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

ORIGINAL APPLICATION NO. 127 of 2024 (SZ)

IN THE MATTER OF

Mrs. Neena.S,
Mangalore – 575 001 and 4 others ... Applicants

and

The Joint Chief Controller of Explosives,
South Circle, Chennai,
Petroleum and Explosives Safety Organisation (PESO),
Nungambakkam, Chennai – 600 006 and 3 others … Respondents.

COMMON I N D E X

Sl. No	Date	Description of Document	Page Nos
1	19.02.2026	Dates and Events filed on behalf of the Applicants – **Annexure - 1**	1 - 4
2	19.02.2026	Additional Documents filed on behalf of the Applicants with Index. – **Annexure – 2 to 7**	5 – 19
3	19.02.2026	Compilation of Judgments filed on behalf of the Applicants with Index. – **Annexure – 8 to 10**	20 - 101
4	20.02.2026	Proof of circulation through email among the Counsels for the Respondents.	102

Place : Chennai

Date : 20.02.2026

Filed by :

V.B.R. MENON
Counsel for Applicants
Mobile : 9384762930
E-mail : vbrmenon@gmail.com

Annexure - 1

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

(Under Section 18(1) read with Section 14 (i) of
National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO. 127 of 2024 (SZ)

Between ;
Mrs. Neena.S,
No.23-9/744/3, Premier Aristo Apartments,
Flat No. 02, Ground Floor,Mangaluru Thota Village,
Mangalore – 575 001 and 4 Others … Applicants
.

and

The Joint Chief Controller of Explosives,
South Circle, Chennai,
Petroleum and Explosives Safety Organisation (PESO),
A and D Wing, Block 1-8, 2nd Floor,
Nungambakkam, Chennai – 600 006 and 3 others … Respondents.

DATES AND EVENTS

S. No.	Date	Description
1	24.05.2010	**Completion/ Occupancy Certificate of Premier Aristo Apartment building consisting of 18 residential flats, 4 flats in each floor with 2 flats and a restaurant in ground floor.**
2	22.07.2019	Final Order passed by the Hon'ble Principal Bench, New Delhi in OA No. 31/2019 with OA No. 86/2019 prescribing Siting Criteria for Petroleum Retail Outlets across India
3	**30.10.2019**	**Prior approval for establishing a CNG filling-cum-storage facility granted by R-1**
4	07.01.2020	Office Memorandum No. B-13011/ 1/2019-20 /AQM/10802-10847 issued by CPCB prescribing Siting Criteria for new Petrol Pumps

5	**02.09.2021**	**NOC issued by 2nd Respondent to 4th Respondent with validity of 2 years and a separate NOC for Auto LPG dispensing unit *without verifying CPCB Siting Criteria as there was no approved site plan*.**
6	**01.07.2022**	**Final Order passed by this Hon'ble Tribunal in a similar case in OA No. 176 of 2020 (SZ)**
7	09.03.2023	Representation sent to the 2ND Respondent objecting to the Petrol Pump station in violation to CPCB Siting Criteria.
8	09.03.2023	Objection letter sent by local residents to the 3rd Respondent
9	14.03.2023	Judgment passed by the Hon'ble Apex Court in IOCL Vs. VBR Menon, reported in (2023) 7 SCC 368 directing enforcement of CPCB Siting criteria
10	**12.04.2023**	**Site Layout Drawing approved by 1st Respondent and issued to the 4th Respondent showing adjacent buildings falsely as " commercial"**
11	**23.04.2023**	**Property Tax Receipt and Assessment Order of the Proposed Site showing it under Residential category.**
12	28.04.2023	Representation sent to the 2nd Respondent seeking cancellation of NOC issued by the 1st Respondent to the 4th Respondent
13	16.06.2023	Memorandum issued by CPCB to the State PCBs to ensure enforcement of CPCB Siting Criteria and guidelines.
14	**13.10.2023**	**Final Order of Hon'ble Apex Court in Civil Appeal No. 5763 of 2022, IOCL Vs. VBR Menon , without interfering with the Order passed by this Hon'ble Tribunal in OA No. 176 of 2020 (*Item No. 6 above*)**
15	2023	SOP notified by the 1st Respondent mandating compliance of CPCB Siting Criteria prior to issuance of Final Licence.

16	19.01.2024	Application submitted by 4th Respondent for Final Explosive Licence to the 1st Respondent with an "**expired NOC**".
17	14.02.2024	Letter sent by 1st Respondent to 4th Respondent seeking explanation on the complaint dated 12.02.2024 received from the Apartment Association
18	**15.02.2024**	**Final Order passed by the Hon'ble First Bench of Madras High Court in WP No.2095 of 2021 prescribing the due procedure for issuing NOC and Licences by the Authorities.**
19	**19.02.2024**	**Revised Site Layout drawing approved by 1st Respondent showing adjacent buildings as "Apartments" and independent buildings.**
20	14.03.2024	MUDA issued a letter stating that the proposed site is eligible for conversion to commercial category as per Master plan(***However, no conversion in a manner known to law has taken place till now***)
21	**28.03.2024**	**Final Explosive License issued in Form No. XIV by the 1st Respondent to 4th Respondent , valid 31.12.2026 based on an expired NOC and without verifying compliance of CPCB Siting Criteria.**
22	**14.05.2024**	**Show Cause notice issued by the 1st Respondent to the 4th Respondent in respect of penal action initiated by PESO , Chennai for violation of CPCB Siting Criteria.**
23	28.05.2024	RTI reply received from 1st Respondent confirming that site photographs showing completion of Site works were not submitted by the 4th Respondent while applying for Licence in violation to conditions annexed to the order of prior site approval .
24	**08.07.2024**	**Notice issued to the 4th Respondent by the 1st Respondent rejecting the reply submitted against the Show Cause Notice dated 14.05.2024**

25	**19.07.2024**	**Notice issued to the 4th Respondent by the 1st Respondent that further action will be taken on receipt of the Order from NGT, SZ.**
26	25.06.2025	Judgment and Final order passed in OA No. 188 of 2024 (SZ) by this Hon'ble Tribunal **with purposeful interpretation of " designated residential area"**
27	2024-25	**Property Tax Receipts of Applicants show that their premises are under Residential Category (4 nos.)**

Dated at Chennai this the 19th day of February, 2026

Counsel for Applicants

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE SITTING AT CHENNAI
(Under Section 18(1) read with Section 14 (i) of
National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO. 127 of 2024 (SZ)

Between ;
Mrs. Neena.S,
Mangalore – 575 001 and 4 Others … Applicants.

and

The Joint Chief Controller of Explosives,
Petroleum and Explosives Safety Organisation (PESO),
Nungambakkam, Chennai – 600 006 and 3 others … Respondents.

I N D E X TO ADDITIONAL DOCUMENTS

Sl. No	Date	Description of Document	Page No.
1	17.10.2007	Property Conversion Order of S.No. 643/1P1 , Applicant's Apartment premises **to residential category** with translation. -**Annexure - 2**	5 - 9
2	24.05.2010	Licence issued to construct the Premier Aristo Apartment consisting of 18 residential Flats , 4 on each floor and 2 in ground floor , a restaurant in the remaining ground floor area with translation. – **Annexure - 3**	10 – 11
3	2024-2025	Property Tax Payment receipts of the Applicants showing their premises **under Residential category** as per Corporation records (4 Nos.)-**Annexure -4**	12 – 15
4	----	True copy of the Extract of the Functions of Urban Development Authority . -**Annexure - 5**	16
5	—-	True copy of the SOP notified for submission of documents while applying for Final Explosive Licence including compliance certificate of CPCB Siting Criteria – **Annexure - 6**	17 - 18
6	—--	**Approved Building Plan of the Premier Aristo Apartment building consisting of 18 Residential Flats – Annexure - 7**	19

Dated at Chennai on this 19th Day of February, 2026

Counsel for Applicants.

[e]

ಟಿ.ಎಲ್.ಎನ್.ಎ./ಸಿ.ಆರ್./ (e) 605 / 2007-08

ತಾಲೂಕು ಕಛೇರಿ
ಮಂಗಳೂರು
ದಿನಾಂಕ 12/10/07.

ಹಿಂಬರಹ

ಮಂಗಳೂರು ತಾಲೂಕು ಎಕ್ಕಾರುಕೋಡಿ ಕೋಟೆ ಗ್ರಾಮದ ~~ಈಪಡೆ ಮನೆ~~
~~ಮುಗಬುಸೆಂಡತಿ~~ ವಿಶಾಂತ ಕುಂ ಚೌದ್ರಿ ಶೆ/ಪಿಕೆ
ಪಿ ಸ್ಟೀವಿ ಕುಂ ಬಿ.ಎನಾಥಿ

ರವರು ಈ ಕೆಳಗೆ ಕಾಣಿಸಿದ ಜಮೀನನ್ನು ವಾಸ್ತವ್ಯದ / ~~ಕೃಷಿಕಾರ್ಯದ~~ ಪರಿವರ್ತನೆಗೆ 1966ರ ಕರ್ನಾಟಕ ಭೂಕಂದಾಯ ನಿಯಮಗಳ 106ಎಯಲ್ಲಿ ತಿಳಿಸಿದಂತೆ ನಮೂನೆ 21ಎ ನೀಡಿದ ಸೂಚನಾಪತ್ರ ಸ್ವೀಕೃತವಾಗಿದೆ. ಅಲ್ಲದೆ ಅವರು ಪಾವತಿಸಿದ ಪರಿವರ್ತನಾ ಶುಲ್ಕ ಹಾಗೂ ಸಬ್ ಡಿವಿಜನ್ ಫೀಸು ಈ ಕೆಳಗಿನಂತಿರುತ್ತದೆ. ಕಟ್ಟಡಗಳನ್ನು ನಿರ್ಮಾಣ ಮಾಡುವಾಗ ಈ ಕೆಳಗಿನ ಷರತ್ತುಗಳನ್ನು ಅರ್ಜಿದಾರರು ಕಡ್ಡಾಯವಾಗಿ ಪಾಲಿಸತಕ್ಕದ್ದು.

ಷರತ್ತುಗಳು

1. ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ, ರಾಜ್ಯ ಹೆದ್ದಾರಿ, ಜಿಲ್ಲಾ ಹೆದ್ದಾರಿ ಹಾಗೂ ಇತರ ರಸ್ತೆಗಳ ಇಕ್ಕೆಲಗಳಲ್ಲಿ ಪರಿವರ್ತಿತ ಜಮೀನಿನಲ್ಲಿ ಕಟ್ಟುವ ಕಟ್ಟುವಾಗ ಭೂಪರಿವರ್ತನ ನಿಯಮ ಹಾಗೂ ಇತರ ಸಂಬಂಧಪಟ್ಟ ಇಲಾಖಾ ನಿಯಮಾನುಸಾರ ನಿರ್ದಿಷ್ಟಪಡಿಸಿದ ಮಾರ್ಜಿನ್ ಕಡ್ಡಾಯವಾಗಿ ಬಿಡತಕ್ಕದ್ದು. ರಸ್ತೆ ಮಾರ್ಜಿನ್ ಉಪಯೋಗದ ಬಗ್ಗೆ ಸಂಬಂಧಪಟ್ಟ ಇಲಾಖೆಗಳ ನಿಯಮಗಳನ್ನು ಕಡ್ಡಾಯವಾಗಿ ಪಾಲಿಸತಕ್ಕದ್ದು.
2. ಪರಿವರ್ತಿತ ಜಮೀನಿನ ತಗ್ಗು ಪ್ರದೇಶಗಳನ್ನು ಮಣ್ಣು ತುಂಬಿಸಿ ಎತ್ತರಿಸುವಾಗ ಸ್ಥಳೀಯ ಪ್ರಾಕೃತಿಕ ಸ್ಥಿತಿಗನುಗುಣವಾಗಿ ನೀರಿನ ಹರಿವಿಗೆ ಯಾವುದೇ ತಂದರೆಯಾಗದಂತೆ ವ್ಯವಸ್ಥೆ ರೂಪಿಸಿಕೊಳ್ಳಬೇಕು. ನೆರೆ ಪರಿಸ್ಥಿತಿ ಉಂಟಾಗದಂತೆ ಮುಂಜಾಗ್ರತಾ ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕು.
3. ತಗ್ಗು ಪ್ರದೇಶದಲ್ಲಿ ಮಣ್ಣು ತುಂಬಿಸಿ, ಎತ್ತರಿಸಿ ಬಳಸುವಾಗ ಇತರರ ವೈಯಕ್ತಿಕ ಹಾಗೂ ಸಾರ್ವಜನಿಕ ದಾರಿಯ ಹಕ್ಕು ಹಾಗೂ ಇತರ ಮಾಮೂಲಿ ಹಕ್ಕುಗಳಿಗೆ ಯಾವುದೇ ಧಕ್ಕೆಯಾಗಬಾರದು.
4. ಮೇಲ್ಕಂಡ ಜಮೀನು ಸ್ವರೂಪ ಬದಲಾವಣೆಯಿಂದ ಸಾರ್ವಜನಿಕ ಆರೋಗ್ಯಕ್ಕೆ ಅಡಚಣೆಯಾಗುವಂತಹ ಮತ್ತು ಸಾರ್ವಜನಿಕ ಹಿತಾಸಕ್ತಿಗೆ ಕಿರುಕುಳ ಉಂಟಾಗುವ ಯಾವುದೇ ಸಂದರ್ಭ ಉಂಟಾಗಬಾರದು.
5. ರಸ್ತೆ ಬದಿಯ ಜಮೀನು ಅಭಿವೃದ್ಧಿ ಪಡಿಸುವಾಗ ರಸ್ತೆ ಮಾರ್ಜಿನಿನಿಂದ ಖಾಸಗಿ ಜಮೀನನ್ನು ಬೇರ್ಪಡಿಸುವಲ್ಲಿ ಚರಂಡಿ ಹಾಗೂ ಗೋಡೆಗಳನ್ನು ರಚಿಸುವ ಮೊದಲು ಅಂತಹ ಕಾಮಗಾರಿಕೆ ಸಂಬಂಧಪಟ್ಟ ಇಲಾಖೆಗಳಿಂದ ಕಡ್ಡಾಯವಾಗಿ ಪೂರ್ವಾನುಮತಿ ಹಾಗೂ ತಾಂತ್ರಿಕ ಅನುಮೋದನೆ ಪಡೆದುಕೊಳ್ಳಬೇಕು.
6. ಮೇಲ್ಕಂಡ ನಿರ್ದೇಶನಗಳ ಉಲ್ಲಂಘನೆ ಹಾಗೂ ಇನ್ಯಾವುದೇ ರೀತಿಯಲ್ಲಿ ಪರಿವರ್ತಿತ ಜಮೀನು ಸಾರ್ವಜನಿಕ ಹಿತಾಸಕ್ತಿಗೆ ವಿರೋಧವಾಗುವ ರೀತಿಯಲ್ಲಿ ಅಡಚಣೆ, ಕಿರುಕುಳವಾಗುವ ರೀತಿಯಲ್ಲಿ ಬಳಕೆಯಾದಲ್ಲಿ ಕ್ರಿಮಿನಲ್ ಪ್ರೊಸೀಜರ್ ಕೋಡ್‌ನ ಕಲಂ 133ರ ಕ್ರಮಕ್ಕೆ ಅಂತಹವರು ವಿಧೇಯವಾಗಬೇಕಾಗುತ್ತದೆ. ಪ್ರಾಕೃತಿಕವಾಗಿ ಹರಿಯುವ ನೀರಿನ ದಿಕ್ಕನ್ನು ಬದಲಾಯಿಸಬಾರದು.

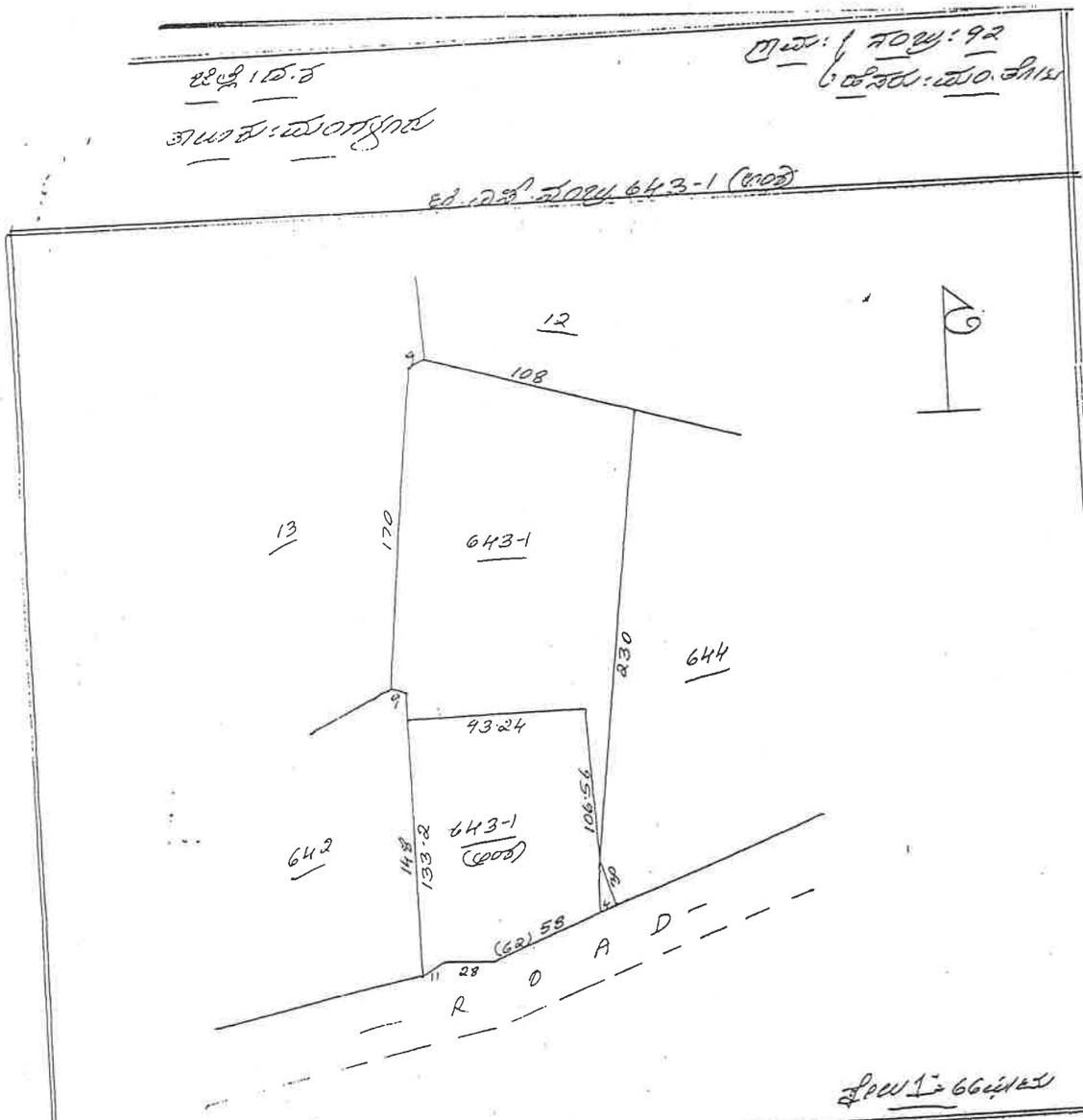
ಗ್ರಾಮ	ಸರ್ವೆ ನಂಬ್ರ	ವಿಸ್ತೀರ್ಣ	ಪಟ್ಟಾದಾರರ ಹೆಸರು	ಪಾವತಿಸಿದ ಪರಿವರ್ತನ ಶುಲ್ಕ	ಸ.ಡಿ. ಫೀಸು	ಚಲನ್ ನಂ. ಮತ್ತು ದಿನಾಂಕ
ಎಕ್ಕಾರುಕೋಡಿ ಕೋಟೆ	643 1ಎ1	0.26.60	ವಿಶಾಂತ ಕುಂ ಚೌದ್ರಿ ಶೆ/ಪಿಕೆ ಪಿ ಸ್ಟೀವಿಕುಂ ಬಿ-ಎನಾಥಿ	8199/-55/-163 16-10-07		

ತಹಸೀಲ್ದಾರ್ ಮಂಗಳೂರು
MANGALORE TALUK

ಪ್ರತಿ : 1. ಅರ್ಜಿದಾರರಿಗೆ
2. ಎಂಆರ್‌ಶಾಖೆಗೆ - ಪಹಣಿ ಪತ್ರಿಕೆಯಲ್ಲಿ ಸೂಕ್ತ ದಾಖಲೆಗಳನ್ನು ಮಾಡುವ ಬಗ್ಗೆ ಹಾಗೂ ಮೇಲ್ಕಾಣಿಸಿದ ಜಮೀನಿನ ಭೂಕಂದಾಯವನ್ನು ವಿರಹಿತಗೊಳಿಸುವ ಬಗ್ಗೆ.

NOTARY RAVIVARMA Notary D.K. Dist. MANGALORE KARNATAKA GOVT OF INDIA
TRUE COPY

This is the True copy of the Original / Certified / Notarised Document Produced before Me.
28/12/18
Ravivarma, Notary
D.K. District



ಸ.ನಂ./ಸ.ನಂ.	ವಿಸ್ತೀರ್ಣ	ವಿವರಗಳನ್ನು	ಷರಾ
643-1 (ಭಾಗ)	ಎಕರೆ-ಗುಂ	ಪ್ರಸ್ತಾವಿತ ಸಾರ್ವಜನಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಳ್ಳಲಾಗಿದೆ	
	0-26-60		

ಕಂದಾಯ ನಿರೀಕ್ಷಕರ ಸಹಿಯಿಂದ ಪ್ರತಿಯನ್ನು ಪಡೆದುಕೊಳ್ಳಲಾಗಿದೆ.

NOTARY
RAVIVARMA
Notary D. K. Dist.
MANGALORE
KARNATAKA
REGD. No. 5186
GOVT OF INDIA
TRUE COPY

//Translated copy//

LNA/CR/ 605/ 2007-08

Taluk Office,
Mangaluru
Dt. 17-10-2007

ENDORSEMENT

The application submitted by 1) Shantha, w/o Chandrashekhar, 2) Nalini, w/o M.P. Nani of Mangaluru Thota village, Mangaluru Taluk in Form 21A as per Rule 106 of Karnataka Revenue Rules 1966 for the conversion of the below mentioned land for residential purpose has been accepted. Also, the conversion fee and sub-division fee paid by them are as follows. The applicants must compulsorily comply with the following conditions while constructing the buildings.

CONDITIONS

1. While constructing a building on the converted land on either side of the National High way, state high way, District High way and other roads, the margin specified in the Land Conversion Rules and other relevant departmental rules shall be mandatorily left. The rules of the concerned departments regarding the use of road margins must be mandatorily followed.

2. While filling and raising the low-lying areas of the converted land with soil, provisions should be made according to the local natural conditions, so that there should not be any impact on the flow of water. Preventive measures should be taken to prevent flooding.

3. While filling and raising the low-lying areas with soil, there should be no infringement on the personal and public right of way and other easement right of others.

4. There should not be any situation where the above land change is detrimental to the public health and public interest.

5. While developing the land on the road side, prior permission and technical approval should be obtained from the concerned departments before constructing drains and walls to separate private land from road margins.

K.S.N. Adiga
Advocate
2nd Floor, Medifair Complex
Karangalpady, Mangaluru - 3

6. Violation of the above directions and, if the converted land is used in a manner that is contrary to the public interest causing obstructing, harassment in any other way, such persons will have to be subjected to the action under section 133 of the criminal procedure code. The direction of naturally flowing water should not be changed.

Village	Survey no.	Extent	Name of the Pattadar	Conversion fee paid	S.D Fee	Chelan No & Date
Mangaluru Thota	643/1P1	0-26-60	1.Shantha w/o Chandrashekhar 2.Nalini, w/o M.P. Nani	8699/-	55/-	**(Not clearly visible in the Xerox copy)**

Copy to: 1. Petitioner
2. M.R Branch, regarding making proper entries in the RTC and to exempt the land revenue of the above land.

CERTIFICATE

This is to certify that, this is the nearest English translation of the Endorsement LNA/CR/ 605/ 2007-08, dated 17-10-2007 in respect of the land I Survey no. 643/1P1, situated in Mangaluru Thota village, based upon the Xerox copy submitted to me.

K.S.N. Adiga, Advocate, Mangaluru

Mangaluru
Dt. 18-02-2026

K.S.N. Adiga
Advocate
2nd Floor, Medifair Complex
Karangalpady, Mangaluru - 3

District : D.K
Taluk : Mangaluru

Village : No-92
: Name : Mangaluru Thota

T.S. No.643-1 (Portion)

-SKETCH-

643-1
(portion)

---------- ROAD ----------

Scale : 1: 66 feet

T.S. No	KISSAM	Extent	Description	Remark
643-1(Portion)	Khushki	0-26-60	Land sought for conversion endorsement	

The eye sketch has been issued in accordance with the sketch of the document for the purpose of Office use.

CERTIFICATE

This is to certify that, this is the nearest English translation of the SKETCH PERTAINING TO THE LAND COMPRISED IN TS No. 643/1 (Portion) of Mangaluru Thota village of Mangaluru Taluk, , based upon the Xerox copy submitted to me.

Mangaluru
Dt. 18-02-2026

K.S.N. Adiga, Advocate, Mangaluru

K.S.N. Adiga
Advocate
2nd Floor, Medifair Complex
Karangalpady, Mangaluru - 3

/True Copy/

VBR Menon

15

[೬]

ಮಂಗಳೂರು ಮಹಾನಗರಪಾಲಿಕೆ, ಮಂಗಳೂರು

ಪರಿಷ್ಕೃತ
ಕಟ್ಟಡ ನಿರ್ಮಾಣಕ್ಕೆ ಪರವಾನಿಗೆ

1. ಪರವಾನಿಗೆ ಸಂಖ್ಯೆ ಇ8:ಬಾ 164:2009–2010 ದಿನಾಂಕ: 24–6–2010
2. ನಗರಾಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಪ್ರಾರಂಭಿಕ ಕನ್ನಿಪಲ: 909:2009–2010
   ಪ್ರಮಾಣ ಪತ್ರದ ಸಂಖ್ಯೆ ಮತ್ತು ದಿನಾಂಕ ವಾನಪ್ರಾ:ನಂ:ತೋ:ಪ್ರ ತಾಂ ಆ: 981:2009–2010 ದಿನಾಂಕ: 12–3–2010
3. ಅರ್ಜಿದಾರರ ಹೆಸರು ಮತ್ತು ವಿಳಾಸ ಶ್ರೀ ಸತೀಶ್ ಬಿ, ಪ್ರೀವಿಯಂತರ ಬಿಲ್ಡರ್ಸ್, 1ನೇ ಮಹಡಿ ಪ್ರೀವಿಯಂತರ ಸೆಂಟರ್, ಹಳೇ ಪೋಸ್ಟ್ ಆಫೀಸ್ ಹತ್ತಿರ ಉಡುಪಿ.
4. ಪರವಾನಿಗೆ ಮಂಜೂರಾತಿ ವಿವರಗಳು ಮಂಗಳೂರು ತೋಟ ಗ್ರಾಮದ ಜಮೀನು ಸ.ನಂ 334:ಪ ಟಿ.ಎಸ್.ನಂ 643:1ಪ1 ರಲ್ಲಿ ಖಾತಾ ನಂಬ್ರ 1811 ರಲ್ಲಿ 26.60 ಸೆಂಟ್ಸ್ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ವಾಣಿಜ್ಯ + ವಾಸದ ಫ್ಲಾಟ್ ಕಟ್ಟಡ.
5. ಕಟ್ಟಡದ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ - ಇತರ ವಿವರ 3275.68 ಚ.ಮೀ.ಗಾ
   1. ತಳ ಅಂತಸ್ತು 793.54ಚದರಿ.ಮೀ(776.54ಚದರಿ.ಮೀ ವಾಹನ ನಿಲುಗಡೆ ಸ್ಥಳ + 17.09ಚದರಿ.ಮೀ ಇತರೆ)
   2. ನೆಲ ಅಂತಸ್ತು 467.00 ಚದರಿ.ಮೀ (199.99 ಚದರಿ.ಮೀ ವಾಣಿಜ್ಯ + 249.92ಚದರಿ.ಮೀ ವಾಸ + 17.09ಚದರಿ.ಮೀ ಇತರ)
   3. ಮೊದಲನೇ ಅಂತಸ್ತು 501.13 ಚದರಿ.ಮೀ
   4. ಎರಡನೇ ಅಂತಸ್ತು : 504.67ಚದರಿ.ಮೀ (ವಾಸ)
   5. ಮೂರನೇ ಅಂತಸ್ತು : 504.67ಚದರಿ.ಮೀ (ವಾಸ)
   6. ನಾಲ್ಕನೇ ಅಂತಸ್ತು : 504.67ಚದರಿ.ಮೀ (ವಾಸ)
6. ಪರವಾನಿಗೆ ಶುಲ್ಕದ ವಿವರಗಳು ಪಟ್ಟಿ ಸಂಖ್ಯೆ 4 ರಲ್ಲಿ ನಮೂದಿಸಲಾಗಿದೆ.

1976ರ ಕರ್ನಾಟಕ ನಗರಪಾಲಿಕೆ ಕಾಯಿದೆಯ ಪರಿಚ್ಛೇದ 301 ರ ಅನ್ವಯ ಮತ್ತು ನಮೂದಿಸಿದ ನಿಬಂಧನೆ ಮತ್ತು ಪರತ್ತುಗಳಿಗೆ ಒಳಪ್ಪುಂತೆ ಶ್ರೀ ಸತೀಶ್ ಬಿ, ಪ್ರೀವಿಯಂತರ ಬಿಲ್ಡರ್ಸ್, 1ನೇ ಮಹಡಿ, ಪ್ರೀವಿಯಂತರ ಸೆಂಟರ ಹಳೇ ಪೋಸ್ಟ್ ಆಫೀಸ್ ಹತ್ತಿರ, ಉಡುಪಿ.

ಇವರಿಗೆ ಪರವಾನಿಗೆ (ಲೈಸನ್ಸ್) ನೀಡಲಾಗಿದೆ.

ಮಂಗಳೂರು

ದಿನಾಂಕ 24–6–2010

ನಗರ ಯೋಜನಾ ಪ್ರಾಧಿಕಾರಿ

—ಸಹಿ—
(ಡಾ: ಕೆ.ಎನ್.ವಿಜಯಪ್ರಕಾಶ)
ಆಯುಕ್ತರು
ಮಂಗಳೂರು ಮಹಾನಗರಪಾಲಿಕೆ, ಮಂಗಳೂರು

NOTARY
RAVIVARMA
Notary D. K Dist.
MANGALORE
KARNATAKA
REGD. No. 5180
GOVT. OF INDIA
TRUE COPY

NOTARY
GOVT. OF INDIA
TRUE COPY

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MANAGALURU MAHANAGARA PALIKE, MANAGALURU

Revised
LICENSE FOR CONSTRUCTION OF BUILDING

Date: 24-05-2010

1. **Building License No.** — E8/BA 164/2009-2010
   Ka Ni Pa Aa 909/2009-2010

2. **Number and date of the Preliminary permit of Town Planning Authority** — Ma.Na.Pra/NaYoSa/Tham A981/2009-2010 dated 12-06-2010

3. **Name & Address of the Applicant** — 1) Sri Sathish B, Premier Builders, 1st Floor, Premier Centre, Near Old Post Office, Udupi

4. **Details of sanctioning of the License** — Construction of Commercial + Residential plat building in R.S. No. 334/P, T.S. No. 643/1P1 of Mangaluru Thota village, measuring 26.60 cents, Khatha No. 1811, 2342

5. **Total extent of the building, other details** — 3275.60sq meter
   1. Basement: 793.54 sq. mtr (776.54 sq. Mtr) Vehicle Parking area : 17.09 sq. mtr other)
   2. Ground Floor : 467.00 sq, mtr 199.99 sq. mtr Commercial + 249.92 sq. mtr.-Residential + 17.09 mtr other
   3. First Floor :501.13 sq. meter
   4. 2nd Floor (residential) : 504.67 sq. meter
   5. 3rd Floor (residential) : 504.67 sq. meter
   6. 4th Floor (residential) :504.67 sq. meter

6. **Detail of Fees :** Mentioned in page No-4

The License has been issued to Sri Sathish B, Premier Builder, 1st Floor, Premier Centre, Near old Post Office, Udupi**subject to the Terms and Conditions as per and mentioned in section 301 of Karnataka Municipal Corporation Act, 1976**

Mangaluru
Dt. 24-05-2010

Sd/-
Joint Director of Town and Rural Planning

Sd/-
(Dr K.S. Vijaya Prakash)
Commissioner(In-charge)
Mangaluru Mahanagara Palike

CERTIFICTE

This is to certify that, this is the nearest English translation of the Building license as per License No. E8/BA 164/2009-2010, Ka Ni Pa Aa 909/2009-2010 dated 24-05-2020, of the Xerox copy of Kannada version.

Mangaluru
Dt. 18-02-2026

/True copy/

VBR Menon

K.S.N. Adiga, Advocate

K.S.N. Adiga
Advocate
2nd Floor, Medifair Complex
Karangalpady, Mangaluru - 3

PROPERTY TAX / ಆಸ್ತಿ ತೆರಿಗೆ

ಮಹಾನಗರಪಾಲಿಕೆ, ಮಂಗಳೂರು | ಕರ್ನಾಟಕ ಸರ್ಕಾರ | ಸ್ವಚ್ಛ ಮಂಗಳೂರು ಅಭಿಯಾನ

MANGALURU CITY CORPORATION

PROPERTY TAX RECEIPT

Section A - Property Tax Details

ಕಟ್ಟಡ ಸಂಖ್ಯೆ / ಸರ್ವೆ ನಂ : 23-9-744/3
Door / survey No :

ವರ್ಷ : 2024-25
YEAR :

ನಿರ್ಧಾರಣೆಯ ಸಂಖ್ಯೆ : 108592
Assessment No :

ಚಲನ್ ಸಂಖ್ಯೆ : 20244004526
Chalan No :

Section B - Owner Details

ಮಾಲೀಕರ ಹೆಸರು : NEENA S
Name of Owner :

ಮಾಲೀಕರ ವಿಳಾಸ : 23-9-744/3, Attavara, MANGALADEVI TEMPLE ROAD RESIDENTIAL - ROAD SIDE, 9, F. No. 02,Premier Aristo Apartment, Ground floor mlore, 575001
Owner Address :

ತಂದೆಯ / ಗಂಡನ ಹೆಸರು :
Father's /Husband's Name :

ಮೊ.ಸಂ : 9745249040
Mobile no :

ವಾರ್ಡ್ ಸಂಖ್ಯೆ : 23 (MANGALADEVI)
Ward No

Section C - Property Details

ಆಸ್ತಿ ID : 77105
Property ID :

ಒಟ್ಟು ಕಟ್ಟಡ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 1400
Total building area in Sqft :

ಖಾತ ಸಂಖ್ಯೆ : .
Khatha No :

ಒಟ್ಟು ಭೂಮಿ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 11212.3
Total land area in Sqft :

ಆಸ್ತಿ ಪ್ರಕಾರ : Apartment
Property type :

ಅಂತಸ್ತಿನ ವಿವರ : Ground Floor
Floor Details :

ಆಸ್ತಿಯ ಬಳಕೆ : RESIDENTIAL
Use of property :

Section D - Payment Details

ಆಸ್ತಿ ತೆರಿಗೆ / Property Tax :	4422.11
112 ಸಿ ರಂತೆ ದಂಡನಾ ಮೊತ್ತ (ಆಸ್ತಿ ತೆರಿಗೆ *2) / Penalty Amount 112C(Property tax * 2) :	0
ಉಪಕರ (ಆಸ್ತಿ ತೆರಿಗೆ *26%) / Cess (property tax*26%) :	1149.749
ಘನ ತಾಜ್ಯ ನಿರ್ವಹಣಾ ಕರ / Sold waste management handling :	960
ಹೊಂದಾಣಿಕೆ / Adjustment :	0
ದಂಡ/ ರಿಯಾಯಿತಿ / Penalties/Discount :	-278.593
ಸೇವಾ ಶುಲ್ಕ / SERVICE CHARGE :	35
ಒಟ್ಟು ಮೊತ್ತ / Total amount :	6289/-

Payment Status : PAID

Remarks : Payment Successful

ಪಾವತಿ ದಿನಾಂಕ : 29-Mar-2024
Payment Date :

ಬ್ಯಾಂಕ್ ಹೆಸರು ಮತ್ತು ಶಾಖೆಯ ಹೆಸರು : Canara Bank
Bank Name And Branch Name :

ಪಾವತಿ ವಿಧಾನ :
Payment Mode :

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PROPERTY TAX / ಆಸ್ತಿ ತೆರಿಗೆ

ಮಹಾನಗರಪಾಲಿಕೆ, ಮಂಗಳೂರು | ಕರ್ನಾಟಕ ಸರ್ಕಾರ | ಸ್ವಚ್ಛ ಮಂಗಳೂರು ಅಭಿಯಾನ

MANGALURU CITY CORPORATION

PROPERTY TAX RECEIPT

Section A - Property Tax Details

ಕಟ್ಟಡ ಸಂಖ್ಯೆ / ಸರ್ವೆ ನಂ : 23-9-752
Door / survey No :

ವರ್ಷ : 2021-22
YEAR :

ನಿರ್ಧಾರಣೆಯ ಸಂಖ್ಯೆ : 61041
Assessment No :

ಚಲನ್ ಸಂಖ್ಯೆ : 20213845628
Chalan No :

Section B - Owner Details

ಮಾಲೀಕರ ಹೆಸರು : B.RAMA
Name of Owner :

ಮಾಲೀಕರ ವಿಳಾಸ : 23-9-752, Attavara, MANGALADEVI CROSS RESIDENTIAL - 5' OR BELOW ROAD, 9, Krishnappa compound,mangaladevi mlore, 575001
Owner Address :

ತಂದೆಯ / ಗಂಡನ ಹೆಸರು :
Father's /Husband's Name :

ಮೊ.ಸಂ : 9481148654
Mobile no :

ವಾರ್ಡ್ ಸಂಖ್ಯೆ : 23 (MANGALADEVI)
Ward No

Section C - Property Details

ಆಸ್ತಿ ID : 28009
Property ID :

ಒಟ್ಟು ಕಟ್ಟಡ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 300
Total building area in Sqft :

ಖಾತ ಸಂಖ್ಯೆ : .
Khatha No :

ಒಟ್ಟು ಭೂಮಿ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 762.3
Total land area in Sqft :

ಆಸ್ತಿ ಪ್ರಕಾರ : Individual
Property type :

ಅಂತಸ್ತಿನ ವಿವರ : Ground Floor
Floor Details :

ಆಸ್ತಿಯ ಬಳಕೆ : RESIDENTIAL
Use of property :

Section D - Payment Details

ಆಸ್ತಿ ತೆರಿಗೆ / Property Tax :	253.173
112 ಸಿ ರಂತೆ ದಂಡನಾ ಮೊತ್ತ (ಆಸ್ತಿ ತೆರಿಗೆ *2) / Penalty Amount 112C(Property tax * 2) :	0
ಉಪಕರ (ಆಸ್ತಿ ತೆರಿಗೆ *26%) / Cess (property tax*26%) :	65.825
ಘನ ತಾಜ್ಯ ನಿರ್ವಹಣಾ ಕರ / Sold waste management handling :	360
ಹೊಂದಾಣಿಕೆ / Adjustment :	0
ದಂಡ/ ರಿಯಾಯಿತಿ / Penalties/Discount :	165.879
ಸೇವಾ ಶುಲ್ಕ / SERVICE CHARGE :	12
ಕರ್ನಾಟಕ ಒನ್ ಶುಲ್ಕ / KARNARAKA ONE CHARGE :	7
ಒಟ್ಟು ಮೊತ್ತ / Total amount :	864/-

Payment Status : PAID

Remarks : Payment Successful

ಪಾವತಿ ದಿನಾಂಕ : 22-Sep-2023
Payment Date :

ಬ್ಯಾಂಕ್ ಹೆಸರು ಮತ್ತು ಶಾಖೆಯ ಹೆಸರು : Karnataka One
Bank Name And Branch Name :

ಪಾವತಿ ವಿಧಾನ :
Payment Mode :

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PROPERTY TAX / ಆಸ್ತಿ ತೆರಿಗೆ

ಮಹಾನಗರಪಾಲಿಕೆ, ಮಂಗಳೂರು | ಕರ್ನಾಟಕ ಸರ್ಕಾರ | ಸ್ವಚ್ಛ ಮಂಗಳೂರು ಅಭಿಯಾನ

MANGALURU CITY CORPORATION

PROPERTY TAX RECEIPT

Section A - Property Tax Details

ಕಟ್ಟಡ ಸಂಖ್ಯೆ / ಸರ್ವೆ ನಂ : 23-9-753
Door / survey No :

ವರ್ಷ : 2025-26
YEAR :

ನಿರ್ಧಾರಣೆಯ ಸಂಖ್ಯೆ : 61042
Assessment No :

ಚಲನ್ ಸಂಖ್ಯೆ : 20254337354
Chalan No :

Section B - Owner Details

ಮಾಲೀಕರ ಹೆಸರು : GURUDUTTA RAO
Name of Owner :

ತಂದೆಯ / ಗಂಡನ ಹೆಸರು :
Father's /Husband's Name :

ಮೊ.ಸಂ : 9481978620
Mobile no :

ಮಾಲೀಕರ ವಿಳಾಸ : 23-9-753, , MANGALADEVI TEMPLE ROAD RESIDENTIAL - 5' OR BELOW ROAD, 9, RAMASEETHA NILAYA KRISHNAPPA COMPOUND MANGALORE, 575001
Owner Address :

ವಾರ್ಡ್ ಸಂಖ್ಯೆ : 23 (MANGALADEVI)
Ward No

Section C - Property Details

ಆಸ್ತಿ ID : 28010
Property ID :

ಖಾತ ಸಂಖ್ಯೆ :
Khatha No :

ಆಸ್ತಿ ಪ್ರಕಾರ : Individual
Property type :

ಆಸ್ತಿಯ ಬಳಕೆ : RESIDENTIAL
Use of property :

ಒಟ್ಟು ಕಟ್ಟಡ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 1018
Total building area in Sqft :

ಒಟ್ಟು ಭೂಮಿ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 1197.9
Total land area in Sqft :

ಅಂತಸ್ತಿನ ವಿವರ : Ground Floor, 1st Floor
Floor Details :

Section D - Payment Details

ಆಸ್ತಿ ತೆರಿಗೆ / Property Tax :	3033.945
112 ಸಿ ರಂತೆ ದಂಡನಾ ಮೊತ್ತ (ಆಸ್ತಿ ತೆರಿಗೆ *2) / Penalty Amount 112C(Property tax * 2) :	0
ಉಪಕರ (ಆಸ್ತಿ ತೆರಿಗೆ *26%) / Cess (property tax*26%) :	788.826
ಘನ ತಾಜ್ಯ ನಿರ್ವಹಣಾ ಕರ / Sold waste management handling :	960
ಹೊಂದಾಣಿಕೆ / Adjustment :	0
ದಂಡ/ ರಿಯಾಯಿತಿ / Penalties/Discount :	-191.139
ಸೇವಾ ಶುಲ್ಕ / SERVICE CHARGE :	35
ಕರ್ನಾಟಕ ಒನ್ ಶುಲ್ಕ / KARNARAKA ONE CHARGE :	7
ಒಟ್ಟು ಮೊತ್ತ / Total amount :	4634/-

Payment Status : PAID

Remarks : Payment Successful

ಪಾವತಿ ದಿನಾಂಕ : 04-Apr-2025
Payment Date :

ಬ್ಯಾಂಕ್ ಹೆಸರು ಮತ್ತು ಶಾಖೆಯ ಹೆಸರು : Karnataka One
Bank Name And Branch Name :

ಪಾವತಿ ವಿಧಾನ :
Payment Mode :

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NO SIGNATURE IS REQUIRED

PROPERTY TAX / ಆಸ್ತಿ ತೆರಿಗೆ

ಮಹಾನಗರಪಾಲಿಕೆ, ಮಂಗಳೂರು | ಕರ್ನಾಟಕ ಸರ್ಕಾರ | ಸ್ವಚ್ಛ ಮಂಗಳೂರು ಅಭಿಯಾನ

MANGALURU CITY CORPORATION

PROPERTY TAX RECEIPT

Section A - Property Tax Details

ಕಟ್ಟಡ ಸಂಖ್ಯೆ / ಸರ್ವೆ ನಂ : 23-9-754,754A
Door / survey No :

ವರ್ಷ : 2025-26
YEAR :

ನಿರ್ಧಾರಣೆಯ ಸಂಖ್ಯೆ : 61043
Assessment No :

ಚಲನ್ ಸಂಖ್ಯೆ : 20254324215
Chalan No :

Section B - Owner Details

ಮಾಲೀಕರ ಹೆಸರು : MALATHI N BANGERA
Name of Owner :

ತಂದೆಯ / ಗಂಡನ ಹೆಸರು :
Father's /Husband's Name :

ಮೊ.ಸಂ : 9740555073
Mobile no :

ಮಾಲೀಕರ ವಿಳಾಸ : 23-9-754,754A, Mangaluru-Thota, MANGALADEVI TEMPLE ROAD RESIDENTIAL - CROSS ROAD, 9, Krishnappa compound mangaladevi temple road mangalore, 575001
Owner Address :

ವಾರ್ಡ್ ಸಂಖ್ಯೆ : 23 (MANGALADEVI)
Ward No

Section C - Property Details

ಆಸ್ತಿ ID : 192503
Property ID :

ಖಾತ ಸಂಖ್ಯೆ :
Khatha No :

ಆಸ್ತಿ ಪ್ರಕಾರ : Individual
Property type :

ಆಸ್ತಿಯ ಬಳಕೆ : RESIDENTIAL
Use of property :

ಒಟ್ಟು ಕಟ್ಟಡ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 450
Total building area in Sqft :

ಒಟ್ಟು ಭೂಮಿ ವಿಸ್ತೀರ್ಣ SqFt ಗಳಲ್ಲಿ : 653.4
Total land area in Sqft :

ಅಂತಸ್ತಿನ ವಿವರ : Ground Floor
Floor Details :

Section D - Payment Details

ಆಸ್ತಿ ತೆರಿಗೆ / Property Tax :	1061.023
112 ಸಿ ರಂತೆ ದಂಡನಾ ಮೊತ್ತ (ಆಸ್ತಿ ತೆರಿಗೆ *2) / Penalty Amount 112C(Property tax * 2) :	0
ಉಪಕರ (ಆಸ್ತಿ ತೆರಿಗೆ *26%) / Cess (property tax*26%) :	275.866
ಘನ ತಾಜ್ಯ ನಿರ್ವಹಣಾ ಕರ / Sold waste management handling :	360
ಹೊಂದಾಣಿಕೆ / Adjustment :	0
ದಂಡ/ ರಿಯಾಯಿತಿ / Penalties/Discount :	-66.844
ಸೇವಾ ಶುಲ್ಕ / SERVICE CHARGE :	35
ಕರ್ನಾಟಕ ಒನ್ ಶುಲ್ಕ / KARNARAKA ONE CHARGE :	7
ಒಟ್ಟು ಮೊತ್ತ / Total amount :	1673/-

Payment Status : PAID

Remarks : Payment Successful

ಪಾವತಿ ದಿನಾಂಕ : 28-Mar-2025
Payment Date :

ಬ್ಯಾಂಕ್ ಹೆಸರು ಮತ್ತು ಶಾಖೆಯ ಹೆಸರು : Karnataka One
Bank Name And Branch Name :

ಪಾವತಿ ವಿಧಾನ :
Payment Mode :

THIS IS COMPUTER GENERTED CERTIFICATE.
NO SIGNATURE IS REQUIRED

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Annexure - 5

Extract of the functions of Urban Development Authority

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Functions of UDA

Activities of the Department

The Local Planning area of MUDA is 306 sq.Km. Issue of Commencement Certificates (excluding Mangalore City Corporation and Town Panchayath jurisdiction) , Zonal Certificates, giving technical opinion for the building plans sent by Town Panchayats and local bodies acquiring land for formation of layouts , distribution of sites and the main functions of the Authority . Issue of No Objection Certificates for conversion of agriculture land to non-agriculture purpose , approval of private layouts, single site approvals are the other functions of the Authority.

Engineering section is also working along with Town planning section and this section is in charge of the execution of Civil Works and other development works of Mangalore Urban Development Authority.

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Annexure- 6 EXRACT FROM THE S O P NOTIFIED BY PESO REQUIRING UNDERTAKING ABOUT THE COMPLIANCE OF CPCB SITING CRITERIA

Sr No	Documents required	Prior approval / In-supersession of Prior approval	Grant of license	Renewal of license	Prior approval for amendment	Amendment of license	Transfer of license	Penal Action
1	Application FORM IX duly signed by applicant mentioning his name and designation below the signature	✓	✓	✓	✓	✓	✓	✓
2	Covering letter duly signed by applicant mentioning his name and designation below the signature	✓	✓	✓	✓	✓	✓	✓
3	Undertaking for legal physical possession of land as per standard format	✓	✓	✓	✓	✓	✓	
4	Undertaking for compliance of the provisions of CPCB guidelines	✓	✓		✓	✓		
5	No Objection Certificate issued under Rule 144 of these rules (applicable for change in premises dimensions also)		✓			✓		
6	Drawing drawn to scale indicating the manner in which provisions of the rules shall be complied, surrounding and all protected works within 100 meters from the edge of all the facilities which are proposed to be licensed, the position, capacity, material of construction, ground and elevation views of all storage tanks, valves, fill points, discharge points, vent pipes, dip pipes, storage and filling shed, pumps, fire fighting facilities and all other building and facilities forming part of the premises proposed to be licensed	✓	✓	✓		✓	✓	
7	Drawing with details mentioned in Sr No 4 duly colour coded: Red: Proposed to amended, yellow: proposed to be deleted and green: approved but not installed				✓			

8	Tank test certificate issued under Rule 126 of these rules		✓			✓		
7	Certificate of safety issued under Rule 130 of these rules		✓			✓	✓	
8	Surrender letter / FIR							✓
9	Any other document*							

**The granting officer may call for any additional document / drawing if he is of the opinion that the document / drawing is required to ensure that the provisions of the rules and conditions of license FORM are fulfilled at all the times.*

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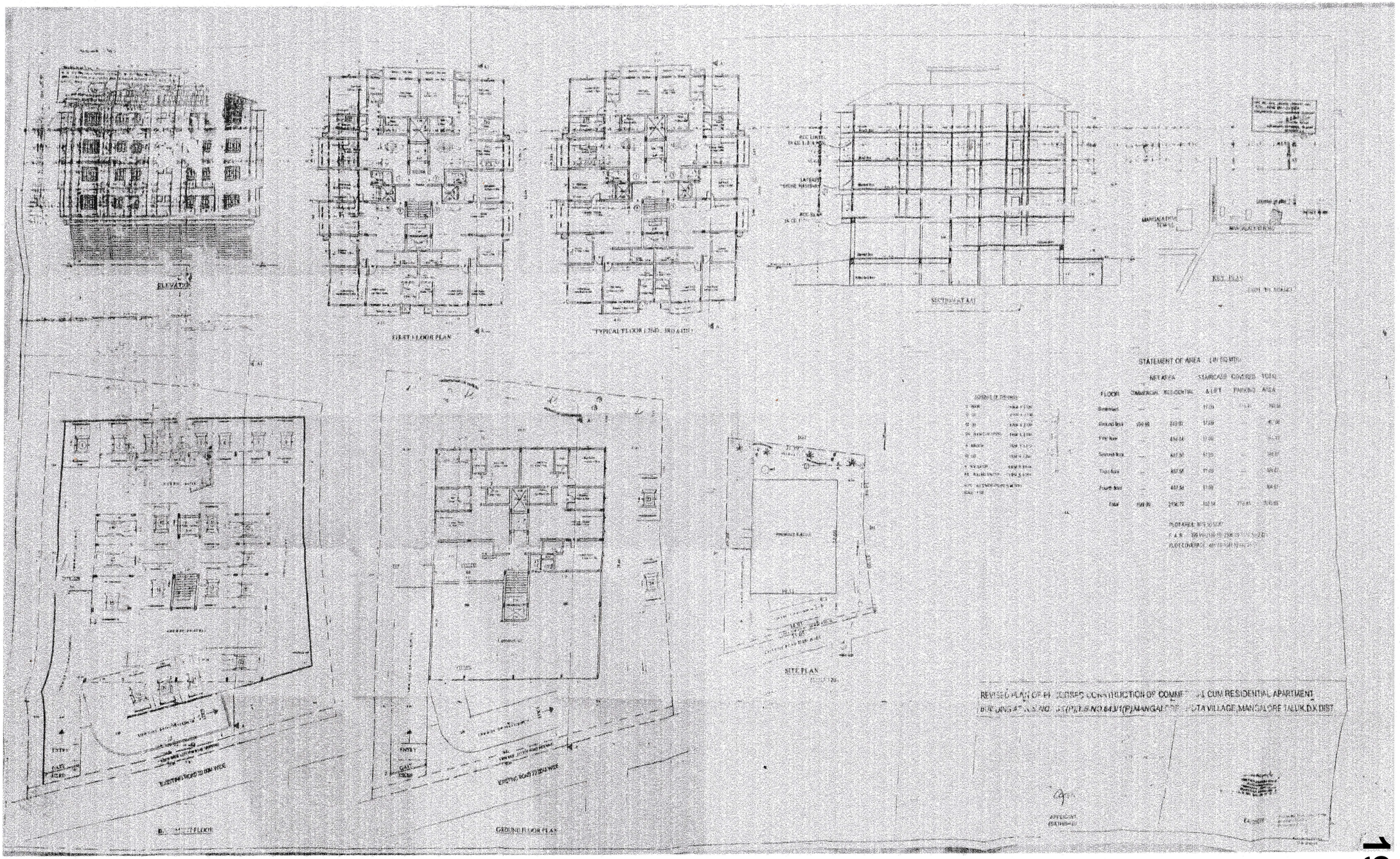
Annexure - 7



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

(Under Section 18(1) read with Section 14 (i) of
National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO. 127 of 2024 (SZ)

Between ;

Mrs. Neena.S,
Mangalore – 575 001 and 4 Others … Applicants.

and

The Joint Chief Controller of Explosives,
South Circle, Chennai,
Petroleum and Explosives Safety Organisation (PESO),
Nungambakkam, Chennai – 600 006 and 3 others … Respondents.

COMPILATION OF JUDGMENTS

S. No.	Case Reference/Citation	Dictum/ Proposition	Page Nos.
1	(2019) 18 SCC 494- Mantri Techzone P.Ltd. Vs. Forward Foundation & Ors.	*Para No. 47;* CPCB Siting Criteria shall have an overriding effect over Karnataka Master Plans, etc.	20 - 49
2	WP(MD) No. 14603, 13637 and 13751 of 2020	*Para Nos. 19 to 23*; R-1 and R-2 are duty bound to ensure strict compliance CPCB Siting Criteria and matter was remanded back to the Authorities for fresh appraisal of the Site particulars.	50 - 79
3	(2012) 2 SCC 562- Archaeological Survey of India Vs. Narender Anand & Ors	*Para No. 53*; Prohibited distance to be measured from the outer boundary of the protected area.	80 - 101

Dated at Chennai this the 19th day of February, 2026

Counsel for Applicants

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Annexure - 8

3-Judge Bench
2019
March 5

(2019) 18 Supreme Court Cases 494

(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED . . Appellant;

Versus

FORWARD FOUNDATION AND OTHERS . . Respondents.

Civil Appeals No. 5016 of 2016† with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019

A. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of

— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT's direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government

— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22 (Paras 39 to 47 and 60 to 63)

[**Ed.**: Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

† Arising from the Judgment and Order in *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)

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B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope**

— Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38 and 55)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

— It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38)

D. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of (Paras 48 to 55)

E. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition**

— Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action of likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

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The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law. (Para 37)

Chunilal V. Mehta & Sons Ltd. v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision. (Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal. (Para 39)

The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights. (Para 40)

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010. (Para 41)

The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment. (Para 43)

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. The existence of the Tribunal

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without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. (Para 44)

Kishore Lal v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the NGT Act, 2010) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions. (Para 45)

Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Para 46)

Section 33 of the NGT Act, 2010 provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. (Para 47)

The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10. (Paras 60 to 62)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*

Core Mind Software & Services (P) Ltd. v. *Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*

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Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. (Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. Non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. (Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. (Paras 52 and 51)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

The findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee report and the inspection note of the expert members. The directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity. (Para 54)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010. (Para 55)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 637, *referred to*

SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika

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S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*
2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*
3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*
4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*
5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*
6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as "Respondents 9 and 10"). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as "the applicants"). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short "the impleaded respondents").

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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case of secondary Rajakaluves and 25 m in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 respectively for setting up of software technology park, commercial and residential complex, hotel and multi-level car parks. The Master Plan formulated by the Bangalore Development Authority (for short "BDA"), identifies the allotted land as "residential sensitive", though the same land was identified in the Draft Master Plan as "protected zone". It was further contended that the revenue map in respect of properties as referred in the land lease agreements has multiple Rajakaluves (storm water drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac each.

5. The satellite digital images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short "SEAC"), which was to assist the State Level Environment Impact Assessment Authority (for short "SEIAA"), held its meetings on various dates to examine the project. It had required Appellant 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short "BWSSB") for the project in question. It was also observed that the project lies between Bellandur Lake and Agara Lake. Respondent 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11-11-2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

7. The applicants further contended that Respondent 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over

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the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from "protected zone" to "residential sensitive area" is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondents 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no disturbance to the storm water drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the groundwater table and borewells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of the Wetlands (Conservation of Management) Rules, 2010 (for short "the 2010 Rules").

8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the report of the Committee under the Chairmanship of Hon'ble Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore City. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore metropolitan area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that Bellandur Lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

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10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

11. Respondent 9 in its objections contended that it was incorporated with the objective of establishing an information technology park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such information technology park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High-Level Committee meeting held on 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an information

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technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

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and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondents 9 and 10, one year time was granted for the implementation of the Project which was extended from time to time. The building drawings were approved on 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. The Lokayukta on 17-12-2013 had written a letter in respect of complaint filed by the South-East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21-12-2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23-12-2013 issued by Bruhat Bengaluru Mahanagara Palike (for short "BBMP") was also stayed vide order dated 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity

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would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other waterbodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

17.5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*[1], SCC Online NGT para 85)

> "*85.* ... (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:
>
> (*a*) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
>
> (*b*) CEO of the Lake Development Authority, Karnataka State.
>
> (*c*) Chief Town Planner of BBMP, Bangalore.
>
> (*d*) Chairman of SEAC which recommended the grant of environmental clearance to the projects in question.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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(*e*) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

(*f*) Dr Siddharth Kaul, former Advisor to MoEF.

(*g*) A senior officer from the National Institute of Hydrology, Roorkee.

(2) Member-Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.

(3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the waterbodies, with particular reference to lakes.

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question.

(5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

(6) The Committee shall substantially notice if any of the conditions of the environmental clearance order in each case of Respondents 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

(7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of waterbodies.

(8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

(9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc., in terms of letters

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dated 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area Development Board to Respondents 9 and 10 respectively.

(10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and waterbodies.

(11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both Respondents 9 and 10 are hereby restrained from creating any third party interests or part with the possession of the property in question or any part thereof, in favour of any person.

(12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the waterbodies in the city of Bangalore.

(13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the waterbodies in and around of the area in question.

(14) For the reasons stated in the judgment Respondent 9 is liable and shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum of Rs 22.5 crores respectively being 5% of the project value, within two weeks from today. The said amount would be paid to KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the project proponent in that area, after taking approval of the Tribunal.

(15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of Direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorisedly."

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order dated 20-5-2015[3] passed the following order: [*Core Mind Software & Services (P) Ltd. case*[3], SCC OnLine SC paras 2-5]

"2. One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs 117.35 crores against the original Respondent 9 (the appellant in CA No. 4832 of

3 *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation*, 2015 SCC OnLine SC 1778

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2015) and Rs 22.5 crores against original Respondent 10 (the appellant in CA No. 4829/2015) is imposed.

3. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment[1] can also be raised.

5. The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under: (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

These applications have been filed on behalf of Respondents 9 and 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of environmental compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions MA No. 603 of 2015 and MA No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
4 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 637

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The Tribunal after hearing the parties passed an order dated 4-5-2016[2] as under: (*Forward Foundation case*[2], SCC OnLine NGT)

a

"***General conditions or directions***

1. In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas,
b 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—

c

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

d (*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

e All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

f All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified
g by CPCB/MoEF.

3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

h

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

(*i*) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a prerequisite for grant of EC.

(*ii*) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

(*iii*) Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific conditions/directions for Respondent 9

In addition to the above directions which should be equally part of EC condition in respect of Respondents 9 and 10, following specific conditions shall apply to Respondent 9:

(*i*) Reclaimed area of the lake to the extent of 3 ac 10 guntas in Survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent 9 to the authorities concerned immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

(*ii*) In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the Rajkalewa should be maintained as green belt.

(*iii*) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between Agara Lake and Belandur Lake, Respondent 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

(*iv*) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic metres in the depth range of 0 to 9 m. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by

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SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

(*v*) The kharab land identified by Revenue Department admeasuring 1 ac 2 guntas should be demarcated and maintained separately as green belt.

(*vi*) The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

(*vii*) In view of the heavy traffic load in the adjoining Sarjapur Road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

* * *

10. Though, at the time of hearing prior to passing of the judgment, we had heard the parties on all aspects but still we have provided rehearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent 9 calls for no variation and Respondent 9 should be called upon to pay the said amount of Rs 117.35 crores determined under the judgment prior to commencement of any project activity at the site. Respondent 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 10 to Rs 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General directions

1. We direct SEIAA, Karnataka to issue amended order granting environmental clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting environmental clearance, this judgment, notification of 2006 and other laws in force.

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3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the authorities concerned are directed to incorporate such conditions in the projects to whom environmental clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to MoEF for demarcating wetlands in terms of the Wetland Rules, 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both Respondents 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. For this reason alone, environmental clearance cannot be given effect to. While issuing the amended environmental clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the respondents (project proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended environmental clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended environmental clearance.

With the above directions, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs." (emphasis in original)

22. Appearing for the appellants in CA No. 5016 of 2016, Shri Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short "the KIAD Act") declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012.

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Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Sections 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of the said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further, the application is barred by limitation. Though environmental clearance was granted on 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short "the Planning Act").

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned Senior Counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur Lake waterbody or to Bellandur Lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in

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the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(*a*) of the NGT Act to provide relief

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(*b*) and 15(1)(*c*) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(*c*) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short "CPC"). Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

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34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

> "**22.** ***Appeal to Supreme Court.***—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under: (AIR p. 1318, para 6)

> "*6.* … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to

5 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

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seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(*a*) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Sections 15(1)(*b*) and (*c*) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(*c*) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

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Lal v. *ESI Corpn.*[6], para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP.

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been

6 (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

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granted environmental clearance on 30-9-2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well-settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11-1-2012 of the Chairman of KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee

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constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. That is why, the Tribunal has observed[1] as under: (*Forward Foundation case*[1], SCC OnLine NGT para 72)

> "*72.* In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:
>
> (1) The construction of both the projects had started prior to the grant to environmental clearance.
>
> (2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.
>
> (3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
>
> (4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
>
> (5) Google satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.
>
> (6) Restriction in regard to extraction of groundwater was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
>
> (7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to lakes and other waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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53. In para 81, the Tribunal has observed as under: (*Forward Foundation case*[1], SCC OnLine NGT para 81)

a

"*81.* ... Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by
b MoEF in its monitoring report dated 14-8-2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

54. In our view, the findings arrived at by the Tribunal are not only based on
c the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the expert members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

d **55.** We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by this Court under Section 22 of the NGT Act.

56. Shri R. Venkataramani, learned Senior Counsel has also raised a subsidiary issue relating to res judicata. According to him, Respondents 12 and 13 filed Writ Petitions Nos. 3656-57 of 2013 seeking similar reliefs in a
e representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of res judicata.

57. The Tribunal has answered this issue in paras 47 to 51 of the order. There was no dispute insofar as filing of the writ petitions is concerned.
f However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the genesis of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the
g Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

h

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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58. After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*[1], SCC OnLine NGT para 51)

> "*51.* ... For these reasons, we find no merit in this contention of Respondents 9 and 10. The purpose of the doctrine of res judicata is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of reagitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality insofar as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The "cause of action" in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of "judicial propriety", because of the writ petitions pending before the Hon'ble High Court of Karnataka."

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by Respondents 9 and 10 do not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016[2]: (*Forward Foundation case*[2], SCC OnLine NGT)

> "*1.* In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to the 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—
>
> > (*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore." (emphasis in original)

61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

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VBR Menon

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : **29.09.2023**

ORDERS PRONOUNCED ON **: 13.10.2023**

CORAM:

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD).Nos.14603, 13637 and 13751 of 2020
and
W.M.P.(MD).Nos.12254, 11346, 11347, 11405, 11408, 12255, 16076 and 12253 of 2020

W.P.(MD).No.14603 of 2020:

Senthil Kumar ... Petitioner

Versus

1. The Union of India,
   Rep. by its Secretary,
   Ministry of Petroleum & Natural Gas,
   Shastri Bhawan,
   New Delhi.

2. The State of Tamil Nadu,
   Rep. by its Principal Secretary,
   Department of Home,
   Fort St.George,
   Chennai.

3. The District Collector,
   Tiruchirapalli District.
   Tiruchirapalli.

4. The Commissioner of Police,

Tiruchirapalli Commissionerate,
Tiruchirapalli.

5. The Joint Chief Controller of Explosives,
South Circle,
A&D Wing, Block 1-8,
2nd Floor, Shastri Bhawan,
26 Haddows Road,
Nungambakkam,
Chennai.

6. The Assistant Controller of Legal Metrology,
Department of Legal Metrology,
Tiruchirapalli Region,
Tiruchirapalli.

7. The District Fire & Rescue Officer,
Fire & Rescue Department,
Tiruchirapalli.

8. The Member Secretary,
Tiruchirapalli Town & Country Planning Authority,
Khajamalai,
Tiruchirapalli.

9. The Central Pollution Control Board,
Rep. By its Additional Director,
Parivesh Bhawan,
East Arjun Nagar,
Shahdara,
Delhi – 110032.

10. M/s.Shell India Markets Pvt. Ltd.,
143, Dr.MGR ROAD,
Perungudi, Chennai. ... Respondents

W.P.(MD).No.13637 of 2020:

Arunkumar Rengasamy ... Petitioner

Versus

1. The Additional chief Secretary to Government of Tamil Nadu,
   Highways & Minor Ports Department,
   Fort St.George, Secretariat,
   Chennai.

2. The Divisional Engineer
   (Construction & Maintenance),
   Highways Department,
   Trichy.

3. The Joint Chief Controller of Explosives,
   A&D wing, Block 1-8,
   Shastri Bhavan,
   No.26, Haddows Road, Nungambakkam,
   Chennai – 600006.

4. The District Fire Officer,
   Tiruchirappalli Division,
   Tiruchirappalli – 620001.

5. The Commissioner of Police,
   Tiruchirappalli District,
   Subramaniapuram, Tiruchirappalli.

6. The Commissioner,
   Tiruchirappalli City Municipal Corporation,
   Tiruchirappalli.

7. The District Revenue Officer,
   Tiruchirappalli District,
   Collectorate campus,
   Tiruchirappalli – 620001.

8. Member Secretary / Assistant Director,

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District Town and Country Planning Authority,
CWC Godown Road,
Kajamalai Road,
Tiruchirappalli – 620 023.

9. M/s. SHELL India Markets Pvt. Ltd.,
Having its registered Office at
2nd Floor, Campus 4A, RMZ Millennia Business Park,
143, Dr.M.G.R. Road, Perungudi,
Chennai – 600 096. ... Respondents

W.P.(MD).No.13751 of 2020:

S.Kirubha ... Petitioner

Versus

1. The Commissioner of Police,
Trichy City Police Office,
Pudukkottai Main Road,
Subramaniapuram,
Tiruchirappalli – 620 023.

2. The District Revenue Officer,
Tiruchirapalli District,
Collectorate Campus,
Tiruchirappalli – 620 001.

3. The Joint Chief Controller of Explosives,
A and D Wing, Block 1 – 8,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai – 600 006.

4. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,

25/28, Shankar Illam,
Pudukottai Main Road, Subramaniyapuram,
Tiruchirappalli – 620 020.

5. The Commissioner,
Trichy Municipal Corporation,
No.58, Bharathidasan Road,
Tiruchirappalli Cantt,
Tiruchirappalli – 620 001.

6. M/s. Shell India Market Privates Limited,
2nd Floor, Campus – 4A,
RMZ Millenia Business Park Phase – 2,
No.143, Dr. M.G.R. Road, Perungudi,
Chennai – 600 096. ... Respondents

PRAYER IN W.P.(MD).No.14603 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for records relating to the impugned proceedings of the 4th respondent in C.No.:M2/23279/2019 dated 15.02.2020 and the impugned proceedings of the 7th respondent in Na.Ka.No. 8854/E1/2019 dated 25.11.2019 and quash the same as illegal and consequently forbear the respondents from permitting establishment of any petroleum pump / retail outlet in Survey No.18/13 and 25/1, Block 10, Ponmalai Zone, Tiruchi West Taluk, Tiruchirapalli.

PRAYER IN W.P.(MD).No.13637 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent dated

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25.11.2019 in Na.Ka.No.8854/இ1/2019 and the records of the 5th respondent in C.N:M2/23279/2019 dated 15.02.2020 and quash the same and consquently direct the respondents to restrain the 9th respondent from installing or setting up a fuel station at plot Nos.1, 2, 3, 9, 10, 11, 12 and the shop Site in J.K. Nagar, Pirattiyur, Ponmalai Zone, Tiruchirappalli City Survey No.18/13 part (New Survey No.18/7part), Survey No.25/1part & Survey.No.25/1A, [T.S.Nos. 18, 19, 20, 21, 27, 28, 29, 30], Ward A.M., Block 10, Tiruchirappalli West Taluk, Tiruchirappalli District.

PRAYER IN W.P.(MD).No.13751 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the No Objection Certificate No.M2/23279/2019 dated 15.02.2020 issued by the 1st Respondent in favour of the 6th Respondent and quash the same and consequently to restrain the 6th Respondent from erection, commissioning and operation of the proposed Petroleum Retail Outlet in the DTCP Approved J.K. Nagar residential layout at Survey No.18/13, (Part), & 25/1 (Part), T.S. No.25/1A, Plot Nos.1, 2, 3, 9, 10, 11, 12 of Ponmalai Zone, Block No.10 of J.K. Nagar, Pirattiyur, Trichy West Taluk, Tiruchirappalli – 620 009 and in gross violation to the IRC Circular No.12-2009.

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In W.P.(MD).No.14603 of 2020

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.S.Jeyasingh,
Senior Panel Counsel for Central Govt.
for Mr.M.Linga Durai,
Special Government Pleader, (for R5)

: Mr.N.S.Karthikeyan, (for R8)

: Mrs.Vijayalakshmi Natarajan, (for R9)

In W.P.(MD).No.13637 of 2020

For Petitioner : Mr.S.Vinod Sathya Lazar

For Respondents : Mr.M.Linga Durai,
Special Government Pleader,
(for RR-1, 2, 4 and 5)

: Mr.N.S.Karthikeyan, (for R6)

In W.P.(MD).No.13751 of 2020

For Petitioner : Mr.V.B.R.Menon

For Respondents : Mr.M.Linga Durai,
Special Government Pleader,
(for RR-1, 2 and 3)
: Mr.S.Jeyasingh, (for R3)
Senior Panel Counsel for Central Govt.
: Mr.N.S.Karthikeyan, (for R5)
: Mr.V.Prakash, Senior Counsel.
for Mr. Jose John, (for R6)

******

J U D G M E N T

[Judgment of the Court was made by **D.Bharatha Chakravarthy, J.,**]

All these Writ Petitions are filed aggrieved by the location of the Petrol Pump retail outlet in S.No.18/13, and S.No.25/1 in Block No.10 Ponmalai Zone, Tiruchy West Taluk, Tiruchirapalli District and as such are taken up together and disposed of by this common judgment.

2.The brief facts leading to the filing of the Writ Petitions are that M/s.Shell India Market Private Ltd., an Oil Company, commenced the erection and proposed operation of the petroleum retail outlet in Plot Nos.1, 2, 3, 9, 10, 11 & 12 of an approved layout, in the name and style of J.K. Nagar, comprised in S.No.18/13 and S.No.25/1, T.S.No.25/1A of Ponmalai Zone, Block No.10, Priyattiyoor of Tiruchy West Taluk, Tiruchy District.

3.Pursuant to the application made by the said Company, by proceeding bearing No.235 of 2019 in Na.Ka.No.8854/E1/2019, dated 25.11.2019, the District Fire Officer, Tiruchirappalli, issued a No Objection Certificate. Thereafter, by proceedings in C.No.M2/232/79 of 2009, dated 15.02.2020, the Commissioner of Police, Trichy City also issued a No Objection Certificate as per Rule 144 of the Petroleum Rules. The petitioners challenging these two

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"No Objection Certificates", on the following grounds:-

(i) The site is within the prohibited distance of 300 meters from the intersection of the State Highway in SH 154, and as such is in violation of Indian Road Congress Norms, 2009 prescribed under Clause No.4.5.2.1(a)(i) of the norms;

(ii) The Petrol Pump is located within 50 meters from the residential buildings and therefore, the same is violative of siting norms prescribed by the Central Pollution Control Board vide Office Memorandum bearing No.B-13011/1/2019-20/AQM 10802-10847, dated. 07.01.2020. The said guidelines are held to be mandatory by the Honourable Supreme Court of India in, ***Indian Oil Corporation Limited -Vs- V.B.R. Menon and others***.,[1] more specifically relied upon the Paragraphs Nos.50 to 53.2;

(iii) In any event, the situs of the dispensing unit as well as the vent are clearly less than 30 meters from the adjacent residential building as such, the above retail outlet is located completely in violation of the CPCB norms;

1 (2023) 7 SCC 368 : 2023 SCC OnLine SC 257 at page 388

(iv) The "No Objection Certificate" issued by the Commissioner of Police merely reproduces the Form prescribed under the Rules and it does not disclose any application of matter whatsoever. As a matter of fact, if the form prescribes "any other matter pertinent to public safety", the same is also routinely reproduced without adverting actually to the matter concerning public safety or saying that there is none. Therefore, the impugned/No objection certificate is issued in a mechanical manner, without considering any of the objections or relevant criteria and passing a speaking order;

(v) The retail outlet is also partly sited on the residential plots, and without even converting the same into commercial use by making an appropriate application before the Planning Authority and the same cannot be used for the establishment of the outlet.

4.*Mr. Ajmal Khan*, learned counsel appearing for the petitioner in W.P.(MD).No.14603 of 2020 would reiterate the above submissions, but, however, he would concede to the position that the IRC guidelines were held to be not mandatory.

5.*Mr.V.B.R. Menon*, learned counsel appearing for the petitioner in W.P.(MD).No.13751 of 2020, reiterating the aforesaid submissions and taking the Court in detail through the relevant pleadings and papers and by referring to the detailed plan filed by him, would submit that there is no way that the present location can satisfy the CPCB norms. It cannot even satisfy the 30-meter norm. The 30-meter norm is only an exception which is not even considered in the instant case. The learned counsel would point out the orders passed by the Commissioners in other jurisdictions, wherein, they have applied their mind and given categorical findings that the findings regarding various criteria that have to be looked into by them under Rule 144 of the Petroleum Rules. The learned counsel would submit that in any event, the validity of the "No Objection Certificate" is only for a period of 3 years and now that the period is already over, it is incumbent on the respondents to once again apply afresh for the "No Objection Certificate".

6.*Mr.S.Vinod Sathya Lazar*, learned counsel appearing for the Writ Petitioners in W.P.(MD).No.13637 of 2020 would adopt the submissions made by the learned Senior Counsel and *Mr.V.B.R. Menon*, learned counsel appearing for the petitioner in W.P.No.13751 of 2020.

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7.Per Contra, Mr.V.Prakash, learned Senior Counsel appearing on behalf of the 6th respondent in W.P.(MD).No.13751 of 2020 would contend that only because these Writ Petitions were filed and pending, and interim orders were also granted, further procedures in the establishment of the retail outlet could not be proceeded with and therefore, the petitioners on the one hand cannot block the progress of the establishment of the Petrol pump, and at the same breath pleaded that the No Objection Certificate has expired on account of time.

8.The learned Senior Counsel would submit that this Court has consistently held that the IRC guidelines do not have any statutory force or are not mandatory. In a given case, depending on the nature of the intersection, retail outlet pumps can be located even within a 300 meter distance. In this regard, the learned Senior Counsel would rely upon the judgment of this Court, in ***A.Periyasamy (deceased) and another., Vs. The Deputy Director and Ors.,***[2] ***(W.P.Nos.34652 of 2019),*** more fully rely upon Paragraph No.13 of the said Judgment.

9.The learned Senior Counsel would further submit that after the

2 2021 SCC OnLine Mad 2860

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amendment of Rule 144, it categorically stipulates that the District Authority shall issue "No Objection Certificate", in the proforma given in the Rules itself. Therefore, when after conducting an enquiry and satisfaction as to the various requirements, certificate is issued in the proforma prescribed under the rules, the same cannot be challenged for want of application of mind.

10.The learned Senior Counsel would rely upon the Judgment of this Court, in ***Maruthapillai Vs. Commissioner of Police and others., (W.P.Nos. 7170 of 2020 etc.,***), more specifically relying upon Paragraph No.11 of the Judgment to contend that when after due inquiry, proforma is issued in the format and the same cannot be set aside for want of express reasonings in the Certificate, as what is issued is only a Certificate.

11.As far as the violation of CPCB guidelines is concerned, the learned Senior Counsel would contend that it is not 50 meters in every case it is necessary, but, by installing safety procedures such as vapor absorbing equipment, etc, the authorities can permit the location of the retail outlet, if there is 30 meters distance.

12. The Learned Senior Counsel would submit that far as the District

Fire Safety Officer is concerned, his inspection and certificate are from the purview of fire safety. As far as the Commissioner of Police is concerned, his approach is from the angle of overall safety. On a perusal of the CPCB guidelines, it can be seen that it is only for the PESO who look into the issue. He would submit that the matter is now pending only at the no objection level and from now on they have to approach the PESO for license. In view of the vast extent of the site of the location of the petrol pump, if before the PESO, the 6th respondent is able to persuade that it can relocate the vent and filling pump, so as to satisfy the mandatory of 30 meters distance, there is still scope for the 6th respondent to establish the retail outlet.

13.We have considered the rival submissions on either side and perused the material records of this case.

14.Firstly, as far as the submission regarding the expiry of the "No Objection Certificate" is concerned, it can be seen that the No Objection Certificate is granted on 15.02.2020 and is normally valid for a period of 3 years. In this case, before the 6th respondent to proceed further, the Writ Petitions were filed in the year 2020 itself by an interim order in the connected

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W.A.(MD).No.1020 of 2020, dated 26.11.2020, the 6th respondent was only permitted to go ahead with the construction, but, was restrained from opening the outlet. In that view of the matter, when the litigations are filed and when an interim order is granted, certainly the period from 16.11.2020 to upto the date, has to be excluded from the said 3 years, and if the same is excluded, it cannot be said that the "No Objection Certificate" has expired.

15.As far as the IRC guidelines are concerned, as rightly contended by the learned Counsel appearing on behalf of the 6th respondent, this Court has already taken a decision that the same is not mandatory. As a matter of fact, the intersections of various roads with the State Highways differ in various ways and means on ground. Therefore, it was held that the guidelines need not be mandatorily followed in all matters. The said position has clearly been reiterated, in ***A.Periyasamy and Anr.,*** cited supra.

16.As far as the contention regarding the location of the Petrol pump in a residential area is concerned, it can be seen that as per Annexure -XVIII to the Zoning regulations in Paragraph No.xxii Under Rule 33 of the TN Combined Development and Building Rules 2019, the location of a petroleum retail outlet in a residential zone is a permitted activity. Therefore, when on

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that basis building permits and planning permission have been given and the same does not give rise to any illegality so as to interfere in the matter.

17. As far as the CPCB guidelines are concerned, so as to exempt the retail outlets from the procedures of approaching the concerned Pollution Control Boards to obtain consent for establishment and consent for operation, the guidelines are held to be mandatory by the Hon'ble Supreme Court of India. It has held that the same has to be strictly adhered to. It is essential to extract Paragraphs Nos. 50 to 53.2 of the Judgment of the Hon'ble Supreme Court of India, in ***Indian Oil Corporation Limited vs. V.B.R.Menon and Ors.,*** cited supra, as follows:-

> *" 50. What is important for us to note is that in the directions/guidelines issued by CPCB dated 30-4-2020 and 7-3-2016, respectively, the automobile fuel outlets have been classified as "green" which may be exempted from consent management. The learned Solicitor General submitted that it is only after due consideration and deliberations that CPCB issued the said directions. NGT itself in para 66 of its impugned order [V.B.R. Menon v. State of T.N., 2021 SCC OnLine NGT 3583] has noted that the oil industry is characterised as "green category" and the CTE and CTO was not required. It appears to us that the apprehension on the part of NGT that the installation of VRS may not be strictly monitored by the State Pollution Control Boards, led NGT to issue directions to CPCB and State Pollution Control*

Boards to issue a circular making it mandatory for obtaining the CTE and CTO as a condition precedent for establishing new petroleum outlets. What has been argued before us and also on the basis of the materials on record, we are convinced that it is not necessary to make obtaining of CTE and CTO mandatory.

51. We would like to impress upon CPCB to ensure that its guidelines referred to above are scrupulously followed and once the guidelines are scrupulously adhered to, no direction to obtain CTE and CTO for starting/operating an RO is warranted. We are at one with the learned counsel appearing for the respective appellants that asking the existing ROs to obtain CTO is something very unreasonable and may lead to various difficulties. Even directing the ROs that may come up in future to obtain the CTE and CTO would be cumbersome and time-consuming and thus we do not find it reasonable.

52. In such circumstances, while holding that the National Green Tribunal has the power to direct CPCB that it should exercise its powers under Section 5 of the 1986 Act for the purpose of protecting the environment, we are inclined to modify the impugned directions issued by NGT, Chennai as contained in paras 69(iii) and 69(iv), respectively, of the impugned order [V.B.R. Menon v. State of T.N., 2021 SCC OnLine NGT 3583] .

53. In view of the aforesaid, we dispose of Civil Appeal No. 2039 of 2022 in the following terms:

53.1.CPCB shall ensure that all the retail petroleum outlets located in different cities having population of more than 10 lakhs and having turnover of more than 300 KL/month shall install the VRS mechanism within the fresh timeline as prescribed in its Circular dated 4-6-2021. To put it in other words, CPCB shall ensure that the

directions issued by NGT as contained in paras 69(i) and (ii) of the impugned order [V.B.R. Menon v. State of T.N., 2021 SCC OnLine NGT 3583] are fully complied with. It shall be the legal obligation of all the State Pollution Control Boards to ensure that the directions issued by NGT in regard to the installation of the VRS mechanism are complied with within the fresh timeline as prescribed by CPCB.

53.2. We set aside the directions issued by NGT in the impugned order [V.B.R. Menon v. State of T.N., 2021 SCC OnLine NGT 3583] as contained in paras 69(iii) and (iv). Instead, we direct CPCB to instruct all the State Pollution Control Boards to ensure that the guidelines issued by it vide the Office Memorandum dated 7-1-2020 are strictly adhered to. ....”

18.It is also relevant to extract Rule 144 of the Petroleum Rules, 2002, and the proforma prescribed under the rule, which reads as follows:-

*“**144. No objection certificate: (1)** Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new license other than a license in Form III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that the is no objection to the applicant receiving a license for the site proposed ama the District Authority shall, if he sees no objection, grant such certificate **1**[in the proforma specified in sub-rule (7),] to the applicant who shall forward it the licensing authority with his application in Form IX.*

***1.**[Note.-The licensing authority shall accept the no objection certificate within a period of three years from the date of its issue for considering grant of licence.]*

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller, as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates, to the Chief Controller or the Controller, as the case may be, that any license which has been applied for should not, in his opinion, be granted, such license shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

2*[(6) Where the location of storage of petroleum is within the notified area of a Port or Airport under the control of the state, or establishment of Indian Space Research Organisation or Department of Atomic Energy, NO OBJECTION CERTIFICATE from the District Authority referred to in sub rules (1) to (5) shall not be required:*

Provided that consent for establishment of petroleum storage from the competent authority of concerned notified area or head of the establishment, as the case may be, is obtained.]

(7) The district authority shall issue a no objection certificate in the following proforma, namely:

PROFORMA
NO OBJECTION CERTIFICATE

(See rule 144)

No.....
Date.....

Subject:- No objection certificate

With reference to the application No.....dated.....submitted by.....and in pursuance of rule 144 of the Petroleum Rules, 2002, there is no objection for granting licence under the Petroleum Rules, 2002 to Shri/Smt./M/s..... address.....for storage of petroleum products in their premises at Survey No...../Gat No... /Khasra No..... Plot No.....
Village.....Taluka/Tehsil.....District... ....Stat e.....as shown in the site plan duly endorsed and enclosed herewith.

(1) The following particulars have been considered while issuing this no objection certificate, that-

(a) possession of the site by the applicant is lawful and authorisation from land owner or lease holder for developing premises under these rules for storage of petroleum products;

(b) ***interest of public, specially the facilities like schools, hospitals or proximity to places of public assembly and the mitigating measures, if any, is provided;***

(c) traffic density and impact on traffic;

(d) conformity of proposal to the local or area development planning;

(e) accessibility of the site to fire tenders in case of emergency and preparedness of fire

services for combating the emergencies;

(f) genuineness of purpose.

(g) ***any other matter pertinent to public safety;***

Signature of the district authority issuing no objection certificate with his office seal (in towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police and for any other place the District Magistrate)

Note.- The licensing authority shall accept the no objection certificate within a period of three years from the date of its issue for considering grant of licence.]"

19.It can be seen from Paragraph No.1(b) and (g) of the proforma that the Authority has to consider the interest of the public especially, facilities like schools, hospitals, or proximity to the places of public assembly and the mitigating measures, if any, are provided and also any other issue regarding public safety. Therefore, we reject the contention of the learned Senior Counsel appearing on behalf of the 6th respondent that it is not the duty of the District Authority to look into the facts as to the violation of the CPCB guidelines. In our view, both the District Authority as well as the licensing authority, namely PESO, are entitled to and are duty bound to look into the same, in view of the categorical pronouncement of the Hon'ble Supreme Court

of India, that the CPCB guidelines have to be strictly adhered to.

20.In the instant case, by referring to the measurement of the extent of the lands, in which the Petrol pump is located, the learned Counsel for the 6th respondent submitted that it is still possible to realign the fill points, dispensing points and vent points so that it would be away from the 30 meters of any residence surrounding the pump.

21.*Mr.V.B.R.Menon*, learned Counsel appearing on behalf of the petitioner would rely upon the ariel view of the site and the map of the location and try to demonstrate that in view of the proposed outlet being surrounded by residential houses on all sites of the Plot, it is impossible to satisfy 30 meters criteria. Pointing out to the same photograph, the learned Senior Counsel appearing on behalf of the 6th respondent would submit that only on one side, the residential buildings are close by and on the other two sides there are roads, and therefore, they may still satisfy the 30 meters criteria by relocating the fill points, dispensing points and vent points and thereafter commence the operation of the pump.

22. The size of the site is 36.05 meters *41.73 meters approximately.

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The above claim and the counter-claim cannot be decided merely on the basis of rough sketches/plans or photographs. It has to be decided by the authorities by making a field inspection and satisfying themselves that there is a possibility and if there is such a possibility and the fill points, dispense points, and vent etc., can be relocated within the premises of the 6th respondent, in such a manner, so as to satisfy the CPCB guidelines, then it can be permitted to do so.

23.In view thereof, we partly allow the Writ Petitions on the following terms:-

> (i) The impugned "No Objection Certificate", bearing reference C.No.M2/23279-2019, dated 15.02.2020 shall stand quashed, inasmuch as, it did not consider the violation as to the mandatory of CPCB guidelines, more specifically in paragraph (H) (Siting criteria of retail outlets) of the guidelines for setting up new petroleum retail outlets, issued vide Office Memorandum, dated 07.01.2020;
>
> (ii) A joint inspection shall be made by the Commissioner of Police, Trichy City as well as the PESO Authorities in the presence of the 6th respondent as well as the Writ Petitioners or their representatives, to consider as to whether by relocating the fill points,

vents and dispensing units in any place, within the proposed premises of the 6th respondent, whether the minimum distance of 30 meters from residences can be satisfied even while satisfying the other mandatory requirements and if so, what are the additional safety measures which have to be imposed on the 6th respondent;

(iii) If upon the inspection, if only the 6th respondent satisfies the 30 meters criteria with additional safety measures as may be agreed by the PESO Authorities, the Commissioner of Police, Trichy shall issue afresh the No Objection Certificate, and thereafter, it will be open for the PESO Authorities to consider the grant of final license in accordance with law.

(iv) The above exercise shall be carried on by the authorities, within a period of three months from the date of receipt of a copy of this order.

(v) However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(S.S.S.R. J.,) **(D.B.C. J.,)**
13.10.2023
(2/2)

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order

klt

To:

1. The Secretary,
   Ministry of Petroleum & Natural Gas,
   Shastri Bhawan, New Delhi.

2. The Principal Secretary,
   Department of Home,
   Fort St.George, Chennai.

3. The District Collector,
   Tiruchirapalli District.

4. The Commissioner of Police,
   Tiruchirapalli Commissionerate, Tiruchirapalli.

5. The Joint Chief Controller of Explosives,
   South Circle,
   A&D Wing, Block 1-8, 2nd Floor, Shastri Bhawan,
   26 Haddows Road, Nungambakkam,
   Chennai.

6. The Assistant Controller of Legal Metrology,
   Department of Legal Metrology,
   Tiruchirapalli Region, Tiruchirapalli.

7. The District Fire & Rescue Officer,
   Fire & Rescue Department, Tiruchirapalli.

8. The Member Secretary,

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Tiruchirapalli Town & Country Planning Authority,
Khajamalai, Tiruchirapalli.

9. The Central Pollution Control Board,
Rep. By its Additional Director,
Parivesh Bhawan, East Arjun Nagar,
Shahdara, Delhi – 110032.

10. The Additional chief Secretary to Government of Tamil Nadu,
Highways & Minor Ports Department,
Fort St.George, Secretariat, Chennai.

11. The Divisional Engineer
(Construction & Maintenance),
Highways Department, Trichy.

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Tiruchirappalli – 620001.

13. The Commissioner of Police,
Tiruchirappalli District,
Subramaniapuram, Tiruchirappalli.

14. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

15. The District Revenue Officer,
Tiruchirappalli District,
Collectorate campus, Tiruchirappalli – 620001.

16. The Commissioner of Police,
Trichy City Police Office,
Pudukkottai Main Road,
Subramaniapuram, Tiruchirappalli – 620 023.

17. The Commissioner,
Trichy Municipal Corporation,

No.58, Bharathidasan Road,
Tiruchirappalli Cantt,
Tiruchirappalli – 620 001.

S.S.SUNDAR, J.,
and
D.BHARATHA CHAKRAVARTHY, J.,

klt

Pre-Delivery Order in
W.P.(MD).Nos.14603, 13637
and 13751 of 2020

True copy

13.10.2023
(2/2)

VBR Menon

JOINT INSPECTION REPORT

U.O.Note Reply

To: K1 Assistant (Through "K" Superintendent)

RTI Act-2005 under Sec 6(3) of the petition is received from Tr.V.B.R.Menon, Advocate, No.4B Brook Apartments, No.12, P.T.Rajan Salai, K.K.Nagar, Chennai with a request to a copy of the Joint Site Inspection report with site measurement and findings made therein in respect of the joint Inspection held on 29.02.2024 of the proposed petrol pump site of M/s Shell India Markets Pvt Ltd., on Trichy- Dindugal main Road at S.No.18/13(Part) & 25/1(Part), T.S.No.25/1A, Plot Nos. 1,2,3,9,10,11,12 of Ponmalai Zone, Block No.10 of JK Nagar, Pirattiyur, Trichy West Taluk, Tiruchirapalli.

2) In this regard, as per petitioner request, a copy of Joint Site Inspection report with site measurement of the above said M/s Shell India Markets Pvt Ltd., Petroleum retail outlet location is enclosed herewith.

23/4 22/4

The following persons and officers were present at site to inspect the proposed Petroleum out let by M/s Shell India Markets Pvt. Ltd. on Trichy - Dindigul main road, Piratiyur pursuant to the order passed by the Hon'ble Madurai Bench of Madras High Court on 13/10/2023 in W.P.(MD) No. 14063, 13637 and 13751 of 2020.

1) The Commissioner of Police, Trichy City.
2) Labour Inspector Legal Metrology Dept., Trichy
3) The Joint chief Controller of Explosives, Chennai
4) Mr. Anandaraj, Network Project manager, M/s Shell India markets Pvt Ltd.,
5) Mr. V.B.R. Menon, Representing petitioner Tmt. Kiruba petitioner in W.P. No. 13751 of 2020
6) Mr. Senthil Kumar, petitioner in W.P. No. 14063 of 2020
7) Mr. Arunkumar, petitioner in WP. No. 13637 of 2

The existing and proposed/revised site dimensions were taken and consolidated report shall be sent to the petitioners and the Oil company for their comments. This joint inspection was carried out today (29/2/2024) at 09.00hrs onwards

29/2/24.
(V.B.R. Menon)

29/2/24.
(S. SENTHILKUMAR)

29/02/2024
(R. ARUNKUMAR)

TRICHY CITY

SITE INSPECTION REPORT PETROLEUM OUTLET OF M/S SHELL INDIA MARKETS PVT. LTD, TRICHY-DINDIGUL MAIN ROAD, PIRATIYUR ON 29.02.2024 AT 0930 HRS

Reading / Measurements of Vent Pipes, Filling Point, Dispensing Unit, Width of street roads & Vacant plots:

1.	South side compound wall to existing Vents (3 pipes)	- 5.5 mts
2.	South side compound wall to Filling point	- 29 mts
3.	South side compound wall to 3rd dispensing unit from North	- 7.4 mts
4.	South side compound wall to 2nd dispensing unit from North	- 14.7 mts
5.	Width of street roads on South side	- 7 mts
6.	Westside of the proposed site	- 7 mts
7.	Length of the vacant plot on the East side of the proposed site	- 35 mts
8.	Width of the road runs from North to South adjacent to vacant plot	- 12 mts

29-2-2024
SUB INSPECTOR OF SURV
WARD COMMITEE OFFICE - I
TIRUCHIRAPPALLI CITY CORPORA

True copy

VBR Menon

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(2012) 2 Supreme Court Cases 562

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

Civil Appeal No. 2430 of 2006†

ARCHAEOLOGICAL SURVEY OF INDIA .. Appellant;

Versus

NARENDER ANAND AND OTHERS .. Respondents.

With

Civil Appeal No. 2431 of 2006

NARENDER ANAND AND ANOTHER .. Appellant;

Versus

ARCHAEOLOGICAL SURVEY OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 2430 of 2006 with No. 2431 of 2006, decided on January 16, 2012

A. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Ss. 39(2), 2(a), 3, 4, 38(1), (2)(a) & (b) and Ss. 20-A, 20-B, 20-C, 20-F [as inserted by Act 10 of 2010] — Jantar Mantar, New Delhi, held, is a protected monument of national importance to be preserved and protected — Noti. dt. 4-10-1956 declaring Jantar Mantar, New Delhi to be protected monument published in Official Gazette — However, Noti. dt. 3-5-1957 issued in supersession thereof purportedly for correcting an error therein not published in gazette — Contention that Jantar Mantar could not be treated as "protected monument" since Noti. dt. 3-5-1957 was not published in gazette and hence, prohibition contained in Noti. dt. 16-6-1992 for purposes of construction within the stipulated area was inapplicable to respondents' construction activity — Tenability — Held, even though Noti. dt. 3-5-1957 did not become effective because it was not published in Official Gazette, earlier Notification issued on 4-10-1956 remained effective and same was saved by S. 39(2) — General Clauses Act, 1897 — S. 23 — Non-publication of notification requiring publication — Effect**

B. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Ss. 20-A, 20-B, 20-C, 20-F [as inserted by Act 10 of 2010] and Ss. 2(a), 3, 4, 38(1), (2)(a) & (b), 39(2) — Powers of Central Government to permit public work or any project in prohibited/protected area — Expression "such other work or project" occurring in S. 20-A(3)(b) — Implication of — "Renovation" — Scope of — Held, said former expression implies larger public interest in contrast to private interest and in no case should construction be allowed if the same adversely affects ancient and historical monuments or archaeological sites — Moreover, term "renovation" appearing in S. 20-C take its colour from the word "repair" appearing therein — This would mean that in the garb of renovation, owner of a**

† From the Judgment and Order dated 23-7-2004 of the High Court of Delhi at New Delhi in FAO (OS) No. 414 of 2002 and WP (C) No. 2635 of 2002

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building cannot demolish the existing structure and raise a new one and competent authority cannot grant permission for such reconstruction — Ancient Monuments and Archaeological Sites and Remains Rules, 1959, Rr. 31, 32 and 33

C. **Constitution of India — Art. 226 — Mandamus — Issuance — Propriety — Direction to review Noti. dt. 16-6-1992 prohibiting construction/mining operations within stipulated area of prohibited monuments — Held, said notification was issued for preserving and protecting ancient and historical monuments and archaeological sites and remains of national importance — In the name of development and accommodating need for multi-storeyed structures, High Court could not have issued mandamus to Central Government to review notification — Notification confirmed and mandamus revoked — Constitution of India, Art. 49**

D. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Ss. 2(a), 3, 4, 38(1), (2)(a) & (b) and Ss. 20-A, 20-B, 20-C, 20-F [as inserted by Act 10 of 2010] — Noti. dt. 16-6-1992 inter alia declaring area up to 100 m from protected limits and further beyond it up to 200 m from protected monuments to be prohibited and regulated areas, respectively for construction/mining purposes — Interpretation of — Held, as rightly interpreted by High Court, 100 m is to be counted from outer boundary wall of monument concerned i.e. Jantar Mantar which has protected area of 5.39 acres and not physical structures of Jantar Mantar observatory — Constitution of India, Art. 49**

E. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — S. 20-A [as inserted by Act 10 of 2010] — Scope of — Explained — Ancient Monuments and Archaeological Sites and Remains Rules, 1959, Rr. 31, 32 and 33**

F. **Ancient and Protected Monuments, Art and Antiquities — State protection — Archaeological and historical pursuits beginning from 18th Century, traced (Paras 3 to 5)**

The Central Government issued Notification dated 4-10-1956 declaring Jantar Mantar, New Delhi to be protected monument, which was published in the gazette on 13-10-1956. Since an error had crept therein stating that the Maharaja of Jaipur was the owner thereof, another notification in supersession of earlier notification was issued on 3-5-1957 and the Government of Rajasthan was shown as the owner. However, the said notification was not published in the Official Gazette. Thereafter on 16-6-1992 another notification was issued which was duly published in the Official Gazette declaring an area up to 100 m from the protected limits and further beyond it up to 200 m adjoining the protected monument to be prohibited and regulated areas, respectively for purposes of mining operations and constructions.

A building plan of Respondents 1 and 2 who owned a plot in Janpath Lane was sanctioned sometime in September 2000. Thereafter the respondents demolished the existing structure and started digging a foundation for the new building. On 5-5-2001, the Conservation Assistant of Archaeological Survey of India lodged a complaint about excavations and constructions undertaken by

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respondents which was in violation of the prohibition contained in Notification dated 16-6-1992. The Archaeological Survey also informed NDMC that the sanction accorded by it was contrary to the notification. Thereupon, NDMC issued notice dated 23-5-2001 to the respondents directing them to stop construction and to obtain necessary permission from Archaeological Survey of India.

Respondents 1 and 2 challenged the letter of NDMC and prayed that the restriction imposed on the construction of building be declared as nullity.

The Single Judge found that in the absence of publication of Notification dated 3-5-1957, the said notification was ineffective and the subsequent Notification dated 8-1-1958 in which reference was made to the earlier Notification dated 3-5-1957 was also ineffective and the prohibition contained in the Notification dated 16-6-1992 cannot be made applicable to the plot of Respondents 1 and 2.

During the pendency of the appeal filed against the order of the Single Judge, Heritage and Culture Forum, Delhi filed writ petition by way of public interest litigation and prayed for issuance of a mandamus for stopping the construction of multi-storeyed building on the plot owned by Respondents 1 and 2. The respondents besides challenging the locus standi of Heritage and Culture Forum to challenge the permission granted to them for the construction of a building, pleaded that Jantar Mantar, New Delhi, cannot be treated as a protected monument because the Notification dated 3-5-1957 was not published in the Official Gazette, and as such, the prohibition contained in Notification dated 16-6-1992 was inapplicable to them. The Division Bench of the High Court before whom the writ petition came up, opined that Jantar Mantar was already declared a protected monument by Notification dated 4-10-1956 and that in view of the prohibition contained in Notification dated 16-6-1992 the respondents were not entitled to raise construction on Janpath Lane because the same was within 100 m of the protected monument. It also directed the Central Government to review the Notification dated 16-6-1992. Hence, the instant appeal.

During the pendency of the instant appeals, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 was amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and Sections 20-A and 20-B were inserted with effect from 16-6-1992 and Sections 20-C to 20-Q were inserted with effect from 29-3-2010.

Allowing the appeals, the Supreme Court

Held :

With the insertion of Section 20-A since 2010 it has been made clear that every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument. Not only this, by virtue of the proviso to Section 20-A(1) the Central Government has been clothed with the power to extend the prohibition beyond 100 m by issuing a notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be. (Paras 45 and 46)

In terms of Section 20-A(2), no person other than an Archaeological Officer can carry out any construction in any prohibited area. Section 20-C is an exception to Section 20-A(2) which lays down that any person who owns any building or structure, which existed in a prohibited area before 16-6-1992 or had

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been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the competent authority. The term "renovation" appearing in Section 20-C take its colour from the word "repair" appearing in that section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the competent authority cannot grant permission for such reconstruction. (Para 47)

The use of the expression "such other work or project" in Section 20-A(3)(*b*), if interpreted in isolation, may give an impression that the Central Government or the Director General is empowered to allow any other work or project by any person in the prohibited area but, the said expression has to be interpreted keeping in view the mandate of Article 49 of the Constitution and the objects sought to be achieved by enacting the 1958 Act i.e. preservation of ancient and historical monuments, archaeological sites and remains of national importance. This would necessarily imply that "such other work or project" must be in the larger public interest in contrast to private interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16-6-1992 and Section 20-A(1) would become redundant. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or archaeological sites. (Paras 48 and 49)

The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructure is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16-6-1992. That notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and archaeological sites and remains of national importance. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become part of history. (Paras 50 and 51)

One of such protected monuments facing extinction is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional which is largely due to construction of multi-storeyed structures around Jantar Mantar. Therefore, the High Court was not justified in directing the Central Government to review or reconsider the Notification dated 16-6-1992 and, to that extent, the impugned judgment is liable to be set aside. (Para 52)

The appeal of Respondents 1 and 2 is wholly meritless. The High Court has rightly held that even though the Notification dated 3-5-1957 did not become effective because the same was not published in the Official Gazette, the earlier Notification issued on 4-10-1956 remained effective and the same was saved by Section 39(2) of the 1958 Act. The High Court's interpretation of the prohibition contained in the Notification dated 16-6-1992 is correct and the distance of

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100 m has to be counted from the outer boundary wall of Jantar Mantar which has protected area of 5.39 acres and not from the physical structures of the observatory. (Para 53)

Heritage and Culture Forum v. *Union of India*, WP (C) No. 2635 of 2002, order dated 26-4-2002 (Del); *Heritage and Culture Forum* v. *Union of India*, WP (C) No. 2635 of 2002, order dated 6-8-2003 (Del); *Archaeological Survey of India* v. *Narender Anand*, Civil Appeal No. 2430 of 2006, order dated 29-9-2010 (SC), *referred to*

P-D/49340/C

Advocates who appeared in this case :

Mohan Parasaran and H.P. Raval, Additional Solicitors General, A. Mariarputham, J.S. Attri, Senior Advocates [Ashok Bhan, Ms Shweta Verma, Ms Asha G. Nair, Pradeep Kr. Bakshi, Rajat N., Ms Bohra Anand, Ms Anjani Aiyagiri, Pawan Bindra, Ms Kavita Wadia, Vishnu B. Saharya (for M/s Saharya & Co.) and Ravindra Kumar, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. Civil Appeal No. 2430 of 2006, order dated 29-9-2010 (SC), *Archaeological Survey of India* v. *Narender Anand* 578*c*
2. WP (C) No. 2635 of 2002, order dated 6-8-2003 (Del), *Heritage and Culture Forum* v. *Union of India* 576*d-e*
3. WP (C) No. 2635 of 2002, order dated 26-4-2002 (Del), *Heritage and Culture Forum* v. *Union of India* 576*b-c*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— These appeals are directed against the judgment of the Division Bench of the Delhi High Court whereby the appeal filed by the Archaeological Survey of India (the appellant in CA No. 2430 of 2006 and Respondent 1 in CA No. 2431 of 2006) was allowed and the order of injunction passed by the learned Single Judge in IA No. 2912 of 2002 in Suit No. 645 of 2002 allowing Shri Narender Anand and M/s Raval Apartments Pvt. Ltd. (Respondents 1 and 2 in CA No. 2430 of 2006 and the appellants in CA No. 2431 of 2006) to raise construction up to the height of 55 ft on Plot No. 14, Janpath Lane, New Delhi was set aside and Writ Petition No. 2635 of 2002 filed by Heritage and Cultural Forum was disposed of with a direction to the Central Government to review Notification dated 16-6-1992 issued under Rule 32 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (for short "the Rules").

2. While the Archaeological Survey of India has questioned the direction given by the Division Bench of the High Court for review of Notification dated 16-6-1992, Respondents 1 and 2 have challenged that portion of the impugned judgment by which the Division Bench vacated the order of injunction passed by the learned Single Judge.

3. Archaeological and historical pursuits in India started with the efforts of Sir William Jones, who put together a group of antiquarians to form the Asiatic Society on 15-1-1784 in Calcutta. He was supported by many persons who carried out survey of monuments in various parts of India. The identification of Chandragupta Maurya with Sandrokottos of Greek historians by Jones helped in fixing a chronological horizon of Indian history. This was followed by the identification of Pataliputra (Palibothra of classical writings)

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at the confluence of Ganga and Sone. The decipherment of Gupta and Kutila scripts by Charles Wilkinson was a landmark in this regard. Thereafter, many individuals made contribution in surveying different monuments in India.

4. In 1861, Alexander Cunningham was appointed as the first Archaeological Surveyor. He surveyed areas stretching from Gaya in the east to Indus in the north-west, and from Kalsi in the north to Narmada in the south, between 1861 and 1865. For this, he largely followed the footsteps of the Chinese pilgrim Hiuen Tsang. However, with the abolition of the Archaeological Survey in 1866, this work came to a grinding halt.

5. In the meanwhile, an Act was passed in 1863 empowering the Government to prevent injury to, and preserve the buildings remarkable for their antiquity and historical or architectural value. In 1878, the Treasure Trove Act was enacted which enabled the Government to confiscate treasures and antiques found during chance digging. After 26 years, the Ancient Monuments Preservation Act, 1904 (for short "the 1904 Act") was enacted for the preservation of ancient monuments and objects of archaeological, historical or artistic interest.

6. Section 2(1) of the 1904 Act, which contains the definition of "ancient monument" and Section 3 under which the Central Government was empowered to declare an ancient monument to be a protected monument were as under:

> "**2.** ***Definitions***.—In this Act, unless there is anything repugnant in the subject or context—
>
> (1) '**ancient monument**' means any structure, erection or monument or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest, or any remains thereof, and includes—
>
> (*a*) the site of an ancient monument;
>
> (*b*) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and
>
> (*c*) the means of access to and convenient inspection of an ancient monument;
>
> * * *
>
> **3.** ***Protected monuments***.—(1) The Central Government may, by notification in the Official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.
>
> (2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Central Government within one month from the date when it is so fixed up will be taken into consideration.
>
> (3) On the expiry of the said period of one month, the Central Government, after considering the objections, if any, shall confirm or withdraw the notification.

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(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act."

7. The Framers of the Constitution were very much conscious of the need of protecting the monuments and places/objects of artistic and historic importance. This is why Article 49 was incorporated in the directive principles of State policy (Part IV of the Constitution) whereby an obligation has been imposed on the State to protect every monument or place or object of artistic or historic interest declared by or under law made by Parliament. For the sake of reference Article 49 is reproduced below:

"**49.** ***Protection of monuments and places and objects of national importance***.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."

8. In 1951, Parliament enacted the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, whereby certain monuments, etc. were declared to be of national importance. After 7 years, Parliament enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short "the 1958 Act") to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. Similar legislations have been enacted by various State Legislatures with reference to Schedule VII List II Entry 12 of the Constitution.

9. The definition of "ancient monument" contained in Section 2(*a*) and Sections 3, 4, 38(1), (2)(*a*) and (*b*) and 39 of the 1958 Act, which are relevant for deciding the issues raised in these appeals are reproduced below:

"**2.** ***Definitions***.—In this Act, unless the context otherwise requires—

(*a*) '**ancient monument**' means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes—

(*i*) the remains of an ancient monument,

(*ii*) the site of an ancient monument,

(*iii*) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(*iv*) the means of access to, and convenient inspection of an ancient monument;

* * *

3. ***Certain ancient monuments, etc. deemed to be of national importance***.—All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National

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Importance) Act, 1951 (71 of 1951), or by Section 126 of the States Reorganisation Act, 1956 (37 of 1956), to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act.

4. ***Power of Central Government to declare ancient monument, etc. to be of national importance***.—(1) Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains; as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

* * *

38. ***Power to make rules***.—(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(*a*) the prohibition or regulation by licensing or otherwise of mining, quarrying, excavating, blasting or any operation of a like nature near a protected monument or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings;

(*b*) the grant of licences and permissions to make excavations for archaeological purposes in protected areas, the authorities by whom and the restrictions and conditions subject to which, such licences may be granted, the taking of securities from licensees and the fees that may be charged for such licences;

* * *

39. ***Repeals and saving***.—(1) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), and Section 126 of the States Reorganisation Act, 1956 (37 of 1956), are hereby repealed.

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(2) The Ancient Monuments Preservation Act, 1904 (7 of 1904), shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respects things done or omitted to be done before the commencement of this Act."

10. In exercise of the power vested in it under Section 38 of the 1958 Act, the Central Government enacted the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 the relevant provisions whereof are extracted below:

"**31.** ***Notice or intention to declare a prohibited or regulated area.***—(1) Before declaring an area near or adjoining a protected monument to be a prohibited area or a regulated area for purposes of mining operation or construction or both, the Central Government shall, by notification in the Official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

(2) Every such notification shall specify the limits of the area which is to be so declared and shall also call for objection, if any, from interested persons.

32. ***Declaration of prohibited or regulated area.***—After the expiry of one month from the date of the notification under Rule 31 and after considering the objections, if any, received within the said period, the Central Government may declare, by notification in the Official Gazette, the area specified in the notification under Rule 31, or any part of such area, to be a prohibited area, or, as the case may be, a regulated area for purposes of mining operation or construction or both.

33. ***Effect of declaration of prohibited or regulated area.***—No person other than an Archaeological Officer shall undertake any mining operation or any construction—

(*a*) in a prohibited, area, or

(*b*) in a regulated area except under and in accordance with the terms and conditions of a licence granted by the Director General."

11. Jantar Mantar, New Delhi is one of the five unique observatories built between 1699 and 1743 by Maharaja Jai Singh (II) of Jaipur, who was a great Mathematician and Astronomer. The other observatories are at Jaipur, Ujjain, Varanasi and Mathura. Jantar Mantar, New Delhi, like other observatories has several instruments that can graph the path of the astronomical universe. There is a colossal Samrat Yantra at the periphery of Jantar Mantar. To the south of Samrat Yantra, there is an amazing instrument called Jai Prakash, which has two concave hemispherical structures used for determining the position of the sun and celestial bodies. The other important yantras are Misra Yantra, Daksinovarti Bhitti Yantra, Karka Rasivalaya, Niyat Chakra, Rama Yantra, Brihat Samrat and Sasthamsa Yantra. Unfortunately, some of these yantras have been rendered unworkable or have become non-functional. One of the main reasons for this is the construction of multi-storeyed structures which have come up in the vicinity of Jantar Mantar in the last 25 to 30 years.

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12. In exercise of the powers conferred by Section 3(1) of the 1904 Act, the Central Government issued Notification dated 4-10-1956, which was published in the Gazette of India dated 13-10-1956, declaring Jantar Mantar, New Delhi to be a protected monument.

13. That notification reads as under:

"MINISTRY OF EDUCATION

ARCHAEOLOGY

New Delhi, 4-10-1956

SRO 2306.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Ancient Monuments Preservation Act, 1904 (7 of 1904), the Central Government hereby declares the ancient monument described in the Schedule annexed hereto to be a protected monument within the meaning of the said Act.

SCHEDULE

Sl. No.	*District*	*Locality*	*Name of monument*	*Area*	*Boundary: East, South, North, West*	*Whether in religious use*	*Ownership*	*Remarks*
	Delhi	New Delhi	Jantar Mantar	Protected area 5.39	South: South India Club, 9, Jantar Mantar Road East: Low land with a modern temple and well West: Jantar Mantar Road North-East: Partap Singh Building North-West: Parliament Street	No	Maha-raja of Jaipur	

(No. F-3-76/50-C-1)

D. Chakravarti

Under-Secretary"

14. With a view to correct an obvious mistake committed by showing Maharaja of Jaipur as the owner of Jantar Mantar in the Schedule to the aforesaid notification, the Central Government issued Notification dated 3-5-1957 under Section 3(1) of the 1904 Act, which reads as under:

"TO BE PUBLISHED IN THE GAZETTE OF INDIA

PART II SECTION III

No. F.3-76/50-0.1

Government of India

Ministry of Education

New Delhi, dated 3-5-1957

NOTIFICATION

(ARCHAEOLOGY)

In exercise of powers conferred by sub-section (1) of Section 3 of the Ancient Monuments Preservation Act, 1904 (7 of 1904) and in supersession

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of notification of the Government of India, Ministry of Education No. F.3-76/50/0.1 dated 4-10-1956, the Central Government hereby declares the ancient monument described in the Schedule annexed hereto to be a protected monument within the meaning of the said Act.

sd/-
(Rameshwar Dass)
Under-Secretary

The Publisher,
Gazette of India,
New Delhi."

15. The Schedule annexed with that notification is reproduced below:

"City	*Locality*	*Name of monument*	*Area*	*Boundary: East, South, North, West*	*Ownership*
1	2	3	4	5	6
Delhi	New Delhi	Jantar Mantar	Protected area 5.39	South: South India Club, 9, Jantar Mantar Road East: Low land with a modern temple and well West: Jantar Mantar Road North-East: Partap Singh Building North-West: Parliament Street	Government of Rajasthan"

16. Although Notification dated 3-5-1957 was not published in the Official Gazette, as was done in the case of Notification dated 4-10-1956, the only difference in the two notifications was that in the Schedule appended to the first notification, the ownership of Jantar Mantar was shown to be that of "Maharaja of Jaipur" and in the second notification, the owner of Jantar Mantar was shown as the Government of Rajasthan. What needs to be emphasised is that after merger of the erstwhile State of Jaipur and formation of the State of Rajasthan, the Maharaja of Jaipur did not retain his earlier status and he no longer remained the owner of Jantar Mantar because it was not his private property.

17. In exercise of the power vested in it under Rule 31 of the Rules, the Central Government issued Notification dated 15-5-1991, which was published in the Gazette of India dated 25-5-1991, and gave notice of its intention to declare an area of 100 m from the protected limits and further beyond it up to 200 m near or adjoining protected monuments to be prohibited and regulated areas respectively for the purposes of mining operations and constructions.

18. After considering the objections/suggestions received from the public, the Central Government issued Notification dated 16-6-1992, which was duly published in the Official Gazette.

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19. The final notification reads thus:

"DEPARTMENT OF CULTURE

(Archaeological Survey of India)

New Delhi, 16-6-1992

(ARCHAEOLOGY)

S.O. 1764.—Whereas by the notification of the Government of India in the Department of Culture, Archaeological Survey of India No. S.O. 1447 dated 15-5-1991 published in the Gazette of India, Part II Section 3 sub-section (*ii*) dated 25-5-1991, the Central Government gave one month's notice of its intention to declare area up to 100 m from the protected limits, and further beyond it up to 200 m near or adjoining protected monuments to be prohibited and regulated areas respectively for purposes of both mining operation and construction.

And whereas the said Gazette was made available to the public on 5-6-1991.

And whereas objections to the making of such declaration received from the person interested in the said areas have been considered by the Central Government.

Now, therefore, in exercise of the powers conferred by Rule 32 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, the Central Government hereby declares the said areas to be prohibited and regulated areas. This shall be in addition to and not in any way prejudice the similar declarations already made in respect of monuments at Fatehpur Sikri; Mahabalipuram; Golcunda Fort, Hyderabad (Andhra Pradesh); Thousands Pillared Temple, Hanamkonda, Distt. Warangal (Andhra Pradesh); Shershah Tomb, Sasaram (Bihar); Rock Edict of Ashoka, Kopbal, Distt. Raichur (Karnataka); Gomateshwara Statue at Sravanbelgola, District Hassan (Karnataka); Elephanta Caves, Gharapur, District Kolba (Maharashtra).

(No. F.8/2/90-M-M.C.)

M.C. Joshi

Director General"

20. Respondents 1 and 2, who own Plot No. 14, Janpath Lane submitted an application to the New Delhi Municipal Corporation (for short "the Corporation") sometime in August 1986 for sanction of the building plan for the construction of multi-storeyed commercial building. The same was rejected vide letter dated 15-9-1986 on the ground that the area was under comprehensive development and the details of redevelopment controls/ drawings, if any, finalised by the Delhi Development Authority (for short "DDA") were not available with the Corporation.

21. After about 7 years, Respondents 1 and 2 again submitted application dated 24-6-1993 for sanction of the building plan. The DDA vide its letter dated 1-10-1993 suggested to the Corporation that Plot No. 14, Janpath Lane formed part of redevelopment scheme and the building plan should be approved as per the Development Control Norms. The building plan was finally sanctioned by the Corporation sometime in September 2000 and was released on 5-3-2001. Thereafter, Respondents 1 and 2 demolished the existing structure and started digging foundation for the new building.

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22. On 5-5-2001, the Conservation Assistant of Archaeological Survey of India lodged a complaint about the excavation and construction being undertaken by Respondents 1 and 2 in violation of the prohibition contained in Notification dated 16-6-1992. The Superintending Archaeologist, Archaeological Survey of India, vide his letter dated 10-5-2001 informed the Corporation that the sanction given by it was contrary to Notification dated 16-6-1992. Thereupon, the Corporation issued notice dated 23-5-2001 to Respondents 1 and 2 and directed them to stop the construction and obtain the requisite permission from the Archaeological Survey of India.

23. Respondents 1 and 2 challenged the letter of the Corporation in Suit No. 645 of 2002 and prayed that the restriction imposed on the construction of building be declared as nullity. They also filed IA No. 2912 of 2002 under Order 39 Rules 1 and 2 CPC for temporary injunction. On 22-3-2002, the learned Single Judge directed registration of the suit and passed an ex parte injunction order whereby the Corporation was restrained from giving effect to letter dated 23-5-2001 subject to the condition that Respondents 1 and 2 shall furnish an undertaking that they will raise construction up to the height of 55 ft only.

24. On notice, the Archaeological Survey of India filed IA No. 4479 of 2002 for modification of order dated 22-3-2002. The same was disposed of by the learned Single Judge with a direction to Respondents 1 and 2 not to raise the construction beyond the DPC level. The injunction application was finally allowed by the learned Single Judge vide order dated 30-10-2002 and the order dated 22-3-2002 was made absolute.

25. The learned Single Judge noted that despite several opportunities, the counsel representing the Archaeological Survey of India failed to produce a copy of the Official Gazette in which the Notification dated 3-5-1957 was published and held that in the absence of such publication, the notification cannot be treated as effective. The learned Single Judge further held that the subsequent Notification dated 8-1-1958 in which reference was made to the earlier Notification dated 3-5-1957 was also ineffective and in the absence of a legally binding notification not having been issued under Section 3(1) of the 1904 Act, the prohibition contained in the Notification dated 16-6-1992 cannot be made applicable to the plot of Respondents 1 and 2.

26. IA No. 10985 of 2002 filed by the Archaeological Survey of India for review of the injunction order was disposed of by the learned Single Judge on 27-11-2002 by taking cognizance of the concession made by the counsel appearing on its behalf that the Notification dated 3-5-1957 had not been published in the Official Gazette. The Archaeological Survey of India challenged the order of injunction in FAO (OS) No. 414 of 2002 mainly on the ground that while deciding the application for injunction, the learned Single Judge had misinterpreted the notifications issued under Section 3(1) of the 1904 Act and Section 39 of the 1958 Act.

27. During the pendency of the appeal filed against the order of the learned Single Judge, Heritage and Culture Forum, Delhi filed Writ Petition

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No. 2635 of 2002 by way of public interest litigation and prayed for issuance of a mandamus for stopping the construction of multi-storeyed building on the plot owned by Respondents 1 and 2 by asserting that the same was contrary to the provisions of the 1958 Act and the Rules framed thereunder and the prohibition imposed on the construction of buildings within 100 m of the protected monument.

28. In their counter-affidavit, Respondents 1 and 2 not only questioned the locus standi of Heritage and Culture Forum to challenge the permission granted to them for the construction of building, but also pleaded that the prohibition contained in the Notification dated 16-6-1992 was not applicable to their plot. On behalf of the Archaeological Survey of India, the Superintending Archaeologist filed counter-affidavit and pleaded that the building plan sanctioned by the Corporation which enabled Respondents 1 and 2 to construct the building was violative of the prohibition contained in the Notification dated 16-6-1992.

29. At the hearing of the appeal, the learned counsel for Respondents 1 and 2 reiterated the plea taken before the learned Single Judge that Jantar Mantar, New Delhi cannot be treated as a protected monument because the Notification dated 3-5-1957 had not been published in the Official Gazette and as such the prohibition contained in the Notification dated 16-6-1992 was not applicable to his clients. He then argued that there was no justification to enforce the prohibition qua Plot No. 14, Janpath Lane because a number of other buildings including Phase II of the Corporation's building had already been constructed around Jantar Mantar in violation of the restriction of 100 m.

30. The Division Bench of the High Court took cognizance of the fact that the Corporation had constructed Phase II building in violation of the prohibition contained in the Notification dated 16-6-1992 and directed the Archaeological Survey of India to explain why such construction of that building was not stopped. Thereupon, the Superintending Archaeologist filed affidavit dated 26-5-2003. In Paras III(1) and (2) of his affidavit, the deponent spelt out the details of the objections raised by the Archaeological Survey of India against the construction of Phase II building of the Corporation and claimed that the officers of the Corporation continued with the construction despite objections.

31. In Para IV of his affidavit, the deponent made the following statement:

> "IV. That it is evident from the abovestated chronology of events that insofar as ASI is concerned, it pursued the matter with NDMC and the Government of NCT of Delhi vigorously with the hope that NDMC would stop the construction. However, despite best efforts of ASI, nothing was being done to ensure that the construction activity at the site takes place in accordance with the provisions of law. It is only on 26-8-2003 that an application in the prescribed form has been submitted by NDMC, seeking the permission of the Archaeological Survey of India

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to sanction the construction in the regulated area. It is respectfully submitted that the Archaeological Survey of India does not have any machinery, either to demolish the construction or to stop the construction and therefore it could do only as much in the present case, since it involved a local authority, and for the purposes of execution of its orders ASI has to depend upon the assurance of the local government only. It is significant to note that in the present case the construction was carried out by none other than the municipal authority, and, as such, there was nothing that the Archaeological Survey of India could do except to persuade the authority concerned to dissuade from persisting with the same. Towards the said directions, best efforts were made by ASI, but to no avail."

32. In compliance with the order dated 26-4-2002[1] passed by the Division Bench of the High Court, the Corporation submitted a status report containing the details of the applications made by Respondents 1 and 2 and sanction of the building plan. The status report also made a mention of letter dated 25-9-2001 written by DDA to the Corporation that the objections/ suggestions made by the Archaeological Survey of India regarding setbacks and heights were considered while finalising the Redevelopment Scheme in 1989, which was approved by DDA on 24-5-1994 and by the Ministry of Urban Development in October 1994.

33. In compliance with another order passed by the Division Bench on 6-8-2003[2], the Corporation explained its position regarding Phase II building by stating that approval for NDMC, New Delhi City Centre was granted vide Resolution dated 12-2-1969 and the building was to be constructed in two phases. That plan for Phase II was approved by the Delhi Urban Arts Commission on 13-3-1992 and the building was constructed without violating the 100 m restriction.

34. Respondents 1 and 2 also filed an affidavit and claimed that the proposed building is 218 ft away from the outer boundary of Jantar Mantar and 101.46 m from the protected monument. According to Respondents 1 and 2, in terms of the sanction plan they are entitled to construct a building up to the height of 75 ft but the learned Single Judge has allowed construction only up to 55 ft.

35. The Division Bench of the High Court first considered the implication of the concession made before the learned Single Judge by the counsel appearing for the Archaeological Survey of India that the Notification dated 3-5-1957 had not been published in the Official Gazette as per the requirement of Section 3(2)* of the 1904 Act and observed that the so-called concession was inconsequential because a copy of the Official Gazette had, in fact, not been produced before the Court. The Division Bench

1 *Heritage and Culture Forum* v. *Union of India*, WP (C) No. 2635 of 2002, order dated 26-4-2002 (Del)

2 *Heritage and Culture Forum* v. *Union of India*, WP (C) No. 2635 of 2002, order dated 6-8-2003 (Del)

* **Ed.**: *See also* Section 3(1) of the 1904 Act at p. 567*f-g*, above.

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then considered the question whether Jantar Mantar is a protected monument, referred to the Notifications dated 4-10-1956 and 3-5-1957 and observed that the second notification had been issued only with a view to correct the mistake which had been committed in mentioning the name of Maharaja of Jaipur in the column of "ownership" of the first notification.

36. The Division Bench opined that Jantar Mantar had already been declared as a protected monument by the Notification dated 4-10-1956, which was specifically saved by Section 39(2) of the 1958 Act. The Division Bench then referred to the Notification dated 16-6-1992 and held that in view of the prohibition contained therein, Respondents 1 and 2 were not entitled to raise construction on Plot No. 14, Janpath Lane because the same was within 100 m of the protected monument.

37. The observations made by the Division Bench in this respect are extracted below:

> "The Notification dated 4-10-1956 clearly refers to the protected area as comprising 5.39 acres. It is not in dispute that the entire area within the boundary wall comprises of these from 5.39 acres. Thus, reading the 1956 Notification itself makes it clear that what is protected is not just the buildings/structures comprised within, which collectively go by the name Jantar Mantar, but the entire area of 5.39 acres. Now, reading the Notification dated 16-6-1992, it is apparent that what has been prohibited is mining and construction activity within 100 m 'from the protected limits' of the protected monuments. Therefore, the measurement that has to be obtained is not from the structures but from the boundary wall or in other words from 'the limits of the protected area'. If that is so, then there is no dispute that the proposed building at Plot No. 14, Janpath Lane falls within 100 m thereof."

38. The Division Bench rejected the argument of Respondents 1 and 2 that in view of the provisions contained in the Delhi Development Act, 1957 (for short "the DDA Act"), which is a special law enacted for planned development of Delhi, the prohibition contained in the Notification dated 16-6-1992 issued under Rule 32 of the Rules framed under Section 38 of the 1958 Act will not be applicable to their case. In the opinion of the Division Bench, there is no conflict between the provisions of the DDA Act and the 1958 Act because the two statutes operate in different fields and even if there was some conflict, the 1958 Act being a special law enacted for the preservation and protection of ancient monuments would prevail over the DDA Act.

39. The Division Bench then noted that several buildings including the Phase II building of the Corporation had come up in violation of the prohibition contained in the Notification dated 16-6-1992 but did not delve deep into the issue because an undertaking was given on behalf of the Corporation that the basement of the building constructed in violation of the prohibition shall not be used.

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40. Finally, the Division Bench vacated the order of injunction passed by the learned Single Judge but proceeded to direct the Central Government to review the Notification dated 16-6-1992 by observing that a provision could be made for relaxation of the prohibition on case to case basis because the degree and type of protection depends upon variables such as the nature of protected monument, its location, the weather conditions, the topography, the soil, etc. and there has to be application of mind on these and other issues linked with preservation of monuments and the Archaeological Survey of India cannot take shelter of the notification prohibiting construction within 100 m from the boundary of the protected monument in each and every case for refusing permission or licence for construction.

41. Before proceeding further, we deem it proper to mention that in compliance with the direction given by this Court on 29-9-2010[3], an additional affidavit was filed on behalf of the Corporation detailing the events leading to the construction of its Phase II building. In the end, it has been stated that the Director General, Archaeological Survey of India has accorded ex post facto approval to the construction of that building. In support of this assertion, copies of letter dated 11-2-2005 issued by the Director General, Archaeological Survey of India to the Chairperson of the Corporation conveying ex post facto approval and licence dated 21-2-2005 issued by the Superintending Archaeologist, Delhi Circle, have been placed on record.

42. Respondents 1 and 2 also filed additional affidavit stating therein that while they are not being allowed to construct a building, the Corporation has constructed multi-storeyed building within 70 m of the protected monument and this is in clear violation of the prohibition contained in the Notification dated 16-6-1992.

43. At this stage, it is apposite to mention that during the pendency of these appeals the 1958 Act was amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and Sections 20-A and 20-B were inserted with effect from 16-6-1992 and Sections 20-C to 20-Q were inserted with effect from 29-3-2010.

44. Since the validity of the Amendment Act has not been questioned before us, we do not propose to examine the same. However, we would like to notice the provisions of Sections 20-A, 20-B, 20-C and 20-F(1) and (2), the interpretation of which will have far-reaching impact on the future of protected monuments of national and international importance including Jantar Mantar, New Delhi. These sections read as under:

> "**20-A.** ***Declaration of prohibited area and carrying out public work or other works in prohibited area***.—Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:
>
> Provided that the Central Government may, on the recommendation of the Authority, by notification in the Official Gazette, specify an area more

3 *Archaeological Survey of India* v. *Narender Anand*, Civil Appeal No. 2430 of 2006, order dated 29-9-2010 (SC)

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than one hundred metres to be the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.

(2) Save as otherwise provided in Section 20-C, no person, other than an archaeological officer, shall carry out any construction in any prohibited area.

(3) In a case where the Central Government or the Director General, as the case may be, is satisfied that—

(*a*) it is necessary or expedient for carrying out such public work or any project essential to the public; or

(*b*) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding.

It or he may, notwithstanding anything contained in sub-section (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project essential to the public or other constructions, to be carried out in a prohibited area:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by the Central Government or the Director General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, shall be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or reconstruction of any building or structure in any prohibited area in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) No. S.O. 1764, dated 16-6-1992 issued under Rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the Committee constituted in pursuance of the order of the Government of India No. 24/22/2006-M, dated 20-7-2006 (subsequently referred to as the Expert Advisory Committee in orders dated 27-8-2008 and 5-5-2009).

(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.

20-B. ***Declaration of regulated area in respect of every protected monument***.—(1) Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains,

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declared as of national importance under Sections 3 and 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains:

Provided that the Central Government may, by notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A:

Provided further that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area shall, be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times.

20-C. ***Application for repair or renovation in prohibited area, or construction or reconstruction or repair or renovation in regulated area.***— (1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be.

(2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or reconstruction or repair or renovation of such building or structure on such land, as the case may be, may make an application to the competent authority for carrying out construction or reconstruction or repair or renovation, as the case may be.

* * *

20-F. ***Constitution of National Monuments Authority.***—(1) The Central Government shall, by notification in the Official Gazette, constitute an Authority to be called as the National Monuments Authority.

(2) The Authority shall consist of—

(*a*) a Chairperson, on whole-time basis, to be appointed by the President, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage and conservation-architecture or law;

(*b*) such number of members not exceeding five whole-time members and five part-time members to be appointed, on the recommendation of the Selection Committee referred to in Section 20-G, by the Central Government, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage, conservation-architecture or law;

(*c*) the Director General as member, ex officio."

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45. What has been done by enacting Sections 20-A and 20-B is to give legislative mandate to the concept of prohibited and regulated areas respectively for the purposes of mining operation and construction. Before the 2010 Amendment, the Central Government could issue notification under Rule 31 read with Rule 32 and declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction or both. With the insertion of Section 20-A it has been made clear that every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument.

46. Not only this, by virtue of the proviso to Section 20-A(1) the Central Government has been clothed with the power to extend the prohibition beyond 100 m by issuing a notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be, under Section 4-A. Of course, this power can be exercised only on the recommendations of the Authority as defined in Section 2(*da*) and constituted under Section 20-F. Somewhat similar provision has been made in Section 20-B for the regulated area in respect of every ancient monument and archaeological site and remains. The proviso to that section empowers the Central Government to issue notification in the Official Gazette and specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.

47. In terms of Section 20-A(2), it has been made clear that no person other than an Archaeological Officer shall carry out any construction in any prohibited area. This is subject to Section 20-C, which can be treated as an exception to Section 20-A(2). That section lays down that any person who owns any building or structure, which existed in a prohibited area before 16-6-1992 or had been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the competent authority. The term "renovation" appearing in Section 20-C will take its colour from the word "repair" appearing in that section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the competent authority cannot grant permission for such reconstruction.

48. Section 20-A(3) lays down that the Central Government or the Director General can, in exceptional cases and having regard to the public interest, pass a reasoned order and permit a public work or any project essential to the public or other construction in a prohibited area provided that such construction does not have substantial adverse impact on the preservation, safety, security of, or access to the protected monuments or its immediate surrounding. The use of the expression "such other work or project" in clause (*b*) of Section 20-A(3), if interpreted in isolation, may give an impression that the Central Government or the Director General is

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empowered to allow any other work or project by any person in the prohibited area but, in our view, the said expression has to be interpreted keeping in view the mandate of Article 49 of the Constitution and the objects sought to be achieved by enacting the 1958 Act i.e. preservation of ancient and historical monuments, archaeological sites and remains of national importance. This would necessarily imply that "such other work or project" must be in the larger public interest in contrast to private interest.

49. In other words, in exercise of power under Section 20-A(3), the Central Government or the Director General cannot pass an order by employing the stock of words and phrases used in that section and permit any construction by a private person dehors public interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16-6-1992 and sub-section (1) of Section 20-A would become redundant and we do not think that this would be the correct interpretation of the amended provision. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or archaeological sites.

50. We may now revert to the impugned judgment in these appeals. In our view, the Archaeological Survey of India is fully justified in making a grievance that the Division Bench of the High Court was not justified in directing the Central Government to review the prohibition contained in the Notification dated 16-6-1992. The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructures is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16-6-1992. That notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and archaeological sites and remains of national importance.

51. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or any other operation of similar nature in such area. Rules 31 and 32 of the Rules empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government must have issued the Notification dated 16-6-1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and

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if effective steps are not taken to check the same, these monuments may become part of history.

52. One of such monuments is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional. This is largely due to construction of multi-storeyed structures around Jantar Mantar. Therefore, we have no hesitation to hold that the High Court was not justified in directing the Central Government to review or reconsider the Notification dated 16-6-1992 and, to that extent, the impugned judgment is liable to be set aside. We may add that with the insertion of Sections 20-A and 20-B, the direction given by the High Court for review of the Notification dated 16-6-1992 has become infructuous and the Government is no longer required to act upon the same.

53. The appeal of Respondents 1 and 2 is wholly meritless. The High Court, in our view, has rightly held that even though the Notification dated 3-5-1957 did not become effective because the same was not published in the Official Gazette, the earlier Notification issued on 4-10-1956 remained effective and the same was saved by Section 39(2) of the 1958 Act. We may add that even though the Notification dated 3-5-1957 was issued in supersession of the Notification dated 4-10-1956, the same remained alive because of non-compliance with Section 3(2) of the 1904 Act. The High Court's interpretation of the prohibition contained in the Notification dated 16-6-1992 is correct and the distance of 100 m has to be counted from the outer boundary wall of Jantar Mantar which has protected area of 5.39 acres and not the physical structures of the observatory. The High Court has given detailed reasons for rejecting the plea of Respondents 1 and 2 that the provisions of the DDA Act would prevail over those contained in the 1958 Act and we entirely agree with it.

54. We may have dealt with the additional affidavits of the parties in greater detail and examined whether the Archaeological Survey of India was justified in not taking action against construction of a large number of buildings in violation of the prohibition contained in the Notification dated 16-6-1992, but do not consider it proper to do so because the owners of these buildings are not parties to these appeals.

55. In the result, Civil Appeal No. 2430 of 2006 is allowed and the direction given by the Division Bench of the High Court for review of the Notification dated 16-6-1992 is set aside. However, it is made clear that in the future the Central Government or the Director General shall not take action or pass any order under Sections 20-A(3) and 20-C except in accordance with the observations made in this judgment. Civil Appeal No. 2431 of 2006 is dismissed. The parties are left to bear their own costs.

True copy

VBR Menon

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SERVING OF ADDITIONAL DOCUMENTS AND CITATIONS IN OA NO. 127 OF 2024 (SZ)

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To

1. Mr. A.R..Sakthivel for R-1
2. Mr. Darpan K.M. for R-2
3. Mr. Abdul Saleem for R-3
4. Mr. S. Saravanan for R-4
5. Mr. Thirunavukarasu for CPCB

Sirs,

Sub: Serving of Additional Documents and Citations in OA No. 127 of 2024 (SZ) -Reg.

Attached please find a soft copy of the Additional Documents and Citations to be filed in OA No. 127 of 2024 (SZ) (Mrs. Neena.S and Ors., Vs.. The Joint Chief Controller of Explosives, Chennai and others). Kindly acknowledge receipt.

Thanking you,

Yours sincerely,

V.B.R. MENON
Counsel for Applicants

Encl: As above.

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Before the Hon'ble National Green Tribunal
Southern Zone sitting at Chennai

O.A. No. 127 of 2024

In the matter of

Mrs. Neena .S,
Mangalore – 575001
and 4 others … Applicants

and

The Joint Chief Controller of Explosives,
South Circle, Chennai
Petroleum & Explosives Safety Organisation,
Nungambakkam, Chennai – 600006
and 3 others … Respondents

ADDITIONAL DOCUMENTS and CITATIONS

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