

BEFORE THE HONBLE NATIONAL GREEN TRIBUNAL AT CHENNAI

OA 30 of 2025

WATER BODIES PROTECTION ASSOCIATION**REPRESENTED BY ITS SECRETARY****MR. V.KITTU**

Having office at

No 80 Annal Ambedkar street

Mahabalipuram – 603104.

PETITIONER**Vs****PROJECT DIRECTOR****National Highways Authority of India**No. 41/3A,2/ 285, 2ndFloor,

Velachery –Tambaram Main Road

Santhoshapuram,Medavakkam

Chengalpattu District.

4TH RESPONDENT**COUNTER AFFIDAVIT FILED BY THE RESPONDENT**

I, Mr. Chaithanya S/o Mr. M. Thejendranath, aged about 41 years, discharging duties as the Project Director, National Highways Authority of India, Project Implementation Unit-Chengalpattu, having its office at No.41/8A, 2/285, Second Floor, Velachery – Tambaram Main Road, Santhoshapuram, Medavakkam, Chengalpattu District, Tamil Nadu-600073 do hereby solemnly affirm and sincerely state as follows:


एम.एस.चैतन्या | M.S. Chaithanya
परियोजना निदेशक | Project Director
प.का.ई. चेंगलपट्टु | PIU Chengalpattu



1. I am the Respondent in the above Original Petition. I am discharging duties as Project Director, National Highways Authority of India, (in short "NHAI") Project Implementation Unit - Chengalpattu. I am Conversant with the facts of the case based on the files and records available at my office. I am Competent to swear to this Counter Affidavit.

2. I specifically deny each and every one of the allegations made therein except those that are specifically and expressly admitted herein. I submit that this Original Petition is not maintainable either in law or on facts and the Original Petition is liable to be rejected at the threshold itself.

Brief Background

3. I humbly submit that the Central Government through Ministry of Road Transport & Highways (MoRT&H) has directed the NHAI to carry out widening/Four laning of NH – 332A in order to de-congest the ever-growing traffic and to meet with increase in vehicular population with the object of developing and augmenting the 4 laning of Mamallapuram to Puducherry Section of NH-332A (ECR) under Bharatmala Pariyojana. NHAI develops Road infrastructure to facilitate speedy transport of agriculture goods, commercial goods and industrial goods from the place of production to the market destination and to ensure safe and speedy movement of travelling public with state of art safety standards and comforts of travelling to general public.


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4. I humbly submit that National Highways Authority of India (in short "NHA") is a Statutory Authority established under the Act 68 of 1988 of the Parliament of India to develop, maintain and manage the National Highways and any other Highways vested in, or entrusted to it by the Central Government as laid down under Section 16 of NHA Act 1988. The lands required by NHA for discharging its functions shall be deemed to be the land needed for public purpose and such land may be acquired under provisions of the National Highways Act 1956 (in short "NH Act 1956"). The 2nd Respondent represents the NHA.

5. I humbly submit that NHA has taken up 4 laning of Mamallapuram to Puducherry Section of NH-332A (ECR) under Bharatmala Pariyojana. Government of India appointed SDRO, LA-NH, Kancheepuram vide notification U/s 3(a) of National Highways Act 1956 in Gazette No. 1523, dated. 19.04.2018 as Competent Authority for Land Acquisition towards Acquisition of Lands for the proposed 4 laning project.

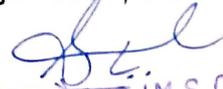
6. I humbly submit that lands along the approved alignment were notified U/s 3A vide Gazette No. 2115, Dated. 06.06.2018, which include 7125 Sq. Mtrs of land in Sy. No. 124/1 & 124/2 in Mamallapuram Village, Thirukazhukundram Taluk, Chengalpattu District. Subsequently, the project from Mamallapuram to Marakkanam (Under 02 Packages) was approved by MoRT&H, Government of India SFC on 05.02.2019.


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7. I humbly submit that during finalization of project alignment, it was observed that the alignment passes through various tanks in Chengalpattu District. Accordingly, necessary proposals were submitted to Water resource Development Department (WRD), Government of Tamil Nadu and obtained No Objection Certificate (NOC) from the Government. The details are as hereunder:

Sl. No.	Chainage	Name of the Village	Type of water body	Remarks
1	1+060 to 1+400	Perumaleri	Irrigation Tank	GoTN, Water Resources (R2) Department G.O. (4D) No. 25, dated. 01.09.2023
2	12+300 to 12+625	Vengambakkam	Irrigation Tank	GoTN, Water Resources (R2) Department G.O. (4D) No. 39, dated. 16.11.2023
3	13+551	Neikuppi	Nallah	GoTN, Water Resources (R2) Department G.O. (4D) No. 6, dated. 11.02.2022
4	15+718	Vittalapuram	River	
5	17+191	Puthupattinam	Nallah	
6	23+373	Kadaloor	Nallah	
7	26+367	Kodapattinam	Buckingham Canal	
8	33+991	Paramankeni	Buckingham Canal	GoTN, Water Resources (R2) Department G.O. (4D) No. 35, dated. 20.05.2022
9	37+146	Mudhaliyarkuppam	Back Water	

8. I further submit that there is an existing at-grade junction at the entrance of Mamallapuram (Elephant Sculpture). Subsequent to development of 4 lane corridor, speed of vehicles will increase on the highway and may cause fatal deaths at this location. This location has potential to become blackspot. Hence, a Vehicular Underpass is proposed at the entrance to Mamallapuram and next to this junction, there


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is a Major Bridge across Buckingham Canal which is 01 Km away. Keeping in view of the applicable safety and designs standards for construction of 4 lane National Highway along with Service Road / Slip Road on both sides, it is inevitable to realign the highway by shifting the centreline away from the existing to ensure safety of road users. While aligning the highway, the right-side Slip Road (Service Road in non built up Areas) that provides access for the traffic coming from Puducherry side towards Mamallapuram has fallen in the edge of the existing pond.

9. I further submit that the approved alignment drawings were communicated to Executive Officer, Mamallapuram Town Panchayat vide letter dated. 30.05.2023 prior to commencement of works at the project site.

10. I further submit that the construction of Slip Road is inevitable failing which access cannot be provided for the traffic coming from Puducherry side towards Mamallapuram. And, further, the slip road cannot be shifted away from the subject pond due to geometrics and design constraints between the existing junction and major bridge across Buckingham Canal.



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11. I submit that upon receipt of notice from 6th Respondent i.e., Executive Engineer, WRD, Araniyar Basin Division, NHAI immediately got the matter examined through Independent Engineer for the project M/s. L.N. Malviya Infra Projects Pvt., Ltd., As per their report, it is submitted that :

(i) The total pond area inevitably utilized for Underpass is about 2907 sqm.

(ii) 10832 cum of earth work has been taken up within Water Body.

As per the field survey, the total extent of pond is about 15,000 sqm out of which, about 3000 sqm have been utilized which is less than 20% that too along edge of the pond in shallow locations.

12. In this regard, I submit that the Borrow Earth is being extracted from various Water Bodies in the vicinity area i.e., Pooncherry, Perumaleri, Karanai & Kulipandalam Lakes for a total quantity of about **45,000 cum** resulting increase in the water storage capacity of those lakes. Quantity being extracted is **more than 4 times** to the filling in Water Body.

13. Hence in view of the facts narrated above it is prayed that this Tribunal may kindly be pleased to consider the overall contribution of the project towards increasing water structure capacity in the entire region instead of looking at an isolated pond.


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14. I submit state that it is inevitable to construct Slip Road / Service Road along the edge of the Water Body and which is not laid across the Water Body and hence overall impact is very minimal. The works were awarded to the Contractor on 23.03.2020 and the project achieved Appointed Date on 12.05.2022. Based on the periodic review reports and other available data with Independent Engineer, I am to state that the works in the subject tank area were commenced during the month May 2023. However, petitioner initially sent a representation on 07.08.2024 (received through Divisional Engineer (H), Chengalpattu E-mail dated. 03.09.2024) i.e, after more than 15 months, for which reply was furnished on 16.09.2024 (within 13 days). Subsequently, now the petitioner approached the Hon'ble Tribunal in the month January 2025. Now, construction of Underpass structure has been provided at various stages as hereunder:

Sl. No.	Description	LHS date	RHS date
1	Foundation (towards Puducherry)	17.10.2022	11.05.2023
2	Foundation (towards Chennai)	01.12.2022	23.01.2023
3	Substructure (towards Chennai)	21.07.2023	23.06.2023
4	Substructure (towards Puducherry)	01.08.2023	04.08.2023
5	Super Structure	04.05.2024	01.04.2024


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15. Hence, I most respectfully submit that even though works were commenced about 02 years ago and the structure reached final stage, the Petitioner approached Tribunal after completion of structure. Hence, modification in the Project Alignment is highly difficult or near impossible due to space constraints, geometry and design compulsions and Road Users suffer due to delay in completion very severely. Further any modification would lead to unavoidable fatalities at the blackspot location. Hence it is most respectfully submitted that Construction of Underpass is absolutely needed at this location to save valuable lives of travelling public.

16. I submit that, NHAI has also committed in protecting Water Bodies. Government of India has launched 'Amrit Sarovar' during the celebrations of 75 years of Independence, NHAI has taken up various strengthening & water capacity increasing activities at about 21 locations (List Enclosed) throughout the State of Tamil Nadu without financial implication to WRD.

Para-wise replies

Regarding the averments made in para a) to d) of the affidavit, I submit that the averments are matter of record related to the petitioner and the petitioner is put to strict proof of the same. Hence, the respondent humbly submits that he has no comments to offer.



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e) It is submitted that the notification u/s 3A towards acquisition of lands was published on 06.06.2018 and paper publication was also made available for public on 16.06.2018 in Times of India & Dinamalar for receiving objections, this includes 7125 Sqm of land in Sy. No. 124/1 & 124/2 in Mamallapuram Village. Subsequently, works were awarded to the Concessionaire for development of project under HAM on 23.03.2020 and further, NHAI entered into Concession Agreement on 28.05.2021 and project achieved Appointed Date (Commencement date) on 12.05.2022. Subsequent to approval of designs, the Concessionaire commenced activities at the pond area in the month of May 2023 by embankment for RHS service road within the pond area. Further, construction of structure portion also taken up at various stages as hereunder:

Sl. No.	Description	LHS date	RHS date
1	Foundation (towards Puducherry)	17.10.2022	11.05.2023
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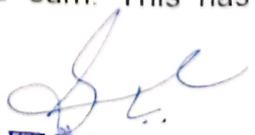


Earlier, the Petitioner submitted representation to this office on August 2024 i.e., more than 06 years after notification of 3A by Government of India and more than 01 year after commencement of works at the location.

f) I submit that the lands under Sy. No. 124/1 & 124/2 were acquired through following the due procedure set-forth by law under the provision of NH Act 1956, it is to submit that out of total extent of around 15,000 sqm, for which NOC has been obtained from the Government of Tamilnadu, only about 3450 sqm has been utilized that too along the edge of the pond but not entire area of the water body. The Respondent takes every effort to minimise or restrict the use of water body area technically feasible. As submitted above, there is no other option except to enter into pond for making geometric improvement and construction of Underpass at the junction to save lives of road users on a 4-lane high speed corridor.

Replies to Grounds

A. As submitted above, approximately 10,800 cum of earthwork have been excavated out within a water body area. Additionally, soil has been extracted from multiple water bodies, located in the neighbouring areas including Pooncherry, Perumaleri, Karanai and Kuzhipandalam lakes, to obtain borrow earth to the tune of more than 45,000 cum. This has


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resulted in an overall increase in the water storage capacity of the entire water body system in and around this area. Thus, NHAI has through this project effected desilting / and consequently increasing the storage capacity of various water bodies in the region.

B. The material dumped into the water body is borrow earth, which is not a pollutant. Further, embankment activities within the water body will not affect water quality, and the same is not considered pollution.

C. The water body is a pond, and out of 15,000 sqm of pond area, 3,460 sqm has been utilized. Hence, it is most respectfully submitted that there would not be any significant impact on the flow of water as mistakenly apprehended by the petitioner due to these activities, as the water will remain static in the pond.

D. It is respectfully submitted that NHAI has followed the due procedure for ensuring sustainable development while preparing the Detailed Project Report in short (DPR) by the competent technical experts. As submitted above, the borrow earth is being taken up from various water bodies in the vicinity of desilting / increasing the capacity results additional benefits. NHAI has taken up 21 Nos water bodies in the neighbourhood of the project under "Amrit Sarovar" throughout the state of Tamil Nadu which



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aims to restore water bodies throughout the state. The applicant have made efforts for taken up at the region level / state level by taking the issue at allegation have been made by isolated pond adjacent to the highway which is inevitable to construct the service road.

E. It is quite incorrect to allege that the respondent authorities have violated Article 48 A of the Constitution of India and the doctrine of Public Trust. It is utter false to allege that the waterbody has already been covered up when there is alternative less intrusive methods are available. Whereas after thorough research by technical experts only the entire project was evolved and the present usage of 3,460 sqm has been could not be avoided. In fact, NHAI has taken utmost care in preserving the natural resources of the Earth through its careful planning and project design.

F. The allegation made by the Petitioner is baseless. The Authority has taken all necessary steps to ensure the conservation and preservation of the water body through desilting / increasing water storage capacity, and the rejuvenation of various water bodies in the region and across the state of Tamil Nadu.

H. No remarks

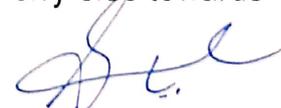
I. No remarks



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J. These allegations are denied, as the Authority has taken all necessary measures to protect various water bodies along the highway by constructing viaducts across the water bodies. In the specific case of Solaipoigai Tank, only the edge of the water body has been affected, as it was inevitable to improve the geometric of the highway situated between at-grade junction and the major bridge to ensure safety of road users and to save valuable lives for providing access to the Mamallapuram Town Panchayat at Underpass, the earthwork activities within the pond area may not cause pollution. However, there is some reduction in water storage capacity of the pond. While the same has been compensated by desilting of 4 tanks in the nearby area under "Amrit Sarovar" Scheme. As submitted above, 04 Nos of water bodies i.e., Pooncherry, Perumaleri, Karanai & Kuzhipandalam Lakes have been utilized for borrow earth for construction of highway, which is resulting in increasing the overall water storage capacity / due to desilting of the water bodies in and around this area.

17. It is most respectfully submitted that due to geometric and technical constraints induced by non availability of sufficient space on either side of the vehicular underpass at Solaipoigai Tank, the NHAI has been forced to utilize a small part at the edge the tank for forming right side slip road for use by the traffic coming from Puducherry side towards



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Mamallapuram. The use of the small area of 3000 sqm of pond at the edge is necessitated by the existing geography. Hence, the occupation of 3000 sqm area of the pond is neither willful nor wanton but dictated by the paramount object of providing road safety and access to the road users.

Hence, in view of the narrated facts and circumstances, it is humbly prayed that the Hon'ble High Court may be pleased to dismiss the Original Petition filed by the petitioner as not sustainable either in law or on facts and devoid of any legal merits and thus render justice.

Solemnly affirmed and signed his
name in my presence on this the
3RD Day of April 2025 at Chennai

BEFORE ME



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Ms. S. 5743/23
C.S. DEEPIKA
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4TH RESPONDENT

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BY THE RESPONDENT

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