

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

ORIGINAL APPLICATION No. 252 of 2020

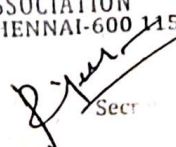
Sri Kapaleeswarar Nagar Residents
Welfare Association
(Regn No. 306/2017) Rep. by its Secretary,
1st North Main Road, Kapaleeshwarar Nagar,
Neelankarai, Chennai 600115
Ph: 9660747397 Email: tanvin.s@gmail.com

.. **Applicant**

Versus

1. State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration & Water Supply Dept (MAWS)
Secretariat, Fort St. George,
Chennai 600001.
Ph: 044 – 25670491 Email: mawssec@tn.gov.in
2. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600003.
Ph: 044-25381330
Email: commissioner@chennaicorporation.gov.in
3. Chief Engineer (General),
Storm Water Drains / Special Project
Greater Chennai Corporation,
Ripon Building, Chennai 600003.
Ph: 9445190500 Email: chiefengineer.swd.roads@gmail.com
4. The Superintending Engineer,
Storm Water Drains / Special Project
Greater Chennai Corporation,
Ripon Building, Chennai 600003.
Ph: 9445190735 Email: sebr@chennaicorporation.gov.in
5. Assistant Executive Engineer (SWD),
Zone 15, 120, Rajiv Gandhi Salai,
Sholinganallur, Chennai 600119.
Ph: 044-25619315 E-mail: Not known
6. German Development Bank (KfW), New Delhi,
Rep. by its Director, 46, Paschim Marg,
Vasant Vihar, New Delhi 110057.
Ph: 011-42534253 Email: kfw.newdelhi@kfw.de

For SRI KAPALEESWARAR NAGAR RESIDENTS
WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600115


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7. Ministry of Forests & Climate Change (MoEFCC),
Rep. by its Secretary,
Indira Paryavaran Bhawan,
Jorbagh Road, New Delhi 110003.
Ph: 011-2695262 Email: secy-mocf@nic.in

8. Tamil Nadu Coastal Zone
Management Authority (TNCZMA),
Rep. by its Secretary, Panagal Building,
Saidapet, Chennai 600015
Ph: 044- 24336421 Email: tndoc@tn.nic.in

.. Respondents

REPLY AFFIDAVIT OF APPLICANT TO COUNTER OF 4th RESPONDENT

I, Rohit Menon, son of G. Gopalakrishnan, aged about 41 years, residing at Plot. No. 50, 1st Main Road, Sri Kapaleeshwarar Nagar, Neelankarai, Chennai 600115 do hereby solemnly swear and sincerely affirm as follows –

1. I state that I am the Secretary of the Applicant Association and I am authorized to file this reply affidavit on behalf of the Applicant Association. I state that I have perused the counter Statement filed by the 4th Respondent Superintending Engineer dated 23.07.2021 in response to the Report of the Joint Committee (appointed by this Hon'ble Tribunal) dated 02.04.2021 and we are filing this Rejoinder affidavit in response to the same.
2. At the outset, we would like to submit that the GCC in their Counter Affidavit have provided vague and generalized rebuttals and not given any specific facts or law to counter the findings of the majority members of the Joint Committee. They have not also specifically refuted any of the direct findings of the Joint Committee as regards location of outfalls in specified points on the beach, which finding is supported both pictorially and also by way of mapping the exact GPS locations on the official TN CZMP map.
3. The 4th Respondent has stated the following main points in their counter statement –


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WELFARE ASSOCIATION
NEELANGARAI, CHENNAI-600 115.

- (i) Outfalls: The outfalls do not fall within CRZ-IA and hence project is not prohibited. No outfall has been constructed. Outfall stops with the road and not on the beach.
- (ii) Storm water drain network: They are constructed in Non-CRZ area and CRZ-II and hence CRZ Regulations do not apply and there is no need to obtain prior CRZ Clearance.
- (iii) There has been no construction of SWD after issuance of Stop Work Order dated 23.12.2020 of the TNCZMA. Whatever work was undertaken was only to close ongoing work on safety considerations.
- (iv) No trees have been cut due to construction of storm water drains.

I. OUTFALLS

4. As stated above, the Chennai Corporation specifically claims that the 27 outfalls are not within the prohibited CRZ-IA region and the water discharged at the outfalls will naturally flow to the sea without causing any erosion of the beaches. They claim that these outfalls will not harm the nesting sites of the Olive Ridley turtles. It also claimed that no outfall has been constructed. However, none of these statements of the Chennai Corporation are backed by any documentary proof or by the law.
5. The majority report of the Joint Committee has conclusively held that some outfalls have been constructed and upon physical inspection have found them to be on the beach which is CRZ-IA. They also found that upon mapping the constructed / proposed outfalls, that they all fall within CRZ-IA which is a prohibited area for such construction. The location of the 27 outfalls was taken from the Chennai Corporation's own document titled "Drawings - Detailed Designs". The Committee has also appended to their Report, GPS mapped locations on official CZMA Maps showing the specific locations of a few select outfalls. These conclusively establish that the outfalls lie within the prohibited CRZ - IA areas on the beach.

6. It is wrong and facetious on the part of the 4th Respondent – GCC SE, who claims that the outfalls will end on the west side of the road near the beach and that therefore there will be no erosion of the beach. It is their further argument that there will be a “natural discharge” which will flow to the sea without causing any erosion of the beach. The claim of the SE is shown to be without basis when we note that the outfalls already constructed clearly show how there will be a channel to the sea created by the water falling at the outfall and emptying into the sea, which in turn has caused erosion on the beach. It is pertinent to point out that there is no factual evidence to prove that there will be no erosion caused when there is majority Report of the Joint Committee after field visit has come to a conclusion that there is ample evidence that erosion has commenced from the outfalls already constructed.
7. Thus, the factual findings of the majority report are based on field inspection and documentary evidence. The Chennai Corporation, apart from baldly claiming that the findings are wrong, have not factually disproven the same.
8. Therefore, the findings of the majority report of the Joint Committee that the outfalls are within the prohibited CRZ-IA area where such construction is prohibited has to be taken as established since they have not been shown to be erroneous or unsubstantiated by the Chennai Corporation.

II. STORM WATER DRAIN NETWORK

9. The counter affidavit of the SE, GCC has accepted the finding of the Majority report of the Joint Committee that the storm water drains network lies in CRZ-II areas though it disputes its existence in CRZ-III.
10. However, while the Chennai Corporation accepts that some parts of its integrated storm water drain falls within CRZ-II, it is silent as to why they have failed to obtain CRZ Clearance for the project when it falls within CRZ.
11. It is submitted that as per Clause 3(v)(b) CRZ Notification, 2011, storm water drains are permissible

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activities provided that prior permission is received for the same. Therefore, even as per the facts stated by the Chennai Corporation, they had to obtain prior permission for their storm water drains network but have admittedly not done so. Moreover they are on record to state that they have not even applied to obtain prior permission for the SWD under the CRZ Regulations.

III. COMPLIANCE WITH STOP WORK ORDER DATED 23.12.2020

12. The Chennai Corporation has made grand claims that when the Stop Work Order dated 23.12.2020 was issued by the TNSCZMA, they immediately complied with the same. This claim is then contradicted by another claim that they merely completed on 'safety' considerations parts of the SWD they had started construction, by bending and closing the iron rods so that they do not cause accidental injury to people and animals.

13. It is submitted that the Chennai Corporation blatantly violated the Stop Work Order dated 23.12.2020 issued by the TNSCZMA. As stated in the interim report of the Joint Committee, during the Hearing organised by the NGT Committee on 28.12.2020, in response to the query of the Convenor of the Joint Committee about the status of their compliance with the Stop Work Order dated 23.12.2020 issued to them by TNCZMA, the Chennai Corporation, represented by the 3rd Respondent Chief Engineer, Mr. Nandakumar, and other senior Engineers overseeing the construction of the SWD, claimed that they had not received any Stop Work Order from the TNSCZMA on 23.12.2020. They claimed that they never received the e-mail that was sent to the official e-mail ID of the Commissioner of the Greater Chennai Corporation. A copy of the Stop Work Order was then provided to the GCC Engineers during the hearing. It should be pointed out that the Legal Advisor to the GCC was also present at this meeting. Later on, in the same day, the Nodal

Officer for the Joint Committee sent the same Stop Work Order again by email to the Commissioner, GCC.

14. It is submitted that instead of complying with the Stop Work Order of TN CZMA, the GCC Officials speeded up their work in many areas and continued working day and night in violation of the Stop Work Order. In many areas, the contractors informed local residents that they had been given unofficial orders to work faster and complete the construction at the earliest and before the next hearing date of the NGT on 11th January, 2021). In actuality, the contractors dug up new roads to construct SWDs, poured concrete to create the drains in other places and continued with construction work even after the Stop Work Order was communicated to the Chennai Corporation on 28.12.2020.

15. It is submitted that the residents of ECR filed contemporaneous complaints in the Chennai Corporation grievance portal regarding this blatant violation of the Stop Work Order even after 28.12.2020. The screenshots of the e-complaints filed and the pictures show that even on 30.12.2020, there was late night construction work that was continuing in several parts of the ECR. Ecomplaints filed by residents on 03rd January, 2021 and photos taken indicates that construction work was continuing despite the Stop Work Order. In some areas the construction work was going on in the presence of local police officials. Therefore, the claim of the Chennai Corporation that they complied with the Stop Work Order is false, baseless and contrary to facts.

IV. TREES WERE CUT AND DAMAGED BY THE CONSTRUCTION WORK

16. The 4th Respondent SE, GCC has also made a claim that no trees were felled for the construction work that was undertaken by them. They have provided no data to back these claims. It is submitted that once again, the reality is that trees were cut. In several places where the trees were not cut, the Chennai Corporation has cut the root systems of these old

trees causing them to slowly die and for them to fall with the next storm.

17. Thus, to conclude, it is submitted that the Counter Affidavit filed by the Chennai Corporation does not refute in any concrete manner the findings of the majority report of the Joint Committee on either facts or law. The Chennai Corporation has merely given bald denials but does not establish how the factual findings are wrong, especially when the NGT Committee's findings are based on field inspection and documentary evidence. Therefore, the findings of the majority members of the Joint Committee that the outfalls fall within CRZ-IA which is a prohibited area and the rest of the storm water drain networks are situated in CRZ-II and III areas for which prior permission is required for construction still holds. It is also submitted that the Corporation's claims that they complied with the Stop Work Order dated 23.12.2020 of the TNSCZMA is contrary to facts. They continued construction work even until the next hearing before this Hon'ble Court on 11.01.2021 during which hearing the Special Advocate General who appeared for the Chennai Corporation gave an undertaking that no work will be continued which was recorded in the daily order dated 11.01.2021.

18. For the reasons stated above, it is prayed that the Counter affidavit filed by the 4th Respondent, GCC should be rejected, especially the claim that the Findings and Conclusions of the Majority Members of the Joint Committee constituted by the Hon'ble Tribunal are wrong. Consequently, it is prayed that this Hon'ble Tribunal accept the conclusions and findings elaborated in the Report of the Majority Members of the Joint Committee dated 02.04.2021, filed before this Tribunal.

19. It is necessary to point out that even at the time of admission of these cases it had been pointed out how the officials were going ahead with the construction of the SWDs

in several locations on the ECR even when this Tribunal had directed enquiry by a NGT appointed Committee. Thus the officials would present a fait accompli by completing the project unless the project was stopped. It was there after that the Tribunal was pleased to direct the Joint Committee already appointed to undertake detailed examination of all issues related to the SWD in the ECR area and submit factual as well as action taken report. This Tribunal had also directed the TNCZMA and the MoEFCC (Respondents 7 and 8) to take appropriate action against the authorities who are engaged in this project, if it is found in violation of any environmental laws, viz., the CRZ, 2011 and 2019, including to stop the project till necessary clearance is obtained. In the backdrop of the majority Report clearly concluding that the construction of the SWD was illegal for violating the CRZ Regulations all the officials including the then Commissioner of GCC, Mr. G. Prakash, the Chief Engineer Mr. Nandakumar, and other officials should be held liable for prosecution u/s 15 of the EP Act and other relevant Acts.

20. Apart from this, the Majority Report also clearly points out that construction activities of the SWD were continuing even after the TNCZMA had passed Stop Work Orders on 23.12.2020. The Nodal Officer of the Joint Committee has also reported that by email dated 06.01.2021 he had brought to the attention of the both the GCC Officials as also the TNCZMA about repeated complaints from residents about construction work going on even after the GCC officials were informed of the Stop Work Order on 28.2.2020. As on date we have no information about whether the TNCZMA undertook any action based on the complaints forwarded to them by the Nodal Officer of the Joint Committee, especially to inspect the locations named in the complaints where SWD construction was going on so as to verify the allegations made by local residents and others. We seek leave to file additional replies in

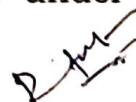
P. Jeyaraj
 FOR SRI KAPALEESWARAR NAGAR RESIDENTS
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the future in the event that the CZMA files any affidavit or submits the relevant files to this Tribunal.

21. It should be pointed at this juncture that there are several complaints filed electronically with GCC Portal complaining that SWD construction was going on feverishly with support of local police. A few of these complaints and relevant pictures have been presented as attachments to this affidavit.

22. It is respectfully submitted that it is a self serving argument of the 4th Respondent that the only construction they had undertaken after the Stop Work Order was to close ongoing construction on "safety considerations" by bending and closing the protruding iron rods in order to prevent accidents to local residents, cattle and other creatures. This is not true at all. The complaints recorded on GCC Portal and sent by email and other messaging portals clearly show that the GCC officials were egging the contractors to dig up earth, put new iron and steel SWD structures, fill it up with concrete and complete SWD constructions at great speed. This work was not some residuary work to close protruding rods alone. New work had been undertaken so as to present a fait accompli in terms of completion of stretches of SWD network. This work was undertaken by GCC Engineers and Contractors willfully, violating the Stop Work Order dated 23.12.2020 of the TNCZMA. The concerned officials and contractors should be held liable for violating the law and the lawfully promulgated 'Stop Work Order' and prosecuted under the Environment Protection Act and other relevant laws.

23. It is submitted that this Hon'ble Tribunal should initiate exemplary action under the law against the then Commissioner, GCC, Mr. G. Prakash, Chief Engineer, GCC, Mr. Nandakumar. The 4th Respondent and other concerned Engineers of the Storm Water Drain department, including both imposition of fine to be collected personally from the officials, as also prosecution under the law. When officials

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Secretary

BEFORE ME

N. B. J. 316/90
C.R. RAJAN JOHN SEWAS
Advocate, Chennai
333 NEW ADELHEIM

**NATIONAL GREEN TRIBUNAL
SOUTH ZONE, CHENNAI**

OA No. 252 of 2020

Sri Kapaleeshwarar Nagar
Residents Welfare Assocn.

.. Applicant

Versus

State of TN, rep. by
Secretary, MAWS Dept
And others

.. Respondents

**Rejoinder Affidavit of
Applicant
to
Counter Affidavit of 4th Respdt.**

M/s SP Arthy
NS Tanvi
P. Balaji
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