999 by the Residents Assembly mainly as a guide to prepare a proposed zonal and land use plan. This plan was then “approved” by the Department of Secondary and Higher Education, Government of India on 12.04.2001. This Master plan (Perspective 2025) was then notified on 16.08.2010 by the Governing Board of Auroville Foundation, with the approval of the Central Government stating that the Master Plan perspective 2025 **shall come into force** from the date of publication in the Gazette i.e **16.08.2010**.
4. The 1st respondent is now attempting to “implement” this Master plan and develop a township for 50,000 people based on the galaxy concept – model of the township, which has been incorporated in the Master plan. The present application came to be filed when large scale tree felling had started towards clearing the right of ways for the Crown road, with the plan to further clear the Right of Ways on the twelve radials and the Ring, which are integral parts of the township being constructed by Auroville Foundation as part of implementing the Master Plan. The proposed township consists of 4 zones (residential, industrial, cultural and international zones), road network with related infrastructure etc. The respondent foundation contends that they are at liberty to implement the schematic drawings in the Master Plan to develop the township including schematic roads network etc. without preparing a proposed land use plan, adhering to the procedure prescribed under the Master Plan, or the EIA Notification, 2006 or the Forest (Conservation) Act, 1980 or the principles of sustainable development, precautionary principle or inter-generational equity. The respondent foundation claims that they can implement the township using the Master Plan document as an implementation plan and no feasibility studies, assessments or clearances / permissions are required.

5. It is submitted that this contention is false and the proposed project of the respondent cannot be implemented based only on the Master plan (Perspective 2025). The proposed project/s of the respondent requires detailed impact assessment studies and clearances for both the development of the township as well as the proposed clearance of forested areas for such projects.

b. Pleadings and proceedings

6. It is necessary to note the following in so far as the manner in which the adjudication of the present case proceeded.

10.12.2021	Application (File A) was listed for admission and interim orders were issued. Respondents were served on the same day. Posted to 17.12.2021.
16.12.2021	Additional affidavit dated 16.12.2021 filed by the applicants along with documents (File B & C) and Counter affidavit of the 1 st respondent dated 15.12.2021 was served on the applicants.
17.12.2021	The Tribunal recorded "First Respondent has filed their pleadings. The Applicant has filed an additional affidavit along with documents. If the parties want to file any additional documents as well as further pleadings, they are at liberty to file the same to this Tribunal or on before 20.12.2021"
20.12.2021	Typed set of documents filed by the 1 st respondent (without any affidavit).
21.12.2021	Rejoinder to the Counter affidavit of the 1 st respondent filed by the applicants (File D). The Tribunal directed MoEF & CC, the 2 nd respondent to answer the question as to whether the project requires prior environmental clearance and file a counter affidavit. Case was posted to 03.01.2022.

03.01.2022	2 nd respondent's counter affidavit dated 02.01.2022 was served on the applicants on 03.01.2022. Applicants filed additional documents (File E) related to the pleadings on record. Applicant commenced submissions. Case was adjourned to 04.01.2022
04.01.2022	Rejoinder to the MoEF&CC's counter affidavit (served on 03.01.2022) was filed by the applicant (File F) and applicant concluded submissions. Posted to 05.01.2022 for further hearing.
05.01.2022	Intervenor made submissions and posted to 06.01.2022.
06.01.2022	Respondents and intervenor made submissions. Posted to 10.01.2022
10.01.2022	Case adjourned to 17.01.2022
17.02.2022	Applicant's reply submissions were heard

7. As can be seen from the above table the matter was taken up at short notice and then heard on a day-to-day basis. Rejoinder to the 1st respondent's counter affidavit served late on 16.12.2021, was filed on 21.12.2021 and rejoinder to the MoEF&CC's counter affidavit served on 03.01.2022 was filed on 04.01.2022. There has been no delay on the part of the applicant in filing pleadings and since the matter was being heard on a day-to-day basis, the pleadings were also served and filed without delay.

8. It is submitted that there is no truth in the allegation that the applicants filed documents without any pleading. In fact, the 1st respondent produced its typed set of documents dated 20.12.2021 without an affidavit. However, such issues need not detain this Hon'ble Tribunal when it is examining an environmental issue.

c. Jurisdiction of this Hon'ble Tribunal

9. The 1st respondent submitted that the present application is not within the scope of this Hon'ble Tribunal under Section 14 of the NGT Act, 2010 and this

case was just an “internal squabble”. It is submitted that such submissions are without merit and the futile attempt of the respondent to trivialise the issue ought to be deprecated. It is necessary to note that under Section 10 (3) of the Auroville Foundation Act, 1988, the foundation (1st respondent herein) shall consist of three authorities namely the governing board, the resident’s assembly and the Auroville International Advisory Council. Two of these three authorities have clearly voiced their opposition to the manner in which the subject project is being executed and have called for halting of activities.

10. The present application raises important, substantial environmental issues relating to preservation of Auroville’s unique environment and ecology and preserving the environmental rule of law, inter alia
 - a. the legality of the proposed construction and development of the township over several hundred hectares of land (491 ha township area) based on the Master Plan (inspired by the Galaxy model) without prior environmental clearance under the EIA Notification, 2006.
 - b. the legality of implementing the Master Plan - a perspective plan providing a policy framework without necessary detailed development plans, feasibility studies, impact assessment studies to assess the necessity and environmental suitability of the project design etc.
 - c. the legality of clearing forested areas – belonging to the rare dry tropical ever green forests which are entitled to protection as deemed forests, without any impact assessments, clearances or consideration of alternatives.

11. It is submitted that this Hon’ble Tribunal has wide powers under Section 14 of the Act. The above questions arise out of the implementation of the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, the EIA Notification, 2006, the principles of sustainable development, the precautionary principle and the eco-centric principle. The application, without question, falls within the jurisdiction of this Hon’ble Tribunal and it would be useful to refer to a couple of precedents to obviate any doubt.

12. A 5 judge Bench of this Hon'ble Tribunal in *Goa Foundation & Anr. Vs Union of India & Ors.* (Judgment dated 18.07.2013 in MA No.49 of 2013 in OA No. 26 of 2012), which considering objections on maintainability of an application under Section 14 of the Act, has held,

17. To analyse the above rival contentions, we must examine the interpretation and impact of the relevant provisions and the scheme of the NGT Act. The NGT Act was enacted to provide for establishment of the Tribunal for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The very Preamble of this Act is a sufficient indicator of the jurisdiction that was to be vested in the Tribunal. The issue relating to environmental protection and conservation was one of the paramount pillars, amongst others, of the adjudicatory process by the Tribunal. It was expected to dispose of cases relating to above matters expeditiously. This is the first indicator of the legislative intent which provides that a case could relate to environmental protection, conservation of forests and other natural resources or even enforcement of legal rights relating to environment and other matters mentioned thereto. This jurisdiction of the Tribunal and access to the people stands further expanded by the use of the words 'for matters connected therewith or incidental thereto'. The legislature in its wisdom has used these two expressions which can only be construed liberally and to provide greater dimension to the mode of access to a person claiming redress of his grievances as well as adjudication by the Tribunal.

19... In light of this language of the Preamble of the NGT Act, now let us refer to some of the relevant provisions. Section 14 of the NGT Act outlines the jurisdiction that is vested in the Tribunal. In terms of this Section, the Tribunal will have jurisdiction over all civil cases where a substantial question relating to environment arises. The Tribunal will also have jurisdiction where a person approaches the Tribunal for enforcement of any legal right relating to environment. Of course, in either of these events, a substantial question arises out of the implementation of the enactments specified in Schedule I to the NGT Act. Section 15 of the NGT Act provides for awarding of relief and compensation to the victims of pollution and other environmental damage, restitution of property damaged and restitution of the environment for such area(s) as the Tribunal may think fit, in addition to the provisions of Section 14(2) supra. This Tribunal, thus, has original as well as appellate jurisdiction. This wide jurisdiction is

expected to be exercised by the Tribunal in relation to substantial question relating to environment or where enforcement of a legal right relating to environment is the foundation of an application. In terms of Section 14(2) of the NGT Act, the Tribunal shall hear disputes relating to the above matters and settle such disputes and pass orders thereupon.

20. The expression 'civil cases' used under Section 14(1) of the NGT Act has to be understood in contradistinction to 'criminal cases'. This expression has to be construed liberally as a variety of cases of civil nature could arise which would be raising a substantial question of environment and thus would be triable by the Tribunal.

24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act. At this stage, reference to one of the scheduled Acts i.e. Environment Protection Act, 1986 may be appropriate. The object and reason for enacting that law was primarily to address the concern over the state of environment that had grown the world over. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. These were the considerations that weighed with the legislature to ensure implementation of the UN Conference on the Human Environment held at Stockholm in June, 1972 to take appropriate steps for protection and improvement of human environment. The essence of the legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the scheduled Acts would have to be read as an integral part of the object, reason and purposes of

enacting the NGT Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would further the cause of the Act and not give an interpretation which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal."

(Please See p. 25 @ p. 41 of the case law compilation filed by Applicant)

13. It is submitted that the powers of the Hon'ble Tribunal under Section 14 are wide and have to be interpreted in a purposive manner. The issues concerned in the present application are without doubt substantial questions relating to the environment.

14. The Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai Vs Ankita & ors* (2021 SCC Online SC 897), examined the powers of the NGT in detail and has held that the Tribunal is sui generis and has widest powers including the power to act suo motu without waiting for a question to be raised by an applicant, has held as follows,

"70. *The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.*

71. *In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning*

applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

72. *The other pertinent provisions relating to, inter-alia , jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.*

79. *The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other 'decisions' or 'orders' to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation"²⁴. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain."*

(Please See p. 1 @ p. 16 of the case law compilation filed by Applicant)

15. It is submitted that the 1st respondent argued that the applicant had not specifically raised the question regarding necessity of obtaining environmental clearance under entry 8 (b) of the EIA Notification, 2006 for the township proposed to be developed and hence this Hon'ble Tribunal ought not to examine the said issue. This submission is entirely misplaced in light of the above judgment of the Hon'ble Supreme Court. It is relevant to point out the manner in which this question has arisen for consideration of this Hon'ble Tribunal.

16. It is submitted that the 1st respondent submitted in its counter affidavit dated 15.12.2021 clearly stated that they are developing and constructing the township in accordance with the Masterplan and that Auroville will be a township for 50,000 people, which is under development. This Hon'ble Tribunal put a question to the MoEF & CC about the applicability of the EIA Notification, 2006 and directed the MoEF&CC to file a counter affidavit on that question. The order of the Hon'ble Tribunal dated 21.12.2021 makes this aspect clear.
17. The MoEF&CC filed an affidavit based on information furnished by the 1st respondent wherein they acknowledge that the subject project is a township being constructed by the 1st respondent but has commenced prior to the EIA Notification, 1994.
18. The applicants have filed detailed submissions in the rejoinder filed to the MoEF&CC's counter affidavit along with documents to demonstrate how the subject township project attracts clause 8 (b) of the EIA Notification, 2006.
19. This is an issue that can be adjudicated by the Hon'ble Tribunal under Section 14 of the Act, irrespective of whether it was raised by the applicants in the original application in the first instance. The applicants are also not precluded from raising this issue and placing materials for the consideration of this Hon'ble Court. This issue is no longer res integra and there are no fetters on this Hon'ble Tribunal considering this issue.

d. The 1st Respondent Township requires EC under EIA Notification

20. The proposed township project requires prior EC because :
- a. Development of a township involving more than 50 Ha area or 1,50,000 Sq M built up area requires EC under entry 8 (b) of the Notification which came into force on 14.09.2006.
 - b. The Master Plan was notified and came into force on 16.08.2010.
 - c. The respondent proposes to develop the township according to the Master Plan notified by the governing board.

- d. The present township involves development of a city area of 491 Ha and overall area of 1963 Ha. The built-up area of the residential zone alone is 15,00,000 Sq M and other zones together will be much higher.
- e. Admittedly, only sporadic, ad-hoc development constructions have come up in Auroville and till now there has been no focus on development of the township.
- f. Clearing of right of ways for roads such as crown, radials etc are part of the township project.
- g. Comparison of satellite imagery of existing structures (in 2021) and how the area would look if the galaxy model was constructed shows that claims that the township is substantially built are bogus and untrue.
- h. The scope of the masterplan has been changed and land use, additional roads have been proposed by the 1st respondent.

21. It is submitted that the 1st respondent in its counter affidavit dated 15.12.2021 has clearly stated that they are constructing a Township according to the Master Plan that has been prepared. A few of the statements of the respondent made in the counter affidavit are extracted below:

- Para 5: "...Auroville foundation is constructing the township including the crown road on its own land..."
- Para 10- "...Auroville is a township under construction"
- Para 11- "...Respondent states that Auroville will be a township for 50,000 residents..."
- Para 12- " there are four township zones (residential, international, industrial and cultural)...". "In addition to the Matrimandir, developments have taken place in each of the township zones, some of which are detailed below...."
- Para 24- "Petitioner has lost sight of the fact that Auroville is a developing integrated township which will have to be implemented under the Auroville Foundation Act and the Auroville Masterplan as provided for in the act to develop a model township, the ideal town..."

- Para 30- "Auroville foundation has been mandated by Parliament to ensure that the Auroville township is built in accordance with the masterplan as per section 17 (e) of the Auroville Foundation Act,1988

22. In its order dated 21.12.2021, the Hon'ble Tribunal, in light of the above submissions made by the 1st Respondent in its counter affidavit directed the 2nd Respondent MoEF&CC to respond on the question of requirement of prior environmental clearance.

23. The MoEF&CC in its counter affidavit dated 02.01.2022 at para 12 extracts the submissions made by the 1st respondent to the MoEF&CC. At para 13, the MoEF&CC states

" 13. That, in view of the information made available and submission made by the respondent no:1, it may be inferred that the **instant township project in question** has been under construction since much before the EIA Notification, 1994 and its amendment dated 7th July, 2004 and therefore it could not have been considered as a "new construction project", under the provision of the said notification as on 7th July, 2004".[emphasis supplied]

Para 14 : " It is further submitted that as per the submission made by the respondent no:1, there is no change in the scope of the township project from the original approved masterplan, as such, the township project may not attract provisions of the EIA Notification, 2006..."

24. The MoEF&CC states that in case of change in scope of the township project from the originally approved masterplan, prior EC shall be required as per provisions of the EIA notification, 2006. The MoEF&CC further states at Para 15 that adequate information is not available on the details of balance construction activities within different zones of the township with respect to their built up area and construction status and that all such individual projects

may require separate prior EC in case they fall under the Schedule of the notification.

25. It is clear from the above submission that even according to the MoEF&CC the subject project **is** indisputably **a township project**. Therefore, the question as to whether the 1st respondent is building a township or not, is not in dispute.
26. The conclusion of the MoEF&CC that it may be inferred that the instant township project has been under construction since much before the EIA Notification, 1994 etc. is erroneous. The MoEF&CC has failed to see that even according to the project proponent 1st Respondent the township is to be constructed in accordance with the Master Plan, and the said masterplan **came in to force only on 16.08.2010**, on which date and subsequently the EIA Notification, 2006 has been in effect. Thus, the inference by the MoEF&CC is incorrect.
27. Accepting the reasoning of the MoEF&CC would result in a situation where project proponents who have commenced some construction prior to 07.07.2004, can thereafter continue to develop a township over several hundred hectares (491 Ha in the instant case) without environmental clearance. Such an absurd interpretation would defeat the purpose of the Notifications. Submissions made below on the extent of building footprint in the galaxy concept vis a vis constructions made as on 2021 would demonstrate that permitting the 1st respondent to continue without clearance would be a travesty of the law.
28. It is submitted that the MoEF&CC has based all its conclusions in the counter affidavit only based on information submitted by the 1st respondent without any independent application of mind. It can be seen from para 12 (vii) that the 1st respondent had falsely informed that a significant part of the ongoing Auroville township has been completed and substantial work of the Auroville project has been ongoing and completed even as far back as 2001. Some

structures constructed already, admittedly for a population of 3000 people cannot be compared with the infrastructure necessary for a township of 50,000 residents.

Township has not been substantially constructed

29. It is submitted that the MoEF in its counter affidavit has attempted to state that the subject township might not attract the EIA Notification since it has been substantially constructed. While there is no exemption provided in the EIA Notification, 2006 on this ground and such contention is without legal merit, it is necessary to demonstrate that this claim is factually incorrect and not based on evidence.

30. The minutes of the 57th meeting of the Governing board of the 1st respondent dated 02.11.2021 itself falsifies the statement made by the 1st respondent. The minutes clearly record that the board itself observed that :

“2.2 There is scattered, sporadic and ad-hoc development resulting in high cost infrastructure and lack of a cohesive social fabric

2.3 Masterplan right of ways (The Crown, radials, outer ring and international zone loop etc.) have not been cleared, resulting in haphazard infrastructure development and high installation and maintenance costs

2.4 There is lack of focus on the development of the township amongst the various working groups and Auroville residents” (Page 379, 380 of File C)

The Governing Board further notes that

“2.5 The ATDC needs to complete the work of preparation of Detailed Development Plans (DDPs) based on the Auroville Masterplan.

2.6 Build the township infrastructure backbone (water, electricity, communication, sewerage etc.) along the fully cleared RoWs to enable planned urban development”.

(Please see p. 378 @ p. 379 in File C of the Applicants)

31. It is submitted that even during oral submissions, the 1st respondent and the intervenor's counsel stated that even decades after the Master Plan, the township has not been developed and that there was an urgent need to develop the township in accordance with the Master Plan. Even the counter affidavit states that the township is to be developed according to the Notified Master plan.
32. Thus, it is clear that the submission of the 1st respondent to the MoEF&CC that the "township" was under construction since 1968 is a blatant lie. In fact, apart from a general idea and vision, there was no plan as of 1968 and what was available was only the galaxy concept which finally evolved into the Masterplan in 2001, which was notified and came into force on 16.08.2010. In fact, the archival documents and interviews concerning the preparation of the Master Plan would clearly indicate that the Galaxy Concept was only a broad concept which took shape over several years and culminated in the masterplan which is also only a framework document. **(Annexure 39 @ p. 569 File F)**
33. Moreover, it is absolutely essential to remember that the Master Plan itself was notified only on 16.08.2010 and the Notification makes it clear that the Master Plan comes into effect from the date of notification. This Master Plan is now being implemented. Development of a township based on this Master Plan is indisputably thus covered by the EIA Notification, 2006.
34. It is submitted that the claim that a substantial portion of the township had been built even prior to 2001 is false. Google Earth imagery produced by the applicant herein along with File F will clearly show in context as to how the existing constructions and the ultimate galaxy model compare. **(Annexure 43 @ p. 592 File F)**.
35. Further, experts on urban design and planning who have also been involved in construction of several buildings within Auroville have calculated the extent of the existing building footprints and floor space area and road footprints

within the city area of the Auroville Township and compared them to those specified in the Master Plan. They conclude that only 7.44% of the entire building footprint, 3.58% of the entire floor space (built up area) and 12% of the roads have been constructed.

36. According to the Zoning regulations specified in the Master Plan (pages 224 – 228 of File B), and Proposed Land Use Zones (Table 12 at pages 188 – 189 of File B), the total floor space is calculated to be 60,14,250 sq. meters. The footprint is calculated to be 20,10,950 sq. meters. The figures below are in square meters (sq.m.)

	Master Plan 2001	2021 Built	% Built
Building Footprint	20,10,950	1,49,555	7.44%
Floor space built up area	60,14,250	2,15,416	3.58%
Road Lengths	20.1 kms	2.4 kms	12%

37. It is relevant to note that according to the Master plan (**2.7.4 at page 204 of file B**), the floor space of the residential zone **alone** is proposed to be 15,00,000 Sq meters and over an area of 100 ha. The calculated figures above will increase when the accurate built-up area of these proposed structures in all the zones are taken into account based on designs that have not yet been created.

38. It is necessary to note that the structures in existence were not constructed as part of the galaxy model as can be seen from the satellite imagery.

39. Thus it has been demonstrated that the claim that the township has been under construction since 1968 and a substantial portion was constructed prior to 07.07.2004 is false. Further, it is submitted that the 1st respondent owned only 778 Ha out of the 1963 Ha of township area. The Master Plan at 1.12.1 states,

"1.12.1 The designated area of Auroville covers 19.63 Square Km i.e. 1963 Ha. For proper and orderly development of Auroville as per the Masterplan, it would be necessary to have full control by the Auroville Foundation over the activities within the above mentioned area. For this purpose, Auroville has been in the process of securing lands required for the development from the beginning. All the lands so far secured have been acquired by negotiated purchase from the owners. As on 1 August 2000, Auroville owns 778 Ha of land in the designated township area"

(please see p.175 in File B)

Hence, it is inconceivable that a majority of the construction of the township was constructed even prior to 2001.

40. The claim that a substantial portion of the township has been constructed is an afterthought and entirely untrue. The respondent did not even provide the MoEF&CC with details of all the buildings and structures it proposed to construct (as seen from the MoEF&CC's counter affidavit).

41. It is to be noted that this argument that a substantial portion has been constructed and hence the project does not require clearance is entirely misplaced and is not based on any law. For the project to attract the EIA Notification, 2006, it only has to meet the threshold limits specified in the Notification – area above 50 Ha or built up area above 1,50,000 Sq Meters, both requirements are met in the instant case and the present projects attracts entry 8 (b) of the Notification, 2006.

Scope of township has changed

42. It is submitted that constructions have come up in Auroville that has changed the scope of the Master Plan. For example, please see Section 2.5 of the Master Plan – proposed land use plan illustrated with– DRG 6, indicates that the vocational training centre and administrative building between the crown and

the Matrimandir in the industrial zone. But since the Master Plan was published several residential apartment buildings (Inspiration, Mitra, Citadine and Sunship) have been built in the vocational training area. This is change of land use that was done without any discussions to change the proposed land use as per the Master Plan.

(please see p. 184 @ File B)

43. Section 2.6 – Physical and social infrastructure – A- physical infrastructure; provides the description of the road network and is supported by a drawing – DRG 7 – Auroville: hierarchy of roads. There are only 8 radials indicated in the drawings with green corridors differentiating between the 4 zones. But since then, the Auroville Town development council has published maps indicating 12 radials. This a change from the road network indicated in the Master Plan.

(please see p. 194 @ File B)

44. The respondent has not reported these changes in the Master Plan to the MoEF&CC.

Notification dated 07.07.2004

45. Township and building projects were brought under the Environmental clearance regime by way of an amendment dated 07.07.2004 effected to the 1994 EIA Notification. This was prompted by an order of the Hon'ble Supreme Court dated 04.12.2001 in W.P (c) 725 of 1994 In re Quietly flows the maily Yamuna. **(Please see p.536 @ File E)**

46. The notification 07.07.2004, amending the EIA Notification, 1994, mandates that all constructions that have not arisen above plinth level have to be subjected to environmental clearance. **(See MoEF&CC's counter @ p.370)**

47. Therefore, from the date of the law, any project meeting the threshold under this Notification that has not risen above plinth level, has to be subjected to environmental clearance requirements. Any other interpretation would lead to

an absurd situation where a project that might have constructed a miniscule portion of the ultimate area – goes on to construct new structures and components of the township without any impact assessment and clearance, thereby defeating the very purpose of the law.

48. However, as noticed by even the respondent foundation's governing board – no steps to develop the township according to the master plan were taken and now that the township is being built, the same cannot happen without prior environmental clearance.

EIA Notification 2006

49. It is reiterated that the EIA Notification 2006 cannot be defeated by claiming that a few structures have been constructed prior to the Notification and hence the entire township can be developed without environmental clearance.

50. The 1st respondent is admittedly only now trying to develop the township as provided in the Master plan (which came into effect only on 16.08.2010). The proposal is to develop the township for 50,000 people (presently only 3500) over an extent of about 491 Ha (city area) according to the proposed land use zones at table 12 of the Master Plan.

51. Any township development beyond 1,50,000 Sq. meters and/or 50 ha requires environmental clearance under 8 (b) of the EIA Notification, 2006. In the instant case, the extent of land involved is above 50 Ha – i.e. 491 Ha (city area) and the proposed built up area is more than 1,50,000 Sq. meters – the residential zone alone is proposed to have 15,00,000 Sq. meters built up area.

52. It is submitted that unless subjected to clearance regime, project proponents like the 1st respondent will incrementally increase the footprint of the township, defeating the purpose of the EIA Notification, 2006. In **Keystone Realtors Pvt Ltd vs Anil Tharthare & Ors** (2020) 2 SCC 66, the Hon'ble Supreme Court was concerned with a case where a project proponent had obtained

clearance under 8 (a) and thereafter was increasing the built up area by about 8085 Sq. meters. The project proponent contended that no fresh EC was required since the proposed increase was within the upper threshold of 1,50,000 Sq M. The Hon'ble Supreme Court rejected this contention and held,

"15. If clause (ii) of paragraph 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities."

(Please see p. 153@ p. 161 of case law compilation-2 of Applicant)

53. The present case is in fact one where the project proponent has no prior EC and the danger articulated by the Hon'ble Supreme Court is real and applies to the present case.

54. If the contention of the 1st respondent is accepted, they will develop the township, carry on construction over several hundred hectares, building lakhs of square meters of built up spaces, all without an assessment of its impact or clearance from the authorities. This is not the purpose of the law and the law does not grant such exemptions from the application of the EIA Notification, 2006.

55. It is submitted that development of such a huge township has to be preceded by environmental impact assessment studies and clearance under the EIA Notification, 2006 as the threshold fixed under the Notification are met by the proposed township. The 1st respondent ought to see that the EIA Notification, 2006 merely operationalises the concept of sustainable development and subjecting the project to prior environmental clearance ought not to be avoided.

56. The Hon'ble Supreme Court in Sushanta Tagore & Ors Vs Union of India & Ors (2005) 3 SCC 16 has recognised the need for a land use plan to also conform to regulations made for the protection and preservation of the environment. Township development is not divorced from environmental considerations and no prejudice will be caused if the EIA Notification, 2006 is followed.

(Please see p.70 @ p. 82 of case law compilation filed by Applicant)

Township project cannot be segmented

57. Roads, buildings, infrastructure like drains, sewage treatment, water supply, waste management etc form integral part of a township. The EIA manual for townships issued by the MoEF&CC states,

“Township in general, is self-contained and integrated in the social infrastructure needs, services, shopping, entertainment and waste management. Infrastructure and services include road network, water supply and management, electricity supply and management and proper communication services. Social infrastructure includes schools, medicare, recreation and community centre. Shopping centre with adequate facilities should be housed in the township itself.”

58. The township cannot be split into segments by taking a road as a separate project, buildings separately and so forth. The Ld' counsel appearing for the respondents also fairly submitted that a township cannot be split and segmented. The respondent cannot contend today that they are only constructing a road and avoid clearance requirement. Admittedly, the road is part of the township as envisaged in the Master Plan.

59. The EIA guidance manual in chapters 3 to 9 elaborates the various studies required and impacts to be assessed. It is in the fitness of administration of justice and environmental good governance that the subject project be subject to environmental clearance process. This will ensure that the law is complied

with and the 1st respondent's township is constructed in an environmentally and legally permissible fashion.

60. The respondents repeatedly attempted to state that the subject matter of this case is only the crown road and that they are only constructing an "internal road" – however, the crown road and roads are an integral part of the township based on the Master Plan and cannot be segmented.
61. It is submitted that the 1st respondent relied on Section 2 (13) of the Tamil Nadu Town and Country Planning Act, 1971 to argue that the development of the crown road will not amount to "development" under the 1971 Act. It is submitted that the respondent's contentions are wrong. A simple reading of Section 2 (13) would show that it is inapplicable.
62. Under 2 (13) (b) and (d) referred to by the respondent - only temporary work carried on by a local authority for the purpose of maintenance or improvement of a road and works carried out on land within the boundaries of the road and the use of any building or other land within the cartilage of a dwelling house incidental to the enjoyment of the dwelling house as such are exempted from the definition of "development".
63. Firstly, the 1st respondent is not a local authority. The definition of local authority under Section 2 (23) of the same Act clarifies this and the Auroville Foundation Act also makes this aspect clear.
64. Secondly, the work carried out is not temporary work for repair or maintenance or usage of lands within the cartilage of a dwelling house. There is no road at present and land is sought to be cleared and a new road is to be laid. It is thus clear that the provisions referred to by the respondent are not relevant.
65. The respondent thereafter referred to Sections 47 onwards of the 1971 Act to state that the Act exempts the Central Government from the purview of the

Act. Firstly, it is submitted that the 1st respondent is not “central government” and is a body corporate created by the Auroville Foundation Act, 1988. Secondly, a reading of Section 58 of the 1971 Act would show that even the Central Government is not exempt from the purview of the 1971 Act. These contentions of the respondent are without merit and erroneous.

66. The judgment in P.Karthikeyan Vs The Commissioner of Corporation dealt with the establishment of solid waste management facilities in parks and open spaces – moreover, the provisions themselves are irrelevant as discussed above, this judgment also has no bearing on the issue at hand.

e. Master Plan (Perspective 2025) is not a project document – Need for studies

67. The next question that arises based on the respondent’s contention is - whether the 1st respondent can implement the township project and its components based only on the Master Plan?

68. At the outset, it is submitted that environmental good governance and the principles of sustainability demand that any development activity is carried on based on microlevel plans developed based on ground realities – including feasibility studies, consideration of impact and alternatives etc.

69. The 1st respondent claims that implementing the Master Plan is a statutory duty under the 1988 Act and that the fact that the crown way is mentioned in the Master Plan would entitle them to implement the same without need for further study / preparation of plans etc.

70. At the outset, it is submitted that the present application **does not seek to challenge the Master Plan (perspective 2025)** but seeks to inter alia ensure strict compliance with it.

71. It is submitted that the Master Plan (perspective 2025) is not a project document. Under the Auroville Act, 1988, the Residents assembly is tasked with formulating the Master Plan (Section 19 (c)) and the governing board under Section 17 (e) has the duty to prepare the Master Plan in consultation with the Residents assembly and ensure development of Auroville as planned.
72. A Master plan (Perspective 2025) was formulated in 1999 by the Residents Assembly mainly as a zonal plan. This plan was then "approved" by the Department of Secondary and Higher Education, Government of India on 12.04.2001. This Master Plan (Perspective 2025) was then notified on 16.08.2010 by the Governing board, stating that the Master Plan perspective 2025 shall come into force from the date of publication in the Gazette i.e. 16.08.2010.
73. The Master Plan provided for the development of the township based on the Galaxy Concept/ model of the town. The town was to be divided into 4 zones, residential, industrial, international and cultural and also provided for a greenbelt area around the town.
74. The Master Plan document does not have the necessary micro level plans nor information but itself provides for the creation of micro level plans such as 5 year detailed development plans, annual implementation plans as well as project plans etc and the attempt of the respondent to state that only because the crown road is merely mentioned in the Master Plan and is marked on a "sketch", they can construct the same based on the Master Plan, without further studies or assessments cannot be countenanced.

Master Plan (Perspective 2025) is only a policy framework

75. The master plan is only a policy framework. The master plan itself envisages the formulation of Detailed development plans to implement the proposals / infrastructure envisaged in the Master Plan. The Master Plan was never

intended to be rigid and has provided for review and revision. The following clauses of the master plan are relevant.

"1.1.1... These guidelines have recommended a planning system consisting of a set of four interrelated plans with the Perspective plan at its apex and plans of projects at the base, with the Development plan and annual plan facilitating the implementation of the urban perspective plan. In line with these guidelines, this Master plan (Perspective 2025) of Auroville has been conceived.

"1.1.2 The master plan (Perspective 2025) provides a policy framework which will serve as a guide in the preparation of five year development plans and annual plans for implementation of the proposals... Part two lays down principles and directions for long term growth and gives development proposals to make auroville the most eco-friendly city. It lays down broad policies in terms of land utilisation, residential densities and qualitative aspects of infrastructure development."

(See p. 147 @ File B)

"2.3.1 Goals and objectives of the Masterplan (Perspective:2025)

i. Laying down broad policies and directions for growth in the principal zones

ii. Determining the hierarchy of roads and access ways.

iii. Establishing the zoning of land use on all lands falling within the 20 Sq Km area of the township."

(See p. 180 @ File B)

"2.11.1 Reviewing the Masterplan (Perspective: 2025)

Although the Master plan (perspective 2025) indicates a time horizon of 25 year, it will neither be traditional, nor static and rigid. In the framework of perspective 2025, the planning group would prepare a detailed five year development plan containing the priority items to be taken up for development..."

(See p.220 @ File B)

76. It is submitted that it is thus clear that the Perspective 2025 plan provides the policy framework and broad guidelines and a detailed development plan prepared under it, is a sine qua non for implementation of the proposals in the

Master Plan. It is reiterated that the Master Plan only lays down broad policies and framework and is not intended to be a rigid document.

77. It is submitted that the Master Plan was drafted in 2001 envisages that 15,000 residents will be in Auroville in 2010. However, even as on today, there are roughly 3500 residents. The projection in the April 2021 report (prepared on the request of the respondent's Town Development Council) states that even as of 2030, only 5000 people are expected to be residents in Auroville. **(p. 302 @ File C)**

78. The entire proposals in the Master Plan are for a population and users that don't exist in reality as on date. In fact, when the Master Plan was notified in the year 2010, the authorities ought to have seen that the projects and plan were not in sync with ground realities. In order to ensure that such aspects are addressed, the Master Plan itself provides for the preparation of detailed development plans under the Master Plan as well as annual plans and plans for projects. The 1st respondent's attempt to justify their clearing of land, demolition of buildings and impacting waterbodies on the ground that it has found mention of a road in the Master Plan is entirely unsustainable. The Master Plan cannot be a substitute for plans and studies required to arrive at a reasoned, informed decision.

79. It is submitted that any activity that impacts the environment, especially in an ecologically rich area like Auroville, has to be planned in a sustainable fashion. The 1st respondent has admitted in replies under the RTI that no studies have been conducted whatsoever **(Please see p. 386 @ File C)** and it is not their case that such studies have been done to assess the impact of the proposed activities prior to its implementation. The precautionary principle and principle of sustainable development demand prior assessments of impacts and choosing the least environmentally deleterious alternative. These principles have been indisputably become part of the law of the land and are enshrined in the NGT

Act also. It is not open to the 1st respondent to contend that they are implementing the project on their own lands and they can do as they please.

80. It is submitted that the 1st respondent is not a local authority or a planning authority. The 1st respondent is a statutorily created body corporate to manage the affairs of Auroville. The lands vest in the name of the 1st respondent by virtue of the Statute and they have been conferred powers to create a Master Plan for the development of the township. They do not supplant the authorities under the Town planning laws.

81. The Auroville city area falls entirely within the territorial limits of the State of Tamil Nadu. In fact, only a few acres of land purchased by the 1st respondent fall within the territorial limits of the union territory of Puducherry and these lands are in the periphery of the green belt area envisaged. For the purposes of development of the township's city area – the relevant planning law is the Tamilnadu Town and Country Planning Act, 1971.

82. The 1st respondent is aware of this fact even in the 57th meeting of the Governing board, it was decided to get approval as a New Town Development Authority under the 1971 TCP Act. The oral contention that because Auroville lands falls in both Tamil Nadu and Puducherry, the 1st respondent got the Master Plan approved by the Central Government is without merit – both factually and legally incorrect.

83. The central government does not have any powers under any statute, including the Auroville Foundation Act, 1988 to approve any Master Plan. In fact, the Department of Secondary Education nor the Central Government are a planning authority. The approval of the Master Plan and the notification by the Governing board are in fact not matters covered by the Auroville Foundation Act, 1988. In fact, it can be seen from the minutes of the meeting dated 15.02.2001 chaired by the Secretary, Department of Secondary Education and Higher Education for considering the Master Plan for Auroville, it was noted that "some discussion

took place about the legality and legitimacy of the Government approving the masterplan in the absence of any specific provision in any of the statutes for doing so. It was finally decided that the document should be processed for approval and for giving the go ahead for further necessary action required for its implementation.” (**please see p. 14 of typed set filed by R1**).

84. In fact, in the approval letter dated 12.04.2001, by the Department of Secondary and Higher Education, it has clearly been stated “It therefore stands approved in so far as Department of Secondary and Higher Education is concerned.” Clearly stating that the approval was not under any of the town planning laws or in any other regard. (**See p.17 of typed set filed by R1**).

85. Section 1 (2) of the 1971 TCP Act clearly states that “it extends to the whole of the State of Tamil Nadu except the places declared to be cantonments under section 3 of the Cantonments Act, 1924”. Therefore, the Act does apply to the lands owned by Auroville foundation, falling within the territorial limits of Tamil Nadu as well. The respondent is confusing land ownership and town planning. Planning laws apply to a geographical area irrespective of the nature of land ownership. In fact, even as on date, the proposal of the 1st respondent for a new town development authority for Auroville is pending with the Directorate of town and country planning.

86. The attempt of the respondent to rely on Section 27 of the Auroville Foundation Act, 1988 to claim that the TCP Act 1971 will not apply is entirely misplaced. The Auroville Foundation Act, 1988 is not a planning statute and does not occupy the same field as the TCP Act, 1971. The 1988 Act was enacted for “*the acquisition and transfer of the undertakings of Auroville and to vest such undertakings in a foundation established for the purpose with a view to making long term arrangements for the better managements and further development of Auroville in accordance with its original charter...*”. The Act does not make any authority under the Act the planning authority or vest in it such powers. In fact, the 1st respondent has correctly approached the Tamil Nadu Town and

Country Planning department for approvals. The contention of the counsel in this regard are factually and legally untenable and not backed by any pleading.

87. It is submitted that the applicants are not challenging the validity of the plan or the 1988 Act and hence the contention that these issues are outside the purview of the Schedule I of the NGT Act, 2010 is without merit. The applicants are aggrieved by the attempt of the 1st respondent to carry on development of the township based solely on the Master Plan and without necessary mandatory detailed development plans under the Master Plan, impact assessment studies etc. Unplanned, unassessed and arbitrary conversion and development of any area, especially one like Auroville – will result in serious deleterious impact on the environment.

88. The 1st respondent is entitled to implement Masterplan, prepared under the Auroville Foundation Act, 1988 but such implementation has to be strictly in accordance with the Master Plan and the laws of the land - a detailed development plan has to be prepared based on ground realities to identify necessary facilities, infrastructure etc. and then a detailed project report, environment and social impact assessment for the proposals sought to be implemented have to be prepared, considering all alternatives. Thereafter statutory clearances ought to be obtained and the project has to be implemented. No person or authority can claim a right to act arbitrarily when it comes to activities that impact the environment. These are questions relating to the environment that this Hon'ble Tribunal is required to enquire into.

f. Forested lands in Auroville are entitled to protection

89. Auroville's afforestation campaign began in the early 1970's. The first tree nurseries were started in Success community and in Kottakarai and large-scale tree planting began. In the next ten years, as part of a massive soil and water conservation programme, over a million trees - timbers, ornamentals, fencing, fruit and fodder trees, nut trees etc.- were planted by the toil of the residents of Auroville. As the trees grew as pioneers, and micro-climates formed, many

species of bird-life and animals returned, further accelerating the dissemination of seeds and enriching the environment. Endangered floral species were planted and thrived in these forests.

90. Over the years, species native to the tropical dry evergreen forest type were reintroduced and today, the forests regenerate on its own. The forests within Auroville provide an incredible genetic resource for future restoration projects over the entire Coromandel coast of Tamil Nadu and Andhra Pradesh. In fact, the nurseries of Auroville and various projects led by the residents of Auroville have contributed to the restoration and regeneration of various destroyed lands, such as the Adyar Poonga, and other lakes and water catchments on the coast of Tamil Nadu.

91. Over 300 species of indigenous trees, shrubs and woody species are currently growing in the Auroville forests and producing viable seeds, which are collected and propagated in various nurseries within Auroville that are organised and run by the residents. Auroville has a forest cover density of 55 % (i-Tree Canopy report). (**See p.398 @ File C**) Tropical dry evergreen forest remains <1% outside of Auroville, in the wild as per experts (one can find many references of Dr. Meher-Homiju and Legre). Auroville in its 50 plus years of conservation efforts, have become a repository of this forest type through restoration.

92. The respondents have taken pains to contend that trees have been planted in four different areas – in the green belt, in the green corridors inside the city, trees planted outside the Master Plan area and trees planted within the city for the sole purpose of preventing soil erosion until the time of development, as contemplated in the Master Plan and that the trees in the fourth category will be felled when need arises.

93. It is submitted that the above distinction is a figment of the 1st respondent's imagination. No document whatsoever has been produced to even allude to

the above submission. There is no such agreement. These submissions are without truth or merit.

94. These forest areas are a result of decades of work by the Forest Group and the foresters in Auroville. The Forest Group is a collective of Auroville residents with the common task of protecting, maintaining and developing the Auroville Green spaces, including Greenbelt and urban greenspace. It came into being in 1982 and now has 80 members from 17 different nationalities. The group currently manages approximately 1300 acres which is divided into 44 stewardship areas. Each of the Stewarded areas has a designated steward, or in some of the larger areas, multiple stewards. These stewards manage land for the Forest Group of Auroville, which in turn is responsible to the Auroville community and the Residents Assembly. Even the Master Plan under Appendix II, while listing the various working groups of Auroville describes the Forest group as "*a group actively involved in the planting and maintenance of Auroville's forested areas, particularly the protective greenbelt around the township*".

(See note at page 504 @ File D)

95. These lands fit the dictionary meaning of forests and are entitled to protection as mandated in the Godavarman case by the Hon'ble Supreme Court. The respondent cannot claim that these forested lands are not entitled to protection as forests merely because they are not recorded or notified as forests. The respondent is the authority who ought to have proposed these forested areas for notification and protection as forest.

96. The proposed alignment of the crown road cuts through forest areas such as Bliss (cleared illegally) and Darkali forests. For the development of the other radial roads, ring road and township, a colossal amount of forested areas will be impacted.

Damage caused to the forest – alternatives

97. In order to ascertain the damage caused to the forest areas till now, an assessment was conducted by highly qualified and experienced foresters in

Auroville. The findings of the Arboriculture Report in connection with the clearing of Right of Way for the proposed Crown Road project give us a detailed overview of the various species of trees in these forests, the number of trees lost because of the on-going illegal activities of the 1st Respondent and the potential/future impact if the project is allowed to continue without any proper impact assessment studies.

98. The main summary of findings presented in the said report will explain the magnitude of the impact and how the same can be mitigated by even considering a mildly modified alignment.

For the crown road right of way:

- A total of 898 trees have been felled so far (including some understory)- this includes 712 from Darkali Forest and 186 from Bliss Forest.
- The number of different tree species destroyed so far is 44
- If the same proposal is allowed to continue, a total of 4586 trees are under threat of being destroyed.
- The number of different tree species likely to be destroyed is 85
- If the alternative alignment proposed by the residents were to be followed, the total tree loss would only be 136, and the alternative alignment lies within the ambit of the crown ways

(See p. 398 @ p. 400 – File C)

99. According to the report, there is no integration of vegetation in the proposed project. All assets are wasted. It is financially and ecologically more viable to integrate vegetation in development plans, compared to replanting everything as mature specimens provide significantly more benefits than newly planted trees. (Doick et al., 2018). Cities containing urban forests and green infrastructure have been found to have significantly improved living conditions in comparison to cities with little or no urban forest strategies. Berlin in Germany, Busan in S. Korea, Singapore and Barcelona in Spain are trying to

rethink types of construction, reimagine urban, and incorporate both food growing areas and forest/natural habitats within the urban-scapes.

100. It is further submitted that the trees both destroyed and potentially affected are mainly species that have been classified under the Tropical Dry Evergreen Forest type and more specifically as the East Deccan Dry Evergreen Forests with the status: Critical/Endangered according to the IUCN. As has been mentioned in the "Arboriculture Report Auroville ROWs" from Dec 2021, at least 129 species of woody plant species have been identified only on the Crown RoW. The Ring and Radial RoWs have not been surveyed due to lack of time and resources. Many of these species fall under the heading Tropical Dry Evergreen Forest (TDEF) as per Champion, H. G. and Seth, V. K. (1968). One should note that only trees and woody shrubs were entered in the survey. No lianas or annual herbs were added, which would have added significantly to the number of species found. These lands cannot be equated with avenue plantations or plantations in educational or other institutions. The presence of lianas and lichens establishes the habitat creation process and not just as a tree plantation.

101. On a request made by the 1st respondent, a study on the Crown Way road was prepared by a few experts who are residents of Auroville. The **Auroville Crown way Study** conducted in September 2021 examined the ground realities and present uses in the area on which the crown construction was proposed. According to this study, Darkali forest falling under Section 4 is described as follows:

"A beautiful forested area (approx 50 acres) in between two canyons, one to the north and the other one on the south side and therefore it is also the lowest point in the Crown at about 40m above MSL (mean sea level). These two canyons drain little over 60% of the area inside the Crown. This is also located in an area that has well drained soil which means it has high water percolation, which is good for aquifer/groundwater recharge. Most of the surface runoff is

captured in the multiple water ponds within this forest, using bunds and check dams, and very little water overflows into the canyon (only during heavy continuous rains) going towards Kottakarai"

The report while describing the present use of this area states:

"Regenerated forested area from a barren eroded landscape over the last 35 years. Important water conservation area with bunding, check dams, and natural/newly created ponds. There are several small special gardens and the west side of the forest has a 1.2 kms long winding fitness track."

(See p.354 @p. 365 File C)

102. The impact on these forested areas and its biodiversity due to the proposed project should be studied and assessed. They cannot be destroyed on a whim by the 1st respondent. It is submitted that an award winning documentary titled "Ever slow green", which tells the story of a 50-years-young tropical forest that evolved in Auroville, South India, through some of the diverse people who dedicate their lives to bringing it to fruition, which is even available on the website of the 1st respondent <https://auroville.org/contents/5193> was filed as an annexure and in order to play it for the Court's viewing, an edited (by the same film team) 15 minute long version of the same was also produced. This video explains in detail and is a testament to the nature of the forested lands in question. Without realising that the video has been hosted on the 1st respondent's own website, the respondent has attempted to cast aspersions on the same.

103. The decision of the Hon'ble Supreme Court in the Okhla bird sanctuary case (2011) 1 SCC 744 is very fact specific and it is relevant to note that in para 16, the CEC's report was premised on the species in the subject land and from para 27 that the subject trees were planted 10 to 12 years ago. In these facts, the Hon'ble Supreme Court rendered its findings. The present case concerns forests that are regenerating and around a half a decade old and belong to species forming part of the rare dry tropical evergreen forests. These lands

have great ecological significance as forests of this kind have become very rare. This Judgment is different on facts and is not a controlling precedent.

104. It is submitted that the Hon'ble Supreme Court in Hanuman Laxman Aroskar Vs. Union of India (2019) 15 SCC 401 at para 76 distinguishes the above judgement in Okhla Sanctuary case on facts and held at Para 77- "In the context of the 2006 notification and the underlying purpose of facilitating an EIA report, the expression "forests" must receive its ordinary and natural connotation. The effort must not be to overlook and destroy forests but to notice and protect them".

(please see p.84 @ 122 in case law compilation 2 filed by Applicant)

105. It is submitted that the history of development of forests, their biodiversity and importance to the region are well documented. It is unfortunate that the respondents are treating these biodiverse lands as expendable resources that do not even require consideration of alternatives and an effort at conservation.

106. It is relevant to note that every available forest patch is unique and requires to be protected. The respondents have failed to inform this Hon'ble Tribunal that only about 35% lands earmarked for the greenbelt area around the city area have been purchased and hence the alleged "greenbelt three times the size of the city area" might never materialise, let alone exist at present. There are 6 villages within the greenbelt of the Masterplan area - Edayanchavady, Sanjeevi Nagar, Irumbai, Kotakkarai, Rayapettai and Alankuppam and the development of the greenbelt cannot happen by displacing these villages.

107. It is submitted that the determination of whether a land is entitled to protection or not can happen only following the methodology prescribed in the Lafarge case by the Hon'ble Supreme Court (2011 7 SCC 338).

Impact on forested lands needs to be considered irrespective of status

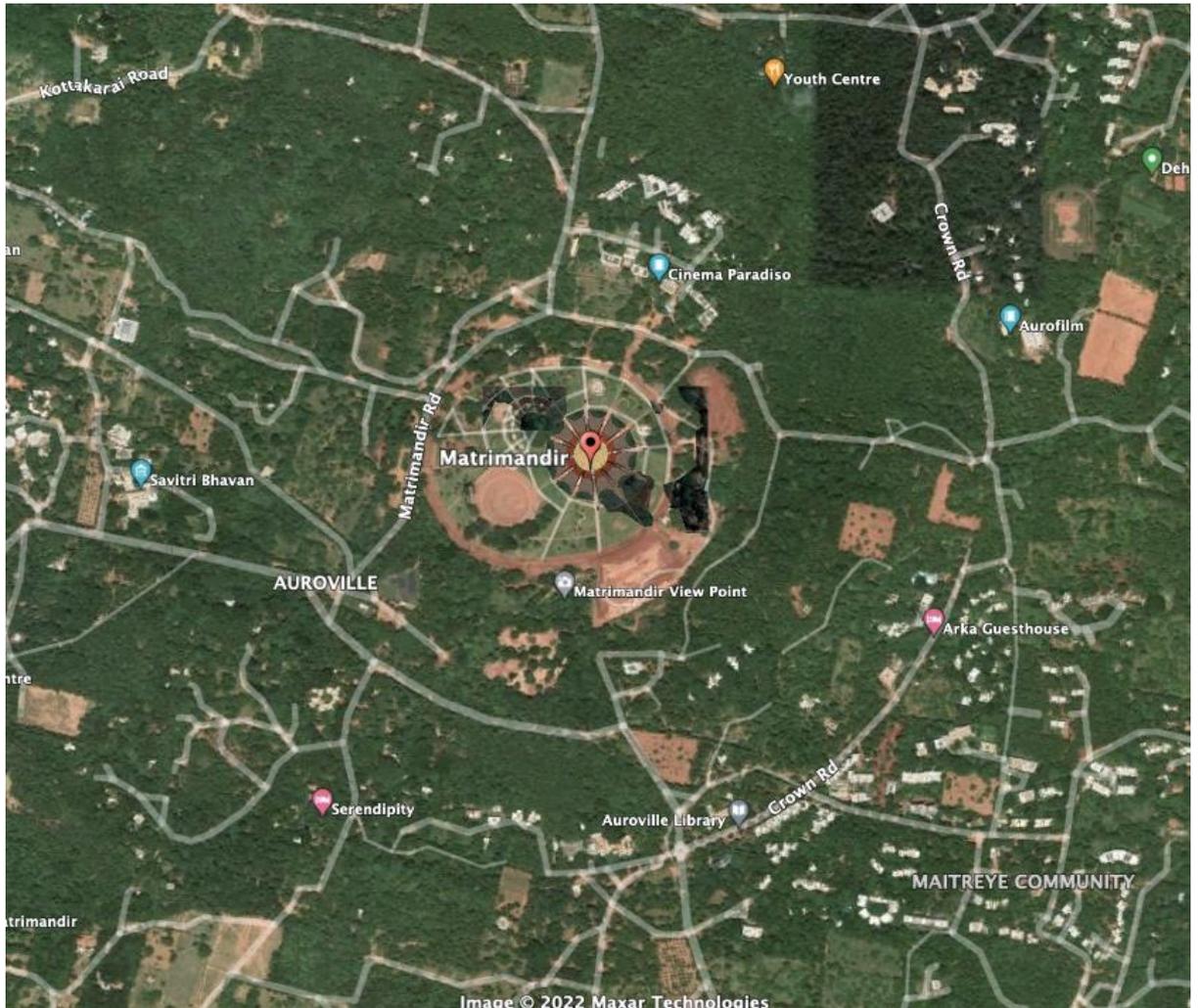
108. Arguendo , it is submitted that even if the lands in question are not entitled to protection under the FC Act, 1980, the impact of destruction of thousands of trees and undergrowth on the ecology and environment of the area has to be assessed and considered. It cannot be denied that the felling of trees and clearing of a forested area will not have an impact on the surrounding environment. Impact on habitat, on fragmentation etc will have to be studied. These impacts will have to be studied in an EIA report prepared for the project, where alternatives can be analysed and impact can be reduced since at present, the respondent has admittedly conducted no studies or assessments and is unwilling to even consider slight modifications – which will result in huge reduction in terms of impact.

109. It is submitted that the Tamil Nadu Preservation of Private, Forests Act, 1949 provides for the protection and preservation of forests on private lands as well. The protection of habitats created in Auroville is of utmost importance and cannot be left to the whims of the 1st respondent.

90% of the crown has not been cleared or constructed

110. It is submitted that an attempt has been made by the 1st respondent to contend that 90% of the crownway has been cleared and these are the only last few patches that need to be cleared. This contention is false.

111. The google earth image below will show that only a small portion of the circular “crown road” has been cleared and constructed (please see bottom right – Auroville library is marked on this road and the road is also called “crown road”). Except this circular segment, the crown road is not circular and the necessary area is now sought to be cleared and constructed. Thus, the contention that 90 percent of the crown has been completed (not backed by pleadings or evidence) is also factually incorrect and a blatant lie.



112. It is seen from the counter affidavit of the 1st respondent that they are now proceeding to clear a right of way of 16.70 M. The crown is proposed to be a circle of 690 m radius with the banyan tree at the centre. Land for this circle has not been cleared to a width of 16.7 M all along its proposed alignment. It is false to state thus. A High Tension cable has been laid through some areas, but this did not include clearing of right of way of 16.7 M. The respondent is attempting to project as though most of the work has been completed but forest areas like Darkali and majority of areas falling on the circle are yet to be cleared. Such clearing ought not to happen in an arbitrary fashion and has to be based on studies, assessments, consideration of alternatives and clearances as submitted above.
113. Further, an argument has been raised to state that the crown road is required to provide access to Matrimandir and the peace area – this is also false

as there are existing roads and paths, offering even wheelchair access through which people have been accessing these areas all along. These roads are also clearly seen on satellite imagery.

114. It is also relevant to note that in the counter affidavit of the 1st respondent it has been stated that the crown will be 75 M wide and have buildings facing the road. This means that the respondent has further plans to clear the area to a width of 75 M and construct buildings and service facilities. The 1st respondent has not provided details of all the proposed and completed construction activities either to this Hon'ble Tribunal or the MoEF&CC.
115. It is submitted that the intervenors in support of the 1st respondent have made submissions that do not even pertain to the issue at hand. From contending that the applicants had not even referred to which provision of the EIA Notification applicable to the project to contending that the Master Plan was being implemented from 1968, factually incorrect and legally unsustainable submissions have been advanced. In fact, the intervenors have attempted to make assertions that are beyond the counter affidavit filed by the 1st respondent albeit without any evidence. These self-serving assertions, not backed by the record are not relevant to the present proceedings.
116. The legal questions involved in the present case have been discussed in detail above and the 1st respondent has pleaded its case. The attempt of the intervenors to cast aspersions on residents of Auroville, once again without evidence has to be deprecated. The intervenors reiterated time and again that because of the 150th anniversary of Shri Aurobindo, the 1st respondent is accelerating the township development. Such accelerated development of the township also requires clearance under entry 8 (b) of the Notification. The intervenors appear to have misquoted the applicant's submissions and responded to the same. The contentions of these intervenors are without merit or truth.

117. It is submitted that the present proceeding is not to prevent the development of Auroville but only to ensure that the development of the Auroville Township is carried on in an environmentally sustainable, ecologically benign and legal manner, with necessary impact assessment studies, feasibility studies and environmental clearances from the authorities. Until now, there admittedly were no efforts to implement the Master Plan and develop the township and hence there was no cause to approach this Hon'ble Tribunal earlier. It is the fundamental duty cast on all citizens to protect and improve natural environment including forests and the Applicants and residents of Auroville have been performing their fundamental duty under Article 51 A (g) of the Constitution of India.

118. The 1st respondent is admittedly going to now develop the township as envisaged in the Master Plan - over an area of 491 Ha. If the 1st respondent is directed to obtain environmental clearance under the EIA Notification, 2006 for the development of the township, necessary impact assessment studies, consideration of alternatives, design and impact of proposed structures and facilities, impact on forested areas, flora and fauna etc will be studied and assessed as a part of the clearance process. Even in the absence of protection as deemed forests, the impact of clearing these forested areas will have to be considered as a part of the clearance process and alternatives will have to be adopted, mitigative measures prescribed etc. The interest of the environment and the environmental rule of law will be served by subjecting the project to the clearance process under the EIA Notification, 2006, which has been correctly described by the Hon'ble Supreme Court in Hanuman Laxman Aroskar Vs. Union of India (2019) 15 SCC 401 as a balance between development and protection of the environment (See para 56,157).

Dated at Chennai on this the 29th day of January, 2022



Counsel for Applicant