

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE
BENCH, CHENNAI**

APPEAL NO. 45 of 2024

IN THE MATTER OF: -

Stone Trust Enterprises

.... Applicant

Versus

The MoEFcc and Ors.

.... Respondent

**COUNTER AFFIDAVIT FILED ON BEHALF OF STATE LEVEL
ENVIRONMENT IMPACT ASSESSMENT AUTHORITY (SEIAA)**



Filed by:
G.M. SYED NURULLAH SHERIFF
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MoEF&Cc.
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Counsel for Respondent no. 2&3

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Appeal No.45 of 2024 (SZ)

M/s. Stone Trust Enterprises

... Appellant

Vs

Ministry of Environment, Forests and Climate Change (MoEF&CC) & Ors.

... Respondents

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Dated at Chennai on this 03rd day of July, 2024.

Counsel for the Respondents 2 & 3

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

Appeal No.45 of 2024 (SZ)

M/s. Stone Trust Enterprises,
Rep. by its Partner Mr.K.P.Mithun Kumar,
7/4, 8th Street, Nandanam Extension, Chennai – 600 035.
Email: stonetrust.semmedu@gmail.com
Phone: 9962084848

... Appellant

Vs

1. Ministry of Environment, Forests and Climate Change (MoEF&CC),

Rep. by its Secretary (EF&CC),

Indira Paryavaran Bhawan,
Jorbagh Road, New Delhi – 110 003
Email: secy-moef@nic.in
Phone No: +91-11-20819308

2. State Level Environment Impact Assessment Authority (SEIAA),

Rep. by its Member Secretary,

3rd Floor, Panagal Maaligai, No.1, Jeenis Road,
Saidapet, Chennai – 600 015.
Email: seiaamstn@gmail.com
Phone No. 044-24359973

3. State Level Expert Appraisal Committee (SEAC),

Rep. by its Chairman,

3rd Floor, Panagal Maaligai, No.1, Jeenis Road,
Saidapet, Chennai – 600 015.
Email: seacchairmantn@gmail.com
Phone No. 044-24359973.

... Respondent(S)

COUNTER AFFIDAVIT FILED ON BEHALF OF SEIAA – TAMIL NADU,

THE 2nd & 3rd RESPONDENTS

I, A.R. Rahul Nadh, I.A.S., aged about 36 years, working as Member Secretary, State Level Environment Impact Assessment Authority, Tamil Nadu (SEIAA-TN) having office at Third Floor, Panagal Maaligai, Saidapet, Chennai – 600015, do hereby solemnly affirm and sincerely state as follows:



1. I am filing this counter affidavit on behalf of the 2nd & 3rd Respondents herein and as such I am well acquainted with the facts and the circumstances of the case from the records available in this office.
2. I state that the above appeal has been filed to set aside the impugned rejection letter dated 10.04.2024 by the 2nd Respondent based on the recommendations of the 3rd Respondent. I have perused the appeal and deny all the averments and allegations stated therein except those that are specifically admitted hereunder and put the Appellant to strict proof of the same.
3. It is respectfully submitted that the project proponent has applied to State Level Environment Impact Assessment Authority – Tamil Nadu (SEIAA-TN) seeking grant of Environmental Clearance for the unit of M/s. Stone Trust Enterprises for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha at S.F. Nos. 22/1, 23/1, 23/2, 24/7, 24/8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu.
4. The proposal was placed in the **404th meeting of State Expert Appraisal Committee (SEAC) held on 25.08.2023. The SEAC noted the following:**
 - i. M/s. Stone Trust Enterprises earlier applied seeking Environment Clearance (File No. 6873 and Online Proposal No. SIA/TN/MIN/37020/2019 dated: 25.06.2019) for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos. 22/1, 23/1, 23/2, 24/7, 24/8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu. The subject was placed before the SEAC in its 136th meeting held on 21.09.2019. SEAC decided not to recommend for issue of Environmental Clearance for the project since the project site is abutting the water tank which has large capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream. Hence SEAC collectively decided that the project is not recommended.
 - ii. Suppressing the said facts to State Level Environment Impact Assessment Authority (SEIAA) and SEAC, the Proponent has applied again for the same project (File No. 9040 and Online Proposal No. SIA/TN/MIN/256739/2022 dated: 15.02.2022) and the proposal was recommended by the SEAC in its 281st meeting held on 03.06.2022. Subsequently the subject was placed before the State Level Environment Impact Assessment Authority (SEIAA) in its 527th meeting held on

01.07.2022 and it was referred back by the Authority for the reasons as stated above. When the subject was listed for discussion in 304th meeting of SEAC held on 20.08.2022, the EIA Coordinator informed the Committee that the Proponent has requested for withdrawal of the application and submitted the withdrawal request vide PARIVESH. Hence the subject was not taken up by the Committee for re-appraisal.

- iii. Subsequently, the Proponent vide letter dated 02.09.2022, stated that about 8 nos. of hydrogeological studies have been carried out in the past three years for the said project and requested for reconsideration of the proposal. Hence the subject was placed before the Authority during its 559th meeting held on 15.10.2022 to decide on further course of action. The Authority decided to seek Committee's opinion on the withdrawal requested via PARIVESH and Proponent's letter dated 02.09.2022 seeking reconsideration of the Project.

Hence the subject was again placed in the 322nd meeting of SEAC held on 19.10.2022. After detailed deliberations, **the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019 which, the Proposal was not recommended by SEAC.**

5. The subject was placed in the 567th Authority meeting held on 07.11.2022 & 08.11.2022. Confirmed the decision taken by the SEAC in its 322nd meeting. The Authority, after detailed deliberations, decided to accept the decision of SEAC.
6. The Project Proponent has submitted another application bearing File No. 9641 vide Online Application No. SIA/TN/MIN/409964/2022.
7. The Project Proponent has submitted requisition letter dated 30.06.2023 along with a copy of the Hon'ble High Court of Madras Order dated 12.06.2023 in W.P. 17246 of 2023 stated as follows:

"Taking into consideration the limited relief sought for in this writ petition, there shall be a direction to the first respondent to consider the petitioner's application bearing file No.9641 dated 13.12.2022 on its own merits and in accordance with law and appropriate orders shall be passed within a period of three months from the date of receipt of a copy of this order."

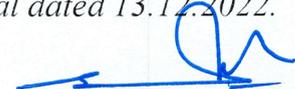
In view of the above, the subject was placed in the 636th Authority meeting held on 10.07.2023. After detailed discussion, the Authority decided to forward the proposal to SEAC to look into the order dated 12.06.2023 passed by the Hon'ble High Court of Madras in W.P. 17246 of 2023.

8. The proposal was again placed in the 404th meeting of SEAC held on 25.08.2023. The SEAC noted that, already a decision has been taken by the previous Committee in its 136th meeting held on 21.09.2019. The Hon'ble High Court has directed the Authority to consider the application freshly filed. SEAC carefully examined the case and decided that the Project Proponent was dishonest in not disclosing the earlier decision of the Authority to deny EC to his proposal based on the recommendation of SEAC. Now again, the Project Proponent has made afresh application for the same proposal, albeit disclosing the history. None of the parameters based on which the EC was denied has changed. Further, reopening already decided cases based on fresh applications would be inappropriate and would lead to Project Proponents filing fresh applications repeatedly till EC is granted. SEAC, therefore, decided that there would be no change in the recommendation already made.
9. The subject was placed in the **655th authority meeting held on 19.09.2023**. The authority noted that, the subject was appraised in **the 404th SEAC meeting held on 25.08.2023**. The Authority, after discussions, accepted the decision of SEAC, rejected the proposal and decided to request the Member Secretary, SEIAA-TN to send rejection letter to the proponent as per 404th SEAC minutes. Rejection letter sent to Proponent vide this office Letter No. SEIAA-TN/F.No.9641/2023 dated: 11.10. 2023. Further, Authority decided to close and record this proposal. Hence the above-mentioned file is **closed and recorded accordingly**.
10. It is respectfully submitted that further, the proponent has filed an Appeal in the Hon'ble National Green Tribunal, Southern Zone, Chennai vide Appeal No. 38 of 2023. Subsequently, the Hon'ble National Green Tribunal, Southern Zone has passed the Order on 06.02.2024 stated as below;

"15. As the impugned order has been passed based on the decision taken by the previous committee in its 136th meeting held on 21.09.2019 apparently there is no appraisal done afresh based on the proposal dated 13.12.2022.

Member Secretary

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
Panagal Maligai, No.1, Jeenis Road,
Saidapet, Chennai - 15



Member Secretary
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
Panagal Maligai, No.1, Jeenis Road,
Saidapet, Chennai - 15

Therefore, it would be appropriate to set aside the impugned order dated 13.12.2022 passed by SEIAA and the same is remitted back to SEIAA for fresh consideration of the proposal no. 9641 dated 13.12.2022 afresh after according an opportunity of personal hearing to the appellant within a period of 04 weeks without influenced by any of the comments made in this order.”

11. It is respectfully submitted that based on the Order dated 06.02.2024 passed by the Hon’ble National Green Tribunal, Southern Zone, Chennai in Appeal No. 38 of 2023, the subject was placed in the 692nd Authority meeting held on 07.02.2024, the Authority after detailed deliberations decided to forward the court direction to SEAC for further course of action and direction.
12. The subject was placed before the 446th SEAC meeting held on 16.02.2024. The SEAC noted that the Hon’ble National Green Tribunal has directed the Authority to consider the proposal afresh after according an opportunity of personal hearing to the appellant within a period of 04 weeks without influenced by any of the comments made in this order. In the meeting, the SEAC has given an opportunity to the proponent to express his views. During the meeting, the proponent has stated the following.

“The proponent has invested significantly in this project, and it is their first project. The proponent has stated that they will adopt eco-friendly quarrying techniques in accordance with the environmental rules and regulations.”

During the deliberations, the SEAC has clearly taken a note of the following significant comments made by the Apex Court and NGT during the disposition of few cases as given below:

1. In the case of Fomento Resorts & Hotels Limited v. Minguel Martins, in paragraphs 53 to 55 and 65, the Apex Court held thus



Member Secretary
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
Panagal Maligai, No.1, Jeenis Road,
Saidapet, Chennai - 15

“- The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

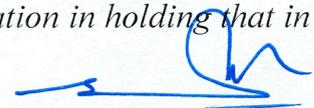
The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved

The public trust doctrine is a tool for exerting long established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations

We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof.

2. In *M.C. Mehta v. Union of India* [(1987) 4 SCC 463] this Apex Court held as under:

It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The —Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in



order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

They play an important role in maintaining and restoring the ecological balance. They act as sources of drinking water, recharge groundwater, control floods, support biodiversity, and provide livelihood opportunities to a large number of people.

Rule 4(v) of the Wetland Conservation and Management Rule, 2017 states that any construction of the permanent nature within specified distance of the high flood level is prohibited. It is further provided that the wet land shall be conserved and managed in accordance with the principles of wise use as determined by the wet land authority.

3. While disposing the Original Application No. 325 of 2015 vide order dated 18.11.2020, the Tribunal, while dealing with restoration of water bodies observed as follows:

“The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important, harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub- watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable,

4. Ancient poet Rahim said: *“Water is most important. As without water, there is no wealth (pearls), life or earth”.*
5. Interestingly, in Jagpal Singh (supra), the Apex Court with pains recorded that *'our ancestors were not fools'. They knew that in certain years, there may be droughts or water shortages for some other reasons, and water was also*

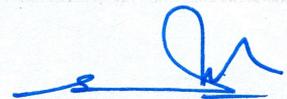
required for cattle to drink and bathe in etc. Hence, they built a pond attached to every village, a tank attached to every temple etc. These were their traditional rain water harvesting methods, which, served them for thousands of year....”

6. The reliance has been placed by the learned counsel on *Susetha vs. State of Tamilnadu* decided on 08.08.2006 by Hon'ble Supreme Court of India, Appeal (Civil) No. 3418 of 2006 (AIR 2006 SC 2893). The relevant portion are quoted below:

“.... Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life....”

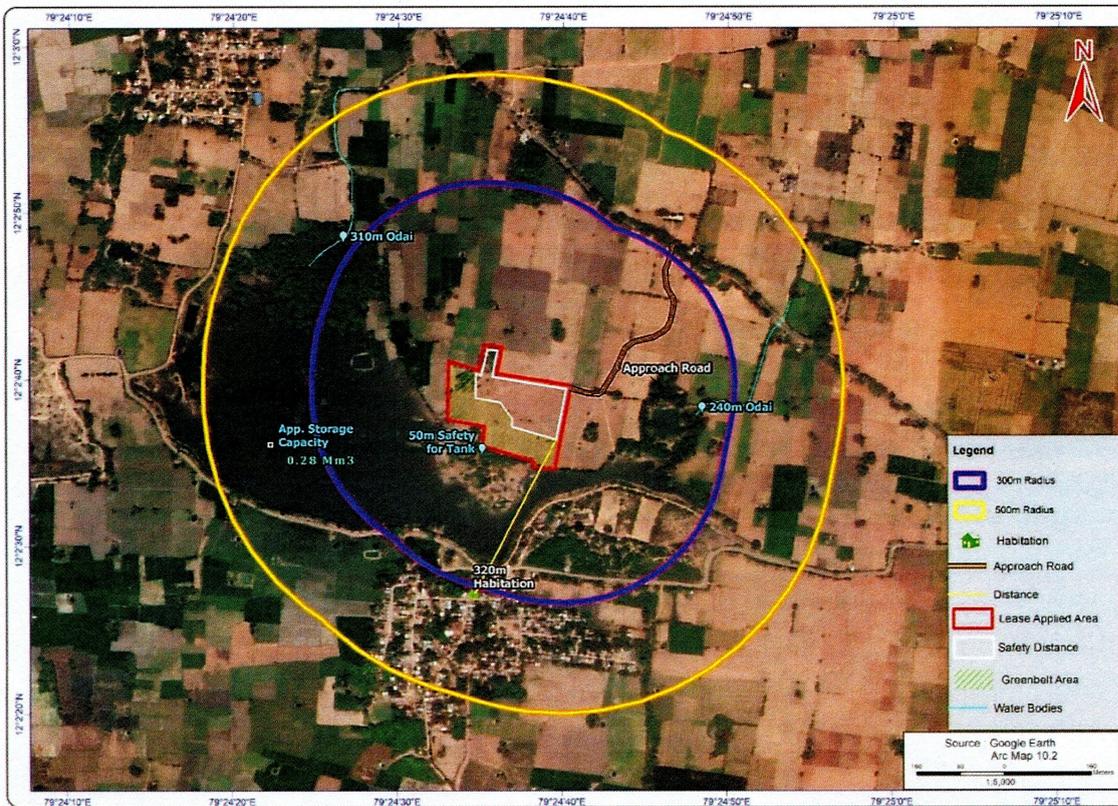
Finally, after a long deliberation, based on the presentation and documents furnished by the project proponent, the SEAC carefully examined the case and **decided not to recommend the proposal** for the grant of Environmental Clearance citing the following reasons:

1. The proposed project site is abetting the major water tank which has larger capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream.
2. The proposed project site is located within the catchment area of the abetting major water tank and thereby affects the Ayakkattu of the nearby surrounded agriculture fields.



Member Secretary
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
Panagal Maligai, No.1, Jeanis Road,
Saidapet, Chennai - 15

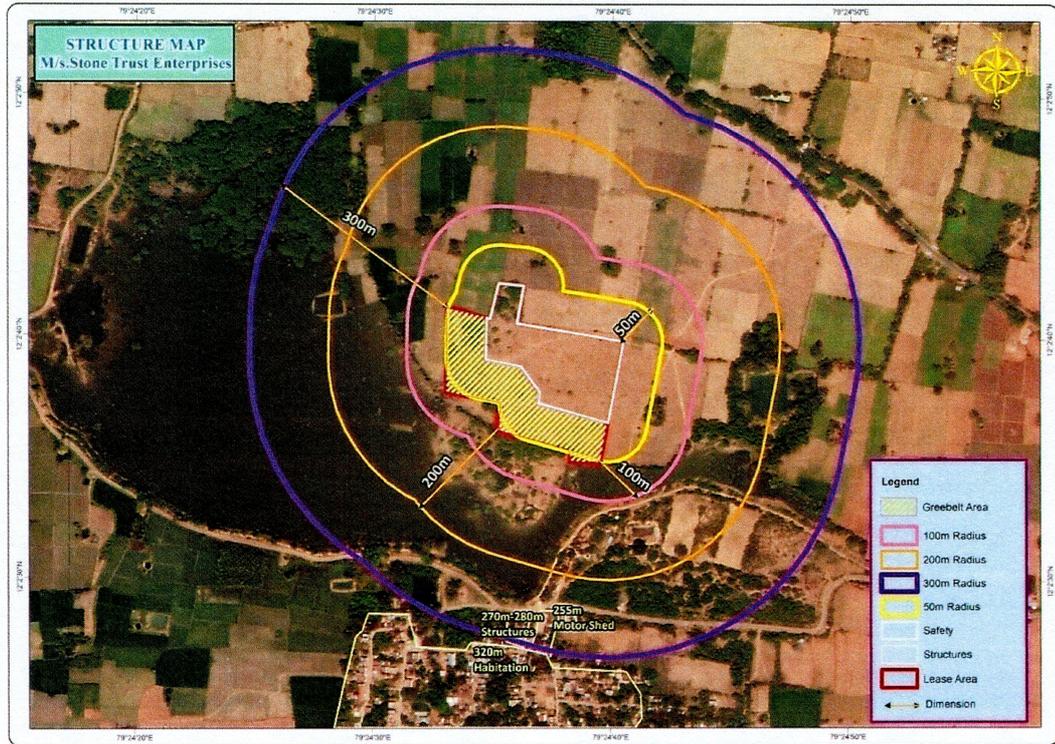
3. Due to this mining activity, it will disturb the natural streams, water pollution due to the discharge of mine pit water and the source of water to the water tank located in the downstream.
4. Due to dumping of mining waste into the waterbody, it will adversely affect the holding capacity (size of the water tank) apart from causing the water pollution as huge quantity of waste / reject blocks anticipated from this quarry and affects the safety features of the existing water tank.
5. During heavy/excess rain, there is a possibility of tank water flooding into the mine pit and thereby affects the holding capacity of the water tank & safety of the men and machinery deployed.
6. Due to this mining activity, flora and fauna will be affected.



[Handwritten signature]

Member Secretary
 STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
 Panagal Maligai, No.1, Jeeris Road,
 Saidapet, Chennai - 15

[Mirrored/Inverted text from the bottom right]
 Member Secretary
 STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
 Panagal Maligai, No.1, Jeeris Road,
 Saidapet, Chennai - 15



Google Earth images showing the proposed project site and the abetting water tank

13. It is respectfully submitted that subsequently, the subject was placed in the 704th authority meeting held on 18.03.2024. The authority noted that the subject was appraised in the 446th SEAC meeting held on 16.02.2024. After a long deliberation, based on the presentation and documents furnished by the project proponent, the SEAC carefully examined the case and **decided not to recommend the proposal** for the grant of Environmental Clearance citing the reasons stated therein.
14. It is respectfully submitted that meanwhile, the project proponent (M/s. Stone Trust Enterprises) has given his representation before SEIAA for consideration of the said proposal vide his letter dated 22.02.2024. Further the project proponent has furnished representation to SEIAA along with the reply furnished to the points for rejection of the proposal mentioned in the minutes of 446th SEAC meeting vide his letter dated 18. 03.2024.

15. It is respectfully submitted that the Project Proponent representation was placed in the 704th authority meeting held on 18.03.2024. During the meeting, the Authority decided to call the Project Proponent for Personal Hearing on 27.03.2024 in the O/o. SEIAA-TN, Chennai. In view of the above, the Authority decided to request the Member Secretary, SEIAA-TN to communicate the personal hearing date, time and venue to the project proponent. A letter dated 20.03.2024 was communicated to the project proponent regarding personal hearing.

16. It is respectfully submitted that based on the above, Personal Hearing was conducted by SEIAA with the Project Proponent on 27.03.2024. During the Personal Hearing, it is clear that the points placed by the Project Proponent were already placed before 446th SEAC meeting held on 16.02.2024.

17. It is respectfully submitted that the subject was placed in the 707th Authority meeting held on 01.04.2024. Hence, after discussions, the Authority accepted the decision of SEAC, rejected the proposal for the grant of Environmental Clearance citing the following reasons in addition to the reasons stated by SEAC.

1. The proposed mining activity will disturb environment of the area through change of landscape, flora & fauna and habitat features of the area, surface drainage and change in soil quality and thereby affect the ecology and environment.
2. The proposed mining activity will affect the quality of the water tank which is located in the downstream.
3. Pollution of water in the surrounding water bodies due to leaching from overburden dumps and due to the pollutants from the other activities. This will affect the aquatic ecology of these water body.
4. Due to the proposed mining activity, environment safety and security will be affected.

18. It is respectfully submitted that in view of the above, the Authority decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per

446th SEAC minutes. Rejection Letter was granted to the Project Proponent vide Letter No. SEIAA-TN/F.No.9641/2024 dated: 10.04.2024. Further, Authority decided to close and record this proposal.

Therefore, it is humbly prayed that this Hon'ble Tribunal may be pleased to record and pass orders as this Hon'ble Tribunal may deem to fit and proper in light of the facts and circumstances of this case and thus render justice.

Solemnly affirmed at Chennai,
on this the 03rd day of July, 2024
and signed their name in my
presence.



Member Secretary
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
Panagal Maligai, No.1, Jeenis Road,
Saidapet, Chennai - 15

Before me,

Advocate, Chennai



THIRU. A.R. RAHUL NADH, I.A.S.
MEMBER SECRETARY

**STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY-TAMILNADU**

3rd Floor, Panagal Maaligai,
No.1, Jeenis Road, Saidapet
Chennai - 600 015.
Phone No. 044-24359973
Fax No. 044-24359975

Letter No. SEIAA-TN/F.No.9641/2024 dated: 10.04.2024

To

M/s. Stone Trust Enterprises,
No.7/4, 8th Street,
Nandanam Extension,
Chennai - 600 035.

Sir,

Sub: SEIAA-TN – Proposal seeking Environmental Clearance for Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha at S.F. Nos. 22/1, 23/1, 23/2, 24/7, 24/8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu by M/s. Stone Trust Enterprises – under 1(a) Mining projects of the schedule of the EIA Notification, 2006 – Proposal not recommended / Rejected – Application closed and recorded – Regarding

- Ref:**
1. Online Proposal No. SIA/TN/MIN/37020/2019, Dated: 25.06.2019 (File No. 6873)
 2. Minutes of the 136th meeting of SEAC held on 21.09.2019
 3. Online Proposal No. SIA/TN/MIN/256739/2022, Dated: 15.02.2022 (File No. 9040)
 4. Minutes of the 281st meeting of SEAC held on 03.06.2022
 5. Minutes of the 527th meeting of SEIAA held on 01.07.2022
 6. PP request letter dated 02.09.2022
 7. Minutes of the 551st meeting of SEIAA held on 19.09.2022
 8. Minutes of the 559th meeting of SEIAA held on 15.10.2022
 9. Minutes of the 322nd meeting of SEAC held on 19.10.2022
 10. Minutes of the 567th meeting of SEIAA held on 07.11.2022 & 08.11.2022
 11. Online Proposal No. SIA/TN/MIN/409964/2022, Dated: 13.12.2022 (File No. 9641)
 12. PP request letter dated 30.06.2023
 13. Minutes of the 636th meeting of SEIAA held on 10.07.2023

14. Minutes of the 404th meeting of SEAC held on 25.08.2023
15. Minutes of the 655th meeting of SEIAA held on 19.09.2023
16. Letter No. SEIAA-TN/F.No.9641/2023 dated: 11.10.2023
17. Minutes of the 692nd meeting of SEIAA held on 07.02.2024
18. Minutes of the 446th meeting of SEAC held on 16.02.2024
19. PP request letter dated 22.02.2024 & 18.03.2024
20. Minutes of the 704th meeting of SEIAA held on 18.03.2024
21. Letter No. SEIAA-TN/F.No.9641/2024 dated: 20.03.2024
22. Personal Hearing conducted on 27.03.2024
23. Minutes of the 707th meeting of SEIAA held on 01.04.2024

I invite your kind attention to the reference cited above, wherein the application received from M/s. Stone Trust Enterprises for Environmental Clearance for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha at S.F. Nos. 22/1, 23/1, 23/2, 24/7, 24/8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu.

The proposal was placed in this 446th meeting of SEAC held on 16.02.2024.

The SEAC noted the following:

1. M/s. Stone Trust Enterprises earlier applied seeking Environment Clearance (File No. 6873 and Online Proposal No. SIA/TN/MIN/37020/2019 dated: 25.06.2019) for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu. The subject was placed before the then Committee in its 136th meeting held on 21.09.2019. SEAC decided not to recommend for issue of Environmental Clearance for the project since the project site is abetting the water tank which has large capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream. Hence SEAC collectively decided that the project is not recommended.
2. Suppressing the said facts to SEIAA and SEAC, the Proponent has applied again for the same project (File No. 9040 and Online Proposal No. SIA/TN/MIN/256739/2022 dated: 15.02.2022) and the proposal was recommended by this Committee in its 281st meeting held on 03.06.2022. Subsequently the subject was placed before the Authority in its 527th meeting held on 01.07.2022 and it was referred back by the Authority for the reasons stated below:

- i. There is a water body and patch of trees close to the project site. Hence the project proponent shall furnish the study report on impact of the proposed mining on the said water body and the tree patch.
 - ii. Detailed study shall be carried out in regard to impact of mining around the proposed mine lease area from a reputed research institutions on the following
 - a) Soil health & bio-diversity.
 - b) Climate change leading to Droughts, Floods etc.
 - c) Pollution leading to release of Greenhouse gases (GHG), rise in Temperature, & Livelihood of the local people.
 - d) Possibilities of water contamination and impact on aquatic ecosystem health.
 - e) Agriculture, Forestry & Traditional practices.
 - f) Hydrothermal/Geothermal effect due to distraction in the Environment.
 - g) Bio-geochemical processes and its foot prints including environmental stress.
 - h) Sediment geochemistry in the surface streams.
 - iii. Hydro-geological study considering the contour map of the water table detailing the number of ground water pumping & open wells, and surface water bodies such as rivers, tanks, canals, ponds etc. within 1 km (radius) so as to assess the impacts on the nearby waterbodies due to mining activity. Based on actual monitored data, it may clearly be shown whether working will intersect groundwater. Necessary data and documentation in this regard may be provided, covering the project life (or) subject to a maximum of thirty years, whichever is earlier.
 - iv. To furnish disaster management plan and disaster mitigation measures in regard to all aspects to avoid/reduce vulnerability to hazards & to cope with disaster/untoward accidents in & around the proposed mine lease area due to the proposed method of mining activity & its related activities.
 - v. To furnish risk assessment and management plan including anticipated vulnerabilities during operational and post operational phases of Mining.
 - vi. Detailed Mine Closure Plan covering the project life (or) subject to a maximum of thirty years, whichever is earlier.
 - vii. Detailed Environment Management Plan including mitigation & remedial strategies covering the project life (or) subject to a maximum of thirty years, whichever is earlier.
3. When the subject was listed for discussion in 304th meeting of SEAC held on 20.08.2022, the EIA Coordinator informed the Committee that the Proponent has requested for withdrawal of the application and submitted the withdrawal request vide PARIVESH. Hence the subject was

not taken up by the Committee for re-appraisal.

Subsequently, the Proponent vide letter dated 02.09.2022, stated that about 8 nos. of hydrogeological studies have been carried out in the past three years for the project and he has requested for reconsideration of the proposal. Hence the subject was placed before the Authority during its 551st meeting held on 19.09.2022 and 559th meeting held on 15.10.2022 to decide on further course of action. The Authority decided to seek Committee's opinion on the withdrawal requested via PARIVESH and the Proponent's letter dated 02.09.2022 seeking reconsideration of the Project.

Hence the subject was placed in the 322nd meeting of SEAC held on 19.10.2022. After detailed deliberations, **the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019** and to call for the following:

1. SEIAA may call for the explanation of the dealing Engineer for having accepted an already rejected proposal and for not disclosing the history of the case to SEAC.
2. SEIAA may call for an explanation of the EIA Coordinator for deliberately hiding the facts regarding the history of the project proposal to the Committee during appraisal.

Subsequently, the subject was placed in the 567th Authority meeting held on 07.11.2022 & 08.11.2022. The Authority noted that the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019 and to call for the following:

- i) SEIAA may call for the explanation of the dealing Engineer for having accepted an already rejected proposal and for not disclosing the history of the case to SEAC.
- ii) SEIAA may call for an explanation of the EIA Coordinator for deliberately hiding the facts regarding the history of the project proposal to the Committee during appraisal.

The Authority, after detailed deliberations, decided to request the Member Secretary, SEIAA TN the following:

- i) To call for explanation as recommended by the SEAC.
 - ii) To call for explanation from the proponent for having applied for EC for an already rejected proposal and not disclosing the facts regarding the history of the project proposal to the Committee during appraisal.
4. The PP submitted requisition letter dated 30.06.2023 along with copy of the Hon'ble High Court of Madras Order dated 12.06.2023 in W.P. 17246 of 2023 stated as follows:

"Taking into consideration the limited relief sought for in this writ petition, there shall be a direction to the first respondent to consider the petitioner's application bearing file No.9641

dated 13.12.2022 on its own merits and in accordance with law and appropriate orders shall be passed within a period of three months from the date of receipt of a copy of this order.”

5. The subject was placed in the 636th Authority meeting held on 10.07.2023. After detailed discussion, the Authority decided to forward the proposal to SEAC to look into the order dated 12.06.2023 passed by Hon’ble High Court of Madras in W.P. 17246 of 2023.
6. The proposal was placed in the 404th meeting of SEAC held on 25.08.2023. The SEAC noted that, already a decision has been taken by the previous Committee in its 136th meeting held on 21.09.2019. The Hon’ble High Court has directed the Authority to consider the application freshly filed. SEAC carefully examined the case and decided that the PP was dishonest in not disclosing the earlier decision of the Authority to deny EC to his proposal based on the recommendation of SEAC. Now again, the PP has made afresh application for the same proposal, albeit disclosing the history. None of the parameters based on which the EC was denied has changed. Further, reopening already decided cases based on fresh applications would be inappropriate and would lead to PPs filing fresh applications repeatedly till EC is granted. SEAC, therefore, decided that there would be no change in the recommendation already made.
7. The subject was placed in the 655th authority meeting held on 19.09.2023. The authority noted that the subject was appraised in the 404th SEAC meeting held on 25.08.2023. The Authority, after discussions, accepted the decision of SEAC, rejected the proposal and decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per 404th SEAC minutes. Further, Authority decided to close and record this proposal.
8. Rejection Letter was granted to the proponent vide Letter No. SEIAA-TN/F.No.9641/2023 dated: 11.10.2023.
9. Further, the proponent has filed an Appeal petition in the Hon’ble National Green Tribunal, Southern Zone, Chennai vide Appeal No. 38 of 2023. Subsequently, the Hon’ble National Green Tribunal, Southern Zone has passed the Order on 06.02.2024 stated as below.

“14. In the instant case, even if there were any doubts, the SEAC ought to have communicated to the appellant and discussed the same. However without doing so, the impugned order is passed and naming the appellant as ‘dishonest’ is biased, unreasonable and unfounded. Such an approach of the SEIAA is unwarranted. Hence, the usage of the word ‘dishonest’ in the impugned order is specifically expunged.

15. *As the impugned order has been passed based on the decision taken by the previous committee in its 136th meeting held on 21.09.2019 apparently there is no appraisal*

done afresh based on the proposal dated 13.12.2022. Therefore, it would be appropriate to set aside the impugned order dated 13.12.2022 passed by SEIAA and the same is remitted back to SEIAA for fresh consideration of the proposal no. 9641 dated 13.12.2022 afresh after according an opportunity of personal hearing to the appellant within a period of 04 weeks without influenced by any of the comments made in this order.”

10. Based on the Order dated 06.02.2024 passed by the Hon’ble National Green Tribunal, Southern Zone, Chennai in Appeal No. 38 of 2023, the subject was placed in the 692nd authority meeting held on 07.02.2024.

In view of the above, the Authority after detailed deliberations decided to forward the court direction to SEAC for further course of action and direction.

The SEAC noted that the Hon’ble National Green Tribunal has directed the Authority to consider the proposal afresh after according an opportunity of personal hearing to the appellant within a period of 04 weeks without influenced by any of the comments made in this order.

In the meeting, the SEAC has given an opportunity to the proponent to express his views.

During the meeting, the proponent has stated the following.

“The proponent has invested significantly in this project, and it is their first project. The proponent has stated that they will adopt eco-friendly quarrying techniques in accordance with the environmental rules and regulations.”

During the deliberations, the SEAC has clearly taken a note of the following significant comments made by the Apex Court and NGT during the disposition of few cases as given below:

1. In the case of Fomento Resorts & Hotels Limited v. Minguel Martins, In paragraphs 53 to 55 and 65, the Apex Court held thus

“- The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved

The public trust doctrine is a tool for exerting long established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air,

water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations

We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof.

2. In *M.C. Mehta v. Union of India* [(1987) 4 SCC 463] this Apex Court held as under:

It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The —Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

They play an important role in maintaining and restoring the ecological balance. They act as sources of drinking water, recharge groundwater, control floods, support biodiversity, and provide livelihood 27 opportunities to a large number of people.

Rule 4(v) of the Wetland Conservation and Management Rule, 2017 states that any construction of the permanent nature within specified distance of the high flood level is prohibited. It is further provided that the wet land shall be conserved and managed in accordance with the principles of wise use as determined by the wet land authority.

3. While disposing the Original Application No. 325 of 2015 vide order dated 18.11.2020, the Tribunal, while dealing with restoration of water bodies observed as follows:

“The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important, harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub- watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable,

4. Ancient poet Rahim said: *“Water is most important. As without water, there is no wealth (pearls), life or earth”.*
5. Interestingly, in *Jagpal Singh (supra)*, the Apex Court with pains recorded that *'our ancestors were not fools'. They knew that in certain years, there may be droughts or water shortages for*

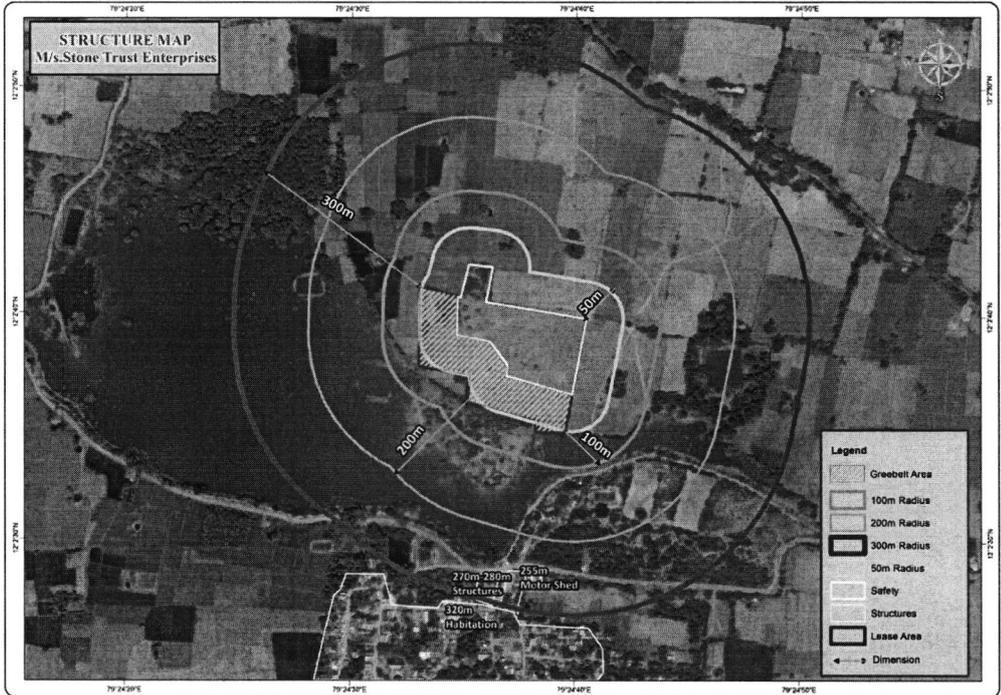
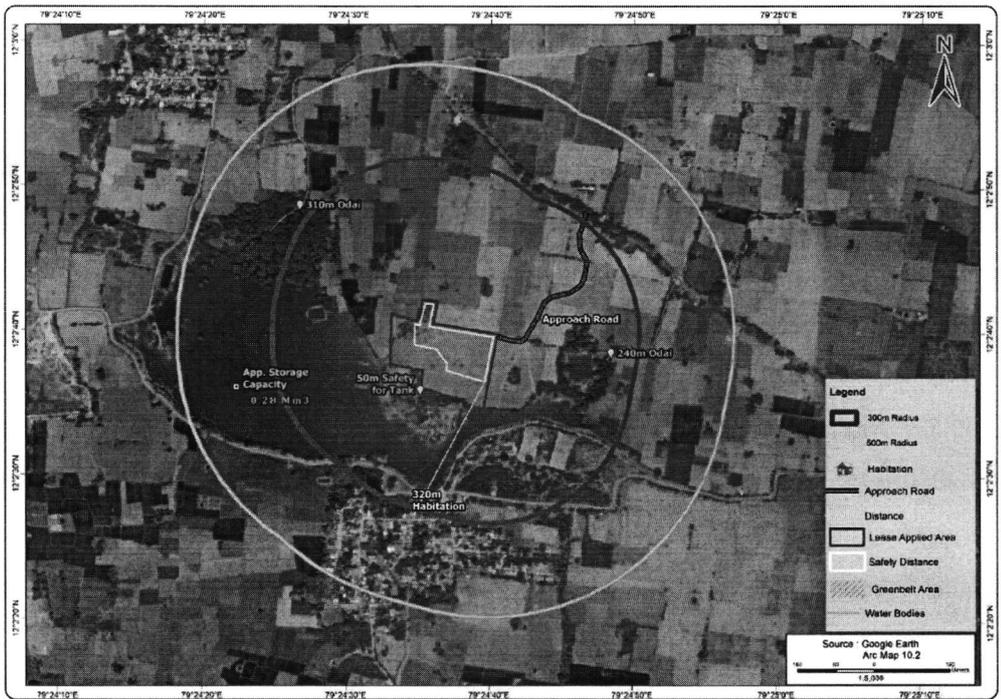
some other reasons, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple etc. These were their traditional rain water harvesting methods, which, served them for thousands of year....”

6. The reliance has been placed by the learned counsel on *Susetha vs. State of Tamilnadu* decided on 08.08.2006 by Hon’ble Supreme Court of India, Appeal (Civil) No. 3418 of 2006 (AIR 2006 SC 2893). The relevant portion are quoted below:

“... Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life....”

Finally, after a long deliberation, based on the presentation and documents furnished by the project proponent, the SEAC carefully examined the case and **decided not to recommend the proposal** for the grant of Environmental Clearance citing the following reasons:

1. The proposed project site is abetting the major water tank which has larger capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream.
2. The proposed project site is located within the catchment area of the abetting major water tank and thereby affects the Ayakkattu of the nearby surrounded agriculture fields.
3. Due to this mining activity, it will disturb the natural streams, water pollution due to the discharge of mine pit water and the source of water to the water tank located in the downstream.
4. Due to dumping of mining waste into the waterbody, it will adversely affect the holding capacity (size of the water tank) apart from causing the water pollution as huge quantity of waste / reject blocks anticipated from this quarry and affects the safety features of the existing water tank.
5. During heavy/excess rain, there is a possibility of tank water flooding into the mine pit and thereby affects the holding capacity of the water tank& safety of the men and machinery depolyed.
6. Due to this mining activity, flora and fauna will be affected.



Google Earth images showing the proposed project site and the abetting water tank

Subsequently, the subject was placed in the 704th authority meeting held on 18.03.2024. The authority noted that the subject was appraised in the 446th SEAC meeting held on 16.02.2024. After a long deliberation, based on the presentation and documents furnished by the project proponent, the SEAC carefully examined the case and **decided not to recommend the proposal** for the grant of Environmental Clearance citing the reasons stated therein.

Meanwhile, the project proponent (M/s. Stone Trust Enterprises) has given his representation before SEIAA for consideration of the said proposal vide his letter dated 22.02.2024. Further the project proponent has furnished representation to SEIAA along with the reply furnished to the points for rejection of the proposal mentioned in the minutes of 446th SEAC meeting vide his letter dated 18.03.2024.

The Project Proponent representation was placed in the 704th authority meeting held on 18.03.2024. During the meeting, the Authority decided to call the Project Proponent for Personal Hearing on 27.03.2024 in the O/o. SEIAA-TN, Chennai. In view of the above, the Authority decided to request the Member Secretary, SEIAA-TN to communicate the personal hearing date, time and venue to the project proponent.

A letter dated 20.03.2024 was communicated to the project proponent regarding personal hearing.

Based on the above, Personal Hearing was conducted by SEIAA with the Project Proponent on 27.03.2024. During the Personal Hearing, it is clear that the points placed by the Project Proponent were already placed before 446th SEAC meeting held on 16.02.2024.

The subject was placed in the 707th Authority meeting held on 01.04.2024. Hence, after discussions, the Authority accepted the decision of SEAC, rejected the proposal for the grant of Environmental Clearance citing the following reasons in addition to the above.

1. The proposed mining activity will disturb environment of the area through change of landscape, flora & fauna and habitat features of the area, surface drainage and change in soil quality and thereby affect the ecology and environment.
2. The proposed mining activity will affect the quality of the water tank which is located in the downstream.
3. Pollution of water in the surrounding water bodies due to leaching from overburden dumps and due to the pollutants from the other activities. This will affect the aquatic ecology of these water body.
4. Due to the proposed mining activity, environment safety and security will be affected.

In view of the above, the Authority decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per 446th SEAC minutes. Further, Authority decided to close and record this proposal.

Hence, the above mentioned file is **closed and recorded accordingly**.

For MEMBER SECRETARY
SEIAA-TN

10/04/2024



THIRU. DEEPAK S. BILGI, I.F.S
MEMBER SECRETARY

STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY-TAMILNADU

3rd Floor, Panagal Maaligai,
No.1, Jeenis Road, Saidapet
Chennai - 600 015.
Phone No. 044-24359973
Fax No. 044-24359975

Letter No. SEIAA-TN/F.No.9641/2023 dated: 11.10.2023

To

M/s. Stone Trust Enterprises,
No.7/4, 8th Street,
Nandanam Extension,
Chennai - 600 035.

Sir,

Sub: SEIAA-TN – Proposal seeking Environmental Clearance for Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha at S.F. Nos. 22/1, 23/1, 23/2, 24/7, 24/8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu by M/s. Stone Trust Enterprises – under 1(a) Mining projects of the schedule of the EIA Notification, 2006 – Proposal not recommended / Rejected – Application closed and recorded – Regarding

- Ref:
1. Online Proposal No. SIA/TN/MIN/37020/2019, Dated: 25.06.2019 (File No. 6873)
 2. Minutes of the 136th meeting of SEAC held on 21.09.2019
 3. Online Proposal No. SIA/TN/MIN/256739/2022, Dated: 15.02.2022 (File No. 9040)
 4. Minutes of the 281st meeting of SEAC held on 03.06.2022
 5. Minutes of the 527th meeting of SEIAA held on 01.07.2022
 6. Minutes of the 322nd meeting of SEAC held on 19.10.2022
 7. Minutes of the 567th meeting of SEIAA held on 07.11.2022 & 08.11.2022
 8. Online Proposal No. SIA/TN/MIN/409964/2022, Dated: 13.12.2022 (File No. 9641)
 9. PP request letter dated 30.06.2023
 10. Minutes of the 636th meeting of SEIAA held on 10.07.2023
 11. Minutes of the 404th meeting of SEAC held on 25.08.2023
 12. Minutes of the 655th meeting of SEIAA held on 19.09.2023

I invite your kind attention to the reference cited above, wherein the application received from M/s. Stone Trust Enterprises for Environmental Clearance for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha at S.F. Nos. 22/1, 23/1, 23/2, 24/7, 24/8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu.

The proposal was placed in this 404th meeting of SEAC held on 25.08.2023.

The SEAC noted the following:

1. M/s. Stone Trust Enterprises earlier applied seeking Environment Clearance (File No. 6873 and Online Proposal No. SIA/TN/MIN/37020/2019 dated: 25.06.2019) for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos. 22/1, 23/1, 23/2, 24/7, 24/8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu. The subject was placed before the then Committee in its 136th meeting held on 21.09.2019. SEAC decided not to recommend for issue of Environmental Clearance for the project since the project site is abetting the water tank which has large capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream. Hence SEAC collectively decided that the project is not recommended.

2. Suppressing the said facts to SEIAA and SEAC, the Proponent has applied again for the same project (File No. 9040 and Online Proposal No. SIA/TN/MIN/256739/2022 dated: 15.02.2022) and the proposal was recommended by this Committee in its 281st meeting held on 03.06.2022. Subsequently the subject was placed before the Authority in its 527th meeting held on 01.07.2022 and it was referred back by the Authority for the reasons stated therein. When the subject was listed for discussion in 304th meeting of SEAC held on 20.08.2022, the EIA Coordinator informed the Committee that the Proponent has requested for withdrawal of the application and submitted the withdrawal request vide PARIVESH. Hence the subject was not taken up by the Committee for re-appraisal.

Subsequently, the Proponent vide letter dated 02.09.2022, stated that about 8 nos. of hydrogeological studies have been carried out in the past three years for the project and requested for reconsideration of the proposal. Hence the subject was placed before the Authority during its 559th meeting held on 15.10.2022 to decide on further course of action. The Authority decided to seek Committee's opinion on the withdrawal requested via PARIVESH and Proponent's letter dated 02.09.2022 seeking reconsideration of the Project.

Hence the subject was placed in this 322nd meeting of SEAC held on 19.10.2022. After detailed deliberations, **the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019** and to call for the following:

1. SEIAA may call for the explanation of the dealing Engineer for having accepted an already rejected proposal and for not disclosing the history of the case to SEAC.
 2. SEIAA may call for an explanation of the EIA Coordinator for deliberately hiding the facts regarding the history of the project proposal to the Committee during appraisal.
3. The subject was placed in the 567th Authority meeting held on 07.11.2022 & 08.11.2022. The Authority noted that the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019 and to call for the following:
- i) SEIAA may call for the explanation of the dealing Engineer for having accepted an already rejected proposal and for not disclosing the history of the case to SEAC.
 - ii) SEIAA may call for an explanation of the EIA Coordinator for deliberately hiding the facts regarding the history of the project proposal to the Committee during appraisal.

The Authority, after detailed deliberations, decided to request the Member Secretary, SEIAA TN the following:

- i) To call for explanation as recommended by the SEAC.
 - ii) To call for explanation from the proponent for having applied for EC for an already rejected proposal and not disclosing the facts regarding the history of the project proposal to the Committee during appraisal.
4. The PP has submitted requisition letter dated 30.06.2023 along with copy of the Hon`ble High Court of Madras Order dated 12.06.2023 in W.P. 17246 of 2023 stated as follows:

“Taking into consideration the limited relief sought for in this writ petition, there shall be a direction to the first respondent to consider the petitioner’s application bearing file No.9641 dated 13.12.2022 on its own merits and in accordance with law and appropriate orders shall be passed within a period of three months from the date of receipt of a copy of this order.”

In view of the above, the subject was placed in the 636th Authority meeting held on 10.07.2023. After detailed discussion, the Authority decided to forward the proposal to SEAC to look into the order dated 12.06.2023 passed by the Hon`ble High Court of Madras in W.P. 17246 of 2023.

The proposal was again placed in the 404th meeting of SEAC held on 25.08.2023. The SEAC noted that, already a decision has been taken by the previous Committee in its 136th meeting held on 21.09.2019. The Hon`ble High Court has directed the Authority to consider the application freshly filed. SEAC carefully examined the case and decided that the PP was dishonest in not disclosing the earlier decision of the Authority to deny EC to his proposal based on the recommendation of SEAC. Now again, the PP has made afresh application for the same proposal, albeit disclosing the history. None of the parameters based on which the EC was denied has changed. Further, reopening already

decided cases based on fresh applications would be inappropriate and would lead to PPs filing fresh applications repeatedly till EC is granted. SEAC, therefore, decided that there would be no change in the recommendation already made.

The subject was placed in the 655th authority meeting held on 19.09.2023. The authority noted that the subject was appraised in the 404th SEAC meeting held on 25.08.2023.

The Authority, after discussions, accepted the decision of SEAC, rejected the proposal and decided to request the Member Secretary, SEIAA-TN to send rejection letter to the proponent as per 404th SEAC minutes. Further, Authority decided to close and record this proposal.

Hence, the above mentioned file is **closed and recorded accordingly**.


MEMBER SECRETARY
SEIAA-TN


2. The PP shall carry out the required number of plantations as committed in the EMP around the periphery of the lease boundary without deviation before the execution of the lease.
3. The PP shall ensure the safety provisions as stipulated in the DGMS Circular No:02, dated. 29.11.2019 while using the Diamond Wire Saw machines in the proposed quarry operation.
4. The PP shall adopt only non-explosive technique (Rock Breaking Compounds) for the fracturing of granite blocks ensuring the eco-friendly mining operation in the proposed quarry.
5. To ensure the conditions of occupational safety, health & welfare status of persons working in the mine, the PP shall annually conduct occupational health survey to determine prevalence of Noise Induced Hearing Loss (NIHL) due to the operation of Diamond Wire Saw cutting & other HEMMs deployed in the mine and to prepare a plan for hearing conservation programme by involving anyone of the reputed institutes - Regional Occupational Health Centre (Southern) of ICMR-National Institute of Occupational Health, Bengaluru, National Institute of Miners' Health, Nagpur and Anna University, Chennai.
6. The PP shall properly provide all the required welfare amenities near quarry such as Drinking water, Rest Shelter, Canteen, Toilets, etc for the persons to be employed in the proposed quarry before the execution of lease, in accordance with the provisions of the Mines Rules, 1955.
7. As accepted by the Project Proponent the Mitigation/Conservation cost of Rs. 5 Lakhs shall be spent for the Cauvery North Wildlife Sanctuary before obtaining CTO from TNPCCB.

Agenda No: 446-17

(File No: 9641/2022)

Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu by M/s. Stone Trust Enterprises – for Environment Clearance. (SIA/TN/MIN/409964/2022, Dated: 13.12.2022)


MEMBER SECRETARY
SEAC -TN


CHAIRMAN
SEAC- TN

The proposal was placed in this 446th meeting of SEAC held on 16.02.2024. The details of the project furnished by the proponent are available in the website (parivesh.nic.in).

The SEAC noted the following:

1. The Project Proponent, M/s. Stone Trust Enterprises has applied for Environmental Clearance for the proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha S.F.Nos. 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2, of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu.
2. The project/activity is covered under Category "B2" of Item 1(a) "Mining Projects" of the Schedule to the EIA Notification, 2006.
3. M/s. Stone Trust Enterprises earlier applied seeking Environment Clearance (File No. 6873 and Online Proposal No. SIA/TN/MIN/37020/2019 dated: 25.06.2019) for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu. The subject was placed before the then Committee in its 136th meeting held on 21.09.2019. SEAC decided not to recommend for issue of Environmental Clearance for the project since the project site is abetting the water tank which has large capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream. Hence SEAC collectively decided that the project is not recommended.
4. Suppressing the said facts to SEIAA and SEAC, the Proponent has applied again for the same project (File No. 9040 and Online Proposal No. SIA/TN/MIN/256739/2022 dated: 15.02.2022) and the proposal was recommended by this Committee in its 281st meeting held on 03.06.2022. Subsequently the subject was placed before the Authority in its 527th meeting held on 01.07.2022 and it was referred back by the Authority for the reasons stated below:


MEMBER SECRETARY
SEAC -TN


CHAIRMAN
SEAC- TN

- i. There is a water body and patch of trees close to the project site. Hence the project proponent shall furnish the study report on impact of the proposed mining on the said water body and the tree patch.
- ii. Detailed study shall be carried out in regard to impact of mining around the proposed mine lease area from a reputed research institutions on the following
 - a) Soil health & bio-diversity.
 - b) Climate change leading to Droughts, Floods etc.
 - c) Pollution leading to release of Greenhouse gases (GHG), rise in Temperature, & Livelihood of the local people.
 - d) Possibilities of water contamination and impact on aquatic ecosystem health.
 - e) Agriculture, Forestry & Traditional practices.
 - f) Hydrothermal/Geothermal effect due to distraction in the Environment.
 - g) Bio-geochemical processes and its foot prints including environmental stress.
 - h) Sediment geochemistry in the surface streams.
- iii. Hydro-geological study considering the contour map of the water table detailing the number of ground water pumping & open wells, and surface water bodies such as rivers, tanks, canals, ponds etc. within 1 km (radius) so as to assess the impacts on the nearby waterbodies due to mining activity. Based on actual monitored data, it may clearly be shown whether working will intersect groundwater. Necessary data and documentation in this regard may be provided, covering the project life (or) subject to a maximum of thirty years, whichever is earlier.
- iv. To furnish disaster management plan and disaster mitigation measures in regard to all aspects to avoid/reduce vulnerability to hazards & to cope with disaster/untoward accidents in & around the proposed mine lease area due to the proposed method of mining activity & its related activities.

- v. To furnish risk assessment and management plan including anticipated vulnerabilities during operational and post operational phases of Mining.
- vi. Detailed Mine Closure Plan covering the project life (or) subject to a maximum of thirty years, whichever is earlier.
- vii. Detailed Environment Management Plan including mitigation & remedial strategies covering the project life (or) subject to a maximum of thirty years, whichever is earlier.

5. When the subject was listed for discussion in 304th meeting of SEAC held on 20.08.2022, the EIA Coordinator informed the Committee that the Proponent has requested for withdrawal of the application and submitted the withdrawal request vide PARIVESH. Hence the subject was not taken up by the Committee for re-appraisal.

Subsequently, the Proponent vide letter dated 02.09.2022, stated that about 8 nos. of hydrogeological studies have been carried out in the past three years for the project and he has requested for reconsideration of the proposal. Hence the subject was placed before the Authority during its 551st meeting held on 19.09.2022 and 559th meeting held on 15.10.2022 to decide on further course of action. The Authority decided to seek Committee's opinion on the withdrawal requested via PARIVESH and the Proponent's letter dated 02.09.2022 seeking reconsideration of the Project.

Hence the subject was placed in the 322nd meeting of SEAC held on 19.10.2022. After detailed deliberations, the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019 and to call for the following:

- i) SEIAA may call for the explanation of the dealing Engineer for having accepted an already rejected proposal and for not disclosing the history of the case to SEAC.
- ii) SEIAA may call for an explanation of the EIA Coordinator for deliberately hiding the facts regarding the history of the project proposal to the Committee during appraisal.


MEMBER SECRETARY
SEAC -TN


CHAIRMAN
SEAC- TN

Subsequently, the subject was placed in the 567th Authority meeting held on 07.11.2022 & 08.11.2022. The Authority noted that the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019 and to call for the following:

- i) SEIAA may call for the explanation of the dealing Engineer for having accepted an already rejected proposal and for not disclosing the history of the case to SEAC.
- ii) SEIAA may call for an explanation of the EIA Coordinator for deliberately hiding the facts regarding the history of the project proposal to the Committee during appraisal.

The Authority, after detailed deliberations, decided to request the Member Secretary, SEIAA TN the following:

- i) To call for explanation as recommended by the SEAC.
- ii) To call for explanation from the proponent for having applied for EC for an already rejected proposal and not disclosing the facts regarding the history of the project proposal to the Committee during appraisal.

6. The PP submitted requisition letter dated 30.06.2023 along with copy of the Hon'ble High Court of Madras Order dated 12.06.2023 in W.P. 17246 of 2023 stated as follows:

"Taking into consideration the limited relief sought for in this writ petition, there shall be a direction to the first respondent to consider the petitioner's application bearing file No.9641 dated 13.12.2022 on its own merits and in accordance with law and appropriate orders shall be passed within a period of three months from the date of receipt of a copy of this order."

7. The subject was placed in the 636th Authority meeting held on 10.07.2023. After detailed discussion, the Authority decided to forward the proposal to SEAC to look into the order dated 12.06.2023 passed by Hon'ble High Court of Madras in W.P. 17246 of 2023.

8. The proposal was placed in the 404th meeting of SEAC held on 25.08.2023. The SEAC noted that, already a decision has been taken by the previous

Committee in its 136th meeting held on 21.09.2019. The Hon'ble High Court has directed the Authority to consider the application freshly filed. SEAC carefully examined the case and decided that the PP was dishonest in not disclosing the earlier decision of the Authority to deny EC to his proposal based on the recommendation of SEAC. Now again, the PP has made afresh application for the same proposal, albeit disclosing the history. None of the parameters based on which the EC was denied has changed. Further, reopening already decided cases based on fresh applications would be inappropriate and would lead to PPs filing fresh applications repeatedly till EC is granted. SEAC, therefore, decided that there would be no change in the recommendation already made.

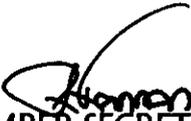
9. The subject was placed in the 655th authority meeting held on 19.09.2023. The authority noted that the subject was appraised in the 404th SEAC meeting held on 25.08.2023.

The Authority, after discussions, accepted the decision of SEAC, rejected the proposal and decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per 404th SEAC minutes. Further, Authority decided to close and record this proposal.

10. Rejection Letter was granted to the proponent vide Letter No. SEIAA-TN/ F.No.9641/2023 dated: 11.10.2023.
11. Further, the proponent has filed an Appeal petition in the Hon'ble National Green Tribunal, Southern Zone, Chennai vide Appeal No. 38 of 2023.

Subsequently, the Hon'ble National Green Tribunal, Southern Zone has passed the Order on 06.02.2024 stated as below.

"14. In the instant case, even if there were any doubts, the SEAC ought to have communicated to the appellant and discussed the same. However without doing so, the impugned order is passed and naming the appellant as 'dishonest' is biased, unreasonable and unfounded. Such an approach of the SEIAA is unwarranted. Hence, the usage of the word 'dishonest' in the impugned order is specifically expunged.


MEMBER SECRETARY
SEAC -TN


CHAIRMAN
SEAC- TN

15. *As the impugned order has been passed based on the decision taken by the previous committee in its 136th meeting held on 21.09.2019 apparently there is no appraisal done afresh based on the proposal dated 13.12.2022. Therefore, it would be appropriate to set aside the impugned order dated 13.12.2022 passed by SEIAA and the same is remitted back to SEIAA for fresh consideration of the proposal no. 9641 dated 13.12.2022 afresh after according an opportunity of personal hearing to the appellant within a period of 04 weeks without influenced by any of the comments made in this order.*"

12. Based on the Order dated 06.02.2024 passed by the Hon'ble National Green Tribunal, Southern Zone, Chennai in Appeal No. 38 of 2023, the subject was placed in the 692nd authority meeting held on 07.02.2024.

In view of the above, the Authority after detailed deliberations decided to forward the court direction to SEAC for further course of action and direction.

The SEAC noted that the Hon'ble National Green Tribunal has directed the Authority to consider the proposal afresh after according an opportunity of personal hearing to the appellant within a period of 04 weeks without influenced by any of the comments made in this order.

In the meeting, the SEAC has given an opportunity to the proponent to express his views.

During the meeting, the proponent has stated the following.

"The proponent has invested significantly in this project, and it is their first project. The proponent has stated that they will adopt eco-friendly quarrying techniques in accordance with the environmental rules and regulations."

During the deliberations, the SEAC has clearly taken a note of the following significant comments made by the Apex Court and NGT during the disposition of few cases as given below:

1. In the case of Fomento Resorts & Hotels Limited v. Minguel Martins, In paragraphs 53 to 55 and 65, the Apex Court held thus


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"- The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved

The public trust doctrine is a tool for exerting long established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations

We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof.

2. In *M.C. Mehta v. Union of India* [(1987) 4 SCC 463] this Apex Court held as under:

It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The —Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

They play an important role in maintaining and restoring the ecological balance. They act as sources of drinking water, recharge groundwater,

control floods, support biodiversity, and provide livelihood 27 opportunities to a large number of people.

Rule 4(v) of the Wetland Conservation and Management Rule, 2017 states that any construction of the permanent nature within specified distance of the high flood level is prohibited. It is further provided that the wet land shall be conserved and managed in accordance with the principles of wise use as determined by the wet land authority.

3. While disposing the Original Application No. 325 of 2015 vide order dated 18.11.2020, the Tribunal, while dealing with restoration of water bodies observed as follows:

“The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important, harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub- watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable,

4. Ancient poet Rahim said: *“Water is most important. As without water, there is no wealth (pearls), life or earth”.*
5. Interestingly, in Jagpal Singh (supra), the Apex Court with pains recorded that *‘our ancestors were not fools’. They knew that in certain years, there may be droughts or water shortages for some other reasons, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple etc. These were their traditional rain water harvesting methods, which, served them for thousands of year....”*
6. The reliance has been placed by the learned counsel on *Susetha vs. State of Tamilnadu* decided on 08.08.2006 by Hon’ble Supreme Court of India, Appeal


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(Civil) No. 3418 of 2006 (AIR 2006 SC 2893). The relevant portion are quoted below:

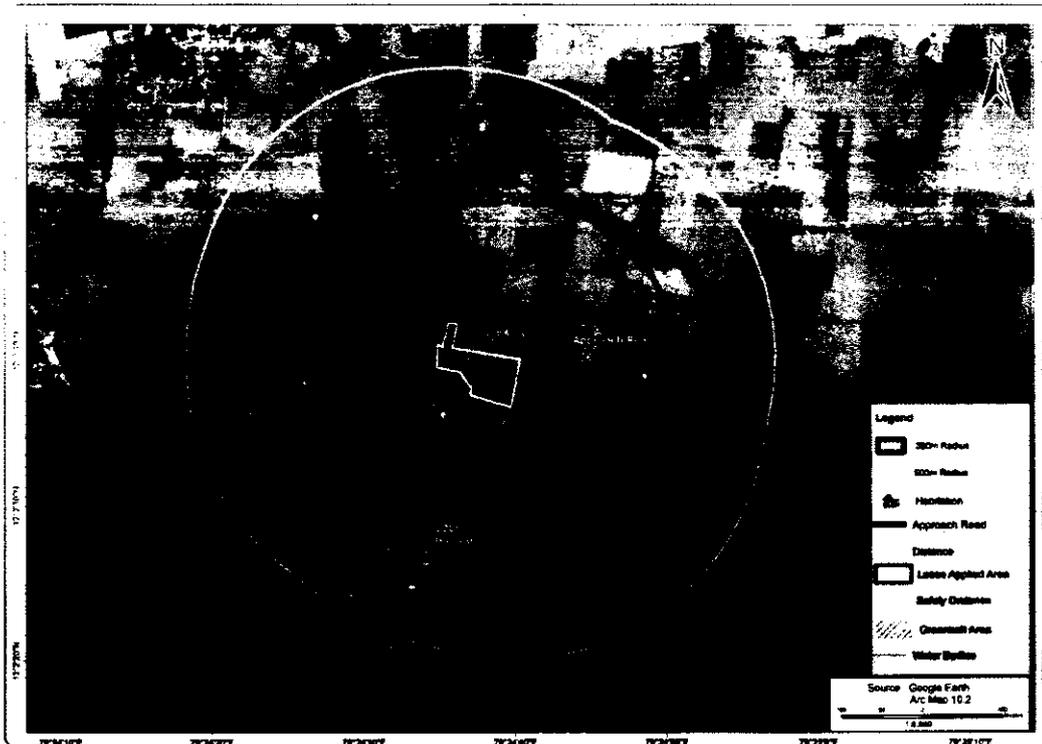
".... Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life..."

Finally, after a long deliberation, based on the presentation and documents furnished by the project proponent, the SEAC carefully examined the case and decided not to recommend the proposal for the grant of Environmental Clearance citing the following reasons:

1. The proposed project site is abetting the major water tank which has larger capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream.
2. The proposed project site is located within the catchment area of the abetting major water tank and thereby affects the Ayakkattu of the nearby surrounded agriculture fields.
3. Due to this mining activity, it will disturb the natural streams, water pollution due to the discharge of mine pit water and the source of water to the water tank located in the downstream.
4. Due to dumping of mining waste into the waterbody, it will adversely affect the holding capacity (size of the water tank) apart from causing the water pollution as huge quantity of waste / reject blocks anticipated from this quarry and affects the safety features of the existing water tank.
5. During heavy/excess rain, there is a possibility of tank water flooding into the mine pit and thereby affects the holding capacity of the water tank& safety of the men and machinery depolyed.
6. Due to this mining activity, flora and fauna will be affected.


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Google Earth images showing the proposed project site and the abetting water tank

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 MEMBER SECRETARY
 SEAC -TN

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 CHAIRMAN
 SEAC- TN

MINUTES

707th MEETING

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY-TAMIL NADU

Date: 01.04.2024

			Upon receipt of the above mentioned details, further deliberations shall be done.
33.	Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu by M/s. Stone Trust Enterprises – for Environment Clearance. (SIA/TN/MIN/409964/2022)	9641	After detailed discussion, the authority noted as follows: 1. Earlier, the subject was placed in the 704 th authority meeting held on 18.03.2024. The authority noted that the subject was appraised in the 446 th SEAC meeting held on 16.02.2024. After a long deliberation, based on the presentation and documents furnished by the project proponent, the SEAC carefully examined the case and decided not to recommend the proposal for the grant of Environmental Clearance citing the following reasons: i. The proposed project site is abetting the major water tank which has larger capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream. ii. The proposed project site is located within the catchment area of the abetting major water tank and thereby affects the Ayakkattu of the nearby surrounded agriculture fields. iii. Due to this mining activity, it will disturb the natural streams, water pollution due to the discharge of mine pit water and the source of water to the water tank located in the downstream.



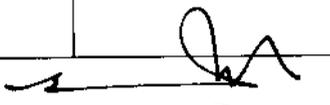
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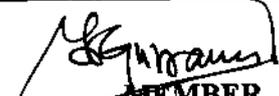


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		<p>iv. Due to dumping of mining waste into the waterbody, it will adversely affect the holding capacity (size of the water tank) apart from causing the water pollution as huge quantity of waste / reject blocks anticipated from this quarry and affects the safety features of the existing water tank.</p> <p>v. During heavy/excess rain, there is a possibility of tank water flooding into the mine pit and thereby affects the holding capacity of the water tank & safety of the men and machinery depolyed.</p> <p>vi. Due to this mining activity, flora and fauna will be affected.</p> <p>2. Meanwhile, the project proponent (M/s. Stone Trust Enterprises) has given his representation before SEIAA for consideration of the said proposal vide his letter dated 22.02.2024. Further the project proponent has furnished representation to SEIAA along with the reply furnished to the points for rejection of the proposal mentioned in the minutes of 446th SEAC meeting vide his letter dated 18.03.2024.</p> <p>3. The Project Proponent representation was placed in the 704th authority meeting held on 18.03.2024. During the meeting, the Authority decided to call the Project Proponent for Personal Hearing on 27.03.2024 in the O/o. SEIAA-TN, Chennai. In view of the above, the Authority decided to request the Member Secretary, SEIAA-TN to communicate the</p>
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MEMBER SECRETARY


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SEIAA-TN

		<p>personal hearing date, time and venue to the project proponent.</p> <p>4. A letter dated 20.03.2024 was communicated to the project proponent regarding personal hearing.</p> <p>5. Based on the above, Personal Hearing was conducted by SEIAA with the Project Proponent on 27.03.2024. During the Personal Hearing, it is clear that the points placed by the Project Proponent were already placed before 446th SEAC meeting held on 16.02.2024.</p> <p>Hence, after discussions, the Authority accepted the decision of SEAC, rejected the proposal for the grant of Environmental Clearance citing the following reasons in addition to the above.</p> <ol style="list-style-type: none">1. The proposed mining activity will disturb environment of the area through change of landscape, flora & fauna and habitat features of the area, surface drainage and change in soil quality and thereby affect the ecology and environment.2. The proposed mining activity will affect the quality of the water tank which is located in the downstream.3. Pollution of water in the surrounding water bodies due to leaching from overburden dumps and due to the pollutants from the other activities. This will affect the aquatic ecology of these water body.4. Due to the proposed mining activity, environment safety and security will be affected.
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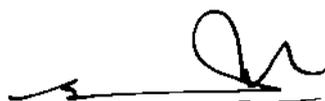


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SEIAA-TN

			In view of the above, the Authority decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per 446 th SEAC minutes. Further, Authority decided to close and record this proposal.
34.	Proposed Rough Stone Quarry lease over an extent of 1.00.0 Ha (Govt. Poramboke Land) in S.F.No. 399/1 (Part-B) of Kallukkurukki Village, Krishnagiri Taluk, Krishnagiri District, Tamil Nadu by Thiru. V. Rajesh, – For Terms of Reference. (SLA/TN/MIN/431128/2023)	10082	<p>The authority noted the following:</p> <p>i) The proponent, Thiru.V.Rajesh submitted an application seeking Terms of Reference vide Proposal No. SLA/TN/MIN/431128/2023 dated.27.05.2023 for quarrying rough stone over an extent of 1.00. Ha in Govt. Poramboke Land at S.F.No. 399/1 (Part-B) in Kallukkurukki Village, Krishnagiri Taluk, Krishnagiri District, Tamil Nadu.</p> <p>ii) Subsequently, ToR was issued to the project proponent vide Lr.No.SEIAA-TN/F.No.10082/SEAC/ToR-1510/2023 dated.01.08.2023.</p> <p>iii) Now, the proponent vide letter dated.28.03.2024 has submitted a request to withdraw the ToR dated.01.08.2023 for the reasons stated therein.</p> <p>iv) The withdrawal request of proponent is placed in this 707th authority meeting.</p> <p>The authority, after discussions, decided to forward the request of the proponent to SEAC for seeking remarks.</p>



MEMBER SECRETARY



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SEIAA-TN

MINUTES**704th MEETING****STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY-TAMIL NADU****Date: 18.03.2024**

			<p>biodiversity report should be submitted every year to SEIAA & IRO of MoEF&CC.</p> <p>7. The progressive and final mine closure plan including the green belt implementation and environmental norms should be strictly followed as per the EMP and as per the amount committed and approved in EC for EMP. Status of progressive mine closure and green belt implementation should be included in the half yearly compliance report submitted to TNPCB, SEIAA & IRO of MoEF&CC.</p> <p>8. As per the OM vide F. No. IA3-22/1/2022-1A-III [E- 172624] Dated: 14.06.2022, the Project Proponents are directed to submit the six-monthly compliance on the environmental conditions prescribed in the prior environmental clearance letter(s) through newly developed compliance module in the PARIVESH Portal from the respective login.</p> <p>9. The amount allocated for EMP should be kept in a separate account and both the capital and recurring expenditures should be done year wise for the works identified, approved and as committed. The work & expenditure made under EMP should be elaborated in the bi-annual compliance report submitted and also should be brought to the notice of concerned authorities during inspections.</p>
10.	Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0	9641	The authority noted that the subject was appraised in the 446 th SEAC meeting held on 16.02.2024. After



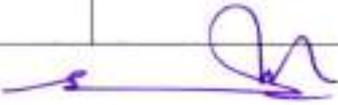
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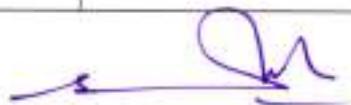
<p>Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu by M/s. Stone Trust Enterprises – for Environment Clearance. (SIA/TN/MIN/409964/2022)</p>	<p>a long deliberation, based on the presentation and documents furnished by the project proponent, the SEAC carefully examined the case and decided not to recommend the proposal for the grant of Environmental Clearance citing the following reasons:</p> <ol style="list-style-type: none"> 1. The proposed project site is abetting the major water tank which has larger capacity and the project will adversely impact the storage capacity of the tank and thereby affecting the irrigation and livelihood of the local people of the downstream. 2. The proposed project site is located within the catchment area of the abetting major water tank and thereby affects the Ayakkattu of the nearby surrounded agriculture fields. 3. Due to this mining activity, it will disturb the natural streams, water pollution due to the discharge of mine pit water and the source of water to the water tank located in the downstream. 4. Due to dumping of mining waste into the waterbody, it will adversely affect the holding capacity (size of the water tank) apart from causing the water pollution as huge quantity of waste / reject blocks anticipated from this quarry and affects the safety features of the existing water tank. 5. During heavy/excess rain, there is a possibility of tank water flooding into the mine pit and thereby affects the holding capacity of the water tank & safety of the men and machinery deployed.
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SEIAA-TN

			<p>6. Due to this mining activity, flora and fauna will be affected.</p> <p>Meanwhile, the Project Proponent (M/s. Stone Trust Enterprises) has given its representation to SEIAA for consideration of the above said proposal vide letter dated 22.02.2024 & 18.03.2024. The Project Proponent representation was placed in the 704th authority meeting held on 18.03.2024. During the meeting, the Authority decided to call the Project Proponent for personnel hearing on 27.03.2024 at 11:30 A.M in the O/o. SEIAA-TN, Chennai.</p> <p>In view of the above, the Authority decided to request the Member Secretary, SEIAA-TN to communicate the personnel hearing date, time and venue to the project proponent.</p>
11.	Proposed Rough Stone and Gravel quarry over an extent of 0.84.0 Ha (Patta land) in S.F.No.31/IB, 31/1C(Part), 31/1E1(Part) and 31/1E2 (Part) of Nallur Village, Anaimalai Taluk, Coimbatore District by Thiru. T. Pasupathi - For Environmental Clearance. (SIA/TN/MIN/272021/2022)	9251	<p>The Authority noted that the subject was appraised in the 446th SEAC meeting held on 16.02.2024. SEAC has furnished its recommendations for granting Environmental Clearance subject to the conditions stated therein.</p> <p>After detailed discussions, the Authority taking into account the recommendations of SEAC and also the safety aspects and to ensure sustainable, scientific and systematic mining, decided to grant Environmental Clearance for the quantity of 45,021m³ of rough stone & 5,180m³ of Gravel up to the depth of 39m Below Ground Level and the annual peak production should not exceed 11,450m³ of rough stone & 2,960m³ of Gravel. This is also subject to the conditions imposed by SEAC, normal conditions stipulated by MOEF&CC in</p>



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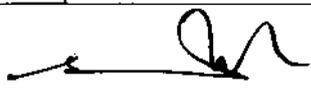
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692nd MEETING

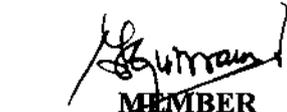
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY-TAMIL NADU

Date: 07.02.2024

Agenda No	Description	File No.	Minutes
1.	Proposed of Black Granite lease over an extent of 1.00.0H at S.F.No.99/3A1(Part) of Nammandahalli Village, Palacode Taluk, Dharmapuri District, Tamil Nadu by Thiru.K.S.Thanikachalam Kumar - for Environmental Clearance	7457	<p>Based on the NGT court order (SZ) (Appeal No.35 of 2023), which states that,</p> <p><i>"..... The impugned rejection order passed by the 1st Respondent/SEIAA Tamil Nadu vide Letter No.SEIAA-TN/F.No. 7457/2022 dated 23.06.2023 is set aside and remitted back to the SEIAA- Tamil Nadu for fresh consideration.</i></p> <p><i>The SEIAA Tamil Nadu is directed to reconsider the appellant's proposal bearing Proposal No.SIA/TN/MIN/131794/2019 dated 16.12.2019 afresh by affording an opportunity of personal hearing to the appellant within a period of 4 (Four) weeks from the date of this order and pass appropriate orders".</i></p> <p>In the view of the above, Authority after detailed deliberation decided to forward the court direction to SEAC for further course of action and direction.</p>
2.	Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu by M/s. Stone Trust Enterprises – for Environment Clearance.	9641	<p>The authority noted as follows:</p> <p>Based on the order dated 06.02.2024 passed by the Hon'ble National Green Tribunal, Southern Zone, Chennai in Appeal No. 38 of 2023, which states that,</p> <p><i>"As the impugned order has been passed based on the decision taken by the previous committee in its 136th meeting held on 21.09.2019 apparently there is no appraisal done afresh based on the proposal dated 13.12.2022. Therefore, it would be appropriate to set aside the impugned order dated 13.12.2022 passed by SEIAA and the same is</i></p>



MEMBER SECRETARY



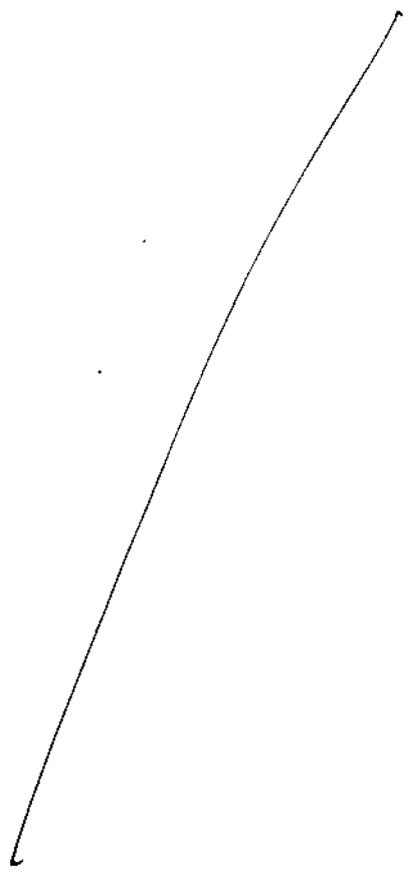
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SEIAA-TN

remitted back to SEIAA for fresh consideration of the proposal no. 9641 dated 13.12.2022 afresh after according an opportunity of personal hearing to the appellant within a period of 04 weeks without influenced by any of the comments made in this order."

In view of the above, the Authority after detailed deliberations decided to forward the court direction to SEAC for further course of action and direction.



MEMBER SECRETARY

MEMBER

CHAIRMAN
SEIAA-TN

MINUTES

655th MEETING

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY-TAMIL NADU

Date: 19.09.2023

11.	Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu Village, Vikravandi Taluk, Viluppuram District, Tamil Nadu by M/s. Stone Trust Enterprises – for Environment Clearance. (SIA/TN/MIN/409964/2022)	9641	<p>The authority noted that the subject was appraised in the 404th SEAC meeting held on 25.08.2023. The SEAC noted that, already a decision has been taken by the previous Committee in its 136th meeting held on 21.09.2019. The Hon'ble High Court has directed the Authority to consider the application freshly filed. SEAC carefully examined the case and decided that the PP was dishonest in not disclosing the earlier decision of the Authority to deny EC to his proposal based on the recommendation of SEAC. Now again, the PP has made afresh application for the same proposal, albeit disclosing the history. None of the parameters based on which the EC was denied has changed. Further, reopening already decided cases based on fresh applications would be inappropriate and would lead to PPs filing fresh applications repeatedly till EC is granted. SEAC, therefore, decided that there would be no change in the recommendation already made.</p> <p>The Authority, after discussions, accepted the decision of SEAC, rejected the proposal and decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per 404th SEAC minutes. Further, Authority decided to close and record this proposal.</p>
12.	Existing project of M/s. L&T South City Projects Ltd (Eden Park Phase 2) SF.No. 90/3A1A, 3A1B(Part) of Pudupakkam Village & SF.No. 123, 127/1 etc of Siruseri Village, Chengalpattu Taluk,	509	<p>The authority noted that the subject was appraised in the 404th SEAC meeting held on 25.08.2023 and SEAC noted that this proposal request for partial EC surrender of the Environmental Clearance Dt:07.11.2013 was filed offline stating that there is no option for online submission in parivesh portal.</p>



MEMBER SECRETARY



MEMBER



CHAIRMAN
SEIAA-TN

MINUTES**636th MEETING****STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY-TAMIL NADU****Date: 10.07.2023**

			<p>Clearance to the proposal subject to the conditions as recommended by SEAC in addition to the following conditions in Annexure 'C' of this minutes.</p> <p>i) Children's play area should be provided within the project site and it should not be located in the area earmarked for OSR.</p>
30.	To consider the proposal for the grant of Environmental Clearance for the Black Granite for over an extent of 3.06.0 Ha in S.F.Nos. 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 at Semmedu Village in Vikravvandi Taluk, Viluppuram District Tamil Nadu by M/s. Stone Trust Enterprises Exports.	9641	After detailed discussion, the Authority decided to forward the proposal to SEAC to look into the order dated 12.06.2023 passed by Hon'ble High Court of Madras in W.P. 17246 of 2023.
31.	Note to consider for the grant of Environmental Clearance Name Transfer for the Construction of Hostel Building Complex from M/s. SPR Construction Private Limited to M/s. SPR SPD Industrial Housing Private Limited at S.F.Nos. 22/2, 22/3A, 22/3B, 22/4, 22/5, 31/9, 31/10, 22/6, 22/8A1, 22/9A1, 22/10A1, 23/4, 23/5A1 of Thandalam Village, Sriperumbudur Taluk, Kancheepuram District, Tamil Nadu.	8670	<p>The subject was placed in 636th Authority meeting held on 10.07.2023.</p> <p>The authority noted that the Environmental Clearance was accorded to M/s. SPR Constructions Private Limited vide this office Letter No. SEIAA-TN/F.No.8670/EC/8(a)/840/2022 dated: 14.06.2022 for the Proposed construction of Men's and Women's Hostel building complex project by M/s. SPR Constructions Private Limited at S.F.Nos. 22/2, 22/3A, 22/3B, 22/4, 22/5, 31/9, 31/10, 22/6, 22/8A1, 22/9A1, 22/10A1, 23/4, 23/5A1 of Thandalam Village, Sriperumbudur Taluk, Kancheepuram District, Tamil Nadu under Category B2 and Schedule S. No. 8(a) under the</p>


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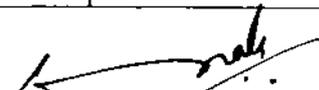
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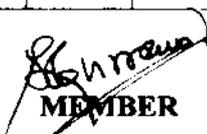
567th MEETING

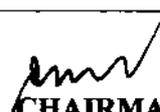
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY-TAMIL NADU

Date: 07.11.2022 & 08.11.2022

			<p>Primary School & Panchyat Government primary school, Andarkulam village before obtaining CTO from TNPCB.</p> <p>3. The project proponent shall obtain prior permission from Regional Inspector of <i>Directorate General of Mines Safety, Chennai</i> before obtaining CTO from TNPCB.</p>
11.	Proposed Black Granite quarry over an extent of 2.69.0 Ha in S.F.Nos. 1/1A, 1/1B,1/2, 1/6A, 1/9 & 1/11, In Siruvadi Village, Marakkanam (formerly Tindivanam) Taluk, Villupuram District, Tamil Nadu by Thiru S. Sumanth Ram (Legal Heir of Thiru Sriram) - For Environmental Clearance.	9009	SEAC has furnished its recommendations to the Authority for granting Environmental Clearance to the Project subject to the conditions stated therein. After detailed discussion, SEIAA decided to grant Environmental Clearance for the quantity as per the mine plan for a period of 5 years approved by the Department of Geology & Mining subject to the conditions as recommended by SEAC in addition to the following condition & conditions stated vide Annexure A.
12.	Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu village Vikravandi Taluk and Villupuram District the state of Tamil Nadu by M/s. Stone Trust Enterprises - for Environment Clearance.	9040	<p>The Authority noted that the SEAC decided to withdraw the recommendation already made in the 281st meeting held on 03.06.2022 and endorse the decision taken by the previous Committee in its 136th meeting held on 21.09.2019 and to call for the following:</p> <p>1. SEIAA may call for the explanation of the dealing Engineer for having accepted an already rejected proposal and for not disclosing the history of the</p>


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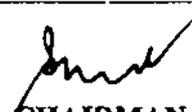
			<p>case to SEAC.</p> <p>2. SEIAA may call for an explanation of the EIA Coordinator for deliberately hiding the facts regarding the history of the project proposal to the Committee during appraisal.</p> <p>The Authority, after detailed deliberations, decided to request the Member Secretary, SEIAA TN the following:</p> <ol style="list-style-type: none"> 1. To call for explanation as recommended by the SEAC. 2. To call for explanation from the proponent for having applied for EC for an already rejected proposal and not disclosing the facts regarding the history of the project proposal to the Committee during appraisal.
13.	Proposed Rough stone and Gravel Quarry quarry lease over an extent of 2.00.0 Ha in S.F.Nos.305/A (part) of Karvazhi Village, Aravakurichi Taluk, Karur District, Tamil Nadu by Balusamy Sasikala - Environmental Clearance	9202	<p>The authority noted that the subject was appraised in 322nd SEAC meeting held on 19.10.2022.</p> <ol style="list-style-type: none"> 1. Earlier the proposal was placed in 303rd SEAC meeting held on 18.08.2022. Based on the presentation made by the proponent, SEAC decided to recommend the proposal for grant of Environmental Clearance. 2. Subsequently, the proposal was placed in the 548th SEIAA meeting held on 01.09.2022.



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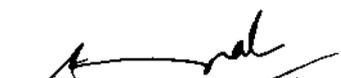


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27	SIA/TN/MIN/20 0540/2021	Covering Letter	Report need to modification in the Mining plan and EC the application.	18-Nov-21	Tmt.K.Then mathi	8431	Unit- IV	Delisted	Accepted
28	SIA/TN/MIN/25 6739/2022	Covering Letter	Oversight Application Application already applied under File No. 6873	19-Aug-22	M/s. Stone Trust Enterprises	9040	Unit- IV	Under Process	will be considered after reappraisal of 9040 by SEAC
29	SIA/TN/MIN/27 4387/2022	Covering Letter	NA	11-Jun-22	The Executive Engineer pwd	9362	Unit- IV	EC Issued	Accepted
30	SIA/TN/MIN/37 903/2019	Covering Letter	I would like to withdraw and resubmit the proposal	16-Sep-22	M/s. Anbura Minerals Pvt Ltd	6898	Unit- IV	EC Issued	Accepted
31	SIA/TN/MIN/38 417/2019	Covering Letter	I would like to withdraw this proposal	16-Sep-22	M/s. Anbura Minerals Pvt Ltd	6898	Unit- IV	EC Issued	Accepted
32	SIA/TN/MIN/45 993/2019	Covering Letter	we would like to withdraw this online proposal number SIA/TN/MIN/45993/2019 Dated: 07.11.2019. Which was submitted earlier in the Parivesh portal. I request once again to kindly consider the above mention online proposal number for the grand of environmental clearance.	06-Aug-22	M/s.A.P.M. Minerals	6877	Unit- IV	EC Issued	Accepted
33	SIA/TN/MIN/56 602/2020	Covering Letter	Due to financial Constraints, we cannot able to continue this project.	17-Jul-22	Tmt.R.Chitra	7857	Unit- IV	Recorded	Withdrawal not accepted
34	SIA/TN/MIN/62 101/2017	—	New file submitted	11-Feb-22	Thiru.M.Bal aji	6240	Unit- IV	Under Process	Defer

MINUTES**551st MEETING****STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY-TAMIL NADU****Date: 19.09.2022**

			4. The kml file uploaded in the parivesh portal is not opening.
32.	To consider the proposal for the grant of Environmental Clearance for the Black Granite for over an extent of 3.06.0 Ha in S.F.Nos. 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 at Semmedu Village in Vikravvandi Taluk, Viluppuram District Tamil Nadu by M/s. Stone Trust Enterprises Exports.	9040	<p>The Authority noted the following:</p> <ol style="list-style-type: none"> 1. M/s. Stone Trust Enterprises applied seeking Environment Clearance for the Proposed Black Granite (Dolerite) quarry lease over an extent of 3.06.0 Ha in S.F.Nos 22/1, 23/1, 2, 24/7, 8, 25/1 and 25/2 of Semmedu village Vikravandi Taluk and Viluppuram District the state of Tamil Nadu. 2. The proposal was appraised and recommended by SEAC in its 281st meeting held on 03.06.2022. 3. Subsequently the subject was placed before the Authority in its 527th meeting held on 01.07.2022 and it was referred back by the Authority for the reasons stated below: <ol style="list-style-type: none"> I. There is a water body and patch of trees close to the project site. Hence the project proponent shall furnish the study report on impact of the proposed mining on the said water body and the tree patch. II. Detailed study shall be carried out in regard to impact of mining around the proposed mine lease area

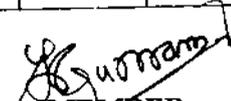

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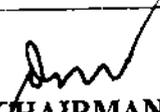

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			<p>from a reputed research institutions on the following</p> <ul style="list-style-type: none"> a. Soil health & bio-diversity. b. Climate change leading to Droughts, Floods etc. c. Pollution leading to release of Greenhouse gases (GHG), rise in Temperature, & Livelihood of the local people. d. Possibilities of water contamination and impact on aquatic ecosystem health. e. Agriculture, Forestry & Traditional practices. f. Hydrothermal/Geothermal effect due to distraction in the Environment. g. Bio-geochemical processes and its foot prints including environmental stress. h. Sediment geochemistry in the surface streams. <p>III. Hydro-geological study considering the contour map</p>
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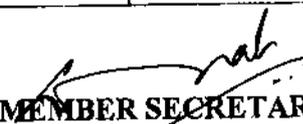
			<p>of the water table detailing the number of ground water pumping & open wells, and surface water bodies such as rivers, tanks, canals, ponds etc. within 1 km (radius) so as to assess the impacts on the nearby waterbodies due to mining activity. Based on actual monitored data, it may clearly be shown whether working will intersect groundwater. Necessary data and documentation in this regard may be provided, covering the project life (or) subject to a maximum of thirty years, whichever is earlier.</p> <p>IV. To furnish disaster management plan and disaster mitigation measures in regard to all aspects to avoid/reduce vulnerability to hazards & to cope with disaster/untoward accidents in & around the proposed mine lease area due to the proposed method of mining activity & its related activities.</p> <p>V. To furnish risk assessment and management plan</p>
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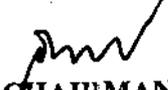
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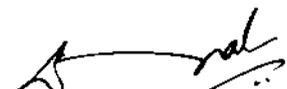
			<p>including anticipated vulnerabilities during operational and post operational phases of Mining.</p> <p>VI. Detailed Mine Closure Plan covering the project life (or) subject to a maximum of thirty years, whichever is earlier.</p> <p>VII. Detailed Environment Management Plan including mitigation & remedial strategies covering the project life (or) subject to a maximum of thirty years, whichever is earlier</p> <p>Meanwhile the EIA Coordinator informed the SEAC that the Proponent has requested for withdrawal of the application through PARIVESH. Hence the subject was not taken up by the Committee for re-appraisal.</p> <ol style="list-style-type: none"> 1. Now the Proponent vide letter dated 02.09.2022, stating that about 8 nos. of hydrogeological studies have been carried out in the past three years for the project, has requested the Authority for reconsideration of the proposal. 2. The Authority further noted that the Proponent has earlier applied seeking EC for the same project vide File No. 6873 which was appraised by the then Committee in
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SEIAA-TN**

			<p>its 136th meeting held on 21.09.2019 and decided not to recommend Environmental Clearance for the project as the project site is abetting the water tank which has large capacity and the project will adversely impact the storage capacity of the tank thereby affecting the irrigation and livelihood of the local people of the downstream(copy enclosed)</p> <p>3. After detailed discussions, the Authority decided to request the Member Secretary, SEIAA to forward the request of the Proponent made in the reference letter dated 02.09.2022, to SEAC.</p>
33.	<p>Note to consider for the grant of Environmental Clearance under violation for the Proposed Expansion of Existing Information Technology Park at S.F.Nos. 240(P), 248(P) & 249(P) in Siruseri Village, Chengalpattu Taluk, Kancheepuram District, Tamil Nadu by M/s. Hexaware Technologies Limited.</p>	3162	<p>The authority noted that the subject was appraised in 222nd SEAC meeting held on 23.08.2022. SEAC has furnished its recommendations for granting Environmental Clearance subject to the conditions stated therein.</p> <p>Accordingly, the authority deferred the proposal in 461st authority meeting for the following:</p> <ol style="list-style-type: none"> 1. The project proponent shall remit the amount of Rs.12.20 Lakhs in the form of bank guarantee to Tamilnadu Pollution Control Board and submit acknowledgement of the same to SEIAA-TN. The funds shall be


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527th MEETING

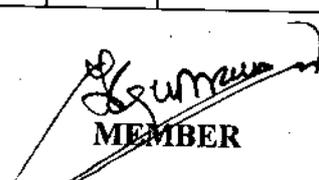
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY-TAMIL NADU

Date: 01.07.2022

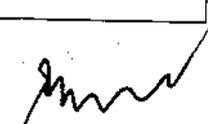
16.	Proposed Rough Stone & Gravel quarry lease over an extent of 0.86.5 Ha at S.F.No. 20/1 of Chinnakallipatti Village, Mettupalayam Taluk, Coimbatore District, Tamil Nadu by Thiru R. suresh - for Environmental clearance.	9031	The Authority noted that the subject was placed in the 281 st meeting of SEAC held on 03.06.2022. After detailed deliberation, the Authority decided to request the Member Secretary SEIAA-TN to communicate the decision of the SEAC to the Project Proponent.
17.	Proposed Gravel quarry over an extent of 3.28.0 Ha in S.F.Nos. 222/4, 222/6, 225/1, 226/1, 226/2, 227/4 & 227/5 of Vellaiyampatti Village, Salem Taluk, Salem District, Tamil Nadu by Thiru. M. Bharanidharan - For Environmental Clearance.	9035	The Authority noted that the subject was placed in the 281 st meeting of SEAC held on 03.06.2022. After detailed deliberation, the Authority decided to request the Member Secretary SEIAA-TN to communicate the decision of the SEAC to the Project Proponent.
18.	Proposal seeking Environmental Clearance for Proposed Black Granite (Dolerite) quarry over an extent of 3.06.0 Ha in S.F.Nos. 22/1, 23/1,2, 24/4,8, 25/1 & 25/2 of Semmedu Village, Vikravandi Taluk, Villupuram District, Tamil Nadu by M/s. Stone Trust Enterprises	9040	<p>The Authority after detailed discussion decided to refer back the proposal to SEAC after the receipt of following additional particulars from the project proponent with reference to project life (or) subject to a maximum of thirty years, whichever is earlier.</p> <ol style="list-style-type: none"> 1. There is a water body and patch of trees close to the project site. Hence the project proponent shall furnish the study report on impact of the proposed mining on the said water body and the tree patch. 2. Detailed study shall be carried out in regard to impact of mining around the proposed mine lease area from a reputed research institutions on the following



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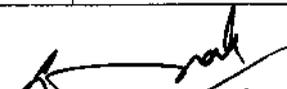


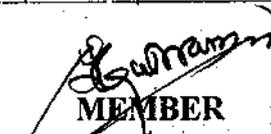
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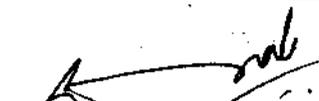
		<p>a) Soil health & bio-diversity.</p> <p>b) Climate change leading to Droughts, Floods etc.</p> <p>c) Pollution leading to release of Greenhouse gases (GHG), rise in Temperature, & Livelihood of the local people.</p> <p>d) Possibilities of water contamination and impact on aquatic ecosystem health.</p> <p>e) Agriculture, Forestry & Traditional practices.</p> <p>f) Hydrothermal/Geothermal effect due to distraction in the Environment.</p> <p>g) Bio-geochemical processes and its foot prints including environmental stress.</p> <p>h) Sediment geochemistry in the surface streams.</p> <p>3. Hydro-geological study considering the contour map of the water table detailing the number of ground water pumping & open wells, and surface water bodies such as rivers, tanks, canals, ponds etc. within 1 km (radius) so as to assess the impacts on the nearby waterbodies due to mining activity. Based on actual monitored data, it may clearly be shown whether working will intersect groundwater. Necessary data and documentation in this regard may be provided, covering the project life (or) subject to a maximum of thirty years, whichever is earlier.</p> <p>4. To furnish disaster management plan and disaster mitigation measures in regard to all</p>
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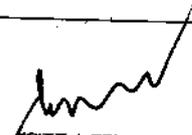

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			<p>aspects to avoid/reduce vulnerability to hazards & to cope with disaster/untoward accidents in & around the proposed mine lease area due to the proposed method of mining activity & its related activities.</p> <p>5. To furnish risk assessment and management plan including anticipated vulnerabilities during operational and post operational phases of Mining.</p> <p>6. Detailed Mine Closure Plan covering the project life (or) subject to a maximum of thirty years, whichever is earlier.</p> <p>7. Detailed Environment Management Plan including mitigation & remedial strategies covering the project life (or) subject to a maximum of thirty years, whichever is earlier.</p>
19.	Proposed Rough Stone quarry lease over an extent of 0.81.35 Ha at S.F.Nos. 265/6D(P), 265/7A(P), 265/7B(P), 265/7C(P), 265/8A, 265/8B, 265/9A & 265/9B of Vellanur Village, Kulathur Taluk, Pudukkottai District, Tamil Nadu by Thiru M.Mani for Environmental Clearance	9042	<p>The authority noted that this proposal was placed for appraisal in this 282nd meeting of SEAC held on 04.06.2022 and the SEAC noted that the Proponent was absent and therefore decided to defer the proposal and called for explanation for not attend the meeting. In view of the above, the authority decided to request the Member Secretary, SEIAA to communicate the SEAC minutes to the project proponent held on 04.06.2022.</p>
20.	Proposed Rough Stone, Jelly & Gravel quarry lease over an extent of 2.99.5 Ha at S.F.Nos. 178/3B, 178/6, 175/1, 175/2, 175/3, 1756/4, 176/1, 177/1,	9043	<p>The Authority noted that the subject was placed in the 282nd meeting of SEAC held on 04.06.2022. After detailed deliberation, the Authority decided to request the Member Secretary SEIAA-TN to communicate the</p>


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Item No. 02

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 325/2015

(With reports dated 01.10.2020 & 29.10.2020)

Lt. Col. Sarvadaman Singh Oberoi

Applicant

Versus

Union of India & Ors.

Respondent

Date of hearing: 18.11.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Ms. Nivedita Sharma, Advocate in MA 26/2019, 252/2019
& 69/2020

Respondent: Mr. Raj Kumar, Advocate for CPCB
Mr. Pradeep Misra & Mr Daleep Dhyani, Advocate for UPPCB
Ms. Madhumita Bhattacharjee, Advocate for State of West Bengal
Mr. Rahul Khurana, Advocate for State of Haryana
Mr. Mukesh Kumar, Advocate for KSPCB
Ms. Jyoti Mendiratta, Advocate for GNCTD

ORDER

The Issue

1. The issue for consideration in the original application was identification, protection and restoration of water bodies in Gurgaon in Haryana. However, in the light of proceedings which took place, the scope of the application was extended to the entire State and then to the entire country, in the interest of protection of environment. This became necessary to give effect to the law laid down by the Hon'ble Supreme Court to which reference will be made later.

Procedural History

Order dated 20.07.2018

2. We may briefly mention the background of the proceedings. Vide order dated 20.07.2018, the Tribunal disposed of the original application

with direction for restoration of 123 water bodies in Gurgaon which were admittedly in the possession of the State in the first instance by assigning Unique Identification Number (UID) and making them free from encroachment. Further direction was to file compliance report.

3. While technically, the matter was disposed of with directions on 20.07.2018, as noted above, it remained pending for consideration of compliance report. The Tribunal considered the matter further vide order dated 10.5.2019 in the light of the compliance report filed by the State of Haryana.

Order dated 10.05.2019

4. The State of Haryana reported that it enacted a special law on the subject, namely, the *Haryana Pond and Waste Water Management Authority Act, 2018* ("Haryana Act"). The Haryana Act creates an Authority to deal with restoration of water bodies at the State level and also appoints District Level Officers for the purpose. The ponds are proposed to be connected to the canal network. It was also reported that the Gurgaon Metropolitan Development Authority (GMDA) had taken up the work of restoration of 123 water bodies in District Gurgaon.

5. The Tribunal noted the need for conservation of water bodies throughout India for healthy environment, particularly in the light of judgment of the Hon'ble Supreme Court in *Hinch Lal Tiwari v. Kamala Devi & Ors.* (2001) 6 SCC 496. The Tribunal observed that under Public Trust Doctrine, the State has to maintain and restore the water bodies. This *inter-alia* helps availability of water, protection of aquatic life, maintaining micro climate, recharge the ground water and e-flow of the rivers. In view of mandate of law laid down by the Hon'ble Supreme Court and the NGT Act, 2010, the Tribunal directed all States/UTs to

take up the task of restoration of the water bodies in their respective jurisdiction and the Chief Secretaries of all States/UTs to oversee the compliance in the course of monitoring compliance of waste management rules and other significant environmental issues for which separate directions were issued by this Tribunal (in OA 606/2018) in the light of directions of the Hon'ble Supreme Court. Further directions of this Tribunal (in OA 673/2018) related to remedial action for abatement of 351 identified polluted river stretches which were also to be monitored by the Chief Secretaries. A Central Monitoring Committee (CMC) comprising Secretary Ministry of Jal Shakti with CPCB and other authorities were to monitor compliance at National level. A status report was directed to be compiled and filed by the CPCB. Operative part of order dated 10.5.2019 is reproduced below:

“13. Thus, to give effect to ‘Precautionary’ principle and ‘Sustainable Development’ principle, we direct all the States and UTs to review the existing framework of restoration all the water bodies by preparing an appropriate action plan. Such action plans may be prepared within three months and a report furnished to the CPCB. The CPCB may examine all such plans and furnish its comments to this Tribunal within two months thereafter. The Chief Secretaries of all the States/UTs in the course of undertaking monitoring exercise in pursuance of the order of this Tribunal in *O.A No. 606/2018, Compliance of MSW Rules, 2016*, may also include restoration of water bodies as one of the items as the same is also incidental to waste management which are covered by orders in *O.A No. 606/2018, Compliance of MSW Rules, 2016*.

14. The CPCB may prepare and place on its website guidelines in the matter of restoration of water bodies in the light of above order within one month.

15. The matter may also be monitored by Central Monitoring Committee constituted in terms of order dated 08.04.2019 in *O.A No. 673/2018, News item published in “The Hindu” authored by Shri Jacob Koshy titled “More river stretches are now critically polluted: CPCB*, as this matter is connected to the steps required for remedying the polluted river stretches as already explained.”

Orders dated 25.02.2020 and 01.06.2020

6. The matter was then considered on 25.02.2020 in the light of the report of the CPCB. The report mentioned that CPCB had issued the necessary guidelines on the subject such as identification and geo-tagging of ponds and lakes, maintaining water quality as per norms and removing encroachments. It was further stated that the States had failed to give proper response and the requisite information. The Tribunal, on consideration, directed as follows:

“ ...
 3. In pursuance of the above, the learned counsel for the CPCB has handed over a status report during the course of hearing to the effect that indicative guidelines for restoration of water bodies have been uploaded on the website of the CPCB on 18.06.2019 but most the States have not submitted their action plans. Out of 435 locations monitored, 357 locations were not complying with the primary water quality criteria for bathing. CPCB constituted an expert committee vide order dated 28.08.2019 under the Chairmanship of MS, CPCB comprising, representatives of MoEF&CC, MoJS, MoHUA, IIT Delhi, officials of CPCB and DHWQM-I as member convener. First meeting of the expert Committee was held on 16.09.2019. The Tribunal has suggested following actions:

S. No.	Activity proposed	Organization Responsible
1	Identification and Geo-Tagging of Ponds or Lakes in the Country	NRSA, State Space Application Centre and Concerned State Departments
2	Assessment of Water Quality of Ponds or lakes.	Through Laboratories approved under E(P) Act, 1986 by the Concerned State Department /ULBs/ State Environment Dept./SPCB/PCC.
3	Prioritization of Ponds or Lakes for restoration in consultation with the respective SPCB.	State Environment Dept./SPCB /PCC.
4	Preparation and submission of action plans for restoration of prioritized Ponds or Lakes to CPCB for random scrutiny of proposed action plans.	State Environment Dept./SPCB /PCC.
5	Execution of approved action plans.	State Environment Dept./SPCB /PCC under the overall supervision of Principal Secretary, Environment Department.

The CPCB conducted a workshop on the subject on 30.01.2020.

4. *Learned counsel for the CPCB states that further progress in the matter is being monitored and a status report will be filed before the next date. It is stated that only 14 States/UTs have furnished information which is not complete while 22 States/UTs have not furnished any information.*

5. *Having regard to the significance of the issue and unsatisfactory response of the States as shown above, we direct that the information may be furnished by all the States/UTs by March 31, 2020 positively to the CPCB failing which the States will be liable to pay compensation at the rate of Rs. 1 lakh per month till information is furnished. Payment of compensation will be the responsibility of the Chief Secretaries of the respective States/UTs. **Since we are informed that plans for restoration furnished by some of the States run even upto ten years, we direct that the action plans should provide for commencement of the work by 01.04.2020 and conclusion by 31.03.2021. The CPCB will be at liberty to issue appropriate directions to all the States/UTs by for compliance. The Ministry of Jal Shakti is also at liberty to take further remedial action in the matter.***

7. Next order of the Tribunal is dated 1.6.2020 on consideration of the report dated 22.05.2020 filed by the CPCB giving information received from some of the States and seeking time on account of COVID situation. The Tribunal extended the time for completion of the action in terms of order dated 25.2.2020 by four months i.e. upto 31.07.2020, instead of 31.3.2020. It was further directed that capacity of the water bodies be increased to utilise surplus rain water and rain water harvesting structures be set up in the sub-watersheds utilizing the MGNREGA funds, involving the community at large including the panchayats which action may be coordinated by the District Magistrates, Department of Irrigation and Flood Control, Department of Rural Development/Urban Development/Local Bodies/Forests/Revenue etc. On both these aspects, the Tribunal sought report from the CPCB. The operative part of the order dated 1.6.2020 is reproduced below:

“
 5. *Having regard to the fact situation noted above, we extend the time for the States to complete action in terms of order dated 25.02.2020 till 31.07.2020. The CPCB may thereafter file its report by 31.10.2020 by e-mail at judicial-ngt@gov.in preferably*

in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

6. However, we wish to add a further direction having bearing on the subject. We have already noted the significance of protection and restoration of water bodies for the environment. The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important, **harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub-watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable, utilizing available funds including under MGNREGA and involving the community at large at every level.** Gram Panchayats can certainly play a significant role in the matter. Once adequate capacity enhancement of waterbodies takes place, excess flood/rain water can be channelized by using appropriate water harvesting techniques. This action needs to be coordinated by the District Magistrates in coordination with the Department of Irrigation and Flood Control or other concerned Departments such as Department of Rural Development/Urban Development/Local Bodies/Forests/Revenue etc. The District Magistrate may as far as possible hold a meeting of all the stakeholders for the purpose as per the District Environment Plan or Watershed Plan within one month from today. The District Magistrates may also ensure that as far as possible atleast one pond/water body must be restored in every village, apart from creation of any new pond/water body.”

Today's proceedings

CPCB Report

8. Accordingly, a consolidated report has been filed by the CPCB on 29.10.2020 in two parts. Part A deals with the aspect of plans for restoration of water bodies and status of their execution while part B deals with the status of compliance of direction relating to water harvesting. **The CPCB report points out the need for making a proper and centralized inventory of water bodies, and assessment of their water quality; the absence of a single nodal agency to oversee the management of restoration of polluted water bodies, and water harvesting; and recommends that the relevant Central**

Ministries, especially MoJS, play an increased and major role in implementation and oversight.

9. We first consider **part A** of the report. It mentions that 24 States mentioned therein have provided information on the subject which has been compiled in Table 1 and 2 as follows:-

“Based on the information received from the States/UTs, State-wise status on Ponds, Lakes and Restoration of Water Bodies, State-wise Status on Inventorisation, Geo-Tagging, UIN Allocation, Water Quality Assessment, Action Plans for Restoration of Water Bodies Pond compiled and presented at Table 1 and Table 2 below.

Table 1. State-wise Status on Ponds, Lakes and Restoration of Water Bodies

S. No	Name of State/UT	Information submitted as Per the format circulated by CPCB	Identified Water Bodies					Status on Restoration of Water Bodies		
			Lakes	Ponds	Tanks	Others (Pynes/Aahars/wells/Reservoirs etc.)	Total No. of Water Bodies Identified	No. of Water Bodies Selected for Restoratio	No. of Water Bodies Restored so far	No. of Water Bodies presently under Restoration
1	Andaman & Nicobar	No	-	-	-	-	37	-	-	-
2	Andhra Pradesh (Panchayati Raj and Rural Development Department, Municipal Administration & Urban Development (MA & UD) Department, Municipal Administration & Urban Development (MA & UD) Department, Irrigation Department)	No	-	-	1699	-	13171	9284	6608	781
3	Arunachal Pradesh	-	-	-	-	-	-	-	-	-
4	Assam	Yes	17	14	-	-	31	-	-	-
5	Bihar	Yes	-	50150	-	51437	101587	-	12867	24075
6	Chattisgarh (Department of Panchayat and Rural Development)	Yes	-	-	-	-	1658	68803	271110	-
7	Daman & Diu & Dadra & Nagar Haveli	Yes	1	5	-	-	6	-	-	-

S. No	Name of State/UT	Information submitted as Per the format circulated by CPCB	Identified Water Bodies				Total No. of Water Bodies Identified	Status on Restoration of Water Bodies		
			Lakes	Ponds	Tanks	Others (Pynes/Aahars/wells/Reservoirs etc.)		No. of Water Bodies Selected for Restoration	No. of Water Bodies Restored so far	No. of Water Bodies presently under Restoration
8	Delhi	Yes	-	-	-	-	256	49	4	-
9	Goa	Yes	9	-	-	-	9	4	-	-
10	Gujarat	Yes	1939	42119	-	-	44058	156	3	153
11	Haryana	Yes	3	16534	-	-	16537	10794	146	189
12	Himachal Pradesh	Yes	6	-	-	-	6	4	-	4
13	Jammu & Kashmir	No	-	2815	-	-	1230	-	-	-
14	Jharkhand	Yes	-	282	-	-	282	221	4	6
15	Karnataka	Yes	-	-	-	-	33350	-	-	-
16	Kerala	Yes	-	40000	-	-	40000	-	-	-
17	Lakshadweep	Yes	-	297	-	-	297	-	59	238
18	Madhya Pradesh	Yes	-	-	-	-	66438	-	-	-
19	Maharashtra	Yes	-	-	-	-	354	-	-	-
20	Manipur	Yes	4	14	-	-	18	-	-	-
21	Meghalaya	Yes	2	-	-	-	2	1	-	---1
22	Mizoram	Yes	9	31	-	-	40	-	-	-
23	Nagaland	Yes	1	8	-	1	10	2	-	2
24	Odisha	Yes	1	8	-	2	11	2	1	-
25	Punjab	Yes	-	15715	-	-	15715	600	310	290
26	Puducherry	Yes	84	843	-	-	927	547	321	43
27	Rajasthan	No	-	-	-	-	-	12127	1963	6348
28	Sikkim	Yes	4	-	-	-	4	4	1	3
29	Tamil Nadu (Public Works Department (PWD), Director of Town Panchayats)	Yes	-	-	-	-	15658	1317	5986	1766
30	Telangana	Yes	-	-	-	-	46531	27631	21436	6195
31	Tripura	Yes	-	180	-	-	180	30	-	26
32	Uttar Pradesh	Yes	-	508	-	-	508	504	84	424
33	Uttarakhand	No	-	-	-	-	-	-	-	-
34	West Bengal	No	-	-	-	-	15000	-	-	-
Total			2080	169523	1699	51440	413911	132080	320903	40543

“Table 2. State-wise Status on Inventorisation, Geo-Tagging, UIN Allocation, Water Quality Assessment, Action Plans for Restoration of Water Bodies Pond

S. No	Name of State/UT	Information submitted as per the format circulated by CPCB	Inventory Status as Reported by States/UTs	Status on Geotagging	Status on UIN Allocated	Status on Assessment of Water Quality of Water Bodies in the State	Prioritisation based on Designated Best Use Criteria or Bathing Criteria Compliance	Preparation & Submission of Action Plans	Proposed Timelines for Restoration	Water Bodies under the Custody of Concerned Authorities in the State/UT
1	Andaman Nicobar	No	Yes	No	No	Not Provided	Not Provided	Not required as per A & N UT	Not Provided	Port Blair Municipal Council & Andaman Public Works Department.
2	Andhra Pradesh	No	Yes	Yes	No	No	No	No	Not Provided	Panchayati Raj and Rural Development Department, Irrigation Department, Municipal Administration & Urban Development (MA & UD) Department, Municipal Administration & Urban Development (MA & UD) Department,
3	Arunachal Pradesh	No	No	No	No	No	No	Being prepared for 3 lakes	-	Department of Environment & Forest
4	Assam	Yes	Yes	No	No	Yes	No	No	-	Environment and Forest Department, Government of Assam

5	Bihar	No	Yes	Yes	No	No	No	No	-	Environment and Forest Department, Minor Water Resources Department, Govt. of Bihar and Rural Development Department, Govt. of Bihar
6	Chhattisgarh	Yes	Yes	Yes	Yes	Not provided	Yes	Yes (Pilot Project)	-	Department of Panchayat and Rural Development, Urban Administration and Development Department
7	Daman & Diu & Dadra & Nagar Haveli	Yes	Yes	No	No	No	No	Yes	Not provided	Daman Municipal Council, District Panchayat, Daman
8	Delhi	Yes	Yes	Yes	No	No	No	Yes	-	DDA, BDO/REV. (PANCHAYAT), EDMC, SDMC, NORTH MCD, DJB, PWD, CPWD, ASI, FOREST, DELHI ARCHAEOLOGICAL DEPTT., DELHI WAKF BOARD, DUSIB, DSIIIDC, JNU and IIT
9	Goa	Yes	Yes	NO	Not provided	Yes	Yes	Yes	March 2021	Goa State Wetland Authority (GSWA), Goa State Pollution Control Board (GSPCB),
10	Gujarat	Yes	Yes	In Progress	No	No	No	No	-	Panchayat Department, Revenue Department, Water Resources Department, and Urban Development Department)

11	Haryana	Yes	Yes	Yes	Yes	Partial	Partial	Yes	2020-2024 (14 Ponds)	The Haryana Ponds and Waste Water Management Authority (HPWMA), Irrigation & Water Resources Dept. Development & Panchayats Department of Urban Local Bodies and Govt./Educational Institutes
12	Himachal Pradesh	Yes	Partial	No	No	Yes	Yes	Yes	2020-21	Himachal Pradesh State Wetlands Authority (HPSWA), HPSPCB, RD & UD, H.P. Forest Department
13	Jammu & Kashmir	No	Partial	No	No	No	No	No	-	Forest Department, Wildlife, Soil & Water Conservation Department, Revenue Department, Jammu Municipal Corporation, DERS/Revenue
14	Jharkhand	Yes	Yes	In progress	In progress	No	No	Yes		Urban Development and Housing Department
15	Karnataka	Yes	Yes	Yes	Yes	Partial	Partial	No	-	Bengaluru Water Supply & Sewerage Board (BWS&SB), Bengaluru Development Authority (BDA) & Cauvery Neeravari Nigama Limited (CNNL).
16	Kerala	Yes	Yes	Yes	Yes	Partial	No	Yes	30.03.2022	Irrigation Design and Research Board (IDRB), Irrigation Design and Research Board (IDRB), ULBs
17	Lakshadweep	Yes	Yes	No	No	Yes	Yes		September, 2020	-
18	Madhya Pradesh	Yes	Yes	Yes	Yes	Partial	Partial	Partial	2020-22	The Environmental Planning and Coordination Organization (EPCO)

19	Maharashtra	Yes	No	Partial	No	No	No	Yes	-	WaterResources Department, ULBs
20	Manipur	Yes	Yes	Yes	Partial	Yes	Yes	No	-	Environment & Climate Change, Water Resources Department, Public Health & Engineering Department, Trade, Commerce and Industries, Manipur Pollution Control Board and Loktak Development Authority
21	Meghalaya	Yes	Yes	No	No	Yes	No	Yes	-	Meghalaya SPCB, Tourism Department, Department of Fisheries, Department of Forest and Environment
22	Mizoram	Yes	Yes	Yes	No	No	No	No	-	Irrigation and Water Resources Department, Govt. of Mizoram
23	Nagaland	Yes	Yes	No	No	No	No	Yes	31.03.2022	Public Health Engineering Department, Nagaland Pollution Control Board and Dimapur Municipal Corporation
24	Odisha	Yes	Yes	Yes	No	No	No	Yes	March, 2022	Orissa Wetland Development Authority, Water Resources Department
25	Punjab	Yes	Yes	Yes	Yes	No	No	Yes	-	Department of Rural Development & Panchayats (DRDP), Department of Local Government, Punjab Pollution Control Board (PPCB) and Directorate of Environment and Climate Change (DECC), Department of Science, Technology & Environment (DSTE), Government of Punjab
26	Puducherry	Yes	Yes	Yes	Yes	No	No	Yes	-	Irrigation Division of the Public Works Department and the village ponds lies with the respective Municipalities and Commune Panchayats Under the Local Administration Department.

27	Rajasthan	No	No	No	No	No	No	No	No	No	Water Resources Department, Government of Rajasthan
28	Sikkim	Yes	Yes	Yes	No	No	No	No	-	-	Forest & Environment Department
29	Tamil Nadu	Yes	-	-	-	-	---	-	-	-	Public Works Department (PWD)
30	Telangana	Yes	Yes	Partial	No	Partial	No	Yes	One Year	-	Hyderabad Municipal Water Supply & Sewerage Board (HMWS&SB), Irrigation & CAD Department (& CAD) and Hyderabad Metropolitan Development Authority (HMDA (L&F)).
31	Tripura	Yes	Yes	Yes	No	Partial	No	Yes	Dec, 2020	-	ULBs/ Urban Development Department, Department of Science Technology & Environment (DSTE), Tripura State Pollution Control Board (TSPCB), Horticulture & Forest Department, District Administration.
32	Uttar Pradesh	Yes	Yes	Yes	No	No	No	No	-	-	Forest Department, Auraiya, Government of Uttar Pradesh
33	Uttarakhand	No	-	-	-	-	---	-	-	-	
34	West Bengal	No	-	-	-	-	---	-	31.12.2020	-	Fisheries, F&RD, L&LR & Urban Development, DST, Department of IT, DoE

10. The CPCB has observed that the information given by the States/UTs was not scientific. Proper inventories were required to be made. Water quality was required to be monitored. Instead of different departments dealing with the issue, single agency was required to be set up as a nodal agency for restoration of all water bodies in the States/UTs. It was also necessary to constitute Wetland Authority in every State/UT as per Wetland (Conservation and Management) Rules, 2017. The said authority can be given responsibility for restoration of water bodies or a separate body for the purpose can be set up on a pattern of Haryana, Madhya Pradesh and Mizoram. The Ministry of Jal Shakti can provide assistance in the light of programmes undertaken by the Government of India like AMRUT, Smart City, MGNREGA and other programmes.

11. It will be appropriate to reproduce the observations and suggestions of the CPCB:-

“2.5 Observations and suggestions of CPCB

- *23 States & 4 UTs have provided information as per the format circulated by CPCB.*
- *Based on the information received from the States/UTs, there are Lakes- 2,080 (11 States and 2 UTs), Ponds- 1,69,523 (13 States and 4 UTs), Tanks- 1,699 (1 State), Others like pynes, aahars, reservoirs etc. - 1,51,440 (3 States), Total number of water bodies identified as - 4, 13,911 (25 States and 6 UTs), Total number of identified water bodies selected for restoration- 1,32,080 (17 States and 02 UTs), Total number of identified water bodies already restored- 3, 20,903 (13 States and 3 UTs), Total number of identified water bodies presently under restoration- 40,543 (14 States and 2 UTs).*
- *It appears, number of water bodies identified by the States/UTs as reported is not scientific and therefore **States/UTs have to carry out proper inventory of water bodies using Geological Survey Maps of India (reconnaissance survey) or using any other available technologies like Remote Sensing.***
- *For prioritization of all the identified water bodies is possible only after **assessment of water quality** of all the water bodies.*

Presently, water quality of water bodies are monitored by the State Water Resources Department/Agricultural Department/Fisheries Department/Public Health Engineering Departments apart from Central Water Commission (CWC), Central Pollution Control Board (under National Water Quality Monitoring Programme). **Therefore, all the water bodies to be assessed for water quality for prioritisation and for restoration. Also, there is a need to pool all the water quality data under /NOIA -WRIS Portal under National Water Informatics Centre as it facilitates policy decision.**

- Presently, various departments in the States/UTs are custodians of water bodies **therefore there is a need that all the States/UTs need to designate a 'single agency' as a nodal agency to ensure restoration of all polluted stagnant water bodies in the respective State/UT in consultation with the concerned departments.** Such a nodal agency also may co-ordinate with the respective State Pollution Control Board (SPCB) in the State or Pollution Control Committee (PCC) in the respective UT for ensuring timely compliance to Hon'ble NGT directions in the matter.
- Presently, States Governments /UT Administrations are required to constitute Wetland Authority in the respective States/UTs under the Wetland (Conservation and Management) Rules, 2017. The wetland authority may be given responsibility of restoration of water bodies or a nodal agency or a separate body may be designated as done in case of Haryana (Haryana Pond Waste Water Management Authority), Madhya Pradesh (The Environmental Planning and Coordination Organization (EPCO) and Mizoram (Irrigation and Water Resource Department).
- Presently, water bodies are undergoing restoration of water bodies under the various schemes like financial support of Ministry of Jal Shakti or State schemes (like Mission Kakatiya in case of Telangana). Therefore, Ministry of Jal Shakti being nodal Ministry for Water Resources in the country, there is a need to integrate with the programmes such as 'National Lake Conservation Programme, National Wetland Conservation Programme, Ministry of Water Resources Programmes like 'Repair, Renovation & Restoration of Water bodies with Domestic/External Assistance which are undertaken by Government of India, Central Sector Schemes like AMRUT, Smart City, MGNREGA or any other programmes for restoration of water bodies in the country."

12. **Part B of the report** deals with the status of rain water harvesting systems. The report mentions that meetings of joint Committee comprising the CPCB and the Ministry of Jal Shakti were held to comply with the directions of this Tribunal. Information was sought from all the

States/UTs. Only 25 States/UTs have provided information. The information has been compiled as follows:-

- “
- *As regards provisions for Rain Water Harvesting in Building Bye-laws, 11 States viz. Arunachal Pradesh, Haryana, HP, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Odisha, Punjab, Tamil Nadu, Tripura and 3 UTs viz Delhi, J&K, Puducherry have provisions for RWH in Building Bye-laws. Two States viz. Assam and Mizoram have communicated that there are no provisions for RWH in Building Bye-laws yet.*
 - *Multiple organizations are implementing Rain Water Harvesting in the States /UTs.*
 - *None of the States/UTs have provided time frame for installation of Rain Water Harvesting structures on all Government and Private buildings that require Rain Water Harvesting systems/structures in accordance with Building Bye-Laws.”*

13. Finally, the CPCB has given following suggestions:-

“7.0 Suggestions

- *As multiple agencies or State Departments/UT Administration Departments are involved in implantation of policies related to Rain Water Harvesting (RWH), information provided by different departments of the State/UT are not corroborating with each other leading to confusion. All the States/UTs shall nominate single Nodal Department for implementation of policies relating to rain water harvesting system.*
- *Every ULBs should have one Rain Water Harvesting cell in place to regulate and monitor the Rain Water Harvesting related activities effectively.*
- *Ministry of Housing & Urban Affairs (MoHUA), Central Ground Water Authority (CGWA) and Department of Water Resources (DoWR), Ministry of Jal Shakti (MoJS) should play a major role in ensuring implementation of policies relating to rain water harvesting in the Country with a mutual co-ordination and for providing requisite guidance and necessary initiatives for ensuring compliance to Hon'ble NGT orders passed in the matter of Tribunal in its Own Motion Vs Government of NCT of Delhi & Ors in OA No 496/2016 in connection with Rain Water Harvesting and Ground water recharging for water conservation.*
- *Presently, provisions for Rain Water Harvesting (RWH) Systems are incorporated mainly under Building Bye-Laws by the States/UTs/ULBs. There is a need to enact legislation/law by*

various States/UTs as done by Tamil Nadu to make RWH measures mandatory.”

UP Oversight Committee Report

14. The Oversight Committee constituted by this Tribunal for the State of UP, headed by Justice SVS Rathore, former Judge, Allahabad High Court, has filed a separate report giving the compliance status in the State, in a tabular form, as follows: -

“V. SUMMARY OF COMPLIANCE STATUS IN O.A 325/2015 AS PER ORDER DATED 1.06.2020

O.A. 325/2015 (in re: M.A NO. 26/2019 in Original Application No.325/2015, I.A. No. 700/2019 & MA. No. 252/2019)					
S. No	<i>Directions by Hon'ble NGT</i>	Concerned Department	<i>Compliance status July</i>	<i>Compliance status August</i>	Compliance status September
1	<p><i>Action Plan including the following:</i></p> <ol style="list-style-type: none"> 1. Number of identified water bodies 2. Location details 3. Water quality status 4. Compliance status with respect designated value 5. Identified water bodies. 6. Prioritization to be sent to CPCB by 31.07.2020 	UPPCB	<p>Partially complied</p> <p><i>On behalf of UPPCB, it has been submitted that Action Plans are being prepared by all the districts and will be sent to CPCB before the deadline i.e. by 31.07.2020.</i></p>	<p>Partially Complied</p> <p><i>Action plans have not been submitted</i></p>	<p>Partially Complied</p> <p><i>Action plans have not been submitted</i></p>

2	Identification and geo tagging of ponds	Dept. of Rural Development, Dept. of Forest, U.P.	Partially Complied Rural Development Commissioner, Shri Ravindra Naik informed the Oversight Committee that Identification of ponds is being done and restoration/Rejuvenati on work is in process. Representative of the Department of Forest informed that a list of all the wetlands (under its authority) with geo reference has been prepared. The Committee noted that such a list is to be provided and steps have to be taken to assign a unique ID to every water body.	Partially Complied Wetland inventory list available on website of Uttar Pradesh Environment Compliance Portal.	Partially Complied Under MGNREGA, 240649 ponds have been identified and restored till 15.09.2020.
3	Steps for restoration of water bodies	Dept. of Minor Irrigation, Rural Development and Panchayati Raj	Partially Complied Vide meeting dated 25.06.2020, the Representatives from Minor Irrigation Dept. And Rural Development, Panchayati Raj Informed that Continuous steps are being taken up for identification and restoration of ponds. The best practices with reference to restoration of water bodies being implemented in Mathura and Gautam Budhh Nagar were Discussed in detail. Such steps to be Implemented in other parts of the State.	No further progress reported	No further progress reported

15. The Committee has thereafter made following recommendations:-

“VIII. RECOMMENDATIONS BY OVERSIGHT COMMITTEE

1. Hon'ble NGT had asked that Action Plans may be prepared by 31st March, 2020. Uttar Pradesh has so far not prepared its Action Plan despite extension of time by

Hon'ble NGT till 31.07.2020. The Oversight Committee was informed by the Commissioner, Rural Development during the review meeting that Action Plan is under preparation. In the State of Uttar Pradesh, water bodies/ponds are looked after by the newly created Department of Namami Gange and rural water supply. In each village, village ponds are maintained by Village Panchayat under the Panchayati Raj Department. The Forest Department also is involved in identification, development and maintenance of wetlands in the State. The construction and repair work on these ponds and water bodies is done under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which is run by the Rural Development Department. These ponds are filled by Irrigation Department from their canals during summer season. **So, it is quite clear that a holistic Action Plan has to be prepared. It has to have components of all these Departments. The Action Plan prepared by the Rural Development Department alone would not suffice. It would be in the fitness of things if the Chief Secretary, UP calls a meeting of all these Departments, asks all of them to survey these water bodies, identify each and every water body in each village, geo-tag it, assign a UID number and then get the Action Plan prepared allocating the role of each Department. This Action Plan should also have a component regarding continuous assessment of water quality of these water bodies to be done by State Pollution Control Board. The action plan also should indicate the prioritization of the work as to which work would be taken at what time; budgetary allocations have to be done and specific time-lines have to be fixed. Only then a meaningful Action Plan would be prepared. The statement of Rural Development Department that so far 2,40,469 water bodies have been restored under MGNREGA is a general statement of works done under the MGNREGA scheme right since its inception rather than the result of a well coordinated action plan based on a state level synchronised geo-tagged survey of all the water bodies. The Chief Secretary may, in compliance of Hon'ble NGT directions, call all these Departments and get the Action Plans prepared on the above lines within the time-lines stipulated by Hon'ble NGT.**

2. The Forest Department may be directed to plan out afforestation activities on the banks of these water bodies. This year the Forest Department's target of afforestation for the entire state is planting of 25 crore trees. This afforestation plan on the banks of these water bodies can be taken up as an important component of that programme and targets can be given Panchayat-wise to the respective departments right now so that they can plan all activities over the year in a sustainable manner.

3. ***The District Magistrates have been directed to take up one pond per village this year. This programme may be included in the District Environment Plan to be monitored by the District Magistrates on a monthly basis. The list of one pond per village may be collected from the districts by the Rural Development Department/Namami Gange Department and it may be made a part of the Action Plan for this year. Funds for the activity may be allocated by budgetary grant from the budget heads of the respective Departments. Alternatively, MGNREGA funds from Rural Development Department may be allowed for conducting these works. Another option is use of devolution funds by the respective Panchayats for maintaining these ponds. Annual District Plan based on this list may be prepared indicating the names of the water bodies to be rejuvenated, the budgetary allocation for each water body and their respective time-lines. These should be monitored on a regular basis by the District Magistrates as part of the District Environment Plan on a monthly basis. Periodical reports of implementation of these Action Plans may be sent at the Headquarters to Chief Secretary through respective Principal Secretaries of various Departments who may further intimate it to Hon'ble NGT.***
4. *CPCB should explain why it has not issued notice for compensation at the rate of Rs. 1 lakh/per month beyond the deadline of 31.07.2020 on each district for non-compliance of Hon'ble NGT direction regarding submission of action plan.*
5. ***The Committee also recommends that active efforts be made in close coordination with technical bodies to tap excess runoff of rivers/canals during rainfall season to recharge old water bodies and retain water in new ponds to be constructed specifically for the purpose.. Such simple interventions have been taken up in district Mathura, Uttar Pradesh to increase groundwater level and rejuvenate water bodies (refer Annexure VI).The Mathura experiment may be technically vetted by some technical body under the Ministry of Water Resources, Govt of India.***
6. ***Development of Bio Diversity Parks in the vicinity of rivers lead to continuous recharge of aquifers and maintenance of E Flow of the rivers. It has been put to notice that project of Biodiversity parks was submitted to NMCG but could not get approved due to shortage of funds. The Committee recommends re-formulation of project by Forest Department after in-depth analysis of such projects in other states viz. Wetland park in Delhi and taking technical advice from experts.***

7. *Hon'ble NGT vide order dated 14.07.2020 in O.A.985/2019 had directed CPCB to issue strict directions to ensure that no authority allows discharge of polluted sewage or polluted effluents directly into a water channel or stream even during the monsoon season. Though orally CPCB representative in the meeting confirmed issuance of some memo to this effect by them, the Oversight Committee is not aware of any such directions available in public domain. CPCB may comply with Hon'ble NGT's orders with a copy to the Oversight Committee.*
8. ***Success story of rejuvenation of river Tamsa in Ayodhya should be circulated among all the District Magistrates and they should be asked to identify and take up similar activities, with the involvement of local public, that may help in improvising the water bodies/rivers / groundwater or environment in any manner that too with the minimum financial burden.***
9. ***The concept of floating islands can be replicated in several water bodies of the State. Moreover, floating barriers can also be used to capture trash in water bodies. In the year 2015, Alpha MERS developed an indigenous design of floating trash barrier for controlling hyacinth and trash from flowing in water. The barrier made of steel and aluminium with a high tensile strength claims to have an ability to survive in both polluted water bodies and change in water levels. For the first time in November 2017 these barriers were deployed in Cooum river in Chennai. Currently, the barriers have been deployed at eight locations in Cooum river (NDTV, 2018)***
10. ***Use of bio-plastics/bio-degradables in every sector viz. domestic and industrial sectors is a viable solution to prevent rivers and water bodies from choking and warding off adverse implications on biodiversity. The State government may develop plans for switching to bio-plastics/bio-degradables at macro level within six months.***
13. ***Restoration of ponds, lakes require involvement from all stakeholders especially local people. Community participation must be encouraged and campaigns be started in areas to restore, conserve water bodies. Ansupa Lake in Odisha has been restored by sincere efforts of Self Help Groups in the area."***

Analysis and Directions

16. We find that the steps taken so far can hardly be held to be adequate. As already noted, protection of water bodies serves great public purpose and is essential for protection of the environment. It helps not only aesthetics but also water availability, aquatic life, micro climate, recharge of ground water and maintaining e-flow of the rivers. Under the Public Trust Doctrine, the State has to act as trustee of the water bodies to protect them for the public use and enjoyment for current and future generations. We may note the observations of the Hon'ble Supreme Court on the subject which are as follows:

i. ***State of T.N. v. Hind Stone, (1981) 2 SCC 205, at page 212:***

*"6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. **Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation.**"*

ii. ***Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496, at page 500:***

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution."

iii. ***T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 606, at page 628:***

*"... ...
33. ... As was observed by this Court in M.C. Mehta v. Kamal Nath our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. **The State is the trustee of all natural resources which are by nature meant for public use and enjoyment.** The public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. **The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.**"*

iv. ***Intellectuals Forum v. State of A.P., (2006) 3 SCC 549, at page 574:***

“75. In *M.C. Mehta v. Kamal Nath & Ors.* (1997) 1 SCC 388, Kuldip Singh, J., writing for the majority held:

“34. Our legal system ... includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. ... The State as a trustee is under a legal duty to protect the natural resources.”

76. The Supreme Court of California, in *National Audubon Society v. Superior Court of Alpine Country* also known as *Mono Lake* case summed up the substance of the doctrine. The Court said:

“Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.”

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government’s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax “The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention”, *Michigan Law Review*, Vol. 68, No. 3 (Jan. 1970) pp. 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine [ibid]:

1. **the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;**
2. **the property may not be sold, even for fair cash equivalent;**
3. **the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.”**

v. ***Jitendra Singh v. Ministry of Environment & Ors.*, 2019 SCC Online 1510 pr 20**

“....
20. **Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this**

country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.”

17. In NGT order dated 27.08.2020 in OA 351/2019, *Raja Muzaffar Bhat vs. State of Jammu and Kashmir & Ors.*, it was observed:

“... ..
8. **One of the serious challenges is solid and liquid waste management, apart from encroachments. There are binding directions of the Hon’ble Supreme Court in *Almitra H. Patel Vs. Union of India & Ors*¹. and *Paryavaran Suraksha vs. Union of India*² on the subject of scientific management of solid waste and sewage/effluents in accordance with the statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, (‘Water Act’) Air (Prevention and Control of Pollution) Act, 1981, (‘Air Act’) and waste management rules framed under the Environment (Protection) Act, 1986 (‘EP Act’). There is large scale non-compliance of the said statutory provisions which has led this Tribunal to consider the issue of river pollution in OA No. 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" in view of acknowledged data of 351 polluted river stretches in the country. Apart from the said issue, large scale failure has been found in the matter of solid waste management as repeatedly recorded in O.A. No. 606/2018. The Chief Secretaries of all the States/UTs were required to remain present in person before this Tribunal for interaction and further planning. In O.A. No. 325/2015, *Lt. Col. Sarvadaman Singh Oberoi v. UOI & Ors.*, the Tribunal has considered the issue of restoration of water bodies. In Original Application No. 593/2017, *Paryavaran Suraksha Samiti & Anr. v. UOI & Ors.*, the issue of untreated sewage or effluent being discharged in water bodies have been taken up for consideration. There are several other matters dealing with the such issues, including coastal pollution, pollution of industrial clusters etc.**

9. **There is discussion in the media about inadequacy of monitoring of action for restoration of lakes, wetlands and ponds which is certainly necessary for strengthening the rule of law and protection of public health and environment³. Several directions have been issued by the Hon’ble Supreme Court in *M.K. Balakrishnan and Ors. v. UOI & Ors.*⁴”**

¹ (2000) 2 SCC 679

² (2017) 5 SCC 326

³ <https://gradeup.co/lakes-in-india-i-4b99dc80-f6ce-11e7-9d78-07a242af4480>
<http://www.saconenvis.nic.in/publication/Lake%20Protection%20and%20Management%20of%20Urban%20Lakes%20in%20India.pdf>

⁴ http://www.worldlakes.org/uploads/Management_of_lakes_in_India_10Mar04.pdf

(2017) 7 SCC 805

18. We also note that the Ministry of Urban Development, Government of India, Central Public Health and Environmental Engineering Organization (CPHEEO) has issued an advisory on **“Conservation and Restoration of Water Bodies in Urban Areas”**⁵ in August, 2013 which need to be followed. The matter was also considered by the Standing Committee on Water Resources (2015-16), Sixteenth Lok Sabha. Its Tenth Report has been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation under the heading **“Repair, Renovation and Restoration of Water Bodies-Encroachment on Water Bodies and Steps Required to Remove the Encroachment and Restore the Water Bodies”**⁶ in August, 2016. Further, the **“Guidelines for the Scheme on Repair, Renovation and Restoration (RRR) of Water Bodies under PMKSY (HKKP)”**⁷ have been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation, Govt. of India in June, 2017. The said report also provides useful material to be looked into by the enforcement agencies.

19. As regards, report of the CPCB on the subject of rain water harvesting, it appears that CPCB has not appreciated the direction of this Tribunal on the subject. While rain water harvesting may be required in all buildings and other places in urban areas, in the present context, the Tribunal has directed setting up of such facilities in sub water sheds along ponds for utilization of surplus rain water for restoration of the ponds which have become dry and for augmenting other ponds.

⁵ <http://mohua.gov.in/upload/uploadfiles/files/Advisory%20on%20Urban%20Water%20Bodies.pdf>

⁶ http://164.100.47.193/lsscommittee/Water%20Resources/16_Water_Resources_10.pdf

⁷ http://pmksy-mowr.nic.in/documents/RRR_PMKSY_Guidelines_2017.pdf

20. There is, thus, need for continuous planning and monitoring at National, State and District levels. Suggestions and observations of CPCB and the Oversight Committee need to be acted upon.

21. As suggested by the CPCB, a single agency needs to be set up in every State/UTs within one month. This work may either be assigned to the Wetland Authority of the State or the River Rejuvenation Committee or to any other designated authority such as the Secretary, Irrigation and Public Health/Water Resources. It is made clear that if the State Wetland Authority is to be assigned the task of protection of all water bodies, this task will be in addition to the normal functioning of the State Wetland Authority under the Wetland (Conservation and Management) Rules, 2017. Such nodal agency must call a preliminary meeting on the subject with all the District Magistrates on or before 31.01.2021 to take stock of the situation and to plan further steps. Thereafter, a regular meeting may be held for periodic monitoring at the District level as well as the State level with the identified targets of proper and scientific identification and protection of all water bodies, assigning unique identification number, removing encroachments, preventing dumping of waste, maintaining water quality and restoration by taking other appropriate steps, involving the Panchayats and the community, utilizing the financial resources available from different sources. Steps taken need to be documented and compiled and reported to a central authority, preferably the CPCB. This Tribunal has already constituted a CMC to be headed by the Secretary, MoJS with the assistance of CPCB and other authorities to monitor remedial action for 351 polluted river stretches. Restoration of water bodies is also a connected issue which can be monitored by the same Committee atleast thrice a year at the national level.

Directions

22. Accordingly, we dispose of this application with following directions:

- (i) All States/UTs may forthwith designate a nodal agency for restoration of water bodies, wherever no such agency has so far been so designated.
- (ii) Under oversight of the Chief Secretaries of the States/UTs, the designated nodal agency may
 - a. Hold its meeting not later than 31.1.2021 to take stock of the situation and plan further steps, including directions to District authorities for further course of action upto Panchayat levels and to evolve further monitoring mechanism as well as Grievance Redressal Mechanism (GRM).
 - b. Submit periodical reports to the CPCB/Secretary Jal Shakti, Government of India. First such report may be furnished by 28.02.2021.
- (iii) The CMC for monitoring remediation of 351 polluted river stretches, headed by the Secretary, MoJS may monitor the steps for restoration of water bodies by all the States periodically, atleast thrice in a year. First such monitoring may take place by 31.3.2021.
- (iv) The CMC may give its action reports to this Tribunal in OA 673/2018 and first such report may be furnished preferably by 30.4.2021 by e-mail.

23. Any individual grievances may be first raised before the appropriate GRM or by moving the concerned District Magistrate which may be looked into on merits.

The application stands disposed of accordingly.

A copy of this order be forwarded to the Secretary, MoJS, CPCB, the Chief Secretaries of all the States/UTs and all District Magistrates by e-mail for compliance.

All pending I.A.s and M.A.s will stand disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 18, 2020
Original Application No. 325/2015
SN

CASE NO.:
Appeal (civil) 3418 of 2006

PETITIONER:
SUSETHA

RESPONDENT:
STATE OF TAMIL NADU and ORS.

DATE OF JUDGMENT: 08/08/2006

BENCH:
S.B. SINHA & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

S.B. Sinha, J:

Leave granted.

The Appellant herein claims herself to be a member of the Okkiam Thoraipakkam Panchayat Union. There exists a temple tank in the said village. The village is located on both sides of the main road connecting Chennai City with Mahabalipuram on the Old Mahabalipuram Road. The said tank admittedly was lying in disuse. It was in fact an abandoned one. The Panchayat took a decision of constructing a shopping complex for the purpose of user thereof for resettlement of those persons who were displaced due to expansion of a highway project. The State of Tamil Nadu also issued a Government Order permitting constructions of a shopping complex therein. A writ petition was filed by the Appellant before the High Court of Madras, questioning the said decision. By an order dated 06.12.2005, the High Court, having regard to the stand taken by the Respondent herein in their counter affidavit, appointed the Director, Centre for Water Resources, Guindy, Chennai, as the Commissioner to inspect the tank land and submit a report in regard to the condition thereof. Pursuant to or in furtherance of the said direction, an inspection was carried out at the instance of the Director. A report by the Centre of Water Resources, College of Engineering Guindy, Anna University, Chennai also was filed before the High Court.

Relying on or on the basis of the said report, a Division Bench of the Madras High Court by reason of the impugned order dismissed the writ petition filed by the Appellant herein.

The Appellant is, thus, before us.

Ms. Indu Malhotra, the learned counsel appearing on behalf of the Appellant, submitted that keeping in view the water shortage faced by the public in general, the High Court committed a manifest error in permitting construction of a shopping complex on a water body.

Drawing our attention to a decision of the Division Bench of the Madras High Court in L. Krishnan v. State of Tamil Nadu, AIR (2005) Madras 311, it was argued that the State Government was enjoined with a duty to preserve the tank by taking all possible steps both by way of preventive measures as well as removal of unlawful encroachments and not to use the same for commercial purpose.

Drawing our attention to a report of the Director, the learned counsel urged that the conclusions arrived at therein were not correct as it was noticed that during rainy season, the tank did not remain dry. Resurrection of the tank, according to the learned counsel, being possible, the High Court should have exercised its extra-ordinary jurisdiction in directing

so.

Mr. Harish N. Salve, the learned Senior Counsel, appearing on behalf of the Respondent-State of Tamil Nadu, on the other hand, supported the impugned judgment contending that the tank in question being an artificial tank and not a natural water resources, all considerations relevant for passing an appropriate order having been taken note of by the High Court, this Court should not exercise its discretionary jurisdiction.

Mr. L. Nageswara Rao, the learned Senior Counsel appearing on behalf of the Gram Panchayat, urged that the Appellant herein is not a member of the Gram Panchayat. It was further submitted that there had been no shortage of water in or around the tank.

The tank in question was admittedly a temple tank. It was not a lake. Although it was classified in the revenue records as a tank poramboke, but it had lost its utility a long time back. It was being used as a dumping yard. There was no inlet or outlet facilities. It was also prone to encroachments.

In its report the Centre for Water Resources, upon inspection of the tank, drew the following conclusions:

"(i) The catchment area available is 26, 781 m². The present capacity of the tank is 1, 861m³. The annual runoff potential is 8,043 m³.

(ii) There is no specific inlet or surplus channels for the temple tank.

(iii) The water from the tank is not directly being used by the public/cattle or for any other purpose.

(iv) The water contained in the tank is unfit for human consumption.

(v) The tank area has not been maintained properly over the years and has been used as a dumping yard.

(vi) When such water bodies are not maintained property, they are likely to be encroached.

(vii) From the interaction with the Public, the team learnt that but for the recent heavy rains, the tank would have remained dry.

(viii) The tank area has no access from three sides namely South, North and Eastern sides and could be accessed only from the Old Mahabalipuram road side.

(ix) The tank does not contain any built up structures like steps to enter, etc. but contains building debris dumped into it.

(x) The area is surrounded by three other bigger sized tanks, two in the East and one in the west, which will be recharging the ground water in that area and the recharge contribution of this temple tank will be insignificant.

(xi) The Temple tank is in a dilapidated condition."

The tank is situated in Survey No. 21+. It is abutting a highway. Within a kilometer from the said tank, there are five other tanks, relevant details whereof are as under:

SI. No.	Name of the Tank	Extent		
		Survey No.	Hec.Acre	Acre Cent
1.	Kannankkan Kulam	41/7	0.32.5	0.80

2.	Kuttai	101/2	0.52.5	1.30
3.	Aya Kulam	207	1.03.5	2.55
4.	Puthu Kulam	209/9	.31.0	0.77
5.	Periya Chandran Kulam	263/2A	0.70.0	1.73
	Total		2.89.5	7.15

It is also not ind dispute that the shops and other dwelling units abutting the said highway were subject matter of acquisition proceedings and the effected families were to be provided alternate sites, shop or dwelling units under the rehabilitation and settlement scheme. The State in its counter affidavit stated that having regard to the condition of the said tank, levelling of the land was taken up and completed on 15.02.2006 and, thus, it is contended that it is in public interest that the proposed shopping complex are allowed to be constructed.

Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life. [See Animal and Environment Legal Defence Fund v. Union of India and Ors., AIR (1997) SC 1071; M.C. Mehta (Badkhal and Surajkund Lakes Matter v. Union of India and Ors., [1997] 3 SCC 715 and Intellectuals Forum, Tirupathi v. State of A.P. and Ors., [2006] 3 SCC 549.

Maintenance of wetlands was highlighted by the Calcutta High Court in People united for better living in Calcutta - Public and Anr. v. State of West Bengal and Ors., AIR (1993) Cal. 215, observing that the wetland acts as a benefactor to the society.

Recently, in T.N. Godavaraman Thirumulpad (99) v. Union of India and Ors., [2006] 5 SCC 47, this Court again highlighted the importance of preservation of natural lakes and in particular those which are protected under the Wild Life (Protection) Act, 1972.

We may, however, notice that whereas natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse. The same principle, in our opinion, cannot be applied in relation to artificial tanks.

In L. Krishnan (supra), the Division Bench of the Madras High Court had been dealing with natural resources providing for water storage facility and in that view of the matter the State was directed to take all possible steps both preventive as also removal of unlawful encroachments so as to maintain the ecological balance.

The matter has also been considered at some details by this Court in Intellectuals Forum, Tirupathi (supra), wherein again while dealing with natural resources, it was opined:

"This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust, Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act

for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources...."

[Emphasis supplied]

This Courts have not, in the aforesaid decisions, laid down a law that alienation of the property held as a public trust is necessarily prohibited. What was emphasized was a higher degree of judicial scrutiny. The doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.

In *Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and Ors.*, [2006] 3 SCC 434, referring to a large number of decisions, it was stated that whereas need to protect the environment is a priority, it is also necessary to promote development stating:

"...The harmonization of the two needs has led to the concept of sustainable development, so such that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs."

Treating the principle of sustainable development as a fundamental concept of Indian law, it was opined:

"The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter-generational interest, it is also not possible to ignore the dire need which the society urgently requires."

The case at hand must be judged having regard to the aforementioned principle in mind. The Respondents categorically denied and disputed that there is any water shortage in the village. The village is situated near a sea having five water tanks in or around therein. It is, therefore, difficult to accept that there had been acute water shortage in the village, as was submitted by Ms. Malhotra. The tank in question is not a natural tank. Only rain water could be collected in it. It has been a dumping ground for a long time. Although there is no material on records to show as to since when it has fallen in disuse, indisputably the tank in question is in a dilapidated condition for a long time and has been used as a dumping yard and sewage collection pond. In our opinion, thus, it is not a case where we should direct its resurrection.

The High Court in its judgment has taken into consideration all relevant factors. It was not pointed out that essential features or other relevant principles of law were not taken into consideration by the High Court in passing the impugned judgment.

We would, however, direct the State and Gram Panchayat to see that other tanks in or around the village are properly maintained and necessary steps are taken so that there is no water shortage and ecology is preserved.

For the foregoing reasons, we do not find any reason to interfere with the impugned judgment. The appeal is dismissed without any order as to costs.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4154 OF 2000

Fomento Resorts and Hotels Ltd. and another ...Appellant(s)

Versus

Minguel Martins and others ...Respondent(s)

WITH

Civil Appeal Nos.4155 and 4156 of 2000

JUDGMENT

SINGHVI, J.

1. The above noted appeals are directed against order dated 25.4.2000 passed by Goa Bench of the High Court of Bombay in Writ Petition No.330 of 1991 Shri Minguel Martins vs. M/s Sociedade e Fomento Industries Pvt. Ltd. and others, Writ Petition No.36 of 1992 Goa Foundation and another vs. Fomento Hotels and Resorts Limited and others and Writ Petition No.141 of 1992 Shri Gustavo Renato de Cruz Pinto vs. State of Goa and others whereby directions have been given for demolition of construction made in survey No.803 (new No.246/2) within the area of Gram Panchayat, Taleigao, for resumption of the land acquired on behalf of appellant No.1, Fomento Resorts and Hotels Limited, earlier known as M/s. Gomantak Land Development Pvt. Ltd. and keeping public access to the Vainguinim beach from point 'A' to point 'B' shown in plan Exhibit-A open without any obstruction of any kind.

2. For deciding the questions arising in the appeals, it will be useful to notice the relevant facts:

(i) Dr. Alvaro Remiojo Binto owned several parcels of land in Village Taleigao, District Tiswadi, Goa. He sold plots bearing survey Nos.803 and 804 (new Nos.246/2 and 245/2) to Gustavo Renato da Cruz Pinto and plots bearing survey Nos.787 and 805 (new Nos.246/1 and 245/1) to M/s. Sociedade e Fomento Industries Pvt. Ltd. (appellant No.2 herein).

(ii) After purchasing the land, appellant No.2 leased out the same to appellant No.1. The latter submitted an application to Gram Panchayat Taleigao (for short 'the Gram Panchayat') for grant of permission to construct hotel complex near Vainguinim beach. On a reference made by the Gram Panchayat, Chief Town Planner, Government of Goa, Daman and Diu vide his letter dated 1.8.1978 informed that the plans submitted by appellant No.1 are in conformity with the regulations in force in the area but observed that right of the public to access the beach must be maintained by providing necessary footpath. Paragraph 2 of that letter reads as under:-

“The road leading to the hotel complex is at present used by general public to approach the Vainguinim Beach which is popular picnic spot for the people of Panaji, as well as other parts of Goa. It will need to be ensured that the right of access to the beach is maintained by the applicant by providing the necessary footpath to the beach at an appropriate place. The parking facilities provided will also have to take care of the parking of vehicles of such members of the public in an appropriate manner. This will ensure that the beach remains open to public as it is at present and that the public is not deprived of this beautiful and frequently used beach.”

[emphasis added]

(iii) Thereafter, the Gram Panchayat issued letter dated 22.8.1978, whereby appellant No.1 was permitted to lay access road linking Dona-Paola-Bambolim Road to the construction site and construct the hotel subject to the conditions specified in the letter including the one relating to public access to the beach. This was reiterated by the Sarpanch of the Gram Panchayat in his letter dated 1.12.1978.

(iv) In furtherance of the permission granted by the Gram Panchayat, appellant No.1 commenced construction of the hotel, which is now known as Hotel Cidade de Goa on the land forming part of survey No.787 (new No.246/1) and completed the same by May, 1983 in different stages, the details of which are given below:-

<u>“Period</u>	<u>Physical Progress</u>	<u>Expenditure Ex</u>
Upto Dec. 1978	Site Development.	Approx. Rs.15 lakhs
Jan. 79 to Dec. 79	Site Development and plinth level construction works of Central Facility area and first Cluster	Approx. Rs.20 lakhs
Jan.80 to Dec.80	Site Development and shell work of Central Facility areas and first cluster of rooms.	Approx Rs.40 lakhs
Jan.81 to Dec. 81	Complete structural works Complete civil works. Complete interiors, complete Air-conditioning, water supply, and sanitation and electrical works of central Facility areas and first cluster of rooms.	Approx.Rs.160 lakhs
Jan.82 to Dec.82	Complete air-conditioning, water supply and sanitation, and electrical works and civil works and interiors of second and third clusters of rooms.	Approx. Rs.210 lakhs
Upto May 1983	Complete air-conditioning water supply and sanitation and electrical works and civil works and interiors of fourth cluster of rooms.	Approx. Rs.65 lakhs”

(v) During construction of the hotel building, appellant No.1 made an application dated 29.9.1979 to the Sarpanch of the Gram Panchayat, for permission to change the location of the footpath and parking area by stating that in view of

installation of 10,000 Kg. gas tank (poisonous gas at high pressure), pressurized water tank and high voltage electric transformer near the hotel building, it will not be in public interest to locate the footpath and parking area at the sanctioned site.

(vi) The Sarpanch of the Gram Panchayat neither forwarded the application of appellant No.1 to the Town and Planning Department for eliciting its views nor placed the same before the Gram Panchayat. Instead he, on his own, wrote letter dated 29.9.1979 to appellant No.1 giving an impression that the Gram Panchayat does not have any objection to the change of location of the footpath and parking area. Thereafter, appellant No.1 is said to have shifted access to the beach from the location originally sanctioned. However, the maps produced before this Court during the course of hearing show that the footpath is still near the gas tank.

(vii) In the meanwhile, Shri Gustavo Renato da Cruz Pinto, Smt. Surana Pefira Pinto and Miss Befta Sara Da Costa Pinto filed Special Civil Suit No.313/1978/A in the Court of Civil Judge, Senior Division, at Panaji against appellant No.2, Dr. Alvaro Remiojo Binto and four others for a decree of possession by pre-emption in respect of the land comprised in survey Nos.787 and 805 and also to restrain the defendants, their agents, servants, etc. from changing, alienating or raising any construction on the suit land by alleging that they were owners of property bearing survey Nos.803, 804, 806, 807, 788 and 789 situated at Taleigao and since time immemorial they and their predecessors were using footpath passing through survey Nos.787, 805 and 769 for going to Panaji-Dona Paola-Bambolim road, which was sought to be obstructed. Defendant No.1 in the suit (appellant No.2 herein) filed written statement to contest the suit. After some time, the parties compromised the matter in terms of which the plaintiffs gave up their claim for pre-emption in respect of plot bearing survey Nos.787 and 805 and defendant No.1 agreed to exchange the plot bearing survey No.790 with plots bearing survey Nos.788 and 789 belonging to the plaintiffs and also that it will have no right of access

through any of the properties of the plaintiffs. As a sequel to this, the plaintiffs applied for withdrawal of the suit. By an order dated 20.12.1978, the Civil Judge permitted them to do so.

(viii) Soon after withdrawal of the suit for pre-emption, appellant No.1 made an application dated 15.11.1978 to Shri Shankar Laad, Minister of Revenue, Government of Goa for acquisition of land comprised in survey Nos.788, 789, 803, 804, 806 and 807 (new Nos.246/3, 246/4, 246/2, 245/2, etc.) of Village Taleigao, Dona Paula for construction of Beach Resort Hotel Complex by highlighting its benefit to the State. Paragraphs 3 to 6 of the application, which have bearing on the decision of these appeals, read as under:

“3. It is proposed to put up a hotel complex in the two phases, in the first phase it is proposed that a hotel building is put up in Plot No. 787 in the second phase it is proposed that a Yoga Centre, Health Club and Water Sports facilities for promoting tourism are put in Plot No. 805. Our Hotel Project which is estimated to cost Rs.150 lakhs and will have 100 rooms in its first phase will add to meeting the much needed demand for accommodation by the international tourists.

4. In the first phase of the hotel complex it is necessary to develop plot No.787 and to immediately proceed to construct the Hotel Building thereon. The land in plot No.787 consists of hilly and rocky area and the land abutting on the beach is also of different levels. In order to put up a hotel building in this plot it would be necessary to undertake cutting of rock which would disturb the topography of the area entailing considerable expense. It is, therefore, necessary that the lay-out for the hotel building is finalized in a manner that the rock cutting is minimized and, at the same time, the natural surroundings of the rock and foliage is maintained. Exclusive cutting of rock is also likely to result in land-slides and may pose danger to the foundation of the hotel buildings and its residents. It is, therefore, necessary to construct the hotel building as near the beach as possible, i.e. on the lowest level of the land abutting the beach.

5. There are two small plots bearing No.788 and 789 area abutting the beach. Those two small plots fall almost midway along the beach frontage of our said plot No.787 and project into the said plot. Those two small plots are in the lowest level of the land and as such are most suited for including in the lay-out plan of the hotel. These two small plots being closest to the beach it is essential for us to install a first aid post and a medical aid centre for providing safety measures to the people using the beach facilities. Besides it is a precondition for a beach resort hotel giving

comforts to provide those facilities both for the residents and for public at large. Keeping in view those factors it is necessary that these two small plots of land are immediately acquired and included in the lay-out plan of the hotel. It is also necessary that the acquisition of these two small plots of land is urgently completed and possession handed over to enable the lay out plan of the hotel building to be readjusted at this initial stage itself, on the ground prepared by proper leveling and terracing before the actual construction work could begin. It is, therefore, necessary that the two plots of land be urgently acquired in the first instance so that there is no delay whatsoever in implementing the first phase of the hotel project.

6. In order to take in hand the second phase of the hotel complex it would be desirable to acquire plot Nos. 803 and 804 which intervene between our second Plot No. 805 and our first plot No. 787 and plot Nos. 806 and 807 which adjoin our second plot No. 805. This would enable us to undertake the second phase of the project as described above. The entire complex will then become one composite unit and these facilities could then be easily availed of by the hotel residents and the resident of this territory. The facilities provided by the hotel will be open for use on membership to non-residents also. Such facilities are not readily and easily available to the people of this.”

(ix) Acting on the application made by the developer, the Government of Goa issued notification No.HD/LQN/315/78 dated 29.10.1980 under Section 4(1) of Land Acquisition Act, 1894 (for short ‘the 1894 Act’) for acquisition of the plots comprised in survey No.803 (new No.246/2) and survey No.804 (new No.245/2).

(x) After holding enquiry under Section 5A of the 1894 Act, the State Government issued declaration under Section 6, which was published in Gazette dated 27.10.1983.

(xi) Gustavo Renato da Cruz Pinto and some others filed Writ Petition No.8/1984 for quashing the aforementioned notifications on various grounds including the one that before acquiring the land, government did not make enquiry as per the requirement of Rule 4 of the Land Acquisition (Companies) Rules, 1963 (for short ‘the Rules’). The writ petitioners also highlighted discrepancies in different notifications issued by the State Government. Respondent No.2 in the writ petition (appellant No.1 herein) filed reply affidavit stating therein that Rule 4 of the Rules is not mandatory and non compliance thereof did not affect legality of the

acquisition. In paragraphs 67 and 76 of the reply affidavit, it was averred that part of the project i.e. hotel is complete and has started functioning. In paragraph 79, it was averred that besides the hotel project, cottages were proposed to be constructed on plot bearing survey No.805 and the acquired land in survey Nos.803 and 804 will be used for putting up health club, yoga centre, water sports and other recreational facilities, which are integral part of the project.

(xii) By an order dated 26.6.1984, Goa Bench of the High Court of Bombay allowed the writ petition and quashed the impugned notifications only on the ground of non compliance of Rule 4 of the Rules. That order was reversed by this Court in *M/s. Fomento Resorts and Hotels Ltd. vs. Gustavo Renato Da Cruz Pino and Others* [(1985) 2 SCC 152] and the case was remitted to the High Court for deciding other grounds of challenge. It, however, appears that after the judgment of this Court, the parties compromised the matter and the writ petition was withdrawn on 26.3.1985.

(xiii) In the meanwhile, appellant No.1 entered into an agreement with the government as per the requirement of Section 41 of the 1894 Act. The agreement was signed on 26.10.1983. The opening three paragraphs and Clauses 3, 4 and 6 of the agreement read as under:-

“WHEREAS the principal objects for which the Company is established are, inter alia, construction of a tourism development project, etc. etc.

AND WHEREAS for the purpose of the construction of this tourism development project comprising of a hotel at Curla, Vainguinim, Dona Paula, Goa, the Company has applied to the Government of Goa, Daman and Diu (hereinafter referred to as “The Government”) for acquisition under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as “the said Act”) of the pieces of land containing 19,114 square metres, situated in the District of Tiswadi and more particularly described in the Schedule appended hereto and delineated in the Plan hereunder annexed (hereinafter called “the said land”) for the following purpose, namely –Tourism Development Project – construction of hotel at Curla, Vainguinim, Taleigao.

AND WHEREAS the Government being satisfied by an enquiry held under Section 40 of the said Act that the proposed acquisition is needed for the aforesaid purpose and the said work is likely to prove useful to the public, has consented to acquire on

behalf of the company the said land, hereinbefore described.

3. The said land, when so transferred to and vested in the Company shall be held by the Company as its property to be used only in furtherance of and for the purpose for which it is required subject nevertheless to the payment of the agricultural, non-agricultural or other assessments and cesses, if any, and so far as the said land is or may from time to time be liable to such assessments and cesses under the provisions of the law for the time being in force.

4.(i) The Company shall not use the said land for any purpose other than that for which it is acquired.

(ii) The Company shall undertake the work of creation of sports and other recreational facilities/amenities within one year from the date on which the possession of the said land is handed to the Company and complete the same within three years from the aforesaid date.

(iii) Where the Government is satisfied after such enquiry as it may deem necessary that the Company was prevented by reasons beyond its control from creating the sports and other recreational amenities within the time specified in the Agreement, the Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period shall not exceed six years.

(iv) The Company shall keep at all times and maintain the said land and the amenities created thereon, in good order and condition to the satisfaction of the Government or any Officer or Officers authorized by the Government.

(v) The Company shall maintain all records of the Company properly and supply to the Government punctually any information as may from time to time be required by the Government.

(vi) The company shall not use the said land or any amenities created thereon for any purpose which in the opinion of the Government is objectionable.

(vii) The Company shall conform to all the laws and the rules and guidelines made by the Government from time to time regarding preservation of ecology and environment.

(viii) The Company shall never construct any building or structures in the acquired land. Prior approval of Eco-Development Council of the Government of Goa, Daman and Diu will be obtained before undertaking activities for its development, besides other statutory requirements under the existing laws.

(ix) The public access/road to the beach shall not be affected or obstructed in any manner.

6. In case the said land is not used for the purposes for which it is acquired as hereinafter recited or is used for any other purpose or in case the Company commits breach of any of the conditions hereof, the said land together with the improvements, if any, affected thereon, shall be liable to resumption by the

Government subject however, to the condition that the amount spent by the Company for the acquisition of the said land or its value as undeveloped land at the time of resumption, whichever is less, but excluding the cost or value of any improvements made by the Company to the said land or any structure standing on the said land, shall be paid as compensation to the Company.

Provided that the said land and the amenities, if any, created thereon shall not be so resumed unless due notice of the breach complained of has been given to the Company and the Company has failed to make good the breach or to comply with any directions issued by the Government in this behalf, within the time specified in the said notice for compliance therewith.”

[Emphasis added]

(xiv) Although, the agreement was signed on 26.10.1983, possession of the acquired land was given to appellant No.1 only after withdrawal of Writ Petition No.8 of 1984 for which permission was granted on 26.3.1985.

(xv) After delivery of possession of the acquired land, Smt. Anju Timblo, Director of appellant No.1, made an application to Panjim Planning and Development Authority (hereinafter referred to as 'the Development Authority') under Sections 44(1) read with Section 49(1) of the Goa, Daman & Diu Town and Country Planning Act, 1974 (hereinafter described as 'Town & Country Planning Act') for grant of permission for extension of the existing hotel building on survey Nos.246/1, 246/3 and 246/4 (old survey Nos.787, 788 and 789). The applicant did not seek extension of hotel building to survey No.246/2 apparently because of the express embargo contained in Clause 4(viii) of the agreement that the company shall never construct any building or structure in the acquired land.

(xvi) The aforementioned application was considered by the EEC in its 23rd meeting held on 11.6.1987 and was favourably recommended subject to the condition that pedestrian path along the beach may be made available by constructing an access from the jetty so that public can reach the beach during the high tide period.

Thereafter, the matter was considered in the meeting of the EDC held on 11.9.1987 and it was decided to accept the recommendations of the EEC, subject to the condition regarding pedestrian path. The decision of the EDC was communicated to Smt. Anju Timblo by the Chief Town Planner vide his letter dated 14.10.1987, the relevant portion of which read as under:

“In continuation of this office letter No. DE/4757(DZ/2009)3055/87 dated 10.7.87, it is to inform that the project was discussed in the 10th meeting of the Eco Development Council held on 11.9.87 and the Council has cleared the project as per the plans submitted by you with condition that pedestrian path be made available by construction an access from the jetty so that the public can reach the beach even during high tide.”

(xvii) In furtherance of the decision taken by the EDC, the Development Authority issued an order under Section 44(3)(c) read with Section 49(2) of the Town and Country Planning Act whereby permission was granted to appellant No.1 for extension of the existing hotel building. The opening paragraph and Clause 10 of the conditions incorporated in that order, read as under:

“Whereas an application has been made by Shri/Smt. Anju Timblo, Development permission is issued for extension to the existing Hotel Building with respect to his/her land zoned as commercial zone bearing Survey No. 246 approved Sub No. 1, 3 and 4 Chalta No. – P.T. Sheet No. ___ of Taleigao Village Town in accordance with the provisions of Section 44(1)/49(1) of the Goa, Daman and Diu Town and Country Planning Act, 1974, read with Rule 13 of the Planning & Development Rules 1977 framed thereunder. And whereas, a development charge affixed at Rs.84,170/- has been paid by him/her.

Therefore, under the powers vested in this Authority under Section 44(3)© / 49(2) of the Goa, Daman & Diu Town & Country Planning Act, 1974, the above said applicant is granted development permission to carry out development in accordance with the enclosed plans subject to the following conditions:-

“.....

10) The Pedestrian path has to be made available by constructing an access from the jetty so that the public can reach the beach even during high tide.”

(xviii) After some time another application was made on behalf of appellant No.1 under Section 46 read with Section 44 of the Town and Country Planning Act for renewal of the permission granted vide order dated 15.4.1988 with a deviation in respect of plots bearing survey Nos.246/1, 2, 3 and 4. Thus, for the first time, a

request was made for raising construction in survey No. 803 (new No.246/2) in the garb of making deviation from the permission already granted. This application was not put up either before the EEC or EDC and was straightaway considered by the Goa Town and Country Planning Board (for short 'the Board') in its meeting held on 20.6.1991 as an additional item and the following decision was taken:-

“The proposal relating to extension/deviation of Hotel Cidade de Goa which also involves relaxation in number of floors was considered and approved subject to the condition that the height shall not exceed the stipulated limit of 17.5 mts. which was applicable at the time when the project was approved”.

(xix) The above reproduced decision of the Board was forwarded by the State Government to the Development Authority. However, without even waiting for consideration by the competent body, appellant No.1 appears to have started construction by deviating from the approved plan. This compelled the Chairman of the Development Authority to send letter dated 12.7.1991 to appellant No.1 requiring it to refrain from going ahead with further construction.

(xx) It is not borne out from the record that matter relating to extension of the hotel building on plot bearing survey No.803 (new No.246/2) was ever placed before the EDC, but the Development Authority *suo moto* passed order dated 20.4.1992 vide which permission was granted to appellant No.1 to carry out the development on plot bearing survey No.246/1, 2, 3 and 4 subject to the terms and conditions specified therein, including the following:

“The condition No.10 of the Order No.PDA/T/7471/297/88 dated 15.4.1988 should be strictly adhered to.”

(xxi) When appellant No.1 started extension of the hotel building in violation of the permission accorded by the EDC, Shri Minguel Martins, who claims to have purchased plots carved out of survey No.792 (new No.242/1), popularly known as 'Machado's Cove', filed Writ Petition No.330/1991, for issue of a direction to the

State Government, Village Panchayat Taleigao and other official respondents to remove the illegal construction made by appellant No.1, to refrain from granting any permission for construction or regularizing the construction already made by appellant No.1 and also revoke the permission granted vide order dated 15.4.1988. He further prayed for issue of a direction to respondent Nos.1 and 2 in the writ petition (appellants herein) to keep the traditional access to the beach open and not to put up any further construction on plots bearing survey Nos.787 and 803, which would interfere with the public road, parking lot and public access to the beach. In paragraph 3 of his petition, Shri Minguel Martins made a mention of the alleged violation of the conditions contained in letters dated 1.8.1978 and 22.8.1978 issued by the Chief Town Planner and Sarpanch of the Gram Panchayat respectively by asserting that respondent Nos.1 and 2 (appellants herein) have closed the road and footpath to the beach and commenced construction of the parking, which he has been challenged in Writ Petition No.284/1991. In paragraphs 5 to 7, he referred to agreement dated 26.10.1983, and alleged that in complete violation of the mandate thereof, respondent Nos.1 and 2 have made construction in survey No.803 and blocked public access to the beach. He also pleaded that even though the land was acquired for sports and recreational facilities and use thereof for any other purpose is prohibited by the terms of agreement, the official respondents are trying to regularize illegal structures put up by respondent Nos.1 and 2 and even violation of CRZ is being ignored. Another plea taken by Shri Minguel Martins was that respondent Nos.1 and 2 have constructed sewerage treatment plant and laundry without obtaining permission from the competent authority under the Water (Prevention and Control of Pollution) Act, 1974 and the Environment Protection Act, 1986.

(xxii) In the reply affidavit filed on behalf of respondent Nos.1 and 2 in Writ Petition

No.330/1991 (appellants herein), it was pleaded that the petitioner is liable to be non-suited on the ground of laches and also on the ground that disputed questions of fact are involved. It was further pleaded that the writ petition has been instituted with an oblique motive at the instance of Dr. Alvaro de Souza Macahdo, one of the co-owners of survey No.792 and developer of Machado's Cove, namely, M/s. Alcon Real Estate Private Ltd., who filed Civil Suit No.67 of 1986 for similar relief but could not persuade Civil Judge, Junior Division, Panaji to entertain their prayer for temporary injunction. The appellants alleged that after having failed to secure injunction from the civil court, Victor Albuquerque, the partner of M/s. Alcon Real Estates Private Ltd. filed Writ Petition No.284/1991 and Minguel Martins filed Writ Petition No.330/1991 and this was indicative of the fact that the petitioner was in collusion with the developer of Machado's Cove. They also questioned, the locus of the petitioner by stating that plot bearing survey No.792 has not been sub-divided and he does not have any interest in that property. On merits it was averred that road, car parking facilities and footpath leading to the beach have been provided in accordance with the condition imposed by the Chief Town Planner and Gram Panchayat and the same are in existence since 1979 and are being used by the public without any obstruction. The appellants denied existence of a pathway through survey Nos.792 and 803 and pleaded that members of the public do not have the right to access the beach through survey No.803. The appellants also relied on Section 16 of the 1894 Act and averred that even if there existed access to the beach through the acquired land, the same stood extinguished after vesting of the land in the government, possession of which was given to appellant No.1 on 26.3.1985. On the issue of extension of hotel building, the appellants pleaded that additional construction was made in accordance with the permission granted vide order dated 15.4.1988 and after obtaining approval of the proposed deviation from the competent authority. As regards, the laundry and water treatment plant, it was averred that temporary sheds were constructed for

laundry after obtaining permission from the Sarpanch of the Gram Panchayat and that treated effluent are intended to be used for gardening, manuring and other purposes for which no separate permission was necessary. The appellants referred to Suit No.313/1978/A filed by Gustavo Renato da Cruz Pinto and others for decree of possession by pre-emption and averred that the so called admissions made in the written statement about the existence of public pathway through plots bearing survey Nos.792 and 803 is not binding on them because contents of the written statement were not verified by the authorized representative of appellant No.2, on the basis of personal knowledge and in their rejoinder, even the plaintiffs had not accepted the existence of such pathway. In support of their plea that there is no public pathway or access to the beach through survey Nos. 792 and 803, the appellants relied on the judgment of Special Civil Suit No. 67/1986 - Alvaro De Souza Machado and another vs. Sociedade De Fomento Industrial Pvt. Ltd. and another.

(xxiii) The Goa Foundation, which is the registered society and is engaged in the protection of ecology and environment in the State of Goa and Dr. Claudio Alvares, Secretary of the Goa Foundation filed Writ Petition No.36/1992 with prayers similar to those made in Writ Petition No. 330/1991. They also invoked Article 51(g) of the Constitution of India and pleaded that the Vainguinim beach, which is a public asset, is sought to be privatized by the respondents (appellants herein) and they have advertised the hotel in foreign country as having a private beach. In paragraph 9 of Writ Petition No.36/1992, the petitioners claimed that the villagers of Taleigao and general public have been using access to the beach that run through plots bearing survey Nos.792 and 803 (new Nos.242/1 and 246/2) in addition to the path running along the boundary of survey No.787 (new No.246/1). They relied on the admissions contained in the written statement filed on behalf of appellant No.2 in Special Civil Suit No.313/1978/A to show that public access to the beach exists through survey

No.803 and pleaded that in complete disregard of agreement dated 26.10.1983, the appellants have constructed hotel building without obtaining permission from the competent authority and they have unauthorisedly put up wall encircling those plots and thereby privatized Vainguinim beach.

(xxiv) Shri Gustavo Renato da Cruz Pinto, who had earlier filed Special Civil Suit No.313/78/A for pre-emption, also joined the fray by filing Writ Petition No.141/1992. He claimed that public access to the beach through plot bearing survey No.803 has been blocked in utter violation of the conditions specified in agreement dated 26.10.1983. Another plea taken by Gustavo Renato da Cruz Pinto was that the land was acquired under Section 40(1)(b) of the 1894 Act and, therefore, the respondents in the writ petition are duty bound to provide amenities to the public in terms of agreement dated 26.10.1983, which they have failed to do.

(xxv) The reply affidavits filed in Writ Petition Nos.36/1992 and 141/1992 were substantially similar to the counter filed in Writ Petition No.330/1991 except that in the reply affidavit of Writ Petition No.36/1992, the appellants denied that they were trying to privatize Vainguinim beach. They claimed that the disputed construction is located at a distance of 200 meters from high tide line and about 1000 meters from Dona Paula jetty. According to the appellants, the beach in question is not a type of coastal beach but has exclusiveness and in that sense it was advertised as a private beach. While defending Writ Petition No.141/1992, Smt. Anju Timblo claimed that there has been no violation of agreement dated 26.10.1983 and the construction has been made after obtaining permission from the competent authority. She also enclosed permission granted by the Sarpanch of the Gram Panchayat for putting up temporary shed for washing machines.

(xxvi) A separate reply affidavit was filed by Shri Moraed Ahmed, Member Secretary of Development Authority in Writ Petition No.330/1991. The substance of his affidavit was that the Development Authority has neither granted approval to the deviation nor renewed the development permission of appellant No.1. He also referred to the illegal construction found at the time of inspections conducted on 15.5.1990 and 14.5.1991 which blocked public access to the river or reduced its width and averred that on being asked to do so, appellant No.1 demolished the obstruction/illegal construction.

3. At the hearing of the writ petitions, learned counsel appearing on behalf of the petitioners did not press the grounds of challenge involving violation of CRZ Regulation and construction of sewerage treatment plant without obtaining permission/consent from the competent authority. After taking note of their statement, the High Court considered other issues raised before it and held that the land was acquired under Section 40(1)(b); that the extension of the hotel building on an area measuring 1000 square meters of survey No.803 (new No.246/2) and other constructions were legally impermissible. The High Court negated the argument of the appellants' counsel that in view of Section 16 of the 1894 Act encumbrance, if any, stood wiped out by observing that traditional public right of way cannot be strictly treated as an encumbrance and existence of the way which was in use from time immemorial by the public openly, peacefully and continuously can not be affected, more so, because in the agreement itself, access through survey No.803 (new No.246/2) is acknowledged in the form of Clause 4(ix). The High Court also rejected the explanations given by the appellants for advertising the beach as a private beach and held that they cannot obstruct the passage by putting up wall/barbed wire fencing. In the end, the High Court observed that after executing agreement dated 26.10.1983, the State Government totally abandoned its duty and did not bother to

ensure compliance of the condition incorporated in it.

4. On the aforesaid premise, the High Court allowed the writ petitions and gave the following directions:-

- a. The constructions which have come up in survey No.246/2 (old 803) are required to be demolished and the concerned authorities shall take action in this respect, within a period of eight weeks from today and the compliance report within two weeks therefrom.
- b. A notice for resumption of the land as required under proviso to clause 6 of the agreement dated 26.10.1983 shall be issued within ten weeks by the Government to the hotel to show cause as to why, in the circumstances, the acquired land should not be resumed. The Government shall then take appropriate decision in accordance with law.
- c. The access which is shown in plan Exh.A colly which is at page 33 of Writ Petition No.141 of 1992 shall be kept open without any obstruction of any kind from point A-B in order to come from Machado Cove side from point A to 803 (246/2 new) and then to go to the beach beyond point B. We have already pointed out that this plan is to the scale.
- d. The challenge relating to yellow access and shifting the same to purple access which is raised in Writ Petition No.330/91 has been exhaustively dealt with in separate judgment in connected Writ Petitions No.284/91 and 37/92 and the order passed therein shall govern the said challenge.

5. Before proceeding further, we consider it necessary to mention that during the pendency of these appeals, the appellants filed I.As. for permission to file additional documents including copy of the agreement entered into between plot owners/developers of Machado's Cove (old survey No.792) with plot purchasers showing the pathway to be maintained in terms of order dated 9.4.1992 passed in W.P. No.141/1992, photographs showing the pathway and extension of the hotel

building on survey No.803 (new No.246/2) which is partly occupied by health club, gymnasium, beauty parlour, barber shop, steam, sauna, video games arcade and aerobics and part of circulation hall, kitchen etc., photograph showing development of garden in survey No.803, a sketch showing the location of path as per Exhibit A, copies of correspondence between the developer and appellant No.1 on the one hand and functionaries of the State Government and Gram Panchayat on the other hand, orders of the Development Authority, letter dated 12.7.1991 of the Chairman of the Development Authority, pleadings of and/or evidence produced by the parties in Special Civil Suit Nos.313/1978/A and 67/1986 and the judgment of Special Civil Suit No.67/1986.

6. It is also apposite to mention that while issuing notice in Writ Petition No.141/1992, the High Court passed an interim order directing appellant No.1 to maintain the public access from point 'A' to 'B' in survey No.803 (new No.246/2). In the special leave petitions, paragraphs 1 and 2 of the directions contained in High Court's order and action initiated for resumption of the land were stayed, but at the same time, the Court recorded that learned counsel for the petitioner has agreed that pathway from point 'A' to 'B' in survey No.246/2 as shown at page 49 of Volume II of the paper book in SLP (C) No.9875/2000 shall be maintained till further orders, [This page is a plan showing the status of various plots including survey No.803 (new No.246/2) through which the public path passes from point 'A' to 'B'].

7. Shri Anil B. Divan, learned senior counsel appearing for the appellant, argued that land in survey Nos.803 and 804 was acquired under Section 40(1)(aa) and not under Section 40(1)(b) of the 1894 Act and the High Court committed serious error in recording a finding that the acquisition was under Section 40(1)(b). Learned senior counsel submitted that the expression "public purpose" appearing in clause

(aa) of Section 40(1) is relatable to the purpose of company and not as the term is generally understood in the context of the provisions contained in Part II of the 1894 Act. Shri Divan further submitted that in the absence of a specific stipulation to that effect in the notification published under Section 4(1) of the 1894 Act and agreement dated 26.10.1983, the High Court was not justified in issuing a mandamus for providing access to the beach through that survey number. An alternative argument of Shri Divan is that the so called public access to the beach through survey No.803 was running parallel to the nallah dividing survey No.803 on the one hand and survey Nos.804 and 805 on the other hand and no useful purpose will be served by insisting on maintaining that access because new path has been made available for access to the beach by constructing road, car parking, etc. in compliance of the condition imposed by the Chief Town Planner in his letter dated 1.8.1978 and by the Gram Panchayat while granting permission for construction of hotel in survey No.787. Learned senior counsel referred to the affidavit filed on behalf of the State Government before this Court and argued that when parties to the agreement have clearly understood the terms thereof and the EDC gave permission for construction of sports facilities and amenities without insisting that the same should be allowed to be used by members of the public, except on paying the specified fees, the High Court committed an error by issuing a mandamus for resumption of the land on the ground of the alleged violation of agreement dated 26.10.1983. Learned senior counsel extensively referred to the pleadings of three writ petitions and additional documents filed in these appeals to show that hotel building was extended on plot bearing survey No.803, after obtaining permission from the EDC and Development Authority and submitted that the irregularity, if any, committed in that regard will be deemed to have been regularized by order dated 20.4.1992 passed by the Development Authority. Shri Divan relied on Clause 6 of the agreement and argued that even if the appellants can be said to have violated any of the conditions of agreement, it is for

the Government to take action for resumption of the land, after giving opportunity to them to rectify the defect, etc. and the High Court could not have usurp the power of the Government and directed demolition of the disputed construction. Learned senior counsel also referred to judgment dated 13.3.2006 passed in Special Civil Suit No.67/1986 and argued that in the face of unequivocal finding recorded by the competent court that there is no pathway from survey No.792 (Machado's Cove) to survey No.803, the direction given by the High Court for resumption of the land on the ground that access to the beach available to the public through survey No.803 (new No.246/2) has been blocked in violation of the terms of agreement dated 26.10.1983, is liable to be set aside. He further argued that the so-called admissions made in the written statement filed in Special Civil Suit No.313/78/A cannot be read against the appellants because the written statement was not signed by authorized representative of appellant No.2 on personal knowledge and, in any case, the finding recorded by the competent court in Special Civil Suit No.67/1986 should be treated as conclusive on the issue of non-existence of passage through survey No.803. In support of this argument, learned senior counsel relied on the judgment of this Court in Nagubai Ammal & ors. Vs. B. Shama Rao & ors. [(1956) SCR 451] and of Allahabad High Court in Anurag Misra vs. Ravindra Singh and another [AIR 1994 Allahabad 124].

8. Shri Pallav Shihsodia, learned senior counsel appearing on behalf of the State of Goa and other official respondent, adopted the arguments of Shri Anil Divan and submitted that right of the public to use the traditional passage through private land bearing survey No.803 (new No.246/2) could, at the best, be treated as easementary right which stood extinguished with the acquisition of land under Section 4(1) of the 1894 Act, and vesting thereof in the State Government in terms of Section 16. Shri Shishodia referred to the counter affidavit filed on behalf of the

State in these appeals and submitted that once possession of the acquired land was taken by the Government free from all encumbrances, the writ petitioners could not have asked for an access to the beach through survey No.803 for members of the public. He submitted that if public is allowed to use survey No.803, there will always be a possibility of threat to the security of the inmates of the hotel, which will affect inflow of tourist in the area and have adverse impact on the economy of the State.

9. Ms. Indira Jaising, learned senior counsel for the Goa Foundation, referred to notification dated 29.10.1980 and agreement dated 26.10.1983 to show that the land in dispute was acquired for execution of work for the benefit of general public and argued that the High Court did not commit any error by recording a finding that the acquisition was under Section 40(1)(b). She pointed out that the land was acquired with the sole object of enabling appellant No.1 to develop sports and recreational facilities/amenities which could be used by the occupants of the hotel rooms as also the general public and argued that the same cannot be said to be for the purposes of the company. Ms. Jaising emphasised that on the date of acquisition, the appellant No.1 had already constructed the hotel and argued that in the garb of creating facilities and amenities for the occupants of the hotel rooms, it could not have extended hotel building on 1000 sq. meters of plot bearing survey No.803, and that too in violation of the express bar contained in Clause 4(viii) of agreement dated 26.10.1983. She argued that order dated 20.4.1992 passed by the Development Authority permitting construction on plot bearing survey No.803 is liable to be ignored in view of Clause 4(viii) of the agreement. She further argued that even if this Court comes to the conclusion that appellant no.1 could construct building on survey No.803 by way of extension of the existing hotel, the disputed construction cannot be saved because permission of the EDC was not obtained. Ms. Jaising invoked the doctrine of public trust and argued that in view of the unequivocal

condition incorporated in Clause 4(ix) of the agreement that access to the beach will be maintained without any obstruction, right of the members of public to go to the beach through survey No.803 cannot be stultified by putting up wall/barbed wire fencing or by creating any other impediment. Learned senior counsel submitted that the beach in question is not a private beach and, therefore, the public at large cannot be denied the right to access the beach. She further submitted that if appellants are allowed to prevent the public from going to the beach through the traditional path from Dona-Paola-Bambolim Road through survey Nos.792 and 803, the same would amount to privatization of the public beach, which is legally impermissible. As regards the judgment in Special Civil Suit No.67/1986, Ms. Jaising submitted that the same is not relevant for deciding the issues raised in these appeals because neither any of the writ petitioners nor the State Government were parties to that litigation and, in any case, in view of the unequivocal stipulation contained in Clause 4(ix) of the agreement, appellant No.1 cannot wriggle out of its statutory obligation to maintain passage through plot bearing survey No.803. She countered the submission of Shri Divan that in view of the availability of alternative access to the beach through the road, car parking and footpath constructed by appellant No.1, the High Court should not have insisted on continuing access to the beach through survey No. 803 by asserting that the said access has been provided in terms of letter dated 1.8.1978 of the Chief Town Planner and permission granted by the Gram Panchayat vide letter dated 22.8.1978 in lieu of the access available to the public through survey No.787 and the same cannot be made basis for depriving members of the public to continue to avail access to the beach through the traditional path available to them survey No. 803. Learned senior counsel also pointed out that the alternative access is totally illusory because it ends on the rocks through which no person can easily go to the beach.

10. We have considered the respective arguments/submissions. The questions which require determination by this Court are:

- (i) Whether land bearing survey Nos.803 (new No.246/2) and 804 (new No.245/2) was acquired under Section 40(1)(aa) or it was an acquisition under Section 40(1)(b)?
- (ii) Whether any public access was available to the beach through survey No.803 (new No.246/2) before its acquisition by the State Government and whether in terms of Clause 4(ix) of the agreement, appellant No.1 is required to maintain the said access/road to the beach, without any obstruction?
- (iii) Whether public access to the beach through survey No.803 (new No.246/2) stood extinguished with the vesting of land in the State Government under Section 16 of the 1894 Act?
- (iv) Whether construction of hotel building on a portion of survey No.803 (new No.246/2) is contrary to the purpose of acquisition and is violative of the prohibition contained in Clause 4(viii) of agreement dated 26.10.1983 and the High Court rightly directed demolition thereof in accordance with Clause 6 of the agreement?
- (v) Whether denial of the facilities and amenities created by appellant No.1 in survey No.803 (new No.246/2) to the members of public is contrary to the purpose of acquisition and is also violative of the agreement and this could be made a ground for resumption of the acquisition of land?

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11. The decision of this question depends on the interpretation of Sections 40 (1) and 41 of the 1894 Act. However, before adverting to those sections, we deem it proper to notice other relevant provisions. Section 4 provides for publication of a

preliminary notification evidencing prima facie satisfaction of the government that land in any locality is needed or is likely to be needed for any public purpose. This section prescribes the mode of publication of notification and also indicates the steps which could be taken for survey etc. of the land for deciding whether the same is fit for the purpose for which it is needed. Section 5A postulates giving of an opportunity to any person interested in the land to raise objection against proposed acquisition and casts a duty on the Collector to hear the objector in person and submit his report to the Government. Section 6 postulates making of a declaration containing satisfaction of the appropriate Government arrived at, after considering the report, if any, made under Section 5A(2) that the particular land is needed for a public purpose or for a company. This is subject to the provisions of Part VII of the Act. Section 39, which finds place in Part VII, lays down that the provisions of Sections 6 to 37 (both inclusive) shall not be put in force for acquiring land on behalf of a company under that part without the previous consent of the appropriate Government, and unless the company executes an agreement in terms of Section 41.

12. In *R.L. Arora vs. State of U.P.* [(1962) Suppl. 2 SCR 149] (hereinafter referred to as 'first R.L. Arora case'), the Constitution Bench considered the legality of the acquisition made on behalf of Lakshmi Ratan Engineering Works Limited, Kanpur, which was engaged in manufacture of textile machinery parts. The appellant, who was owner of the land, challenged the acquisition on the ground that it was not for a public purpose. It was argued on behalf of the appellant that the impugned acquisition cannot be treated to have been made under Section 40(1)(b), merely because the products of the company, for which land is sought to be acquired will be useful to the public. It was urged that, if Section 40(1) is given such an interpretation, the Government will become an agent for acquiring lands on behalf of the companies engaged in producing something which may be used by the public.

The respondents argued that Section 40(1)(b) is of wide amplitude and land can be acquired under the Act for any company when the work set up by it is likely to prove useful to the public. The majority of the Constitution Bench held that Section 40(1)(b) must be read in conjunction with Section 41 to find out the intention of the legislature when it provides for acquisition of land for a company through the agency of the Government, and rejected the argument of the respondents by making the following observations:

“..... If we were to give the wide interpretation contended for on behalf of the respondents on the relevant words in ss. 40 and 41 it would amount to holding that the legislature intended the Government to be a sort of general agent for companies to acquire lands for them, so that their owners may make profits. It can hardly be denied that a company which will satisfy the definition of that word in s. 3(e) will be producing something or other which will be useful to the public and which the public may need to purchase. So on the wide interpretation contended for on behalf of the respondents, we must come to the conclusion that the intention of the legislature was that the Government should be an agent for acquiring land for all companies for such purposes as they might have provided the product intended to be produced is in a general manner useful to the public, and if that is so there would be clearly no point in providing the restrictive provisions in ss. 40 and 41. The very fact therefore that the power to use the machinery of the Act for the acquisition of land for a company is conditioned by the restrictions in ss. 40 and 41 indicates that the legislature intended that land should be acquired through the coercive machinery of the Act only for the restricted purpose mentioned in ss. 40 and 41, which would also be a public purpose for the purpose of s. 4.”

“Let us therefore turn to the words of s. 40(1)(b), which says that acquisition should be for some work which is likely to prove useful to the public. Now if the legislature intended these words to mean that even where the product of the work is useful to the public, land can be acquired for the company for that purpose, the legislature could have easily used the words "the product of" before the words "such work". The very fact that there is no reference to the product of the work in s. 40(1)(b) shows that when the legislature said that the work should be likely to prove useful to the public it meant that the work should be directly useful to the public through the public being able to use it instead of being indirectly useful to the public through the public being able to use its product. We have no doubt therefore that when s. 40(1)(b) says that the work should be useful to the public it means that it should be directly useful to the public which should be able to make use of it. This meaning in our opinion is made perfectly clear by what is provided in the fifth term in s. 41. Before the machinery of the Act can be put into operation to acquire land for a company, the Government has to take an agreement from the company, and that agreement must provide, where acquisition is needed for the construction of some work and that work is likely to prove useful to the public, the terms on which the public shall be entitled to use the work.”

13. With a view to over come the difficulty created in the acquisition of land for private companies on account of the judgment in first R.L. Arora's case, Clause (aa) was inserted in Section 40(1) by the Land Acquisition (Amendment) Act, 1961. Section 40 (as it stands after 1961 amendment) and Sections 41 and 42 of the 1894 Act read as under:

“40. Previous enquiry. - (1) Such consent shall not be given unless the appropriate Government be satisfied either on the report of the Collector under section 5A, sub-section (2), or by an enquiry held as hereinafter provided, -

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of a Civil Court.

41. Agreement with appropriate Government. - If the appropriate Government is satisfied after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40 that the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40], it shall require the Company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely :-

(1) the - payment to the appropriate Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company.

(3) the terms on which the land shall be held by the Company,

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;

(4A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.

42. Publication of agreement.— Every such agreement shall, as soon as may be after its execution, be published in the Official Gazette, and thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.”

14. In this case, we are not concerned with Clause (a) of Section 40(1) because the land in survey Nos.803 (new No.246/2) and 8042 (new No. 245/2) was not acquired for erection of dwelling houses for workmen employed by appellant No.1 or for provision of amenities directly connected therewith.

15. The dispute between the parties centers round the remaining two clauses of Section 40(1). According to the appellants, the acquisition was under Clause (aa), whereas writ-petitioners (private respondents herein) pleaded that the acquisition was under Clause (b). A careful reading of the two clauses shows that while Clause (aa) envisages acquisition for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or

work which is for a public purpose, Clause (b) refers to acquisition for construction of some work which is likely to prove useful to the public. The difference in the language of the two clauses clearly brings out this distinction. In the second part of Clause (aa), the legislature has used the expression ‘in any industry or work which is for a public purpose’. This means that the particular acquisition can be treated to have been made under that clause if it is for construction of some building or work for a company which is engaged or is likely to engage itself in any industry or work which may not necessarily be useful to the public in general. As against this, usefulness of the construction of some work to the general public is *sine qua non* for acquisition under Clause (b). The expression “public purpose” used in Clause (aa) was interpreted in *R.L. Arora vs. State of Uttar Pradesh & others* [(1964) 6 SCR 784] (herein after referred to “second R.L. Arora’s case”) which was instituted by the land owner for striking down the amendment made in 1961 for validating the acquisition, which was quashed in the first R.L. Arora’s case. It was argued on behalf of the petitioner that even if the amendment was not treated *ultra vires* the provisions of the Constitution, the disputed acquisition is liable to be annulled because the condition prescribed in Clause (aa) of Section 40(1) was not fulfilled, inasmuch as the acquisition was not for a public purpose. It was submitted that unless there was any direct connection or close nexus between the articles produced by the company and general good of the public, the impugned acquisition cannot be treated as covered by Clause (aa). The majority of the Constitution Bench rejected this argument and held:-

“In approaching the question of construction of this clause, it cannot be forgotten that the amendment was made in consequence of the decision of this Court in *R.L. Arora case* and the intention of Parliament was to fill the lacuna, which, according to that decision, existed in the Act in the matter of acquisitions for a company Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute.

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Therefore, we have to see whether the provision in clause (aa) bears another construction also in the setting in which it appears and in the circumstances in which it was put on the statute book and also in view of the language used in the clause. The circumstances in which the amendment came to be made have already been mentioned by us and the intention of Parliament clearly was to fill up the lacuna in the Act which became evident on the decision of this Court in *R.L. Arora case* It was only for such a company that land was to be acquired compulsorily and the acquisition was for the construction of some building or work for such a company i.e. a company engaged or about to be engaged in some industry or work which is for a public purpose. In this setting it seems to us reasonable to hold that the intention of Parliament could only have been that *land should be acquired for such building or work for a company as would subserve the public purpose of the company*; it could not have been intended, considering the setting in which clause (aa) was introduced, that land could be acquired for a building or work which would not subserve the public purpose of the company Further, acquisition is for the construction of some building or work for a company and the nature of that company is that it is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose. When therefore the building or work is for such a company it seems to us that it is reasonable to hold that the nature of the building or work to be constructed takes colour from the nature of the company for which it is to be constructed. We are therefore of opinion that the literal and mechanical construction for which the petitioner contends is neither the only nor the true construction of clause (aa) and that when clause (aa) provides for acquisition of land needed for construction of some building or work it implicitly intends that the building or work which is to be constructed must be such as *to subserve the public purpose of the industry or work in which the company is engaged or is about to be engaged*. In short, the words 'building or work' used in clause (aa) take their colour from the adjectival clause which governs the company for which the building; or work is being constructed It is only in these cases where the company is engaged in an industry or work of that kind and where the building or work is also constructed for a purpose of that kind, which is a public purpose, that acquisition can be made under clause (aa). As we read the clause we are of opinion that the public purpose of the company for which acquisition is to be made cannot be divorced from the purpose of the building or work and it is not open for such a company to acquire land under clause (aa) for a building or work which will not subserve the public purpose of the company".

16. The same question was again considered in *State of West Bengal and another vs. Surendra Nath Bhattacharya and another* [(1980) 3 SCC 237]. In that case, acquisition was made on behalf of a company which was carrying on the business of manufacturing of sodium silicate, plaster of paris etc. The manufactured goods of the company were widely used all over India, saving large amount of foreign exchange which was earlier used for importing similar goods. The Division Bench of

Calcutta High Court quashed the acquisition on the ground that it was not for a public purpose. After noticing the majority judgment in second R.L. Arora's case, the Court held:-

“The effect of the observations made above leads to the irresistible conclusion that the words “public purpose” are not to be interpreted in a restricted sense but takes colour from the nature of the industry itself, the articles that it manufactures and the benefit to the people that it subserves. This Court clearly indicated that the land should be acquired for building or work which would serve the *public purpose of the company* and not public purpose as it is generally understood. In the instant case, we have also set out the nature of the products of the company and have stressed the fact that the articles produced by the company are used for the benefit of the people and as it saves lot of foreign exchange, it is unmistakably for the general good of the country particularly from the economic point of view. In these circumstances, it cannot be said that the object of the company in extending its operations by enlarging the area of its production was not for the public purpose of the company. Taking an overall picture of the nature of the products of the company, its various activities, the general public good that it seeks to achieve and the great benefit that the people derive, it cannot be said that the acquisition, in the present case, was not for a public purpose. According to the test laid down by this Court, it is sufficient if it is shown that the building sought to be built or the work undertaken subserves the public purpose of the company which is completely fulfilled in this case.”

17. In *Pratibha Nema and others vs. State of M.P. and others* [(2003) 10 SCC 626], this Court analysed the provisions of Part II and VII of the 1894 Act, referred to the earlier judgments in *Somwanti vs. State of Punjab* [AIR 1963 SC 151], second R.L. Arora's case, *Jage Ram vs. State of Haryana* [(1971) 1 SCC 671], *Bajirao T. Kote vs. State of Maharashtra* [(1995) 2 SCC 442] and observed:-

“These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in the private sector as it would ultimately benefit the people. However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the court.

.....

Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether the cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with

the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.”

18. Section 41 lays down that if the appropriate Government is satisfied, after considering the report, if any, of the Collector under Section 5A(2) or on the report of the officer making an inquiry under Section 40, that the proposed acquisition is for any of the purposes referred to in clause (a) or (aa) or clause (b) of sub-section (1) of Section 40, then it shall require the company to enter into an agreement on the matters enumerated in Clauses 1 to 5. Clause 4(A) of Section 41, which is relatable to an acquisition under Section 40(1)(aa), requires that the agreement must indicate the time within which and the conditions on which the building or work shall be constructed or executed. Clause (5) of Section 41, which is relatable to an acquisition under Section 40(1)(b), also postulates indication of time within which work is executed or maintained and the terms on which public shall be entitled to use the work.

19. In *State of West Bengal vs. P.N. Talukdar* [AIR 1965 SC 646] this Court considered a question similar to question No.1 framed by us and observed:

“..... Generally speaking the appropriate government would not state in so many words whether it was proceeding under Clause (a), or Clause (aa) or Clause (b). The question whether consent has been given under one clause or the other or more than one clause has to be decided on the basis of the agreement and the notification under Section 6. We have also no doubt that it is open to the appropriate government to give consent on being satisfied as to one of the three clauses only or as to more than one clause. In the present case reliance has been placed on behalf of the State Government on all the three clauses and particularly on clauses (aa) and (b), to show that the consent was given after keeping in mind all the three clauses of Section 40(1). The question as to which clause of Section 40(1) was acted upon by the State Government to give consent is important because on that will depend the nature of the agreement which has to be made under Section 41. Where the purpose of the

acquisition is as mentioned in Clause (a), the agreement has to provide for the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided. Where the consent is based on Clause (aa), the agreement is to provide for the time within which and the conditions on which, the building or work shall be constructed or executed. Where the consent is given on the basis of Clause (b), the agreement, is to specify the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work. It will be seen from the above that there are bound to be differences in the terms to be embodied in an agreement under Section 41 depending upon whether the consent was given.”

20. In the light of the above, we shall now consider whether on a conjoint reading of notification dated 29.10.1980 and agreement dated 26.10.1983, acquisition of survey Nos.803 and 804 (new Nos.246/2 and 245/2) can be treated as having been made under Section 40(1)(aa) or it was an acquisition under 40(1)(b) of the 1894 Act. A brief recapitulation of the facts shows that soon after commencing work for construction of the hotel, appellant No.1 approached the State Government for acquisition of land comprised in various survey numbers including survey Nos.803 and 804 (new Nos.246/2 and 245/2) by indicating that the first phase of its project envisages construction of hotel building in survey No.787 and in the second phase, it was intending to put up a yoga centre, health club and water sports facilities in survey No.805 for promoting tourism, which will also be useful to the general public. Appellant No.1 pointed out that two small plots bearing survey Nos.788 and 789, abutting the beach, are required for installing a first aid post and a medical aid centre, which are necessary for beach resort hotel and for providing safety measures and facilities to the residents of the hotel and also for the public at large, using the beach. Appellant No.1 then submitted that for second phase of the hotel complex, it will be desirable to acquire survey Nos.803 and 804 so that the entire complex will become one composite unit. In the end, appellant No.1 indicated that the facilities provided by the hotel will be open for use to the non-residents on membership basis. The notification issued by the State Government under Section 4(1) shows that the

land was needed for a public purpose, namely, the tourism development project – construction of hotel at Curla, Vainguinim, Taleigao. In our view, as appellant No.1 was engaged in executing a project of tourism development, i.e., construction of hotel along with amenities like yoga centre, health club and water sports facilities, acquisition of survey Nos.803 and 804 (new Nos.246/2 and 245/2) was clearly relatable to its project. This is also borne out from the language of agreement dated 26.10.1983, which records satisfaction of the Government that the land was needed for the purpose of executing tourism development project of appellant No.1. Clause 4 (ii) of the agreement shows that appellant No.1 was required to undertake the work of creation of sports and recreational facilities / amenities within one year of getting possession and complete the same within three years. This work was certainly ancillary to the tourism development project being executed by appellant No.1. Therefore, there is no escape from the conclusion that the acquisition was under Section 40(1)(aa) of the 1894 Act and the contrary finding recorded by the High Court is legally unsustainable. It is also necessary to bear in mind that tourism is an important industrial activity in Goa which attracts tourists from all over the country and abroad. A huge amount of foreign exchange is generated by this industry apart from providing employment and ancillary benefits to a large section of the population of the State. Therefore, acquisition of land for tourism development project is certainly for a public purpose.

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21. For deciding the question whether public access to the beach was available through survey No.803 (new No.246/2) before its acquisition in the year 1980, it will be profitable to notice the pleadings of the parties and contents of the documents produced by them. In all the writ petitions, the petitioners claimed that there exists passage through survey No.803 which is being used by the public for many years for

going to the beach. In para 6 of his writ petition, Minguel Martins referred to the affidavit of Avdhut Kamat filed by appellant No.2 in civil suit for a decree of pre-emption instituted by Gustavo Renato da Cruz Pinto and two others. In other two petitions, the writ petitioners relied on the averments contained in the written statement filed on behalf of appellant No.2 in Special Civil Suit No.313/1978/A to support their assertion regarding existence of access to the beach through survey No.803. Gustavo Renato da Cruz Pinto also placed on record a copy of the affidavit of Avdhut Kamat and plan prepared by him showing access to the beach from point 'A' to 'B' in survey No.803. In that plan starting point of access from the beach was at point 'B' in survey No.803 and it ended at point 'A' touching northern boundary of that survey number towards Machado's Cove.

22. In paragraphs 2F to 2O, 2R, 2S, 3E and 3H of the written statement filed on behalf of appellant No.2 in Special Civil Suit No.313/1978/A, the following averments were made:

“2F. As shown before, the properties 803, 804, 787, 788, 789 and 805 are bounded on the South by seashore beyond which the river zuari lies. A part of this shore which forms the boundary to the said properties is used as public way. This public way after passing through the seashore and some private road goes upto Dona Paula jotty. This, public way is used by the members of the public including the fisher folk to go from th said seashore upto Dona Paula jetty and vice-versa, from time immemorial, without objection whosoever, openly, peacefully and continuously and as a matter of right.

2G. The beach existing at the south of property 803 and 787 is a public resort and it is visited by members of the public from all parts of Ilhas Taluka. For this purpose there is a ramp (stone construction) built on the ground in property 803 as a means of access to the beach. There is also a similar ramp in the property 787. The existence of the ramps and the date of their construction is lost in antiquity but has been known to exist at least for the last seventy years.

2H. In order to have access to the portion of the beach existing in the property 803, there is a footpath starting from the ramp and going towards North upto the culvert linking property 803 with property 792 of Machado therefrom after crossing the property of Machado in the same direction, it touches the public footpath going from Dona Paula to Calapur. At present, the said footpath touches the Panaji-Dona Paula-Bambolim road and crosses the property of Machado.

2I. The way mentioned in the proceeding para 2H is being used by members of the public living in the village Calapur and also by other members of the public coming from different parts of Taluka Ilhas. This way is clearly visible on site.

2J. The Plaintiffs family have access to the properties 803, 804, 788 and 789 through the said way mentioned in para 2H and they have been using this access for the last fifty years. The family of the Plaintiffs have their residential house at St. Cruz village and this way in the nearest way for them.

2K. The access to the property 788 and 789 of the Plaintiff's family is through the property 803 and through the portion of the beach used as a public way and standing on the Southern side.

2L. The access to the property 804 is through the property 803 and for that purpose there exists a culvert.

2M. The access to the property 806 is in the continuation of the way leading from 803 and 804 and then going to the beach and to property 806. 806 has also direct access to the seashore which is used as public way.

2N. It is not true that that the way to 806 goes from property 805 as represented in the map annexed to the Plaint.

2O. The access to the property 807 is through the property of Machado Survey No. 792 and more particularly the way which goes just in line with the Eastern boundary of property of Machado. This latter was given access also to property 806 after passing through properties which stand at the East of property 807 and 805. As represented in the map annexed to the Plaint, 807 has access through 804 and 803.

.....

2R. The members of the public coming through the way mentioned in Para 2P were using either the portion of beach in property 787 or portion of beach in property 803. Whenever they were using the ramp existing in the property 803, they used the way which connects the footpath mentioned in Para 2P with the footpath stated in Para 2H and thereafter they were going to the ramp through the way to 2 (H).

2S. The ways mentioned in Para 2F, 2H and 2P have been used by the members of the public and villagers from immemorial times, openly, peacefully, continuously in order to come to the beach and they are public ways and have been so dedicated as is evidenced by the long and continuous user.

.....

“3E. From this parking place a footpath is maintained alongside the Eastern boundary of property 787 and Western boundary of property 803 going to the south upto the Sea Shore.

3H. The Plaintiffs have not come to the Court with clean hands and hence deliberately omitted to represent in the map annexed to the plaint the ramps existing in the properties 787 and 803 and giving access to the beach. Similarly the Plaintiffs have deliberately omitted to represent in the map the public way mentioned in Para 2H and 3E, the Plaintiffs have further deliberately, in order to snatch injunction, wrongly represented the way mentioned in 2(k).”

[Emphasis added]

23. Along with the written statement, appellant No.2 filed affidavit of Shri Avdhut Kamat, who was engaged as consulting engineer for the hotel project. In paragraph 2 of his affidavit, Shri Kamat stated as under:

“2. I say that under instructions from said Fomento, I have prepared a plan of property bearing survey No. 787 to 807. The properties with survey No.787, 790, 798, 800, 801, 802 and 805 have been purchased by said Fomento from Defendants No.2 to 5. The plan has been drawn by me taking into consideration the old survey, new survey and present position on the site. The new numbers of the survey are also shown in the plan. On the said plan, I have shown existing public pathways by red pencil lines. From the said plan it appears that none of the Defendant’s lands (all of which are hatched on the plan) are, in fact, enclosed property, since all of them have access to public ways. The pathways marked red in the plan have been personally checked by me with the assistance of my assistants Engineers and can be verified on the site.”

[Emphasis added]

The affidavit of Shri Kamat was accompanied by the plan marked as Exhibit-A which depicted various pathways including the one going from the beach to Dona-Paola-Bambolim Road through survey Nos.803 and 792.

24. In the reply affidavit filed in Writ Petition No.141/1992, appellant No.1 did not dispute the correctness of the written statement filed in Special Civil Suit No.313/1978/A or the affidavit of Shri Avdhut Kamat and plan prepared by him after personally inspecting the site. The High Court relied on the averments contained in the written statement and held that the existence of public access to the beach/pathway leading to the beach through survey No.803 cannot be doubted.

25. Shri Anil Divan, learned senior counsel appearing for the appellants heavily relied on judgment dated 13.3.2006 passed by Civil Judge, Panaji in Special Civil Suit No.67/1986 - Alvaro De Souza Machado and another v. Sociedade De

Fomento Industrial Pvt. Ltd. and another and argued that the finding recorded by the High Court on the issue of existence of public access to the beach through survey No.803 should be treated as redundant because the same is entirely based on admissions made in the written statement filed on behalf of appellant No.2 in Special Civil Suit No.313/1978/A and the competent court has found that the same are not binding on the appellants (who were defendants in Special Civil Suit No.67/1986). He pointed out that learned Civil Judge, Panaji has found that written statement was not verified by the concerned person on personal knowledge and, therefore, admissions made therein cannot be made basis for recording an adverse finding against the defendants in the suit. In the first blush, this argument of the learned senior counsel appears attractive but on a closure scrutiny, we do not find any merit in it. The learned Civil Judge who decided the suit filed by Alvaro De Souza Machado and another relied upon the judgments of this Court in Nagubai Ammal & others v. B. Shama Rao & others (supra) and of the Allahabad High Court in Anurag Misra vs. Ravindra Singh and another (supra) and held that the admissions made in the earlier suit in paragraphs 2A, 2C, 2E, 2F to 2S, etc. cannot be treated as binding on the defendants because contents of the written statement were verified by using the words "true to the best of my information which I believe as true" and not on personal knowledge. This approach of the learned Civil Judge was clearly contrary to Order VI Rule 15 of the Code of Civil Procedure, which provides for verification of pleadings. Sub-rule (1) of Rule 15 lays down that save as otherwise provided, by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. Sub-rule (2) lays down that the person verifying shall satisfy, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon the information received and believed to be true. Sub-rule (3) requires that the

verification shall be signed by the person making it and shall state the date on which and the place at which it was signed. By amending Act No. 46/1999 the requirement of filing an affidavit by the person verifying the pleadings was incorporated but that provision does not have any bearing on this case.

26. The plain language of Order VI Rule 15(2) makes it clear that the pleadings can be verified by the concerned person on his own knowledge or upon the information received and believed to be true by him/her. The written statement filed on behalf of appellant No.2 in Special Civil Suit No.313/1978/A was verified by Smt. Anju Timblo who represented the appellants cause before various functionaries of the State Government and its instrumentalities and also filed reply affidavits in different writ petitions. Smt. Anju Timblo did not claim that she is acquainted with the topography/geography of the area which included survey Nos.792 and 803. Therefore, she could not have verified the written statement containing the admission regarding existence of passage/pathway to beach through survey No.803 on her own knowledge. Therefore, verification of the written statement containing admission about the existence of passage through Machado's Cove and survey No.803 on the basis of information which she believed to be true was in consonance with Order VI Rule 15(2) and the learned Civil Judge committed an error in holding that the admissions contained in the written statement of the earlier suit were not binding on the defendants. Another error committed by the learned Civil Judge was that he altogether overlooked the statement made by Smt. Anju Timblo, who appeared as a witness on behalf of the defendants in Special Civil Suit No.67/1986 and candidly accepted in the cross-examination that the written statement filed in Special Civil Suit No.313/1978/A contained admissions about existence of access to the beach through survey No.803. It is also significant to note that neither the writ petitioners nor the State of Goa were parties to the second suit and, therefore, they did not get

opportunity to show that admissions contained in the written statement of appellant No.2 in Special Civil Suit No.313/1978/A were rightly relied upon by the High Court and the learned Civil Judge could not have taken a contrary view.

27. It was neither the pleaded case of the appellants before the High Court nor it was argued on their behalf that the admissions contained in the written statement filed in the previous suit about existence of access to the beach from Dona-Paola-Bambolim Road through survey Nos.792 (Machado's Cove) and 803 were made under a *bonafide* mistake and the affidavit of Shri Avdhut Kamat and the sketch prepared by him were contrary to the actual physical status of various survey numbers mentioned therein. Therefore, the High Court cannot be said to have erred in relying upon the admissions made in the written statement of appellant No.2 in Special Civil Suit No. 313/1978/A that there existed access to the beach through survey Nos.792 and 803 before its acquisition by the State Government.

28. The propositions of law laid down in Nagubai Ammal's case and Nusserwanji Rattanji Mistri's case on which reliance has been placed by Shri Divan do not have any bearing on the cases in hand. In Nagubai Ammal's case, this Court considered the legality of the sale made in execution of decree passed on a mortgage deed. The appellants, who were defendants in the suit for declaration of title to certain building sites, resisted the respondents' claim based on the purchase made in execution of mortgage decree. That suit was decreed in 1921 and the lands were purchased by the decree holder in 1928. The mortgager was adjudged an insolvent in 1926. Suit to enforce the mortgage deed was brought in 1933 impleading the official receiver and the purchaser in execution of the maintenance and charge decree, but the appellants were not impleaded as parties. In execution of the decree passed in the second suit, the lands were sold to a third party. The respondents' father purchased the land in 1938 from the said third party. The learned District Judge held that the

appellants' title acquired by the purchase of 1920 stood extinguished by the sale held in execution of the charge decree by operation of Section 52 of the Transfer of Property Act. Before the Supreme Court, the appellants relied on the admission made by Abdul Huq (predecessors of respondents), and the respondents themselves that the decree and sale in the suit instituted in 1920 were collusive. While rejecting the argument, this Court observed:

“An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel. In the present case, there is no question of estoppel, as the title of Dr. Nanjunda Rao arose under a purchase which was longer prior to the admissions made in 1932 and in the subsequent years. It is argued for the appellants that these admissions at the least shifted the burden on to the plaintiff of proving that the proceedings were not collusive, and that as he gave no evidence worth the name that these statements were made under a mistake or for a purpose and were, in fact, not true, full effect must be given to them. Reliance was placed on the well-known observations of Baron Park in *Slatterie v. Pooley* [[1840] 6 M. & W. 664, 669; 151 E.R. 579, 581], that "what a party himself admits to be true may reasonably be presumed to be so", and on the decision in *Rani Chandra Kunwar v. Chaudhri Narpal Singh : Rani Chandra Kunwar v. Rajah Makund Singh* [[1906-07] L.R. 34 I.A. 27], where this statement of the law was adopted. No exception can be taken to this proposition. But before it can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained. It has been already pointed out that the tenor of the statements made by Abdul Huq, his legal representatives and the plaintiff was to suggest that the proceedings in O. S. No. 100 of 1919-20 were fraudulent and not collusive in character. Those statements would not, in our opinion, be sufficient, without more, to sustain a finding that the proceedings were collusive.”

In Anurag Misra's case (*supra*), the learned Single Judge of the Allahabad High Court held that vague allegations about the ownership of the premises made by the tenant in his written statement filed in a suit for eviction cannot be treated as admission about the contract of tenancy with the plaintiff/landlord and the tenant cannot be estopped from subsequently disputing the relationship of landlord and tenant by pleading that somebody else is the owner of the premises in question.

29. In neither of the afore-mentioned cases, this Court or Allahabad High Court considered whether unequivocal admission made by a party in a contemporaneous litigation can be ignored on the ground of so-called defect in verification. That apart, as we have already found, verification of the written statement filed on behalf of appellant No.2 in Special Civil Suit No. 313/1978/A was in conformity with Order VI Rule 15 of the Code of Civil Procedure and the High Court rightly relied upon the same for holding that existence of public access to the beach through survey No.803 (new No.246/2) cannot be doubted.

30. The appellants attempt to confuse the existence of access to the beach from point 'A' to 'B' in survey No.803 with the so-called access running along side nallah deserves to be discarded because no such case was projected before the High Court and no argument was advanced on that score. It is also worth mentioning that in his letter dated 1.12.1978 the Sarpanch of the Gram Panchayat had made a specific mention of public footpath which runs on survey No.787 and forms the boundary of survey No.803 and the parking area which was shown as situated on the Northeast corner of survey No.787 adjacent to survey No.803. There is no mention in any of the documents of the so-called access along side the nallah dividing survey No.803 (new No.246/2) on the one hand and survey Nos.804 and 805 on the other hand.

31. Once it is held that there existed public access to the beach through survey No.803 (new No.246/2) before its acquisition by the State Government in 1980, the appellants are duty bound to act in accordance with Clause 4(ix) of the agreement, which has the force of law by virtue of Section 42 of the 1894 Act. That clause casts a duty on appellant No.1 to maintain access to the beach without obstruction of any kind whatsoever. The argument of Shri Anil Divan and Shri Pallav Shishodia, learned senior counsel appearing for the appellants and the State of Goa respectively,

that the Court may relieve the appellants of the obligation to maintain access to the beach through survey No.803 (new No.246/2) because an alternative access has been provided by constructing road, parking area and public footpath, in furtherance of the permission accorded by the Gram Panchayat for construction of hotel in survey No. 787, cannot be accepted for the simple reason that the agreement was executed between the President of India and appellant No.1 in the backdrop of acquisition of survey No.803 (new No.246/2) and 804 (new No.245/2) and survey No.787 on which the hotel was constructed has nothing to do with the acquisition proceedings. Therefore, the alternative road, parking and public footpath provided by appellant No.1 in lieu of the access available through survey No.787 cannot be made basis for depriving members of the public of their age old right to go to the beach through survey No.803 (new No. 246/2).

32. The matter deserves to be considered from another angle. The public trust doctrine which has been invoked by Ms. Indira Jaising in support of her argument that the beach in question is a public beach and the appellants cannot privatize the same by blocking/obstructing traditional access available through survey No.803 (new No.246/2) is implicitly engrafted by the State Government in Clause 4(ix) of the agreement. That doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. These resources are gift of nature, therefore, they should be freely available to everyone irrespective of one's status in life. The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public

interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article “The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention” (1970), indicates that the Public Trust Doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust. The Public Trust Doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today, every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people’s rights and the people’s long term interest in that property or resource, including down-slope lands, waters and resources.

33. In *Illinois Central Railroad Co. vs. People of the State of Illinois* [146 US 387], the United States Supreme Court considered whether the State could abdicate its general control over the sub-merged land. In the year 1869, the Illinois legislature made a substantial grant of sub-merged land – a mile strip along the shores of Lake

Michigan extending one mile out from the shoreline – to the Illinois Central Railroad. This was repealed in 1869. The State of Illinois sued to quit title. The Supreme Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust — for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public.

34. In *Robbins vs. Deptt. of Public Works* [244 NE 2d 577], the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, “wetlands of considerable natural beauty ... often used for nature study and recreation” for highway use.

35. In *National Audubon Society vs. Superior Court of Alpine County* [33 Cal 3d 419], the Supreme Court of California considered whether a permit can be granted to the Department of Water and Power of the City of Los Angeles to appropriate water of four of the five streams flowing into Mono Lake, which is the second largest lake in California. Some environmentalists, using the public trust doctrine, brought law suit against Los Angeles Water Diversions. The Supreme Court of California explained the concept of public trust doctrine in the following words:

“ ‘By the law of nature these things are common to mankind — the air, running water, the sea and consequently the shores of the sea.’ (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns ‘all of its navigable waterways and the

lands lying beneath them as trustee of a public trust for the benefit of the people.’ ”

While dealing with the State’s power as a trustee of public property, the

Court observed:-

“Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust....”

The Court recorded its conclusion in the following words:-

“The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, *Some Reflections on Environmental Considerations in Water Rights Administration*, 2 Ecology L.Q. 695, 710-711 (1972); Comment, 33 Hastings L.J. 653, 654.) As a matter of practical necessity the State may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen v. N.D. State Water Cons. Comm’n* [247 NW 2d 457 (ND 1976)] at pp.462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust.”

36. The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main moto of social life has been “to live in harmony with nature”. Sages and Saints of India lived in forests. Their preachings contained in Vedas, Upanishadas, Smritis etc. are ample evidence of the society’s respect for plants, trees, earth, sky, air, water and every form of life. It was regarded as a sacred duty of every one to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by their parents and grandparents about the

necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora fauna and every species of life.

The Constitution of India, which was enforced on 26th January, 1950 did not contain any provision obligating the State to protect environment and ecology, but the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After almost three decades of independence, the legislature recognized the importance of protecting and improving environment and safeguarding forests and wild life and Article 48A was inserted in Part IV of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 whereby a duty was imposed on the State to endeavour to protect and improve the environment and safeguard forests and wild life of the country. By the same amendment Article 51A was inserted in the form of Part IVA which enumerates fundamental duties of every citizen. Article 51A(g) declares that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Thereafter, the Courts repeatedly invoked Articles 48A and 51A for protecting environment and ecology and several orders were passed in public interest litigation mandating the State to take action for protecting forests, rivers and anti pollution measures.

The importance of the public trust doctrine was also recognized by this Court and the same was applied for protecting natural resources which have been treated as public properties and are held by the government as trustee of the people. In *M.C. Mehta v. Kamal Nath and others* [(1997) 1 SCC 388], this Court considered whether a private company running tourists resort in Kullu-Manali valley could block the flow of Beas river and create a new channel to divert the river to at least 1 kilometer down stream.

After advertng to the theoretical and philosophical basis of the public trust doctrine and some judgments on the subject, this Court observed:

“We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

37. In *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and others* [(1999) 6 SCC 464], the Court applied public trust doctrine for upholding the order of Allahabad High Court which quashed the decision of Lucknow Nagar Mahapalika permitting appellant – M.I. Builders Pvt. Ltd. to construct an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. The High Court noted that Lucknow Nagar Mahapalika had entered into an agreement with the appellant for construction of shopping complex and given it full freedom to lease out the shops and also to sign agreement on its behalf and held that this was impermissible. On appeal by the builders, this Court held that the terms of agreement were unreasonable, unfair and atrocious. The Court then invoked the public trust doctrine and held that being a trustee of the park on behalf of the public, the Nagar Mahapalika could not have transferred the same to the private builder and thereby deprived the residents of the area of the quality of life to which they were entitled under the Constitution and Municipal Laws.

38. In *Intellectuals Forum, Tirupathi vs. State of A.P. and others* [(2006) 3 SCC 549], this Court again invoked the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati town, referred to some judicial precedents including *M.C. Mehta vs. Kamal Nath* (supra), *M.I. Builders Pvt. Ltd. (supra)*, *National Audubon Society* (supra), and observed:

“This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly *prohibit* the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government’s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax “The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention”, *Michigan Law Review*, Vol. 68, No. 3 (Jan. 1970) pp.471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine [ibid]:

1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. the property may not be sold, even for fair cash equivalent;
3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.”

39. The Court then held that the government orders are violative of principle Nos.1 to 3, mentioned in the article of Professor Joseph L. Sax and directed that no further construction be made in Peruru and Avilala tanks and corrective measures be taken for recharging them.

40. We reiterate that natural resources including forests, water bodies, rivers, sea shores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public

and the Court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural eco-systems.

41. As a sequel to the above discussion, we hold that Clause 4(ix) of the agreement is binding on the appellants and appellant No.1 is under a statutory obligation to maintain access/road to the beach through survey No.803 (new No.246/2) without any obstruction of any kind and the High Court did not commit any error by issuing a mandamus in that regard.

Re:3

42. Section 16 of the 1894 Act which constitute the foundation of the arguments of the appellants and State that the public access to the beach, if any available, through survey No.803 (new No.246/2) stood extinguished with the vesting of land in the State Government, reads as under:-

“16. Power to take possession. – When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.”

43. The argument of Shri Anil Divan, learned senior counsel appearing for the appellants is that even though access to the beach may have been available through survey No.803 before its acquisition and the general public may have been using the same as of right for going to the beach, the said right got terminated as soon as possession of the land was taken by the government. His further argument is that public access to the beach through survey No.803 was in the nature of encumbrance

on the land which stood extinguished on vesting of the land in the Government in terms of Section 16 of the 1894 Act. Shri Pallav Shishodia, learned senior counsel appearing for the State adopted this argument and emphatically submitted that access to the beach available to the public through survey No.803 (new No.246/2) before its acquisition was obliterated once the acquired land vested in the Government.

44. Although, no exception can be taken to the appellants coming forward with such an argument despite the fact that in terms of Clause 4(ix) of the agreement which has, by virtue of Section 42 of the 1894 Act, the force of law, they are required to maintain public access to the beach, we are quite surprised with the stance adopted by the State Government. Admittedly, the agreement was executed by appellant No.1 under Section 41 of the 1894 Act in the backdrop of acquisition of survey No.803 (new No.246/2) and survey No.804 (new No.245/2). It is also not in dispute that in terms of Clause 4(ix), appellant No.1 is required to maintain access to the beach without any obstruction. This shows that despite Section 16 of the 1894 Act, the parties had consciously decided to protect the traditional right of the members of public to go to the beach by using the existing pathway through the acquired land. Both, the appellants and State functionaries knew that there exist public access to the beach through survey No.803 (new No.246/2), that members of public were using the same since time immemorial and that it was necessary to protect that right. Therefore, it is not possible to find any fault with the view taken by the High Court that access to the beach is not an encumbrance and in any case, the traditional pathway available to the public for going to the beach through survey No.803 (new No.246/2) cannot be treated as having been extinguished in the face of specific provision contained in the agreement which is statutory in character.

45. In *Collector of Bombay vs. Nusserwanji Rattanji Mistri* [AIR 1955 SC 298], a bench of three Judges considered whether right of the State to levy assessment on the land can be treated to have been extinguished in view of Section 16 of the 1894 Act. The Court answered the question in negative and observed:-

“Under Section 16, when the Collector makes an award ‘he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances’. The word ‘encumbrances’ in this section can only mean interests in respect of which a compensation was made under Section 11, or could have been claimed. It cannot include the right of the government to levy assessment on the land”.

46. In *State of H.P. vs. Tarsem Singh* [(2001) 8 SCC 104], a two-Judge bench interpreted Section 3 of H.P. Village Common Lands Vesting and Utilization Act, 1973 and held that the common right of grazing available to the people of the area stood extinguished with the vesting of land in the State. The respondents who were residents of the village brought a suit in representative capacity for declaration that the land in dispute is being used for grazing cattle, cutting fuel wood and for other common purposes and the defendant cannot interfere with their easementary right to enjoy the land. The trial Court decreed the suit. The appeal preferred by the state was substantially dismissed by the first appellate Court. The High Court dismissed the second appeal and held that easementary right of grazing cannot be treated to have vested in the State under Section 3. This Court reversed the judgment of the High Court and dismissed the suit. After noticing the *non obstante* clause used in Section 3(1) of the Act, the Court held that all interests, title and rights in the land vested in the Gram Panchayat stood extinguished and came to be vested in the State free from all encumbrances including the easementary right. In the course of the judgment, two-Judges bench referred to the judgments of Allahabad and Calcutta

High Courts wherein it was held that the word 'encumbrance' means burden or charge upon property for a claim or lien upon State or land and it would include easementary right over the land.

47. The last mentioned judgment was considered by another bench of two-Judges in H.P. State Electricity Board and others vs. Shiv K. Sharma and others [(2005) 2 SCC 164]. The facts of that case were that appellant-board purchased 10.10. bighas out of the holding of one Rikhi Ram. The sale deed specifically mentioned that respondent Nos.1 to 3 shall have access to their land from the land of the seller. Thereafter, the State Government acquired an area of 41.06 bighas of land for construction of 60 KW Sub-Station. The acquired land included the remaining land of Rikhi Ram from whom respondent Nos.1 to 3 had purchased the land. After acquisition, the entire property was fenced off by barbed wire and electric sub-station and living quarters of the employees of appellant were also constructed thereupon. In the process, the appellant blocked off the passage being used as access to the land of the respondents. Respondent Nos.1 to 3 unsuccessfully sued the appellant-board for mandatory injunction to remove the barbed wire fence blocking access to their land. On appeal, the learned District Judge reversed the judgment of the trial Court and decreed the suit. The High Court confirmed the appellate judgment. Before this Court, reliance was placed on the judgment in Tarsem Singh's case and it was argued that even if respondent Nos.1 to 3 had a right of way by easement over the land of Rikhi Ram, the said land having been acquired stood vested in the State Government under Section 16 absolutely free from all encumbrances including such easementary right. The High Court drew a distinction between easement of an ordinary nature in respect of which compensation could have been claimed in the land acquisition proceedings and an easement of necessity like a right of passage and held that such right was not extinguished by reason of acquisition. For this purpose, the High Court

relied on the observations made in Nusserwanji Rattanji Mistri's case. While confirming the High Court's verdict, the two-Judges bench observed:

“This judgment of *Collector of Bombay* was a judgment by a Bench of three learned Judges of this Court. Learned counsel for the appellants drew our attention to the judgment in *State of H.P.* rendered by a Bench of two learned Judges and contended that this judgment clearly holds that the phrase “free from all encumbrances” used in Section 16 of the Act is wholly unqualified and would include in its compass every right including an easementary right which affects the land. He particularly drew our attention to para 10 of the judgment where the Court took the view:

“All rights, title and interests including the easementary rights stood extinguished and all such rights, title and interests vested in the State free from all encumbrances.”

In the first place, it is difficult for us to read the judgment in *Tarsem Singh case* as taking a view contrary to and differing from the law laid down by a larger Bench in *Collector of Bombay*. Secondly, we notice that the decision in *Tarsem Singh* is not in respect of an easementary right arising out of necessity. There does not seem to be any discussion on the said aspect of the matter in this judgment. The view taken in *Collector of Bombay* therefore, appears to hold the field, particularly where the nature of easementary right claimed is not capable of being evaluated in terms of compensation and arises out of sheer necessity.”

48. By applying the ratio of the judgments in Nusserwanji Rattanji Mistri's case and H.P. State Electricity Board's case to the facts of this case, we hold that when the State volunteered to take possession of the land subject to the right of the members of public to access the beach through the acquired land and a specific provision to that effect was incorporated in the agreement executed under Section 41 (5), Section 16 of the 1894 Act cannot be invoked for nullifying the right of the public to access the beach through survey No.803 (new No.246/2).

49. We also do not find any substance in the argument of Shri Anil Divan that Court should not insist on continuance of public access to the beach through survey No.803 (new No.246/2) because the pathway going to Dona Paula-Bambolim Road which was available through survey No.792 (new No.242/1) (Machado's Cove) does not exist any more. The premise on which Shri Divan has made this argument, namely, non-availability of pathway through survey No.792 does not find support

from the record of these appeals. Therefore, it is neither proper nor justified for this Court to deny the people of their traditional right of access to the beach through survey No.803 (new No.246/2) which goes to Dona-Paola-Bambolim Road by using the roads provided in survey No.792 (new No.242/1) (Machado's Cove).

Re: 4

50. For deciding this question, we shall have to again advert to the factual matrix of the case. Appellant No.2 purchased survey Nos.787 and 805 from Dr. Alvaro Remiojo Binto and leased out the same to appellant No.1. The latter obtained permission from the Gram Panchayat for constructing hotel building in survey No.787. The construction commenced in 1978 and was completed in May 1983. Alongside construction of the hotel building, appellant No.1 approached the State Government for acquisition of land in various survey numbers including survey Nos.803 and 804 (new Nos.246/2 and 245/2). In paragraph 3 of the application addressed to Shri Shankar Laad, Minister of Revenue, Government of Goa, appellant No.1 gave out that in the first phase of the project hotel building was proposed to be constructed in survey No. 787 and in the second phase, yoga centre, health club and water sports facilities were proposed to be put up in survey No.805 for promoting tourism. In paragraph 5, appellant No.1 offered justification for acquisition of survey Nos.788 and 789 which abut the beach. In paragraph 6, appellant No.1 pointed out that for second phase of the hotel complex, it would be desirable to acquire survey Nos.803 and 804 which will make the entire area one composite unit. It is thus evident that at the time of making application to the State Government for acquisition of land, appellant No.1 did not have any proposal for construction and/or extension of hotel building in survey No.803. The State Government initiated acquisition proceedings by issuing notification dated 29.10.1980 under Section 4(1) of

1894 Act, which were finalized in 1983. After Government took possession of the acquired land, appellant No.1 entered into an agreement as per the requirement of Section 41. Clauses 3, 4 (ii), (iv), (v) and (vii) of the agreement enumerate affirmative actions required to be taken by appellant No.1 for achieving the object of acquisition, whereas Clause 4(i), (vi), (viii) and (ix) contain various negative covenants including the one against the use of land for any purpose other than for which it was acquired. A conjoint reading of these clauses unmistakably shows that appellant No.1 was to use the acquired land only in furtherance of and for the purpose for which it was acquired, namely, creation of sports and other recreational facilities/amenities and to maintain the same in good order and condition and was not to use the land for any other purpose. The first part of Clause 4(viii) contains an express embargo against construction of any building or structure on the acquired land by appellant No.1. The second part of that clause envisages that prior approval of EDC of the Government of Goa will be obtained before undertaking activities for its development, besides other statutory requirements under the existing laws. The management of appellant No.1 was very much aware of the embargo contained in first part of Clause 4(viii) against construction of any building or structure on the acquired land and this is the reason why in the application made by Smt. Anju Timblo to the Development Authority under Section 44(1) read with Section 49 of Town and Country Planning Act for grant of permission for extension of the existing hotel building, survey No.246/2 was not mentioned. The EEC and EDC considered that application and approved extension of the existing hotel building on land in survey Nos.246/1, 246/3 and 246/4 (old Nos.787, 788 and 789) subject, of course, to the condition of maintaining pedestrian path. The order issued by the Development Authority on 15.4.1988 was also for extension of the existing hotel building on land bearing survey No.246/1, 3 and 4. Neither in the minutes of EEC or EDC nor in the order issued by the Development Authority under Section 44(3)(c) read with Section

49(2) of the Town and Country Planning Act, there was any mention of survey No.246/2. This shows that till that stage, appellant No.1 had consciously refrained from putting up even a proposal for constructing any building or structure on the acquired land. For the first time a request to that effect was made in the garb of making an application for renewal of permission granted by order dated 15.4.1988 with a deviation. A mention of four sub-divisions of survey No. 246 (1, 2, 3 and 4) was made instead of three sub-divisions, i.e., 1, 3 and 4. With a view to avoid scrutiny by the EEC and EDC, the appellants managed consideration of the application for extension and deviation of hotel building by the Board constituted under Section 4 of the Town and Country Planning Act. The Board considered and approved extension/deviation albeit in violation of the negative covenant contained in first part of Clause 4(viii) of the statutory agreement. While doing that, the Board was fully cognizant of the fact that in view of Clause 4 (viii), appellant No.1 cannot use the land for constructing any structure and also that even for undertaking any activity relating to development, approval of the EDC will be necessary. That is why the State Government forwarded the decision of the Board to the Development Authority for its consideration. Unfortunately, the Development Authority without even bringing the matter to the notice of the EDC, passed order dated 20.4.1992 and permitted appellant No.1 to carry out construction on plot bearing survey No.246/2. In our considered view, neither the State Government nor the Board could allow extension of the hotel building on the acquired land in violation of first part of Clause 4(viii) of agreement dated 26.10.1983 which, at the cost of repetition, we would like to emphasise, has the force of law by virtue of Section 42 of the 1894 Act. Section 8 of the Town and Country Planning Act, which enumerates functions and powers of the Board reads as under:

“8. Functions and powers of Board.—(1) Subject to the provisions of this Act and the rules made thereunder, the functions of the Board shall be to guide, direct and assist

the Planning and Development Authorities, to advise the Government in matters relating to the planning, development and use of rural and urban land in the Union Territory, and to perform such other functions as the Government may, from time to time, assign to the Board.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the Board may, and shall if required by the Government so to do—

(a) direct the preparation of development plans by the Planning and Development Authorities;

(b) undertake, assist and encourage the collection, maintenance and publication of statistics, bulletins and monographs on planning and its methodology;

(c) co-ordinate and advise on the planning and implementation of physical development programmes within the Union Territory;

(d) prepare and furnish reports relating to the working of this Act; and

(e) perform such other functions as are incidental, supplemental or consequential to any of the functions aforesaid or which may be prescribed.

(3) The Board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.”

51. A reading of the above reproduced section makes it clear that the Board is required to guide, direct and assist the Planning and Development Authorities; to advise the Government in matters relating to the planning, development and use of rural and urban land in the Union Territory, and to perform other functions assigned to it by the Government. In terms of Section 8(2), the Board can direct the preparation of development plans by the Planning and Development Authorities; undertake, assist and encourage the collection, maintenance and publication of statistics, bulletins and monographs on planning and its methodology; co-ordinate and advise on the planning and implementation of physical development programmes

and perform such other functions which are incidental to the enumerated functions. The role of the State Government primarily relates to approval of regional plan (S.44), revision of regional plan (S.17), declaration of planning areas, their amalgamation, sub-divisions, etc. (S.18), power to withdraw planning area from operation of the Act (S.19) and constitution of Planning and Development Authorities for the planning area (S.20). Section 22, which enumerates functions and powers of Planning and Development Authority reads as under:

“22. Functions and powers of Planning and Development Authorities.—Subject to the provisions of this Act and the rules framed thereunder and subject to any directions which the Government may give, the functions of every Planning and Development Authority shall be –

- (a) to prepare an existing Land Use Map;
- (b) to prepare an Outline Development Plan;
- (c) to prepare a Comprehensive Development plan;
- (d) to prepare and prescribe uses of land within its area; and
- (e) to prepare schemes of development and undertake their implementation,

and for these purposes, it may carry out or cause to be carried out, surveys of the planning area and prepare report or reports of such surveys, and to perform such other functions as may be prescribed.”

52. Chapter VII of the Town and Country Planning Act contains provisions relating to control of development and use of land. Section 44 lays down that any person intending to carry out any development in respect of, or change of use of, any land shall make an application in writing to the Planning and Development Authority

for permission in such form containing such particulars and accompanied by such documents and plans as may be prescribed. Section 44(2)(b) and (c) deal with the situation in which the Development Authority objects to the proposal for development, in which case the matter has to be placed before the Government for its decision. Section 44(3) lays down that the Development Authority can grant permission, conditionally or unconditionally for carrying out any development or change of use of the land. While doing so, the Development Authority is required to take note of the provisions of the development plan, if any, in force, relevant bye-laws, regulations, etc.

53. None of the above noted provisions of the Town and Country Planning Act empowers the Board and/or the Development Authority to modify, amend, alter or change an agreement entered into as per the requirement of Section 41 of the 1894 Act or allow violation thereof by the company. Therefore, the decision taken by the Board in its meeting held on 20th June, 1991 and order dated 20th April, 1992 issued by the Development Authority were *non est* and the High Court rightly did not give any credence to those decisions while adjudicating the issue relating to legality of construction made on survey No.803 (new No.246/2).

54. We are also of the opinion that even the EDC which was empowered under second part of Clause 4(viii) of the agreement to grant approval to the activities relating to development could not have permitted construction/extension of the hotel building on a portion of survey No.803 (new No.246/2). Any such decision by the EDC would also have been declared nullity on the ground of violation of the mandate of first part of Clause 4(viii) of the statutory agreement.

55. The argument of Shri Divan that extension of the hotel building on 1000 sq. mts. of survey No.803 (new No.246/2) falls within the definition of “development” contained in Section 2(10) of the Town and Country Planning Act which comprehends carrying out of building activities and, therefore, the High Court should not have ordered demolition of the extended portion of the hotel, but we are unable to agree with him and reiterate that neither the Board nor the Development Authority could sanction violation of agreement dated 26.10.1983.

56. For the reasons stated above, we hold that the High Court did not commit any error by declaring that extension of the hotel building on 1000 sq. mts. of survey No.803 (new No.246/2) is illegal and directed its demolition after following the procedure prescribed under Clause 6 of agreement dated 26.10.1983.

Re: 5.

57. This question deserves to be answered in favour of the appellants. A reading of application dated 15.11.1978 made by appellant No.1 makes it clear that it had no intention of making available the facilities of yoga centre, health club and amenities like water sports to the general public. Rather in paragraph 6 of its application, appellant No.1 made it clear that the facilities provided by the hotel will be open for use by non-residents also on membership basis. Agreement dated 26.10.1983 is totally silent on the issue of making the facilities created by the appellants open for public use without permission and payment of fees. Therefore, it is not possible to agree with Ms. Jaising that the facilities and amenities created by the appellant should be made available to the general public free of costs.

58. In the result, the appeals are dismissed. Since execution of most of the directions given by the High Court remained stayed during the pendency of these appeals, we deem it proper to issue the following directions:-

- (i) The appellants are allowed three months' time to demolish the extended portion of the hotel building which was constructed on 1000 sq. mts. of survey No.803 (new No.246/2) and, thereafter report the matter to the Development Authority which shall, in turn, submit a report to that effect to Goa Bench of the Bombay High Court.
- (ii) If the appellants fail to demolish the building and report the matter to the Development Authority within the time specified in direction No.(i) above, the concerned authority shall take action in accordance with paragraphs (a) and (b) of the operative part of the High Court's order.
- (iii) The access shown in plan Exhibit-A attached to Writ Petition No.141/1992 shall be kept open without any obstruction of any kind from point 'A' to 'B' in order to come from Machado's Cove and then go to the beach beyond point 'B'. If during pendency of the litigation, appellant No.1 has put up any obstruction or made construction to block or hinder access to the beach through survey No.803 (new No.246/2), then the same shall be removed within one month from today.

[B.N. AGRAWAL]

[G.S. SINGHVI]

New Delhi,
January 20, 2009.

respondent No.1. The latter submitted an application to Gram Panchayat Taleigao (for short 'the Gram Panchayat') for grant of permission to construct hotel complex near Vainguinim beach. On a reference made by the Gram Panchayat, Chief Town Planner, Government of Goa, Daman and Diu vide his letter dated 1.8.1978 informed that the plans submitted by respondent No.1 are in conformity with the regulations in force in the area but observed that right of the public to access the beach must be maintained by providing necessary footpath. Paragraph 2 of that letter reads as under:-

“The road leading to the hotel complex is at present used by general public to approach the Vainguinim Beach which is popular picnic spot for the people of Panaji, as well as other parts of Goa. It will need to be ensured that the right of access to the beach is maintained by the applicant by providing the necessary footpath to the beach at an appropriate place. The parking facilities provided will also have to take care of the parking of vehicles of such members of the public in an appropriate manner. This will ensure that the beach remains open to public as it is at present and that the public is not deprived of this beautiful and frequently used beach.”

[emphasis added]

(iii) Thereafter, the Gram Panchayat issued letter dated 22.8.1978, whereby respondent No.1 was permitted to lay access road linking Dona-Paola-Bambolim Road to the construction site and construct the hotel subject to the conditions specified in the letter including the one relating to public access to the beach. This was reiterated by the Sarpanch of the Gram Panchayat in his letter dated 1.12.1978, which reads as under:

“VILLAGE PANCHAYAT OF TALEIGAO

Your ref. No.

Our Ref. no.VT/TLG/329/78

Dated:1.12.1978

To

M/s. Gomantak land Development Pvt. Ltd.,
Velho Building,

Panaji – Goa.

Dear Sir,

I have inspected the site for the proposed hotel building and I am satisfied that the licence holder bearing licence No.195/78 dated 22.9.1978 has complied with the condition imposed by the letter dated 1st August, 1978 from the department of Town Planning to the Panchayat by constructing a road as required. The said road runs up to the parking area on the spot No.787, from west to east. The parking area is situated on the north east corner of survey No.787 adjacent to Survey no.803. The public footpath runs on survey No.787 and forms the boundary to survey No.803.

The interest of the public as per the condition in the letter of the Department of Town Planning of 1.8.1978 are satisfied. The road parking area and the public footpath will be open to public use and will not be altered without our permission.

Thanking you,

Yours faithfully,
-sd-

(Somnath D. Zraukar)
Sarpanch
Village Panchayat of Taleigao
Tiswadi – Goa.

Copy: Department of Town Planning.

Sd/-
(A.A. Noronha)
Secretary

Sd/-
(Somnath D. Zuarker)
Sarpanch”

(iv) In furtherance of the permission granted by the Gram Panchayat, respondent No.1 commenced construction of the hotel, which is now known as Hotel Cidade de Goa on the land forming part of survey No.787 (new No.246/1) and completed the same by May, 1983.

(v) During construction of the hotel building, respondent No.1 made an application dated 29.9.1979 to the Sarpanch of the Gram Panchayat, for permission to change the location of the footpath and parking area by stating that in view of installation of 10,000 kg gas tank (poisonous gas at high pressure), high pressure water tank and high voltage electric transformer near the hotel building, it will not

be in public interest to locate the footpath and parking area at the sanctioned site.

(vi) The Sarpanch of the Gram Panchayat neither forwarded the application of respondent No.1 to the Town and Planning Department nor placed the same before the Gram Panchayat. Instead, he wrote letter dated 29.9.1979 to respondent No.1 giving an impression that the Gram Panchayat does not have any objection to the change of location of the footpath and parking area. Thereafter, respondent No.1 shifted access to the beach to the new site.

(vii) In the meanwhile, Shri Gustavo Renato Da Cruz Pinto, Smt. Surana Pepfira Pinto and Miss Befta Sara Da Costa Pinto filed Special Civil Suit No.313/1978/A in the Court of Civil Judge, Senior Division, at Panaji against respondent No.2, Dr. Alvaro Remiojo Binto and four others for a decree of possession by pre-emption in respect of the land comprised in survey Nos.787 and 805 and also to restrain the defendants, their agents, servants, etc. from changing, alienating or raising any construction on the suit land by alleging that they were owners of property bearing survey Nos.803, 804, 806, 807, 788 and 789 situated at Taleigao and since time immemorial they and their predecessors were using footpath passing through survey Nos.787, 805 and 769 for going to Panaji-Dona Paula-Bambolim road, which was sought to be obstructed. Defendant No.1 in the suit (appellant No.2 herein) filed written statement to contest the suit. After some time, the parties compromised the matter in terms of which the plaintiffs gave up their claim for pre-emption in respect of plot bearing survey Nos.787 and 805 and defendant No.1 agreed to exchange the plot bearing survey No.790 with plots bearing survey Nos.788 and 789 belonging to the plaintiffs and also that it will have no right of access through any of the properties of the plaintiffs. As a sequel to this, the

plaintiffs applied for withdrawal of the suit. By an order dated 20.12.1978, the Civil Judge permitted them to do so.

- (viii) Soon after withdrawal of the pre-emption suit, Respondent No. 1 represented to Shri Shankar Laad, Minister of Revenue, Government of Goa for acquisition of land comprised in survey Nos. 788, 789, 803, 804, 806 and 807 of village Taleigao, Dona-Paola for construction of Beach Resort-Hotel complex. The State Government partially accepted the request of respondent No. 1 and issued notification dated 29.10.1980 under Section 4 (1) of Land Acquisition Act, 1894 for acquiring survey Nos. 803 and 804. After holding an enquiry under Section 5A of the Act, the State Government issued declaration under Section 6, which was published in Gazette dated 27.10.1983.
- (ix) Gustavo Renato da Cruz Pinto and some others filed Writ Petition No. 8/1984 for quashing the aforementioned notifications on various grounds including the one that before acquiring the land, government did not make enquiry as per the requirement of Rule 4 of the Land Acquisition (Companies) Rules, 1963 (for short 'the Rules'). The writ petitioners also highlighted discrepancies in different notifications issued by the State Government. Respondent No. 2 in the writ petition (respondent No. 1 herein) filed reply affidavit stating therein that Rule 4 of the Rules is not mandatory and non compliance thereof did not affect legality of the acquisition. In paragraphs 67 and 76 of the reply affidavit, it was averred that part of the project, i.e., hotel is complete and has started functioning. In paragraph 79, it was averred that besides the hotel project, cottages were proposed to be constructed on plot bearing survey No. 805 and the acquired land in survey Nos. 803 and 804 will be used for putting up health club, yoga centre, water sports and other recreational facilities,

which are integral part of the project.

- (x) By an order dated 26.06.1984, Goa Bench of the High Court of Bombay allowed the writ petition and quashed the impugned notifications only on the ground of non compliance of Rule 4 of the Rules. That order was reversed by this Court in *M/s Fomento Resorts and Hotels Ltd. vs. Gustavo Renato Da Cruz Pinto and Others* [(1985) 2 SCC 152] and the case was remitted to the High Court for deciding other grounds of challenge. It, however, appears that after the judgment of this Court, the parties compromised the matter and the writ petition was withdrawn on 26.3.1985.
- (xi) In the meanwhile, respondent No. 1 entered into an agreement with the Government as per the requirement of Section 41 of the 1894 Act.
- (xii) After taking possession of the acquired land, Respondent No. 1 extended the hotel building on survey Nos. 787, 788, 789 and 803 in the garb of permission granted by the Development Authority under the Goa, Daman and Diu Town and Country Planning Act, 1974. Respondent No. 1 also closed public access to the beach available through survey No. 803 (new No. 246/2). The same was challenged in Writ Petition No.330 of 1991 *Shri Minguel Martins vs. M/s Sociedade e Fomento Industries Pvt. Ltd. and others*, Writ Petition No.36 of 1992 *Goa Foundation and another vs. Fomento Hotels and Resorts Limited and others* and Writ Petition No.141 of 1992 *Shri Gustavo Renato da Cruz Pinto vs. State of Goa and others*. By an order dated 25.4.2000 the Division Bench of the High Court allowed the writ petitions and issued directions for demolition of the construction made in survey No. 803 (new No. 246/2) after complying with Clause 6 of agreement dated 26.10.1983. The High Court further directed that access to the beach shown in plan Exhibit-A filed along with Writ Petition

No.141/1992 shall be kept open without obstruction of any kind.

- (xiii) Shri Victor Albuquerque and the appellants herein filed another set of Writ Petition Nos. 284 of 1991 and 37 of 1992 for issue of a direction to the respondents (including respondent Nos. 1 and 2 herein) for restoration of public access to Vainguinim beach and the car parking area through survey No. 787 (new no. 246/1) and for demolition of the construction made in the open area of survey No. 789 (new No. 246/4).
- (xiv) In their writ petition, the appellants claimed that while approving the plan for construction of hotel project in survey No. 787 (new No. 246/1), the Chief Town Planner had directed respondent Nos. 1 and 2 to maintain access to the beach through that survey number by providing necessary footpath and also provide facility for parking of the vehicles and this was reiterated by the Gram Panchayat, but respondent Nos. 1 and 2 have shifted access to the beach to another location on the basis of permission allegedly granted by the Sarpanch who had no authority to do so. According to the appellants, respondent Nos. 1 and 2 were and are not entitled to shift the public access to some other location and, as a matter of fact, instead of ending at the beach, new road leads to the rocks through which public cannot go to the beach. It was also the appellants' case that the location of new road is extremely dangerous because it is adjacent to 10,000 Kg. poisonous gas tank.
- (xv) In their counter-affidavit, respondent Nos. 1 and 2 pleaded that the sanction accorded by the Chief Town Planner was subject to the condition that public access to the beach should be maintained by providing necessary footpath at appropriate place and facilities should be provided for parking of the vehicles but no particular location was identified for

that purpose. It was further their case that in the first instance, car parking was identified at North-East corner of property bearing survey No. 787 and the footpath alongside its Eastern boundary, but during execution of the project, it was found that existence of road near 10,000 Kg. poisonous gas tank, high pressure water tank, electric transformer will be dangerous to the public and, therefore, application was made to the Sarpanch of the Gram Panchayat for shifting the location of public road, car parking and footpath and construction thereof at the new site was undertaken after seeking permission from the Sarpanch. Respondent Nos. 1 and 2 also pleaded that since 1979 members of the public are using access to the beach through alternative road and footpath.

(xvi) The High Court referred to letter dated 1.8.1978 of the Chief Town Planner, letter dated 1.12.1978 of the Sarpanch, two letters dated 29th September, 1979, one of which was written by respondent No. 1 to the Sarpanch, and the other by the Sarpanch and held that even though access provided by respondent Nos. 1 and 2 is not at the site initially approved by the Gram Panchayat, the same is being maintained at the new location since 1979. The High Court noted that while approving the plan prepared by respondent No.1 for construction of hotel complex, the Chief Town Planner did not identify the particular location at which public road, car parking and footpath were to be constructed and even when inspection was carried out on 16th October, no objection was raised to the change of alignment of the public road etc. and, therefore, it cannot be said that respondents have violated the conditions of sanction. The High Court also took cognizance of the photographs produced by the writ petitioners and observed that the access to the beach is not maintained in proper manner and that the same leads to rocks and is inaccessible during high tide.

Accordingly, directions were issued to the respondents to maintain tarred road of three meters width throughout, proper area for parking of cars and ensure that the access goes up to beach. However, the prayer of the writ petitioners for demolition of the construction made in survey No. 789 (new No. 246/4) was rejected by observing that the so-called construction is in the form of road and there is no legal prohibition against such construction. The relevant extracts of paragraphs 12 and 13 of the impugned order which also contain the directions given by the High Court read as under:

“All said and done, once, it is not in dispute that the members of the public are entitled to have their access through the property bearing survey no. 787, it cannot be disputed the Respondents are duty bound to maintain a proper access for the public to the said beach and sufficient area for parking of cars. Both these things are to be maintained through and in the property bearing survey no. 787. It is the contention of the Respondents that they have already provided such access and that the same is being used by the public. However, the photographs of such access which are placed on record by the Petitioners and not disputed by the Respondents clearly disclose that such access is not maintained in proper manner and/or as is otherwise required to be maintained in terms of the directions given by the Chief Town Planner. It is the contention of the Petitioners that the said access leads not to the beach but to the rocks and the beach is absolutely unaccessible during the hightide by the said access. The fact that members of the public cannot have access to the beach during the high tide is also admitted by the respondents in the Affidavit-in-replies filed in both the Petitions. In Writ Petition No. 37/92, it has been clearly stated in Affidavit-in-reply in para 20 “and that the Respondents state that in compliance with the said condition from the point of steps, where also there is a jetty the Respondents built retaining wall with access over it to the extent of 60 metres giving access over it to the public through the beach even during the high tide”. Similarly, in Writ Petition No. 284/91 in the Affidavit-in-reply it is stated in para 13(d) that “the Respondents state that in compliance with the said condition from the point of steps where also there was a jetty, the Respondents have built a retaining wall with access over it giving access to the public through the beach even during the high tide.” The Affidavit-in-reply in Writ Petition No. 284/91 was filed in September, 1991 whereas the Affidavit-in-reply in Writ Petition No. 37/92 was filed in January, 1992. This clearly shows that the Respondents are fully aware that the access which has been stated to have been maintained by the Respondents as it stands today is not at all convenient for free access to the public to the said beach. Once, it is not disputed that the public have right to free access to the beach through the said property and the project of construction of hotel was approved with the condition that such access is to be maintained, it is the duty of the Respondents to maintain a proper access through the property to the beach. It has been stated across the bar and delineated in a sketch produced by the Petitioners and not disputed by the Respondents that alternative access as exists at present provided by the Respondents for the public is through the western half of the property bearing old survey no. 787. It leads to the steps constructed near the retaining wall by the side of the jetty leading to the sea situated

on the said Vainguinim Beach. Once, it is clear that the said access does not lead to the beach directly but to the steps and further to the rocks, it is necessary to give appropriate directions to the Respondents to extend the said access upto the beach along the retaining wall referred to in para 20 of the Affidavit-in-reply in Writ Petition No. 37/92 to such an extent that the said access directly leads to the said beach and not to the rocks or some other place. It is also necessary that such road should be maintained of 3 metres in width all throughout, and also that the said road to be tarred and maintained in proper condition. The Respondents shall also maintain proper area for parking of the cars and the area should be maintained in a usable condition for the members of the public and the responsibility in that regard shall also be of the Respondent Nos. 1 and 2. There shall not be any obstruction caused on the said access or car park area either by construction of any fencing or any gate or otherwise and the same should be kept open all 24 hours of day and night.

13. Considering the fact that neither of the parties have bothered to place on record a proper plan with dimension and to scale, a further direction in that regard is necessary to the Respondent Nos. 1 and 2 who shall file a proper plan drawn by a recognized surveyor showing the location of the access and car park maintained in accordance with directions of this Court and such plan should be filed along with the Affidavit regarding the compliance of maintenance of such access within a period of four weeks from today. The said access shall be at the location corresponding to the one disclosed in the sketch produced by the Respondents and placed on record and marked at 'X' for identification. However, an alteration in the location of the access shall be made as regards the space near the gas tank shown in the said sketch and sufficient space should be maintained from the location of the gas tank so as to avoid hardship or injury to the members of the public using the said access and the distance between the gas tank and the access shall not be less than 20 metres under any circumstances. It shall also be the responsibility of the Respondent No.5 in Writ Petition No. 37/92 as well as other authorities to have periodical checks and to ensure the maintenance of the said access and the car park area in the said property.”

[underlining is ours]

2. Ms. Indira Jaising, learned senior counsel appearing for the appellants argued that even though the letter dated 1.8.1978 of the Chief Town Planner did not identify the location where footpath and parking facilities were required to be provided by respondent Nos. 1 and 2 for access to the beach, but if the same is read in conjunction with permission granted by the Gram Panchayat vide letter dated 22.8.1978 and letter dated 1.12.1978 of the Sarpanch, it becomes clear that respondent Nos. 1 and 2 were required to provide parking area, on the north-east corner of survey No. 787 adjacent to survey No. 803 and public footpath was to be provided in a manner that it would run on survey No. 787 and form the boundary

of survey No. 803 but they manipulated the so-called permission from the Sarpanch of the Gram Panchayat and changed the location of public road and car parking. She vehemently argued that access provided at the new site ends on the rocks and it is impossible for the public to go to the beach even during the normal period what to say of high tide period and the High Court committed grave error by declining the appellants' prayer for issue of mandamus to respondent Nos. 1 and 2 to provide access to the beach through survey No. 787 in terms of the approval accorded by the Chief Town Planner vide his letter dated 1.8.1978 read with the permission granted by the Gram Panchayat on 22.8.1978. Shri Anil B. Divan, learned senior counsel appearing for the respondents, submitted that the directions given by the High Court are just and proper and do not call for interference, because public road, car parking and access to the beach had been constructed in 1979 after obtaining permission from the Sarpanch of the Gram Panchayat and public has been using the same for last almost 20 years. Learned senior counsel produced some photographs to show that tarred road has been constructed and access provided through footpath goes right up to the beach.

3. We have considered the respective submissions. Since it is not in dispute that respondent Nos. 1 and 2 have provided access to the beach at the alternative site in 1979 and the same is in existence for last almost 20 years and is being used by the public, it is not possible to agree with Ms. Indira Jaising that the High Court committed an error by not taking cognizance of the approval accorded by the Chief Town Planner and the permission granted by the Gram Panchayat on 22.8.1978. It is true that Sarpanch did not place before the Gram Panchayat letter dated 29.9.1979 written by respondent No.1 for permission to change the location of the footpath and parking area from the site originally sanctioned and the Gram Panchayat did not pass any resolution sanctioning such change, but the fact remains

that pursuant to letter dated 29.9.1979 written by the Sarpanch of the Gram Panchayat, respondent No.1 laid access to the beach at alternative site and made it operational sometime in 1979 and the same is being used by the public since then. The photographs produced during the hearing of the appeal also prima facie show that access to the beach is available at the alternative site. It is not the appellants' pleaded case that they were unaware of the change of location of public access to the beach and construction of road, parking area, etc. at the alternative site in 1979. Therefore, the writ petition filed by them in 2000 was highly belated, and the High Court may have been justified in non-suiting them only on the ground of delay. However, as the High Court has dealt with the matter on merits, we do not consider it necessary to deal with this issue in detail, more so because we are convinced that the directions given by the High Court to respondent Nos. 1 and 2 for ensuring that public road is shifted from the site near 10,000 Kg. poisonous gas tank and access to the beach ends on the beach and not on the rocks are just and proper and are in consonance with public interest.

4. In the result appeal is dismissed. Needless to say that if respondent Nos. 1 and 2 have not carried out the directions given by the High Court in toto and access to the beach still ends at the rock or there is any other deficiency in the implementation of the order impugned in this appeal, then the appellants or any other interested person shall be free to bring this to the notice of the High Court for appropriate order and action.

[B.N. AGRAWAL]

.....J.

.....J.

[G.S. SINGHVI]

New Delhi,
January 20, 2009.