

BEFORE THE COURT OF NATIONAL GREEN TRIBUNAL (SZ)

AT CHENNAI

Original Application No. 33/2022

In the Matter of:

Jagan Kumar J

..... Applicant

V/s

The Member Secretary and Others

..... Respondents

INDEX

SL NO.	DESCRIPTION	PAGE NO.
1	Individual report on behalf of Respondent No.8	1-3
2	ANNEXURE- A &B	4-8

Bengaluru

Date: 8/1/2023


Advocate for Applicant

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Original Application No. 33/2022

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Individual report on OA. No. 33/2022(SZ) filed before the Hon'ble National Green Tribunal, Southern Zone, Chennai on behalf of Respondent No.8

Introduction:

To ascertain the genuineness of the allegations made in Original application No. 33/2022, the Hon'ble Tribunal (SZ) vide order dated 16/03/2022 has a joint committee comprising of the Deputy commissioner/District Collector, Assistant Commissioner or Sub Divisional Magistrate, Senior officer from Ministry of Environment, Forest and climate change (MoEF & CC) Integrated Regional Office, Bangalore, Senior officer from State Level Environmental Impact Assessment Authority Karnataka, Senior officer from BDA, as deputed by its Commissioner, a senior officer from KSPCB as deputed by its chairman to inspect the project and submit the factual as well as action taken report, if there is any violation found.

Accordingly the Joint Committee officials visited site on 20/4/2022 and the observation of the committee against each directions given by the HON'BLE TRIBUNAL (SZ) vide order dated 20/4/2022 in OA. No. 33/2022 are as follows:

1. *Whether there is an encroachment of the waterbodies by 8th respondent. If so what is nature of the encroachment and what is the nature of action taken by the regulators.*

As per the reports submitted by KSPCB ON 22.4.2022, in clause 9(i) it is crystal clear that there is no encroachment made by the project authority.

2. *Whether there are any violations of the conditions imposed in the Environmental Clearance (EC) and the permit plan for the project committed by the 8th respondent, if so, what is the nature of violation committed and what is the impact of that violation on the environment.*

As per the letter and reports on inspection submitted by BDA to KSPCB, it is evident from clause 9(ii) that the setback are as per the approved building plan and the small basement is within the permissible limit and the authorities can permit the same with penalty. The respondent No.8 has applied for the modified plan within the regulation of RMP-2015.

3. *Whether the Respondent No. 8 has obtained necessary permissions/ clearances from the Tamil Nadu pollution control board and other environmental laws and complying with their conditions imposed.*

The report of KSPCB clause 9(iii) states that there is no encroachment made by the respondent No.8. Hence the CFE Conditions is compiled which is the major allegations made by the applicant.

4. *If there is any encroachment in the water body and is the nature of remedial measures to be taken to restore the water body to its original position.*

As the clauses 9(i), 9(iii) and 9(iv) it is comprehensible that there is no encroachment of the Rajakaluve by the respondent No.8 or the project authority.

5. *To assess the environment damage caused and also assess the environmental compensation for the violations committed, if any b 8th respondent including the cost required for restoration of the damage caused to the environment to its original position.*

As the investigation/ inspection report of KSPCB there is no encroachment of the Rajakaluve by the respondent No.8 or the project authority and pertinent to state that debris have been cleared, the buffer zone is measuring 72.2 meters from the Rajakaluve to the building retaining wall, the STP is installed at 66.40 meters distance from the Rajakaluve and hence no damage has been caused to the environment.

The Investigation report submitted by KSPCB dated 22/04/2022 and the letter of BDA dated 21/04/2022 is herewith produced as Annexure-A and B respectively.

Prayer

WHEREFORE, in the view of the above facts and the reports submitted by KSPCB, Bangalore, it is humbly prayed that the application may kindly be dismissed and any order as the Hon'ble Tribunal deems fit and proper in the interest of justice and equity. However, the respondent shall abide by any order and directions, if any, passed by this Hon'ble Tribunal.

Bangalore

Date: 8/1/2023



Advocate of Respondent No.8

Brinda AS

Action taken report of the Joint Committee as per the direction of the Hon'ble NGT passed in OA No.33 of 2022 (SZ) relating to the encroachment into the water bodies while developing the land by the 8th respondent – The Managing Partner, M/s. DS-Max Properties Private Limited with respect to the Multi-storeyed residential apartment project in the name of DS Max Sangam Grand at Sy.no.92/3, 92/4, 92/5, 92/6 of Seegehalli Village, Bidarahalli Hobli, Bengaluru East Taluk, Benagluru Urban District

Preamble:

Sri. J.Jagan Kumar, resident of Bengaluru has filed application at Hon'ble National Green Tribunal, Southern Zone (SZ), Chennai with regard to the encroachment into the water bodies while developing the land by the 8th respondent – The Managing Partner, M/s. DS-Max Properties Private Limited with respect to the Multi-storeyed residential apartment project in the name of DS Max Sangam Grand at Sy.no.92/3, 92/4, 92/5, 92/6, Seegehalli Village, Bidarahalli Hobli, Bengaluru East Taluk, Benagluru Urban District. The builder/Developer is constructing apartment building, swimming pool and other permanent structures within the stream/water body buffer zone by encroaching the buffer zone of stream/water body, dumping construction waste/debris into and along the stream/water body, constructing additional basement floor, i.e., 2 Basement floors and reduced the set back/passage to approximate 3 meters on either side and exploiting using huge groundwater for their construction activities in blatant and deliberate violation of sanctioned plan approval and Environmental Clearance in broad day light for their personal gain without the fear of the Authorities and Law and hence the same has been admitted in Hon'ble NGT (SZ) in the name of Original Application No.33 of 2022(SZ).

The Hon'ble National Green Tribunal, Southern Zone, Chennai has passed an order dated 16.03.2022 with respect to Original Application No.33 of 2022 regarding to the encroachment into the water bodies while developing the land by the 8th respondent. In the said order, Hon'ble NGT has appointed a Joint Committee comprising of Deputy Commissioner/District Collector, Bengaluru Urban Distric or his nominee not below the rank of Assistant Commissioner or Sub Divisional Magistrate as deputed by him, a Senior Officer from Ministry of Environment, Forest and Climate Change (MoEF & CC), Integrated Regional Office Bengaluru, a Senior Officer from State Level Environment Impact Assessment Authority-Karnataka (SEIAA), a Senior Officer from Bangalore Development Authority, Bengaluru (BDA) and a Senior Officer from Karnataka State Pollution Control Board (KSPCB), Bengaluru as deputed by its Chairman and has directed this Joint Committee to inspect the area in question and submit a factual as well as action taken report, if there is any

ch. P. S. Venkatesh

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violation found and also Karnataka State Pollution Control Board has been made as Nodal Agency for co-ordination and for providing necessary logistics for this purpose.

In order to implement the Hon'ble NGT (SZ) order dated: 16.03.2022, the Karnataka State Pollution Control Board had issued an Office Memorandum vide no.PCB/01/Infra/GEN/22/337 dated 13.04.2022 w.r.t constitution of Joint Committee consisting of the following Departments: Copy of OM is herewith annexed as Annexure-I.

1. The Deputy Commissioner, Bengaluru Urban Dist as Joint Committee Chairman.
2. Dr. Murali Krishna Chimata, Scientist 'E', Senior Officer from the Regional Office, MoEF and CC, South Zone, Bengaluru nominated as member.
3. Senior Officer (SEIAA) as member
4. Senior Officer (BDA) as member
5. Sri.Shivappa Naik, The Zonal Senior Environmental Officer, Bengaluru East, KSPCB, nominated as member.
6. Sri D.P.Mahendra, Regional Officer, Regional Office-Mahadevapura, KSPCB, nominated as Convener.

Accordingly, SEIAA & BDA has nominated the Officers vide letters dated 18.04.2022 & 20.04.2022 viz., Sri.Mahadevagowda, Executive Engineer from BDA and Sri.Suhas.H.S, Scientific Officer Grade-1, Forest, Ecology and Environment Department from SEIAA respectively. Copy of the nomination letters of SEIAA & BDA is herewith annexed Annexure-II.

Further, as per the instructions of the Deputy Commissioner (Bengaluru Urban Dist), the spot inspection of DS Max Sangam Grand apartment located at Sy.no.92/3, 92/4, 92/5, 92/6, Seegehalli Village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru Urban District was carried out by the Joint Committee on 19.04.2022 wherein following Officers were accompanied for inspection to ascertain the ground reality.

1. Sri.Shivanna, Assistant Commissioner, Bengaluru North.
2. Sri.Ajith Rai, Tahsildar, Bengaluru East Taluk
3. Dr. Murali Krishna Chimata, Scientist 'E', Senior Officer from the Regional Office, MoEF and CC, South Zone, Bengaluru.
4. Sri.Santhosh, Assistant Director of Land Records (ADLR), Bengaluru East Taluk
5. Sri.Shivappa Naik, Zonal Senior Environmental Officer, Bengaluru East, KSPCB
6. Sri D.P.Mahendra, Regional Officer, Regional Office-Mahadevapura, KSPCB
7. Sri.Mahadevagowda, Executive Engineer, BDA

The photographs taken during inspection are herewith annexed Annexure -III. The observation of the joint committee and action taken report, as per the direction of the Hon'ble NGT has been mentioned in detail and in this regard separate table is prepared as below.

Dr. Murali Krishna

TABLE

Directions No	Subject of Directions	Observations of Joint Committee	Action taken report
9 (i)	Whether there was any encroachment into the water bodies by the 8 th respondent as alleged in the application and if so, what is the nature of encroachment and what is the nature of action taken by the regulators,	There is an existing Rajakaluve towards Southern side of DS Max Sangam Grand apartment project. As per building plan approved by BDA, the Sewage Treatment Plant (STP) location has been marked towards North-West side of the building in basement floor. However, as observed during inspection, STP has been constructed towards South-West side of the building. Hence, The Assistant Director of Land Records (ADLR) was directed to undertake a survey of the project area viz., Sy.no. 92/3, 92/4, 92/5, 92/6 and submit the survey sketch of buffer zone details showing the distance between the rajakaluve to project building retaining wall and to the STP.	ADLR has submitted the survey sketch of buffer zone in Sy.no. 92/3, 92/4, 92/5, 92/6, Shigehalli village, Bidarahalli Hobli as per which the distance from the center of Rajakaluve to STP is 66.40 meters and distance from the center of Rajakaluve to the building retaining wall is 72.20 meters. Also, it is stated in the said sketch that, there is a canal on the northern side of Sy.no. 92/3, 92/4, 92/5, 92/6 as per survey records and it is an existing public road as per the actual spot. Copy of the sketch is herewith annexed as Annexure-IV . As per the above said survey sketch details, it is ascertained that, there is no encroachment made by the Project authority.
9 (ii)	Whether there are any violations of the conditions imposed in the Environmental Clearance (EC) and the permit plan for the project committed by the 8 th respondent, if so, what is nature of violation committed and what is the impact of that violation on environment	DS Max Properties Pvt. Ltd has obtained Environmental Clearance (EC) from SEIAA vide no.SEIAA 45 CON 2018 dated 09.05.2018. Copy is herewith annexed as Annexure-V . Further, on the day of inspection, STP was not installed, which was supposed to be installed prior to completion of second floor itself and got to be certified by an independent expert, which is a violation of EC condition. On the day of inspection, two borewells were also	The Executive Engineer, BDA has submitted a letter dated 21.04.2022 stating that, during site inspection on 20.04.2022, it is observed that, the set backs are as per sanctioned plan, but there is small basement construction observed which covered very permissible area as per site condition, for which builder have applied for modified plan. The modified plan within the regulation of RMP-2015, authority may permit with penalty fee and regularization can be possible. Copy of BDA letter is herewith annexed as Annexure-VI . The project authorities have not submitted half yearly

ch. P. N. Krishna

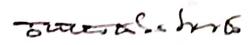
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		<p>seen in the project site and project authority has not produced copies of permissions obtained for drawl of groundwater from Central/State Ground Water Authority, which is a violation of EC condition.</p> <p>EC & BDA plan approval has been obtained for building configuration of 1BF+GF+4UF+TF. However, as observed during inspection, the project authority has constructed additional basement floor.</p>	<p>compliance reports to the Regional Office of the Ministry which is a mandatory EC condition. In the absence of said compliance reports, it is not possible to ascertain the status of compliance of any EC conditions.</p>
9 (iii)	<p>Whether the 8th respondent had obtained necessary permission/clearances from the Tamil Nadu Pollution Control Board and other environmental laws and complying with the conditions imposed.</p>	<p>DS Max Properties Pvt. Ltd has obtained Consent for Establishment (CFE) order from KSPCB vide no.CTE-314482 dated 28.08.2019 with validity co-terminus with the validity of EC. Copy is herewith annexed as Annexure-VII.</p>	
9 (iv)	<p>If there is any encroachment into the water body what is the nature of remedial measures to be taken to restore the water body to its original position,</p>	<p>There is no encroachment into the Rajakaluve. Except Rajakaluve on Southern side of the project, there is no other water body present.</p>	<p>Not applicable</p>
9 (v)	<p>To assess the environmental damage</p>	<p>There is no encroachment into the Rajakaluve and no environmental damage caused.</p>	<p>Not applicable</p>

sh. P. Pratik Krishna  

<p>caused and also assess the environmental compensation for the violation committed, if any, by 8th respondent including the cost required for restoration of damage caused to the environment to its original position.</p>		
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Hence, we submit this report along with Annexure I to VII before the Hon'ble National Green Tribunal (South Zone) for kind consideration.

Chinnappa M.G
 Assistant Commissioner
 (Bengaluru North)
 and Chairman of the Joint Committee

Ch. Punali Krishna
 Scientist 'E', Senior Officer, Regional Office,
 MoEF and CC, South Zone, Bengaluru &
 Joint Committee Member

[Signature]
 Senior Environmental Officer, Bengaluru
 East, KSPCB,
 & Joint Committee Member

[Signature]
 Environmental Officer, Regional Office-
 Mahadevapura KSPCB, Bengaluru and
 Member Convener

[Signature]
 Executive Engineer
 BDA
 Joint Committee Member

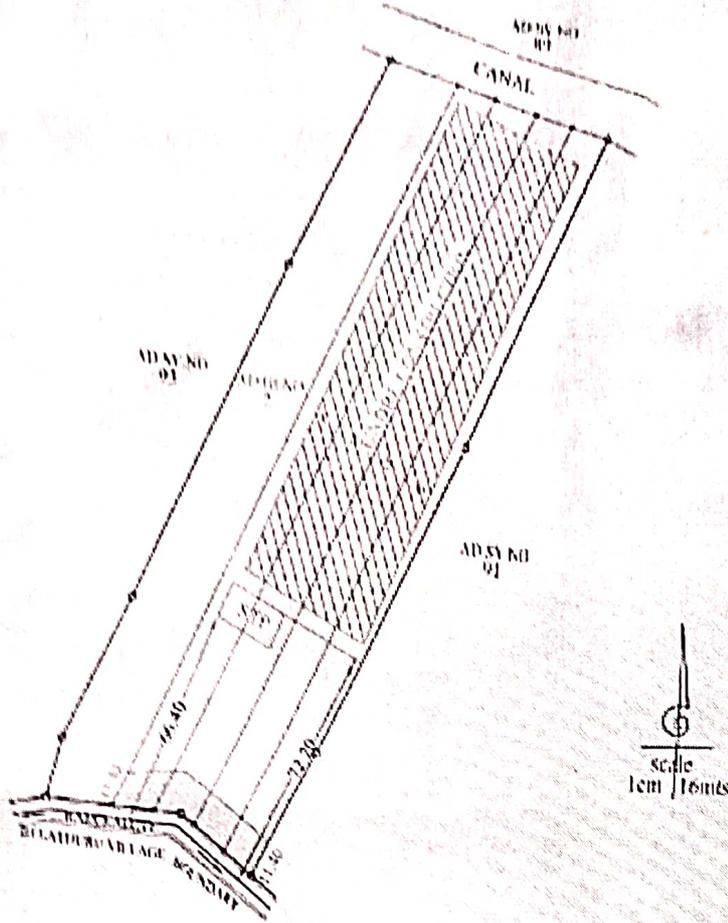
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 Deputy Commissioner,
 Bangalore Urban District
 Bangalore

VILLAGE - SHIGGHALLI

HOBLI - BIDARAHALLI

TALUK - BENGALURU EAST

Sketch Showing Sy.No. 92/3,4,5,6 Buffer zone Sketch



1. The sketch of Buffer Zone in Sy No-92/3,4,5,6 of Shigghalli Village, Bidarahalli Hobli, is prepared as per the Order Dated-18.03.22 of O.A /33/2022 (SZ) of Hon'ble National Green Tribunal South Zone and Letter of Pollution Control Board PCB/01/NFRA/GEN/ 22/337 and Office Memorandum ADLR (P)MISC/32/22/23 Of ADLR Office, Bangalore East Taluk.
2. The area marked by this colour, measures 11.40m which is the existing Rajukaluve and it is not shown in the Survey Records.
3. The Line marked by 66.40 this colour is the line showing the distance from the center of the Rajukaluve to S.T.P, and it measures 66.40 Mts.
4. The Line marked by 72.20 this colour, is the line showing distance from the center of the Rajukaluve to the building retaining wall and it measures 72.20 Mts.
5. There is Canal on the northern side of the Survey No 92/3,4,5,6 as per Survey Records and it is an 'existing public road' as per the actual spot.

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 19/4/2022
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 19/4/2022
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ANNEXURE - B

ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ

Bangalore Development Authority

No: BDA/EE(E)/ 45 /2022-23

Office of the Executive Engineer
East Division,
BDA, HSR BDA Complex
Bangalore. Date: 21.04.2022

To,

The Member Secretary,
Karnataka State Pollution Control Board,
Parasara Bhavan, 1st to 5th Floor, No 49, Charch Street,
Bangalore - 560001

Dear Sir,

Sub : Reply for NGT order No: 33 of 2022 (SZ)
Ref : 1) National Green Tribunal Southern Zone, Chennai, No:
33/2022 dated: 16.03.2022.
2) KSPCB Office Memorandum No: PCB/01/Infra/
GEN/22/337 date: 13.04.2022)

* * * * *

With reference to above subject, we would like to submit that as per NGT direction vide letter under reference, the site inspection carried out on 20.04.2022. During the site inspection we have observed the set backs as per sanctioned plan, but there is small basement construction observed which covered very permisable area as per site condition, for which builder have applied for modified plan. The modified plan within the regulation of RMP - 2015, authority may permit with penalty fee and regularisation can be possible.

For kind submission.

Yours faithfully


Executive Engineer,

East Division,

BDA, Bangalore