

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

ORIGINAL APPLICATION No.249 of 2020

Dusharla Satyanarayana

...Applicant

-Vs-

National Highways Authority of India

Rep. by its Chairman

G 5&6, Sector - 10, Dwarka,

New Delhi - 110075 and 4 others

... Respondents

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Place: Suryapet

Date: 16-08-2021.


EXECUTIVE ENGINEER
Irrigation Division No. 1
Suryapet.

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(SZ) CHENNAI**

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REPLY AFFIDAVIT FILED ON BEHALF OF THE 5th RESPONDENT

I, D.Bhadru, S/o. Lachi Ram, aged about 55 years, working as Executive Engineer, Irrigation Division No.1, Suryapet District, do hereby solemnly affirm and sincerely state as follows:

I am filing this reply affidavit on behalf of 5th respondent herein and I am well acquainted with the facts of the case. I submit that I deny all the allegations and averments contained in the above OA except those that are specifically admitted herein, and put the applicant to strict proof of the same.

1. I submit that, the tank ChuttuKunta is a Minor irrigation source located adjacent to the highway Khammam-Suryapet in Raghavapuram (Village), Mothey (Mandal), Suryapet (District) and this irrigation tank facilitate water for major ayacut and drinking purpose needs of the people & cattle of Raghavapuram Village.
2. I submit that, the Chuttukunt is also one of the tank in the chain link of 12 tanks constituting over 8 village in five mandals, viz. Chuttukunta, mamillakunta, Oorakunta Raghavapuram village, NallaKunta Namavaram Village in Mothey mandal, Peddha cheruvu, Madhavaram village, Modhula Cheruvu, Gurrapu Bandham in Tadvai village of Munagala mandal, Veerladevi Cheruvu, Bethole village Chilkur mandal, kalvapelli Bandham, Malyalavari Bandham kalvepalli village, Garidepally Mandal, Vemuluri Project, Yathavakila village, Venkata Rangaiah Bandham Chennaipalem village, Mattampally Mandal then finally drains into Krishna River, in this connection it is to submit that, as the changes in the Hydraulic Particulars of the Chuttukunta tank due to


EXECUTIVE ENGINEER
Irrigation Division No. 1
Suryapet.

encroachment of this road to the FTL area causes adverse effects on the remaining tanks in the chain system.

The details of Chuttukunta is as follows

Name of the Tank	:	Chuttukunta
Location of the Tank	:	Raghavapuram Village, Mothey Mandal, Suryapet District.
Geo ID	:	17° 9' 14" & 79° 46' 28" (Lat& Long)
UID	:	80902801601301
Capacity	:	6.10 Mcft
Ayacut	:	33-35 (Ac-gt)

3. I submit that, the alignment of the NH-365 BB is passing through the Chuttukunta Lake, Raghavapuram (Vil), Mothey (M), SuryapetDist, Telangana State. In this regard the NH-365BB officials have not taken any prior permission and also not taken the NOC (No Objection Certificate) before starting the work from the Minor Irrigation Officials who are competent authority pertaining to Tanks & Lakes in the Telangana State. The NH-365BB officials have executed some work by encroaching into the FTL of the tank which causes reduction in the capacity consequently the ayacut irrigated under this tank will also get reduced (Approx reduction in the capacity & ayacut is 0.70 Mcft&4 Acre).
4. I submit that, that the NH-365BB highway has being executed by encroaching into the tank FTL we have immediately issued notices continuously to the NH-365 BB officials to stop the work immediately vide **1. Notice given by the Assistant Executive Engineer, I.B. Section Mothey on Dt:29/06/2020, 2.Lr.No.EE/IB/SRPT/2020-21/169M,Dt:17/07/2020 & 3. Lr.No.DEE/IB SD/SRPT/2020-21, 245 E, Dt:05.01.2021 (enclosed),** and also stopped the work at site.
5. I submit that, as it come the notice that again NH-365BB work has been resumed in the month of June, 2020 again we have issued notices which were referenced in the above para and again stopped the work. Further, it is submit that the Irrigation department has been made a strong obstruction to the NH-365 BB authorities and stopped the work without being completely executed, by serving continuous notices and letters to the NH-365 BB authorities and doing the site inspections regularly as this issue came into the notice of the Irrigation Department.


EXECUTIVE ENGINEER
Irrigation Division No. 1
Suryapet.

6. I submit that, in view of the above it is to submit that, to safe guard the Chuttukunta lake of Rghavapuram (Vil), Mothey (M), Suryapet (Dist) of Telangana State, the NH-365 BB authorities have to remove the soil which was filled in the Chuttukuta lake, and instead of forming the road using the soil with a culvert in the middle, they have to construct a fly over bridge with piers all along the length of the alignment of NH-365BB without affecting the Bund, FTL, Buffer zone and other elements if any pertaining to the Chuttukunta lake. The fly over bridge with piers constructed in such a way that the bottom level of the bridge is not less than the TBL of the Chuttukunta lake, or the NH-365 BB authorities have to choose another alignment for forming the road it should be in such a way that it should not affect the FTL & Buffer zone of the Chuttukunta lake and also it should not object the operational moves of the department authorities and any other officials, and also they have to take the formal NOC (No Objection Certificate) from the Irrigation Department before starting the work.
7. It is therefore prayed that the Hon'ble Court may be pleased to pass appropriate order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

VERIFICATION

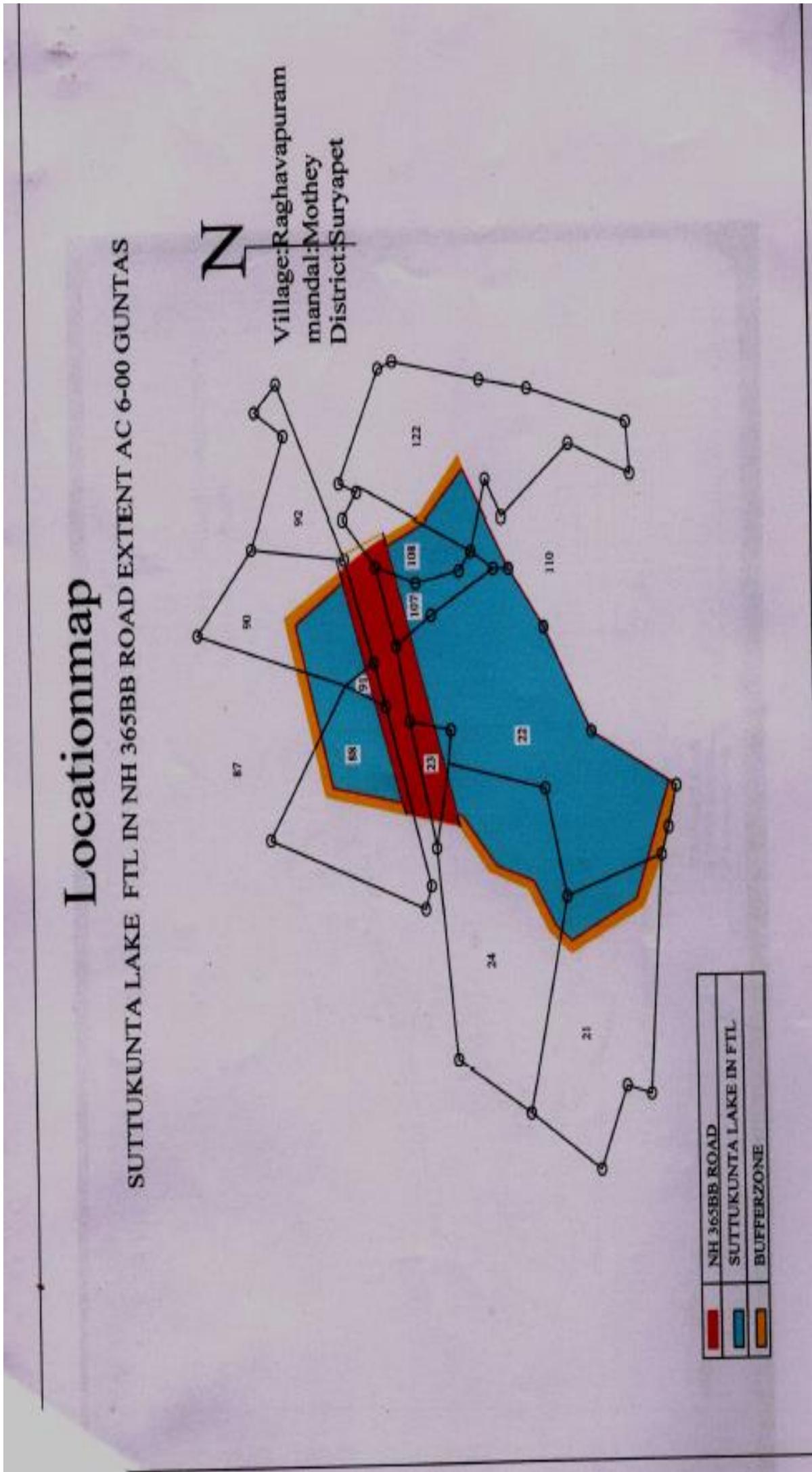
I, D.Bhadhru, S/o. Lachi Ram, aged about 55 years, working as Executive Engineer, Irrigation Division No.1, Suryapet District, Telangana state on behalf of 5th respondent, do hereby verify and declare that the contents stated in the above reply affidavit are true and correct to the best of my knowledge and belief.

Place: Suryapet

Date: 16-08-2021.


EXECUTIVE ENGINEER
Irrigation Division No. 1
Suryapet.

FTL MAP



**Assistant Executive Engineer, Irrigation Dept., Notice on
Dt:29.06.2020.**

GOVERNMENT OF TELANGANA
IRRIGATION & CAD DEPARTMENT

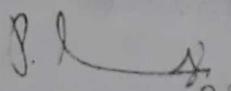
NOTICE

Sub 1 & CAD Department- Issuing of Notice Regarding to stop soil Filling in FTL of Chuttu Kunta, Raghavapuram (V), Mothey Mandal, Suryapet District.

With reference to cited above, I am here with submit that the Chuttu Kunta Raghavapuram(V), Mothey Mandal, Suryapet District is an Irrigation Source. It observed that old NH 365 from Khammam to Suryapet is passing adjacent to the Irrigation Source tank Bed of Chuttu Kunta, Raghavapuram (V), Mothey Mandal, Suryapet District. It observed that the NH authorities entering into the FTL of Irrigation Source tank Bed of Chuttu Kunta, Raghavapuram (V), Mothey Mandal, Suryapet District and filling the soil in the tank bed which is against the law as per section 4B THE ANDHRA PRADESH (TELANGANA AREA) IRRIGATION ACT 1957.

In this connection it is instructed to NH Authority to stop the widening of the road work with in the FTL of Chuttu Kunta, Raghavapuram (V), Mothey Mandal, Suryapet District. And also instructed to the NH Authority to take necessary approvals from the Irrigation Department.

Yours Faithfully


23/06/2020
Assistant Executive Engineer,
I.B. Section Mothey.

1. Copy submitted to District Irrigation Officer & Executive Engineer, Suryapet Dist. For favour of information.
2. Copy submitted to Deputy Executive Engineer, IB Sub-Division, Suryapet for favour of information.

Executive Engineer, Irrigation Dept., Notice on Dt:17.07.2020.**GOVERNMENT OF TELANGANA
IRRIGATION & CAD DEPARTMENT**

From
Sri D. Bhadru, B. Tech.,
Executive Engineer,
I.B. Division Suryapet,
Suryapet dist.

To
The Project Director,
National Highways Authority of India,
Project Implementation Unit,
Khammam.

Lr.No.EE/IB/SRPT/2020-21

M
169

Dt: 17/07.2020.

Sir,

Sub:- I & CAD Department- Request to stop raising of land by soil filling in Full tank Level (FTL), Buffer zone areas of Chuttu Kunta, Raghavapuram (V), Mothey Mandal, Suryapet District - submission of Report- Regarding.

Ref:- 1. Dy. Executive Engineer, IB Sub-Division, Suryapet Lr. No. DEE/IB/SD/SRPT/76/1, Dt. 24-06-2020.
2. Chief Engineer, Minor Irrigation (KB) Memo. No. DCE-1/OT1/AEE2/Soil Filling/2020, Dt. 19-06-2020.

With reference to the letter of Deputy Executive Engineer I.B. Sub Division Suryapet vide reference 1st cited the tank Chuttu Kunta, Raghavapuram village, Mothey Mandal, Suryapet District is inspected by me and the field staff and observed that old NH 365 (Khammam to Suryapet road) is passing adjacent to the said tank Chuttu Kunta. As a part of developmental activity the old NH 365 road is being upgraded from 10.50 Meter Width to 33.00 Meters and the work is in progress. While widening of the old NH 365 road it observed that the new formation road of extra width is falling into the FTL of Irrigation Source tank Bed of Chuttu Kunta and aslo observed that FTL land is being raised by soil heaps for formation of the road which thereby leads to decrease in the tank submergence area and ultimately to decrease in water storage capacity.

As per Go.Ms 168 Dated 07-04-2012 MA & UD (M Department,

Rule 3 a (i) No building / development activity shall be allowed in the bed of water bodies like river or nala and in the Full Tank Level (FTL) of any lake, pond, cheruvu or kunta / shikam lands.

Rule 3 a (ii) The above water bodies and courses shall be maintained as Recreational/Green Buffer Zone and no building activity shall be carried out within:

Rule 3 a (ii) (2) 30m from the FTL boundary of Lakes / Tanks / Kuntas of area 10Ha and above.

As, the tank Chuttu Kunta, Raghavapuram (V), Mothey Mandal, Suryapet District submergence area is more than 10Ha hence the buffer zone is maintained to be of 30 meter.

In this connection the NHAI authorities are requested to stimulate other modes of formation of roads other than raising using soil heaps with in the FTL and buffer zones so as to safeguard the precious water body and also to take the NOC clearance from this department while encountering any tank, nala, stream, canal in the stretch of laying of the New NH 365 (Suryapet to Khammam Road).

Yours faithfully,

NK *05/01/2021*

Deputy Executive Engineer,
I.B. Sub division, Suryapet,
Suryapet Dist.

Deputy Executive Engineer, Irrigation Dept., Notice on**Dt:05.01.2021.****GOVERNMENT OF TELANGANA**
IRRIGATION & CAD DEPARTMENT

From
Sri N.Ramesh,
Deputy Executive Engineer,
I.B. Sub division Suryapet,
Suryapet dist.

To
The Project Director,
National Highways Authority of India,
Project Implementation Unit,
Khammam.

Lr.No.DEE/IB SD/SRPT/2020-21

Dt: 05-01-2021.

Sir,

Sub:- I & CAD Department- Request to stop raising of land by soil filling in Full tank Level (FTL), Buffer zone areas of Chuttu Kunta, Raghavapuram (V), Mothey Mandal, Suryapet District - submission of Report- Regarding.

Ref:- 1. Ass. Executive Engineer, IB section Mothey, Suryapet Lr. No. 5 AEE/IB SD/SRPT/Mothey/ , Dt.04-01-2021.
2.Chief Engineer, Minor Irrigation (KB) Memo. No. DCE-I/OT1/AEE2/Soil Filling/2020, Dt. 19-06-2020.

With reference to the letter of Deputy Executive Engineer I.B. Sub Division Suryapet vide reference 1st cited the ~~tank~~ Chuttu Kunta, Raghavapuram village, Mothey Mandal, Suryapet District is inspected by me and the field staff and observed that old NH 365 (Khammam to Suryapet road) is passing adjacent to the said tank Chuttu Kunta. As a part of developmental activity the old NH 365 road is being upgraded from 10.50 Meter Width to 33.00 Meters and the work is in progress. While widening of the old NH 365 road it observed that the new formation road of extra width is falling into the FTL of Irrigation Source tank Bed of Chuttu Kunta and aslo observed that FTL land is being raised by soil heaps for formation of the road which thereby leads to decrease in the tank submergence area and ultimately to decrease in water storage capacity.

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Yours faithfully,

NK
05/01/2021

Deputy Executive Engineer,
I.B. Sub division, Suryapet,
Suryapet Dist.

Report Submitted to Joint Committee

**GOVERNMENT OF TELANGANA
IRRIGATION AND C.A.D.DEPARTMENT**

From
Sri. D.Badhru B.Tech.,
Executive Engineer,
Irrigation Division No.1,Suryapet.

To
Integrated Regional Officer,
MoEF&CC, Aryan Bhavan,
3rd floor, Saifabad, Hyderabad.

Lr.No :EE/Irr/Div.1/SRPT/DB/AEE(T)/2020-21 ^M 43 Date: 13/02/2021

Sir,

Sub:- I & CAD department – Irrigation Division No.1,Suryapet –
Constitution of Joint Committee as per NGT direction -
Report submitted – Regarding.

Ref:- 1.File No: EP(A)/12.7/NGT(SZ) 1074/2020/TS/02,
Dt:03.02.2021.
2.NHAI/PIU-KMM/2017/117, Dated:15.05.2017.
3.NHAI/PIU-KMM/2017/146, Dated:05.06.2017.
4.Notice given by the Assistant Executive Engineer, I.B.
Section Mothey on Dt:29/06/2020.
5.Lr.No.EE/IB/SRPT/2020-21/169M, Dt:17/07/2020.
6.Lr.No.DEE/IB SD/SRPT/2020-21, 245 E, Dt:05.01.2021.

With reference to the 1st cited above, the Hon'ble NGT has
Suggested to constitute a Joint Committee of experts members, and
accordingly a joint committee has been formed and conducted inspection
of Chuttugunta Lake & formation NH-365BB near Chuttugunta Lake on
10.02.2021. In this regard, the report is being submitted to the following
points which are being covered in Irrigation Department point of view.

c. Whether is any encroachment in Buffer Zone or Full Tanl level
(FTL) of Chuttugunta Lake.

Yes.

d. Whether any prior permission has been obtained from the State
Government in this regard namely from the Irrigation Department
for this purpose.

In the state of Telangana, up to Dt:28.12.2020 the irrigation
Department is having 3 wings, they are Major Irrigation, Medium
Irrigation, and Minor irrigation. The projects & water bodies which
are having an ayacut below 5000 acres are categorized under Minor
Irrigation wing, which includes all the MI & PR tanks, and projects
which are having an ayacut of 5000 acres to 25000 acres are
categorized under Medium Irrigation wing and the projects which
are have an ayacut more than 25000 acres are categorized under
Major Irrigation wing. In this context it is to submit that all the
tanks and lakes were look after by the Minor Irrigation wing. The
NHAI have been informed regarding construction of NH-365BB to
the SRSP (i.e Major Irrigation wing) officials vide 2nd & 3rd reference

cited above, but they have not informed and also not taken any prior permission from Minor Irrigation officials regarding construction of NH-365BB, and also it is to submit that with reference to the 4th, 5th & 6th cited above our Minor Irrigation officials have given notices & letters to the Project Director, National Highway Authority of India to regarding stopping the work and also to take NOC from the Minor Irrigation officials.

As per the Andhra Pradesh (Telangana Area) Irrigation Act. 1357 section 48 (g), 49(a) & (f) & 50 the vehicular traffic on bunds or inspection path ways are prohibited within the boundaries of tank, canal or channel relating to the irrigation work and damaging of irrigation works i.e., damages, alters, enlarges or obstructs any irrigation work, not withstanding any prohibition, passes or causes animals or vehicles to pass in or across any irrigation work, its banks or channels and endangering stability of any irrigation work.

The Government vide G.O. Ms No.168,MA&UD Dept., Dated: 07.04.2012 have issued orders clearly at para (3) (a) (ii) (2), that no development activity shall be allowed in the bed of water bodies like river or nala and in the Full Tank level (FTL) of any lake, pond, cheruvu or kunta / Shikam lands and water bodies and courts shall be maintained as Recreational / Green Buffer zone and no building activity shall be carried out with 30m from the FTL boundary of lakes / tanks / kuntas of are 10 Ha above. This particular chuttukunta lake has the area more than 10 ha and hence its buffer zone is 30 m above FTL. As such there is a bar to such activities beyond 30m of the FTL i.e., Buffer zone.

e. Whether on account of the widening the High way is there any possibility of affecting the ecological equilibrium of the lake.

The alignment of the Highway is passing within the FTL of Chuttukunta lake which causes reduction in the capacity of the lake, and it is also inform that it also objects the inflows to the Chuttukunta lake from natural catchment through feeder channels, SRSP canal (i.e. DBM-71/36L/12R sub minor) which severely affects the functioning of the lake and also endangering the existence of the lake. During the peak rainy season this lake receives huge inflows through both catchment and canal system for this inflow the proposed culvert is not sufficient which causes inundation of the habitations around the lake and also there is a possibility of damage of the road embankment, hence instead of embankment formation with culvert, construction of the bridge over piers with the bottom level equivalent to TBL of the bund.

The Hon'ble Supreme Court made it clear in civil appeal No. 4787 of 2001, dt. 25-07-2001, in the case of Hon'ble Speaker Hirch Lal Tiwari and Kamala Devi and other stressed and held on ecological balance. Court held that the pond land cannot be allotted for any purpose to protect the environmental and ecological balance, that the lands related to tanks, ponds, private ferries, water channels, pathways cannot be allotted to anyone in the interest of the National and Nature and scope, enjoyment of quality life hold in the essence of right guaranteed under article 21 of constitution of India, Community resource need for their protection Forest, Tanks, Ponds, Hillocks and Mounting etc., hills or natures bounty, they help to dedicate maintain the ecological balance and need to be protected.

f. And if there is any violation what is the action proposed to be taken by the regulators including imposition of environmental compensation and if such project has to continue what are all the remedial measures to be taken as a precaution to protect the water body from encroachment and reducing its Buffer Zone and Full Tank Level (FTL).

In this regard to safe guard the water body and to maintain the ecological equilibrium of the chuttukunta lake, instead of embankment formation with culvert, construction of the bridge over piers with the bottom level equivalent to TBL of the bund or NH authorities have to adopt another alternative alignment, such that it should not affect the FTL and Buffer zone of the Chuttukunta lake is more efficient.

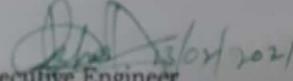
Hence these are the points submitted from Irrigation Department side.

Yours faithfully

Encl:- Copy of Ref 2 to 6 &
FTL Map of Chuttukunta lake


Executive Engineer,
Irrigation Division No.1, Suryapet.

✓ Copy submitted to the District Collector, Suryapet District for favour of information.


Executive Engineer,
Irrigation Division No.1, Suryapet.

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REPLY AFFIDAVIT FILED ON

BEHALF OF THE 5th RESPONDENT

H.Yasmeen Ali

Counsel for the Respondent No.5