

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI
INTERLOCUTORY APPLICATIONS NO. 6 & 8 OF 2021

IN

O.A. No. 251 of 2020

KfW

...Applicant/ Respondent No. 6

Vs

Singaravellar Ocean Side Residents Welfare Association and Ors.

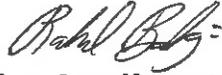
...Respondents

INDEX TO REJOINER AFFIDAVIT PAPERBOOK

S. No.	Document	Page No.
1.	Rejoinder Filed by the Applicant in the IA	1
2.	Annexure A- Legal Communication on behalf of Applicant in the IA to Respondents no. 1-4	19
3.	Letter from the applicant in the IA concerning Complaint on Storm Water Drainage Project in Chennai, to the Original Applicant	20

Certified that the above are true copies of the originals.

Dated at this the 30th day of March 2021 at Chennai.



Counsel for the Applicant/Respondent No. 6

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI

Interlocutory Application No. 6 of 2021 &
Interlocutory Application No. 8 of 2021

In

Application No. 251 of 2020



KfW, New Delhi, Represented by its Director
46, Paschimi Marg, Vasant Vihar, New Delhi – 110 057
Ph: 011-42534253 Email: kfw.newdelhi@kfw.de

...Applicant/
Respondent No.6

Vs

1. Singaravellar Ocean Side Residents Welfare Association,
(Regn No. 432/2012),

Represented by its Secretary, Padma Subramanian,

Having its office at C2/575, 3rd Cross Street,
Chinna Neelankarai, Chennai – 600 115.

Ph: 9660747397 Email: tanvin.s@gmail.com

...Respondent No.1/
Applicant No.1

2. VGP Golden Seaview Residents Welfare Association
(Regn No. 255/2018),

Represented by its Secretary, Lata Ganapathy, Having its
office at Corporation Park,

VGP 4th Main Road, Palavakkam, Chennai – 600 041.

Ph: 9660747397 Email: tanvin.s@gmail.com

...Respondent No.2/
Applicant No.2

N Balaji,

S/o L Nambi,

488 Amritha Street, VGP Layout,

Uthandi, Chennai – 600 119.

Ph: 9660747397 Email: tanvin.s@gmail.com

...Respondent No.3/
Applicant No.3

4. D Irudayadhas,

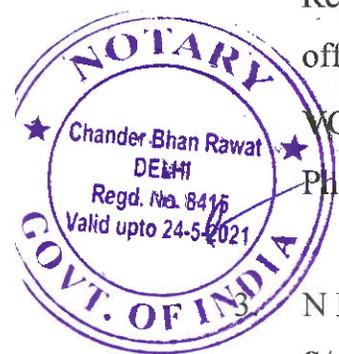
S/o Das Sebastin,

170A, The Oliver, VGP Gandhi Street,

Uthandi, Chennai – 600 119.

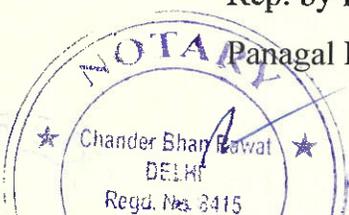
Ph: 9660747397 Email: tanvin.s@gmail.com

...Respondent No.4/



Applicant No.4

5. State of Tamil Nadu, Represented by its Secretary,
Municipal Administration & Water Supply (MAWS),
Secretariat, Fort St. George, Rajaji Salai, Chennai - 600
001. Ph: 044 – 25670491 Email: mawssec@tn.gov.in
...Respondent No.5/
Respondent No.1
6. The Commissioner,
The Greater Chennai Corporation, Ripon Building,
Chennai – 600 003. Ph: 044-25381330
Email: commissioner@chennaicorporation.gov.in
...Respondent No.6/
Respondent No.2
7. Chief Engineer (General), Storm Water Drains/Special
Project, Greater Chennai Corporation, Ripon Building,
Chennai – 600 003. Ph: 9445190500
Email: chiefengineer.swd.roads@gmail.com
...Respondent No.7/
Respondent No.3
8. The Superintending Engineer,
Storm Water Drain/Special Project,
Greater Chennai Corporation, Ripon Building,
Chennai – 600 003. Ph: 9445190735
Email: sebr@chennaicorporation.gov.in
...Respondent No.8/
Respondent No.4
9. Assistant Executive Engineer (Storm Water Drains),
Zone 15, No. 120, Rajiv Gandhi Salai, Sholinganallur,
Chennai – 600119. Ph: 044-25619315
E-mail: Not known
...Respondent No.9/
Respondent No.5
10. Ministry of Forests and Climate Change (MoEF &CC),
Rep. by its Secretary,
Indira Paryavaran Bhawan,
Jorbagh Road, New Delhi- 110 003
Ph: 011-24695262 Email: secy.moef@nic.in
...Respondent No. 10/
Respondent No. 6
11. Tamil Nadu Coastal Zone Management Authority
(TNCZMA),
Rep. by its Secretary,
Panagal Building, Saidapet, Chennai-600 015



**REJOINDER TO THE COUNTER AFFIDAVIT FILED ON BEHALF OF
RESPONDENT NOS. 1 - 4**

I, Christoph Wilhelm Kessler, S/o Herbert Alfons Kessler, aged about 64 years, resident of B5, Westend Colony, New Delhi 110021, do hereby solemnly affirm on oath and state as under:

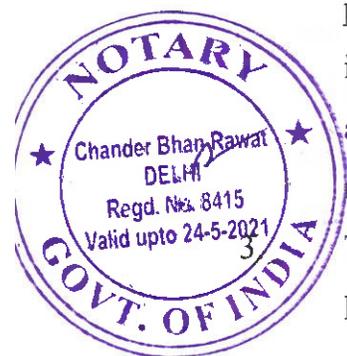
1. I am the Authorized Representative of the Applicant in I.A. Nos. 6&8 of 2021 (being Respondent No. 6 in O.A No. 251 of 2020) and I am well conversant with the facts and circumstances of the present case. As such, I am competent to swear this affidavit on behalf of the Applicant in I.A. Nos. 6&8 of 2021 (being Respondent No. 6 in O.A. No. 251 of 2020). The contents of this affidavit are based on advice that I have received and I have relied on advice of my legal counsels on Indian law to counter the submissions made in the Counter Affidavit filed by Respondent Nos. 1-4 and as such my submissions herein be taken to be based on advice from my legal counsels received.

Preliminary Submissions

2. At the outset, the KfW Development Bank- Applicant/ Respondent No.6 would like to highlight that it is a financing institution and not a project implementing agency. As a responsible development financing institution, any funds it disburses is contingent on compliance with all applicable laws and regulations, including all environmental laws and regulations.

There is nothing in the Counter Affidavit of Ms. Lata Ganapathy that has addressed the core issue raised in our Applications that nothing in the National Green Tribunal Act and Rules governs financing activities, as stated in para 24 of the I.A. No.8 of 2021. The obligation to ensure compliance with all applicable laws and regulations, including all environmental regulations, lies on the project implementing agency.

4. The Counter Affidavit filed on behalf of the Respondent Nos. 1 to 4 also continues to ignore the fact as explained in the Application seeking Deletion (I.A. No. 8 of 2021), that Applicant/Respondent No.



4

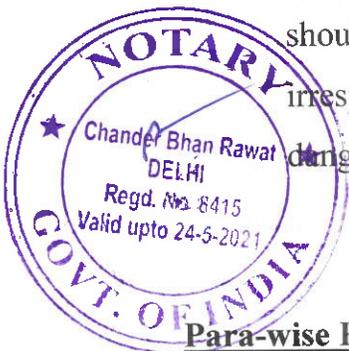
6 has indeed entered into agreements relating to financing of the Integrated Storm Water Management System in the Kovalam Basin watershed of Chennai (“Project”) at a government level and is not undertaking project implementation works. The agreements entered into are with the Government of India. It is the Government of India which is the “borrower” from the Applicant/ Respondent No.6, and channels the loans to the Government of Tamil Nadu and through Government of Tamil Nadu to the Greater Chennai Corporation (“GCC”) (Respondent No. 2 in O.A 251/2020), which is identified as the project implementation agency. The loans and financing agreements are predicated on compliance with all applicable legal requirements, and statutory permissions.

5. Applicant/ Respondent No.6 takes its responsibility for ensuring financing of projects that contribute to sustainable development very seriously. It is also a matter of fact that pursuant to the interim report of the Joint Committee being issued, the Applicant/ Respondent No.6 recommended the initiation of an independent assessment relating to environmental compliances by IIT-Madras, pursuant to which the Greater Chennai Corporation (Respondent No. 2 in O.A 251/2020), has engaged IIT-Madras for the same.
6. From the Counter Affidavit filed on behalf of Respondents No. 1 to 4, it is clear that the Applicant is certainly not a necessary or proper party for the conduct of these proceedings before the Hon’ble Tribunal.
7. The Counter Affidavit alleges that the Applicant/Respondent No.6 has taken the position that no environmental clearances are required. This is completely false and without any basis, and belied by the underlying financing agreements which make any disbursements contingent on ensuring compliance with all laws and regulations.
8. The Counter Affidavit does not state why the Applicant/ Respondent No.6 is a necessary or proper party. Instead, it (in Para 5) maintains that it is imperative for the Applicant/ Respondent No.6 to be a party to the proceedings “to caution the Applicant Bank that rather than aiding development in a third world country, the Bank was actually sponsoring permanent damage that the proposed project would cause



to the environment and ecology". This clearly indicates the abuse of process of this Hon'ble Tribunal being undertaken by Respondent Nos. 1 to 4 in making the Applicant Respondent No.6 to OA 251 of 2020. This admitted objective of making the Applicant Respondent No.6 of OA 251 of 2020 is not only not a legal basis supported by applicable laws, but is clearly *mala fide*, with the sole purpose to sensationalise the matter. The Applicant/ Respondent No.6 respectfully submits that the law of the land relating to whether a party is necessary or proper party to the proceedings, is not based on whether the complaining party believes that it needs to "caution" such other party.

9. As explained in para 3 of our I.A. No.8 of 2021, the Disputed Section of the Project pertains to the South Coast Watershed (M3), which is only a component of the overall Project which is being financed by Applicant/Respondent No.6. It is estimated that the overall financing for the M3 portion of the Project represents approximately only 18.4% of the financing for the whole Project. Throughout its Counter Affidavit, the Respondent Nos. 1 to 4 have made a bald and baseless allegation that the Project in its entirety is "unlawful", and that they were right in asking Applicant/ Respondent No.6 to withdraw from the financing. Such an approach, it is respectfully submitted, would not only be irresponsible, but also defeat the very purpose of any developmental activity. No funds have been disbursed or will be disbursed in respect of the M3 portion of the Project till such time that the issue of all necessary clearances is resolved. But for the Respondent Nos. 1 to 4 to state that the Applicant/ Respondent No.6 should withdraw its development financing for the Project, irrespective of the outcome of ongoing legal proceedings, is a grossly dangerous proposition to be made.



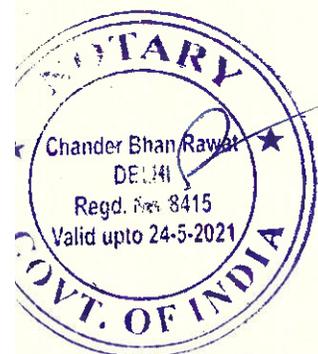
Para-wise Reply to the Counter-Affidavit

10. The Applicant/ Respondent No.6 hereby denies the averments and allegations contained in the Counter Affidavit of Ms. Lata Ganapathy, except those which are matters of record and those which are specifically admitted by the Applicant/ Respondent No.6 in the present Rejoinder. Any factual averment or allegation made by the Respondent Nos. 1- 4 in the Counter Affidavit, which has not been expressly admitted by the Applicant/ Respondent No.6, and/or which

is inconsistent with the averments of the Applicant/ Respondent No.6 made in this Rejoinder, shall be deemed to have been denied by the Applicant/ Respondent No.6.

Rejoinder to Para 1

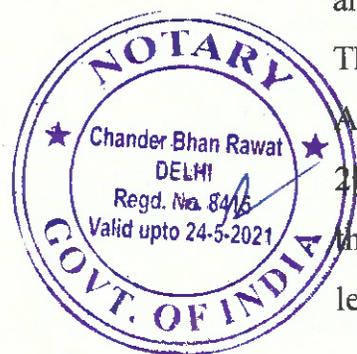
11. In respect of Para 1, no document has been placed on record to support the position being asserted by the Deponent therein nor any resolution providing any authorization to file the said Counter Affidavit on behalf of Respondent No.2 as well as on behalf of Respondents 1,3 and 4 has been provided and the Deponent therein be placed to strict proof for the same.
12. It is highlighted that the Respondents No. 1 and 2 are resident welfare associations (RWAs) which are governed by the Tamil Nadu Societies Registration Act, 1975 and Tamil Nadu Apartment Ownership Act, 1994. Each RWA would be bound by the terms of its Memorandum of Association and bye-laws which, as the name suggests, will be limited in scope for handling matters concerning only the properties covered by their respective Memorandum and of the members of the specific residential society that they represent and not the general public at large. None of the Respondents 1 to 2 have submitted their Memorandum or Bye Laws or the scope of the properties covered by their respective Memorandum. Furthermore, under Section 20 of the Tamil Nadu Societies Registration Act, 1975 the committee or any officer of the registered society authorized in this behalf by its bye-laws may bring or defend or cause to be brought or defend any action or other legal proceeding touching or concerning "*any property, right or claim of the registered society and may sue or be sued in respect of any such property, right or claim.*".
13. Therefore, under applicable law the scope of RWA is limited to the property covered by the society and not for general public or general public interest. The Respondents are to be put to strict proof whether the present petition is duly authorized and falls within the scope of the powers and functions of the respective RWA under the Tamil Nadu Societies Registration Act, 1975 and the Tamil Nadu Apartment Ownership Act, 1994 and rules made thereunder. The applicable resolutions and authority documents authorizing the initiation of the petitions and the filing of the present Counter Affidavit have to be



necessarily provided. I have been advised that prima facie without review of such documents, it would seem that the institution of the proceedings and the submission of the Counter Affidavit is ultra vires the authority of the respective RWAs that are Respondents 1 to 2.

Rejoinder to Para 2

14. The application filed by the Applicant/ Respondent No.6 praying for costs is a matter of record. The other averments made in para 2 are vehemently denied. It is a matter of fact that under Section 23 of the National Green Tribunal Act, 2010 this Hon'ble Tribunal has the power to make such orders as to costs, as it may consider necessary. It is a settled principle of law that the legal process is not to be abused by the litigants in any manner and Courts would be fully justified even imposing punitive costs where legal process has been abused. There is nothing in this provision which prescribes the stage of proceedings during which Section 23 may be invoked, and the contention by the Respondent Nos. 1- 4 that the same is premature, is without any legal basis. It is denied that the application filed is without any basis. In fact as stated above, the Counter Affidavit admits to the legal notice having been issued under instructions and being based on assumptions and impressions and is now sought to be downplayed as not being relevant. The inclusion of the Applicant as Respondent No.6 in OA 251 of 2020 is clearly an abuse of process, made admittedly on impressions and assumptions and clearly without any basis and admittedly vexatious in nature to gain traction in media. The basis for the Application seeking imposition of costs filed by the Applicant/ Respondent No.6 (I.A. No. 6 of 2021 in O.A. No. 251 of 2020 and IA No. 7 of 2021 in O.A. 252 of 2020) are duly explained in the said applications itself, and the Applicant/ Respondent No.6 seeks leave to rely on the same during the course of arguments.



Rejoinder to Para 3

15. In Para 3 the Respondent Nos. 1-4 seeks to claim that the alleged transgressions of Greater Chennai Corporation (Respondent No. 2 in O.A 251/2020) are somehow attributable to the Applicant/ Respondent No. 6 since the Respondents Nos. 1-4 had written to the Applicant/ Respondent No. 6. The averments in Para 3 are denied. Neither the National Green Tribunal Act, 2010 nor the Environmental Protection Act, 1986, impose obligations on funding agencies/lenders

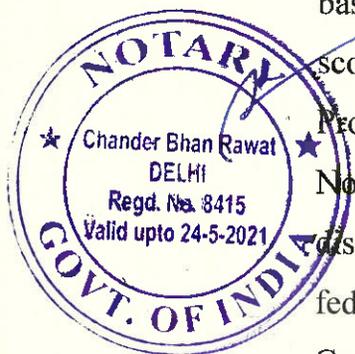


or financial institutions of the nature being sought to be claimed against the Applicant/ Respondent No. 6

16. The fact that the Interim Report of the Joint Committee constituted in the O.A. No. 233 of 2020(SZ), O.A. No. 243 of 2020(SZ), O.A. No. 251 of 2020 (SZ) & O.A. No. 252 of 2020(SZ) ("**Interim Report**") has opined the need for clearance under the Coastal Regulation Zone notification does not have a bearing on whether the Applicant/ Respondent No. 6 is a necessary or proper party to the proceedings before the Hon'ble Tribunal. The other averments made in para 3 are vehemently denied as baseless and wrong. It is submitted that the Applicant/ Respondent No.6 is undertaking the financing of numerous developmental projects and it would be wholly irresponsible and illegal for the Applicant/ Respondent No.6 to exit a project merely because some allegations are raised against a certain section (i.e. M3) of the Integrated Storm Water Management System in the Kovalam Basin watershed of Chennai ("**Project**"). It is submitted that the Applicant/ Respondent No. 6 is sensitive to the due process of law and necessary legal compliances, and hence has clearly provided in the various financing agreements for the Project, that any financing is subject to compliance with all applicable laws and regulations, as well as satisfaction of Environmental and Social Impact Assessment ("**ESIA**") and the Environmental and Social Management Plans ("**ESMP**") that the project implementing agency has to mandatorily comply with. Further, as explained above, GCC (Respondent No. 2 in O.A 251/2020), has therefore appointed IIT-Madras for an assessment of the environmental clearances and CRZ clearances as required, while the final report of the Joint Committee, and the decision of this Hon'ble Tribunal on the subject, is awaited.

Rejoinder to Para 4

17. The averments made in para 4 are vehemently opposed as false, baseless and misleading and are without any basis and outside the scope of National Green Tribunal Act, 2010, the Environmental Protection Act, 1986 and the present proceedings. The Respondent Nos. 1 to 4 are deliberately twisting and misrepresenting the discussion of this issue at the German Bundestag (i.e., the German federal parliament). An issue was indeed raised by a member of the German Bundestag, and responded to. Furthermore, the reference in



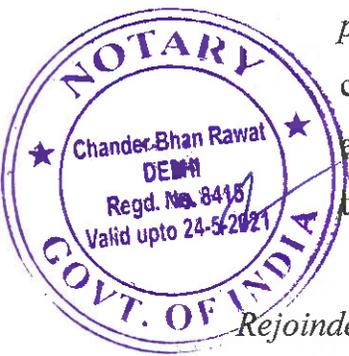
para 4 to the Counter Affidavit to “German Government has ordered a fresh independent assessment over the CRZ violations”, is also misleading. The only new development since the issuance of the Interim Report by the Joint Committee, as explained above, is that the GCC (Respondent No. 2 in O.A 251/2020) has appointed IIT-Madras, to provide advice on the environmental clearances, including the necessary applications as required for CRZ clearance. Para 4 clearly indicates the reliance on media reports and importance being given to traction in media by the Respondent, rather than any basis in applicable law.

18. The Para 4 actually shows the vexatious nature and mala fide intent of the Respondent in making the Applicant Respondent No.6 to OA 251 of 2020. It is clear that the only purpose and intent of the Respondent is to gain traction in the media on the basis of queries raised in the German Bundestag. It is clear that neither the proceedings of the German Bundestag nor the events or directions of the Federal Government of Germany are subject to the jurisdiction of the Hon’ble Tribunal.

19. The Respondent Nos. 1-4 continue to make bald and baseless statements, including that the Applicant/ Respondent No.6 is “*extending financial support to an unlawful and unauthorized project*” all of which are false and denied. The Respondent Nos. 1-4 continue to make brazen statements, with no evidence of the same in an attempt to defame the Applicant/ Respondent No.6 and mislead this Hon’ble Tribunal.

Rejoinder to Para 5

20. The contents of Para 5 are vehemently denied. The averments in Para 5 further show that the Respondent Nos. 1- 4 had no basis for having made the Applicant/ Respondent No.6 in OA 251/2020 as it is simply stating that it is relying on statements made in media attributed to Greater Chennai Corporation or to “propaganda by the Greater Chennai Corporation”. It is submitted that the Applicant/ Respondent No. 6 cannot be held responsible or made to account for any representations made by GCC (Respondent No. 2 in O.A 251/2020) before the general public or before the Joint Committee or in proceedings before the Hon’ble High Court, to which the Applicant/



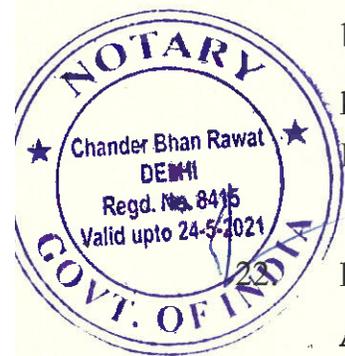
Respondent No.6, is not a party. The Applicant/ Respondent No.6 is not aware of any statements made by GCC (Respondent No. 2 in O.A 251/2020) which indicates that Applicant/ Respondent No. 6 has stated that no approvals/clearances are required to proceed with the Project. Assuming, but not admitting that such statements have been made, these are denied in toto since they are factually incorrect. The statement made by GCC (Respondent No. 2 in O.A 251/2020) that the Project "was designed by the KfW" is also factually incorrect. The statements made in Para 4 of the counter affidavit are reckless since they cast baseless aspersions on the repute and standing of the Applicant/ Respondent No. 6.

21. Para 5 also demonstrates clearly the underlying vexatious nature of making the Applicant/ Respondent No.6 a respondent to the proceedings before this Hon'ble Tribunal. This para states that "*it was imperative that the Bank be made party to these proceedings to caution the Applicant Bank that rather than aiding development in a third world country, the Bank was actually sponsoring permanent damage that the proposed project would cause to the environment and ecology.*" This is clearly not a basis for any action or proceedings under National Green Tribunal Act, 2010 nor the Environmental Protection Act, 1986. It also makes apparent the mala fides of the Respondent in making the Applicant Respondent No.6 in OA 251/2020. They seem to suggest that Respondent Nos. 1 to 4 believe that threatening a financial institution through vexatious litigation can be justified as "caution", which is not a basis for any action or proceedings under the National Green Tribunal Act, 2010 nor the Environmental Protection Act, 1986.

In the absence of any cause of action being disclosed against the Applicant/Respondent No. 6, it is respectfully submitted that the Applicant/ Respondent No. 6 be deleted from the array of parties in the present proceedings.

Rejoinder to Para 6(a)

23. The contents of this para do not require a rejoinder. Para 6(a) clearly shows and admits that there is no basis for making the Applicant as Respondent No. 6 in OA 251/2020. The specific terms of Section 15, Environment Protection Act, 1986 do not apply to lenders but only to



the person that fails to comply with or contravenes the provisions of the law or directions issued thereunder.

Rejoinder to Para 6(b)

24. The averments made in this para are denied as false and baseless, except for what is specifically admitted herein. It is a matter of fact that a notice dated 10.12.2020 was issued to the Applicant/ Respondent No.6, and this has been annexed with our I.A No.6 of 2021 as Annexure A and I.A No.8 of 2021 as Annexure A. It was this letter that personally threatened the Director of KfW Delhi Office, with criminal prosecution and imprisonment of upto 5 years and alleging that he has personally violated the laws and the order dated 04.12.2020, of this Hon'ble Tribunal, when this was legally and factually incorrect. The Respondent Nos. 1 to 4 continue to reiterate their stand, in complete disregard to the fact that the order of this Hon'ble Tribunal simply required that notice be issued, inter alia, to Respondent No.6. The order does not make any observation as regards any violation of the CRZ regulations, since that was a matter referred to the Joint Committee. It only directed that appropriate action would be necessary if any violation is found. There was absolutely no finding in the order of this Hon'ble Tribunal against the Applicant/ Respondent No.6. It is submitted that if the intention was only to provide notice of the Hon'ble Tribunal's Order, the same could have been simply done by providing a copy of the same without embellishments of alleging possible actions against the Applicant and its officers.

25. The Respondent Nos. 1- 4 claim that their communication to the Applicant/ Respondent No.6 dated 10.12.2020 was "*not intimidating as claimed, but only brought to attention the fact that the Environment Protection Act provides for penal action*", however this statement is absolutely false and contrary to the actual language used in the notice dated 10.12.2020 and a mere attempt by the Respondent Nos. 1- 4 to avoid any liability. The actual language of the notice dated 10.12.2020 is as follows: "*Notwithstanding the order of the NGT and regardless of the punitive provisions of the Environment Protection Act, you have personally attempted to, and continue to attempt to, un abashedly violate the laws and the order, thereby exposing yourself to criminal prosecution. Must you continue to engage in such flagrant violation of*



1 2

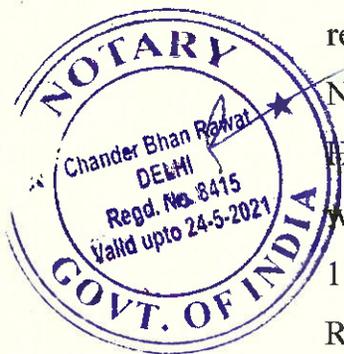
law ... my client shall be constrained to initiate appropriate criminal prosecution against you, albeit at your risk and cost". The Respondent Nos. 1- 4 have also clearly misrepresented the order of the Hon'ble Tribunal dated 04.12.2020, by stating that this Hon'ble Tribunal directed that "proceeding with construction of a project which was illegal would invite serious legal repercussions and individual officials would be made liable for the infraction of law", when no such statement has been made by this Hon'ble Tribunal in the order dated 04.12.2020. It is a matter of fact that the order of this Hon'ble Tribunal dated 04.12.2020 has referred the matter to the Joint Committee in O.A. No. 233 of 2020, and directs the relevant authorities to take necessary actions in case a violation is found. The Respondent Nos. 1- 4 therefore continue to misrepresent the contents of the order dated 04.12.2020 in an attempt to intimidate the Applicant/ Respondent No. 6, when the Applicant/ Respondent No. 6 is not the implementing agency for the Project.

The Applicant/ Respondent No.6 reiterates that such representation clearly amounts to mala fide abuse of process of this Hon'ble Tribunal, and should not be permitted.

Rejoinder to Para 6(c)

26. Para 6(c) provides the admission by the Respondent Nos. 1-4 that it was not aware that funds are yet to be disbursed for the project and is an admission that it stands corrected to that extent. At the same time, they note that non-disbursement of funds constitutes "harping on semantics", and that this this is a "non-issue", and that it is "imperative" that Applicant/ Respondent No.6 is part of the proceedings, without providing any legal basis for their averment.

27. All other averments in Para 6(c) including that this is a non-issue and not an abuse or process are denied and clearly without any basis. It is a matter of fact that the counsel for the Applicant/ Respondent No. 6 responded to the intimidating communication from the Respondent Nos. 1 to 4, reminding them that the matter is *sub-judice* before this Hon'ble Tribunal, and that it was highly irregular for them to be writing threatening letters. A copy of the communication dated 17.12.2020 from counsel of the Applicant/ Respondent No. 6 to Respondent No. 1 to 4 is annexed as **Annexure A** with this rejoinder.



28. It is humbly submitted that making the Applicant/ Respondent No. 6 a party to the present proceedings when it is neither a necessary or proper party for the same, and making completely baseless and incorrect statements of affidavit before this Hon'ble Tribunal clearly amounts to an abuse of process.

Rejoinder to Para 6(d)

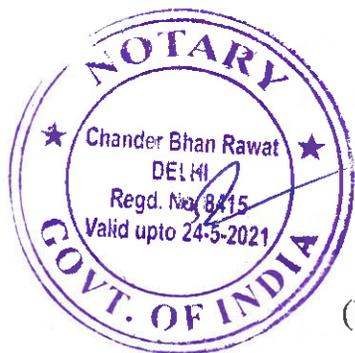
29. The averments made in para 6(d) are misleading, mala-fide and vehemently denied. Para 6(d) does not stand in light of the admission in Para 6(c) and is only to be disregarded. The statement that the Applicant/ Respondent No. 6 has financed a project that has been "proved to be wrong by a Committee appointed by this Tribunal", is misleading and denied. Sustainable and environmentally responsible development are the core values that underlie any financing undertaken by Applicant/ Respondent No.6, and any financing is subject to compliance with applicable law and regulations. The allegation that the Applicant/ Respondent No. 6 undertook financing of a project which is in violation of applicable law, is grossly false and without any basis. Whether the Project requires any environmental clearance is a matter which is *sub-judice* in the present proceedings, and the Applicant/ Respondent No. 6 is not a necessary or proper party for a determination of this issue.

Rejoinder to Para 6(e)

30. The contents of Para 6 sub-para (e) are replete with misstatements and inaccuracies and are vehemently denied. In particular, the Applicant/ Respondent No.6 seeks to highlight the following aspects:

(a) The Applicant/ Respondent No. 6 is a financing institution, and the implementing agency is the GCC (Respondent No. 2 in O.A 251/2020), which is responsible for ensuring all required regulatory compliances. The financing by the Applicant/ Respondent No.6 itself will be subject to such compliances, under the underlying agreements for financing the Project.

(b) It is further submitted that the Counter Affidavit is misleading this Hon'ble Tribunal by stating that the Applicant/ Respondent No. 6 has stated in its letter dated 19.02.2021 that it has given its approval for the Project. The Applicant/ Respondent No.6 was not a party to the proceedings before the Hon'ble High Court of Madras in WP No. 11235 of 2020 and had no part in the affidavit

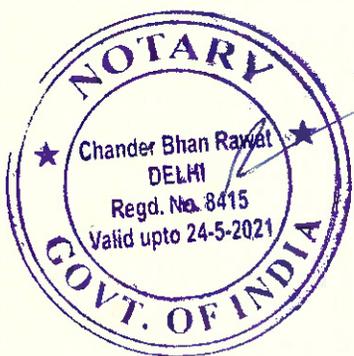


14

that is being referred to as having been filed by Greater Corporation of Chennai in those proceedings. It is incorrect to state that the Applicant/Respondent No.6 is responsible in some manner for statements being made by the Greater Corporation of Chennai. It is also reiterated that as a development financing institution that functions under an overall government to government agreement between the Governments of India and Germany, the Applicant/ Respondent No. 6 has always made sure that any financing is subject to compliance with all applicable environmental laws and regulations. The averment made in this sub-para that the Applicant/ Respondent No. 6 "*conveniently remains silent about the CRZ violation*" is denied. In fact, the letter dated 19.02.2021 clearly states that the Applicant/ Respondent No. 6 is aware of the fact that issues regarding requirement of CRZ clearance are pending before this Hon'ble Tribunal and further that it is in close communication with GCC (Respondent No. 2 in O.A 251/2020) to ensure compliance with national environmental regulations and international standards. A copy of the letter from Applicant/ Respondent No.6 to the Resident Welfare Association dated 19.02.2021, is annexed as **Annexure B**.

(c) It is also important to put in context the various developments relating to the Project:

- (i) Tetra Tech India Limited was the consultant engaged by the GCC (Respondent No. 2 in O.A 251/2020) to prepare a Detailed Project Report ("DPR") relating to the Project in 2014. In this, it had been observed that the Ministry of Environment and Forests (MoEF) Notification dated 14th September 2006 ("EIA Notification"), does not list stormwater projects as requiring environmental clearances.
- (ii) In 2017, Kocks Consultants was appointed by the Department of Economic Affairs ("DEA"), Ministry of Finance, Government of India, and it reviewed the DPR that had been prepared by Tetra Tech India Limited and reiterated the assessment on the EIA Notification. In addition to this, it noted that the guidelines issued by Tamil Nadu Urban Infrastructure Financial Services Limited ("TNUIFSL") "Environmental, Climate Change and Social Management Frame Work", categorize the stormwater



drainage project as “E2”, which will have moderate environmental impacts, and measures will be needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance. It also recommended updating the Environmental Management Plan. It should be noted that Kocks Consultants did not undertake any legal due diligence, since this was not part of their mandate. Nor did Kocks Consultants assess whether the Project location is in the CRZ. In fact, it is a standard principle that only lawyers qualified in India can opine on the need for specific clearances in that jurisdiction. It is for this reason that as a responsible financial institution, the Applicant/ Respondent No. 6 ensures that the obligation to ensure compliance with all applicable legal obligations is built into its financing activities.

- (iii) As has been already explained in detail in Para 14 of IA No. 8 of 2021 and IA No. 9 of 2021, it was in 2019 that Applicant/ Respondent No.6 entered into the Loan Agreement and Financing Agreement in relation to the Project, which clearly specified the need for all legal compliances by the Project implementing agency i.e. GCC (Respondent No. 2 in O.A 251/2020).
- (iv) The various financing agreements also mandate the need for on ground assessments by the works contractors. The design for the Project is therefore not something that the Applicant/ Respondent No.6 is responsible for, since it necessarily has to evolve based on the on-ground realities and contingencies, and regulatory compliances that necessarily need to be ensured.

Rejoinder to Para 6(f)

31. The contents of Para 6 sub-para (f) are vehemently denied. There is absolutely no basis for stating that funding has been suspended in January 2021, when the Applicant/ Respondent No.6 had never initiated the funding in the first place. The Respondent Nos. 1-4 continues to make brazen statements, with no evidence of the same in an attempt to defame the Applicant/ Respondent No.6.



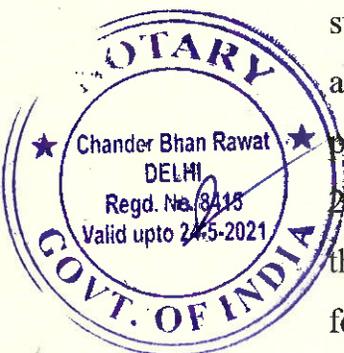
16

Rejoinder to Para 6(g)

32. The contents of Para 6 sub-para (g) are vehemently denied. It is grossly misleading to state that the “*German Government has ordered a fresh investigation into the lawfulness of the project funded*”. The only development, as explained earlier, since the release of the Joint Committee’s interim report, is the institution of an independent assessment relating to environmental compliances by IIT-Madras, who GCC (Respondent No.2 in OA 251 of 2020), has engaged.
33. It is further submitted that the statement in para 6(g) that “*The Bank ought to take responsibility for the error in judgment, rather than seek to wriggle out of the proceedings, thereby wishing away its fallacies*” is completely baseless and holds no basis in law.
34. The contents of Para 6(g) are *mala fide* and defamatory and further show the *mala fide*, vexatious and defamatory nature of the actions of the Respondent Nos. 1-4. The Respondent Nos. 1-4 are clearly only relying on media reports and draw their sustenance from reckless and willfully false statements given by them for publicity and media coverage. In the absence of any cause of action being disclosed against the Applicant/Respondent No. 6, it is submitted that the Applicant/ Respondent No. 6 necessarily needs to be deleted from the array of parties in the present proceedings.

Rejoinder to Para 7

35. The contents of Para 7 are false and misleading and are denied. It is submitted that the Applicant/ Respondent No. 6 is the financing entity at a government to government level and is not undertaking the project implementation works. Since GCC (Respondent No. 2 in O.A 251/2020) is the owner and implementer of the Project, it is submitted that the Applicant/ Respondent No. 6 is not in any manner responsible for obtaining the necessary clearances; but has made any financing subject to ensuring all regulatory compliances. Therefore, the Applicant/ Respondent No. 6 has been arrayed as a party to the present proceedings in complete absence of any cause of action against them. The Applicants in OA 251/ 2020 and OA 252/ 2020 are misleading the Court by stating that the “*...notice of the Respondent dated 10.12.2020 is innocuous and only brings on record the penal*



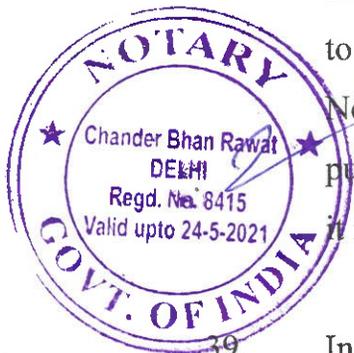
provision in the Environment Protection Act". It is denied that the notice of the Respondent Nos. 1-4 dated 10.12.2020 was innocuous. The said communication (Annexure A to IA No. 8 of 2021), speaks for itself, and demonstrates that the Director of KfW in India was personally threatened with criminal prosecution and imprisonment of upto 5 years for personally violating the laws and order of this Hon'ble Tribunal. This is nothing but a clear misrepresentation and abuse of process of this Hon'ble Tribunal.

36. It is denied that the Applicant/ Respondent No. 6 is seeking the direction for Respondent Nos. 1-4 to pay costs of Rs. 25,00,000/- (Rupees Twenty five lakhs only) without any basis. The Applicant/ Respondent No. 6 has provided sufficient grounds in IA 6/2021 and IA 7/2021 showing the abuse of its process and further showing that the claims made in O.A. 251/2020 and O.A. 252/2020 as against the Applicant/ Respondent No. 6 are false and vexatious.

37. It is also significant to note that the Project cannot be called "unlawful and illegal". Applicant/ Respondent No.6 acknowledges that there is a dispute relating to the nature of clearances pertaining to a section of the Project (South Coast Watershed or "M3") which is a component of the entire Integrated Stormwater Project, which comprises of the Pallikaranai Marshland Watershed ("M1"), and South Buckingham Watershed ("M2") also. The objective of the Project is to protect the population and local businesses in the Project area from flood risks, in particular emanating from heavy rainfall events and rise in sea-levels, thereby increasing resilience to negative effects of climate change. The matter relating to CRZ clearance for the M3 component is under consideration by this Hon'ble Tribunal.

38. There is absolutely no basis in law or facts for the Applicant/ Respondent No.6 to be arrayed as party in the O.A 251/2020 merely to make such a point. On the contrary, the Applicant/ Respondent No.6 is being made to expend its valuable time and resources in pursuing the present proceedings before the Hon'ble Tribunal when it is neither a necessary or proper party.

39. In the light of the aforesaid submissions, it is prayed that this Hon'ble Tribunal may kindly be pleased to reject the prayer made by the



Respondent Nos. 1-4 in the Counter Affidavit and pass any such other /further order(s), which it may deem fit and proper in the interest of justice.

[Signature]

Counsel For Applicant

[Signature]


Applicant

VERIFICATION

25 MAR 2021

I, Christoph Wilhelm Kessler, S/o Herbert Alfons Kessler, aged about 64 years, resident of B5, Westend Colony, New Delhi 110021, do affirm that I am the Authorised Signatory of the Applicant and hereby verify that the contents of paras 1 to 39 are true to the best of my knowledge, information and belief and are based on legal advice which is believed to be true and correct. I state that I have not suppressed any material fact.

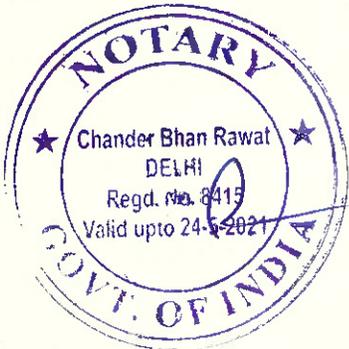
Date: 25th March 2021

Place: New Delhi

[Signature]
I Identified the deponent who has Signed / put in my presence.

[Signature]


Authorised Signatory of Applicant



37

25 MAR 2021

CERTIFIED THAT THE DEPONENT
Shri/Smt/Mr..... Christoph Wilhelm Kessler
S/o, W/o, D/o..... S/o Mr. Herbert Alfons Kessler
Identified by Shri/Smt.....
has solemnly affirmed before me at Delhi
on..... at Sl. No.....
The contents of the affidavit which have
been read and explained to him are true
and correct to his knowledge.

MS. Sumit Yadava
Adv

CHANDER BHAN RAWAT
Notary Public, Delhi (IN)

ANNEXURE A



Mr. S.P. Arthi
 A-3, Rukmani Terrace,
 16/3, Leith Castle Centre Street,
 Santhome, Chennai - 600 028

December 17, 2020

Mr. Arthi,

Subject: Your letter dated 10.12.2020 regarding OA Nos. 251 & 252/2020- NGT, Chennai

We are writing on behalf of our client Kreditanstalt Fur Wiederaufbau Development Bank ("KfW"/ "Our Client"), in response to your letter dated December 10, 2020, (which had enclosed a copy of the order dated December 4, 2020 of the Hon'ble National Green Tribunal, Chennai Bench), which was received by Our Client on December 14, 2020.

You and your client are fully aware that Our Client is not implementing the relevant project that is the subject matter of the proceedings initiated by you before the Hon'ble NGT, Chennai Bench. Our Client is an international financing arm of the Federal Government of Germany that provides funding under a government-to-government arrangement that is governed by the laws of Germany and is not involved in the implementation of the Project. You and your client are fully aware that neither the Environment Protection Act, 1986 nor the National Green Tribunal Act, 2010 regulate financing activities. You and your client are fully aware that Our Client is neither a proper nor necessary party in the proceedings before Hon'ble NGT, Chennai Bench.

Without in any manner: (i) accepting the validity of Our Client being made a Respondent in proceedings of OA No. 251 & 252 of 2020, before the Hon'ble NGT, Chennai Bench and (ii) reserving all our objections and rights to exercise suitable legal remedies by Our Client, we are addressing your letter dated December 10, 2020, which was received by Our Client on December 14, 2020.

In light of the fact that the entire matter is sub-judice before the Hon'ble NGT, Chennai Bench, it is highly irregular for you to have communicated with Our Client in the manner that you have. Your communication dated December 10, 2020 is making defamatory statements, as well as reckless and unfounded allegations, without providing any supporting grounds, facts or documents and clearly seems to have been issued only with the intention to intimidate and attempt to brow-beat Our Client.

Our Client reserves all its rights against you and your client in this regard and will consider its appropriate responses in any legal proceedings.

Sincerely,

R.V. Arthi
 For Clarus Law Associates



ANNEXURE B



To whom it may concern

Business area
KfW Entwicklungsbank

Date: 19/02/2021

»» **Storm Water Drainage Project in Chennai**
Your complaint

Dear Sir or Madam,

We thank you for submitting your concerns about the Storm Water Drainage Project being undertaken along the East Coast Road in Chennai, India. Please be assured that we, as the financing bank, have assessed the project in depth before signing any financing agreements. We always pay close attention to the environmental and social impact of our projects. Please bear in mind that the overall goal of the project is to strengthen the resilience to flooding caused by storm water and thus to protect the inhabitants.

In light of the concerns raised, we have reviewed the project again and also discussed the issues with the project proponent, the Greater Chennai Corporation (GCC). Below are the main results of this additional analysis:

Although the project area is located on the shores of the Bay of Bengal and consists mainly of sandy soil without storm water drainage project there will be more flooding in the future for two reasons:

- 1) The degree of urbanization and thus densification will increase in the area following the pattern of the past decennia.
- 2) Climate change: due to the ongoing climate change extreme rainfall events have increased in the past and will continue to increase in the upcoming years.

Our calculations show that the sandy soil cannot absorb enough rainwater during heavy rains and therefore a storm water drainage system is required already shown in the catastrophic 2015 floods, but also in recent heavy rainfall events.

The project design has incorporated several specialized elements to ensure that only excess runoff is discharged into the sea, harnessing the natural infiltration capacity of

KFW

soil to the maximum. Among these are the specialized Rainwater Harvesting Blocks which will be installed at 20 locations in the project area.

As you may know further issues like the question as to whether the project requires any CRZ clearance or whether the project will have any environmental impact on the aquifer and the coastal zone have been submitted to the National Green Tribunal (NGT). We currently expect a decision on how to proceed on these issues from the NGT in early March.

Please be assured that we are in close communication with GCC to ensure compliance with national environmental regulations and international standards.

We were also made aware that in order to inform all residents about the project and its details, GCC invited the residents to a meeting which was held on 29.10.2020. In this meeting GCC informed the residents that a Consultative Committee will be established as an effort to promote a collaborative engagement process with the residents. The residents can provide additional suggestions, how the measures could be improved, and it will be assessed whether these measures can be implemented. We believe this will be an important step to enhance your engagement in the project processes and implementation.

For the reasons outlined above, we continue to believe that the project is necessary to prepare Chennai for the challenges of further urbanization and climate change and that it is for the benefit of the city's population.

We can only encourage you to be engaged in the Consultative Committee if you have proposals to improve the project.

We also want to outline that we as KfW are the financing bank but GCC is the implementor and owner of the project. Therefore, we request you to place any further complaint directly in the Consultative Committee or to the official grievance office of GCC.

Yours sincerely,

KfW


Carolin Gassner
Director South Asia


Rainer Sünner
Principal Portfolio Manager

**BEFORE THE NATIONAL GREEN
TRIBUNAL -SZ CHEENNAI**

I.A. No. 6&8 of 2021

In

O.A. No. 251/2021

KfW

...Applicant

Vs

Singaravellar Ocean Side Residents
Welfare Association and Ors.

...Respondents

**REJOINDER FILED BY THE
APPLICANT/ 6TH RESPONDENT**

Rahul Balgi

**COUNSEL FOR THE APPLICANT/
6TH RESPONDENT**