

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH, CHENNAI

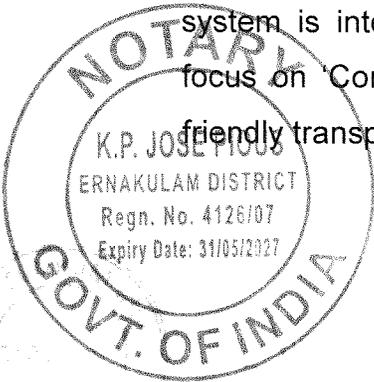
ORIGINAL APPLICATION No. 34 of 2022

K. G. Prathapa Simhan : Applicant
Vs.
Union of India and others : Respondents

REPLY AFFIDAVIT FILED BY THE 3RD RESPONDENT

I, Shaji P.J., aged 51 years, S/o Late P.A. Janardhanan, Chief General Manager (Water Transport), Kochi Metro Rail Ltd. presently residing at Dulcet-4A, Olive Courtyard, Edachira, Kakkanad, Kochi-682030, do hereby solemnly affirm and state as follows.

1. I am the Chief General Manager (Water Transport) of the 3rd respondent in the above Original Application (O.A.) and am duly authorised to represent the 3rd respondent. I am conversant with the facts of the case.
2. All the averments and allegations in the O.A. are denied except those that are specifically admitted hereunder.
3. The above O.A. is filed challenging the construction of High Court Terminal of Kochi Water Metro Project and to direct the 3rd respondent to remove all constructions which are made for the said Terminal as well as other reliefs.
4. It is respectfully submitted that the subject matter of the present O.A. has a chequered history which has gone up to the Hon'ble Supreme Court and dismissed thereon. This respondent was assigned with the task of executing an Urban Water Transport Project named the 'Kochi Water Metro Project' on behalf of the Government of Kerala (GoK). The project is ideated as a user oriented and socially inclusive transport system with intermodal connectivity between jetties, bus terminals and metro network to ensure that the waterway system is integrated with the entire public transport system of the City with focus on 'Connecting People'. On implementation, it will be an environment friendly transport system of such wider dimensions for the first time in the world.



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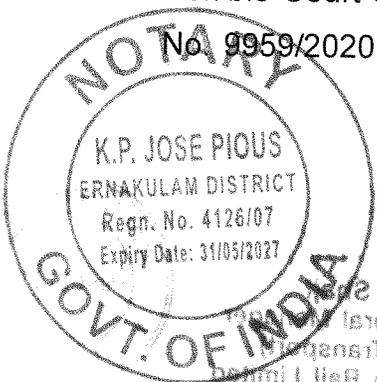


The project envisions fifteen (15) identified routes connecting thirty-eight terminals across ten (10) island communities across 78.2 km channel length and 2 boatyards.

5. It is further submitted that the layout for all 38 terminals were designed to offer seamless accessibility to all including differently abled and includes waiting area for passengers. The terminals have been designed with CCTV systems, access control and fare gate system to ensure inclusiveness and security to even the most vulnerable groups. The boats are electrically propelled twin-screw aluminum catamaran powered by Li-titanate batteries and are environment friendly. Boarding and disembarkation of passengers will be carried out from floating pontoons which makes the system differently abled friendly.

6. It is respectfully submitted that the contract for construction of High Court Terminal was awarded to Mary Matha Infrastructure Pvt. Ltd. (Contractor) in 2019. The High Court Terminal is designed as an open pile structure with floating pontoons to facilitate natural free flow of water. The design together with the plan and elevation was approved by the 1st respondent and the State Wetland Authority of Kerala (hereinafter referred to as SWAK) after extensive and rigorous scrutiny. All necessary clearances and no-objection certificates as are required for the High Court Terminal were obtained from the various statutory authorities. The final clearance for the project was given by the 1st respondent on 01.10.2019 vide Annexure A 1.

7. While the construction works were progressing, one Sri. Joe Joseph, a resident of Ashoka Apartments (resident of Apartment No.A-63 whereas the present applicant is a resident of Apartment No.A-53) situated near the proposed High Court Terminal filed W.P.(C).No. 9959/2020 before the Hon'ble High Court of Kerala, challenging the implementation of the project raising frivolous and baseless allegations inter alia claiming that the construction of the Terminal will deprive the residents of Ashoka Apartment, sea view and will affect free flow of air and water. This respondent filed a detailed counter affidavit in the said writ petition narrating all relevant facts before the Hon'ble High Court. After a detailed consideration of the allegations on merits, the Hon'ble Court of Kerala as per judgment dated 13.01.2021 dismissed W.P.(C) No. 9959/2020. Copy of the judgment dated 13.01.2021 is produced herewith



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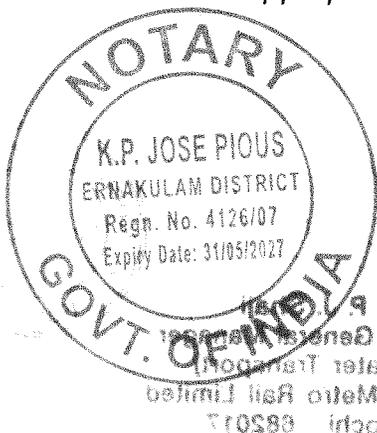


9. It is respectfully submitted that in view of the afore circumstances, especially Annex.A3 judgment of the Division Bench of the Hon'ble High Court of Kerala, which was affirmed by the Hon'ble Supreme Court, this respondent filed WP(C) No.13631/2022 for interdicting the interim order dated 21.03.2022 passed by this Hon'ble Tribunal, which was obtained ex parte by grave misrepresentation and suppression of material facts by the present applicant. In fact, the deliberate ploy by the present applicant had resulted in interdicting the 1st and 2nd respondents from taking a final decision pursuant to Annex. A3 judgment.

10. It is respectfully submitted that the averments contained in paragraphs 1 and 2 of the O.A. are frivolous and preposterous, hence denied. As already contended in paragraph 6 above, all necessary clearances and approvals were obtained by the respondent before commencement of the construction activities. It is reiterated that there are neither any illegalities or violation of the Coastal Regulation Notification, 2011 nor any adverse impact on the coastal ecology by the construction undertaken for the High Court Terminal of Kochi Water Metro Project.

11. The averments and allegations contained in paragraph 3 is vexatious and contrary to the true state of affairs which are very well within the information of the present applicant as revealed by the detailed counter affidavits filed by this respondent in WP(C) 9959/2020 as well as in WP(C) No. 14014/2021. It is submitted that in WP(C) No. 9959/2020, it was also alleged that nearly 3000 Sq. Ft. backwaters have been illegally reclaimed to commence the construction. This respondent (5th respondent in said case) had filed a detailed counter affidavit elucidating all the factors and especially in paragraph 13 regarding the alleged reclamation as follows;

'It is humbly submitted that the allegation of petitioner that the 6th respondent has illegally reclaimed 3000 Sq. Ft. of backwaters to commence the construction is absolutely false. The bunding done by the 6th respondent is purely a temporary arrangement to commence piling. The said method is the most efficient and safe method to commence the construction in order to avoid damage to the adjoining structures. Other options will require extensive dredging near to the shore to install pile rigs which may weaken the adjoining structures and lead to collapse of the existing broad walk. The 6th respondent has adopted the most appropriate and safe measures to commence construction activities and



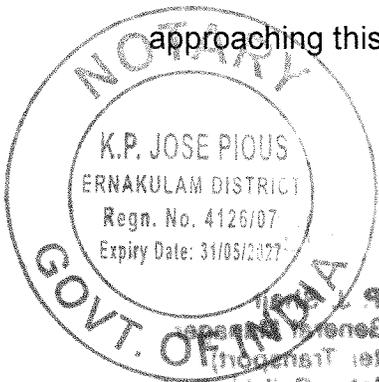
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and marked as **Annexure R3-1**. After Annex. R3-1 judgment, the present applicant, who is also a resident of the Asoka Apartments filed W.P.(C) No. 14014/2021 before the Hon'ble High Court of Kerala, camouflaging it as a Public Interest Litigation. Copy of the said Writ Petition without Exhibits is produced herewith and marked as **Annexure R3-2**. When the said Writ Petition came up for consideration before the Division Bench of the Hon'ble Court, this respondent pointed out Annexure R3-1 judgment. Even though the present applicant has made a prayer to quash Annex.A1 in the said writ petition, when the Writ Petition came up for final hearing, he limited his prayer for consideration of representations submitted by him before the 1st and 2nd respondents herein (Exhibits P7 and P6 in the said Writ Petition). The Division Bench of the Hon'ble High Court of Kerala headed by the Chief Justice disposed of the Writ Petition vide Annex. A3 judgment directing the 1st and 2nd respondents to consider Exts.P6 and P7 within one month from the date of receipt of the copy of the judgment. On 22.10.2021, the 2nd respondent herein submitted application to enlarge the time for compliance of the directions contained in Annex. A3 judgment. In the interim, the present applicant challenged Annexure A3 judgment before the Hon'ble Supreme Court by filing Special Leave Petition (SLP) No. 15447/2021. A copy of the SLP without Annexures is produced herewith and marked as **Annexure R3-3**. However, the SLP was dismissed by the Hon'ble Supreme Court vide its order dated 10.12.2021, a copy of which is produced herewith and marked as **Annexure R3-4**.

8. It is submitted that the present applicant, by deliberately concealing the filing of SLP and Annex. R3-4 order of the Hon'ble Supreme Court, filed the present O.A. before this Hon'ble Tribunal. The prayers in Annex.R3-2 and the present O.A. would go on to show that the substantial relief sought for by the 1st respondent is removal of the constructions at the High Court Terminal which are part of Kochi Water Metro Project. In paragraph 6 of the O.A., the present applicant refers to Annex.A3 judgment but just ignores the same by saying that no action is being taken, without revealing anything about Annex.R3-3 SLP and Annexure R3-4 order of the Hon'ble Supreme Court. In any view of the matter, if the applicant has a grievance that the direction in Annex. A3 judgment is not complied with or implemented, the remedy is definitely not by way of approaching this Hon'ble Tribunal by cunningly suppressing material facts.



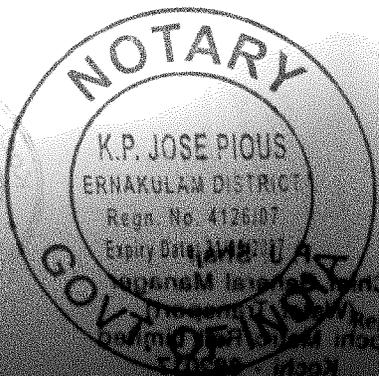
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Terminal is clearly visible in the second photograph which is taken towards shoreline. It is respectfully submitted that there arises no doubt regarding the requirement of water front for the operation of Kochi Water Metro.

15. It is submitted that the averments and allegations contained in paragraph 5 of the O.A. are inane and preposterous, hence denied. The averment that the present construction, though named 'Jetty' is not a jetty but a building intended for other purposes, which does not require waterfront is ludicrous and hence denied in its entirety. In Annex. R3-1, the Hon'ble High Court has specifically laid down that the term 'boat jetty' would include not only the landing terminal but also appurtenant building. The narrow meaning attributed by the applicant that 'jetty' is a long structure built out into water and used as a place to get on, get off or tie up a boat is nonsensical and is not at all applicable in the case of modern boats. Water metro is not akin to the conventional system where tickets are offered inside the boats and where boats are tied up to piers used for boarding and disembarkation of people. The Water Metro Terminal encompasses landing area, passenger waiting area and ticket counter which all cater to the operation of water metro and it is preposterous to state that 'jetty' does not contemplate construction of a building. It is respectfully submitted that the test shall be whether the Terminal is for facilitating the operation of Water Metro or for other purposes. Constructing different buildings for ticket counter, waiting area and other facilities is infeasible, will entail higher costs and will only be a loss to the public exchequer and will only exacerbate inconveniences and difficulties to the elderly and differently abled. It is also submitted that the applicant is challenging the construction activities after more than 3 years from the commencement of the construction, when critical works have already been completed spending substantial quantum of public money. It is pertinent to note that the applicant was not concerned even during the pendency of WP(C) 9959/2020, and the sudden concern arose by filing WP(C) 14014/2021 nearly six months after disposal of WP(C) 9959/2020 only goes on to prove the covert motives and ulterior personal interests of the applicant. It is respectfully submitted that the present O.A., filed by suppressing material facts from this Hon'ble Tribunal, also proves the surreptitious personal interests of the applicant.



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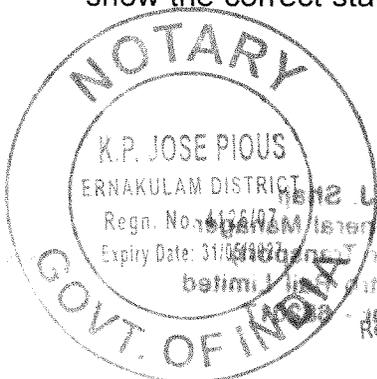


will restore the area to its original state on completion of the construction.'

12. The Hon'ble High Court while considering the said writ petition took due notice of the submission made by this respondent and dismissed the writ petition as per Annex. R3-1 judgment. A copy of the counter affidavit filed by this respondent in WP(C) No.9959/2020, without Exhibits is produced herewith and marked as **Annexure R3-5**. It is pertinent to note that Annex. R3-1 judgment was not challenged in appeal and hence has attained finality. The subsequent writ petition, WP(C) No.14014/2022 as well as the SLP, filed by the present applicant was also based on substantially similar questions. This respondent filed a detailed counter affidavit in WP(C) No. 14014/2022 as well, refuting the allegations of reclamation by the present applicant. A copy of the counter affidavit filed by this respondent in WP(C) No. 14014/2022 without Exhibits is produced herewith and marked as **Annexure R3-6**. It was clearly submitted in Annex. R3-6 as well that the construction of temporary bund was only aimed at facilitating the construction activities and that the process of restoration of the area has commenced and about 40% of the area is restored to its original condition. Hence, the above O.A., based on substantially similar questions contained in Annex. R3-2, R3-3 and WP(C) 9959/2020 is devoid of any merit and is liable to be dismissed as devoid of bonafides also.

13. In view of the afore contention as well as the contentions in paragraph 6 above, it is respectfully submitted that the averments and allegations contained in paragraph 3 that the High Court Terminal is constructed on the backwater by reclaiming it and not on pillars is frivolous and inane, hence denied in its entirety. The open pile structure of the High Court Terminal is clearly visible in the second photograph of Annex. A2 submitted by the applicant himself. It is submitted that the restoration of the area is almost complete as of now.

14. The averments and allegations contained in paragraph 4 of the O.A. as well as Annex. A2 photographs, except the second photograph, are frivolous, misleading and fails to evoke the true state of affairs for the consideration of this Hon'ble Tribunal, and are hence denied. It is submitted that most of the Annexure A2 photographs except the second one are taken from the land and the google earth photograph from the top. The said photographs are unable to show the correct status of the Terminal. However, the open pile structure of the



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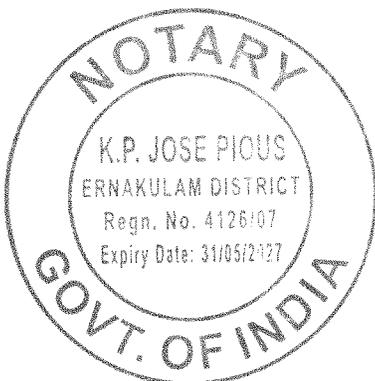
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16. It is submitted that the averments and allegations contained in paragraphs 6 and 7 of the O.A. are aimed at misleading this Hon'ble Court. If the applicant is aggrieved by the alleged inaction of 1st and 2nd respondents pursuant to the directions contained in Annex. A3 judgment, the applicant should have resorted to the proper legal remedy and it is not by filing the present O.A. by suppressing material facts from this Hon'ble Tribunal. There is no violation of CRZ norms by the construction of the High Court Terminal as averred. There is no reclamation of backwaters for the said purpose as averred. In view of the afore contentions, all the grounds stated in the O.A. are unfounded and hence denied. The statement under 'Limitation' that the applicant made representations to respondents 1 and 2 on 15.06.2019 and 01.10.2019 is false and frivolous, hence denied. The applicant has in WP(C) 14014/2021 has stated that he made representations (Exhibits P6 and P7 therein) only on 01.07.2021.

17. It is respectfully submitted that the applicant is experimenting with legal process by making frivolous allegations and wasting the time of different judicial forums which goes on to prove his apathy to the entire legal system. The chain of litigations and the unfounded allegations makes it pellucid that the applicant is only trying to protect his clandestine personal interests and is not genuinely concerned about any public or environmental welfare. This respondent has conducted necessary studies and analysis, passed the rigors of scrutiny and inspection by relevant statutory authorities and had obtained all requisite permissions including environmental clearance for implementation of the Project. The construction activities undertaken by this respondent is in line with the statutory provisions, statutory clearances and CRZ norms. The petitioner has no locus standi to approach this Hon'ble Tribunal. The petitioner has approached this Hon'ble Tribunal with untidy hands and malevolent intentions and by suppressing material facts.

18. It is respectfully submitted that the removal of the temporary bunding is almost complete and the area is restored to its original condition. The inauguration of the Water Metro service is also expected during September/October, 2022. Any interference at this point of time will adversely affect the implementation of the Project as well as the time line for completion and may also tend to reduce confidence of the foreign lender in the Project



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implementation. Moreover, delay of any sort at this juncture will also result in cost escalation and claims from the contractor which in turn will have an unpropitious effect on the state exchequer as well.

In the above circumstances, it is humbly prayed that the applicant is not entitled to any of the reliefs prayed for in the O.A. The questions raised in the O.A. have already been considered and settled by the Hon'ble High Court of Kerala in Annex. A3 judgment, which has been affirmed by the Hon'ble Supreme Court vide Annex. R3-4. The present O.A., marred by malafides and blemished with clandestine personal interests may be dismissed with exemplary costs to this respondent.

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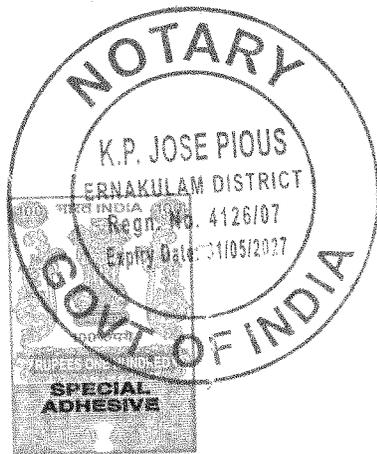
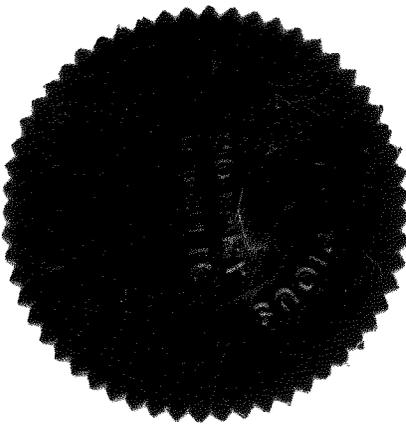


Solemnly affirmed at Kochi
On this the ___ day of August,
2022 and signed his name
in my presence.

Before Me,

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REPLY AFFIDAVIT

M/s. Fox Mandal & Associates

Counsel for 3rd Respondent

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