

**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. 7 AND 11**

**PAPER BOOK**

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**ADVOCATE FOR THE APPELLANTS: SRISHTI AGNIHOTRI**

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**OF RESPONDENT NOS. 7 AND 11**

**MOST RESPECTFULLY SHOWETH:**

1. That this rejoinder is being filed to the Counter Affidavit dated 20.10.2021 filed by Respondent Nos. 7 and 11 i.e. M/s Technopark, an autonomous society, wholly owned by the Government of Kerala, in Thiruvananthapuram, Kerala, and the Electronics and Information Technology Department of the Government of Kerala, in Thiruvananthapuram, Kerala, respectively. 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") 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. That the present case is concerned with an expansion of the Technopark Phase-3 Campus in Thiruvananthapuram, Kerala. The total proposed

expansion of the area of the project is 3.93 ha, in Village Attipra, Taluk & District Thiruvananthapuram, Kerala (henceforth, the '**lands in question**') The project has been granted an environmental clearance in blatant violation of the EIA Notification, 2006, and the Precautionary Principle. The approval suffers from illegality, irregularity and procedural impropriety.

3. 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, natural drains and a wetland system associated with it. Significantly, the re-routing of the natural drain, and altering and alienating water bodies for industrial purposes cannot be permitted, under the guise of providing alternatives, as per the ruling of the Hon'ble Supreme Court in Jitendra Singh v. MoEF&CC, in civil appeal No. 5109 of 2019, decided on 25.11.2019. The Land Revenue Commissioner in his letter dated 13.07.2021, has also confirmed the existence of water bodies on certain survey numbers (sys nos. 290, 352, 353 and 365) in the lands in question, and has relied on the judgement of the Hon'ble Supreme Court in Jitendra Singh v. MoEF&CC, to prevent reclamation and conversion of the same. Not only is the land in question a wetland, it also could not have been built on, under the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the Wetlands (Conservation and Management) Rules, 2017.

4. **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. That 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 flood prone, as waterlogging and flash flood becomes a daily affair in various areas including Technopark phase III, 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 Appellant has also placed 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 Appellant has also placed the letter from 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.
- Site Inspection Report on site inspection undertaken on 01.01.2018 by the Agricultural Officer, who is the reporting authority under the Kerala Conservation of Paddy Land and Wetland Act, 2008, issued 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. Further, the Local Level Monitoring Committee (‘LLMC’) in its meeting dated 03.01.2018 confirmed that the lands in question are wetlands.
- 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.
- Further, 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. Further, the Sub-collector also, 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 ('Act of 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.
- A 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.
- Further, the Kerala state government authorities, vide Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021, identified and notified the overlapping lands in question as wetlands, in the final data bank published vide said notification.

- d) The local state authorities, government officials and committees authorized under the Act of 2008, 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 there is an absolute prohibition on reclamation of wetlands as per Section 11 of the Kerala Conservation of Paddy Land and Wetland Act, 2008. Section 11 states as follows:
- "11. Prohibition on reclamation of wetland. - On and from the date of commencement of this Act, the wetlands of the State shall be maintained as such and there shall be a total prohibition on reclamation of such wetland and removal of sand therefrom: Provided that nothing contained in this section shall affect the*

*removal of slurry and mud to maintain the ecological condition of such wetland.”*

- f) Rule 4(2) of The Wetlands (Conservation and Management) Rules, 2017 prohibits the reclamation of wetlands for conversion for non-wetland uses, including encroachment of any kind.
- g) 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. 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 illegal reclamation of the Veli-Akkulam wetlands, which are identified as wetlands in the National Wetland Atlas of the State of Kerala, *inter alia*, as set forth in Paras 4 (c) and (d) of this Rejoinder, cannot be ignored.
- h) That the Respondents have presented an erroneous translation of ‘nilam’ land mentioned in the Basic Tax Register, in Civil Appeal no. 2535 of 2020 (‘Thomas Lawrence v. State of Kerala and Ors.’) before the Hon’ble Supreme Court, and portrayed the lands in question as ‘paddy lands’. 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 considered the term ‘nilam’ to literally mean wetland. 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”.*

- i) 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 Act of 2008, for any purpose, public or private. Moreover, the said land as in use by Dragonstone is for a commercial complex of restaurants, hotels, movie theatre and other amenities which are evidently to serve private interests and not any public purpose. It is significant to note that the 2015 report of the Comptroller and Auditor General of India, in its compliance audit of the information technology department of the Government of Kerala (Chapter IV), highlighted various irregularities in the allotment of land to co-developers, such as allotment of land to non IT related purpose, absence of standardised procedure, arbitrariness in allotment, dilution of terms of agreement, *inter alia*. The CAG report categorically states that *"Audit found that before handing over the land to the co-developers, Techno-park initiated proposals to allot (May 2013) 19.73 acres of land at a prime location adjacent to NH bye pass to a real estate developer M/s Taurus Development Investment Advisory (P) Ltd. which comprised of 12.93 acres of land already allotted to the seven co-developers. The proposal was approved by State Government (October 2014). It is pertinent to mention that M/s Taurus Development Investment Advisory (P) Ltd. is not an IT company but a real estate developer engaged in the work of developing shopping malls. Techno-park failed to provide any justification for the allotment of land to a non IT company and non-*

handing over the site to seven co-developers. One of the seven allottees viz . M/s Speridian Technologies who was allotted two acres of land in September 2010 moved the High Court of Kerala which ordered (July 2014) Techno-park to hand over the possession of the land at the originally earmarked area to M/s Speridian Technologies. Thus, the non-handing over of land to seven co-developers and allotment of the same land to a multinational real estate developer was indicative of non- transparency in the allotment of land which was primarily acquired for IT activities.”.

- j) It is significant to note that the conversion of land vide GO 40 of 2018 dated 03.02.2018 was notified only belatedly on 18.10.2019, after the reclamation work had already illegally begun, as noted by the Agricultural Officer on 01.01.2018. It is also pertinent to note that in the response to an RTI filed by the Appellant on 02.02.2021, Technopark categorically stated that the lands in question are not wetlands. However, that the response to another RTI filed earlier on 29.03.2011 was enclosed along with the response dated 05.03.2021. In this response, Technopark stated that 15.5 acres of marshy wet lands had been filled in the project site for the purpose of constructing IT buildings. It is also significant to note that in response to another RTI filed on 24.12.2020, by Shri Sushil Thomas Abraham, Technopark categorically stated that Survey Nos. 560, 561, 562, 564, 565, 566, 568 and 569 are under its ownership. The State Wetland Authority (Kerala) categorically identifies the afore-said survey nos. as wetlands as per the Wetlands (Conservation and Management) Rules, 2017, in its draft report dated 18.06.2020.
- k) That the government of Kerala, 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. The CEO of Technopark vide letter dated 22.04.2021 requested for removal of the exempted survey nos. from the final wetland databank. It is submitted that, under the

proceedings of the sub-collector & sub-magistrate, in its order dated 04.08.2021, the sub-collector erroneously relied on the exemption already granted by GO (MS) No. 40/2018/Rev dated 03.02.2018, the said overlapping lands in question (Sy. nos. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358, 359) and held that the same are to be excluded from the final wetlands data bank. It is, however, significant to note that the sub-collector in its order dated 04.08.2021, held that *“the “thodu” passing between the survey numbers 290 and 291,292 and 288,286 and 293,285 and 293,281 and 284,282 and 283.355 and 354, 353 and 358, 352 and 359 & 359 and 365 in non-SEZ Area, and draining into the Thettiyar Thodu (shown in red in Annexure I) should not be diverted considering the natural stream it is. It shall be ensured that all subsequent conversion and action (aken in these survey numbers do not disturb or divert this “thodu” for any disturbance to this “thodu” may result in the disturbance to the natural drainage of water in adjacent properties and may result in water logging in adjoining areas during the rainy season.”*

Further, as per the erroneously granted GO (MS) No. 40/2018/Rev dated 03.02.2018, the government permitted conversion of the lands in question, provided the following survey nos. are kept apart for rain water harvesting: 291/2, 291/3, 291/10, 297/2, 297/3, 297/4, 297/5, 297/6, 297/7, 297/8, 297/9, 297/10, 297/11, 297/12, 297/13, 297/14, 297/15, 297/16, 297/18, 297/19, 297/20. It was noted by the sub-collector that no rain water harvesting measures are seen to be taken so far, although the order dated 03.02.2018 mandates water conservation measures to be taken prior to the conversion.

- 1) That 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.

- m) 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 the 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.
- n) 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. 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.

- o) That, such a project ought to have been appraised for grant of EC with utmost due diligence by strictly following the provisions of the EIA Notification, 2006, the application of the cardinal principles of sustainable development and precautionary principle. However, the manner in which the approval was granted reflects a highly casual approach in which the SEIAA as well as the SEAC was guided by the sole motive to grant EC to the project, with a complete disregard for the scoping and appraisal processed as envisaged under the EIA Notification, 2006. That the impugned Environmental Clearance suffers from the vice of illegality, irregularity and procedural impropriety. Hence, the 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 and that this Hon'ble Tribunal has admitted the present appeal under Section 16(h) of the National Green Tribunal Act, 2010, challenging the Environmental Clearance (EC) dated 06.03.2021 on substantive grounds, granted in connection with the Phase III establishment of Technopark, to be decided on merits. That the Appellant has been a primary party in litigations against the mass destruction of the Veli-Akkulam wetland ecosystem, in Original Application No. 875 of 2018 and Execution Application No. 39 of 2019, Hon'ble High Court of Kerala in Writ Petition (C) No. 4934 of 2021 and Hon'ble Supreme Court of India in Civil Appeal No. 2535 of 2020 advocating for protection of wetlands, as set forth in detail in Paras 4 ((l), (m), (n) of this Rejoinder. It is reiterated that the Civil Appeal 2535/2020 before the

Hon'ble Supreme Court, was filed on the ground that the disposal of the Execution Application by this 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. The Hon'ble Supreme Court. in Civil Appeal 2535/2020, dated 29 October 2020, held that *“Given the fact that the Collector has passed an order pursuant to the NGT's order dated 19.12.2018, it is clear that the execution application filed before the NGT has become infructuous. It is open to the petitioner to challenge the order of the Collector dated 30.04.2019 in accordance with law”*. Accordingly, the Appellant preferred a revision petition dated 08.12.2020 before the Government, in accordance with Section 28 of the Kerala Conservation of Paddy Land and Wetland Act, 2008, which is still pending. That the present appeal does not arise from any past litigations, pending or otherwise, but has been filed on fresh, substantive grounds under Section 16(h) of the National Green Tribunal Act, 2010, challenging the impugned EC dated 06.03.2021.

- That the contents of Para Nos. 3 to 6 require no response as these are factual averments relating to the incorporation of the Respondents, the acquisition of land by them, and the exemption granted to the Respondents by the government under Section 10 of the Kerala Conversion of Paddy Land and Wetland Act 2008. It is, however, submitted that there is a litany of evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder, and that the Revenue Divisional Officer, 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. However, 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.
- That the contents of Para No. 7 are wrong and denied. The Appellant has placed all the material documents before the Hon'ble Court. The data bank and the Basic Tax Register describe the land in question as ‘nilam’. The Respondents have presented an erroneous translation of ‘nilam’ land mentioned in the Basic Tax Register and portrayed the lands in

question to translate to ‘paddy lands’. 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 considered the term ‘nilam’ to literally mean wetland. 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).*

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, as stated in Para 4 (c) and (d) of this rejoinder. 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.*”

- That the contents of Para Nos. 8 and 9 are wrong and denied. There is a litany of evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder. Further, the local 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 inside Phase III (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 data bank as per Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021. The CEO of Technopark vide letter dated 22.04.2021 requested for removal of the exempted survey nos. from the final wetland database. It is submitted that, under the proceedings of the sub-collector, in its order dated 04.08.2021, the sub-collector erroneously relied on the exemption already granted by GO (MS) No. 40/2018/Rev dated 03.02.2018, the said overlapping lands in question (Sy. nos. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358, 359) and held that the same are to be excluded from the final wetlands data bank. It is submitted that the Revenue

Divisional Officer, vide GO 40 of 2018 dated 03.02.2018, has gravely erred in permitting the conversion of the lands in question by Technopark. However, 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.

- That the contents of Para No. 10 are wrong and denied. The CEO of Technopark vide its letter dated 26.12.2017, sought recommendation of the LLMC to convert ‘nilam’ land for public purpose. On the basis of this letter, the LLMC and SLMC conducted site inspections and came to the conclusion that the lands in question are indeed ‘wetlands’, and recommended issuance of ‘stop work’ notice to the Respondents. In addition, there is sufficient evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4(c) and (d) of this Rejoinder.
- That the contents of Para No. 11 are wrong and denied. It is denied that the lands in question are abandoned paddy lands, and that there is sufficient evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4(c) and (d) of this Rejoinder. Specifically, in its site inspection dated 01.01.2018, the Agricultural Officer observed that the Project Lands were bifurcated into Non-Special Economic Zone and the Special Economic Zone. With regard to the Non-Special Economic Zone, it was observed that there was a water body/canal measuring 10 feet in width, which terminates to Thettiyar Thodu, photographic evidence of which water body forms part of the said report. That in respect of the Special Economic Zone, it was observed that a lake measuring 8 to 10 acres was found on the Project Site, photographic evidence of which forms part of the said report. That the LLMC report dated 13.03.2019, titled ‘About the filling of wetland in Technopark Phase 3’, with 4 exhibits showing the status of water bodies, and effect of landfilling on the same, has concluded that “on verifying the satellite images submitted by KSREC, it is seen that the survey nos. come under the category of waterbodies. As per the rule of the Kerala Conservation of Paddy Land and Wet Land Act, 2005, the wetland should not be filled.” Further, the report of the Agricultural Officer dated 25.03.2019, on a joint site visit along with the village officials, containing sufficient photographic evidence of said waterbodies on the lands in question, notes that “During the joint investigation along with the village officials and I was convinced that the said property is a marshy and watery

area. It came to our notice during the visit that the said land is filled with soil.” It is also pertinent to note that the Land Revenue Commissioner vide letter dated 13.07.2021, has confirmed the existence of waterbodies on certain survey numbers in the lands in question.

- That the contents of Para No. 12 are wrong and denied. That, despite the body of evidence identifying the lands in questions as wetlands, 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 Act of 2008. However, it is reiterated that, given that the land in question is wetland and not paddy land, it could not have been so converted/reclaimed, by virtue of Section 11 of the Act of 2008. Further, as submitted by the Respondent, the revised NOC issued by the irrigation department dated, 17.04.2021, permits re-routing of the existing natural drain inside the Technopark II Campus. However, it is pertinent to note that this is in direct contravention of the order of the sub-collector & sub-magistrate dated 04.08.2021, where the sub-collector has held that *“the "thodu" passing between the survey numbers 290 and 291, 292 and 288, 286 and 293, 285 and 293, 281 and 284, 282 and 283, 355 and 354, 353 and 358, 352 and 359 & 359 and 365 in non-SEZ Area, and draining into the Thettiyar Thodu should not be diverted considering the natural stream it is. It shall be ensured that all subsequent conversion and action taken in these survey numbers do not disturb or divert this "thodu" for any disturbance to this "thodu" may result in the disturbance to the natural drainage of water in adjacent properties and may result in water logging in adjoining areas during the rainy season.”* . Significantly, the re-routing of the natural drain, and altering and alienating water bodies for industrial purposes cannot be permitted, under the guise of providing alternatives, as per the ruling of the Hon’ble Supreme Court in **Jitendra Singh v. MoEF&CC, in civil appeal No. 5109 of 2019, decided on 25.11.2019**, in which the Hon’ble Supreme Court held that **“The respondents’ scheme of allowing destruction of existing water bodies and providing for replacements, exhibits a mechanical application of environmental protection.** Although it might be possible to superficially replicate a water body elsewhere, however, there is no guarantee that the adverse effect of destroying the earlier one would be offset. Destroying the lake, would kill the vegetation around it and would prevent seepage of groundwater which would affect the already low water -table in the area. The people living around the lake would be compelled to travel all

the way to the alternative site, in this case allegedly almost 3 kilometres away. Many animals and marine organisms present in the earlier site would perish, and wouldn't resuscitate by merely filling a hole with water elsewhere. Further, the soil quality and other factors at the alternate site might not be conducive to growth of the same flora, and the local environment would be altered permanently. **The respondents' reduction of the complex and cascading effects of extinguishing natural water- bodies into mere numbers and their attempt to justify the same through replacement by geographically larger artificial water bodies, fails to capture the spirit of the Constitutional scheme and is, therefore, impermissible**". The Land Revenue Commissioner in his letter dated 13.07.2021, has also confirmed the existence of water bodies on certain survey numbers (sys nos. 290, 352, 353 and 365) in the lands in question, and has relied on the judgement of the Hon'ble Supreme Court in **Jitendra Singh v. MoEF&CC**, to prevent reclamation and conversion of the same.

- That the contents of Para Nos. 13 are wrong and denied. That, despite the substantial evidence (in Para 4 (c) and (d) of this Rejoinder) to show that the lands in question are wetlands, on which there is a total embargo on conversion as envisaged under Section 11 of the Act of 2008, 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, unfortunately relying solely on the letter of the District Collector dated 19.01.2018 to the Chief Secretary, recommending such conversion. It is submitted that the District Collector, for reasons unknown, concealed the reports of the 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. It is pertinent to note that the request for site inspection was from CEO of Technopark dated 18.01.2018, however as per the response to RTI dated 14.12.2020, the public information officer has submitted that no records of site inspection by Tehsildar, nor any copy of the entry pass are available with them.

- That the contents of Para No. 14 are wrong and denied. There is sufficient evidence to show that lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder, and that the resolution of the Attipra Ward Council dated 05.02.2019, for revival and restoration of wetlands to its original condition, was passed, stating that “(Reclamation will lead to)..the drastic depletion of ground water level, creation of extreme drought like situation in the coastal regions and extreme flooding during the monsoon season. Therefore, it is sought through this resolution that the act of reclamation of such wetlands and paddy fields which is causing harm to the environment and the existence of flora and fauna in the region should be stopped urgently under the Kerala Conservation of Paddy Land and Wetland Act, 2008 and action should be taken to restore the above-mentioned wetland and streams”. Accordingly, it was decided that the subject should be examined by the Corporation Level- Regional Monitoring Committee, under the Act of 2008.
- That the contents of Para No. 15 are wrong and denied. That the LLMC report dated 13.03.2019, is itself titled ‘About the filling of wetland in Technopark Phase 3’, and does not confirm the status of lands as paddy lands. The the reclamation of which will adversely affect the surrounding environment and cultivation and is likely to result in waterlogging and flooding, considering that the area is already flood-prone, as highlighted in Para 4(b) of this Rejoinder. Attipra Village Officer, vide letter dated 8/10/2021, has confirmed flooding in the years 2018, 2019, 2020 and 2021 in Attipra village (where the lands in question are located), and that relief camps had to be set up for rescue and relief. Further, the Agriculture Officer in its report dated 03.01.2018 expressed concerns about the flood-prone location of Technopark phase III that “during the flood of 2018, 40 residents residing nearby were also shifted to another place. By filling this area there will be a situation for flood in future and also the well will become dry.” Further, the LLMC in its report dated 13.03.2019 , the Executive Engineer of the Irrigation Department in its letter dated 14.12.2018, the Sub-Collector in its order dated 04.08.2021 and have all unanimously expressed concerns of water logging, flooding and environmental problems of the lands in question in the highly populated region where Technopark Phase III is being established, upon reclamation. Further, as per GO (MS) No. 40/2018/Rev dated 03.02.2018, the government permitted conversion of the lands in question, provided the following survey nos. are kept apart for rain water harvesting: 291/2, 291/3, 291/10, 297/2, 297/3, 297/4,

297/5, 297/6, 297/7, 297/8, 297/9, 297/10, 297/11, 297/12, 297/13, 297/14, 297/15, 297/16, 297/18, 297/19, 297/20. It was noted by the sub-collector that no rain water harvesting measures are seen to be taken so far, although the order dated 03.02.2018 mandates water conservation measures to be taken prior to the conversion. It is submitted that violation of this order upon which the Respondents are placing so much reliance, and the lack of rain-water harvesting measures also exacerbates the flooding problem on the Technopark project site.

- That the contents of Para Nos. 16 and 17 are wrong and denied. There is substantial evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder, including the response to RTI by the Revenue Department dated 29.11.2019, which referred to and confirmed the findings of the SLMC report dated 5.01.2018, identifying the lands in question as wetlands. Further, the revenue records, BTR and data banks refer to the lands in question as 'nilam'. 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 considered the term 'nilam' to literally mean wetland. 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).*

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, as stated in Para 4 (c) and (d) of this rejoinder. 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."*

- That the contents of Para Nos. 18 and 19 are wrong and denied. The lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder, including the Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated

28.01.2021, which confirmed that the overlapping lands in question owned by Technopark inside Phase III (Sy. nos. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358, 359) have been identified and included as wetlands in the final data bank. That since 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, and that the Revenue Department made a grave error in not relying on the reports of the local authorities under the Paddy Act, and granted exemption to convert said lands in question vide GO 40 of 2018 dated 03.02.2018.

- That the contents of Para Nos. 20 and 21 are wrong and denied. That there is sufficient evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder. That since 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. And further, Section 10 of the said Paddy Act, which is only applicable to paddy lands, would not be applicable in this case.
- That the contents of Para No. 22 is wrong and denied. As per the site inspection conducted on 01.01.2018 by the Attipra agricultural officer, it is reported that there exists a water body/canal on the lands in question, and that its natural flow is being obstructed due to deposit of waste, which is affecting the nearby environment and cultivation. It is significant to note that the prior environmental clearance dated 07.06.2019, granted by the MoEF&CC was subject to a specific condition that no construction shall be allowed to obstruct the natural drainage through the site, on wetland and water bodies. Further, the Superintendent Engineer of the Minor Irrigation Department issued a letter to the CEO, Technopark, dated 19.12.2018, sounding the alarm with regard to the serious issue of encroachment of the water body as a result of the encroachments of the Technopark. It was noticed that the width of the natural drain was originally 20-24 meters but this had been substantially reduced to 10m as a result of the encroachments on either side of the drain.
- That the contents of Para No. 23 is wrong and denied. 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 databank as per the Kerala Government Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021, issued by the Govt. of Kerala. That, given the substantial evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder, the veli-akkulam wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2017, meaning thereby that there is an embargo on the conversion of these wetlands.

- That the contents of Para No. 24 requires no response as it merely states the definitions of ‘paddy land’ and ‘wetlands’ as provided under the Kerala Conservation of Paddy Land and Wetland Act, 2008.
- That the contents of Para No. 25 are wrong and denied. There is sufficient evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder, and that these lands do not fall under the definition of ‘paddy lands’ as envisaged under the Kerala Conservation of Paddy Land and Wetland Act, 2008. “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*”. It is submitted that the Veli backwaters and the Veli-Akkulam coastal wetland ecosystem falls squarely within this definition as per the Act of 2008.
- That the contents of Para No. 26 is wrong and denied. That the overlapping lands in question (Sy. nos. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358, 359)

have been identified as wetlands, and included in the final databank of paddy lands and wetlands as per Notification No. E16/51965/17 dated 22.01.2021 vide EO Gazette No. 342 dated 28.01.2021. The Respondent No. 7, vide letter dated 22.04.2021 requested for removal of the exempted survey nos./lands in question from the final wetland databank. It is submitted that the sub-collector, by its order dated 04.08.2021, erroneously relied on the wrongfully granted exemption, granted by the Revenue Department vide GO (MS) No. 40/2018/Rev dated 03.02.2018, and held that the overlapping lands in question are to be excluded from the final wetlands data bank. It is submitted that the Revenue Divisional Officer, 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. However, 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, for any purpose, public or private.

- That the contents of Para No. 27 is wrong and denied. The Appellant reiterates that the lands in question are wetlands. In this regard, 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, for any purpose, public or private.
- That the contents of Para No. 28 and 29 are wrong and denied. There is a litany of evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder. The order of the District Collector No. B7/1659/2018 dated 30.04.2019 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 as per law. Thus, 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.
- That the contents of Para Nos. 30 and 31 are incomplete and misleading. It is true that this Ld. Tribunal disposed of the O.A. No. 71/2019, filed by one Sanjeev S.J., however, it was disposed of stating that the proposed expansion may not be carried out till requisite

clearances are granted, i.e. consent to establish from the pollution control board for the additional built up area, and that the EIA study will need to consider the cumulative impact of the proposed expansion. It is pertinent to note that, as to date, no such cumulative impact assessment has taken place. It is true that this Ld. Tribunal disposed of the Execution Application No. 39 of 2019 in O.A. No. 875 of 2018 against the order of the Collector dated 30.04.2019, however it was disposed 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. It is also pertinent to note that the Tribunal has original and appellate jurisdiction with regard to the implementation of seven environmental laws, as under the National Green Tribunal Act, 2010. That the O.A. No. 875 of 2018, and the consequent Execution Application No. 39 of 2019 was admitted under this Ld. Tribunal's original jurisdiction. However, in admitting the current appeal, the Ld. Tribunal is exercising its appellate jurisdiction by which regulatory approvals or consent granted (or rejected) by the relevant government agency can be challenged. Section 16(h) of the National Green Tribunal Act, 2010 specifically permits appeals against granting environmental clearances.

- That the contents of Para No. 32 are wrong and denied, and that his Hon'ble Tribunal has admitted the present appeal under Section 16(h) of the National Green Tribunal Act, 2010, challenging the Environmental Clearance (EC) dated 06.03.2021 on substantive grounds, granted in connection with the Phase III establishment of Technopark, to be decided on merits. That the Appellant has been a primary party in litigations against the mass destruction of the Veli-Akkulam wetland ecosystem, in Original Application No. 875 of 2018 and Execution Application No. 39 of 2019, Hon'ble High Court of Kerala in Writ Petition (C) No. 4934 of 2021 and Hon'ble Supreme Court of India in Civil Appeal No. 2535 of 2020 advocating for protection of wetlands, as set forth in detail in Paras 4 ((l), (m), (n) of this Rejoinder. It is reiterated that the Civil Appeal 2535/2020 before the Hon'ble Supreme Court, was filed on the ground that the disposal of the Execution Application by this 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. The Hon'ble Supreme Court. in Civil Appeal 2535/2020, dated 29 October 2020, held that

*“Given the fact that the Collector has passed an order pursuant to the NGT’s order dated 19.12.2018, it is clear that the execution application filed before the NGT has become infructuous. It is open to the petitioner to challenge the order of the Collector dated 30.04.2019 in accordance with law”.* Accordingly, the Appellant preferred a revision petition dated 08.12.2020 before the Government, in accordance with Section 28 of the Kerala Conservation of Paddy Land and Wetland Act, 2008, which is still pending. That the present appeal does not arise from any past litigations, pending or otherwise, but has been filed on fresh, substantive grounds challenging the impugned EC dated 06.03.2021..

- That the contents of Para No. 33 are true and 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 Act of 2008. The Government of Kerala has continuously been stalling on a decision on the said revision petition of the Appellant despite the said order of the Hon’ble Supreme Court dated 29 October 2020. The Appellant thereafter approached the Hon’ble Kerala High Court vide W.P. (C) No. 4934 of 2021 seeking consideration of his revision. The Hon’ble Kerala High Court vide order dated 25.03.2021 disposed of the Appellant’s writ petition by directing the Government of Kerala to hear and pass orders as expeditiously as possible, with four months from the date of receipt of a copy of the order. It may be noted that a decision is still pending on the revision preferred by the Appellant since 8 December 2020. It is pertinent to note that these pending proceedings have been completely omitted for consideration by the SEAC in its decision to grant EC.
- That the contents of Para No. 34 are wrong and denied. There is substantial evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder. Moreover, the Agricultural Officer in a letter dated 03.01.2018 reported that the water body of approximately 9 acres is being illegally reclaimed by way of dumping soil, and requested issuance of a stop memo to the Respondents. The Sub-collector also wrote to the RDO, to take immediate steps in this regard. Further, in the response to an RTI filed by the Appellant on 02.02.2021, Technopark categorically stated that the lands in question are not wetlands. That the response to another RTI filed earlier on 29.03.2011 was enclosed along with the response dated 05.03.2021. In this response,

Technopark stated that 15.5 acres of marshy wet lands had been filled in the project site for the purpose of constructing IT buildings.

- That the contents of Para Nos. 35, 36 and 37 are wrong and denied. That there has been wilful material concealment in Form 1 and Form 1-A submitted to the State Environmental Impact Assessment Authority ('SEIAA') in 2019, which forms the basis of the entire appraisal process, and that, such concealment of presence of wetlands, *inter alia*, would lead to vitiating the entire Environmental Clearance process. As per letter dated 26/12/2017, by the CEO of Respondent No. 7, some lands in question were marked as 'Nilam', in the data bank for which recommendations from the LLMC were sought for construction activities. Despite this knowledge, there has been no mention of presence of any 'nilam' lands or the Veli-Akkulam wetland ecosystem or any 10 acre pond/water body in Form 1 and Form 1-A submitted to the SEIAA. In its site inspection dated 01.01.2018, the Agricultural Officer observed the existence of a lake measuring 8 to 10 acres on the Project Site, in the Special Economic Zone and a natural pond in non-SEZ area. He observed that reclamation of the land had already begun. In light of this, the Agricultural Officer reported that land filling should be stopped immediately. On later site visits of 01.01.2019 (LLMC report dated 03.01.2019), it was noted by the LLMC that 90% of the land had been filled with soil by this date, and construction was ongoing. Further, Technopark itself has admitted that 100,000 Cubic Meters of truck loads of foreign soil was bought from outside Technopark Campus in answer to RTI query "How many cubic meters of foreign soil filled in this 10 acres SEZ area?", in response to an RTI query dated 24.12.2020. It is submitted that the Respondents had already begun development activities on the project site, without waiting for the final Environmental Clearance from the MoEF&CC dated 07.06.2019, or NOC from the Kerala State Pollution Board, in blatant violation of the existing laws.
- That the contents of Para Nos. 38 and 39 are wrong and denied. There is a host of evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder. Further, it is reiterated 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. 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 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.

- As regards Para Nos. 40 and 41, the Appellant reiterates the presence of wetlands overlapping the lands in question, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder. Further, the NOC issued by the irrigation department dated, 17.04.2021, which permits diverting the drain after meeting specific conditions, is in direct contravention of the order of the sub-collector dated 04.08.2021, where the sub-collector has held that *"the thodu" passing between the survey numbers 290 and 291, 292 and 288, 286 and 293, 285 and 293, 281 and 284, 282 and 283, 355 and 354, 353 and 358, 352 and 359 & 359 and 365 in non-SEZ Area, and draining into the Thettiyyar Thodu should not be diverted considering the natural stream it is. It shall be ensured that all subsequent conversion and action (taken in these survey numbers do not disturb or divert this "thodu" for any disturbance to this "thodu" may result in the disturbance to the natural drainage of water in adjacent properties and may result in water logging in adjoining areas during the rainy season."*
- The contents of Para No. 42 require no response, as they merely state that the Respondent has no direct knowledge of many of the contentions of the Appellant, and may be answered by the concerned respondent.
- The contents of Para Nos. 43, 44 and 45 are wrong and denied. There is a litany of evidence to show that the lands in question are wetlands, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder. The local authorities, government officials and committees authorized under the Kerala Conservation of Paddy Land and Wetland Act, 2008, 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 understand the ground realities and support the Appellant's stand that the lands in question are wetlands.

- As regards Para No. 46, it is submitted that in the minutes of the 118th meeting of the SEAC dated 01.02.2021, while deciding to recommend the issuance of EC to Dragonstone, the SEAC erroneously observed that no proceedings are pending against the Project Proponent. 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. It may be noted that a decision was still pending on the revision preferred by the Appellant since 8 December 2020, at the time of the 118th meeting. It is vehemently denied that the pending revision would have no bearing on the SEIAA or SEAC processing the application for EC and granting the same, since the subject matters are so intertwined, and the outcome of the pending revision could have a direct impact on the process of granting environmental clearance with respect to wetlands.
- As regards Para No. 47, it is submitted that Rule 27 of the Kerala Municipality Building Rules, 2019, provides for the calculations of floor space index which limits the maximum building area. Rule 27 (iv) specifies that in the case of Government owned Information Technology Parks, Government approved private Information Technology parks, Government approved private Information Technology buildings, under Group E occupancy, the maximum permissible F.S.I. shall be 4 and the maximum permissible coverage shall be 60%. As per the calculations under said rules, the built-up area applied for in the Environmental Clearance is evidently 8.8 times the size. The SEAC evidently failed to notice this flagrant violation of the Kerala Municipal Building Rules, 2019.
- As regards Para No. 48, the Appellant reiterates the presence of wetlands overlapping the lands in question, as averred by the Appellant in Para 4 (c) and (d) of this Rejoinder.
- That the contents of Para Nos. 49, 50 and 51 need no response.
- 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.

*Shank*

**APPELLANT**

**THROUGH**

*Srishti Agnihotri*

**RITWICK DUTTA**

**RAHUL CHOUDHARY**

**SRISHTI AGNIHOTRI**

**G. STANLY HEBZON SINGH**

**DRAWN BY:**  
VERA SHRIVASTAV  
ADVOCATE

**ADVOCATES FOR THE APPELLANT**

N-71, LOWER GROUND FLOOR,

GREATER KAILASH-I

NEW DELHI - 110048

**PLACE: NEW DELHI**

**DATE: 21.01.2022**

**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.

Verified at

on this the

day of November, 2021.



*Shank*

**APPELLANT**

**S. PRAMOD LL.B., M.B.L.**  
ADVOCATE & NOTARY  
Vanchiyoor  
Thiruvananthapuram  
Kerala State, India - 695 035  
Mob: +91-94487-XXXXXX

**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.

*Thomas Lawrence*

**DEPONENT**

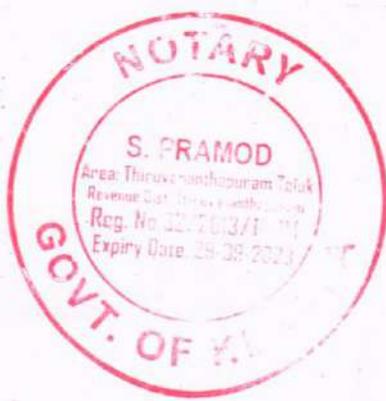
**VERIFICATION**

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.

*Thomas Lawrence*

**DEPONENT**

**ATTESTED**



  
**S. PRAMOD LL.B., M.B.L.**  
**ADVOCATE & NOTARY**  
 Vanchiyoor  
 Thiruvananthapuram  
 Kerala State, India - 695 035  
 Mob: +91- 9446704419  
 22/11/2021