

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI  
O.A. No. 25 of 2022 (SZ)**

IN THE MATTER OF:

M. Sundaramurthy, Chennai and Ors.

...Applicants

*versus*

The Principal Secretary,  
Department of Environment,  
Climate Change & Forest,  
Government of Tamil Nadu and Ors.

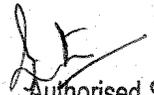
...Respondent

**AFFIDAVIT ON BEHALF OF RESPONDENT NO. 9**

I, Preeti Bhandari d/o Shri R.S. Bhandari major in age holding position as AGM- Legal at M/s Ashiana Housing Private Limited having office at Door No 10, 1<sup>st</sup> Floor, GJ Complex, 1<sup>st</sup> Main Road, CIT Nagar, Chennai – 600 035, and the authorised signatory, do hereby solemnly affirm and sincerely state as follows:

1. I am well acquainted with the facts of the case and I am authorized to file Affidavit and as such I am well acquainted with facts and circumstances.
2. The instant Original Application has been filed by M. Sundaramurthy and others (“**Applicants**”) alleging environmental violation by Respondent No. 8 (“M/s. Escapade Real Estate Pvt. Ltd.”) and the Respondent No. 9, Ashiana Housing Limited (collectively “**Project Proponents**”). The Applicants have alleged discharge of untreated water into their property and also the forest area.
3. A Joint Committee was constituted by this Hon’ble Tribunal to submit its findings on the allegations levelled in the captioned OA, which submitted its report based on inspections carried out on 20.04.2022, 05.07.2022 and 07.07.2022.

For ASHIANA HOUSING LTD.

  
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4. The instant affidavit is being filed to address concerns raised by this Hon'ble Tribunal in its order dated 10.11.2022, which are broadly as follows:
  - a. Whether or not natural flow of water has been diverted due to construction;
  - b. Particulars of discharge of treated waste water from the STP;
  - c. Whether or not compounding fees has been remitted;
  - d. Distance required to be maintained from the reserve forest.
5. Before adverting to the aforesaid concerns, the Answering Respondent seek to raise a preliminary objection to the captioned OA which relates to the maintainability of the same.

#### **PRELIMINARY OBJECTION: MAINTAINABILITY**

6. It is submitted that the instant case cannot be adjudicated upon by this Hon'ble Tribunal as it does not involve a "*substantial question relating to environment*" a prerequisite for which is that the community at large is affected. The instant case is one that involves a private grievance of the Applicants inasmuch as they seek to agitate that their personal properties are adversely affected due to the construction undertaken by the Answering Respondent. No doubt, the OA has been dressed up to project an environmental dispute involving a forest, in reality, the same was an incident caused on account of unprecedented rainfall, without any recurrence thereafter, and the Answering Respondent have already been penalised for the same. A reading of the averments in the OA would clearly suggest that the fulcrum thereof is a private grievance of the Applicants, who at best qualify as a "*group of individuals*", which is not enough to qualify the instant case as a "*substantial question relating to environment*".
7. Therefore, the requirement to qualify as a substantial question relating to the environment under Section 2 (1) (m) of the NATIONAL GREEN TRIBUNAL ACT, 2010 is not met. The section reads as follows that:

*"(m) substantial question relating to environment" shall include an instance where,—*

*(i) there is a direct violation of a specific statutory environmental obligation by a person by which,—*

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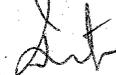
- (A) ***the community at large** other than **an individual or group of individuals** is affected or likely to be affected by the environmental consequences; or*
- (B) *the gravity of damage to the environment or property is substantial; or*
- (C) *the damage to public health is broadly measurable;*

(Emphasis Supplied)

8. It is submitted that the present dispute is in fact not an environmental dispute and the Applicants have filed the application only to represent their interests before this Hon'ble Tribunal and therefore the captioned OA ought not to be entertained.
9. The OA at paras 5, 6 and 10 state that the Applicants' concern is focused on the alleged flow of sewage water into their land. The Applicants have attempted to mislead this Hon'ble Tribunal by making unsubstantiated claims, regarding lack of an environmental clearance and soil pollution due to sewage discharge, to project that the instant dispute is an environmental dispute. However, as also stated in the OA, this is a dispute that only affects a small group of individuals and thus the threshold for qualifying as a substantial question of law to be determined by this Hon'ble Tribunal has not been met.
10. In fact, the dispute here is merely a civil dispute without any "*substantial question relating to environment*" is evident from the relief sought, which neither seeks for the restoration of environmental damages nor compensation towards the same but merely "*permanent injunction*" to prevent the flow of water into the "*plots of the Applicants and the Sengundram reserve forest area*" which can admittedly be granted in a civil suit.
11. The Answering Respondent have laid down responses to the concerns raised by this Hon'ble Tribunal below.

**OBSERVATION 1:** "*(i) how they are going to let in the water flowing from the natural stream which is now diverted because of the construction.*"

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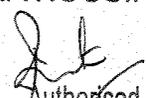
12. At the very outset it is respectfully submitted that there is no “*natural stream*” in the subject property and the same is baseless and contrary to the revenue records for the subject property. This can be confirmed from the revenue records which merely show the existence of a “*cart track*” i.e., an unmetalled road, which cannot by any measure qualify as a “*natural stream*”. It is pertinent, at this juncture, to note that the flow of water from higher inclined area which is the western side to the eastern side which is in the lower lying area, along the “*car track*”, is only seasonal. It is respectfully submitted that the mere flow of water on this unmetalled road would not convert it into a “*natural stream*”, and therefore allegations of diversion of flow of a “*natural stream*” are unsubstantiated. Pertinently, the Bombay High Court has in *Colva Civic and Consumer Forum v. State of Goa*, 2015 SCC OnLine Bom 6462 and in *Cavelossim Villagers v. State of Goa* 2017(1) Bom.C.R. 170 held that courts should not concern themselves with artificially created water bodies in private property which are not reflected in revenue records, the same being of no interest to the public at large. It is respectfully submitted that the revenue records and records with the Directorate of Town and Country Planning show that the said route of the natural flow of water is a cart tract (*Vandi Padhai*) and not water body or *Neer Odai* or *Odai* or *Neer Pidipu Pagudhi* or *Neer Pasana Pagudhi*. ‘

A copy of the revenue records indicating the alleged natural water route as a cart track are hereto marked and annexed as **ANNEXURE- R1**.

A copy of the Directorate of Town and Country Planning records indicating the alleged natural water route as a cart track are hereto marked and annexed as **ANNEXURE -R2**.

13. Without prejudice to the above, it is humbly submitted that the apprehension pertaining to diversion of natural flow of water is baseless since the direction of the flow has not changed owing to the conduct of the Answering Respondent. It is pertinent, at this juncture, to note that the flow of water from higher inclined area which is the western side to the eastern side which is in the lower lying area, along the “*car track*”, is only seasonal. Even during such periods when there exists water flow, the water flow doesn’t cause flooding. Instead, to ensure that rainwater

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continues to be drained appropriately especially during heavy rainfall, the Answering Respondent have installed two hume pipes of 1m in diameter each and a catch pit (“storm water network”), for carrying the rainwater from the lake besides the project area to the other side. The under-construction storm water network, to improve drainage and prevent flooding, was also noted by the Joint Inspection Committee, and the Answering Respondent were directed by the Joint Committee to complete the construction of the underground conveyance pipeline and catch pit within two months. It has since been completed and compliance has been confirmed by our reply 20.09.2022.

14. It is further submitted that Respondent 8 and 9 undertook a topographical survey in 2007 and in 2015 for the land. Based on such surveys, the Answering Respondent constructed the building in a phased manner accounting for the natural gradient of the land and made necessary arrangements for sewage and storm water drainage to prevent land at the lower levels (including that of the Applicants) from being flooded during heavy rainfall. Despite such measures, due to unprecedented and extremely heavy rainfall in November 2021, there was flooding of the lake and the Answering Respondent No. 9 wrote a letter to the Forest Department requesting permission to fortify the naturally existing cart tracks to allow for easier drainage.

A copy of letter dated 03.11.2021 from the Respondent No. 9 to the Forest Department is hereto marked and annexed as **ANNEXURE -R3**.

A copy of Times of India report dated 02.12.2021 recording “*double the average number of rainy days in November 2021*” is hereto marked and annexed as **ANNEXURE -R4**.

15. The Answering Respondent respectfully submit that due to the contours of the land, the excess water from the lake naturally drains into the land belonging to the Project Proponents (as it has always been) and with the intention to avoid flooding in the area, the Answering Respondent have streamlined the flow of water from the West

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to the East. There has been no man-made intervention in the natural flow of the water but the Answering Respondent have made their best efforts to fortify existing drains to avoid flooding the land.

16. It is submitted that the catch pit and the underground conveyance pipe line has also been laid by this Answering Respondent which would cater to 2067.99 litres per second of water, more than sufficient to cater to 1382.9mm of rainfall even though the maximum rainfall that Chennai and neighbouring parts have received has been 84 mm of rainfall. Prior to the construction of the pits and pipe lines, there was an irregular flow of water and it is primarily due to this that water would accumulate and flood the land belonging to the Project Proponents. In other words, the hume pipes installed by the Answering Respondent are merely reinforcing existing trenches/cart tracks predating the construction by the Answering Respondent.

17. The prudence of the storm water network has been acknowledged by the Joint Committee in their report. It may be noted that the aforesaid system has been laid strictly in terms of the drawings of the chartered engineer.

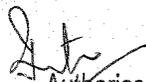
A copy of the certificate of the chartered engineer recommending the catch pit and underground conveyance as sufficient for the expected rainfall in Chennai is hereto marked and annexed as **ANNEXURE- R5**.

**OBSERVATION 2 & 3:** *“(ii) where the sewage water is taken to, and (iii) how they are using the treated water discharged from the STP”*

18. At the outset, it is submitted that the Answering Respondent has installed an STP which is scalable to 750KLD and is presently operating at 500KLD as per the occupancy of the project. The aforesaid STP is in terms of the EC granted to the Answering Respondent.

19. The treated waste water is discharged in the manner contemplated by the EC which provides for the treated water to be discharged from the STP as follows:

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13)	<i>Waste Water</i>	
	<i>i) Sewage</i>	<i>564KLD</i>
	<i>ii) Details of Treatment</i>	<i>STP – 600KLD</i>
	<i>iii) Mode of Disposal with quantity</i>	<i>i) Flushing-222KLD</i>
		<i>ii) Gardening-79KLD</i>
		<i>iii) OSR Gardening -63KLD</i>
		<i>iii) 172KLD of excess treated water will be disposed to farmers for irrigations purposes.</i>

20. In other words, the treated waste water generated is not discharged into the adjoining plot but discharged in terms of the EC conditions, which have been incorporated in the consent to establish dated 19.02.2020 (CTE) and are utilized, for horticulture, gardening and greenbelt development. Further excess treated water is supplied to farmers with whom the Answering Respondent has entered into agreements with them and has been approved in condition 7 in the CTE for the project.

A copy of the consent to establish dated 19.02.2020 is hereto marked and annexed as **ANNEXURE- R6**.

21. Additionally, it is submitted that there has been no discharge of water into the land of the Applicant. The Joint Inspection Committee has also recorded the same. Further, to ensure that there is no further allegation of discharge, the STP is constantly monitored with a Closed Circuit Monitoring System (CCMS) that has been installed.

A copy of the map/plan/invoice/CCMS is hereto marked and annexed as **ANNEXURE -R7A**.

A Photos showing the STP area and Applicants land are attached as **ANNEXURE - R7B**.

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22. It is submitted that the Answering Respondent had currently applied for an enhanced STP with a 750KLD capacity and have sought an environmental clearance for an expansion which is pending before the SIACC.

In the 254th meeting held by the State Expert Appraisal Committee (SEAC) on 17.03.2022, the SEAC had recommended the grant of the expansion, the State Level Environmental Impact Assessment Authority (SEIAA) in its 534th has kept the examination of the proposal at abeyance subject to outcome in the captioned OA. A copy of the minutes of the meeting held by the SEAC dated 17.03.2022 is hereto marked and annexed as **ANNEXURE -R8A**.

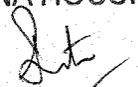
23. A copy of the minutes of the meeting held by the SEIAA dated 20.07.2022 is hereto marked and annexed as **ANNEXURE -R8B**.

24. That with regards to direction of this Tribunal dated 10.11.2022, para 6 of the order to produce the Environmental Clearance for the villas, the 8th Respondent had obtained Environmental clearance to establish a construction project vide letter No.21-563/2007-IA.III dated 22.07.2008 for the construction of 238 villas and 368 apartments. The copy of Environmental Clearance for the villas is attached as **ANNEXURE- R9**

25. It is humbly submitted that Respondent 8 owned 45 acres and 05 ½ cents (Larger Land) and on one portion of the Larger Land Respondent 8 has developed villas under the name of Villa Viviana. The villas so constructed by 8th Respondent is situated at the extreme west side of the Larger Land and Respondent 8th completed construction of 161 villas during 2013 and 22 villas during 2017 totalling to 183 villas and handed over to the allottees and currently all villas are occupied.

26. This Respondent is restricted only with 20 acres 20 cents of the land situated in the eastern side of the Larger Land. This Respondent entered into a joint venture arrangement with Respondent 8th for developing a distinct project for senior living

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on 20 acres and 20 cents of the Larger Land. This Respondent is constructing the senior living project (separate and distinct from villas) in a phase wise manner. Phase-1 consist of 144 apartments, Phase 2 consist of 144 apartments, Phase 3 consist of 172 apartments and Phase 4 is under construction. This Respondent has obtained necessary Environmental Clearance, CTE and CTO separately for our project and had obtained competition certificate for Phase 1, Phase 2, Phase 3 and handed over all units of Apartments to the Allottees.

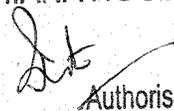
**OBSERVATION 4:** “(iv) whether the compounding fee has been remitted or not”.

1. The Department of Environment, Climate Change and Forest of the Government of Tamil Nadu had levied a compounding fee amounting to Rs. 1,50,000/- dated 21.10,2021.
2. It is submitted that the Respondent has remitted the above-mentioned fee, the copy of the receipt along with translated copy for the same is hereto marked and annexed as **ANNEXURE -R10**.

#### **DISTANCE BETWEEN RESERVE FOREST**

3. At the very outset it must be noted that prior to undertaking any construction the Answering Respondent sought to obtain a non-objection certificate from the District Forest Officer of the Chengalpattu Division at Kancheepuram in a proceeding bearing Proc. No. 5438/2013/D dated 25.07.2014, and the Forest Officer issued a No Objection Certificate (“**Forest NOC**”). This was done with the aim of ruling out the necessity of a forest clearance, the lack of which was established with the grant of the Forest NOC.

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4. Curiously, the Forest NOC required the Answering Respondent to maintain “sufficient and adequate vacant land between the industrial site and the Reserve forest”

5. As a law-abiding citizen, the Answering Respondent maintained an adequate setback of 10m to 14m along the boundary of the forest from the compound wall and the construction has been left vacant as per the sanction plan, as approved by the Directorate of Town and Country Planning (DTCP) and accordingly the residential block were developed leaving a setback as approved by sanction plan . The Forest NOC did not stipulate any further condition requiring construction to have additional setbacks. The Forest NOC also did not mandate any specific measure for such vacant land.

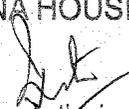
A copy of the approval from the DTCP dated is hereto marked and annexed as **ANNEXURE -R2.**

6. It is pertinent to mention, that Tamil Nadu Forest Department in its reply dated 30/11/2022 bearing no C. No. 11993/2022/E1 has categorically referenced letter by Principal Secretary dated 27.12.2019 bearing no. 22365/FR.10/2019-1 which waives the requirement of leaving vacant land for adjoining reserve forest land in case of already assigned patta land. A copy of the reply to the RTI Application preferred by the project proponent is attached herewith as **ANNEXURE- R11.**

7. It is humbly submitted that the Joint Committee has erroneously recorded that there has been no ‘buffer zone’ maintained and a wall has been constructed on the boundary of the reserve forest. It is submitted that there is no requirement in law for maintaining a buffer zone around the reserve forest.

8. The issue of buffer zone around reserve forests has been dealt with by the Hon’ble Madras High Court in **K.Meera Reddy v. The Secretary to Government**, Writ Petition No.40950 of 2016, unequivocally held that there is no requirement for a buffer zone around reserve forests. It specifically held that :

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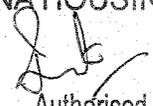
  
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*“..there is no law prohibiting any activities within the distance of 132 ft. from the reserved forest...”*

9. Therefore, it is submitted, considering there has already been a Forest NOC granted by the District Forest Officer and there are no further statutory requirements for a buffer, there can be no allegation of a violation.
  
10. Alternatively, assuming without admitting that the Joint Committee has loosely employed the term “buffer zone” to describe an eco-sensitive zone (ESZ) notified under the ENVIRONMENTAL PROTECTION ACT, 1986 (‘The 1986 Act’). A buffer zone is contemplated under Section 3 (2) (v) of the 1986 Act. It is not to be assumed, but is to be notified by the MOEF after following a rigorous process. That such a buffer zone cannot be assumed as a matter of logic or good sense is apparent from the legal position that any notification for a buffer zone must conform with requirements envisaged under Rule 5(2) of the ENVIRONMENTAL PROTECTION RULES, 1986 which contemplates a procedure for the declaration of ESZ, as was held by the Hon’ble Supreme Court in the case of *Goa Foundation v. Union of India*, (2014) 6 SCC 590:

*“52. .... these procedural checks have been made in Rule 5 because a notification issued by the Central Government prohibiting an operation or a process will have serious consequences on the rights of different persons”.*
  
11. Further, since no ESZ has been notified under Section 3 (2) (v) of the 1986 Act, there is no requirement for a ESZ that can be assumed, as erroneously stated by the Joint Committee in their report.
  
12. Moreover, it is submitted that the wall predates the construction and the Forest NOC. This wall was intended to demarcate the boundary and was in existence, even before applications were made for a Forest NOC obtained vide proceedings No. 5438/2013/D dated 25.07.2014 and other necessary clearances from the relevant authorities. Google Earth Map of the year 2009 is hereby attached as **Annexure -R 12** in which the Compound wall is clearly seen. The Forest Department at the time

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of inspection for granting the Forest NOC was cognisant of the same but did not object to its existence. The Forest Department granted the Forest NOC being fully aware of the same and provided no instruction for tearing down the wall or increasing the gap between the project and the forested land.

13. There has been no further clarification so as to define what would constitute 'sufficient and adequate' by the forest authorities. It is submitted that the Answering Respondent cannot be penalised for vague stipulations.

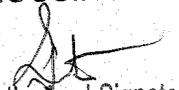
14. Hence it is apparent from the above that the Answering Respondent have demonstrated adherence to the law inasmuch as they have done all their construction after obtaining due permissions and in accordance thereof. In such circumstances, neither the Applicant nor the Joint Committee's wisdom can be employed to penalise the Answering Respondent. The Hon'ble Supreme Court in ***Murali Lal Jhunjunwala v. State of Bihar***, 1991 Supp (2) SCC 647 has held that a citizen cannot be penalised if he has done all that he has been told to do and the authorities cannot in hindsight ask for more from him. The Hon'ble Supreme Court observed as follows:

*"5. The appellant has done all that he could do under the law. He **has not been told at any time that he is required to do anything more than what he has already done.** For successive four years the Licensing Authority went on accepting the application for licence with the necessary licence fees, and at no time it denied the claim of the appellant. Its silence seems to demonstrate the total lack of awareness to the rights of the appellant. To cover up its own inaction and lethargic attitude, it seems to have directed the prosecution of the appellant."*

(Emphasis Supplied)

15. It is settled law that if there is any ambiguity in the legal position a citizen cannot be penalised in such circumstances. The Hon'ble Supreme Court in ***In re: Noida Memorial Complex Near Okhla Bird Sanctuary***, (2011) 1 SCC 744 and the Hon'ble Delhi High Court in ***Maruti Suzuki India Ltd. v. Ministry of Environment and Forests*** (2014) SCC OnLine Del 3264 employed the aforesaid principle in the context of an eco-sensitive zone and EIA Notification 2006 respectively.

For ASHIANA HOUSING LTD.

  
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16. To summarise the responses to the concerns raised by this Hon'ble Tribunal, it is stated that the Answering Respondent have:

- a. Fortified a pre-existing cart track to ensure proper drainage of water and have not diverted the natural flow. This fortification has been done by the construction of an underground conveyance pipe and catch pit, which was directed to be completed by the Joint Committee during their inspection.
- b. Utilised treated sewage from the STP for gardening and to supply to farmers for irrigation as mandated by the Consent to Establish dated 19.02.2020 of the Answering Respondent.
- c. Remitted the compounding fees.
- d. Are not required to maintain any further vacant space in law, and importantly there is no buffer zone that has been notified for the said land.

17. In sum and substance, the Answering Respondent submit that while they cannot be penalised for any action on their part which has been undertaken after sufficient due diligence and statutory compliance, considering the Answering Respondent will abide by any direction that this Hon'ble Tribunal deem fit that would assuage the concerns of the Applicant and this Hon'ble Tribunal.

18. For the reasons stated above it is humbly prayed that this Hon'ble Tribunal may be pleased to take this affidavit on record and pass any further orders as it may deem fit and necessary in the interest of justice.

**For ASHIANA HOUSING LTD.**



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Solemnly affirmed at Chennai this

03<sup>rd</sup> day of December 2022 and signed my name  
in the Presence of

Before me

*Mitesh*  
*3286/2015*  
*29/12/2022*  
*ch-104*

Advocate: Chennai

**BEFORE THE NATIONAL GREEN  
TRIBUNAL**

**SOUTHERN ZONE BENCH AT CHENNAI**

**ORIGINAL APPLICATION NO. 25 OF  
2022**

In the matter of

M.Sundaramurthy,  
S/o Mathurai Naicker

68-A, Palavakkam VGP layout,

Chennai-600 041

Email-msm.2323@yahoo.com

And 2 others

...Applicants

-Vs-

The Principal Secretary,

Department of Environment/ , Climate  
Change and Forest,

Government of Tamil Nadu,

Namakkal Kavignar Maligai,

Fort.St.George,

Chennai-600 009.

Email: tn DOE@tn.nic.in Ph : 044 24336421

and 8 others

...Respondents

**AFFIDAVIT ON BEHALF OF 9<sup>th</sup>  
RESPONDENT**

**M/s Aiyar and Dolia**

**Muthucharan Sundresh**

**(2892/2018)**

**Arjun Suresh**

**(1682/2020)**

**K.D.Saisyaam**

**Counsel for Respondent 8<sup>th</sup> and 9<sup>th</sup>**

**aiyaranddolia@gmail.com 9840989809**