

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHER ZONE AT CHENNAI**

APPEAL NO.05 OF 2022

BETWEEN

Shaji A.K.
S/o. Kuryakose, Arakkal House,
Perinkari PO, Kannur District – 670706, Kerala.

...Appellant

AND

Ministry of Environment, Forests & Climate Change,
Indira Paryavaran Bhawan, Jor Bagh, Ali Ganj, New Delhi – 110 003,
Represented by its Secretary and Ors.

...Respondents

REPLY STATEMENT FILED BY THE 2 to 4 RESPONDENTS

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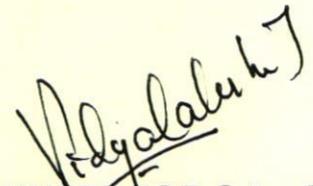
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Dated at Chennai on this 23rd day of May, 2022


COUNSEL FOR 2 to 4 RESPONDENTS

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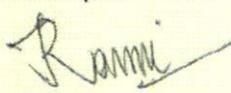
REPLY STATEMENT FILED BY THE 2 to 4 RESPONDENTS

I. RANI R.S., wife of Mr. Prabodh Chandran, aged about 45 years, working as Legal Officer, SEIAA at Thiruvananthapuram, do hereby solemnly affirm and sincerely state as follows:-

I am well acquainted with the facts of the case from the available records and I am authorized to file this Reply on behalf of the 3rd Respondent. I crave leave of the Hon'ble Tribunal to file reply as and when additional facts are available to the Respondent.

1. It is submitted that this respondent denies all the allegations and averments raised by the Applicant against this Respondent except that are specifically admitted. It is submitted that the Respondent submit certain facts, which are necessary for the present Application. It is submitted that, it is short reply placing all facts and circumstances as per available records. It is further submitted that the Respondent seeks further liberty of this Hon'ble Tribunal to file additional reply, if any.
2. It is submitted that Shri.Anwar Sadath, Director, M/s Calicut Landmark Builders & Developers Pvt. Ltd, Landmark world, NH-17 bypass, Kozhikode-673014, vide his application dated 24.11.2018 has sought Environmental Clearance under EIA Notification, 2006 for the proposed Mixed use Township Development Project "Landmark Trade Centre" in Survey Nos. 27/1, 30/4c, 31/4, 7, 8, 9, 32/4, 351b of Patheerankavu Village, Olavanna Panchayat, Kozhikode Taluk & Kozhikkode District, Kerala. It is inter alia, noted that the project comes under the Category B of Schedule 8(a) of EIA Notification 2006.
3. It is submitted that the proposed Mixed-use Township development consisting of 2 residential towers (210 units, studio apartment (204 units), Business Park, 70 key hotels with restaurant facility and 500 pax convention centre and a club house. The total plot




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area of the project is 3,309 ha and the total built up area is 81,589 sq.m. The maximum height of the proposed building is 44.80 m. The parking proposed is 775 cars and 2900 two-wheelers.

4. It is submitted that the proposal was considered in the 89th SEAC meeting held on 04th December 2018. The proponent presented the details of the project in the said meeting. After scrutinizing the project, it was decided to seek following details from the proponent. **(The copy of the extract of the minutes herein attached)**

1. Measures taken to segregate floating population
2. Need assessment mechanism to be ensured with CER
3. Report from pollution control Board
4. Measures taken to prevent minor subsidence due to sub-surface clay patches.
5. Access road should have a minimum width of 14 m
6. Mechanisms to be taken for access to all type of people
7. Water management report
8. Report on evacuation

5. It is submitted that M/s Calicut Landmark Builders & Developers Pvt.Ltd furnished details vide their letter dated 07.03.2019. **(Copy of the Letter herein attached).**

6. It is seen that the subject was placed before 95th SEAC meeting held on 27th & 28th March 2019. The Committee entrusted Dr.N.Anil Kumar & Dr.A.V.Raghu for the field inspection. The subcommittee visited the project site on 03.05.2019. It is found that the proponent has started land development and construction before receiving environmental clearance and permit from local self-government. **(Copy of the 95th SEAC Meeting of the Minutes and field inspection report dated 03.05.2019).**

7. It is submitted that the proposal along with the Subcommittee report was placed in the 97th meeting of SEAC held on 21st & 22nd May 2019. The Subcommittee decided to recommend SEIAA for starting action against the proponent for violating relevant rules and regulations for issuing environmental clearance. **(The extract of the 97th SEAC Minutes of the Meeting herein attached)**

8. It is submitted that the matter was placed in the 93rd SEIAA meeting held on 30th May 2019. This Respondent accepted the recommendation of SEAC and decided the following

i. Direct the District collector and the Secretary, Kozhikode Corporation to issue Stop Memo and report compliance.

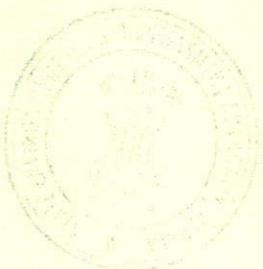
ii. Initiate violation proceedings against the proponent as per S.O 1030 (E) dt.08.03.2018 under EIA Notification 2006.



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- iii. It is submitted that the proponent submitted the representation dated 12.06.2019. The proponent requested that they doesn't comes under the purview of violation proceeding.
9. It is submitted that the proposal was again considered in the 95th SEIAA meeting held on 29th July 2019. This Respondent decided to stick to the above decisions taken in its 93rd meeting held on 03rd June 2019. Accordingly direction was given to the District Collector, Kozhikode and the Secretary, Kozhikode Corporation on 27.08.2019 to issue Stop Memo and report compliance.
10. It is submitted that the proponent submitted the documents dated 26.08.2019, has intimated that, as per Judgment of the Hon'ble Supreme Court in IA Nos-2609-2610 of 2009 in WP© No.202/95 filed by T.N.Godavarman Thirumulpad, no EC is required from SEIAA or MoEF for the building of a Township below the area of 1,50,000 sq.m and hence requested to consider their application at the earliest and to accept their request to invalid the decision of SEIAA based on the judgment.
11. It is submitted that the proposal was placed in the 97th SEIAA meeting held on 24th September 2019. This Respondent noted that the building permit was granted by Olavana Grama Panchayt on 26.10.2017. This project is basically a township development project but covered under category B (8a) of the schedule, as the built up area is 81589 sq.m, which is less than 1,50,000sq.m required for considering the project under township area development projects. All category B (8a) required EC .No doubt, the project of this magnitude will have environment impact and EC is mandatory under EIA Notification 2006. This was known to the proponent and he has applied for EC but started construction before issue of EC leading violation of EIA Notification 2006.
12. It is submitted that the proponent vide his letter dated 26.08.2019 addressed to Member Secretary has requested for withdrawal of violation proceedings quoting a Supreme Court Judgment in I.A. Nos 2609-2110 of 2009 in WP(Civil) No.2002 of 1995, dt.03.12.2010. He has enclosed copy of the Judgment also. A perusal of the Judgment shows that Supreme Court was analysing the reasons for classifying the projects under category 8(a) or 8(b) and ultimately Supreme Court was also of the opinion that there is an ambiguity in classification of category 8(a) & 8(b) projects based on the area. Finally Supreme Court decided that the project in question in UP state does not come under category 8 (b), as the area is less than 1,50,000 sq.mts and hence project does not fall within the limit of EIA Notification S.O 1533 (E) dated 14th September 2006. This judgment pertains to a different project in the State of Uttar Pradesh, specific to that project under given circumstance of the case and this may not be made uniformly applicable to other projects in the whole of the country.



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13. It is submitted that this Respondent noted that the proponent project is covered under category 8(a) and there is no ambiguity on that account and the proposal was processed accordingly right from the beginning for obtaining EC. In S.O 804(E) dated.14.03.2017, sub paragraph (3) in para 13 reads that "in cases of violation action will be taken against the project proponent by respective state or State Pollution Control Board under the provision of S.19 of the EPA Act 1986 and further no consent to operator or occupancy certificate will be issued till the project is granted EC".
14. It is submitted that in the mean time MoEF in its latest OM dated 09th September 2019 has clarified that the violation falling in the window period of 14.03.2017 to 13.09.2017 & 14.03.2018 to 13.04.2018 or prior to it, can be considered for initiating violation procedures under OM dated.14.03.2017 & 08.03.2018. MoEF & CC is silent on the violations that have taken place beyond this window period. In this instant case the violation has taken place beyond this window period.
15. It is submitted that this Respondent decided to take up the matter with MoEF & CC for an urgent clarification on this issue with directions for procedure to be followed for the violation that have taken place beyond the window period.
16. It is submitted that the letter has been sent to Director, MoEF & CC to consider the matter and furnish urgent clarification on this issue. But no report received. It is submitted that Shri.Anwar Sadath, Director submitted a request on 12.12.2019 enclosing a copy each of the judgment of the Hon'ble High Court of Bombay in WP (C) 470/2013 and judgment dated 10.07.2019 in WA 215/2018 and requested for personal hearing.
17. It is submitted that the proposal was considered in the 100th SEIAA meeting held on 23rd & 24th December 2019. It is submitted that this Respondent decided to wait for the reply from MoEF & CC, GoI, for further course of action.
18. It is submitted that the proponent again submitted a representation dated 28.12.2019 as appeal against the decision of this Respondent. It is submitted that the proponent also submitted an affidavit stating that the construction activities beyond 20,000 sq.m will commence only after getting EC from SEIAA. It is submitted that the proponent was invited for hearing at 101st SEIAA meeting on 17.01.2020. The Olavana Grama Panchayth Secretary, also invited to attend the meeting.
19. It is submitted that the proposal was placed before 101st SEIAA meeting held on 17th & 18th January 2020. This Respondent noted all the developments that have taken place after the submission of the application for EC. This Respondent also perused all the documents produced by the proponent in support of their claim that there had been no violations to EIA Notification 2006. It is submitted that the proponent appeared before this Respondent and stated that the construction work of only one building with built up area of less than 20,000 m² for which EC was not required, was commenced on site and in their application (Form1) they have wrongly stated the project, as a totally new project.

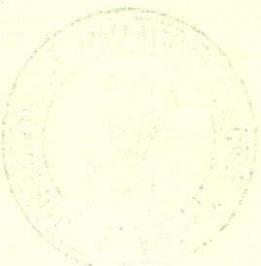


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He stated that, in fact the project is an expansion of the existing building and they have made a mistake in Form I by not mentioning it and they have apologized for the mistakes they have committed. It is submitted that proponent had requested to treat their application for the expansion of the existing building of area less than 20,000 m² up to which EC is not required. He has also stated that he will be careful in future and will not commit any irregularity in violation of EIA notification both during construction and operation phases of the project.

20. It is submitted that as per the direction of this Respondent, Panchayat Secretary, Olavanna Grama Panchayat had also appeared before this Respondent and stated that he had given a building permit [Permit No.A4-BA (90337)/2017 dt.26.10.2017] for the construction of a building with a total building area of 508.84 m². The Proponent stated that he has taken up the construction of only this building as permitted by the local authorities. Proponent had also given a written statement narrating all the above points.
21. It is submitted that as per para 7 (ii) of EIA Notification 2006, prior Environmental Clearance can be given for the expansion or modernization or change of product mix in the existing project. During the hearing the proponent has given an undertaking that no further construction activity will be taken in excess of 20,000 m² without taking prior Environmental Clearance under the provision of EIA Notification 2006.
22. Under the circumstance this Respondent decided to give approval for the project considering it as an expansion, subject to the following conditions.

1. In the SEIAA meeting held on 17th January 2020, after the personal hearing, proponent has given an undertaking and he shall scrupulously follow his undertaking during the construction and operation phase of the project.
2. Proponent shall not violate any rules and regulations under EIA Notification 2006 as well as other rules and regulations of Govt. Kerala applicable to this Project.
3. Proponent shall carry out all ameliorative measures to rectify the environmental damage caused if any, in the project region, due to present construction activity, as suggested by SEAC to the best satisfaction of SEAC.
4. During the pendency of EC, SEAC shall make an inspection and the proponent shall abide by the conditions if any suggested.
5. Activities relating to Corporate Environmental Responsibilities amounting to Rs. 7 crores shall be carried out leading to protection and promotion of environment including waste management in the project district as per OM F.No.22-65/2017-IA-III dt.01.05.2018 of MoEF& CC as directed by Director, Directorate of Environment & Climate Change and supervised by District Collector.
6. Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project (Circular No.J-11013/41/2006-IA.II(I) of Govt. MoEF dt.22.09.2008).



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23. It is submitted that the proposal was placed in the 110th SEAC meeting held on 11th & 12th February 2020. The Subcommittee consisting of Shri.K.Krishna Panicker and Dr.A.V.Raghu. was entrusted to conduct the field inspection and monitor the compliance of the conditions of the EC. **((The copy of the Field Inspection Report attached herein)).**
24. It is submitted that the Environmental Clearance was issued to Sri.Anwar Sadath, Director, M/s Calicut Landmark Builders & Developers Pvt.Ltd, Kozhikode as per order No. 1193/EC2/2018/SEIAA Dt.12/03/2020 for the period of 5 years from 12/03/2020 for the Mixed use Township Development project "Landmark Trade Centre" in Sy. No. 27/1.30/4c.31/4.7.8.9.32/4.351b of Patheerankavu Village, Kozhikode Taluk & Kozhikkode District, Kerala for an area of 3.309 hectares and the validity of EC will be expired on 11/03/2025.
25. It is submitted that the proposal was placed in 114th SEAC meeting held on 06th, 07th & 08th October 2020. The committee observed that construction of more than one building was started at the time of field inspection. Moreover, the entire land was modified/developed making it difficult to assess the damage to flora and fauna, natural landscape and natural drainage systems. However, the 101st SEIAA meeting disagreed with the SEAC recommendation. *As per clause 8 (ii) of EIA Notification 2006, "In case where the SEIAA disagrees with the recommendations of the SEAC, SEIAA shall request reconsideration by the SEAC"*. This procedure was not followed in this case. So, the Committee decided to bring this procedural lapse to the notice of SEIAA.
26. It is submitted that the proposal was placed in the 105th SEIAA meeting held on 22nd and 23rd October 2020. This Respondent noted the observation of SEAC for decided to request SEAC to take follow up actions on the EC conditions especially under items 3rd, 4th and 5th listed in the conditions. The Project Proponent shall follow the instructions given by SEAC and render all assistance to SEAC in complying conditions of EC to the best satisfaction of SEAC.
27. It is submitted that the proposal was placed in the 116th SEAC meeting held on 02nd, 03rd & 07th December 2020. The Committee decided to conduct field inspection as suggested by SEIAA and entrusted Shri.K.Krishna Panicker and Dr. R.Ajayakumar Varma for the same to recommend specific conditions as suggested by the SEIAA
28. It is submitted that the field inspection report was received on 09.02.2021 and Recommendation was suggested for the consideration of SEAC.(The copy of the Field Inspection Report is herein attached)
29. It is submitted that the 119th SEAC meeting held on 23rd, 24th & 25th February 2021. The Committee discussed and accepted the Field Inspection Report. The Committee decided to communicate to SEIAA the following recommendations for further consideration:
- Proponent may be directed to file compliance reports on time.
 - Emergency / second access suitable for fire engine movement must be developed.



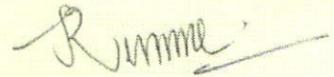
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- e. Water spraying must be done for dust control.
- d. Temporary accommodation for construction workers must be made as directed by SEIAA.
- e. Proponent must be directed to submit a reasonable time schedule for the implementation of CER activities.
- f. Necessary steps must be taken to prevent soil erosion from the soil dump area.

30. It is seen that the 108th meeting of SEIAA held on 22nd & 23rd March 2021. This Respondent decided to forward the field inspection report of SEAC to the Project Proponent with a direction to attend the observations of SEAC on priority and also directed the Project Proponent would be informed that the position of compliance of the directions of SEAC as well as other EC conditions would be reviewed after 6 months. and appropriate action should be taken for non-compliance including cancellation of EC.

Under the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to pass such order or orders as this Hon'ble tribunal may deem fit and proper in circumstances of the case and thus render justice.

Dated at Chennai on this the 23rd day of May, 2022

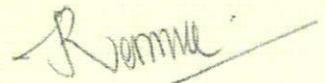


RESPONDENT Nos .2 TO 4

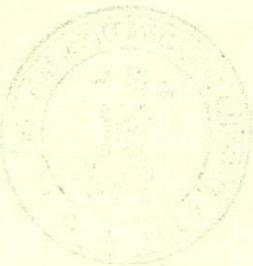
VERIFICATION

I, RANI R.S., wife of Mr. Prabodh Chandran, aged about 45 years, working as Legal Officer, SEIAA at Thiruvananthapuram, do hereby verify that the contents of paras 1 to 30 are true to the best of my personal knowledge and paras 1 to 30 believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this the 23rd day of May, 2022.



RESPONDENT Nos .2 TO 4



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