

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE BENCH AT CHENNAI

(Appeal under Section 16 (h) of the National Green Tribunal Act, 2010)

APPEAL NO 54 OF 2021 (SZ)

IN THE MATTER OF:

THOMAS LAWRENCE

...APPELLANT

VERSUS

STATE ENVIRONMENT IMPACT

ASSESSMENT AUTHORITY,

KERALA AND ORS

...RESPONDENTS

**REJOINDER BY THE APPELLANT IN RESPONSE TO THE COUNTER ON BEHALF
OF RESPONDENT NOS. 4, 5 AND 6**

PAPER BOOK

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ADVOCATE FOR THE APPELLANTS: SRISHTI AGNIHOTRI

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**REJOINDER BY THE APPELLANT IN RESPONSE TO THE COUNTER ON BEHALF
OF RESPONDENT NOS. 4,5 AND 6****MOST RESPECTFULLY SHOWETH:**

1. That this rejoinder is being filed to the Counter Affidavit dated 21.10.2021 filed by Respondent No. 4 (Dragonstone Realty Pvt. Ltd.), Respondent No. 5 (Winterfell Realty Pvt. Ltd.) and Respondent No. 6 (Dorne Realty Pvt. Ltd.). At the outset, the Appellant denies various statements which have been made in the Counter which are not only contrary to the record but are patently false. Nothing should be assumed to be admitted for want of specific traverse and all averments in the Counter should be assumed to be denied unless specifically admitted.
2. That the Appellant has filed the present appeal under Section 16(h) of the National Green Tribunal Act, 2010 before this Ld. Tribunal challenging the Environmental Clearance dated 06.03.2021 (hereinafter referred to as the 'impugned EC') granted by the State Environmental Impact Assessment Authority, Kerala ('SEIAA') to Dragonstone Realty Pvt. Ltd, ('Dragonstone' or 'Project Proponent') in connection with the Phase-III expansion of Technopark in Thiruvananthapuram District, at Technopark Phase-3 Campus, Attipra Village, Thiruvananthapuram Corporation, Taluk & District Thiruvananthapuram, Kerala. Details of the proposed expansion are as follows: (i) - Mixed land use building construction project of 3.937 hectares of plot area with 2,71,164.4 sq. m. of built-up area

(Approved built -up area 1,33,491 sq. m. with additional proposed built -up area of 1,37,673.4 sq.m.). - (ii) Consists of Commercial retail area, Multiplex, Hotel, Restaurant, Banquet hall, Office area & Residential area, and other facilities.

3. That the impugned EC has been obtained by Dragonstone by concealment of material facts in Form 1 and Form-1A regarding the presence of wetlands, *inter alia*, and a faulty EIA report with various deficiencies such as no cumulative impact assessment, despite an undertaking before this Ld. Tribunal in pursuance of its order dated 26.2.2019, that cumulative impacts will be considered by the EIA report in the expansion of the project sought by the Project Proponent. That Form-1 and Form 1A form the basis of the entire appraisal process and concealment of material information in the said forms would lead to vitiating the entire Environmental Clearance process.
4. That the proposed expansion is near the Veli-Akkulam wetlands system. The proposed expansion has had the result of illegal reclamation and large scale destruction of a 10 acre pond and a wetland system associated with it. That the Not only is the land in question a wetland, it also could not have been built under the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the Wetlands (Conservation and Management) Rules, 2017, which absolutely prohibits any conversion of wetlands.

PRELIMINARY SUBMISSIONS:

- a) That wetlands are of great ecological and economic significance. They are critical for conserving biological diversity, human development and well being, especially in India, where a large number of people are dependent on them for clean water, food, raw materials and livelihood. They are highly productive ecosystems that provide a wide range of ecosystems services, storm and flood control measures by acting as natural sponges and absorbing rainfall, in addition to supporting significant recreational, social and cultural activities. The Millennium Ecosystem Assessment estimates conservatively that wetlands cover seven percent of the earth's surface and deliver 45% of the world's natural productivity and ecosystem services. Despite their immense importance, wetlands today are under severe threat. Around 50% of the earth's wetlands are estimated to already have disappeared worldwide over the last hundred years through conversion to industrial, agricultural

and residential purposes. That wetland conservation has been accorded a high priority in India by the Government, which has formulated several plans and policies for their conservation and preservation. Since 1987, under the National Wetlands Conservation Programme of India, wetland conservation activities for various wetlands are being supported. India is also a party to the Ramsar Convention which identifies 26 major wetlands in India of international importance. Further, realising the importance of wetlands, the Ministry of Environment, Forests and Climate Change, sponsored a National Inventory and Assessment of Wetlands spearheaded by ISRO, under which a National Wetland Atlas and State Wetland Atlases have been prepared. As per the National Wetland Atlas for the State of Kerala (pg. 76, pt. 6.1.14), 1762 wetlands have been delineated in the state of Kerala. In Thiruvananthapuram alone, 5942 ha of wetlands have been identified, which includes 385 small wetlands. There are 10 major backwaters in the district. Some of the major ones are Veli, Kadinamkulam, Anchuthengu(Anjengo), Kaappil, Akathumuri and the Edava-Nadayara. The backwater of Veli-Akkulam, adjoining the Arabian Sea in the south-west part of Indian Peninsula, is a coastal wetland system and forms an integral part of the local ecosystem.

- b) That the State of Kerala receives an estimated average annual rainfall of 3107 mm in comparison to the all-India average of 1,197 mm. That the 2018 floods were the worst in Kerala in a century, and displaced more than one million people, and more than 400 people died when heavy rains flooded the state. The 2020 flood in Kerala marked the third year in a row of severe monsoon flooding. That rampant encroachment of water bodies and aggressive construction activities, destruction of wetlands and lakes have turned the residential areas near Technopark Phase III, flood prone, as waterlogging and flash flood becomes a daily affair in these areas, prompting families to move out or abandon their property, and that in many areas, floodwater is not receding owing to a lack of proper stormwater drainage.
- c) The Appellant has placed all the material documents before this Hon'ble Tribunal, which confirm the status of the lands in question as wetlands, including:

- relevant extracts of the National Wetland Atlas for the State of Kerala, as published by the Ministry of Environment, Forest and Climate Change in August 2010, wherein the Veli-Akkulam Wetland system, on which the Technopark Phase III expansion is occurring, has been identified and categorized as a “wetland”.
- the quarterly newsletter of ENVIS, published in 2011, sponsored by the Ministry of Environment, Forest and Climate Change, which confirms the presence of wetlands on the Technopark Phase III expansion site/lands in question.
- the letter from the CEO of Technopark to the Local Level Monitoring Committee of Trivandrum Corporation, dated 26.12.2017, categorically referring to the lands in question as wetlands.
- the Site Inspection Report issued by the Agricultural Officer to the Revenue Divisional Officer, dated 3.01.2018, requesting them to take immediate action and issue a ‘stop work’ memo to the Respondents, to stop the illegal reclamation of the wetlands in question.
- the Local Level Monitoring Committee (‘LLMC’) in its meeting dated 03.01.2018 confirmed that the lands in question are wetlands. The Appellant has also placed the report of the State Level Monitoring Committee (‘SLMC’), dated 05.01.2018, confirming the LLMC meeting report and upholding that the lands in question are wetlands. The Committee recommended that as per Section 11 of the Kerala Paddy and Wetlands Act, 2008, there is a complete embargo on any construction work on the lands in question.
- the Land Revenue Commissioner, vide letter dated 10.04.2018, directed the District Collector to urgently take action regarding the construction set to take place on the wetlands in question.
- the Sub-collector, vide letter dated 10.05.2018, apprised the District Collector of the fact that the construction on the lands in question would destroy the sensitive ecological surroundings and immediate steps were

required to be taken under Section 8 of the Kerala Paddy and Wetlands Act, 2008.

- The follow up Site Inspection Report undertaken by the Agricultural Officer and Village Officials on 25.09.2018, which reiterated that the lands in question are wetlands, and reclamation of the said lands in question was detrimental to the environment and could result in flooding of the area.
- report by the LLMC dated 13.03.2019, further confirming the findings of the Kerala State Remote Sense Engineering Centre, that the lands in question are wetlands and should not be reclaimed.
- On 29.11.2019, the Revenue Department also confirmed the status of lands in question as wetlands, as per the response to an RTI request, already placed on record by the Appellant.
- the resolution of the Attipra Ward Council, dated 05.02.2019, stating that action is to be taken for revival and restoration of the wetlands in question, to its original condition.
- The draft report of the State Wetland Authority (Kerala) dated 18.06.2020, wherein a draft list of wetlands in Kerala as per the Wetlands (Conservation and Management) Rules, 2017 prepared by the Kerala Remote Sensing & Environment Centre ('KSREC'), which is the nodal agency under the Wetlands (Conservation and Management) Rules, 2017, clearly indicates the presence of wetlands in the concerned areas.
- Further, as per the response to RTI request by the Kerala State Remote Sensing and Engineering Centre, dated 11.11.2021, the KSREC has validated the status of the lands in questions (more specifically, survey nos. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358 and 359) as wetlands.
- the state government authorities, vide Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021, notified the final databank of Paddyland and wetlands, which has a significant overlap with the lands in question owned by Technopark (Sy. nos. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358, 359). The overlapping lands in

question have been identified as wetlands, in the final databank as per Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021.

- d) The local authorities, government officials and committees authorized under the Kerala Conservation of Paddy Land and Wetland Act, 2008 to identify and protect paddy lands and wetlands in Kerala, including the agricultural production commissioner, agricultural officer, village officials, the Attipra Ward Council, the Local Level Monitoring Committee, the State Level Monitoring Committee, mayor of municipality, the Land Revenue Commissioner, environmental experts and scientists, the sub-collector, unanimously support the Appellant's stand that the lands in question are wetlands. The draft report of the State Wetland Authority (Kerala) dated 18.06.2020, wherein a draft list of wetlands in Kerala as per the Wetlands (Conservation and Management) Rules, 2017 prepared by the Kerala Remote Sensing & Environment Centre ('KSREC'), which is the nodal agency under the Wetlands (Conservation and Management) Rules, 2017, also confirms the presence of wetlands on the lands in question. That more than 16 government agencies have confirmed the presence of wetlands on the lands in question. That the Hon'ble Supreme Court in the matter of Divisional Revenue Officer, Fort Kochi v. Jalaja Dileep and Ors., reported in (2015) 11 SCC 597, has confirmed the importance of the committees and observed that *"To ensure the proper implementation of objectives, the Act envisages the Constitution of Committees at three different levels ie. Local Level Monitoring Committee (LLMC) , State Level Committee (SLMC), and District Level Authorised Committee . Besides it, Wetland Act also provides for the reporting officers under Section 7, who are Agricultural Officers vested with Responsibility to report to the Revenue Divisional Officer as well as to Committees ,regarding any act in violation of provisions of the Act."* That such conversion of wetlands cannot be permitted by bypassing the competent authorities envisaged under the Act of 2008.
- e) That it is well settled that the wetlands cannot be reclaimed for the following reasons:- (i) There is an absolute prohibition on reclamation of wetlands as per Section 11 of the Kerala Conservation of Paddy Land and Wetland Act, 2008; (ii)

Rule 4(2) of The Wetlands (Conservation and Management) Rules, 2017 prohibit the reclamation of wetlands for conversion for non wetland uses, including encroachment of any kind.; (iii) The Hon'ble Supreme Court, in its order in **M.K. Balakrishnan v. Union of India**, reported in, (2017) 7 SCC 810(2), upheld that identified wetlands are subject to the principles of Rule 4(2) of The Wetlands (Conservation and Management) Rules, 2017, meaning thereby that there is an embargo on conversion of the wetlands.

- f) That, despite this, the Revenue Department, vide GO 40 of 2018 dated 03.02.2018, has gravely erred in permitting the conversion of the lands in question by Technopark for a "public purpose" under Section 10 of the Kerala Conservation of Paddy Land and Wetland Act, 2008, relying solely on the letter of the District Collector dated 19.01.2018, recommending such conversion. It is submitted that the District Collector, for reasons unknown, concealed the reports of the competent and reporting authorities under the Act of 2008, i.e. Attipra Agricultural Officer, LLMC, SLMC, Land Revenue Commissioner, - who all unanimously confirmed that the lands in question are wetlands and natural water bodies. Instead of placing reliance on these reports issued by the competent, reporting authorities under the Act of 2008, the District Collector depended upon the manipulated and fabricated report of one 'Tehsildar', who was not a competent reporting authority under the Act of 2008, certifying that the lands in question are abandoned paddy lands based on his site inspection dated 19.01.2018. Significantly, given that the land in question is wetland and not paddy land, it could not have been so converted/reclaimed, by virtue of the total prohibition on reclamation of wetlands envisaged under Section 11 of the Kerala Conservation of Paddy Land and Wetland Act, 2008.
- g) Accordingly, the Appellant moved this Ld. Tribunal via O.A. No. 875 of 2018, which on 19.12.2018 directed the Ld. District Collector to look into the matter of mass destruction of 10 Acre pond and wetlands. The order of the District Collector No. B7/1659/2018 dated 30.04.2019 however held that the said land was reclaimed and no action could be taken at the level of District Collector under Sections 11 and 13 of the Act of 2008. However, it is evident that reclamation of wetlands is not

permissible. Thus, it is submitted that the order of GO 40 of 2018 as well as the order of the District Collector No. B-7/1659/2018 are in violation of the law and facts on the record.

- h) Thereafter, one Sanjeev SJ approached the Principal Bench of this Ld. Tribunal vide **O.A. No. 71 of 2019** (*Sanjeev SJ v. State of Kerala*), alleging that the facts about built up area were concealed. This Ld. Tribunal directed and received a joint status report from the Central Pollution Control Board and the State Pollution Control Board dated 24.08.2019, which said that the expansion of built up area was sought by Dragonstone and it is yet to be considered. The SEIAA also submitted a report to the effect that the EIA study will consider the cumulative impact of the proposed project on the structures in the meeting to be held on 18.10.2019. Accordingly, this Ld. Tribunal disposed of the application O.A. No. 71 of 2019. Meanwhile, the Appellant then moved the Principal Bench of this Ld. Tribunal through Execution Application No. 39 of 2019 in O.A. No. 875 of 2018 against the order of the Collector dated 30.04.2019. However, this Ld. Tribunal disposed of the Appellant's application on 06.11.2019 stating that in view of the order in O.A. 71 of 2019 (Sanjeev SJ), the issues raised can be gone into in the course of EIA study in the said matter.
- i) The Appellant then approached the Hon'ble Supreme Court through Civil Appeal No. 2535 of 2020 against the order dated 06.11.2019 of the Ld. Tribunal in Execution Application No. 39 of 2019 arising out of Original Application No. 875 of 2018. The Civil Appeal was filed on the ground that the disposal of the Execution Application by the Ld. Tribunal by placing reliance on the case of *Sanjeev SJ* (O.A. 71/2019) which was an entirely distinct proceeding (as it had challenged the grant of Environmental Clearance to M/s Dragonstone Realty Pvt. Ltd.), while the OA No. 875/2018 and the Execution Application pertained to the destruction of wetlands. That the Hon'ble Supreme Court vide order dated 29 October 2020 gave the Appellant an opportunity to challenge the order of the Collector dated 30 April 2019 in accordance with law. Accordingly, the Appellant preferred a revision petition dated 8 December 2020 before the Government, in accordance with Section 28 of the Kerala Conservation of Paddy Land and Wetland Act, 2008. The

Electronics and Information Technology Department of the Government of Kerala, passed an order dated 19/11/2021, which has erroneously upheld order of the Revenue Department, vide GO 40 of 2018 dated 03.02.2018, permitting the conversion of the lands in question by Technopark for a “public purpose” under the Kerala Conservation of Paddy Land and Wetland Act, 2008. Significantly, given that the lands in question are wetlands and not paddy land, it could not have been so converted/reclaimed, by virtue of the total prohibition on reclamation of wetlands envisaged under Section 11 of the Kerala Conservation of Paddy Land and Wetland Act, 2008.

j) That the project proponent has concealed critical information from Form-1 and Form 1A (annexed in the memorandum of appeal) which was submitted to the SEIAA in 2019. It is submitted that Form-1 and Form 1A form the basis of the entire appraisal process and concealment of material information in the said forms would lead to vitiating the entire Environmental Clearance process. The Appellant has placed all material documents and information before this Hon’ble Tribunal, which highlight the concealment of material facts in Form 1 and Form 1A, including:-

- the section on “Environmental Sensitivity” , wherein Dragonstone has stated ‘NO’ against the column “Changes in water bodies or the land surface affecting drainage or run-off?” In the details column, the project proponent has merely stated, “There is a drain flowing in the east side abutting to the property boundary. During the construction & operation phase this drain will be protected & maintained.” There is no mention whatsoever of the wetland upon which the project proponent is currently carrying on construction. There is no mention as to how it will be protected after construction takes place.
- the project proponent has marked “Yes” against the column, “Areas which are important or sensitive for ecological reasons - Wetlands, water courses or other water bodies, coastal zone, biospheres, mountains, forests”. However, it only specified certain water bodies and completely omitted to mention the Veli-Akkulam wetlands. The project proponent has specified

only the following waterbodies: “Water bodies : - Drain – near to site (N) & (W) Thodu (“Parvathy-Puthanaar”) at 1.50 km. (W) Arabian sea - About 2.50 km. (SW) Aakulam Lake - About 3.5 km (SE) Kadinamkulam lake - About 6.5 km. (NW) (Information Source : Google Earth aerial distance)

- the section on “Environmental Sensitivity”, where Dragonstone has stated ‘None in the area’ against the column “Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration”. There is no mention of migratory fauna, such as the little grebe, pheasant tailed Jacana, large egret, Indian shag, oriental darter, moorhen and different kinds of plovers, which are dependent on the Veli-Akkulam wetland system. It is pertinent to note that the number of fish species in the Veli-Akkulam wetland ecosystem have fallen from over 300 half a century back to just around 25 today, owing to reclamation and pollution. It is also significant to note that the project proponent has itself stated that *“There are various native species of trees, shrubs, herbs etc. existing at site as part of floral ecology. Some of the species identified are exotic & invasive species. Also the site has several faunal species.”*, in the section on “Vegetation” in Form 1-A, to the question “ Is there any threat of the project to the biodiversity? (Give a description of the local ecosystem with its unique features, if any).
- Similarly, in the column marked for “Inland, coastal, marine or underground waters”, the details bear no mention of any 10 acre pond or wetlands. The project proponent has thus engaged in material concealment with respect to the 10 Acre Pond and wetlands upon which it is currently completing construction.
- In response to Question 1.5 of Form 1-A, titled, “Will the proposal involve alteration of natural drainage systems? (Give details on a contour map showing the natural drainage near the proposed project site)”, the project proponent went on to answer as follows: “Ans. The proposed development does not affect the drainage pattern of the site and surroundings.” Again,

the answer of the project proponent shows blatant concealment of the VeliAkkulam wetlands in the vicinity.

- In response to Question 1.8 of the Form 1-A, “Will the low lying areas & wetlands get altered? (Provide details of how low lying and wetlands are getting modified from the proposed activity)”, the project proponent has merely answered with “Not applicable.” It is thus clear that the project proponent has wilfully and deliberately sought to mislead the authorities.
- That it is pertinent to note that Form-1 mandates disclosure of information of environmental sensitivity in a radius of 15 km from the project boundary. Form-1A requires project proponents to provide full information on their project’s environmental impacts. It is clear from the above extracts of Form-1 and Form-1A that the project proponent has concealed and misrepresented extensive amounts of material information in this regard, especially the fact of the existence of 10 Acres of pond and the wetland ecosystem. Thus, the Project Proponent ought to have disclosed the same in its Form-1 and Form-1A.

k) That the impugned Environmental Clearance is liable to be quashed as per Para 8 (vi) of the EIA Notification, 2006 deliberate concealment which provides thus:

“Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

l) That, in the matter of **Hanuman Laxman Aroskar v. Union of India & Ors.**, reported in **(2019) 15 SCC 401**, the Hon’ble Supreme Court has emphasized on the importance of the Form-1 and that that failure to disclose information in Form I defeats the purpose of the EIA Notification, 2006. The relevant part of the judgment is reproduced hereunder:

“60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA.

...

61. Under the 2006 Notification, EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:

61.1. EAC or SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.

61.2. At the appraisal stage, the regulatory authority examines the documents submitted by the applicant “strictly with reference to ToR” and communicates any inadequacy to EAC or SEAC.

...

*62. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. **Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately.***

...

*82. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The 2006 Notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 Notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. **The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment : a “heads I win, tails you lose” approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.***

(emphasis supplied)

Hence, the Environmental Clearance granted to Dragonstone, based on deliberate concealment of facts, is liable to be quashed.

m) That, in the matter of **Save Mon Region Federation & Anr. v. Union of India & Ors.** (Appeal No. 39 of 2012), vide judgment dated 7.04.2016, this Ld. Tribunal has held that: “17. It is true that these material facts were not before the EAC when scoping was done. Naturally, ToRs prescribing EIA study as regards these material facts were not prescribed, thereby resulting in a vacuum in the EIA Report on this material aspect. Consequently, inevitable aberration creeps in the appraisal done by the EAC for recommending grant of EC in question.”

n) That, in the matter of **Sreeranganathan K.P. v. Union of India & Ors.** (bearing Appeal no. 172 of 2013) (SZ), vide judgment dated 28.05.2014, this Ld. Tribunal had struck down the environmental clearance granted for the purpose of establishing an airport in Aranmula village in Kerala on the ground amongst others that the project proponent had concealed material facts and had submitted false information in the Form 1. The relevant portion is reproduced hereunder:- “

153. ... xi) It is quite evident from the available materials, the 3rd respondent/project proponent, while making an application for the airport project in Form I has provided false data about the ecology in the area, resources to be used and overall impact on the environment and presence of wetland or forests ... 154. Hence, it is held that the Form I in the application filed by the 3rd respondent/project proponent before the 1st respondent/MoEF for the Aranmula airport project was inchoate and invalid for false and suppression of materials and for inadequacy.”

Hence, the Environmental Clearance granted to Dragonstone, based on concealment of material facts, is liable to be quashed.

o) That it is submitted that the EIA Report and Environment Management Plan (“EMP”) of March 2020 prepared and submitted by the Project Proponent is highly deficient as well as faulty in many respects, such as: -(i) No Cumulative Impact Assessment as per the undertaking given to the National Green Tribunal by the SEIAA in the Original Application titled 71/2019 (Sanjeev SJ v. State of Kerala and Ors.). - (ii) The data compiled in the EIA Study is limited to very general parameters of Air Environment, Noise Environment, Land Environment, Water Environment, Ecological Environment and Socio-economic Environment, without

any category dealing with the impact on wetlands. - (iii) Failure to include additional conditions in TORs pertaining to surface water quality monitoring and selection of technology for STP, detailed as under:-

- While in the minutes of its meeting dated 26.08.2019, the SEAC directed Dragonstone that, “the EIA study should also consider the cumulative impact of the proposed project on the structures nearby”, no such cumulative assessment is found in the EIA report. The EIA Report, annexed in the memorandum of appeal, even states at page 1-9 that: “Apart from the standard ToR, the study includes cumulative impact of the proposed project on the structures nearby viz. the impact on traffic, the water & electricity supply, liquid and solid waste generation and its treatment and disposal.” However, a perusal of the report shows that no such cumulative impact assessment was done. Only “traffic impact assessment” and “social impact assessment” was done. Moreover, there are two bodies mentioned in the EIA study close to the project site: Thettiyar Thodu – West Direction and Small Drain- East Direction. The Project Proponent failed in examining the anticipated impacts on any of these water bodies as done for other bodies in Table 4.1 of the EIA study (“Matrix of Identified Environmental Aspects and their Anticipated Impacts from the project”). It is submitted that an incomplete EIA report was submitted, in direct violation of the direction of the SEIA and the undertaking given to this Ld. Tribunal.
- The components of the EIA study are provided in paragraph 3.2.3 of the EIA Report (page 3-2). The data compiled is limited to very general parameters of Air Environment, Noise Environment, Land Environment, Water Environment, Ecological Environment and Socio-economic Environment, without any category dealing with the impact on wetlands. Even though some of the land was reclaimed, the components of the water environment section were limited to consumption of water, its sources, ground water and its characteristics. Further, Dragonstone had remained silent on the conditions relating to wetlands and stormwater compliance

reports/documents (as imposed by the SEAC in its 92nd meeting dated 22.01.2019 and 96th meeting dated 28.03.2019).

- The EIA study also mentions in the Meteorological parameters that the district has significant benefit of both monsoon– southwest monsoon and northeast monsoon. However, the presence of monsoon does not bode well for the region as the project land being marshy wetland will result in flooding of the nearby area if construction is brought on it. This is not dealt with at all in the EIA study, especially as the natural drain on the project site is planned on being rerouted without regard for the ecological sensitivity and inhabitants of the area.
- It is also submitted that the Environment Management Plan does not account for crucial aspects. The purpose of the EMP is to advance such plan which mitigates the anticipated damage during the EIA study. The Environment Management Plan submitted by the Project Proponent is a general plan without dealing with the crucial ecology of the project land, following the same approach with which the EIA study was conducted.
- Further, the SEAC in its 108th meeting dated 13.01.2020 issued additional specific conditions to the project proponent as follows: “i) Increase surface water quality monitoring stations proposed for EIA study to 5 from the proposed number of 3. The added monitoring station shall be located in the downstream portion of Thettiyar. ii) Ensure that selection of technology for STP is done , considering the location of site and crossing of Thettiyar through the proposed plot, adequate for ensuring zero discharge or cent percent recycle / reuse of treated water in the Campus for gardening/ toilet flushing/ make up water in the A/c system/ local ground water recharging etc.” These special conditions were later approved in the 103rd meeting of the SEIAA dated 24.02.2020. The EIA study was submitted in March 2020, merely a month after SEIAA approved the special conditions. As such, the EIA Report failed to include these special conditions in the EIA Report. It is submitted that such serious deficiencies and faults vitiate the entire EIA Report and the same ought to be set aside.

p) That Form 1, Column 9 of the EIA Notification, 2006 reveals an obligation to conduct a Cumulative Impact Assessment. The heading of Part 9 reads as follows: “Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality”. The Ld. Tribunal vide judgment dated 12.09.2011 in **Sarpanch Grampanchayat Tiroda v. The Ministry of Environment and Forests** (Appeal No. 3 of 2011) expressed the importance of a cumulative impact assessment as follows: “Unfortunately, the cumulative effect of these four proposed projects was not considered to be of significant in causing environmental pollution in a small area. It appears an impression is sought to be created that there was only one application of Tiroda mine and at that time the Redi mine was not in operation. When number of mines are sought to be considered in a small area of Sawantwadi Taluk, **the EAC was expected to examine various aspects such as the cumulative impact of Air, Water, Noise Flora, Fauna and Socio-economic aspects in view of large number of transport vehicles, plants and machinery, etc. that would be operating in the area. It would have been appropriate, if a cumulative impact study was undertaken to take care of all existing/proposed mines within 10 km of the present project site apart from Redi mine, if any.** Therefore, we are of the opinion that these aspects were not properly assessed and examined scientifically and therefore, the EIA report requires to be re-examined afresh. Thus, the EIA report suffers from incorrect and insufficient data which pertains to a period much prior to grant of ToR, therefore, the EIA report cannot be said to be sufficient for the purpose of recommending grant of EC.” In the case at hand, given the presence of wetlands in the vicinity, a cumulative impact assessment was obligatory. As such, these aspects were not properly assessed and the EIA Report was not sufficient for recommending grant of EC. The obligation to conduct a cumulative impact assessment is reflected in various Supreme Court cases such as **Alaknanda Hydro Power Company Ltd. v. Anuj Joshi and Ors., (2014) 1 SCC 769, and K. Guruprasad Rao v. State of Karnataka and Ors., (2013) 8 SCC 418.**

- q) Additionally, Dragonstone obtained its first EC for the proposed project by materially misrepresenting itself as an IT company, whereas it (and its parent company Taurus Development Investment Advisory (P) Ltd.) are actually real estate developers engaged in the work of developing shopping malls. This was noted in Para 4.2.7 of the report of the Comptroller and Auditor General of India on Economic Sector for the year ended March 2014, Report No. 4 of the year 2015.
- r) Moreover, it is submitted that the Original Environmental Clearance for the total built up area of 133491 sqm. was granted by the MoEF&CC only on 07.06.2019 for the proposal dated 24.10.2017 (for the proposed “Commercial cum Office Complex”). It is submitted that the Respondents had already begun development activities on the project site, based only on the recommendations of the Expert Appraisal Committee on 02.07.2018, without waiting for the final Environmental Clearance from the MoEF&CC (07.06.2019) or NOC from the Kerala State Pollution Board. As per Rule 4(ii) & (iii) of the EIA Notification, 2006, it is well settled that the MoEF&CC is the competent & final authority to grant an environmental clearance, and not the Expert Appraisal Committee, which only provides its recommendations to the MoEF&CC for further approval or rejection. Additionally, Rule 2 of the EIA Notification, 2006, requires ‘prior’ environmental clearance from the concerned authorities. The project proponents have considered the original environmental clearance process in a most casual, lackadaisical manner from the get go, and have adopted the same attitude towards the environmental clearance process of the impugned EC dated 06.03.2021.
- s) It is submitted that concealment of material information in the Forms 1 and 1-A, a faulty EIA report with various deficiencies such as no cumulative impact assessment, *inter alia*, as set forth above, are liable to vitiate the entire Environmental Clearance process. Hence, this present appeal under Section 16(h) of the National Green Tribunal Act, 2010 before this Ld. Tribunal challenging the impugned Environmental Clearance dated 06.03.2021.

PARA WISE RESPONSE

- The contents of Para No. 1 require no response being in the nature of a formal recital.

- The contents of Para No. 2 are wrong and denied. It is submitted that the name ‘Veli-Akkulam wetland’ is not a creation of the Appellant. That the interconnected Veli backwaters and Akkulam lake in the southwest coast of Kerala, together form the ‘Veli-Akkulam’ wetland ecosystem, which is commonly known so. The Akkulam Lake is part of the main Veli backwaters, which is connected to the sea at Veli end by an estuary. That there is substantial evidence, already placed on record, to show that the lands in question are wetlands, as averred by the Appellant in Para 5 (c) and (d) of this Rejoinder. That the Appellant understands the well settled laws for the protection of wetlands, as set forth in Para 5(e) of this Rejoinder. That the Veli Akkulam wetlands fall squarely within the definition of ‘Wetlands’ as envisaged under the Kerala Conservation of Paddy Land and Wetland Act, 2008, and is not fallow land. “Wetland” is defined under the Act of 2008 as “land lying between terrestrial and aquatic systems, where the water table is usually at or near the surface or which is covered by shallow water or characterized by the presence of sluggishly moving or standing water, saturating the soil with water and *includes backwaters, estuary, fens, lagoon, mangroves, marshes, salt marsh and swamp forests but does not include paddy lands and rivers*”.
- The contents of Para No. 3 are wrong and denied. Respondent No. 5, Winterfell Realty Private Limited and Respondent No. 6, Dorne Realty Private Limited, are lessees of a portion of land claimed by the project proponent to come within the proposed expansion plot area, and have been carrying on construction and reclamation works at the project site. Dragonstone, Winterfell, and Dorne are all Indian subsidiaries of Taurus Investment Holdings, LLC, an American real estate company, which has entered into the Framework Agreement dated 30.09.2015, with Electronics Technology Parks, Kerala. Thus, they are pertinent parties to this appeal.
- That the contents of Paras. 4, 5 and 6 are wrong and denied. The Appellant reiterates the submissions set out in Para 5(r) of this Rejoinder, and submits that there is no contention against which authorities are entitled to grant environmental clearance, which are clearly laid out under the EIA notification, 2006, but only that the Respondents have blatantly misused the environmental clearance process, and violated the rules of ‘prior environmental clearance’ under EIA Notification, 2006, as set out in Para 5(r) of this Rejoinder above.

- The contents of Para No. 7 need no response as these are factual averments relating to the recognition and protection of wetlands, internationally and by the government of India.
- That the contents of Para Nos. 8 and 9 are incomplete and misleading. That Rule 3 of the Wetlands (Conservation and Management) Rules, 2017, are enacted to protect and preserve wetlands identified under the Ramsar Convention or notified by the Central Government or State Governments. The State Wetland Authorities are recognised authorities under the said rules to identify wetlands. The draft report of the State Wetland Authority (Kerala) dated 18.06.2020, wherein a draft list of wetlands in Kerala as per the Wetlands (Conservation and Management) Rules, 2017 prepared by the KSREC, clearly indicates the presence of wetlands at the project site. Further, as per the response to RTI request by the Kerala State Remote Sensing and Engineering Centre, dated 11.11.2021, the KSREC has validated the status of the lands in questions (more specifically, survey nos. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358 and 359) as wetlands. Additionally, the overlapping lands in question have been identified as wetlands, in the final data bank as per Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021, issued by the State Govt. of Kerala. That there is a litany of evidence to show that the lands in question are wetlands, as averred by the Appellant in Paras 5 (c) and (d) of this Rejoinder.
- The contents of Para No. 10 needs no response as these are factual averments relating to the enactment of the Kerala Conservation of Paddy Land and Wetland Act, 2008, and relevant sections thereunder.
- As regards Para No. 11, the case law *Matha Nagar Residents Association Vs. District Collector*, reported in 2020 (2) KLT 192, cited by the Respondents, merely states that going by the definition of wetland in order to treat a particular land as wetland, it should have the characteristic features and requirement as is provided under Act, 2008. It is reiterated by the Appellant, that as set forth in detail in Paras 5(c) and (d) of this Rejoinder, the lands in question are indeed wetlands, having the characteristic features and requirements to constitute a wetland. That the Veli Akkulam wetlands (which are the interconnected Veli backwaters, estuaries and Akkulam lake ecosystem) fall squarely within the definition of 'Wetlands' as envisaged under the Kerala Conservation of Paddy Land and Wetland Act,

2008, and is not fallow land, and that “Wetland” is defined under the Act of 2008 to include backwaters and estuaries.

- As regards Para No. 12, as per the case law cited by the Respondents, Suraj KS vs. State, 2018 (1) KLT 1, the Kerala High Court held that the said Paddy Act does not contemplate inclusion of any land which is not shown as wetland in the revenue records, as wetland in the Data Bank to be prepared under the Act. It is submitted that the Hon’ble Supreme Court in the matter of *Divisional Revenue Officer, Fort Kochi v. Jalaja Dileep and Ors.*, reported in (2015) 11 SCC 597, has held that the nature of the land cannot be changed or converted by directing changes in the Basic Tax Register which is maintained only for the purpose of land tax, and that the the concerned authorities constituted under the Kerala Wetland Act 2008 are the competent authority to ascertain the same. The relevant portion of the judgment has been extracted: “21. *Statutory enquiry to ascertain whether the land is a "Paddy Land" or "Wetland" and conversion of the land for residential purpose or for any public purpose is governed by KLU Order or the Kerala Wetland Act, 2008 for conversion of the land from "Nilam" (Wetland) to 'Purayidam' (Dry Land). The concerned authorities constituted under KLU Order or Kerala Wetland Act 2008 are the competent authority. Nature of the land cannot be changed or converted by directing changes in the Basic Tax Register which is maintained only for the purpose of land tax*”.

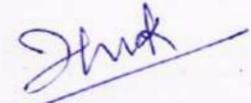
Additionally, In *Shahanaz Shukkoor v. Chelannur Grama Panchayat* [(2009 (3) KLT 899)], the Hon’ble High Court held that “*The definition of the terms `paddy field and `wetland in the said (Kerala Conservation of Paddy Land and Wetland) Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities and not on any quality or type of land, depending on its description in the title document.*” Significantly, the Agricultural Officer, the LLMC and SLMC constituted under the Kerala Conservation of Paddy Land and Wetland Act, 2008, have categorically identified the lands in question as wetlands, based on ground realities, and that the State Government, in recent notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021, have also included the said lands in question in the final data bank of wetlands, as set forth in detail in Paras 5 (c) and (d) of this Rejoinder. As such, the case law cited by the Respondent is untenable and inapplicable in the present case, and deserves to be rejected by this Hon’ble Tribunal.

- That the contents of Para No. 13 are incomplete and misleading with regard to the cited case, *M.K. Balakrishnan v. Union of India*. The Hon'ble Supreme Court, in its order in *M.K. Balakrishnan v. Union of India*, reported in, (2017) 7 SCC 810(2), held that identified wetlands are subject to the principles of Rule 4(2) of *The Wetlands (Conservation and Management) Rules, 2017*, meaning thereby that there is an embargo on conversion of the wetlands. On noting the fact that with the passage of time, the possibility of disappearance of wetlands was plausible, the Hon'ble Supreme Court ordered for the protection of wetlands by directing for the application of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to the areas that have been marked as wetlands in the National Wetland Atlas. In the present case, the National Wetland Atlas of the State of Kerala, *inter alia*, has identified the Veli Akkulam ecosystem as a wetland, as set forth in Paras 5 (c) and (d) of this Rejoinder.
- As regards the contents of Para No. 14 and 15, it is submitted that the designated authorities under the Kerala Conservation of Paddy Land and Wetland Act, 2008, have identified the lands in question to be wetlands, as reiterated under Paras 5 (c) and (d) of this Rejoinder. Significantly, the Agricultural Officer, the LLMC and SLMC constituted under the Kerala Conservation of Paddy Land and Wetland Act, 2008, have categorically identified the lands in question as wetlands, based on ground realities, and that the State Government, in recent notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021, have also included the said lands in question in the final data bank of wetlands, as set forth in detail in Paras 5 (c) and (d) of this Rejoinder.
- That the contents of Para No. 16 are wrong and denied. That the completion of development of Phase I and II of the Technopark campus, and lease to global IT giants does not preclude the fact of existence of the wetlands in the lands in question, which are of great environmental importance, are highly productive ecosystems which support rich biodiversity and provide a wide range of ecosystem services such as water storage, water purification, flood mitigation, erosion control, aquifer recharge, microclimate regulation, aesthetic enhancement of landscapes while simultaneously supporting many significant recreational, social and cultural activities. It is reiterated that the Respondents had already begun development activities on the project site for phase I and II, without waiting for the final Environmental Clearance from the MoEF&CC (07.06.2019) and Rule 2 of the EIA

Notification, 2006, requires 'prior' environmental clearance from the concerned authorities, as set forth in Para 5(r) of this Rejoinder. That the project proponents have considered the original environmental clearance process in a most casual, lackadaisical manner from the get go, and have adopted the same attitude towards the environmental clearance process of the impugned EC dated 06.03.2021.

- That the contents of Para No. 17 are wrong and denied. It is submitted that concealment of material information in the Forms 1 and 1-A, a faulty EIA report with various deficiencies such as no cumulative impact assessment, *inter alia*, as set forth at length in Para 5(j), (k), (l), (m), (n), (o), and (p) of this Rejoinder, are liable to vitiate the entire Environmental Clearance process.
- That, in light of the above, the prayers in this appeal should be allowed.

Pass any such order deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.



APPELLANT

THROUGH



RITWICK DUTTA

RAHUL CHOUDHARY

SRISHTI AGNIHOTRI

G. STANLY HEBZON SINGH

ADVOCATES FOR THE APPELLANT

**DRAWN BY:
VERA SHRIVASTAV
ADVOCATE**

**N-71, LOWER GROUND FLOOR,
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NEW DELHI - 110048**

PLACE: NEW DELHI

DATE:

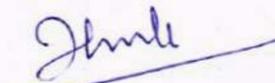
VERIFICATION

I, Thomas Lawrence, aged about 56, s/o P.T.Lawrence Pullankulam, r/o GV 79, Divisional Office Road, Near PMG Junction, Thiruvananthapuram, Kerala 659 033, do hereby verify that that the contents of the paragraphs stated above are true to my personal knowledge and are believed to be true on legal advice and I have not suppressed any material fact.



on this the _____ day of November, 2021.

**S. PRAMOD LL.B., M.B.L.
ADVOCATE & NOTARY
Vanchiyoor
Thiruvananthapuram
Kerala State, India - 695 035
Mob: +91- 9446704419**



APPELLANT

ATTESTED

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

APPEAL NO. 54 OF 2021 (SZ)

IN THE MATTER OF:

THOMAS LAWRENCE

...APPELLANT

VERSUS

STATE ENVIRONMENT IMPACT ASSESSMENT

AUTHORITY, KERALA AND OTHERS

...RESPONDENTS

AFFIDAVIT

I, Thomas Lawrence, aged about 56, s/o P.T.Lawrence Pullankulam, r/o GV 79, Divisional Office Road, Near PMG Junction, Thiruvananthapuram, Kerala 659 033, do hereby solemnly affirm and declare as under:

1. That I am the Appellant in the above titled Appeal and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

[Handwritten Signature]

DEPONENT

VERIFICATION

Verified on this ____ day of November, 2021 at _____ that the contents of the present affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.

[Handwritten Signature]

DEPONENT



S. PRAMOD LL.B., M.B.L.
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Mob: +91- 9446704419

22/11/2021

ATTESTED