

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH AT PUNE  
APPEAL NO. 48/2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPELLANT

VERSUS

THE PRINCIPAL SECRETARY-DoE,  
GoM & OTHERS

...RESPONDENTS

**FILE-A**  
**[VOLUME-\_\_\_\_]**

REJOINDER TO REPLY OF RESPONDENT No. 9-PP-M/s.  
RAVIRAJ REALITY, RESPONDENT No. 4-MPCB AND  
COMMENTS TO THE JOINT COMMITTEE REPORT

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

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**[ANNEXURE-A-01 To A-07]**  
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**[CASE LAWS: 655 To 829]**

APPELLANT IN-PERSON

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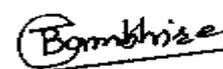
MR. TANAJI BALASAHEB GAMBHIRE ... APPELLANT  
VERSUS  
THE PS-DoE, GoM & ORS. ... RESPONDENTS

FILE-A  
VOLUME-\_\_

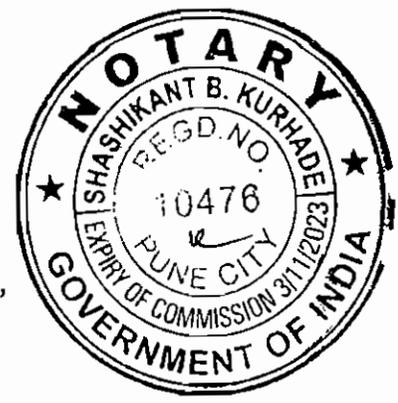
<b>SR.</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
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Date: 25.01.2023



APPELLANT



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH AT PUNE  
**APPEAL NO. 48/2019**

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPELLANT

VERSUS

THE PS-DOE, GOM & ORS. ... RESPONDENTS

REJOINDER TO REPLY OF RESPONDENT No. 9-PP-M/s.  
RAVIRAJ REALTY, RESPONDENT No. 4-MPCB AND COMMENTS  
TO THE JOINT COMMITTEE REPORT

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 39 Years, Profession: Advocate, R/o: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002 (MH), do hereby solemnly affirm and state on oath as follows:

Part	Para	Description
Part-A	<b>1-3</b>	Brief Background Of Case
Part-B	<b>4</b>	Important Facts That Need To Be Taken On Record For Better & Scientific Adjudication Of The Appeal
Part-C	<b>5</b>	Important Dates & Events
Part-D	<b>6</b>	Admitted Facts By Joint Committee As Well As PP & Other Respondents
Part-E	<b>7</b>	PMC Sanctions & Total Built-Up Area Of Sanction Dated 23.11.2015, Before Starting Of Excavation & Obtaining PCC, Obtaining EC And Consent is more than <b>20504.4</b> M <sup>2</sup> and EC is Ex-Post Facto
Part-F	<b>8</b>	Rejoinder To The Reply Of Respondent No. 9-M/S. Raviraj Realty-PP Dated 28.03.2022
Part-G	<b>9</b>	Rejoinder To The Reply Of Respondent No. 4-MPCB Vide Dated 16.03.2022
Part-H	<b>10</b>	Reply By Respondent No. 1-PS-DOE, 2-SEIAA, 3-SEAC-III, 5-Executive Engineer Of Water Resource Department, 6-PMC & 7-Mr. Prashant M. Waghmare-CE-PMC are not filed till date
Part-I	<b>11</b>	Case Laws by Appellant
Part-J	<b>12</b>	Reply To The Case Laws Of PP
Part-K	<b>13</b>	Request/Suggestions on behalf of Appellant seeking Reliefs/Directions/Orders

**PART-A:****BRIEF BACKGROUND OF CASE**

1. I state that, the Appeal is filed on 06.06.2019 for quashing & setting aside Environment Clearance dated 07.05.2019 granted by Respondent No. 2-SEIAA to the Respondent No. 9-PP for building construction project "Vitoria Lagoon" situated at Survey No. 2A/7A (CTS No. 8) at Village-Bopodi, Taluka-Haveli, District-Pune within local limits & jurisdiction of PMC, on ground set out in Appeal, that the EC is granted to the project proposed in prohibited Zone of blue flood line of Mula River, procured on the basis of false & misleading information given in Form-1 & 1A, it is ex-post facto EC as substantial excavation is carried out & part plinth of Bldg-C and collusion of Respondent Government Authorities & its Officers from PMC and this project have serious adverse impact on the environment & ecology of Mula River, if permitted. Therefore, Appellant seeks relief of quash & set aside of EC, revocation of PMC sanction Plan, action against City Engineer of PMC i.e. Mr. Prashant Waghmare, appropriate action against SEIAA & SEAC-III members etc.
2. I state that, this Hon'ble NGT vide its Order dated 05.01.2021 appointed Joint Committee of SEIAA, MPCB, Irrigation Department, Collector of Pune for calling of fact finding report. Thereafter, this Hon'ble NGT issued notices to all Respondent vide its Order dated 11.08.2021, then MPCB & PMC sought adjournment for filing the report of Joint Committee vide dated 29.09.2021 and thereafter, Joint Committee filed its Report vide dated 10.11.2021 submitting their observations in support of the contentions raised in Appeal and from there itself i.e. 11.11.2021, this



Appeal is not listed for hearing till date to the utter shock & surprise.

3. I state that, the MPCB filed its reply vide dated 16.03.2022 and PP filed its reply vide dated 28.03.2022 and other Respondents have not filed their replies till date, which is very unfortunate act on part of the Government Authorities.

**PART-B**

**4. IMPORTANT FACTS THAT NEED TO BE TAKEN ON RECORD FOR BETTER & SCIENTIFIC ADJUDICATION OF THE APPEAL:**

- A) I state that, the word "Vitoria Lagoon" itself indicates that the project is situated in the deep area of water/pond/in the water body etc. and therefore, this project cannot be permitted in any circumstances otherwise it will sent wrong president as well as it will create unbridled & uncontrolled situation for environment & ecology.
- B) I state that, the Respondent No. 7- Mr. Prashant Waghmare-City Engineer of PMC have issued the Circulars for strict implementation of EIA Notification-2006 dated 02.11.2006 {**ANNEXURE-A-1**}. But these circulars are only paper work to show off, in actual this respondent has shown dustbin to the EIA Notification-2006 and this Respondent has spoiled entire Pune City by promoting non-sustainable development on account of Mother Nature and entire public infrastructure of the city is collapsed due to this Respondent and for his ill will goals as this Respondent is holding the Post of City Engineer since 2002 in illegal manner without transfer against Civil Service Rules.
- C) I state that, the Assistant Engineer of PMC vide its letter dated 11.09.2007 {**ANNEXURE-A-2**} issued notice to the PP for demarcation of high flood line on the project land by

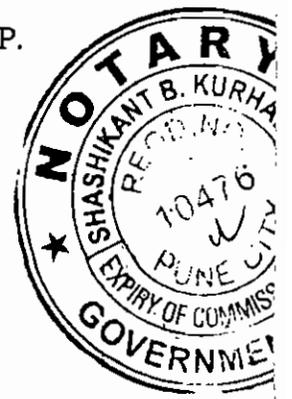


pointing out the project land level and marking of high flood level at the Pune-Mumbai Railway Bridge on the occasion of High Flood faced in the year 2005 by comparing the low level of the project land.

- D)** I state that, the MoEF issued Office Memorandum vide dated 19.08.2010 {**ANNEXURE-A-3**} for specifying no construction activity is permissible without obtaining prior EC, except fencing at project site.
- E)** I state that, the PMC granted revalidation building sanction vide dated 23.11.2015 {**ANNEXURE-A-4**} having total BUA of **20504.4 M<sup>2</sup>** i.e. **more than 20000 M<sup>2</sup>** mandating prior EC under EIA Notification, 2006.

<b>Sr.</b>	<b>Revalidation Sanction No. dated 23.11.2015 Particulars</b>	<b>Total BUA (M<sup>2</sup>)</b>
1.	FSI Area	11100.80
2.	Balcony	1622.62
3.	Staircase	411.64
4.	Passage	746.76
5.	Lift & L. M. Room	57.80
6.	Terrace	2790.28
7.	Parking	3654.50
8.	U.G. Water Tank, T1(6x5x2)	60.00
9.	O.H. Water Tank, T2(6x5x2)	60.00
10.	O.H. Tank	
11.	MSEB	
12.	<b>Total BUA</b>	<b>20504.4</b>

- F)** I state that, this Appellant also filed the complaint before Respondent No. 1-PS-DoE & Respondent No.2-SEIAA vide dated 10.06.2019 {**ANNEXURE-A-5**}.
- G)** I state that, the Respondent No. 1-PS-DoE & Respondent No.2-SEIAA issued proposed directions vide dated 15.06.2019 {**ANNEXURE-A-6**} to the Respondent No. 9-PP.



- H) I state that, this Appellant also filed the complaint before Respondent No. 4-MPCB vide dated 08.08.2019 {ANNEXURE-A-7}.

**PART-C**

**5. IMPORTANT DATES & EVENTS:**

I state that the following dates and events are important for deciding the present case.

Sr.	Date	Event	Annexure/ Page	Remark
1.	05.01.1987	GoM Approved Development Plan (DP) for PMC	A-2, P@63	Project Land #Industrial Zone
2.	21.09.1989	GoM-Notification by Irrigation Department on flood line marking imposing prohibition on activity	A-3, P@64-66	Prohibited Area #River-Blue Flood Line Area
3.	14.09.2006	MoEF issued notification mandating prior EC for Building Construction projects/Activity	A-4, P@64-103	Restriction, Prohibition, Sr. No. 2.4, Building Material, Word "Flood" Occur: Form-1#8.3, #Environmental Sensitivity, Sr. No. 12, Form-1A#2.8, 2.11
4.	29.03.2007	PMC Layout Sanction		
5.	30.03.2007	PMC Building Sanction		
6.	11.09.2007	<b>PMC Notice to PP</b>	P@593-594	<b>PP to obtain flood line marking on project site</b>
7.	02.06.2010	Irrigation Dept. submitted flood line marking plan to PMC	P@488-489	
8.	04.04.2011	Clarification on definition of BUA & Covered Construction Area	A-6, P@138-144	
9.	07.10.2011	Revision of Sanction Plan		
10.	04.02.2013	Renewal of Sanction Plan		



11.	11.07.2013	Hon'ble NGT Judgment in OA No. 02/2013 for prohibition on construction in blue flood line	A-7, P@145-189	
12.	23.11.2015	Revalidation of Sanction Plan	<b>P@596</b>	
13.	01.03.2017	Part Plinth Check Certificate for Bldg-C	A-8, P@190	
14.	09.10.2017	GoM released Final Development Plan for PMC Old Limit for period of 2007-2027	A-9, P@191-192	
15.	17.02.2018	GoM Approved excluded part of substantial modifications	A-10, P@193-245	
16.	03.05.2018	GoM-Notification by Irrigation Department on flood line marking imposing prohibition on activity	A-12, P@250-258	Item#3: Blue Line Item#5: Prohibitive Zone Item#7: Prohibitive Zone Uses
17.	11.05.2018	GoM approved Final Development Plan for PMC Old Limit for Excluded Part period of 2007-2027	A-13, P@259-261	
18.	30.07.2018	Revision of sanction Plan	A-15, P@263	
19.	___/___/2018	Application for EC	A-16, P@264-298	False Information, Blue Flood Line, Tress, Building Material,
20.	15.01.2019	SEAC-III Minutes for 80 <sup>th</sup> Meeting	A-18, P@362-374	
21.	27.03.2019	Tree Authority NoC issued by PMC	A-21, P@379 Item#2	Total Available Trees=297
22.	24.04.2019	SEIAA Minutes for 165 <sup>th</sup> Meeting	A-22, P@380-392	
23.	07.05.2019	Impugned EC granted by SEIAA for the project following under prohibited zone of blue flood line	A-1, P@48-61	
24.	06.06.2019	<b>Appeal No. 48/2019 filed before Hon'ble NGT</b>	P@01-46	
25.	10.06.2019	Complaint of Appellant to SEIAA & PS-DoE	P@597-627	



26.	15.06.2019	Proposed Direction-SCN Notice by SEIAA to PP	P@628-630	
27.	08.08.2019	Complaint of Appellant to MPCB	P@631-654	
28.	30.01.2020	Hon'ble NGT Order in OA No. 41/2019(WZ)	P@655-661	Demolished PCMC STP
29.	04.06.2020	Hon'ble SC Order in CA No. 2083/2020	P@662-663	Hon'ble SC Confirmed NGT Order in OA No. 41/2019(WZ)
30.	20.07.2020	MPCB rejected CTE	P@494-495	
31.	05.01.2021	First Order of Hon'ble NGT constituting Joint Committee		
32.	26.02.2021	Affidavit on Service to Joint Committee	P@431-433	
33.	11.08.2021	Second Order of Hon'ble NGT issuing Notices to the Respondents		
34.	10.09.2021	Affidavit on Service to Respondents	P@434-452	
35.	29.09.2021	Third Order of Hon'ble NGT granting additional time for submission of joint Committee Report		
36.	10.11.2021	Joint Committee Report filed before Hon'ble NGT	P@453-500	
37.	11.11.2021	Fourth Order of Hon'ble NGT		
38.	16.03.2022	MPCB Reply Affidavit	P@501-506	
39.	28.03.2022	PP Reply Affidavit	P@507-563	

**PART-D**

**6. ADMITTED FACTS BY JOINT COMMITTEE VIDE ITS REPORT DATED 10.11.2021 AS WELL AS PP & OTHER RESPONDENTS:**

- A) Joint Committee vide its Report dated 10.11.2021 have admitted that the impugned EC is granted to the proposed project which project land follows in prohibited zone of blue flood line, wherein construction is not permissible.



- B) Joint Committee vide its Report dated 10.11.2021 have admitted that the PP have provided incorrect information on account of existing number of trees to the tune of 44, in actual PMC garden Department NOC disclosed existing number of trees to the tune of 297 at site.
- C) Joint Committee vide its Report dated 10.11.2021 have admitted that there is excavation at site and Plinth Check vide letter dated 01.03.2017.
- D) Water Resource/Irrigation Department have admitted that the flood line maps/plans were handed over to the PMC vide its letter dated 02.06.2010
- E) MPCB have admitted that the Consent to Establish is rejected vide its letter dated 20.07.2020
- F) SEIAA have issued proposed directions/ show cause notice vide letter dated 15.06.2019

**PART-E**

**7. PMC SANCTIONS & TOTAL BUILT-UP AREA OF SANCTION DATED 23.11.2015, BEFORE STARATING OF EXCAVATION & OBTAINING PCC, OBTAINING EC AND CONSENT IS MORE THAN 20000M<sup>2</sup> AND EC IS EX-POST FACTO:**

- a) I state that, the PMC have issued Original Sanction vide dated 30.03.2007 and thereafter, revised sanction on 18.08.2008, 07.10.2011, renewal on 04.02.2013, Revalidation on 23.11.2015 and final revised sanction 30.07.2018 till date.
- b) I state that, as per sanction dated 23.11.2015 having total built-up area of the project more than **20504.4 M<sup>2</sup>** i.e. **more than 20000 M<sup>2</sup>** mandating prior EC under EIA Notification, 2006 as well as consents under Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 with Solid Waste Handling Rules.



However, PP carried out excavation and small structure of Building for which PP procured Plinth Check Certificate (PCC) vide dated 01.03.2017 and committed violation of EIA Notification, 2006.

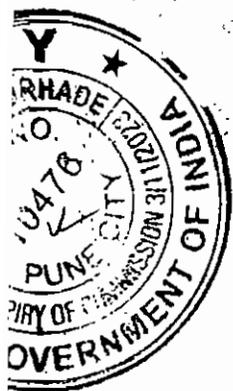
- c) I state that, the PP have carried out the excavation as well as construction of Plinth of Bldg-C only after PMC sanction dated 23.11.2015 to counter blast & violate the settled provisions of the law in collusion with the PMC officers by avoiding, ignoring mandate of prior EC & Consents, despite the TBUA of the sanction dated 23.11.2015 was more than 20000 M<sup>2</sup> and in violation of principle of sustainable development under Section-20 of NGT Act, 2010. Therefore, the EC under challenge is the ex-post facto EC.

**PART-F**

**8. REJOINDER TO THE REPLY OF RESPONDENT NO. 9-M/S. RAVIRAJ REALTY-PP DATED 28.03.2022:**

I have read the reply affidavits filed on behalf of Respondent No.9-PP vide dated 28.03.2022 in reply thereto, I state as under:

- a) That, the contents of Reply Affidavit filed by Respondent No.9-M/s. Raviraj Realty-PP vide dated 28.03.2022 are casual, cursory, false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Appellant, except the statements admitted by PP.
- b) That the following stands are taken by the PP;
- i) TBUA of the sanctions issued by the PMC is below 20000 M<sup>2</sup>, not requiring prior EC and it is only after sanction dated 30.07.2018, PMC directed to obtain EC and accordingly obtained the EC dated 07.05.2019. Excavation work is carried out as per



PMC sanction and PP have not carried out any development activity.

- ii) Project land reserved for Industrial Zone as per PMC Development Plan, 1987 is also changed to from Industrial Zone to Residential Zone vide dated 28.03.2007 and Appellant have not challenged such change. (Para-9)
  - iii) PP is not required to run around for various permissions, if there is change in the legal position as per Civil Appeal No. 595/2020, Sai Baba Sales Vs. Union of India. Therefore, subsequent demarcation of the red line & blue line taken place in 2017 cannot be applied retrospectively as the project have received approval prior to 2017 and Authority have rightly granted EC. (Para-10 & 13)
  - iv) PP have not suppressed any information from SEIAA in the Application of EC and EC have been granted by SEIAA after examining all aspects. (Para-12)
  - v) EC is the additional permission combined with earlier sanctions received and Appellant have not challenged sanction granted before any court of law. Appellant cannot assail the challenge to the sanction dated 30.07.2018, as it does not falls under Schedule-I statutes of the NGT Act. (Para-19 & 21)
- c) I state that, the contents of Para-1 to 25 of the PP Reply Affidavit dated 28.03.2022 are partly casual, cursory, vague, cryptic, false, baseless and misleading. Appellant have made out the case and Joint Committee have substantiated the allegations of Appellant as well as the harm to the environment & ecology is well established. Also the proposed building construction activity of PP is



prohibited in blue flood line of the Mula River, there is excavation done at site without prior EC causing damage to the environment, ecology, riverine, PP suppressed vital information of flooding affected area, 297 number of existing trees at site in Form-1 & 1A and misled SEAC-III & SEIAA, and therefore, EC is illegal, ex-post facto and does not allow any construction in prohibited zone and needs to be quashed.

- d) I state that, the PP have carried out the substantial excavation & Plinth Construction only after the PMC revised sanction dated 23.11.2015 having total BUA of **20504.4 M<sup>2</sup>** which is more than 20000 M<sup>2</sup> attracting prior EC under EIA Notification, 2006 and therefore, impugned EC is ex-post facto and this Hon'ble NGT shall quash & set aside.
- e) Further I state that, the every stand of PP is already struck down by the Joint Committee as both PP as well as PMC are stating that there is no construction at site except exaction & Bldg-C Plinth and as held by this Hon'ble NGT in OA No. 02/2013 vide its Judgment dated 11.07.2013, no construction is permissible in prohibited area of blue flood line and Water Resource/Irrigation Department have submitted its flood line marking plan to the PMC vide letter dated 02.06.2010 and provisions of DC Rules, Development Plan and flood line marking are independent and enforced independently.
- f) That the State Government have already prohibited any construction in blue flood line vide its notification dated 21.09.1987, PMC notice dated 11.09.2007 to PP for flood line marking, Water Resource/Irrigation Department submitted flood line marking plans to PMC vide its letter dated 02.06.2010, further State Government have approved the Development Plan with flood line marking on



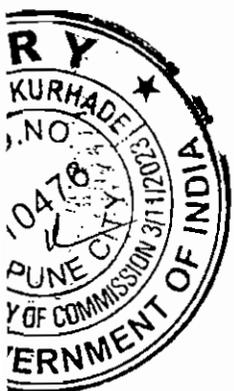
09.10.2017, Also State Government vide its notification dated 03.05.2018 again confirmed that there shall not be any construction permitted in prohibited zone of blue flood line and recently, this Hon'ble NGT vide its Order dated 30.01.2020 passed in OA No. 41/2019(WZ) have demolished public importance project of STP initiated by PCMC at Village-Chikhali, then in these circumstances, EC has to be quashed & set aside and PP shall be restrained from going ahead with the any construction.

- g) That this Hon'ble NGT have powers under section 33 of NGT act, 2010 to have overriding effect to any other legislature inconsistent with the provision of the act as held by Hon'ble Supreme Court in **Para-47 of Mantri Techzone Case (2019) 19 SCC 494**. Therefore, the sanction plans of PMC granted to the PP needs to be quashed & set aside and,
- h) That this Hon'ble NGT have powers to pass strict orders Under Rule No. **24 of NGT (P&P) Rules, 2011** as per **Para-38-39 of MCGM Vs. Ankita Sharma (2021) SCC OnLine SC 897** to stop the abuse of its powers with end of justice against the erring officers of the PMC for granting sanctions against the settled position of law, that the construction cannot be carried out in the prohibited zone of blue flood line. Therefore, the notorious officer **Mr. Prashant Waghmare** & careless & reckless **PP** must be saddled with heavy cost that to be utilised for legal aid in the environmental matters.
- i) Therefore, as held by Hon'ble Supreme Court in **Para-41 of MCGM Vs. Ankita Sharma (2021) SCC OnLine SC 897** this Hon'ble NGT have widest powers to give appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.



**PART-G****9. REJOINDER TO THE REPLY OF RESPONDENT NO. 4-  
MPCB VIDE DATED 16.03.2022:**

- a) I state that, the MPCB have rejected the Consent to Establish vide its Order dated 20.07.2020. {P@494-495, Joint Committee Report} and also observe that no construction activity is found at site and Old plinth construction is observed at site. {Para-5 of MPCB Affidavit}. Also, PP have not applied for the Consent to Establish with requisite information.
- b) I state that, the MPCB have not answered the important question that, "Whether MPCB can grant the consents to the project for construction proposed in prohibited Zone of blue flood line after submission of requisite information as sought by MPCB"? as MPCB have rejected the Consent on the basis of non-submission of requisite information being sole ground.
- c) I state that, MPCB being responsible authority shall submit the complete information with their reply before this Hon'ble NGT for fair adjudication of the case. However, MPCN have not submitted the letter seeking requisite information issued to the PP, Show-cause notice dated 22.06.2020 and Report of SRO-I dated 20.07.2020 referred in Consent refusal Order dated 27.07.2020.

**PART-H**

- 10. REPLY BY RESPONDENT NO. 1-PS-DoE, 2-SEIAA, 3-  
SEAC-III, 5-EXECUTIVE ENGINEER OF WATER  
RESOURCE DEPARTMENT, 6-PMC & 7-MR. PRASHANT  
M. WAGHMARE-CE-PMC ARE NOT FILED TILL DATE:**

I state that, the Respondent No. 1-PS-DoE, 2- SEIAA & 3- SEAC-III, Respondent No. 5-Executive Engineer of Water Resource Department, Respondent No. 6- Commissioner of PMC & 7-MR. Prashant M. Waghmare-CE-PMC have not filed their reply till date, even after lapse of 17 months from issue notice Order dated 11.08.2021 for the reasons best known to them, despite wasting of sufficient valuable time of this Hon'ble NGT and this Appellant is not able to understand the callous attitude of the Government Authority towards the proceedings of court of law and disrespect towards the Orders too. Therefore, this Appellant request to forfeit their opportunity to file any reply as this Appeal is admitted case for quashing and if granted, this Appellant craves leave of this Hon'ble NGT to file rejoinder to their reply if required.

**PART-I**

**11. CASE LAWS BY APPELLANT:**

- a) Common Cause Case-(2017) 9 SCC 499 at **Para-125**: Grant of EC is not mechanical exercise, Grant of EC after due diligence since damage to the environment can have long term impact, Grant of ex-post facto EC would be detrimental to the environment and could lead to irreparable degradation of the environment, concept of the ex-post facto or retrospective EC is completely alien to the environmental jurisprudence, EC will come into force not earlier than the date of its grant.
- b) Goel Ganga Case-(2018) 18 SCC 257 at **Para-17**: Natural Resource-sand, gravel, steel, glass, marble-Building Material does not concern FSI & Non-FSI, entire covered area to be considered for Adverse impact on environment by use of natural resources, **Para-26-28**: Ex-post facto EC



- granted without scientific appraisal & assessment is quashed, **Para-64:** Manipulation of Government Officials & Higher environmental damages to be imposed on polluter,
- c) **Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors. (2019) 18 SCC 494** at **Para-47:** Sec. 33 of NGT Act, 2010, provides 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 Corporation 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 zones around specific lakes and waterbodies in contradiction with zoning regulations under these statute or RMP. **Para-50 opines:** No mention of provisions, well settled principle of law, non-mention or erroneous mention of provisions would not be any relevance, if court had 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.
- d) **Cavelossim Villagers Forum Vs Village Panchayat of Cavelossim, 2019 SCC Online NGT 1662** at **Para-14:** Cause of Action & Limitation "*Forward foundation case Para-24 to 32*", **Para-19:** Sec. 20 of the Act i.e. 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. It may be inevitable to pass orders in the nature of public interest. It may be said to be comparable or otherwise to PIL jurisdiction. Fact



remains that jurisdiction under Section 15 read with Section 20 of the Act has to be exercised meaningfully to protect environment.

e) MCGM Vs Ankita Sinha & Ors. **2021 SCC Online SC 897:**

**Para-38.** While on the statutory provisions, it is seen that the Central Government has framed the National Green Tribunal (Practice & Procedure) Rules, 2011 (for short “the NGT Rules”). For our purpose, Rule 24 is important which reads thus:

*“24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.”*

**Para-39.** The said Rules make it clear that the NGT has been given wide discretionary powers to secure the ends of justice. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

**Para-40.** By choosing to employ a phrase of wide import, i.e. secure the ends of justice, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

**Para-41.** Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest



**power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.**

**Para-42.** Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

**Para-43.** The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

#### **PART-J**

#### **12. REPLY TO THE CASE LAWS OF PP:**

- a) That, the case relied by PP to his Reply affidavit dated 28.03.2022, i.e. M/s. Sai Baba Sales Pvt. Ltd. Case is also totally against the PP and does not support the contention of PP. In **Para-4 to 7 & 11** of M/s. Sai Baba Sale Case, Hon'ble SC has observed that, the PP started Construction of the project on the basis of PCMC sanction vide dated 14.05.2013 having construction area of 15040 M<sup>2</sup> (below the EC threshold limit of 20,000 sq. mtrs.) and thereafter, due to increase in FSI, PP sought revised sanction from PCMC vide dated 28.11.2016 for total construction of 49012 sq. mtrs.. at the verge of applying to the SEIAA for EC,



MoEFCC issued Notification dated 09.12.2016 changing the regime for obtaining EC and power were granted to local authority for granting of Environmental Conditions and accordingly, PP obtained Environment Conditions from PCMC vide dated 28.11.2017. Now, in present case, total construction BUA is more than 20000 M<sup>2</sup> since grant of commencement Certificate vide dated 23.11.2015 and based on this sanction, PP carried out excavation & small part of construction for Bldg-C in the year 2017 and procured Plinth Check Certificate dated 01.03.2017 and thereafter, procured the ex-post facto EC dated 07.05.2019. PP also carried out excavation & small construction of Bld.-C without prior EC and therefore, as per EIA Notification, 2006 and it is clear cut violation of EIA Notification, 2006 and EIA Notification, 2006 does not permits grant of ex-post facto clearance. However, the principal contention in this case is the proposed construction in prohibited zone of blue flood line, for which PMC vide its notice dated 11.09.2007 to get the demarcation of flood line on the project land from Irrigation Department and PP neglected the same. Moreover, Irrigation Department issued the flood line demarcation plan in the year 2009-2010 and accordingly informed the PMC vide its letter dated 02.06.2010, even though the PMC have issued revised sanctions to the project vide dated 07.10.2011, renewal on 04.02.2013, Revalidation on 23.11.2015 and final revised sanction 30.07.2018 and helped to get the ex-post facto illegal EC dated 07.05.2019, which is not tenable in the eyes of law and Therefore, PP cannot be allowed to cause irreparable damage to the environment & ecology, riverine by its illegal building construction in prohibited zone of Mula River for his ill intention of making profits at the cost of Mother



Nature and thus, M/s. Sai Baba Sale Case is not applicable to the PP stand and on contrary it support the Original Applicant.

**PART-K**

**13. THEREFORE, HUMBLE SUGGESTIONS OF APPELLANT ARE AS FOLLOW:**

I state that, the Joint Committee vide its Report dated 10.11.2021 have clearly opined that this project construction activity is not permissible in blue flood line. Therefore, this case is clear cut case for granting all reliefs i.e. quashing of EC dated 07.05.2019, cancelation of the sanction plans for projects coming in prohibited zone of blue flood line, action against Respondent No. 7-Mr. Prashant Waghmare City Engineer of PMC since year 2002 indulging into activity of sanctioning project under prohibited zone of blue flood line of Mula River along with other reliefs.

Therefore, this Hon'ble NGT may kindly pass appropriate Orders/directions/reliefs for restitution & restoration of area.

**14. Hence this Affidavit.**

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Date: 25.01.2023

*Bombhise*

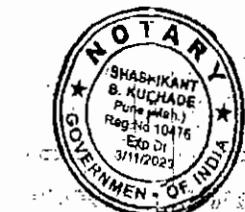
(TANAJI BALASAHEB GAMBHIRE)  
AFFIANT

**BEFORE ME**

*S.B. Kurhade*

**Shashikant B. Kurhade**  
Notary Govt. of India

Noted and Registered  
at Sr. No. 52/2023  
Date:- 25 JAN 2023



NOTARIAL



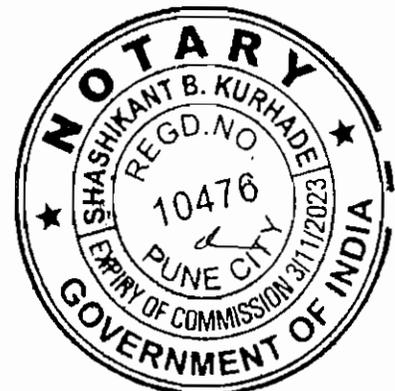
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25/1/2023

**ANNEXURE-A-1**

जा.क्र. : न/अजा/ज/र/६८

दिनांक :

२/११/२००६

मा. महापालिका आयुक्त

पुणे महानगरपालिका

यांजकडेस

विषय : बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची  
अंमलबजावणी करणेबाबत .

संदर्भ : १) परिपत्रक , नगर अभियंता कार्यालय , पुणे म.न.पा. जा.क्र.

DPO/५२८२ , दि. १६/९/२००५ .

२) Regional Officer , Maharashtra Pollution

Control Board , Regional Office Pune यांचे पत्र क्र.

Ref. No. ROP/7476/05 date 19/10/05.

३) Ministry of Environment & Forests Notification ,  
date 14/9/2006.

बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची  
अंमलबजावणी करणेसाठी वरील संदर्भ क्र.१ अन्वये परिपत्रक प्रस्तुत करण्यात आलेले अमून  
त्याप्रमाणे कार्यवाही चालू आहे . महाराष्ट्र पोल्युशन कंट्रोल बोर्डची , रिजनल ऑफीसर यांनी  
वरील संदर्भ क्र.२ चे पत्र पाठविले आहे . त्यामध्ये बांधकामाचे संमतीपत्र देणेपुर्वी पर्यावरणाचा  
दाखला तयार करणे आवश्यक असल्याचे नमूद केलेले आहे . आता वरील संदर्भ क्र.३ चे  
नोटीफिकेशन दाखल झालेले अमून त्याप्रमाणे कार्यवाही करणे करिता सदरचे निवेदन सादर  
केलेले आहे .

वरील नोटीफिकेशन मधील अ.क्र.८ खालीलप्रमाणे आहे .

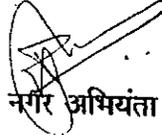
S.r. No.	Project	Category -/८	Conditions if any
४ (ब)	Building & Constuction Project	$\geq 20,000$ sq.m & $< 1,50,000$ sq.m of Built up area #	# ( Built up area for covered construction in the case of facilities open to the say , it will be the activity area)
४ (ग)	Townships & Area Development Projects	Covering an area $\geq 20$ ha & or built up area $\geq 1,50,000$ sq.mts. ++	All projects under item 8(b) shall be appraised on category B1

TRUE COPY

Bombrise

नोटिफिकेशन मध्ये नमूद केलेल्या category B, मधील प्रस्तावांना State Environment Impact Assessment Authority (SEIAA) यांचे पर्यावरणाबाबत ना-हरकतपत्र दाखल करणे आवश्यक आहे. "सदरचे ना-हरकतपत्र जागेवरील काम चालू करणेपूर्वी सादर करावे".

तरी वरील संदर्भ क्र.३ मधील नोटिफिकेशन नुसार सोवत कार्यालयीन परिपत्रक प्रस्तुत करणेस मा.महापालिका आयुक्त यांची मान्यता मिळणेची विनंती आहे.  
मा.स.कळावे.

  
नगर अभियंता  
पुणे महानगरपालिका

मा.विशेष कार्याधिकारी (दक्षता)

महापालिका आयुक्त कार्यालय

यांचेमार्फत .....

नगर अभियंता कार्यालय  
पुणे महानगरपालिका  
जा.क्र.  
दि.

## परिपत्रक

विषय :- बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची अंमलबजावणी करणे बाबत.

संदर्भ :- १) परिपत्रक नगर अभियंता कार्यालय, पुणे म.न.पा. जा.क्र. डी.पी.ओ./५२८२ दि. १६.९.०५

२) Ministry of Environment and Forests Notification date 14.9.2006

केंद्रशासनच्या पर्यावरण व वन विभाग यांचे अधिसूचने अन्वये नविन बांधकाम विकास प्रकल्पासाठी पर्यावरण दाखला घेणे बंधनकारक असून त्याबाबत अंमलबजावणी करण्याबाबत आदेश दिले आहेत. त्यानुसार वरील संदर्भ क्र. १ अन्वये कार्यालय परिपत्रक प्रस्तुत करण्यात आले आहे.

आता वरील संदर्भ क्र. २ अन्वये Ministry of Environment and forestry Notification date 14.9.2006 अन्वये category B मधील प्रस्तावांना State Environment Impact Assessment Authority (SEIAA) यांचे पर्यावरणाबाबत नाहरकत पत्र दाखल करणे आवश्यक आहे. सदरचे नाहरकत पत्र काम चालू करणेपूर्वी सादर करावे.

Sr. No.	Project	Category	Conditions if any
8(a)	Building and Construction Projects	$\geq 20000$ sq. mtrs. and $< 150000$ sq. mtrs. of built up area #	# (built up area for covered construction in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects	Covering an area $\geq 50$ ha and or built up area $\geq 150000$ sq. mtrs. ++	++ All projects under Item 8 (b) shall be appraised as category B <sub>1</sub>

तरी सादर बाबत कार्यवाही केल्याची नोंद करावी.

नगर अभियंता  
पुणे महानगरपालिका

## परिपत्रक

विषय : बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची  
अंमलबजावणी करणेबाबत .

संदर्भ : १) परिपत्रक नगर अभियंता कार्यालय , पुणे म.न.पा .

जा.क्र.डीपीओ/५२८२ दि.१६/९/०५ .

२) Ministry of Enviroment & Forest Notification date  
14/9/2006 .

केंद्रशासनाच्या पर्यावरण व वनविभाग यांचे अधिसूचने अन्वये नविन बांधकाम विकास प्रकल्पासाठी पर्यावरण दाखला घेणे बंधनकारक अगून त्याबाबत अंमलबजावणी करण्याबाबत आदेश दिले आहेत . त्यानुसार वरील संदर्भ क्र.१ अन्वये कार्यालय परिपत्रक प्रस्तुत करण्यात आले आहे .

आता वरील संदर्भ क्र.२ अन्वये Ministry of Enviroment & Forest Notification date 14.9.2006 अन्वये Category A & B मधील प्रस्तावांना पर्यावरणाबाबत नाहरकतपत्र दाखल करणे आवश्यक आहे .सदरचे नाहरकतपत्र काम चालू करणेपूर्वी दाखल करणे आवश्यक आहे .

वरील नोटीफिकेशन मधील अ.क्र.७ व ८ खालीलप्रमाणे आहे .

## 7 Physical Infrastructure including Enviroment services

S.N	Project or Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
7(c)	Industrial estates /Parks /Complexes /areas , export processing zones (EPZs) special Economics Zones (SEZs) Biotech Parks , Leather Complexes.	It ay least one industry in the proposed industrial estate falls under the category A , entire industrial area shall be treated as category A , irrespective of the area . Industrial estates with area greater than 500 HA & housing at least one category B industry	Industrial estates housing at least one category B industry & area < 500 HA Industrial estates of area > 500 HA & not housing any industry belonging to category A or B	Special condition shall apply Note : - Industrial Estates of area below 500 HA & not housing any industry of category A or B does not require clearance .
	waste treatment storage , & disposal Facilities (TSDFs)	facilities having incineration & land fill or incineration alone	having land fill only .	shall apply .
7 (h)	Common Effluent treatment plants (CETPs)		All Projects	General condition shall apply .

7(i)	Common Municipal solid Waste Management facility (CMSWMP)		All Projects	General condition shall apply.
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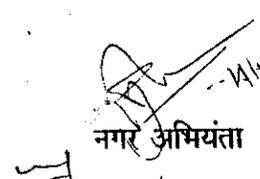
**8 Building /Construction projects/Area Development Projects & Townships**

S.N.	Project or Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
8 (a)	Building & Construction Project		$\geq 20,000$ sq.m & $< 1,50,000$ sq.m of Built up area #	# ( Built up area for covered construction in the case of facilities open to the sky , it will be the activity area)
8 (b)	Townships & Area Development Projects		Covering an area $\geq 50$ ha & or built up area $\geq 1,50,000$ sq.mts. ++	+ + All Projects under item 8(b) shall be appraised on category B1

The above projects or activities shall require prior environmental clearance from concerned regulatory authority , which shall hereinafter referred to be as the Central Government in the Ministry of Enviroment & Forests for matters falling under caterory 'A' & at State level the State Impact Assessment Authority (SEIAA) for matters falling under Category 'B' before any Construction work , or preparation of Land by the project Management except for securing the land , is started on the project or activity .

- (iii) All new projects or activities listed in the schedule to this Notification .
- (iv) Expansion & Modernization of existing projects or activities listed in the schedule to this Notification with additions of capacity beyond the limits specified for the concerned sector , that is projects or activities which cross the threshold limits given in the schedule , after expansion or modernization .

तरी सदर बाबत कार्यवाही काटेकोरपणे करावी .

  
 नगर अभियंता  
 पुणे महानगरपालिका

18/11/06  
 10/11/06  
 10/11/06

**City Engineer Office**  
**Pune Municipal Corporation**  
**Outward No: C.E.O/J/2868**  
**Date: 2/11/2006**

**To,**  
**Honourable Municipal Commissioner,**  
**Pune Municipal Corporation**

**Subject:** Implementation of Decision of Central Gov. about making Environmental Clearance Certificate mandatory for Construction Work

**Reference:**

- 1) Circular, City Engineer Office, Pune Municipal Corporation, Outward No: DPO/5282; dated 16/09/2005
- 2) Letter Ref. No: ROP/7476/05 from Regional Officer, Maharashtra Pollution Control Board, Regional Office, Pune; dated 19/10/05
- 3) Ministry of Environment & Forests Notification, dated 14/9/2006

A Circular pursuant to Reference No. 1 has been submitted in order to implement Decision of Central Government i.e. making Environmental Clearance Certificate a mandatory document for starting Construction work & actions are taken accordingly. Reference Letter 2 is sent by Regional Officer of Maharashtra Pollution Control Board. Therein it is mentioned that it is necessary to obtain Environment Clearance Certificate before issuing Consent Letter for commencing Construction Work. Notification of Reference No. 3 is now submitted & a request is made for taking actions accordingly.

**Serial No. 8 in the Notification is as follows:**

<b>Sr. No</b>	<b>Project</b>	<b>Category – B</b>	<b>Conditions if any</b>
<b>8 (a)</b>	Building & Construction Project	≥ 20,000 Sq.m & < 1,50,000 Sq.m of Built up Area #	# (Built up area for covered construction in the case of facilities open to the say, it will be the activity area)
<b>8 (b)</b>	Townships & Area Development Projects	Covering an area ≥ 50 ha & or built up area ≥ 1,50,000 Sq.m ++	++ All projects under Item 8 (b) shall be appraised as Category B

In case of Proposals mentioned in Category B in the above Notification, it is necessary to submit Environment Clearance Certificate issued by State Environment Impact Assessment Authority (SEIAA). "Such Clearance Certificate should be submitted before commencing Construction Project on Site".

However, according to Notification in Reference No: 3; we hereby request honourable Municipal Commissioner to approve Official Circular enclosed herewith.

**Yours Sincerely,**  
**Sd/-**  
**City Engineer,**  
**Pune Municipal Corporation**

**From,**  
**Honourable Special Officer (Efficiency)**  
**Municipal Commissioner Office**

**City Engineer Office,  
Pune Municipal Corporation,  
Outward No:  
Date:**

## Circular

**Subject: Implementation of Decision of Central Government of making Environmental Clearance Certificate a mandatory document for Construction Work**

**Reference:**

- 1) Circular from City Engineer Office, Pune Municipal Corporation, Outward No: D.P.O/5282, dated 16/9/05**
- 2) Ministry of Environment & Forests Notification date 14.9.2006**

According to the Notification of Environment & Forests Department of Central Government, it is obligatory to obtain Environmental Clearance Certificate for new Construction & Development Projects & an order has been issued to implement the same. Pursuant to this an official Circular is submitted as per Reference No: 1.

Now, according to Ministry of Environment & Forestry Notification date 14.9.2006 mentioned in Reference No: 2; Submission of Environmental Clearance Certificate issued by State Environment Impact Assessment Authority (SEIAA) is mandatory in case of Proposals in Category B.

<b>Sr. No</b>	<b>Project</b>	<b>Category</b>	<b>Conditions if any</b>
8 (a)	Building & Construction Projects	≥20,000 Sq.m & < 1,50,000 Sq.m of built up area #	# (built up area for covered construction in the case of facilities open to the sky, it will be the activity area)
8 (b)	Townships & Area Development Projects	Covering an area ≥ 50 ha & or built up area ≥ 1,50,000 Sq.m ++	++ All projects under Item 8 (b) shall be appraised as Category B

However strict actions should be taken accordingly.

**Sd/-  
City Engineer,  
Pune Municipal Corporation**

Pune Municipal Corporation

Outward No: \_\_\_\_\_

Date: \_\_\_\_\_

**Circular**

**Subject: Implementation of Decision of Central Government of making Environmental Clearance Certificate a mandatory document for Construction Work.**

**Reference:**

**1) Circular from City Engineer Office, Pune Municipal Corporation, Outward No: DPO/5282 dated 16/9/05**

**2) Ministry of Environment & Forest Notification date 14/9/2006**

According to the Notification of Environment & Forestry Department of Central Government, it is obligatory to obtain Environment Clearance Certificate for new Construction & Development Projects & an order has been issued to implement the same. Pursuant to this Official Circular as per Reference No: 1 has been submitted accordingly.

Now, according to Ministry of Environment & Forest Notification date 14.9.2006 as mentioned in Reference No: 2, Proposals in Category A, & B need to submit Environmental Clearance Certificate. The said NOC should be submitted before commencing Work.

Serial No. 7 & 8 in the above Notification is as follows:

**7 Physical Infrastructure including Environment Services**

S. N	Project / Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
7 (c)	Industrial estates/ Parks / Complexes / areas, export processing zones, (EPZs) Special Economic Zones (SEZs), Biotech Parks, Leather Complexes	It may at least one industry in the proposed industrial estate falls under category A, entire industrial area shall be treated as category A, irrespective of the area. Industrial estates with area greater than 500 HA & housing at least one category B industry	Industrial estates housing at least one category B industry & area < 500 HA. Industrial estates of area > 500 HA & not housing, any industry belonging to category A or B	Special condition shall apply Note: Industrial Estates of area below 500 HA & not housing any industry of category A or B does not require clearance.
7(d)	Common hazardous waste treatment, storage and disposal facilities (TSDFs)	All integrated facilities having incineration & landfill or incineration alone	All facilities having land fill only	General Condition shall apply
7 (h)	Common Effluent treatment plants (CETPs)		All Projects	General condition shall apply
7 (i)	Common Municipal solid Waste Management Facility (CMSWMP)		All Projects	General condition shall apply

**8 Building / Construction projects / Area Development Projects & Townships**

S. N.	Project / Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
8 (a)	Building & Construction Project		≥ 20,000 Sq.m & ≤ 1,50,000 Sq.m of Built up Area #	# (Built up area for covered construction in the case of facilities open to the sky, it will be the activity area)
8 (b)	Townships & Area Development Projects		Covering an area ≥ 50 ha & or built up area ≥ 1,50,000 Sq.m ++	++ All projects under item 8 (b) shall be appraised on category B 1

The above projects or activities shall require prior environmental clearance from concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment & Forests for matters falling under category A & at State level, the State Impact Assessment Authority (SEIAA) for matters falling under category B before any Construction Work, or preparation of Land by the project Management except for securing the land, is started on the project or activity.

- (iii) All new projects or activities listed in the schedule to this Notification.
- (iv) Expansion & Modernization of existing projects or activities listed in the schedule to this Notification with additions of capacity beyond the limits specified for the concerned sector, that is projects or activities which cross the threshold limits given in the schedule, after expansion or modernization.

However, strict Action needs to be taken.

**Sd/-**  
**City Engineer,**  
**Pune Municipal Corporation**

// TRUE TRANSLATION//



मुमादामु. ३९४ (५०x२ पानी २५० लहान + २५० मोठे प्रॅड्स) ९-२००२

बांधकाम नियंत्रण

बांधकाम नियंत्रण कार्यालय

पुणे महानगरपालिका

भेटण्याची वेळ : सोमवार ते शुक्रवार

जाचक क्र. हातवेळीत

सकाळी ११-३० ते १२-३०

दिनांक : ११.११.२००७

रा. रा.

श्री. दामोदर बा. नैनवकर (P.A.H) C/O ता. शा. लक्ष्मी चिरे

राहणार पुणे, पेट

वि. नं. १८ पुणे - ५

घरांक

वांस -

तुमचा दिनांक

२००७

वा.

विवरण: पुणे पेट लोपेरी बांधकाम P.A.H. सि. क्र. १८ (Part 1) येथील

इमारत बांधकामाच्या बाबत हाय फ्लोर लेव्हल बाबत

विवरीतीची माहिती देण्याबाबत आपण उच्च शिक्षक

द्वारा पुणे मंडळ येथील बांधकाम विभाग हाय फ्लोर लेव्हल मार्क केलेली

इमारत बांधकामाबाबत आपण हाय फ्लोर लेव्हल जुलै २००५चे पुराती

यसल्याने आपण हाय फ्लोर लेव्हल बांधकाम हाय फ्लोर लेव्हलची

माहिती आपण या मार्क केलेल्या बांधकामाबाबत मुला नदीचे सुवातवर आपण

माहिती देण्याबाबत आपण आपण

तरी आपण आपण आपण आपण River Bed level तरेने

पुणे मंडळीय River Bed level बाबत विचारणारे विषय हाय फ्लोर लेव्हलची

माहिती आपण आपण आपण आपण आपण आपण आपण आपण

कळते.

सदरच्या कार्यभर प्रति शासकीय माहिती अधिकार २००५ अन्वये पुणे महानगरपालिका शहर अभियंता कार्यालय (बा. ल. वि. प्र.) सौ. क्र. ६, कडून देण्यात आलेल्या आहेत.

Handwritten signature

सहायक अभियंता TRUE COPY

पुणे महानगरपालिका

Bombrose

कळते दिनांक

२००७

पुणे महानगरपालिका

Handwritten signature

बांधकाम नियंत्रण

## पुणे महानगरपालिका

बांधकाम नियंत्रण कार्यालय

भेटण्याची वेळ सोमवार ते शुक्रवार  
सकाळी ११-३० ते १२-३०

जावक क्र. हातोहात  
दिनांक: 11/09/2007

रा. रा. ....श्री. आशिष ब. जैन व इतर (PAH) C/o: ला. अर्कि. लक्ष्मण थिटे ....  
राहणार पुणे पेठ .... शिवाजीनगर ..... घरांक.....१८, पुणे-५ .....यांस  
तुमचा दिनांक ...../...../२०० चा .....

विषय: पुणे पेठ बोपोडी स. न. २A/७A सि. स. न. ८ (Part) येथील इमारत बांधकाम  
प्रकरणी हाय फ्लूड लेव्हल बाबत.

विषयांकीत मिळकत मुळा नदीला लागुन आहे. मिळकती लगत पुणे मुंबई रेल्वे  
लाईनची पुलावर हाय फ्लूड लेव्हल मार्क केलेली आढळून आलेली आहे. प्रस्तुत हाय  
फ्लूड लेव्हल जुलै २००५ चे पुराची असल्याचे जागेवर दर्शवलेले आहे. प्रकरणी हाय  
फ्लूड लेव्हलची मार्किंग जागेवर पुणे मुंबई रेल्वे लाईनचे मुळा नदीचे पुलावर आपल्या  
प्रतिनिधीस दाखविण्यात आलेली आहे.

तरी आपल्या मिळकती संबंधी River Bed level व रेल्वे पुलावरील River Bed  
level विचारात घेऊन हाय फ्लूड लेव्हलची मार्किंग आपल्या मिळकती मध्ये मार्क  
करून घेण्यात यावे.

कळावे.

कळावे, दिनांक ..../...../२०० इमारत निरीक्षक

Sd/- 11/9/07

सहायक अभियंता, क-६

पुणे महानगरपालिका

Sd/- 11/9

Received

Sd/-

**CONSTRUCTION CONTROL**  
**PUNE MUNICIPAL CORPORATION**

**CONSTRUCTION CONTROL OFFICE**

Visit Time Monday To Friday  
11-30 To 12-30

Outward No.: By Hand  
Date: 11/09/2007

Ra. Ra.....**Shri. Ashish B. Jain and Others** (PAH) C/o: La. Ar.  
**Laxman Thite**

Resident of Pune Peth **Shivajinagar**, House No. **18, Pune-5** reg.

Your, Dated: .... / ..... / 200,

**Subject:** High Flood Line in building Construction proposal from Pune Peth Bopodi Sr. No. 2A/7A C. S. No. 8 (Part) in reg.

Subject matter property is adjacent to the Mula River. In adjacent to the property on Pune Mumbai Railway Line Bridge High Flood Level marking is noticed. Said High Flood Line is marked from Flood of July-2005 as it is indicated on the spot. In this matter High Flood Level Marking on Pune Mumbai Railway line is shown to your representative from Mula River Bridge.

So, considering your Property River Bed Level and Railway Bridge River Bed Level, that obtain the marking of High Flood Level marking in your property.

Regards.

Regards, Date .... / ... / 200	Building Inspector  Received Sd/-	Sd/-11/9/07 Assistant Engineer Pune Municipal Corporation Sd/- 11/9
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**//TRUE TRANSLATION//**

Bombhise

595 **ANNEXURE-A-3**  
No. J-11013/41/2006-IA.II(I)  
Government of India  
Ministry of Environment & Forests

Paryavaran Bhavan,  
C.G.O. Complex, Lodi Road,  
New Delhi-110003.

Dated 19<sup>th</sup> August, 2010

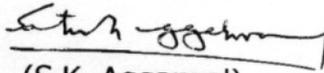
**Office Memorandum**

**Sub: Activities which can be undertaken without prior  
Environmental Clearance - Clarification regarding.**

Instances have come to the notice of this Ministry where the project proponents have undertaken construction activities relating to the project at site without obtaining the requisite prior environmental clearance as is mandated under the EIA Notification, 2006. It is to reiterate that the EIA Notification, 2006 mandates prior environment clearance to be obtained in respect of all the activities listed therein following the prescribed procedure. No activity relating to any project covered under this Notification including civil construction, can be undertaken at site without obtaining prior environmental clearance except fencing of the site to protect it from getting encroached and construction of temporary shed(s) for the guard(s).

All the project proponent may note that any contravention of the provisions of the EIA Notification amounts to violation of the Environment (Protection) Act, 1986 and would attract penal action under the provisions thereof. The project proponent may also note that in case of any project where TORs have been prescribed for undertaking detailed EIA study and where construction activities relating to the project have been initiated by them, the TORs so prescribed may be suspended / withdrawn in addition to initiating penal action under the provisions of the EP Act, 1986.

This issues with the approval of the Competent Authority.

  
(S.K. Aggarwal)  
Director

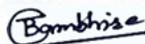
To

1. All the Officers of IA Division
2. Chairpersons / Member Secretaries of all the SEIAAs/SEACs

**Copy to:-**

1. PS to AS(JMM)
2. Advisor (NB)
3. Website, MoEF
4. Guard File

**TRUE COPY**

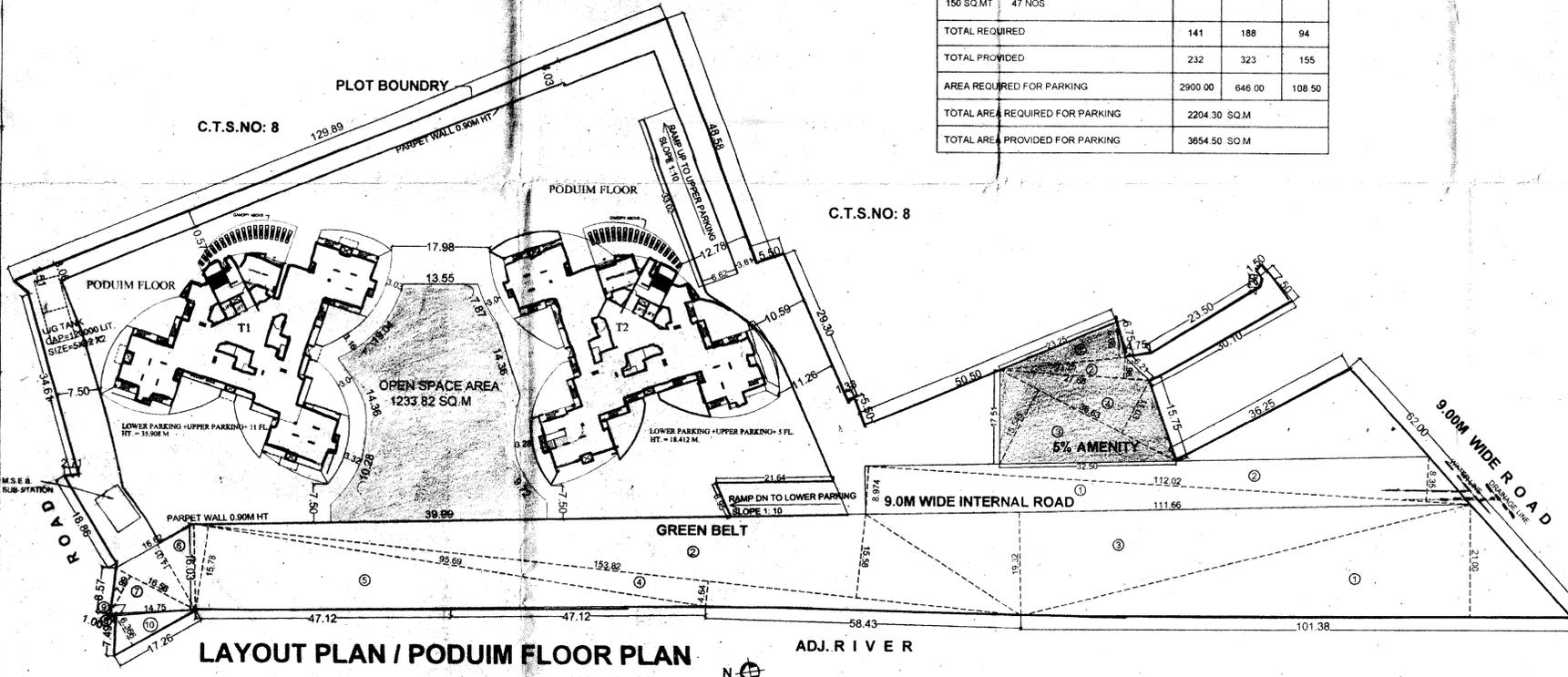
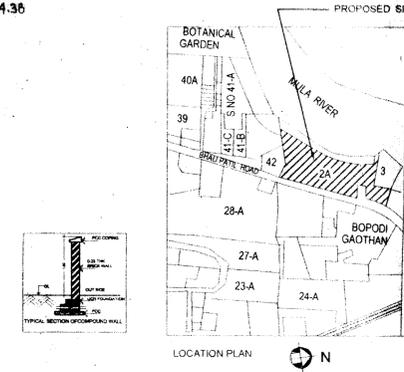


F. S. I. STATEMENT (SQ.M.)														BALCONY (SQ.M.)				LIFT & L. TERRACE AREA										
BLDG	GROUND COVERAGE		LOWER PARKING	UPPER PARKING	FLOOR AREA											PROPOSED	PERMISSIBLE	STAIRCASE	PASSAGE	LIFT & L. AREA	TERRACE AREA							
	20%	50%			FIRST	SECOND	THIRD	FOURTH	FIFTH	SIXTH	SEVENTH	EIGHTH	NINTH	TENTH	ELEVENTH							TOTAL						
T1	1184.38		23.97	679.85	709.29	709.29	709.29	709.29	709.29	709.29	709.29	709.29	709.29	693.67	7761.00	1141.16	15% OF 11100.80	293.79	513.90	28.90	2089.67							
T2	1184.38		30.02	679.85	709.29	709.29	709.29	482.06							3319.80	481.46		117.85	232.86	28.90	700.61							
COV. PARKING																												
TOTAL	2368.76		53.99	1359.70	1414.32	1414.32	1414.32	1164.78	709.29	709.29	709.29	709.29	709.29	693.67	11100.80	1622.62	1665.12	411.64	746.76	57.80	2730.28							
EXCESS BALCONY																												
TOTAL PROPOSED F.S.I.														11100.80														

COVERAGE CALCULATION  
 MAX. BLDG AREA = 709.29  
 TERRACE AREA = 475.83  
 TOTAL COV. AREA = 1184.36

TENEMENT STATEMENT (SQ.M.)														WATER TANK CALCULATIONS							
BLDG	ABOVE 150 SQ.M	FLOOR AREA											WING	TOTAL TEN	TOTAL PERSONS (SPER/TEN)	REQUIRED CAPACITY (OVERHEAD)	REQUIRED CAPACITY (U.G.R.) 1.5X0.H.	FIRE FIGHTING WATER REQUIRED	TOTAL WATER REQUIRED	SIZE OF U.G. WATER TANK	
		LOWER PARKING	UPPER PARKING	FIRST	SECOND	THIRD	FOURTH	FIFTH	SIXTH	SEVENTH	EIGHTH	NINTH									TENTH
T1	1184.38		3	3	3	3	3	3	3	3	3	3	3	33	33	165X135	22275 LTR	33415 LIT	10000 LIT	43.415 LIT	6.00 X 5.00 X 2.00
T2	1184.38		3	3	3	3	2							14	14	70X135	9450 LTR	14175.00 LIT	10000 LIT	2.4175 LIT	6.00 X 5.00 X 2.00
TOTAL			6	6	6	6	5	3	3	3	3	3	3	47							

PARKING STATEMENT				
REQUIRED	CAR	SCOOTER	CYCLE	
FOR RESIDENTIAL (3.4:2)				
TENEMENTS HAVING CARPET AREA MORE THAN 150 SQ.MT	141	188	94	
47 NOS				
TOTAL REQUIRED	141	188	94	
TOTAL PROVIDED	232	323	155	
AREA REQUIRED FOR PARKING	2900.00	646.00	108.50	
TOTAL AREA REQUIRED FOR PARKING	2204.30			SQ.M
TOTAL AREA PROVIDED FOR PARKING	3654.50			SQ.M



AREA CALCULATION OF GREEN BELT	
1. 0.5 X 101.38 X 21.00 =	1064.49 SQ.M
2. 0.5 X 153.82 X 15.58 =	1198.26 SQ.M
3. 0.5 X 111.88 X 19.32 =	1078.64 SQ.M
4. 0.5 X 153.82 X 4.64 =	356.96 SQ.M
5. 0.5 X 95.89 X 15.78 =	754.99 SQ.M
6. 0.5 X 16.62 X 14.01 =	116.42 SQ.M
7. 0.5 X 16.56 X 7.99 =	66.16 SQ.M
8. 0.5 X 1.00 X 0.36 =	0.18 SQ.M
9. 0.5 X 14.75 X 0.39 =	2.88 SQ.M
10. 0.5 X 17.28 X 6.368 =	54.94 SQ.M
<b>TOTAL AREA OF GREEN BELT =</b>	<b>4693.82 SQ.M</b>

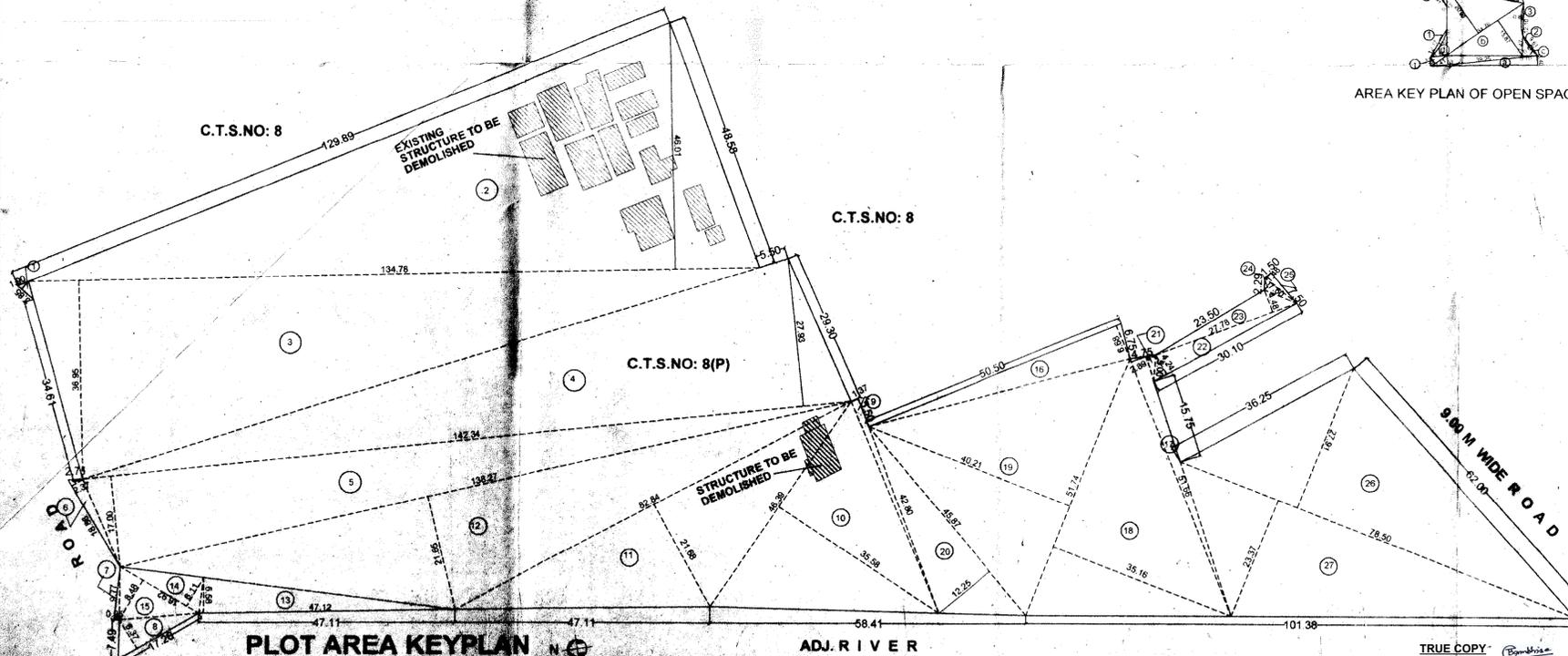
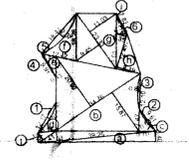
INTERNAL ROAD AREA CALCULATION	
1. 0.5 X 112.02 X 8.974 =	502.63 SQ.M
2. 0.5 X 112.02 X 8.35 =	467.88 SQ.M
<b>TOTAL ROAD AREA =</b>	<b>970.31 SQ.M</b>

AREA CALCULATION FOR AMENITY	
1. 0.5 X 23.25 X 6.88 =	77.66 SQ.M
2. 0.5 X 27.68 X 3.98 =	55.08 SQ.M
3. 0.5 X 36.83 X 15.435 =	282.71 SQ.M
4. 0.5 X 36.53 X 11.03 =	201.46 SQ.M
<b>TOTAL AREA OF AMENITY =</b>	<b>616.91 SQ.M</b>

AREA CALCULATION FOR OPEN-SPACE	
a. 0.5 X 39.25 X (3.58 + 3.40) =	136.98 SQ.M
b. 0.5 X 34.76 X (20.99 + 15.87) =	640.62 SQ.M
c. 0.5 X 5.70 X 7.47 =	21.28 SQ.M
d. 0.5 X 6.11 X 9.88 =	30.18 SQ.M
e. 0.5 X 5.13 X 7.52 =	19.28 SQ.M
f. 0.5 X 12.42 X 16.28 =	101.29 SQ.M
g. 0.5 X 23.33 X (8.45 + 11.03) =	238.89 SQ.M
h. 0.5 X 12.49 X (8.19 + 3.35) =	72.06 SQ.M
i. 0.5 X 3.49 X 7.01 =	12.23 SQ.M
j. 0.5 X 7.41 X 2.93 =	10.85 SQ.M
<b>TOTAL</b>	<b>1283.66 SQ.M</b>

DEDUCTION	
1. 2/3 X 12.17 X 1.04 =	8.43 SQ.M
2. 2/3 X 9.81 X 0.63 =	4.03 SQ.M
3. 2/3 X 12.10 X 0.87 =	7.01 SQ.M
4. 2/3 X 9.91 X 0.43 =	2.84 SQ.M
5. 2/3 X 18.43 X 2.07 =	25.43 SQ.M
6. 2/3 X 7.83 X 0.37 =	1.93 SQ.M
<b>TOTAL DEDUCTION</b>	<b>49.67 SQ.M</b>
<b>NET OPEN SPACE AREA =</b>	<b>1233.99 SQ.M</b>

PLOT AREA CALCULATION	
1. 0.5 X 3.85 X 1.90 =	3.66 SQ.M
2. 0.5 X 134.78 X 48.01 =	3100.61 SQ.M
3. 0.5 X 134.78 X 36.95 =	2490.06 SQ.M
4. 0.5 X 142.34 X 27.93 =	1987.78 SQ.M
5. 0.5 X 142.34 X 17.00 =	1209.89 SQ.M
6. 0.5 X 18.86 X 2.37 =	22.35 SQ.M
7. 0.5 X 9.77 X 0.95 =	4.64 SQ.M
8. 0.5 X 17.26 X 6.37 =	54.67 SQ.M
9. 0.5 X 42.80 X 1.37 =	29.32 SQ.M
10. 0.5 X 46.39 X 35.58 =	825.28 SQ.M
11. 0.5 X 82.84 X 21.68 =	897.99 SQ.M
12. 0.5 X 138.27 X 21.85 =	1496.77 SQ.M
13. 0.5 X 47.12 X 6.58 =	155.02 SQ.M
14. 0.5 X 16.92 X 6.11 =	51.62 SQ.M
15. 0.5 X 16.92 X 8.48 =	71.74 SQ.M
16. 0.5 X 50.50 X 6.68 =	168.67 SQ.M
17. 0.5 X 51.66 X 2.89 =	74.65 SQ.M
18. 0.5 X 51.74 X 35.16 =	909.59 SQ.M
19. 0.5 X 81.74 X 40.21 =	1040.23 SQ.M
20. 0.5 X 45.87 X 12.25 =	280.95 SQ.M
21. 0.5 X 5.00 X 1.76 =	4.40 SQ.M
22. 0.5 X 30.10 X 4.24 =	63.81 SQ.M
23. 0.5 X 27.78 X 4.48 =	62.23 SQ.M
24. 0.5 X 7.60 X 1.84 =	6.99 SQ.M
25. 0.5 X 7.80 X 1.48 =	5.82 SQ.M
26. 0.5 X 78.50 X 27.92 =	1095.93 SQ.M
27. 0.5 X 78.50 X 23.37 =	917.27 SQ.M
<b>TOTAL PLOT AREA =</b>	<b>17032.11 SQ.M</b>
<b>AS PER 7/12 EXTRACT PLOT AREA =</b>	<b>18157.0 SQ.M</b>
<b>MINIMUM AREA CONSIDERED =</b>	<b>17032.11 SQ.M</b>



STAMP OF APPROVAL  
 B.P. LAYOUT  
 APPROVED SUBJECT TO CONDITION  
 APPROVED UNDER COMMENCEMENT  
 CERTIFICATE NO. 2335/11 DATE 7/10/2011  
 Building Inspector Deputy Commissioner P.M.C.  
 PUNE MUNICIPAL CORPORATION  
 APPROVED  
 PUNE

AREA STATEMENT (IN SQ.MTS)	
1. AREA OF THE PLOT	17032.11
2. DEDUCTIONS FOR	
a. Road Acquisition Area (U/S 205)	
b. Proposed Road (U.P. Road / Road Widening)	
c. Any Reservation GREEN BELT	4693.82
TOTAL (a+b+c)	
3. NET GROSS AREA OF THE PLOT (1-2)	12338.29
4. DEDUCTIONS FOR	
a. Recreation Ground As Per Rule No 13.3.1 (10% Open Space)	1233.82
b. Internal Road	970.31
c. Amenity space (15%)	616.91
d. M.S.E.B	25.00
TOTAL (a+b+c)	2846.04
5. NET AREA OF THE PLOT (3-4)	9492.25
6. ADDITION FOR F.A.R.	
a. Road Acquisition Area (U/S 205)	
b. Proposed Road (U.P. Road / Road Widening)	
c. Amenity space	616.91
d. Recreation Ground As Per Rule No 13.3.1 (10% Open Space)	
e. Internal Road	970.31
f. T.D.R.	
g. ADDITION FOR M.S.E.B	25.00
TOTAL (a+b+c+d+e+f)	1612.22
7. TOTAL AREA (5+6)	11104.47
8. F.A.R. PERMISSIBLE	
a. Residential (1.00)	11104.47
b. Commercial (0.5/1/0.85/0.75)	
c. Information Technology (2)	
TOTAL F.A.R. PERMISSIBLE	11104.47
9. F.A.R. EXISTING	
a. Residential	
b. Commercial	
c. Information Technology	
TOTAL F.A.R. EXISTING	
10. F.A.R. PROPOSED	
a. Residential	11104.47
b. Commercial	
c. Information Technology	
TOTAL F.A.R. PROPOSED	11104.47
11. PERMISSIBLE COVERAGE (20% OF 9492.25)	1898.45
12. PERMISSIBLE COVERAGE (30% OF 9492.25)	2847.67
13. PROPOSED COVERAGE	2368.76
13. MAX. PERMISSIBLE COVERAGE WITH PREMIUM (AS PER 7/12 EXTRACT)	470.31

TENEMENT STATEMENT	
13. Area As Per Item 7 Above (250.4)	9492.25
14. Less Deduction Of Non Residential Area	
15. Area Under Residential Tenements	9492.25
16. Tenements Permissible 250 Nos / Hectar (237.30 SAY 238)	238 NOS.
17. Tenements Proposed	47 NOS.

LEGEND	
Plot Boundary Shown Thick Black	Water Line Shown Black (Dotted)
Proposed Work Shown Red	Existing Work To Be Retained Blue
Drainage Line Shown Red (Dotted)	Existing Work To Be Demolished Yellow

- BRIEF SPECIFICATIONS -
- FOUNDATION UP TO HARD STRATA
  - RCC FRAME STRUCTURE
  - EXTERNAL AND INTERNAL WALL 0.15 THK
  - EXTERNAL SAND FACED PLASTER AND INTERNAL NEERU FINISHED CEMENT PLASTER
  - T.W. DOORS & M.S. WINDOWS
  - M.M. TILE FLOORING

LAND OWNER (AS PER 7/12 OR P.R.C.)  
 Mrs. Shantabai .T. Bahirat & Others (6)

POWER OF ATTORNEY HOLDER  
 MR. RAVINDRAKUMAR N. SAKLA  
 MR. NITIN S. BHOSALE

CLIENT/FIRM'S NAME  
 SKYLINE ARCHITECTS

CONTENTS  
 LAYOUT OF BUILDINGS  
 F.S.I. WATER & PARKING STATEMENTS  
 PLOT AREA CALCULATIONS

PROJECT (REVISED PROPOSAL)  
 PROPOSED BUILDING  
 AT CTS.NO:8 PART, (S.NO 2A/7A),  
 BOPODI, PUNE.

NOTE:  
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REVISION		DEALT	DATE
R1	CHANGE IN DESIGN	SANJAY	17/09/07
R2	CHANGE IN DESIGN	SANJAY	10/05/08

OWNER/P.A.H.  
 MR. R.N.SAKLA  
 MR. N.S.BHOSALE

LIAISONING ARCHITECT ARCHITECT

LAXMAN THITE ARCHITECT  
 SKYLINE ARCHITECTS ARCHITECTS AND DESIGNER  
 BLOCK NO.12, 2ND FLOOR, 10A/B, RAJAWADI MALL COMPOUND, MANJURGAON, PUNE-411004  
 SENAPATI BHATT MANG. LOWER PANEL NO. 450015  
 PH. - 020-26101112/31416 FAX. - 2660000  
 E-MAIL - skyline.architects@gmail.com

**ANNEXURE-A-5**

BEFORE THE HON'BLE PRINCIPAL SECRETARY,  
ENVIRONMENT DEPARTMENT GOVERNMENT OF  
MAHARASHTRA AND MEMBER SECRETARY OF SEIAA  
MAHARASHTRA AT MUMBAI

COMPLAINT NO. \_\_\_\_\_ /2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPELLANT

VERSUS

M/S. RAVIRAJ REALITY ... RESPONDENTS

2m  
10.8.19  
आवक लिपिक  
पर्यावरण विभाग  
मंत्रालय, मुंबई

**[VOLUME-I]**

**COMPLAINT, AFFIDAVIT &  
ANNEXURES**

**(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)**

**[COMPLAINT a/w AFFIDAVIT- 01 To 27]**

**[ANNEXURE-A-01 To A-13]**

**[ANNEXURE PAGE No. 28 To 173]**

**TRUE COPY**

*Bambhise*

**BEFORE THE HON'BLE PRINCIPAL SECRETARY,  
ENVIRONMENT DEPARTMENT GOVERNMENT OF  
MAHARASHTRA AND MEMBER SECRETARY OF SEIAA  
MAHARASHTRA AT MUMBAI**

**COMPLAINT NO. \_\_\_\_\_ /2019**

**IN THE MATTER OF:**

MR. TANAJI BALASAHEB GAMBHIRE

... APPELLANT

VERSUS

M/S. RAVIRAJ REALITY

... RESPONDENTS

**FILE-A  
VOLUME-I**

SR.	DESCRIPTION	PAGE NO.
1.	Complaint dated 07.02.2019	01 - 26
2.	Affidavit in support of Complaint dated 06.02.2019	27
3.	<b><u>ANNEXURE-A-1</u></b> Copy of the Environment Clearance under challenge granted by SEIAA under S.O. 1553 (E) EIA Notification- 2006 issued on 07.05.2019	28 - 41
4.	<b><u>ANNEXURE-A-2</u></b> Copy of the Government Circular No.: FDW-1089/243/89/Sin Vya (Work) Regarding marking of flood line to restrict any type of construction inside dated 21.09.1989	42 - 44
5.	<b><u>ANNEXURE-A-3</u></b> Copy of Flood Control Maps of Mula	45

	River at Bopodi Village Sheet No. 2	
6.	<b><u>ANNEXURE-A-4</u></b> Copy of the Judgment and final order in Original Application No. 2 of 2013 passed by Hon'ble NGT-PB prohibiting construction in blue flood control line on 11.07.2013	46 - 90
7.	<b><u>ANNEXURE-A-5</u></b> Copy of Part plinth check certificate dated 01.03.2017	91
8.	<b><u>ANNEXURE-A-6</u></b> Copy of the Government Circular No. PuRaNi-2018/(182/2018) Sin. Vya. (Revenue) for Directives to demarcate flood lines and use of Prohibitive and Restrictive Zones to not to allow any construction inside flood line to avoid possible risk of floods dated 03.05.2018 along with English translation	92 - 100
9.	<b><u>ANNEXURE-A-7</u></b> Copy of the Final Development Plan (2007-2017) for the Village Bopodi under Sec. 31 (1) of MR & TP Act-1966 along with Cover Page & Legend dated 11.05.2018	101
10.	<b><u>ANNEXURE-A-8</u></b> Copy of PMC sanction plan vide no. CC/1290/2018 dated 30.07.2018	102
11.	<b><u>ANNEXURE-A-9</u></b>	103 - 137

	Copy of online Form-1, Form-1A and master layout submitted to SEIAA for obtaining EC dated __.__.2018	
<b>12.</b>	<b><u>ANNEXURE-A-10</u></b> Copy of the 80 <sup>th</sup> meeting Minutes of SEAC-III dated 15.01.2019	<b>138 - 148</b>
<b>13.</b>	<b><u>ANNEXURE-A-11</u></b> Copy of the Garden & Tree Authority NOC issued by PMC for the project coming in Blue Flood line of Mula River on 27.03.2019	<b>149</b>
<b>14.</b>	<b><u>ANNEXURE-A-12</u></b> Copy of the 165 <sup>th</sup> meeting Minutes of SEIAA dated 24.04.2019	<b>150 - 160</b>
<b>15.</b>	<b><u>ANNEXURE-A-13</u></b> Copy of the Consolidated Statement(CS) & summary of Minutes of Meeting of SEAC & SEIAA decisions dated __.__.2019	<b>161 - 173</b>

Date: 07.06.2019

*Bombhise*  
COMPLAINANT

**BEFORE THE HON'BLE PRINCIPAL SECRETARY,  
ENVIRONMENT DEPARTMENT GOVERNMENT OF  
MAHARASHTRA AND MEMBER SECRETARY OF SEIAA  
MAHARASHTRA AT MUMBAI  
COMPLAINT NO. \_\_\_\_\_ /2019**

**IN THE MATTER OF:**

**MR. TANAJI BALASAHEB GAMBHIRE**

Age: Adult, Occupation: Self-employed,  
R/o- CTS-296, Shukrawar.Peth,  
Near Shivaji Maratha High School,  
Laxmi Apartment, White House Lane,  
Pune-411002, E-mail: tanaji\_9june@yahoo.com

... **COMPLAINANT**

**VERSUS**

**M/S. RAVIRAJ REALITY**

Having office at- Office No. 1 to 5, Second Floor,  
Millennium Star, Next to Ruby Hall Clinic,  
Dhole Patil Road, Pune - 411001, Maharashtra  
Through Shri. Ravindra Naupatlal Sakla  
Email: info@bhosalehousing.com, sales@ravirajrealty.com

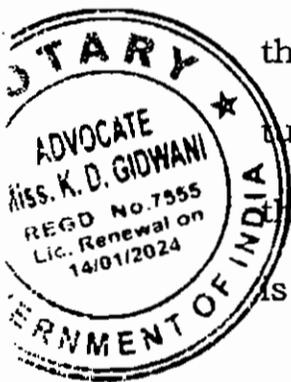
....**RESPONDENT/ PROJECT PROPONENT**

**SUBJECT:** COMPLAINT FOR REVOCATION OF THE ENVIRONMENT CLEARANCE DATED 07.05.2019 GRANTED TO RESPONDENT / PROJECT PROPONENT FOR HIS PROJECT FOLLOWING IN THE BLUE LINE OF MULA RIVER AND PROCURING OF EC ON THE BASIS OF FALSE & BASELESS INFORMATION BY MISLEADING THE SEAC-III & SEIAA.

**COMPLAINANT STATES THAT:**



1. The complainant above named begs to submit this complaint for revoking of the Environment Clearance vide no. **SEIAA-EC-0000001510** dated 07.05.2019 **(ANNEXURE-A-1)** issued under EIA Notification-2006 dated 14.09.2006.
2. It is respectfully submitted that acts of the Project Proponent in violation of the various environmental laws to its brim with the active aid of the officers of various government department needs to be dealt with sternly hands so that a clear and unambiguous message to be passed in the entire community of unapologetic, maneuver, mighty & resourceful Project Proponents and the issue of one such gross violation by the developer and turning deaf ears to such violations despite bringing it to the notice of authorities responsible for upholding the law is the reason and basis of this complaint.

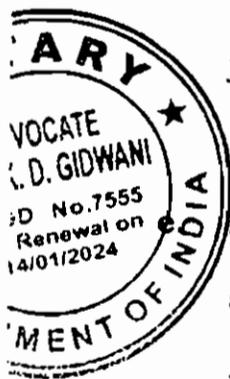


**3. PARTICULARS OF COMPLAINANT:**

- a. It is most respectfully submitted that, the complainant is Bachelor of Engineering and have worked with many Petrochemical Refinery at abroad and he is performing his fundamental duty of environment protection by filling cases against the violators and polluters before the various court of law by obtaining information under RTI.

**4. PARTICULARS OF PROJECT PROPONENT AND PROJECT UNDER CHALLENGE: -**

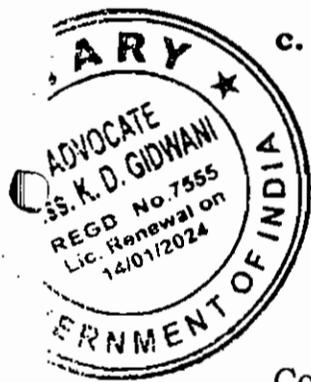
- a. It is submitted that, the Respondent - M/s. Raviraj Reality-Project Proponent is developing land bearing Survey Nos. 2A/7A (CTS No. 8) at Village-Bopodi, Taluka-Haveli, District-Pune for Residential buildings project under the name & style as "**Vitoria Lagoon**" for Mall.
- b. It is submitted that, the total project land is admeasuring 17032.11 Sq. Mtrs. from the above survey number. It seems that this area is not correct and there is encroachment on the adjacent river area.
- c. It is submitted that, the PP have undertaken construction of this residential building and part of the construction for building-C is completed up to plinth of 31.75 Sq. Mtrs. on 01.03.2017 And there is substantial excavation prior to the EC dated 07.05.2019.
- d. It is submitted that, the present project is situated in the jurisdiction & limits of the Pune Municipal Corporation and PMC is the sanctioning authority.
- It is submitted that, the PP is responsible for all illegal activity committed during the construction phase as well as for the damage caused to environment and ecology due to this project activity.



**5. BRIEF FACTS LEADING TO THE PROJECT UNDER CHALLENGE:**

- A. NO CONSTRUCTION IS PERMITTED IN BLUE FLOOD LINE AND RIVER:**

- a. It is submitted that, there was many incidents of flood due to heavy rain and dam breaks harmed to the human habitants, wildlife etc in the State of Maharashtra earlier to the 1980, therefore Government of Maharashtra decided to prohibit the development in the vicinity of the rivers in view to protect the environment and inhabitant from the floods of the rivers.
- b. It is submitted that, the Government of Maharashtra issued notification on 21.09.1989 defining the areas of blue flood line imposing restrictions on any constructions between this line and river bed and red flood line regulating the constructions activity with certain guidelines and directed every concern department to implement this regulations in the state of Maharashtra.
- c. Therefore, any construction in the range between blue flood line and river bed is illegal since 21.09.1989 and proposed construction of the PP will not be survive by any means.



Copy of the Government Circular No.: FDW-1089/243/89/Sin Vya (Work) regarding marking of flood line to restrict any type of construction inside dated 21.09.1989 is attached herewith and marked as ANNEXURE-A-2 (Page-42 to 44).

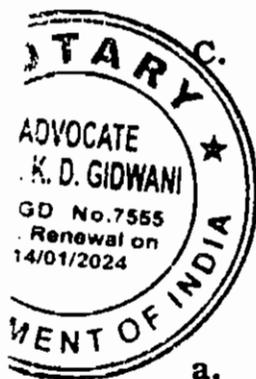
**B. ENVIRONMENT CLEARANCE IS NOT PRIOR ENVIRONMENT CLEARANCE AND IT IS EX-POST FACTO EC, AS THERE IS VIOLATION OF EIA NOTIFICATION-2006**

- a. It is submitted that, the MoEF issued the EIA Notification-2006 dated 14.09.2006 mandating prior environment clearance to the building construction project having total BUA more than 20,000 Sq. Mtrs., that the word "prior" is mentioned more than 19 time in the EIA Notification-2006.
- b. It is submitted that, the said project had total potential of BUA more than 20,000 Sq. Mtrs. from beginning and it was mandatory to obtain prior EC. But PP neglected to obtain the prior EC intentionally and has shown careless and reckless attitude towards the environment and proceeded with the illegal construction.
- c. It is submitted that, the MoEF & CC has also issued notification vide dated 04.04.2011 clarifying the EIA Notification-2006 for the term built up area is nothing but all covered area on all floors.
- It is submitted that, the PP carried out the substantial excavation of plot in 2016 & 2017, and then the carried out part construction work for Building C and then construction was stopped for reasons best known to the PP.
- e. It is submitted that, the PP also obtained part plinth check certificate for Building C on 01.03.2017.
- f. It is submitted that, the PP has applied for the Environment Clearance to the SEIAA in the month of December-2018 and procured the EC on 07.05.2019 by



suppressing the important fact of blue flood line affected project land.

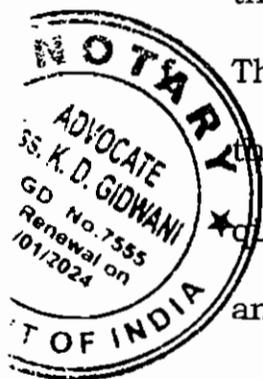
- g. It is submitted that, the granting of environment clearance to any project is not the mechanical exercise as it should be granted after due diligence & reasonable care since damage to the environment can have a long term impacts and therefore considering the complexity in the environmental issued it requires meticulous examination & dispassionately conclusion and findings, which is not done while granting the present EC.
- h. Therefore the EC dated 07.05.2019 is nothing but the illegal and ex-post facto EC in violation of EIA Notification-2006.



**PROJECT SITE COMES UNDER BLUE FLOOD LINE AND MULA RIVER BED AS PER FLOOD LINE MARKING MAPS PREPARED BY WATER RESOURCE DEPARTMENT PUNE IRRIGATION CIRCLE:**

- a. It is submitted that, the Village-Bopodi is situated on the bank & joining of Mula River & Pawana River. Also Mula River is passing through the Survey number 2A, of the Mula River. Pawana River is joining the Mula River at distance of 50 Mtrs from the survey Number 2A.
- b. It is submitted that, the joining of the Mula & Pawana river at project is adversely affecting the project site and this fact is also suppressed by the PP & PMC.

- c. It is submitted that, the Pune irrigation circle prepared the flood line marking plans for rivers Mula, Mutha, Pawana, Indrayani etc. passing through the city of Pune & Pimpri Chinchwad area somewhere in the year 2009 and imposed said marking on the development plans in 2010 & 2011 of PMC & PCMC.
- d. It is submitted that, the said maps of irrigation departments clearly shows that, the project site is following in the blue line and Mula River Bed.
- e. It is submitted that, the due high hazardous potential of the flood of Mula rivers and other rivers passing through the Pune City, Pune Irrigation Circle have prepared Standard Operation Procedure for flood control and disaster management of human lives & infrastructures in the PMC & PCMC area.



Therefore the project construction is not permissible at the project site and EC dated 07.05.2019 should be quashed and set aside in view to protect the environment and ecology.

Copy of Flood Control Maps of Mula Rivers at Bopodi Village Sheet No. 2 is attached herewith and marked as **ANNEXURE-A-3 (Page- 45 to 45)**.

**D. PRINCIPAL LAID DOWN BY HON'BLE NGT ON PROHIBITION OF CONSTRUCTION IN BLUE LINE VIDE JUDGMENT AND FINAL ORDER IN ORIGINAL APPLICATION NO. 2 OF 2013 DATED 11.07.2013:**

a. It is submitted that, the Pune based environment activists were filed Original Application No. 2 of 2013 before Hon'ble NGT seeking prohibition of construction of Road in blue line of the Mutha River. Wherein the Hon'ble NGT have made important observations in view to protect the environment and ecology and also the principal of sustainable development.

b. It is submitted that, the observations made by the Hon'ble NGT in para-35 of Judgment are as below;

*"(a) Narrow river passage/flood plain which would obviously result in adversely affecting the civilisation during floods in the river.*

*(b) Obstruction in flow of storm water/rainy water from drains/nullahs and the flow shall enter the other side of the proposed elevated road, thereby cause flooding in the area.*

*(c) Insufficiency of cross drainage at appropriate locations.*

*(d) Dredging of even two km. in the river will not protect floods and damage to the ecology as it would become a pool of water unless or until a proper gradient in downstream is provided."*

c. Further it is observed in Para-36 of Judgment "

*"36. Besides this, it is very important to avoid environmental damage and in the interest of ecology, flood plains are maintained properly. As the flood plains provide important ecological services like ensuring flow in streams for most of the year through modulation of the river-discharge by conserving huge flow of water derived from peak flow and storm run off during the rainy season and releasing it gradually; recharge the ground water*



*and improve its quality, besides flood plain produce resources like fodder, fuel and timber. Also these provide breeding and feeding ground for fish, reptiles, amphibians, birds and other living creatures in addition to improving water quality through retention and transformation of nutrients and other chemicals. These services or benefits would be adversely affected by any encroachment of the flood plains."*

d. Also it is observed that in Para-37,

*"37. ....The authorities cannot be permitted to cause irreversible damage to the environment and ecology of the area and even expose the inhabitants of the vicinity to undue flood risks on the ground that the project is being taken up in public interest merely for providing an alternative road and for reducing the vehicular pollution."*

e. Here it is important to note that, the project challenged on OA NO. 2 of 2013 was of somewhat public importance, but in the present case the project is for personal gain and PP is money making entrepreneur and no one is allowed to make money at the cost of mother nature.

f. Therefore by any stretch of imagination PP should not be allowed for the present development and Environment Clearance dated 07.05.2019 granted to the project must be quashed and set aside.

Copy of the Judgment and final order in Original Application No. 2 of 2013 passed by Hon'ble NGT-PB prohibiting construction in blue flood control line on 11.07.2013 is attached herewith and marked as **ANNEXURE-A-4 (Page- 46 to 90)**.



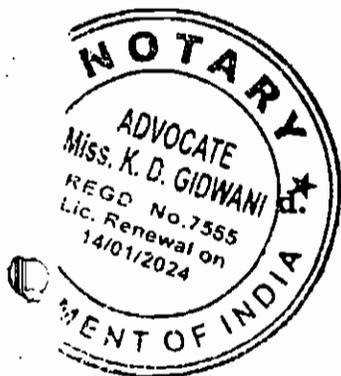
**E. PART RCC STRUCTURE UPTO PLINTH LEVEL FOR BUILDING C WITHOUT ANY PRIOR EC AND CONSENTS IN BLUE LINE OF MULA RIVER:**

- a. It is submitted that, the PMC is not the vigilant authority and also not functioning in the interest of citizens as PMC is always failed to protect the interest of public at large.
- b. It is submitted that, the PMC has revalidated the sanction of PP on 2015 for the project without applying mind, that this can cause the ecology of river.
- c. It can be seen from their conduct of allowing PP for excavation and granting him part Plinth check dated 01.03.2017 for RCC structure of Building C on the project site without any prior EC and consent even the total BUA potential of the project was more than 20000 Sq. Mtrs.

This type of acts on account of PMC are occurring due to negligence and personal interests of the corrupt officers seating on the superior positions having hands in gloves with the PP.

- e. Therefore any act of PP of carrying out excavation & part RCC construction of building C cannot survive him to continue his construction activity in the blue flood line of Mula River and these types of acts must be dealt with heavy hands.

Copy of part plinth check certificate dated 01.03.2017 is attached herewith and marked as **ANNEXURE-A-5 (Page-91)**.



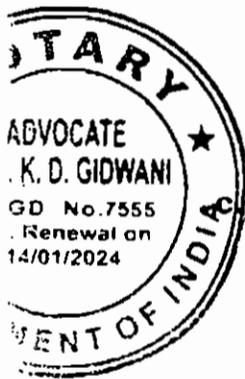
**F. GOVERNMENT OF MAHARASHTRA MODIFIED THEIR EARLIER NOTIFICATION DATED 21.09.1989 AND IMPOSED STRICT RESTRICTIONS ON CONSTRUCTION IN BLUE FLOOD LINE AND RIVER BED:**

- a. It is submitted that, to avoid possible threat of flooding, with a view to demarcate flood lines to prohibit any type of construction inside flood lines, instructions have been given vide Irrigation Department Gov. Circular No. FDW-1089/243/89/Sin Vya (Works) Dt. 2/9/1989 and Dt. 21/9/1989.
- b. It is submitted that, the Government of Maharashtra modified the above notification with clarity on directives to demarcate flood lines and use of Prohibitive and Restrictive Zones to not to allow any construction inside flood line to avoid possible risk of floods.

It is submitted that, this notification have clearly defined the following:

**“CIRCULAR-**

1. Gov. Irrigation Department circular No. FDW-1089/243/89/Sin Vya (Works) Dt. 2/9/1989 and Dt. 21/9/1989 is being modified.
2. With respect to the land use in flood prone zones, as per the guidelines given in the Dam Safety Manual Chapter 8/1984 important flood lines will be primarily of two types. Prohibitive Flood Line (Blue Line) and Restrictive Flood Line (Red Line).
3. Blue Flood Line:  
Blue Flood Line will be the line marked at the water level of the highest discharge of:



a) Flood discharge at the average frequency of 25 years.

b) One and half times the discharge of the established riverbed.

4. Red Flood Line:

Red Flood Line will be the line marked at the water level of the water discharge as under:

a) Where there is no dam, flood discharge at the average frequency of 100 years.

b) Where there is a dam, maximum flood discharge over the spill way added with flood discharge from the free catchment area at the average frequency of 100 years.

5. Prohibitive Zone:

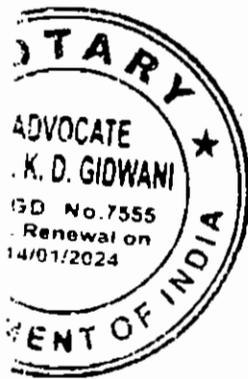
The area between the Blue Flood line on the right bank of the river to riverbed to the Blue Flood line on the left bank of the river shall be called as Prohibitive Zone.

6. Restrictive Zone:

The area between the Blue Flood Line of the river and the Red Flood Line on the same bank shall be called as Restrictive Zone.

7. Prohibitive Zone can be used only in the form of open land e.g. gardens, play grounds, light crops; where there is established easement right to take crops (e.g. water melons, musk melons etc. public toilets and sewage discharge facilities), so that there will not be any obstruction to the flow of the river, there will not be reduction in the carrying capacity of the river and there will not be any change in the cross section of the river."

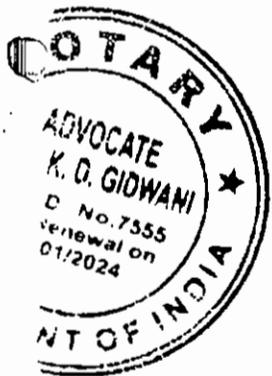
- d. It is submitted that, the flood line marking plans prepared for Village-Bopodi clearly shows that, the project land is following in restricted zone and no construction is permitted at all.



Copy of the Government Circular No. PuRaNi-2018/(182/2018) Sin. Vya. (Revenue) for Directives to demarcate flood lines and use of Prohibitive and Restrictive Zones to not to allow any construction inside flood line to avoid possible risk of floods dated 03.05.2018 is attached herewith and marked as **ANNEXURE-A-6 (Page-92 to 100)**.

**G. FINAL DEVELOPMENT PLAN OF BOPODI VILLAGE ALSO SHOWS PROJECT IS FOLLOWING UNDER BLUE LINE MARKING OF MULA RIVER:**

- a. It is submitted that, the Government of Maharashtra approved the excluded part from draft development plan of PMC on 17.02.2018 and thereafter gave final approval for the development plan for old limit of PMC on 11.05.2018.
- b. It is submitted that, the Survey Number 2A of Village-Bopodi was reserved for the Industrial Area reservation and Irrigation department have approved the flood control maps Pune Area in 2009 and thereafter marked these flood control line on development plans in 2010-2011 of old city.
- c. It is submitted that, there was no sanction for residential buildings from PMC for said project and PP has procured the afterthought permissions in 2015 with revalidation.
- d. It is submitted that, the final development plan sanctioned on 11.05.2018 by Government of Maharashtra for PMC also shows that the project land is affected by



blue flood line of the Mula River as shown in the draft Development plan.

- e. Therefore, said project land is prohibited from carrying out any construction.

Copy of the Final Development Plan (2007-2017) for the Village Bopodi under Sec. 31 (1) of MR & TP Act-1966 dated 11.05.2018 is attached herewith and marked as **ANNEXURE-A-7 (Page-101 to 104)**.

**H. PMC SANCTION DATED 30.07.2018 GRANTED TO THE PROJECT FOLLOWING IN BLUE FLOOD LINE IS ILLEGAL:**

- a. It is submitted that, the final development plans is approved on 11.05.2018 as stated above for the village-Bopodi and old city of Pune.

That the survey number 2A of project land was excluded from the industrial reservation and included in the residential area, but the said area is affected by blue flood line of the Mula River.

- c. Despite there being blue flood line affecting the project land, PP suppressed said fact while procuring the sanction from PMC and also PMC officers neglected the said fact.
- d. It is submitted that, the PP procured the subsequent revise plan on 30.07.2018 to the 2015 sanction, but did not shown blue line on the plans submitted to the PMC.



- e. There the sanction given on 30.07.2018 by PMC is totally illegal and giving counterblast to the principal of sustainable development.
- f. It is submitted that, the PP has submitted same sanction to the SEAC-III & SEIAA for obtaining environment clearance by suppressing the blue flood line marking.

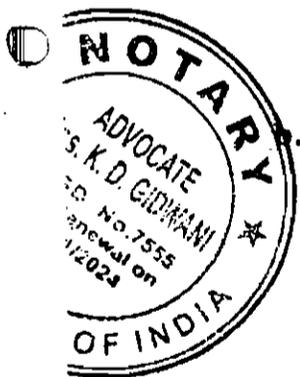
Copy of PMC sanction plan vide no. CC/1290/2018 dated 30.07.2018 is attached herewith and marked as ANNEXURE-A-8 (Page-102).

**I. FALSE, BASELESS AND MISLEADING APPLICATION FOR OBTAINING EX-POST FACTO EC:**

- a. It is submitted that, the PP has applied for the EC before SEAC-III & SEIAA by stating in item-4 of Form-1 that this is new building and construction project which is totally false.

It is submitted that, the PP has provided false information in form-1 at Sr. No. 22, 1.24, 1.4, 2.1, 2.4, 8.3 and (III) Environmental Sensitivity item-2 & 12, That the project land is affected by blue flood line and there is prohibition on the construction of project. This information is suppressed from the authority.

22.	Whether there is any government order/ policy relevant/ relating to the site?	No
1.24	Changes in water	No change in the water



bodies or the land surface affecting drainage or run-off?	bodies or the land use surface affecting natural drainage ways.
---	---

1.4	Pre-construction investigations e.g. bore houses, soil testing?	YES	<u>Soil testing will be carried out.</u>
2.1	Land especially undeveloped or agricultural land (ha)	YES	Proposed site does not fall under Agriculture or <u>Non-Development Zone.</u>
2.4	Construction material stone, aggregates, sand / soil (expected source -MT	YES	Construction materials such as cement, steel, metal sand and bricks will be procured from authorized dealers.
8.3	Could the project be affected by natural disasters causing environmental damage (e.g. floods, earthquakes, landslides, cloudburst etc)?	NO	The project area falls under Zone III as per Map showing Seismic Zones of India. Zone III is of moderate Seismic Intensity. The building design has been planned accordingly.
(III) Environmental Sensitivity			
2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests	YES	Mula River : 0.06 km



12	Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)	No	Earth Quake Zone III Therefore, all relevant design parameters as per zone III have been considered for RCC design of the buildings.
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- c. It is submitted that, there are pre construction investigations done related to soil and ground water test for contamination.
- d. It is submitted that, the PP has made statement that there is no natural hazard from flood and same is totally false.
- e. It is submitted that, the PP submitted master layout to the Authority with EC Application, but Blue Flood line was also suppressed from same master plan.

The PP has submitted very vital information related to the environment & ecology of Mula River and damage from flood. Therefore EC dated 01.05.2019 need to quash and set aside.

Copy of online Form-1, Form-1A and master layout submitted to SEIAA for obtaining EC dated \_\_.\_\_.2018 is attached herewith and marked as **ANNEXURE-A-9 (Page-103 to 137)**.

**J. APPRAISAL OF PROJECT BY SEAC-III ON FALSE AND MISLEADING INFORMATION**



- a. It is submitted that, the application for the EC was considered by the SEAC-III in its 80<sup>th</sup> meeting held on the 15.01.2019 and without going in to detail discussion. It was just cursory mechanical exercise for issuance of EC.
- b. It is submitted that, the SEAC-III in its meeting has recorded "Not Applicable" against the item-6 "6.New project/expansion in existing project/modernization/diversification in existing project.", which is totally false as the excavation of the project land is already undertaken and part of RCC structure is completed for Building-C as disclosed in item-13 of the meeting "Plinth certificate received on 01/03/2017" against "13.Note on the initiated work (If applicable)". Therefore this is violation case as per the principal laydown in the S.P. Muthuraman case and provisions of EIA Notification-2006 for prior EC.



It is submitted that, the SEAC-III in its meeting has recorded "NA" against the issue of "Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries" which is totally false.

- d. It is submitted that, the SEAC-III has recommended the project on account of compliance of following conditions:

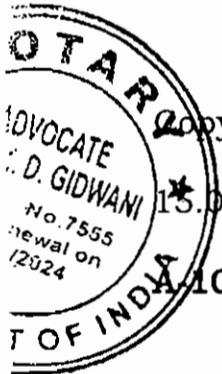
**"During discussion following points emerged:**

1. PP to submit Fire NOC and Garden NOC.
2. PP to submit undertaking for retaining of existing trees. PP to revise RG plan along with tree

plantation plan adding local species of fruit bearing trees.

*SEAC decided to **recommend** the proposal for prior environmental Clearance, subject to PP complying with the above conditions."*

- e. It is submitted that, from bare perusal of the above conditions it can be seen that SEAC-III has not applied their mind and there lack of practical view for protection of environment with scientific appraisal.
- f. It is important to note that, the SEAC-III has recorded that, there are only 44 existing trees on the basis of false information provided by the PP. actually there are 297 existing trees as per NOC
- g. Therefore the EC dated 07.05.2019 needs to quash and set aside.



Copy of the 80<sup>th</sup> Meeting Minutes of SEAC-III dated 15.01.2019 is attached herewith and marked as **ANNEXURE-10 (Page-138 to 148)**.

**K. TREE AUTHORITY NOC ISSUED BY PMC TO MISLEAD THE AUTHORITY AND COMMITTEE:**

- a. It is submitted that, the Tree Authority of PMC has issued the NOC for garden on 27.03.2019 for the purpose of obtaining EC. It is stated that, there are 297 of existing trees, but PP has disclosed only 44 existing trees before SEAC-III & SEIAA.

Copy of the Garden & Tree Authority NOC issued by PMC for the project coming in Blue Flood line of Mula River on 27.03.2019 is attached herewith and marked as **ANNEXURE-A-11 (Page-149)**.

**L. ASSESSMENT OF THE PROJECT BY SEIAA ON FALSE AND MISLEADING INFORMATION & ON RECOMMENDATION OF SEAC-III**

- a. It is submitted that, the SEIAA has assessed the project in its 165<sup>th</sup> meeting on reconditions of SEAC-III without application of mind. It is doubtful that whether the meetings of SEIAA had took place or not but it seems to be farce.
- b. It is submitted that, the also SEIAA in its meeting has recorded "Not Applicable" against the item-6 "6.New project/expansion in existing project/modernization/diversification in existing project.", which is totally false as the excavation of the project land is already undertaken and part of RCC structure is completed for Building-C as disclosed in item-13 of the meeting "Plinth certificate received on 01/03/2017" against "13.Note on the initiated work (If applicable)". Therefore, this is violation case as per the principal laydown in the S.P. Muthuraman case and provisions of EIA Notification-2006 for prior EC.
- c. It is submitted that, the also SEIAA in its meeting has recorded "NA" against the issue of "Distance from



Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries” which is totally false.

- d. However, SEIAA has just copied the same minutes of the SEAC-III and cleared the project on the CER & Standard EC Conditions as below.

**“Specific Conditions by SEIAA:**

1) PP Shall comply with Standard EC conditions mentioned in the Office Memorandum issued by MoEF & CC vide F.No.22-34/2018-IA.III dt.04.01.2019.

2) PP to submit CER plan to the Commissioner, PMC and submit the acknowledgement to the Member Secretary, SEIAA.

3) SEIAA decided to grant EC for: FSI: 21565.97 m<sup>2</sup>, Non-FSI: 19122.71 m<sup>2</sup> and Total BUA: 40688.68 m<sup>2</sup> (IOD no- CC/1290/18, Date-30.07.2018)”

- e. It is submitted that, from bare perusal of the above conditions it can be seen that SEIAA has not applied their mind and there lack of practical view for protection of environment with scientific appraisal.
- f. It is important to note that, the SEIAA has recorded that, there are only 44 existing trees on the basis of false information provided by the PP. actually there are 297 existing trees as per NOC.
- g. Therefore the EC dated 07.05.2019 needs to quash and set aside.



Copy of the 165<sup>th</sup> meeting Agenda & Minutes of SEIAA dated 24.04.2019 is attached herewith and marked as **ANNEXURE-A-12 (Page-150 to 160)**.

**M. MISLEADING CONSOLIDATED STATEMENT AND MOM SUMMARY OF PROJECT:**

- a. It is submitted that, the Consolidated Statement prepared after SEAC-III & SEIAA meetings is also nothing but the repetition intentional negligence on account of environmental sensitive issues of blue flood line of Mula river and damage to the river due to this construction.
- b. Therefore, it can be seen that, the SEAC-III and SEIAA both are not working in the interest of environment protection, but just to make money. There is requirement of serious action against the SEIAA & SEAC-III members.



Copy of the Consolidated Statement (CS) & summary of Minutes of Meeting of SEAC & SEIAA decisions dated \_\_\_\_.2019 is attached herewith and marked as **ANNEXURE-A-13 (Page-161 to 173)**.

**6. GROUND FOR THIS COMPLAINT:**

- a. Application filed by PP for Environment Clearance under EIA Notification-2006 is not for prior EC as substantial excavation and part of building-C have carried out by Project Proponent.

- b. Environment Clearance under challenge is not prior EC and it is nothing but ex-post facto Environment clearance.
- c. Concept of granting of ex-post facto Environment Clearance is not allowed in environmental jurisprudence in India.
- d. Entire Project land is under Blue flood line of Mula River and in fact within main riverine and therefore granting of EC is not mechanical exercise.
- e. PP has submitted false, baseless & misleading information to SEIAA while obtaining Environment Clearance and therefore PP is guilty of "**Suppressio Veri Suggestio Falsi**"
- f. PP has submitted false, defective and misleading application for EC before SEIAA.
- Project is situated in pollution prevention area of Pune city and within boundaries of Eco-sensitive fields of Mula River.
- h. PP has not preserved the top layer of the fertile soil and carried out excavation prior to EC.
- i. PP has not done soil and ground water test. No report has been submitted.
- j. PP is using ground water from bore well at project site without appropriate clearances.
- k. PMC officers have neglected to perform their duties for protection of environment and acted against the law.



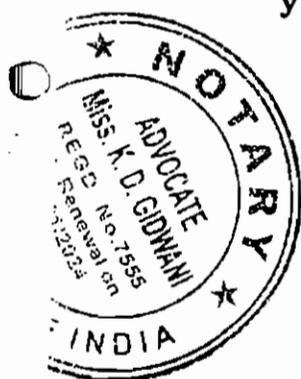
- l. PP has carried out substantial excavation in illegal manner causing damage to the Ground Water Level.
- m. PMC, SEAC, SEIAA, DoE, MPCB and Irrigation Dept. (WRD) is failed to stop illegal excavation at site deliberately.
- n. Substantial violations and illegal acts of respondent/ PP are damaging the environment and giving counter blast to the sustainable development.
- o. No application for prior Consent to Establish from MPCB and construction is initiated without Consent to Establish by PP.
- p. PP is causing huge damage to the Environment.
- q. PP has disclosed only 44 no. of existing trees at site and suppressed information of the existing 297 trees. And while granting EC no existing tree is disclosed.
- r. There is complete non-application of mind by the local authority while issuing building sanction.
- s. Thus it is mandatory to stop the project construction permanently and EC dated 07.05.2019 need to be quashed & set aside.  
Because if the procedure of the post facto Environment Clearance is allowed to be followed, any project proponent would complete his project by causing irreversible damages to the environment and then seek post-facto environmental clearance making the provisions of EIA notification infructuous. The grant of post facto clearance defeats the very purpose of environmental protection law



and the mandate of obtaining environmental clearance as per the provisions of EIA Notifications 2006.

- u. Because the environment clearance granted by the State Level Impact Assessment Authority is illegal and has no legal sanctity.
  - v. Because the EIA Notification, 2006 no were provided the grant of post facto clearance after the completion of the project.
  - w. Because there is complete non-application of mind by the SEAC & SEIAA in granting environment clearance for the project have started construction and within blue flood line of Mula River in prohibited zone.
  - x. Because the SEIAA failed to take any action for the violation of the provision of EIA notification, 2006 and Environment (Protection) Act, 1986.
  - y. Because the SEIAA and its Expert Committee is equally liable for allowing the illegal structures of expansion and also they are equally liable for granting environment clearance to the project in gross violation of EIA Notification, 2006 and other procedure established under law.
7. It is submitted that, the complainant have no personal interest in the project and also there is no enmity against the project proponent.

8. **PRAYERS:**



In the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass an order thereby:

- A. Revoke the Environment Clearance granted to the Project Proponent - M/s. Raviraj Reality for the project "Vitoria Lagoon" at Village- Bopodi, Tal- Haveli and District-Pune vide No. SEIAA-EC-0000001510 dated 07.05.2019.
- B. Pass any other just and equitable orders in the interest of justice.

**DATE: 07/06/2019**

**PLACE: PUNE**

*Bombhise*  
**COMPLAINANT**

VERIFICATION

Verified at Pune on this 07<sup>th</sup> day of June, 2019 that the contents of the aforesaid complaint are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.



*Bombhise*  
**DEPONENT**

**BEFORE THE HON'BLE PRINCIPAL SECRETARY,  
ENVIRONMENT DEPARTMENT GOVERNMENT OF  
MAHARASHTRA AND SEIAA AT MUMBAI**

**COMPLAINT NO. \_\_\_\_\_ /2019**

**IN THE MATTER OF:**

**MR. TANAJI BALASAHEB GAMBHIRE ... COMPLAINANT**

**VERSUS**

**M/S. RAVIRAJ REALITY ... RESPONDENT**

**AFFIDAVIT IN SUPPORT OF COMPLAINT**

I, Tanaji S/o Balasaheb Gambhire Aged Adult,  
Occupation: Self-Employed, R/o: CTS-296, Shukrawar Peth,  
Flat No-16, Laxmi Apartment, Near Shivaji Maratha High  
School, White House Lane, Pune-411002, do hereby solemnly  
affirm and state on oath as follows:

1. I state that I am complainant in the aforesaid Complaint / Application and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.
2. I state that the accompanying complaint in Para No. 01 to 07 have been drafted myself and that the facts stated therein are true to the best of my knowledge and belief.
3. I state that the Annexures to the said Complaint / Application are true copies of their respective originals.

**BEFORE ME**

*[Signature]*  
**Miss. K. D. Gidwani  
Advocate & Notary  
Govt. of India**

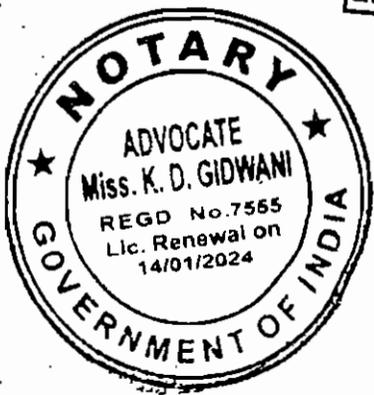
*Bambhise*  
**DEPONENT**



*Identified from Adhar -  
No. 646996267745*

**Noted & Registered  
at Sl. No. 979/19**

*- 7 JUN 2019*



**TRUE COPY**

*Bambhise*



**NOTARIAL**

**NOTARIAL**

**NOTARIAL**

**NOTARIAL**

**NOTARIAL**

**GOVERNMENT OF MAHARASHTRA**

No. Comp-2019 /CR- 08 /SEIAA  
 Environment Department,  
 217(Annex),Mantralaya,  
 Mumbai - 400 032.  
 Date : 15/06/ 2019

**By Fax/ RPAD/ Speed Post/e-mail**

To,

**M/S. RAVIRAJ REALTY**

Having office at- Office No. 1 to 5, Second Floor,

Millennium Star, Next to Ruby Hall Clinic,

Dhole Patil Road, Pune – 411001.

Through Shri. Ravindra Naupatlal Sakla

Email: info@bhosalehousing.com, sales@ravirajrealty.com

**Subject:** - Proposed Directions u/s 5 of the Environmental (P) Act, 1986 r.w. EIA Notification-2006 dated 14.9.2006

**Reference:** - Complaint / Notice of Mr. Tanaji B. Gambhire dated 07.06.2019

WHEREAS, it was obligatory on your part to obtain prior Environment Clearance from the Competent Authority, as per the EIA Notification dated 14.9.2006, before starting any building construction activity.

AND WHEREAS, we are in receipt of above referred, wherein following issues are raised by the complainant in respect of your building construction project "Vitoria Lagoon" situated at Survey No. 2A/7A (CTS No. 8) at Village-Bopodi, Taluka-Haveli, District-Pune

- a. Application filed by PP for Environment Clearance under EIA Notification-2006 is not for prior EC as substantial excavation and part of building-C have carried out by Project Proponent.
- b. Environment Clearance under challenge is not prior EC and it is nothing but ex-post facto Environment clearance.
- c. Concept of granting of ex-post facto Environment Clearance is not allowed in environmental jurisprudence in India.
- d. Entire Project land is under Blue flood line of Mula River and in fact within main riverine and therefore granting of EC is not mechanical exercise.
- e. PP has submitted false, baseless & misleading information to SEIAA while obtaining Environment Clearance and therefore PP is guilty of "*Suppressio Veri Suggestio Falsi*"
- f. PP has submitted false, defective and misleading application for EC before SEIAA.
- g. Project is situated in pollution prevention area of Pune city and within boundaries of Eco-sensitive fields of Mula River.
- h. PP has not preserved the top layer of the fertile soil and carried out excavation prior to EC.

**TRUE COPY***Bombhise*

- i. PP has not done soil and ground water test. No report has been submitted.
- j. PP is using ground water from bore well at project site without appropriate clearances.
- k. PMC officers have neglected to perform their duties for protection of environment and acted against the law.
- l. PP has carried out substantial excavation in illegal manner causing damage to the Ground Water Level.
- m. PMC, SEAC, SEIAA, DoE, MPCB and Irrigation Dept. (WRD) is failed to stop illegal excavation at site deliberately.
- n. Substantial violations and illegal acts of respondent/ PP are damaging the environment and giving counter blast to the sustainable development.
- o. No application for prior Consent to Establish from MPCB and construction is initiated without Consent to Establish by PP.
- p. PP is causing huge damage to the Environment.
- q. PP has disclosed only 44 no. of existing trees at site and suppressed information of the existing 297 trees. And while granting EC no existing tree is disclosed.
- r. There is complete non-application of mind by the local authority while issuing building sanction.
- s. Thus it is mandatory to stop the project construction permanently and EC dated 07.05.2019 need to be quashed & set aside.
- t. Because if the procedure of the post facto Environment Clearance is allowed to be followed, any project proponent would complete his project by causing irreversible damages to the environment and then seek post-facto environmental clearance making the provisions of EIA notification infructuous. The grant of post facto clearance defeats the very purpose of environmental protection law and the mandate of obtaining environmental clearance as per the provisions of EIA Notifications 2006.
- u. Because the environment clearance granted by the State Level Impact Assessment Authority is illegal and has no legal sanctity.
- v. Because the EIA Notification, 2006 no were provided the grant of post facto clearance after the completion of the project.
- w. Because there is complete non-application of mind by the SEAC & SEIAA in granting environment clearance for the project have started construction and within blue flood line of Mula River in prohibited zone.
- x. Because the SEIAA failed to take any action for the violation of the provision of EIA notification, 2006 and Environment (Protection) Act, 1986.
- y. Because the SEIAA and its Expert Committee is equally liable for allowing the illegal structures of expansion and also they are equally liable for granting environment clearance to the project in gross violation of EIA Notification, 2006 and other procedure established under law.

AND WHEREAS, as per the Complaint / Notice above referred, you have misled the SEAC-III & SEIAA while obtaining Environment Clearance dated 07.05.2019 for proposed Residential & Commercial Building Construction Project at situated at Survey No. situated at Survey No. 2A/7A (CTS No. 8) at Village-Bopodi, Taluka-Haveli, District-Pune and you have submitted false document in relation to your project is following in the blue flood line of the Mula River. During scrutiny of your application it has been observed that you have violated the conditions of the previous Environment Clearance dated 07.05.2019. It has been has also observed that there is dissimilarity in the information submitted by you to the SEAC-III & SEIAA for the project and the information submitted to the Pune Municipal Corporation in plans. This amounts to violation of the EIA Notification-2006 r/w Environment (Protection) Act-1986.

NOW THEREFORE, in view of the above non-compliances, you are hereby directed to show cause as under: -

- a) Why EC dated 07.05.2019 shall not be revoked as per the condition stipulated thereunder for submission of false documents?
- b) Why your building construction activity shall not be stopped forthwith for the violation of Environment Impact Assessment Notification dated 14.09.2006, issued by the ministry of Environment & Forest, Government Of India, for not obtaining prior Environmental Clearance from the Competent Authority / Government of Maharashtra?
- c) Why further legal action shall not be initiated against you under the provisions of the Environment (Protection) Act, 1986 and Rules made there under?

Take notice that, you are hereby directed to submit your reply within a period of 15 days from the date of receipt of this Proposed Directions, after receipt of reply, you may call for personal hearing, so as to take appropriate decision in the matter, failing which, this office has no option than to initiated further legal action against you including stoppage of your construction activity, which please note.

(Anil Diggikar)  
Principal Secretary,&  
Member Secretary- SEIAA

**Copy to:**

**PUNE MUNICIPAL CORPORATION Through Municipal Commissioner**

You are the sanctioning authority of the aforesaid project therefore you are hereby requested to take appropriate actions against project proponent and also to submit the documents related to Project.

**Enclosed:** Copy of Complaint / Notice of Mr. Tanaji B. Gambhire dated 07.06.2019 is attached herewith.

**ANNEXURE-A-7**

**BEFORE THE MAHARASHTRA POLLUTION  
CONTROL BOARD**

COMPLAINT NO. \_\_\_\_\_ /2019

**IN THE MATTER OF:**

MR. TANAJI BALASAHEB GAMBHIRE ... COMPLAINANT

VERSUS

M/s. RAVIRAJ REALITY ... PROJECT PROPONENT

**[VOLUME-I]**

**COMPLAINT & ANNEXURES**

**(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)**

**[COMPLAINT - 01 To 22]**

**[ANNEXURE-A-01 To A-3]**

**[ANNEXURE PAGE No. 23 To 70]**

**TRUE COPY**



## BEFORE THE MAHARASHTRA POLLUTION CONTROL BOARD

COMPLAINT NO. \_\_\_\_\_ /2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... COMPLAINANT

VERSUS

M/s. RAVIRAJ REALITY ... PROJECT PROPONENT

**VOLUME-I**

<b>SR.</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
<b>1.</b>	Complaint before MPCB dated 08.08.2019	<b>01 - 22</b>
<b>2.</b>	<b><u>ANNEXURE-A-1</u></b> Copy of the Environment Clearance under challenge granted by SEIAA under S.O. 1553 (E) EIA Notification-2006 issued on 07.05.2019	<b>23 - 36</b>
<b>3.</b>	<b><u>ANNEXURE-A-2</u></b> Copy of the complaint filed before Member Secretary SEIAA & Principal DoE, GoM dated 07.06.2019	<b>37 - 67</b>
<b>4.</b>	<b><u>ANNEXURE-A-3</u></b> Copy of the Show cause notice issued by Member Secretary SEIAA & Principal DoE, GoM dated 15.06.2019	<b>68 - 70</b>

Date: 08.08.2019

COMPLAINANT

**Tanaji Balasaheb Gambhire**

296, Shukrawar Peth, Laxmi Apt.,

Near Shivaji Maratha High School,

White House Lane, Pune-411002

Cell No. 9420181896

E-mail: -tanaji\_9june@yahoo.com

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**Date: - 08/08/2019**

**To,**

**1. MAHARASHTRA POLLUTION CONTROL BOARD**

Through Member Secretary,  
Kalptaru Point, 3<sup>rd</sup> Floor, Near Sion Circle,  
Opp. Cine Planet Cinema, Sion (E), Mumbai-400022  
E-mail: ms@mpcb.gov.in

**2. MAHARASHTRA POLLUTION CONTROL BOARD**

Through Sub-Regional Officer, Pune-1  
Jog Centre, 3<sup>rd</sup> Floor, Mumbai-Pune Old Highway,  
Wakadewadi, Pune-411003  
E-mail: sropune1@mpcb.gov.in

**COMPLAINT AGAINST:**

**M/S. RAVIRAJ REALITY**

Having office at- Office No. 1 to 5, Second Floor,

Millennium Star, Next to Ruby Hall Clinic,

Dhole Patil Road, Pune - 411001, Maharashtra

Through Shri. Ravindra Naupatlal Sakla

Email: - info@bhosalehousing.com, sales@ravirajrealty.com

**PROJECT PROPONENT**

**SUBJECT:** COMPLAINT FOR VIOLATION OF TERMS AND CONDITIONS OF THE ENVIRONMENT CLEARANCE DATED 07.05.2019 GRANTED TO RESPONDENT / PROJECT PROPONENT FOR HIS PROJECT FOLLOWING IN THE BLUE LINE OF MULA RIVER AND PROCURING OF EC ON THE BASIS OF FALSE & BASELESS INFORMATION BY MISLEADING THE SEAC-III & SEIAA AND WITHOUT OBTAINING CONSENTS FROM MPCB.

**COMPLAINANT STATES THAT:**

1. The complainant above named begs to submit this complaint appropriate legal action against the PP for violation of terms and

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condition of Environment Clearance vide no. **SEIAA-EC-0000001510** dated 07.05.2019 (**ANNEXURE-A-1**) issued under EIA Notification-2006 dated 14.09.2006 and for not obtaining mandatory consents from MPCB by carrying out construction of building construction project.

2. It is respectfully submitted that acts of the Project Proponent in violation of the various environmental laws to its brim with the active aid of the officers of various government department needs to be dealt with sternly hands so that a clear and unambiguous message to be passed in the entire community of unapologetic, maneuverer, mighty & resourceful Project Proponents and the issue of one such gross violation by the developer and turning deaf ears to such violations despite bringing it to the notice of authorities responsible for upholding the law is the reason and basis of this complaint.

**3. PARTICULARS OF COMPLAINANT:**

- a. It is most respectfully submitted that, the complainant is Bachelor of Engineering and have worked with many Petrochemical Refinery at abroad and he is performing his fundamental duty of environment protection by filling cases against the violators and polluters before the various court of law by obtaining information under RTI.

**4. PARTICULARS OF PROJECT PROPONENT AND PROJECT UNDER CHALLENGE: -**

- a. It is submitted that, the Respondent - M/s. Raviraj Reality-Project Proponent is developing land bearing Survey Nos.

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2A/7A (CTS No. 8) at Village-Bopodi, Taluka-Haveli, District-Pune for Residential buildings project under the name & style as "**Vitoria Lagoon**" for Mall.

- b. It is submitted that, the total project land is admeasuring 17032.11 Sq. Mtrs. from the above survey number. It seems that this area is not correct and there is encroachment on the adjacent river area.
- c. It is submitted that, the PP have undertaken construction of this residential building and part of the construction for building-C is completed up to plinth of 31.75 Sq. Mtrs. on 01.03.2017 And there is substantial excavation prior to the EC dated 07.05.2019.
- d. It is submitted that, the present project is situated in the jurisdiction & limits of the Pune Municipal Corporation and PMC is the sanctioning authority.
- e. It is submitted that, the PP is responsible for all illegal activity committed during the construction phase as well as for the damage caused to environment and ecology due to this project activity.

5. **BRIEF FACTS LEADING TO THE PROJECT UNDER CHALLENGE:**

**A. NO CONSTRUCTION IS PERMITTED IN BLUE FLOOD LINE AND RIVER:**

- a. It is submitted that, there was many incidents of flood due to heavy rain and dam breaks harmed to the human habitants, wildlife etc in the State of Maharashtra earlier to the 1980,

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therefore Government of Maharashtra decided to prohibit the development in the vicinity of the rivers in view to protect the environment and inhabitant from the floods of the rivers.

- b. It is submitted that, the Government of Maharashtra issued notification on 21.09.1989 defining the areas of blue flood line imposing restrictions on any constructions between this line and river bed and red flood line regulating the constructions activity with certain guidelines and directed every concern department to implement this regulations in the state of Maharashtra.
- c. Therefore, any construction in the range between blue flood line and river bed is illegal since 21.09.1989 and proposed construction of the PP will not be survive by any means.

**B. ENVIRONMENT CLEARANCE IS NOT PRIOR ENVIRONMENT CLEARANCE AND IT IS EX-POST FACTO EC, AS THERE IS VIOLATION OF EIA NOTIFICATION-2006**

- a. It is submitted that, the MoEF issued the EIA Notification-2006 dated 14.09.2006 mandating prior environment clearance to the building construction project having total BUA more than 20,000 Sq. Mtrs., that the word "prior" is mentioned more than 19 time in the EIA Notification-2006.
- b. It is submitted that, the said project had total potential of BUA more than 20,000 Sq. Mtrs. from beginning and it was mandatory to obtain prior EC. But PP neglected to obtain the prior EC intentionally and has shown careless and reckless

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attitude towards the environment and proceeded with the illegal construction.

- c. It is submitted that, the MoEF & CC has also issued notification vide dated 04.04.2011 clarifying the EIA Notification-2006 for the term built up area is nothing but all covered area on all floors.
- d. It is submitted that, the PP carried out the substantial excavation of plot in 2016 & 2017, and then the carried out part construction work for Building C and then construction was stopped for reasons best known to the PP.
- e. It is submitted that, the PP also obtained part plinth check certificate for Building C on 01.03.2017.
- f. It is submitted that, the PP has applied for the Environment Clearance to the SEIAA in the month of December-2018 and procured the EC on 07.05.2019 by suppressing the important fact of blue flood line affected project land.
- g. It is submitted that, the granting of environment clearance to any project is not the mechanical exercise as it should be granted after due diligence & reasonable care since damage to the environment can have a long term impacts and therefore considering the complexity in the environmental issued it requires meticulous examination & dispassionately conclusion and findings, which is not done while granting the present EC.
- h. Therefore the EC dated 07.05.2019 is nothing but the illegal and ex-post facto EC in violation of EIA Notification-2006.

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**C. PROJECT SITE COMES UNDER BLUE FLOOD LINE AND MULA RIVER BED AS PER FLOOD LINE MARKING MAPS PREPARED BY WATER RESOURCE DEPARTMENT PUNE IRRIGATION CIRCLE:**

- a. It is submitted that, the Village-Bopodi is situated on the bank & joining of Mula River & Pawana River. Also Mula River is passing through the Survey number 2A of the Mula River. Pawana River is joining the Mula River at distance of 50 Mtrs from the survey Number 2A.
- b. It is submitted that, the joining of the Mula & Pawana river at project is adversely affecting the project site and this fact is also suppressed by the PP & PMC.
- c. It is submitted that, the Pune irrigation circle prepared the flood line marking plans for rivers Mula, Mutha, Pawana, Indrayani etc. passing through the city of Pune & Pimpri Chinchwad area somewhere in the year 2009 and imposed said marking on the development plans in 2010 & 2011 of PMC & PCMC.
- d. It is submitted that, the said maps of irrigation departments clearly shows that, the project site is following in the blue line and Mula River Bed.
- e. It is submitted that, the due high hazardous potential of the flood of Mula rivers and other rivers passing through the Pune City, Pune Irrigation Circle have prepared Standard Operation Procedure for flood control and disaster management of human lives & infrastructures in the PMC & PCMC area.

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- f. Therefore the project construction is not permissible at the project site and EC dated 07.05.2019 should be quashed and set aside in view to protect the environment and ecology.

**D. PRINCIPAL LAID DOWN BY HON'BLE NGT ON PROHIBITION OF CONSTRUCTION IN BLUE LINE VIDE JUDGMENT AND FINAL ORDER IN ORIGINAL APPLICATION NO. 2 OF 2013 DATED 11.07.2013:**

- a. It is submitted that, the Pune based environment activists were filed Original Application No. 2 of 2013 before Hon'ble NGT seeking prohibition of construction of Road in blue line of the Mutha River. Wherein the Hon'ble NGT have made important observations in view to protect the environment and ecology and also the principal of sustainable development.
- b. It is submitted that, the observations made by the Hon'ble NGT in para-35 of Judgment are as below;

*"(a) Narrow river passage/flood plain which would obviously result in adversely affecting the civilisation during floods in the river.*

*(b) Obstruction in flow of storm water/rainy water from drains/nullahs and the flow shall enter the other side of the proposed elevated road, thereby cause flooding in the area.*

*(c) Insufficiency of cross drainage at appropriate locations.*

*(d) Dredging of even two km. in the river will not protect floods and damage to the ecology as it would become a pool of water unless or until a proper gradient in downstream is provided."*

- c. Further it is observed in Para-36 of Judgment "

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*"36. Besides this, it is very important to avoid environmental damage and in the interest of ecology, flood plains are maintained properly. As the flood plains provide important ecological services like ensuring flow in streams for most of the year through modulation of the river-discharge by conserving huge flow of water derived from peak flow and storm run off during the rainy season and releasing it gradually; recharge the ground water and improve its quality, besides flood plain produce resources like fodder, fuel and timber. Also these provide breeding and feeding ground for fish, reptiles, amphibians, birds and other living creatures in addition to improving water quality through retention and transformation of nutrients and other chemicals. These services or benefits would be adversely affected by any encroachment of the flood plains."*

d. Also it is observed that in Para-37,

*"37. ....The authorities cannot be permitted to cause irreversible damage to the environment and ecology of the area and even expose the inhabitants of the vicinity to undue flood risks on the ground that the project is being taken up in public interest merely for providing an alternative road and for reducing the vehicular pollution."*

e. Here it is important to note that, the project challenged on OA NO. 2 of 2013 was of somewhat public importance, but in the present case the project is for personal gain and PP is money making entrepreneur and no one is allowed to make money at the cost of mother nature.

f. Therefore by any stretch of imagination PP should not allowed for the present development and Environment Clearance dated 07.05.2019 granted to the project must be quashed and set aside.

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**E. PART RCC STRUCTURE UPTO PLINTH LEVEL FOR BUILDING C WITHOUT ANY PRIOR EC AND CONSENTS IN BLUE LINE OF MULA RIVER:**

- a. It is submitted that, the PMC is not the vigilant authority and also not functioning in the interest of citizens as PMC is always failed to protect the interest of public at large.
- b. It is submitted that, the PMC has revalidated the sanction of PP on 2015 for the project without applying mind, that this can cause the ecology of river.
- c. It can be seen from their conduct of allowing PP for excavation and granting him part Plinth check dated 01.03.2017 for RCC structure of Building C on the project site without any prior EC and consent even the total BUA potential of the project was more than 20000 Sq. Mtrs.
- d. This type of acts on account of PMC are occurring due to negligence and personal interests of the corrupt officers seating on the superior positions having hands in gloves with the PP.
- e. Therefore any act of PP of carrying out excavation & part RCC construction of building C cannot survive him to continue his construction activity in the blue flood line of Mula River and these types of acts must be dealt with heavy hands.

**F. GOVERNMENT OF MAHARASHTRA MODIFIED THEIR EARLIER NOTIFICATION DATED 21.09.1989 AND IMPOSED STRICT RESTRICTIONS ON CONSTRUCTION IN BLUE FLOOD LINE AND RIVER BED:**

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- a. It is submitted that, to avoid possible threat of flooding, with a view to demarcate flood lines to prohibit any type of construction inside flood lines, instructions have been given vide Irrigation Department Gov. Circular No. FDW-1089/243/89/Sin Vya (Works) Dt. 2/9/1989 and Dt. 21/9/1989.
- b. It is submitted that, the Government of Maharashtra modified the above notification with clarity on directives to demarcate flood lines and use of Prohibitive and Restrictive Zones to not to allow any construction inside flood line to avoid possible risk of floods.
- c. It is submitted that, this notification have clearly defined the following:

**“CIRCULAR-**

1. Gov. Irrigation Department circular No. FDW-1089/243/89/Sin Vya (Works) Dt. 2/9/1989 and Dt. 21/9/1989 is being modified.
2. With respect to the land use in flood prone zones, as per the guidelines given in the Dam Safety Manual Chapter 8/1984 important flood lines will be primarily of two types. Prohibitive Flood Line (Blue Line) and Restrictive Flood Line (Red Line).
3. Blue Flood Line:  
Blue Flood Line will be the line marked at the water level of the highest discharge of:
  - a) Flood discharge at the average frequency of 25 years.
  - b) One and half times the discharge of the established riverbed.
4. Red Flood Line:

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Red Flood Line will be the line marked at the water level of the water discharge as under:

a) Where there is no dam, flood discharge at the average frequency of 100 years.

b) Where there is a dam, maximum flood discharge over the spill way added with flood discharge from the free catchment area at the average frequency of 100 years.

5. Prohibitive Zone:

The area between the Blue Flood line on the right bank of the river to riverbed to the Blue Flood line on the left bank of the river shall be called as Prohibitive Zone.

6. Restrictive Zone:

The area between the Blue Flood Line of the river and the Red Flood Line on the same bank shall be called as Restrictive Zone.

7. Prohibitive Zone can be used only in the form of open land e.g. gardens, play grounds, light crops; where there is established easement right to take crops (e.g. water melons, musk melons etc. public toilets and sewage discharge facilities), so that there will not be any obstruction to the flow of the river, there will not be reduction in the carrying capacity of the river and there will not be any change in the cross section of the river."

d. It is submitted that, the flood line marking plans prepared for Village-Bopodi clearly shows that, the project land is following in restricted zone and no construction is permitted at all.

**G. FINAL DEVELOPMENT PLAN OF BOPODI VILLAGE ALSO SHOWS PROJECT IS FOLLOWING UNDER BLUE LINE MARKING OF MULA RIVER:**

a. It is submitted that, the Government of Maharashtra approved the excluded part from draft development plan of PMC on

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17.02.2018 and thereafter gave final approval for the development plan for old limit of PMC on 11.05.2018.

- b. It is submitted that, the Survey Number 2A of Village-Bopodi was reserved for the Industrial Area reservation and Irrigation department have approved the flood control maps Pune Area in 2009 and thereafter marked these flood control line on development plans in 2010-2011 of old city.
- c. It is submitted that, there was no sanction for residential buildings from PMC for said project and PP has procured the afterthought permissions in 2015 with revalidation.
- d. It is submitted that, the final development plan sanctioned on 11.05.2018 by Government of Maharashtra for PMC also shows that the project land is affected by blue flood line of the Mula River as shown in the draft Development plan.
- e. Therefore, said project land is prohibited from carrying out any construction.

**H. PMC SANCTION DATED 30.07.2018 GRANTED TO THE PROJECT FOLLOWING IN BLUE FLOOD LINE IS ILLEGAL:**

- a. It is submitted that, the final development plans is approved on 11.05.2018 as stated above for the village-Bopodi and old city of Pune.
- b. That the survey number 2A of project land was excluded from the industrial reservation and included in the residential area, but the said area is affected by blue flood line of the Mula River.

- c. Despite there being blue flood line affecting the project land, PP suppressed said fact while procuring the sanction from PMC and also PMC officers neglected the said fact.
- d. It is submitted that, the PP procured the subsequent revise plan on 30.07.2018 to the 2015 sanction, but did not shown blue line on the plans submitted to the PMC.
- e. There the sanction given on 30.07.2018 by PMC is totally illegal and giving counterblast to the principal of sustainable development.
- f. It is submitted that, the PP has submitted same sanction to the SEAC-III & SEIAA for obtaining environment clearance by suppressing the blue flood line marking.
- I. FALSE, BASELESS AND MISLEADING APPLICATION FOR OBTAINING EX-POST FACTO EC:**
- a. It is submitted that, the PP has applied for the EC before SEAC-III & SEIAA by stating in item-4 of Form-1 that this is new building and construction project which is totally false.
- b. It is submitted that, the PP has provided false information in form-1 at Sr. No. 22, 1.24, 1.4, 2.1, 2.4, 8.3 and (III) Environmental Sensitivity item-2 & 12, That the project land is affected by blue flood line and there is prohibition on the construction of project. This information is suppressed from the authority.

22.	Whether there is any government order/ policy relevant/ relating to the site?	No
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1.24	Changes in water bodies or the land surface affecting drainage or run-off?	No change in the water bodies or the land use surface affecting natural drainage ways.
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1.4	Pre-construction investigations e.g. bore houses, soil testing?	YES	<u>Soil testing will be carried out.</u>
2.1	Land especially undeveloped or agricultural land (ha)	YES	Proposed site does not fall under Agriculture or <u>Non-Development Zone.</u>
2.4	Construction material stone, aggregates, sand / soil (expected source –MT	YES	Construction materials such as cement, steel, metal sand and bricks will be procured from authorized dealers.
8.3	Could the project be affected by natural disasters causing environmental damage (e.g. floods, earthquakes, landslides, cloudburst etc)?	NO	The project area falls under Zone III as per Map showing Seismic Zones of India. Zone III is of moderate Seismic Intensity. The building design has been planned accordingly
(III) Environmental Sensitivity			
2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests	YES	Mula River : 0.06 km
12	Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)	No	Earth Quake Zone III Therefore, all relevant design parameters as per zone III have been considered for RCC design of the buildings.

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- c. It is submitted that, there are pre construction investigations done related to soil and ground water test for contamination.
  - d. It is submitted that, the PP has made statement that there is no natural hazard from flood and same is totally false.
  - e. It is submitted that, the PP submitted master layout to the Authority with EC Application, but Blue Flood line was also suppressed from same master plan.
  - f. The PP has submitted very vital information related to the environment & ecology of Mula River and damage from flood. Therefore EC dated 01.05.2019 need to quash and set aside.

**J. APPRAISAL OF PROJECT BY SEAC-III ON FALSE AND MISLEADING INFORMATION**

- a. It is submitted that, the application for the EC was considered by the SEAC-III in its 80<sup>th</sup> meeting held on the 15.01.2019 and without going in to detail discussion. It was just cursory mechanical exercise for issuance of EC.
- b. It is submitted that, the SEAC-III in its meeting has recorded "Not Applicable" against the item-6 "6.New project/expansion in existing project/modernization/diversification in existing project.", which is totally false as the excavation of the project land is already undertaken and part of RCC structure is completed for Building-C as disclosed in item-13 of the meeting "Plinth certificate received on 01/03/2017" against "13.Note on the initiated work (If applicable)". Therefore this is violation case as per the principal laydown in the S.P. Muthuraman case and provisions of EIA Notification-2006 for prior EC.

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- c. It is submitted that, the SEAC-III in its meeting has recorded "NA" against the issue of "Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries" which is totally false.
- d. It is submitted that, the SEAC-III has recommended the project on account of compliance of following conditions:
- "During discussion following points emerged:**
1. PP to submit Fire NOC and Garden NOC.
  2. PP to submit undertaking for retaining of existing trees. PP to revise RG plan along with tree plantation plan adding local species of fruit bearing trees.
- SEAC decided to **recommend** the proposal for prior environmental Clearance, subject to PP complying with the above conditions."*
- e. It is submitted that, from bare perusal of the above conditions it can be seen that SEAC-III has not applied their mind and there lack of practical view for protection of environment with scientific appraisal.
- f. It is important to note that, the SEAC-III has recorded that, there are only 44 existing trees on the basis of false information provided by the PP. actually there are 297 existing trees as per NOC
- g. Therefore the EC dated 07.05.2019 needs to quash and set aside.
- K. TREE AUTHORITY NOC ISSUED BY PMC TO MISLEAD THE AUTHORITY AND COMMITTEE:**

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- a. It is submitted that, the Tree Authority of PMC has issued the NOC for garden on 27.03.2019 for the purpose of obtaining EC. It is stated that, there are 297 of existing trees, but PP has disclosed only 44 existing trees before SEAC-III & SEIAA.

**L. ASSESSMENT OF THE PROJECT BY SEIAA ON FALSE AND MISLEADING INFORMATION & ON RECOMMENDATION OF SEAC-III**

- a. It is submitted that, the SEIAA has assessed the project in its 165<sup>th</sup> meeting on reconditions of SEAC-III without application of mind. It is doubtful that whether the meetings of SEIAA had took place or not but it seems to be farce.
- b. It is submitted that, the also SEIAA in its meeting has recorded "Not Applicable" against the item-6 "6.New project/expansion in existing project/modernization/diversification in existing project.", which is totally false as the excavation of the project land is already undertaken and part of RCC structure is completed for Building-C as disclosed in item-13 of the meeting "Plinth certificate received on 01/03/2017" against "13.Note on the initiated work (If applicable)". Therefore, this is violation case as per the principal laydown in the S.P. Muthuraman case and provisions of EIA Notification-2006 for prior EC.
- c. It is submitted that, the also SEIAA in its meeting has recorded "NA" against the issue of "Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries" which is totally false.

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- d. However, SEIAA has just copied the same minutes of the SEAC-III and cleared the project on the CER & Standard EC Conditions as below.

**“Specific Conditions by SEIAA:**

- 1) PP Shall comply with Standard EC conditions mentioned in the Office Memorandum issued by MoEF & CC vide F.No.22-34/2018-IA.III dt.04.01.2019.
  - 2) PP to submit CER plan to the Commissioner, PMC and submit the acknowledgement to the Member Secretary, SEIAA.
  - 3) SEIAA decided to grant EC for: FSI: 21565.97 m<sup>2</sup>, Non-FSI: 19122.71 m<sup>2</sup> and Total BUA: 40688.68 m<sup>2</sup> (IOD no-CC/1290/18, Date-30.07.2018)”
- e. It is submitted that, from bare perusal of the above conditions it can be seen that SEIAA has not applied their mind and there lack of practical view for protection of environment with scientific appraisal.
- f. It is important to note that, the SEIAA has recorded that, there are only 44 existing trees on the basis of false information provided by the PP. actually there are 297 existing trees as per NOC.
- g. Therefore the EC dated 07.05.2019 needs to quash and set aside.

**M. MISLEADING CONSOLIDATED STATEMENT AND MOM SUMMARY OF PROJECT:**

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- a. It is submitted that, the Consolidated Statement prepared after SEAC-III & SEIAA meetings is also nothing but the repetition intentional negligence on account of environmental sensitive issues of blue flood line of Mula river and damage to the river due to this construction.
  - b. Therefore, it can be seen that, the SEAC-III and SEIAA both are not working in the interest of environment protection, but just to make money. There is requirement of serious action against the SEIAA & SEAC-III members.
- 6. GROUND FOR THIS COMPLAINT:**
- a. Application filed by PP for Environment Clearance under EIA Notification-2006 is not for prior EC as substantial excavation and part of building-C have carried out by Project Proponent.
  - b. Environment Clearance under challenge is not prior EC and it is nothing but ex-post facto Environment clearance.
  - c. Concept of granting of ex-post facto Environment Clearance is not allowed in environmental jurisprudence in India.
  - d. Entire Project land is under Blue flood line of Mula River and in fact within main riverine and therefore granting of EC is not mechanical exercise.
  - e. PP has submitted false, baseless & misleading information to SEIAA while obtaining Environment Clearance and therefore PP is guilty of "***Suppressio Veri Suggestio Falsi***"
  - f. PP has submitted false, defective and misleading application for EC before SEIAA.

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- g.** Project is situated in pollution prevention area of Pune city and within boundaries of Eco-sensitive fields of Mula River.
  - h.** PP has not preserved the top layer of the fertile soil and carried out excavation prior to EC.
  - i.** PP has not done soil and ground water test. No report has been submitted.
  - j.** PP is using ground water from bore well at project site without appropriate clearances.
  - k.** PMC officers have neglected to perform their duties for protection of environment and acted against the law.
  - l.** PP has carried out substantial excavation in illegal manner causing damage to the Ground Water Level.
  - m.** PMC, SEAC, SEIAA, DoE, MPCB and Irrigation Dept. (WRD) is failed to stop illegal excavation at site deliberately.
  - n.** Substantial violations and illegal acts of respondent/ PP are damaging the environment and giving counter blast to the sustainable development.
  - o.** No application for prior Consent to Establish from MPCB and construction is initiated without Consent to Establish by PP.
  - p.** PP is causing huge damage to the Environment.
  - q.** PP has disclosed only 44 no. of existing trees at site and suppressed information of the existing 297 trees. And while granting EC no existing tree is disclosed.
  - r.** There is complete non-application of mind by the local authority while issuing building sanction.

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- s. Thus it is mandatory to stop the project construction permanently and EC dated 07.05.2019 need to be quashed & set aside.
  - t. Because if the procedure of the post facto Environment Clearance is allowed to be followed, any project proponent would complete his project by causing irreversible damages to the environment and then seek post-facto environmental clearance making the provisions of EIA notification infructuous. The grant of post facto clearance defeats the very purpose of environmental protection law and the mandate of obtaining environmental clearance as per the provisions of EIA Notifications 2006.
  - u. Because the environment clearance granted by the State Level Impact Assessment Authority is illegal and has no legal sanctity.
  - v. Because the EIA Notification, 2006 no were provided the grant of post facto clearance after the completion of the project.
  - w. Because there is complete non-application of mind by the SEAC & SEIAA in granting environment clearance for the project have started construction and within blue flood line of Mula River in prohibited zone.
  - x. Because the SEIAA failed to take any action for the violation of the provision of EIA notification, 2006 and Environment (Protection) Act, 1986.
  - y. Because the SEIAA and its Expert Committee is equally liable for allowing the illegal structures of expansion and also they are

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equally liable for granting environment clearance to the project in gross violation of EIA Notification, 2006 and other procedure established under law.

7. It is submitted that, the complainant have no personal interest in the project and also there is no enmity against the project proponent.

8. **PRAYERS:**

In the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass an order thereby:

- A. Necessary Action may kindly be initiated against the PP.
- B. Pass any other just and equitable orders in the interest of justice.

**COMPLAINANT**

**TRUE COPY**

Bambhise

Item No. 02

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
(Through Video Conferencing)**

Original Application No. 41/2019 (WZ)

(I.A. No. 55/2019)

Federation of River Residency Cooperative  
Housing Society

Applicant (s)

Versus

Pimpri Chinchwad Municipal Corporation & Ors.

Respondent(s)

Date of hearing: 30.01.2020

**CORAM : HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER  
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Applicant(s): Mr. Ankur Mittal, Mr. Ankur Saboo and  
Mr. Parag Gandhi, Advocates

For Respondent(s): Mr. Amol Patayeet, Mr. Amit Lanke, and  
Makarand Nikam, City Engineer, for  
Respondent No. 1.  
Ms. Manasi Joshi, Advocate for  
Respondent No. 3.

**ORDER**

1. This application was preferred alleging construction of Sewage Treatment Plant (STP) by the Pimpri-Chinchwad Municipal Corporation (PCMC) in the area between the river bank and Blue Flood Line of the Indrayani River which is a prohibited zone. It is *inter alia* alleged that because of such construction the integrity, riparian area of the Indrayani river system, the flood plains, sanitation of general public would be affected adversely and, therefore, deleterious to the environment.
2. When the matter came up before us for the first time on 22.05.2019, we deemed it necessary to call for a report from a joint

Committee comprising of the PCMC, Pune, Maharashtra State Pollution Control Board (MPCB) and the Pune Irrigation Division, Government of Maharashtra. The MPCB, being the nodal agency appointed for the purpose submitted its report on 16.08.2009 by e-mail and was taken on record on 17.09.2019. After consideration of the report, formal notices were issued upon the respondents who appeared as a consequence on 14.11.2019 on which day following order was passed:

- “
1. ***The only question involved in the present case is with regard to the construction of STP within the blue line Zone of Indrayani River by the Pimpri Chinchwad Municipal Corporation (PCMC). Report called for from the joint Committee comprising of PCMC, Pune, the Maharashtra Pollution Control Board (MPCB) and the Pune Irrigation Division, Government of Maharashtra indicates that the Sewage Treatment Plant (STP) is being constructed in the prohibited Zone, i.e., blue line Zone of Indrayani river.***
  2. ***It is also stated that the existing location is not suitable for construction of STP apart from the fact that PCMC has not obtained Consent to Establish for the STP. We have also taken note of the status report of STP filed as Annexure I to the report by which reference has been made to technical circulars dated 16.11.2015 and 08.03.2018 of the Water Resource Development (WRD) resolution which substantiate that the STP construction is on a land bearing Gat No. 90 and falls in the blue line of the river and is a prohibited zone for permanent constructions.***
  3. ***Notification dated 18.09.2017 issued by the Government of Maharashtra, which has been filed by the Applicant in support of his contention also indicate that area between the river bank and blue line (Flood line towards the river bank) has been declared as prohibited zone for any construction except for parking, open vegetable market with otta type construction, garden, open space, cremation and burial ground, public toilet or like uses, provided the land is feasible for such development.***
  4. ***A conjoint reading of all the documents and the report filed by the Committee through the MPCB would categorically indicate that the STP has been constructed on a prohibited zone without obtaining Consent to Establish from the State PCB. Taking into consideration these facts, the application could have been disposed off with appropriate directions***

**but, it has been submitted on behalf of the PCMC that by GR dated 03.05.2018 construction of STP is permissible within the blue line Zone. He also submits that a report has been filed on 12.11.2019 on behalf of the PCMC indicating such fact. However, we do not find such report in our records.**

5-7 *xxxx-----xxxx-----xxxx*"

3. In their affidavit-in-reply, the PCMC took exceptions to the Committee's report referred to earlier, essentially asserting that construction of the STPs was permissible in the no construction zone of rivers under GR dated 03.05.2018 filed as Annexure R-7 to the affidavit.
4. During the course of hearing today, the Learned counsel for the PCMC submitted that GR dated 03.05.2018 (Annexure R-7) are the "guidelines for utilization of prohibited and controlled area and marking the flood line so as to prevent any construction within the flood line and avoid the flood calamity" (hereinafter referred to as 'the guidelines') issued by the Water Resources Department, Government of Maharashtra on 03.05.2018. Referring to Clause 7 of the guidelines, it was contended that the prohibitive zone can be utilized in the form of open land for certain purposes including public toilets and sewage disposal facility in such a way that there is no obstruction in the flow, the water carriage capacity of the river is not reduced and that there is no change in the intersection of the river. For convenience we may reproduce Clause 7 referred to above:

**"7. The Prohibitive Zone can be utilized in the form of open land, for example gardens, play grounds, or light crops. Wherever the right to grow crops is established as a result of customary use, such places should be utilized for such purposes (as Watermelon/Sweet Melon/Melon plantations, public toilets and sewage disposal facility) in such a way that there is no obstruction in the river flow, the**

***water carriage capacity of the river is not reduced and there is no change in the intersection of the river.”***

5. On the other hand, learned Counsel for the Appellant pointed out that as a consequence of the resolution passed by the General Body of PCMC on 27.06.2013, it was decided to demarcate the flood lines on the revised Development Plan of the PCMC for which purpose it was decided to include a new Rule No. 9.4 in the Development Control Rules for PCMC dated 17.12.1990 to provide for use/development in the flood lines. Notification was thus issued *inter alia* introducing such amendment to the Development Control Rules for PCMC *vide* Notification dated 18.09.2017. The Sanctioned New Rule 9.4 is reproduced as below:

**“Sanctioned New Rule No. 9.4**

***The development in the area falling in the flood lines will be governed as follows:-***

- i) Area between the river bank and blue flood line (Flood line towards the river bank) shall be prohibited zone for any construction zone prohibits any construction except parking, open vegetable market with otta type construction, garden, open space, cremation and burial ground, public toilet or like uses, provided the land is feasible of such development.***

***Provided further that redevelopment of the existing authorized properties within river bank and blue flood line, may be permitted at a height of 0.45m above red flood line level subject to NOC from Irrigation Department.***

- ii) Area between blue flood line and red flood line shall be restrictive zone for the purpose of construction. The construction within this area be permitted at a height of 0.45m above the red flood line level.***
- iii) If the area between the river bank and blue flood line or red flood line forms the part of the entire plot in development zone i.e. residential, commercial, public-semi-public, industrial, then FSI of this part of land may be allowed to be utilized on remaining land.***
- iv) The blue and red flood line shown on the development plan shall stand modified as and when***

***it is modified by the Irrigation Department for a stretch of water course. In such case it shall be necessary to issue order to that effect by the Municipal Commissioner.”***

6. A bare reading of clause 9.4(i) above most categorically prohibits any construction except parking, open vegetable market with otta type construction, garden, open space, cremation and burial ground, public toilet or like uses, provided the land is feasible of such development. Provided that redevelopment of the existing authorized properties within the river bank and Blue Flood Line, may be permitted at a height of 0.45 meter above Red Flood Line level subject to NOC from the Irrigation Department.

7. It is, therefore, quite apparent that from the conspectus of the various provisions referred to above, utilization of open land in the prohibitive zone even for the purposes mentioned in Clause 7 of the guidelines for various activities is permissible only if there is no obstruction caused in the river flow, the water carriage capacity of the river is not reduced and that there is no change in the intersection of the river. In the light of this position, the observations in the report of the Joint Committee comprising of the PCMC, Pune, MPCB and the Pune Irrigation Department, Government of Maharashtra assumes relevance and, therefore, is reproduced below:-

- “(i) The location of STP is on land at अ. नं. 1/130, Chikhali, Tal. Haveli, Dist. Pune, which is affected by blue line.***
- (ii) The said location falls in Blue line of the river Indrayani and there is obstruction in the natural flow of river during rainy season.***
- (iii) The construction work of STP was found in progress. Excavation Work was almost completed and some construction was started.***

**2. Considering the above facts & observations made during the visit, MPCB and Irrigation Department are of view that the existing location is not suitable for construction of STP. The Pimpri Chinchwad Municipal Corporation has not obtain Consent to Establish for their STP at Chikhali, Tal. Haveli, Dist. Pune.”**

8. The report as would be evident from the record is prepared by a Committee constituted by the MPCB which is an independent statutory entity and a representative of the Irrigation Department which is the competent authority having the requisite expertise to deal with matters relating to river banks. Thus the contentions of the PCMC that it had its own opinion regarding the matter cannot be accepted and would naturally be overridden by the opinion of the experts. Moreover, the guidelines dated 03.05.2018 have obviously been issued by the Water Resources Department as an executive instruction which cannot override a statutory Notification or a sub-ordinate legislation like the Development Control Rules issued under Section 31(1) of Maharashtra Regional & Town Planning Act, 1996. Rule 9.4 having been issued under the said provision of law assumes statutory character and all circulars, guidelines or orders issued under the executive power of a State to the extent that are in conflict with the statutory Notifications would stand superseded. Clause 7 of the guidelines, therefore, stands superseded so far as it is in consistent or in conflict with the Notification dated 18.09.2017.
9. Having regard to the facts and circumstances set out above, we have no hesitation in holding that the questioned STP has been constructed within the prohibitive zone and, apart from the fact

that the PCMC did not have the necessary Consent to Establish, the structure (STP in the present case) besides having been raised at a location which is not suitable for construction of STP, is also obstructing the natural flow of the river during the rainy season.

10. As a consequence, we direct the PCMC to immediately demolish the STP in question and take steps to construct one at some other suitable site in accordance with law. The entire exercise shall be carried out within a period of one month under the strict supervision of the MPCB and the Irrigation Department, Government of Maharashtra.
11. Since, during the construction of the STP severe damage was caused to the environment and ecology of the area, we direct the MPCB to assess the ecological damage by taking scientific support of experts and recover the same from the PCMC.
12. Report of compliance shall be filed within three months in the Registry through email at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in).
13. In the result, the application is allowed.
14. The application thus stands disposed off along with the connected I.A.
15. No order as to costs.

S.P. Wangdi, JM

Siddhanta Das, EM

30<sup>th</sup> January, 2020  
O.A. No. 41/2019 (WZ)  
avt

ITEM NO.8

Virtual Court 3

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2083/2020

PIMPRI CHINCHWAD MUNICIPAL CORPORATION

Appellant(s)

VERSUS

FEDERATION OF RIVER RESIDENCY COOPERATIVE HOUSING SOCIETY & ORS.  
Respondent(s)( IA No.43751/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.43749/2020-STAY APPLICATION and IA  
No.43752/2020-EXEMPTION FROM FILING O.T. )

Date : 04-06-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MR. JUSTICE B.R. GAVAIFor Appellant(s) Mr. Shivaji M. Jadhav, AOR  
Mr. Aditya P. Khanna, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R  
The appeal is dismissed in terms of the signed order.  
Pending applications, if any, are disposed of.(NEELAM GULATI)  
ASTT. REGISTRAR-cum-PS(NISHA TRIPATHI)  
BRANCH OFFICER

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2083 OF 2020

PIMPRI CHINCHWAD MUNICIPAL CORPORATION

Appellant(s)

VERSUS

FEDERATION OF RIVER RESIDENCY COOPERATIVE HOUSING SOCIETY & ORS.  
Respondent(s)

O R D E R

Heard the learned counsel for the appellant.

We do not find any reason to interfere with the Impugned Order passed by the National Green Tribunal, Principal Bench at New Delhi.

Consequently, the appeal is dismissed.

Pending applications, if any, are disposed of.

.....J.  
(ROHINTON FALI NARIMAN)

.....J.  
(NAVIN SINHA)

.....J.  
(B.R. GAVAI)

NEW DELHI  
JUNE 04, 2020

**(2017) 9 Supreme Court Cases 499**

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

- a* Writ Petition (C) No. 114 of 2014  
COMMON CAUSE .. Petitioner;  
*Versus*  
UNION OF INDIA AND OTHERS .. Respondents.  
*With*
- b* Writ Petition (C) No. 194 of 2014  
PRAFULLA SAMANTRA AND ANOTHER .. Petitioners;  
*Versus*  
UNION OF INDIA AND OTHERS .. Respondents.
- c* Writ Petitions (C) No. 114 of 2014 with  
No. 194 of 2014, decided on August 2, 2017
- d* **A. Mines and Minerals — Illegal mining — Ambit of expression “illegal mining” — Held, illegal mining does not only mean mining outside lease area — Illegality can take place even inside lease area — Purpose of MMDR Act is to ensure scientific mining, balanced utilisation of natural resources and protection and preservation of environment by adhering to statutory provisions — Non-adherence would attract penalty and termination of lease — Adherence to statutory provisions necessarily implies adherence to provisions of Environment (Protection) Act, 1986, laws pertaining to air and water pollution and Forest Conservation Act, 1980 besides adherence to mining statutes — Submission against interpreting “illegal mining” with such wide ambit on ground that definition of “illegal mining” was inserted vide R. 2(ii-a), Mineral Concession Rules, 1960, by Noti. dt. 26-7-2012 and thus present case not covered, not tenable**
- e* — Mineral Concession Rules, 1960 — Rr. 2(ii-a), 22, 22-A, 27 and 37 — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 21, 4-A, 2, 3, 4, 5, 6, 8, 10, 12, 13, 18 and 23-C — Mineral Conservation and Development Rules, 1988 — Rr. 9, 10, 13, 31, 37, 38 and 41 — Environment (Protection) Act, 1986 — S. 3 — Forest (Conservation) Act, 1980 — S. 2 — Words and Phrases — “Illegal mining” (Paras 84 and 128 to 130)
- f* **B. Mines and Minerals — Illegal mining — Suspension of illegal mining leases in Odisha — Directions issued**
- g* — IAs Nos. 45 (filed by Zenith Mining), 47 (filed by *K*) and IA No. 66 (filed by *J*) dismissed as they did not have forest clearance (FC) or environmental clearance (EC) or both
- *S* (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease — Thus said IA also dismissed but as infructuous — However, State Government directed to ensure about valid statutory clearances
- h* — All other IAs disposed of in terms of present order — Clarified that only after compliance with statutory requirements and full payment of compensation and other dues, mining leaseholders can restart their mining operations —

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SUPREME COURT CASES

(2017) 9 SCC

And this should be deposited on or before 31-12-2017 — State Government directed to decide pending show-cause notices if not already decided by 31-12-2017 (Paras 16, 222 to 225, 227 and 232)

**C. Mines and Minerals — Illegal mining — Violation of S. 6, MMDR Act, that is, relating to entitlement of maximum area for each person — Thus this illegality also relating to benami holders — CEC not finding any such illegality in respect of 2 of 7 mining leases, accepted as nothing contrary shown — For other leases, matter directed to be listed after two weeks for fixing of dates of hearing — Mines and Minerals (Development and Regulation) Act, 1957, S. 6 (Paras 192, 193, 197 and 226)**

**D. Mines and Minerals — Illegal mining — Illegal mining in State of Odisha — Procedure for transfer of lease under R. 37, MCR — Alleged violation of — Fresh look by new Committee, required — Directions**

— Matter adjourned for setting up of new Committee to identify lapses and recommend preventive measures — Validity of constitution of earlier committee was disputed and resultant litigation pending in High Court — Mineral Concession Rules, 1960, R. 37 (Paras 198 to 200, 202, 205, 228 and 229)

**E. Mines and Minerals — Illegal mining — Illegal mining in State of Odisha — Judicial notice taken of rampant mining and huge sums of money involved**

— Judicial notice taken of illegal and rampant mining in State of Odisha causing untold misery to the tribals in area — Over-extraction of 2155 lakhs MT of iron ore and manganese ore — Rs 17,516 crores worth mineral ore produced without environmental clearance (EC) or in excess of EC — And the above figures do not include mining without forest clearance (Paras 1, 25, 26 and 48)

**F. Mines and Minerals — Illegal mining — Facts found by Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952, held, reliable for present purpose — It cannot be said that mining leaseholders were not given opportunity of hearing before Commission or the Commission did not follow the procedure**

— Even otherwise First Report being a fact-finding report there is no question of giving any notice to leaseholders or their cross-examination — Public Accountability, Vigilance and Prevention of Corruption — Inquiries/Commission of Inquiry — Commissions of Inquiry Act, 1952 — Ss. 8-B and 8-C — Procedure of notice and cross-examination under (Paras 33, 34, 43 and 45)

**G. Mines and Minerals — Illegal mining — Illegal mining in Odisha — CEC report — Credibility and relevance**

— CEC reports highlighted gravity of situation — Contention that CEC exceeded its limit by reporting on issues other than environment and forest, not tenable — Directions of Court to CEC indicate that CEC was expected to report on all aspects of illegal mining — Credibility of CEC report

cannot be doubted, though its recommendations are subject to satisfaction of Court (Paras 51 to 58 and 60)

**a H. Mines and Minerals — Rehabilitation and Regeneration — Projects for tribal welfare and area development — Special Purpose Vehicle (SPV) for affected districts of Odisha — Huge amounts already available — Large amounts to be made available due to present order — Utilisation of funds and accountability — Directions**

**b** — Chief Secretary, Odisha (Chairman, SPV) directed to provide audited accounts and ensure that amounts are utilised for benefit of tribals in affected districts — While taking up said projects, a bottom up planning and participatory approach should be followed (Paras 215, 217, 219, 220 and 231)

**c** The probe into illegal mining in State of Odisha had started due to an IA filed against illegal mining in the State in a pending writ petition, that is, *T.N. Godavarman*, WP (C) No. 202 of 1995. Reports of Central Empowered Committee (CEC) appointed by Court and inquiries made under the Commissions of Inquiry Act, 1952 revealed that all kinds of illegalities were committed by the mining leaseholders in the State of Odisha. The Court, therefore, suspended the illegal mining leases in the State of Odisha. The Court however, permitted them to approach appropriate authorities for necessary approvals and clearances and thereafter approach the Court for modification of interim order against them. Some **d** of the IAs in present matter were thus filed by mining leaseholders for modification of said interim order. The present case also clarified about the grounds on which illegality can be said to have been committed by mining leaseholders under various statutes and rules made thereunder and the remedial measures.

*Held :*

**e Expression “illegal mining” — Ambit**

**f** The overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980. Exploitation of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMDR Act which provides for the termination of a mining lease is applicable.

**g** This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc. then the Central Government may request the State Government to prematurely terminate a mining lease. (Para 84)

**h** It was wrongly submitted that a mining operation only outside the mining lease area would constitute “illegal mining”. That is because the definition of “illegal mining” in Rule 2(ii-a) of the MCR was inserted by a Notification dated 26-7-2012

while the present case is concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral. (Paras 128 and 129)

Mining operations outside a leased area are obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible to accept such narrow interpretation since the matter is about a natural resource which is intended for the benefit of everyone and not only for the benefit of the mining leaseholders. (Para 130)

***Frightening facts and figures — Judicial notice of illegal and rampant mining in State of Odisha causing untold misery to the tribals in the area***

The facts revealed during the hearing of these writ petitions filed under Article 32 of the Constitution suggest a mining scandal of enormous proportions and one involving megabucks. The lessees in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment and forests and perhaps caused untold misery to the tribals in the area. Steps taken by the lessees to ameliorate the hardships of the tribals, is perhaps not more than a drop in the ocean—also too little, too late. (Para 1)

There are some frightening figures mentioned by CEC in its final report. According to CEC, excess mining without environmental clearance or beyond what was authorised by the environmental clearance is 2130.988 lakhs MT of iron ore and 24.129 lakhs MT of manganese ore making a total of 2155.117 lakhs MT of iron ore and manganese ore. This does not include extraction of ore without forest clearance. These figures give an indication of the extent of excess or illegal or unlawful mining carried out. In terms of rupees, according to CEC the total notional value of minerals produced without an environmental clearance or in excess of the environmental clearance, at the weighted average price of minerals as proposed by the Indian Bureau of Mines comes to about Rs 17,091.24 crores for iron ore and about Rs 484.92 crores for manganese ore making a total of Rs 17,576.16 crores. Again, this does not include mining without forest clearance. Therefore, these can be referred to as megabucks and rapacious mining. (Paras 25 and 26)

*Common Cause v. Union of India*, IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC); *Common Cause v. Union of India*, WP (C) No. 114 of 2014, order dated 7-10-2015 (SC); *Common Cause v. Union of India*, (2016) 11 SCC 455, referred to

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***Significant observations of Commission about miserable condition of tribals***

The Commission made certain significant observations as follows:

- a* (a) The tribals in the area have been displaced or stay in pathetic and miserable conditions in same area. There is rampant air pollution with the trees having the colour of minerals making it clear that tribals are forced to breathe polluted air and drink polluted water.
- (b) Streams and ground water is polluted and there is hardly any facility of drinking water. Women have been seen fetching water from dirty nalas.
- b* (c) Mining companies and beneficiation plants are drawing water from rivers and nearby water resources are getting depleted at a fast rate. River Baitrani has been seriously affected by this activity.
- (d) Basic facilities such as medical facilities, shelter/residence, education facilities are absent. Roads have a heavy flow of traffic and on one road of the area about 7000 trucks passed during night time.
- c* (e) The labour is not being paid adequate wages beyond the minimum wages even though the income of the mine owners runs into billions of rupees. (Para 48)

***Facts found by Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952, reliable for present purpose***

- d* The First Report of Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952 is relevant for the purpose of the present judgment and order. A resume of the procedure followed will indicate that full opportunity was given to the leaseholders to have their say. [Ed.: For said resume, see paras 35 to 42.] (Paras 33 and 34)
- The First Report is generally a limited fact-finding enquiry on the basis of information supplied by the mining leaseholders. Therefore, there is absolutely no question of any notice being issued to any mining leaseholder under Section 8-B or the right of cross-examination being granted to any mining leaseholder under Section 8-C, Commissions of Inquiry Act, 1952. The Commission made adequate efforts to collect the facts and this collation in the First Report was possible with the assistance of the mining leaseholders and the government authorities. Therefore, the procedure adopted by the Commission in collecting facts was neither irregular nor illegal. Any mining leaseholder who wanted to be heard was given an opportunity of being heard and was fully aware of what the Commission was attempting to achieve and if any particular mining leaseholder chose not to associate with it, it was at his or her own peril. All the mining leaseholders were fully aware of what was going on, if not personally then certainly through their list of counsel running into 18 pages or their representatives individually or their Federation. (Para 43)
- e* There is no challenge to the reports of the Justice Shah Commission. However, the present judgment can confine itself to some limited facts adverted to by CEC in its final report. The reports of the Commission are not necessary for conclusions of the present judgment. (Para 45)
- f* *Goa Foundation v. Union of India*, (2014) 6 SCC 590, *relied on*
- CEC Report — Credibility and relevance***
- g* The gravity of the situation is apparent from the report of CEC and the Commission also seems to support it. (Para 51)

The contention that in giving the Report dated 16-10-2014 CEC has exceeded its remit is not tenable. Though in *T.N. Godavarman Thirumulpad*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), the Court stated that the report of CEC should not cover cases other than forest and environmental issues, subsequent orders have been completely overlooked by the respondent leaseholders inasmuch as on 21-4-2014 CEC was specifically directed to make a list of such lessees who are operating the leases in violation of the law. The various orders of the Court make it clear that the jurisdiction of CEC was not limited and it was expected to give a detailed report on all aspects of illegal mining or mining being carried out without any lawful authority in whatever manner. The initial objection raised on behalf of the leaseholders is therefore rejected. (Paras 52 to 54)

*T.N. Godavarman Thirumulpad v. Union of India*, (2014) 14 SCC 160, *relied on*

*T.N. Godavarman Thirumulpad v. Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), *clarified*

CEC constituted in *T.N. Godavarman Thirumulpad (50)*, (2013) 8 SCC 198 is now an established body which renders extremely valuable advice to the Supreme Court and provides factual material on the basis of which the Court can make some recommendations and pass appropriate orders. (Para 55)

*T.N. Godavarman Thirumulpad (50) v. Union of India*, (2013) 8 SCC 198; *T.N. Godavarman Thirumulpad v. Union of India*, (2013) 8 SCC 204, *relied on*

The credibility of CEC cannot be doubted though its recommendations are subject to the satisfaction of the Supreme Court. In the present cases, CEC as a fact-finding body has functioned impartially and it is only on the conclusions arrived at by CEC on the basis of the facts gathered that there can be some debate and discussion. Anyone may disagree with the views of CEC and there is no need to make heavy weather about this at all. (Para 56)

*Samaj Parivartana Samudaya v. State of Karnataka*, (2013) 8 SCC 154, *relied on*

In its Final Report dated 16-10-2014, CEC has stated that it held meetings with the Chief Secretary and other senior officials of the State of Odisha and others on six dates. It also heard the leaseholders and others on seven dates and it held meetings with three of the leaseholders, that is, Jindal Steel and Power Ltd. (JSPL), Sarda Mines Pvt. Ltd. (SMPL) and Essel Mining and Industries Ltd. (Essel) on 10-9-2014. CEC visited the site of the mining lease of SMPL from 4-3-2014 to 7-3-2014 and had site visits of a number of other lessees from 12-7-2014 to 16-7-2014. The report of CEC dealt with leasewise and yearwise details of production of iron ore and manganese ore, permissible production and production without environmental clearance/beyond environmental clearance. Separately, CEC has dealt with the facts concerning SMPL and JSPL pursuant to a meeting held with them on 11-9-2014. (Paras 57, 58 and 60)

***Projects for tribal welfare and area development — special purpose vehicle (SPV) — Directions***

A scheme for setting up a special purpose vehicle (SPV) for tribal welfare and area development works has been implemented by the State of Odisha. (Para 215)

*T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC); *T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC), *referred to*

*T.N. Godavarman Thirumulpad (104) v. Union of India*, (2008) 2 SCC 222, *cited*

a Some of the salient features of the scheme are as follows: The SPV will undertake specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. These will include works/projects related to livelihood intervention, health, water supply and sanitation, education, special programmes for development of women and children, entrepreneurial development of local people, communication and infrastructure projects and agro silvi-horticultural based livelihood projects through identified agencies/Government Departments. While taking up such projects/works a bottom up planning and participatory approach will be followed. (Para 217)

b Some of the mining leaseholders offered to deposit and in fact did deposit an amount of Rs 237.05 crores for utilisation by the SPV for carrying out welfare works and activities in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha. There are huge amounts available with the special purpose vehicle for tribal welfare and area development works but nothing is known about the utilisation of the funds. Further, as a result of present order very large amounts will again be made available to the State of Odisha. These amounts should also be kept with the special purpose vehicle. (Para 219)

c To ensure that the amounts are utilised for the benefit of tribals in the affected districts and for area development works, the Chief Secretary of Odisha, ex-officio Chairman of SPV is directed to file an affidavit stating the work done as well as provided the audited accounts of the receipt and expenditure of the SPV from its inception. The Chief Secretary of Odisha should file said affidavit within a period of six weeks and in any case on or before 30-9-2017. The Registry will list these petitions along with the affidavit immediately after its receipt for consideration. (Paras 220 and 231)

***Minimum area for which mining lease may be granted — Violation of and benami holders***

e There have been several amendments to S. 6 relating to the maximum area for which a mining lease may be granted to a person. (Paras 189 to 192)

In this background, CEC examined the case of seven mining leaseholders. (Para 193)

f As far as Bonai Industrial Company Ltd. and Feegrade & Co. Pvt. Ltd. are concerned, CEC has concluded that they have not violated Section 6 of the MMDR Act. That being the position, and nothing having been shown to the contrary, the recommendation of CEC in this regard is accepted. With regard to remaining 5 companies hearing on the matter was required, thus, postponed. (Para 197)

g The Court would hear Jindal Steel and Power Ltd., Sarda Mines Private Ltd., Rungta Group of Companies and Essel Mining and Industries Ltd. on the applications filed by them. For this purpose matter to be listed again after two weeks so that a convenient date of hearing can be fixed. (Para 226)

***Procedure for transfer of lease — Alleged violation of — Fresh look by new committee, required — Directions***

h CEC has discussed the possible violation of Rule 37 of the MCR. In this context, it was noted that there were several mining leaseholders who had entered into raising contracts which were actually a transfer of the lease as postulated by Rule 37 of the MCR. (Para 198)

On this basis the State of Odisha constituted a Committee on 8-7-2011 to carry out a study of the financial transactions between the mining leaseholders and the raising contractors to determine whether there is a prima facie violation of Rule 37 of the MCR. (Para 199)

a

The Committee concluded that eight mining leaseholders violated Rule 37 of the MCR. (Para 200)

The Central Government in revision under Section 30, MMDR Act and Rule 55, MCR set aside the order constituting the Committee. Writ petitions thereagainst filed by the State of Odisha are pending in the High Court. (Para 202)

b

It will be appropriate if in fact a fresh look is given to the matter. Thus the Court would like to hear the eight mining leaseholders concerned on the question of appointing an appropriate committee in respect of the applicability of Rule 37 of the Mineral Concession Rules to them. The Court would hear all the parties with regard to setting up of an Expert Committee presided over by a retired Judge of the Supreme Court to identify the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to the State of Odisha but generally to all other States where mining activities are proceeding on a large scale. (Paras 205, 228 and 229)

c

*State of Rajasthan v. Gotan Lime Stone Khanij Udyog (P) Ltd.*, (2016) 4 SCC 469, *relied on* *Common Cause v. Union of India*, WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), *referred to*

d

***IA pursuant to liberty granted***

Pursuant to the liberty granted to move for modification of the interim order dated 16-5-2014 suspending the illegal mining leases, 17 interim applications for modification were received. (Para 16)

*Common Cause v. Union of India*, (2014) 14 SCC 155; *Goa Foundation v. Union of India*, (2014) 6 SCC 590, *referred to*

e

IAs Nos. 45 (filed by Zenith Mining) and 47 (filed by K) are dismissed since their lease has not been extended or has been determined and they do not have any environmental clearance or forest clearance. (Para 222)

IA No. 66 (filed by J) is also dismissed since there is no forest clearance available. (Para 223)

S (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease. Accordingly, IA No. 9 (filed by S) is also dismissed but as being infructuous. However, it is made clear that the State Government should ensure that the lessee S in fact has valid statutory clearances. (Para 224)

f

Pending show-cause notices issued by the State Government should be decided by 31-12-2017 (if not already decided) after hearing the notices concerned. (Para 225)

g

The amounts determined as due from all the mining leaseholders should be deposited by them on or before 31-12-2017. Subject to and only after compliance with statutory requirements and full payment of compensation and other dues, the mining leaseholders can restart their mining operations. (Para 227)

All other pending IAs are disposed of in terms of orders in present case. (Para 232)

h

- I. Mines and Minerals — Judicial Intervention — Illegal mining in State of Odisha — Prayer for CBI inquiry — Instead of CBI inquiry, expert committee to be set up under guidance of retired Supreme Court Judge to identify lapses and suggest measures for corrective steps that can be taken for future and for other States (Paras 47, 49, 50, 229, 213 and 214)**

*Held :*

- a** Justice M.B. Shah Commission under the Commissions of Inquiry Act, 1952 suggests that Central Bureau of Investigation (CBI) may be directed to investigate into allegations of corruption made against politicians, bureaucrats and others. This however, would be considered at the appropriate stage. (Para 47)

- c** Commission felt that the Vigilance Commission was unlikely to conduct an impartial and independent enquiry for arriving at just and proper findings because of external pressures. Accordingly, it would be more appropriate if the Central Bureau of Investigation (CBI) conducts a detailed enquiry into all cases that have been registered between 2008 and 2011. (Para 49)

- d** It was also noted that the Railways have issued demand notices to the extent of Rs 1874 crores. The latest position with regard to these notices is not available. It was also noted that notices have been issued in 146 cases to various leaseholders for recovery of mined ore as per Section 21(5) of the MMDR Act for recovery of more than Rs 59,000 crores! (According to CEC the figure exceeds Rs 61,000 crores)!! (Paras 49 and 50)

- e** For the present, no direction is passed with regard to any investigation by CBI. What is of immediate concern is to learn lessons from the past so that rapacious mining operations are not repeated in any other part of the country. This can be achieved through the identification of lapses and finding solutions to the problems that are faced. Undoubtedly, there have been very serious lapses that have enabled large-scale mining activities to be carried out without forest clearance or environment clearance and eventually the persons responsible for this will need to be booked but the violation of the laws and policy need to be prevented in other parts of the country. The rule of law needs to be established. Therefore, it would be appropriate if an Expert Committee is set up under the guidance of a retired Judge of the Supreme Court to identify the lapses that have occurred over the years enabling rampant illegal or unlawful mining in Odisha and measures to prevent this from happening in other parts of the country. (Paras 229 and 213)

- g** There is no doubt that the recommendations of the Commission can form a platform for the study but it is also necessary to use technology for maintenance of registers, records and data through computers, satellite imagery, videography and other technology tools so that the natural wealth of our country is not rapaciously exploited for the benefit of a few to the detriment of a large number, many of whom are tribals inhabiting the land for several generations. (Para 114)

**J. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — EIA Notification — EIA 1994 — Applicability to mining leases — Following aspects, clarified**

- h** — (i) statutory basis of environmental clearance (EC) for mining activities, (See para 86)

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— (ii) Meaning of EC, (See para 87)

— (iii) When prior approval of EC required, (See paras 88, 89 and 96) —  
Requirement of environmental clearance (EC) if pollution load is to exceed due  
to expansion or modernisation of any activity or if new project listed in Sch. I  
is undertaken a

— (iv) When prior EC not required, (See paras 91 and 96)

— (v) Base year for computing extent of modernisation and expansion for  
calculation of pollution load, that is, 1993-1994, (See paras 93, 94 and 96) b

— (vi) renewal of mining leases, (See paras 100 to 108) (Paras 86 to 108)

*Held :*

Having regard to to object of the MMDR Act, an Environment Impact  
Notification dated 27-1-1994 (EIA 1994) was issued by the Central Government in  
exercise of powers conferred by Section 3(1) and Section 3(2)(v) of the EPA read  
with Rule 5(3)(d) of the Environment (Protection) Rules, 1986. It is a prohibitory  
Notification and directs that on and from the date of its publication in the Official  
Gazette: c

(i) expansion or modernisation of any activity (if pollution load is to  
exceed the existing one); and

(ii) a new project listed in Schedule I to the notification, shall not be  
undertaken unless it has been accorded environmental clearance (EC) by  
the Central Government in accordance with the procedure specified in the  
Notification. d  
(Para 86)

The Notification provides, among other things, that in case of mining  
operations, site clearance shall be granted for a sanctioned capacity and shall be  
valid for a period of five years from commencing mining operations. What this  
means is that on receipt of an EC a mining leaseholder can extract a mineral only  
from a specified site, up to the sanctioned capacity and only for a period of five  
years from the date of the grant of an EC. This is regardless of the quantum of  
extraction permissible in the mining plan or the mining lease and regardless of the  
duration of the mining lease. Consequently, a mining leaseholder would necessarily  
have to obtain a fresh EC every five years and can also apply for an increase in  
the sanctioned capacity. There is no concept of a retrospective EC and its validity  
effectively starts only from the day it is granted. Thus, the EC takes precedence  
over the mining lease or to put it conversely, the mining operations under a mining  
lease are dependent on and “subordinate” to the EC. e  
(Para 87) f

On 4-5-1994 an Explanatory Note was added to EIA 1994. As per its First  
Note, if any proposed expansion or modernisation activity results in an increase  
in the pollution load, then a prior EC is required. The project proponent should  
approach the State Pollution Control Board concerned (for short SPCB) for  
certifying whether the proposed expansion or modernisation is likely to exceed the  
existing pollution load or not. If the pollution load is not likely to be exceeded, the  
project proponent will not be required to seek an EC but a copy of such a certificate  
from SPCB will require to be submitted to the Impact Assessment Agency which  
can review the certificate. g  
(Paras 88 and 89) h

a Eighth Note of Explanatory Note dated 4-5-1994 to EIA 1994, makes it clear that existing mining projects that have a no-objection certificate from SPCB before 27-1-1994 will not be required to obtain an EC from the Impact Assessment Agency. Of course, this is subject to the substantive portion of EIA 1994 and the 1st Note. However, if the existing mining project does not have a no-objection certificate from SPCB, then an EC will be required under EIA 1994. (Para 91)

b A reading of EIA 1994 read with the 1st Note implies that the base year for computing extent of expansion and modernisation or increase of annual production and its impact on existing pollution load is the immediately preceding year, that is, 1993-1994. This is obvious from the opening sentence of the 1st Note, that is, a project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the *existing levels*. In its report, CEC also has taken 1993-1994 as the base year. (Para 93)

c Circular dated 28-10-2014 cannot be interpreted to mean that production even prior to 1993-1994 could be taken as the base year. The *existing levels* mentioned in the 1st Note clearly have reference to the immediately preceding year and not to a preceding year in a comparatively remote past. Further, a very high annual production in any one year is not reflective of a consistent pattern of production — it could very well be a freak year and that freak year certainly cannot be a basic standard or the norm to measure expansion. Then if the interpretation d sought to be given is accepted, there would be an absence of consistency and a lack of uniformity with different mining leaseholders having different base years. This is hardly conducive to good governance. Finally, EIA 1994 was intended to prevent the existing environmental load from increasing based on the existing data of the immediate past and not data of a few years gone by. The only exception e that could be made in this regard would be if there is no production during 1993-94. In that event, the immediately preceding year would be relevant and that is the only reasonable interpretation for the use of the words “or its preceding years”. (Para 94)

On a composite reading of EIA 1994, it is clear that:

f (i) A no-objection certificate from SPCB was necessary for continuing mining operations;

(ii) An expansion or modernisation activity required an EC unless the pollution load was not exceeded beyond the existing levels;

(iii) The base year for determining the pollution load and therefore the proposed expansion would be with reference to 1993-94;

g (iv) Whether an expansion or modernisation would lead to exceeding the existing pollution load or not would require a certificate from SPCB which could be reviewed by the IAA;

(v) New projects require an EC; and

(vi) Existing projects do not require an EC unless there is an expansion or modernisation for the duration (if any) of the validity of the certificate from SPCB. (Para 96)

h Nothing more needs to be stated on this subject since CEC has proceeded to discuss the issue of mining in excess of the EC or in excess of the mining plan only

from the year 2000-01 onwards. The prior period may, therefore, be ignored and it is the period from 2000-01 onwards which is actually relevant for the present discussion. (Para 96)

Circular dated 14-5-2002 indicates that several units had come up in violation of EIA 1994. The MoEF had taken the view that such units may be permitted to apply for an EC by 31-3-1999 which was then extended to 30-6-2001 by Circulars dated 5-11-1998 and 27-12-2000, respectively. By the Circular dated 14-5-2002 the deadline for applying for an EC was extended up to 31-3-2003 as a last and final opportunity to obtain an ex post facto EC in respect of units which had commenced mining operations without obtaining a prior EC in violation of EIA 1994. (Paras 98 and 99)

*M.C. Mehta v. Union of India*, (2004) 12 SCC 118, referred to

As to whether EC was required particularly in respect of pre-EIA 1994 mining leases and operations it was wrongly submitted that it was not obligatory for the mining leaseholders, who did not expand their mining operations, to obtain an EC and in any event the period for obtaining an EC was extended till 31-3-2003 with ex post facto approval. (Paras 100 and 102)

With regard to EIA 1994 and Circular dated 14-5-2002, the intention of the MoEF was not to legalise the continuance of mining activity without complying with the requisite stipulations. If that were unfortunately so, then it would demonstrate a lack of sensitivity of the MoEF to the principles of sustainable development and the object behind issuing EIA 1994. EIA 1994 would apply to the renewal of a mining lease that came up for consideration post 27-1-1994. For the renewal of a mining lease, an EC was required by the mining leaseholder. EIA 1994 is mandatory. It is applicable to all mining operations—expansion of production or even increase in lease area, modernisation of the extraction process, new mining projects and renewal of mining leases. A mining leaseholder is obliged to adhere to the terms and conditions of a mining lease and the applicable laws and the mere fact that a mining plan has been approved does not entitle a mining leaseholder to commence mining operations. Although the two clarificatory Circulars issued by MoEF on 28-10-2004 and 25-4-2005 extended the date to apply for EC and although it gave the possibility of getting an ex post facto EC, that cannot be treated as a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. Compliance with the MMDR Act and the Rules framed thereunder are important for the protection and preservation of the environment. The obligation of everyone to abide by the law cannot be overlooked. That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994. (Paras 103 to 108)

*M.C. Mehta v. Union of India*, (2004) 12 SCC 118, relied on

**K. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — EIA Notification — EIA 2006 and EIA 1994 — Applicability to mining leases — Concept of ex post facto environmental clearance (EC) or retrospective EC, held, completely alien to environmental jurisprudence not only under EIA 1994 but also under EIA 2006**

— No doubt EC obtained earlier would continue under certain circumstances — But a prior EC would be required (a) if there is over-extraction

- beyond permissible limits or (b) if there is renewal of mining lease even if there is no over-extraction — And for this a mining plan is subordinate to EC, meaning that, mining would be illegal even if permitted by mining plan if such mining plan does not conform to conditions of EC or if a prior EC has not been obtained where required — And an EC will come into force not earlier than the date of its grant

*Held :*

- b The EIA 2006 Notification dated 14-9-2006 required prior EC for projects or activities mentioned in the Schedule to it both for major as well as minor minerals if the leased area is 5 ha or more. Several mining leaseholders, in compliance with EIA 2006, applied for and were granted an EC. (Para 109)

Circular dated 2-7-2007 clarified as follows:

- c (i) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;
- (ii) If there was an increase in the lease area or enhancement of production, an EC was required by the mining leaseholder;
- (iii) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production. (Paras 111 and 112)

- d There is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations were commenced on mining leases before 27-1-1994 (or even thereafter). Post EIA 2006, every mining leaseholder having a lease area of 5 ha or more and undertaking mining operations in respect of major minerals (with which we are concerned) was obliged to get an EC in terms of EIA 2006. (Para 115)

- e A mining plan is subordinate to an EC. Having an approved mining plan does not imply that a mining leaseholder can commence mining operations. That being so, a modified mining plan without a revised or amended EC, is of no consequence. Allegedly, under the shield of a modified mining plan, illegal or unlawful mining in the form of mining without an EC, mining by over-reaching EIA 1994 and EIA 2006 was being carried out. (Para 117)

- f In a Letter dated 29-10-2010 addressed to the Controller General, Indian Bureau of Mines it was made clear that all modifications of mining plans shall be effective prospectively only and earlier instances of irregular mining shall not be regularised through a modification of the mining plan. (Para 118)

- g In respect of overproduction, a High Level Committee (called the Hoda Committee) on the National Mineral Policy noted in its Report dated 22-12-2006 that the permissible variation in production as per the Indian Bureau of Mines is  $\pm 10\%$  but according to the Letter dated 12-12-2011 issued by the Ministry of Mines, the reasonable variation limit could be  $\pm 20\%$ . The fact that in some cases the variation exceeded 20% was a cause for concern which necessitated strict and punitive action. (Paras 120 and 121)

- h For the purposes of renewal of the mining lease, an application is required to be made by the mining leaseholders and the deemed renewal clause under Rule 24-A of the MCR will come into operation only after an application for renewal is

made in Form J in Schedule I of the MCR. Under Rule 26 of the MCR, the State Government may refuse to renew the mining lease. In view of EIA 1994, it is quite clear that the renewal of a mining lease would require a prior EC. Circular dated 28-10-2004 issued by MoEF stated that in view of the decision in *M.C. Mehta*, (2004) 12 SCC 118 all mining projects of major minerals of more than 5 ha lease area that had not yet obtained an EC would have to do so at the time of renewal of the lease. (Paras 122 and 123)

*M.C. Mehta v. Union of India*, (2004) 12 SCC 118, *relied on*

The grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. An EC will come into force not earlier than the date of its grant. (Para 125)

**L. Mines and Minerals — Encroachment — Joint survey — Directions to State of Odisha and CEC — Mining outside sanctioned mining areas, held, illegal — Directions issued for proper identification of nature and extent of encroachment of 82 leaseholders — As Joint Survey had been conducted by State of Odisha only in respect of 39 leases, authorities directed to complete survey of remaining 43 leases — CEC directed to present such report before Court on or before 31-12-2017 — Mines and Minerals (Development and Regulation) Act, 1957, S. 4**

*Held :*

Section 4(1) of the MMDR Act makes it clear that no person can carry out any mining operations except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the Rules made thereunder. Obviously therefore, any person carrying on mining operations without a mining lease, is indulging in illegal or unlawful mining. This would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining. (Para 131)

CEC stated that in 82 mining leases for iron ore and manganese ore there were encroachments in the form of illegal mining pits, illegal overburdened dumps, etc. (Para 132)

In respect of these 82 mining leases, the State of Odisha appointed a Committee on the suggestion of the Commission, to survey and identify the exact extent and location of the sanctioned lease area, lease area under occupation of the mining leaseholder and the area under encroachment/illegal mining. The Committee or the Joint Survey consisted of officers of the Revenue Department, Forest Department and Mining Department of the State of Odisha who carried out a field survey in respect of 39 mining leases. The findings of the field survey or the Joint

Survey were verified by a team comprising of the Director, Mines, Chief Engineer, ORSAC and the Additional Secretary, F & E Department of the Government of Odisha. (Para 133)

*a* It is mentioned in the report of CEC that the Joint Survey for each of the 39 mining leases is technically sound and reliable. However, the fact is that a joint survey has not been conducted in respect of remaining 43 mining leases. (Para 134)

*b* For completing the record and taking the report of CEC to its logical conclusion, it would be appropriate if a fresh Joint Survey is conducted by officers concerned of the Government of Odisha from the Revenue Department, the Forest Department, the Mining Department and any other department that may be deemed necessary. The Forest Survey of India, the MoEF, the Indian Bureau of Mines and the Geological Survey of India should also be associated in the Joint Survey. In our opinion, it would also be appropriate if CEC is also associated in the Joint Survey and the best and latest technology should be made use of including satellite imagery and thereafter a report is submitted in the Supreme Court on or before 31-12-2017 after hearing the 82 lessees identified by the Commission. (Para 135)

*c* **M. Mines and Minerals — Illegal mining — Over extraction — Permissible limits — 20% variation in extraction over and above mining plan as per R. 22(5), MCR — Scope of, explained — Clarified that this does not permit mining leaseholder to extract entire permissible quantity for 5 years plus 20% over extraction in a single year and thereafter extract miniscule amounts over the remaining 4 years — Mining in excess of permissible limits would amount to illegal or unlawful mining or mining without lawful authority — Mineral Concession Rules, 1960, R. 22(5) (Paras 136 and 140)**

*Held :*

*e* A side issue raised by the learned counsel for the mining leaseholders in this regard was the necessity (if any) of adhering to the annual plan or calendar plan of mining. It was contended that a mining leaseholder could mine in excess of the annual plan. While it is so, this submission must be tempered and appreciated in the proper context. A mining plan is valid for a period of five years but there could be a 20% variation in extraction over and above the mining plan. This is the maximum that is stated to be reasonably permissible according to the Ministry of Mines. In terms of Rule 22(5) of the MCR a mining plan shall incorporate a tentative scheme of mining and annual programme and plan for excavation from year-to-year for five years. At best, there could be a variation in extraction of 20% in each given year but this would be subject to the overall mining plan limit of a variation of 20% over five years. What this means is that a mining leaseholder cannot extract the five year quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. If any other interpretation is given, it would lead to an absurd situation where a mining leaseholder could extract the entire permissible quantity under the mining plan plus 20% in one year and extract miniscule amounts over the remaining four years, and this could be done without any reference to the EC. The submission in this regard simply cannot be accepted. (Para 136)

*h*

While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law. This is the correct interpretation of Section 21(5), MMDR Act. (Para 140)

a

**N. Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — When attracted — S. 21(5) is attracted when any person, without lawful authority extracts any mineral from any land — State Government is entitled to recover said illegally extracted mineral or price thereof — Word “any land” not confined to violations outside lease area — It includes violations within mining lease area (Para 151)**

b

*Held :*

Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from *any land*. In that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words “any land” are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of Section 21(5) of the MMDR Act being extraction without lawful authority. It would also attract Section 21(1) of the MMDR Act. In any event, Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by a person only outside the mining lease area — it includes a violation committed even within the mining lease area. This is also because the MMDR Act is intended, among other things, to penalise illegal or unlawful mining on any land including mining lease land and also preserve and protect the environment. Action under the EPA or the MCR could be the primary action required to be taken with reference to the MCR and Rule 2(ii-a) thereof read with the Explanation but that cannot preclude compensation to the State under Section 21(5) of the MMDR Act. The MCR cannot be read to govern the MMDR Act. (Para 151)

c

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e

*Karnataka Rare Earth v. Deptt. of Mines & Geology*, (2004) 2 SCC 783, *relied on*

*Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra*, (1975) 2 SCC 22 : 1975 SCC (Tax) 227, *distinguished*

f

*Director of Public Prosecutions v. Schildkamp*, 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL), *referred to*

*Black's Law Dictionary*, 7th Edn., p. 1421; Justice Singh, G.P.: *Principles of Statutory Interpretation* (8th Edn., 2001, p. 147), *referred to*

**O. Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — Quantum — There can be no compromise on quantum of compensation — S. 21(5) contemplates 100% recovery — State should not forego what is its due in order to fill coffers of defaulting lessees (Paras 153 and 154)**

g

h

*Held :*

- a 100% recovery should be made under the provisions of Section 21(5) of the MMDR. Submission that only 30% of the value of the illegally mined ore should be recovered cannot be accepted. (Para 153)

- b There can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee. It simply does not stand to reason why the State should be compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill-gotten manner. (Para 154)

- c **P. Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — Calculation — Base year and period of application — For said calculation, base year of 1993-1994, held, reasonable in present cases — Although some might lose and some might benefit, each leaseholder is given benefit of calculation only from year 2000-2001 and would not be penalised for period prior thereto (Paras 155 to 157)**

*Held :*

- d The issue now is with regard to the calculations made by CEC with regard to the production of iron ore and manganese ore without or in excess of the EC and/or the mining plan. The figures were not disputed (except by JSPL and SMPL). Therefore, only the application of the figures requires consideration. (Para 155)

- e For the said calculation, the base year of 1993-94 is most appropriate. Some lessees might lose in the process while some of them might benefit but that cannot be avoided. In any event, each mining leaseholder is being given the benefit of calculations only from 2000-2001 and is not being “penalised” for the period prior thereto. The mining leaseholders should be grateful for this since the penalty is levied from the date of EIA 1994. The cut-off from 2000-2001 (without interest) is undoubtedly reasonable and there can hardly be any grievance in this regard. The mining leaseholders cannot have their cake and eat it too, along with the icing on top. (Para 156)

- f Thus the compensation should be payable from 2000-2001 onwards at 100% of the price of the mineral. (Para 157)

- g **Q. Environment Law — Forests, Wildlife and Zoos — Mining and Industry in Forest Area — Mining in forest areas (in State of Odisha) — Permissibility of — Preconditions, stated, (a) prior approval of Central Government under S. 2, FCA, and (b) payment of net present value (NPV) as directed in *T.N. Godavarman Thirumulpad, (2010) 15 SCC 177* considering peculiar circumstances prevailing in State of Odisha — (c) However, from 7-1-1998 any mining activity in any forest or DLC forest (forest identified by District Level Committee) is completely illegal and price of mineral extracted is recoverable under S. 21 of MMDR Act until forest clearance (FC) is obtained from Central Government, and 100% of price of iron ore or manganese ore mined without S. 2 approval should be recovered — However, clarified that a leaseholder is only liable to pay 100% price of illegally extracted ore**

**for non-compliance with either FC or EC or both — For not having both FC and EC clearances, leaseholder would not be required to pay 200% — However, this has to be distinguished from NPV — Even if NPV has been paid earlier, additional NPV is neither adjustable not refundable since that falls in a different category altogether — Further, clarified that a violation of FCA is condonable on payment of penal compensatory afforestation charges, and mining leaseholders would be entitled to temporary working permit (Paras 164 to 188)**

*Held :*

After the commencement of the FCA no fresh breaking up of forest land or no fresh clearing of the forest on any such land could be permitted by the State Government or any authority without the approval of the Central Government. However, in respect of broken up land, if the State Government permits the lessee to remove any discovered mineral, it cannot be said that there has been a violation of Section 2 of the FCA particularly since there is no breaking up of any fresh forest land. However, this does not mean that renewal of lease can be claimed as a matter of right. The primary purpose of the FCA is to prevent deforestation and ecological imbalance as a result of deforestation. Therefore, the primary duty under the FCA was to the community and the obligation to society must predominate over the obligation to the individuals. (Paras 164 and 165)

*Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504, *relied on*

*State of Bihar v. Banshi Ram Modi*, (1985) 3 SCC 643, *distinguished*

Therefore, compliance with Section 2 of the FCA is necessary as a condition precedent even for the renewal of a mining lease. (Para 166)

The definition of the word “forest” for the purposes of the FCA came up for consideration in *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267. In this context, it was held that “forest” must be understood according to its dictionary meaning and it would cover all statutorily recognised forests, whether designated, reserved, protected or otherwise. The Supreme Court further directed each State Government to constitute within one month an Expert Committee, inter alia, to identify areas which are “forest” irrespective of whether they are so notified, recognised or classified under any law and irrespective of the ownership of the land of such forest. Pursuant to the directions given by the Supreme Court, the State of Odisha constituted District Level Committees (DLC) for identification of forest lands. After the identification process, appropriate affidavits were filed by the State of Odisha in the Supreme Court in 1997-98, the last being dated 6-1-1998. (Paras 167 to 170)

The Court in *T.N. Godavarman Thirumulpad*, (2010) 15 SCC 177 accepted the recommended by CEC that given the peculiar circumstances prevailing in the State of Odisha, mining operations in the entire DLC lands included in the mining leases may be allowed to continue on payment of the net present value (NPV) subject to the fulfilment of other statutory requirements and rules being complied with. (Para 174)

Consequently, the State of Odisha appears to have implemented the recommendations regarding recovery of NPV and realised an amount of about Rs 1750 crores as additional NPV. (Para 175)

*a* *T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC); *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 15 SCC 177; *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 3 SCC 312, referred to

In addition to the above, the mining leaseholders have subsequently deposited an amount under the heading of penal compensatory afforestation which was introduced through guidelines issued by the MoEF on 3-2-1999. (Para 176)

*b* Given the fact that the defaulting mining leaseholders have been asked to pay and have paid additional NPV as well as an amount towards penal compensatory afforestation, it must be assumed that the violation of the FCA has been condoned to a limited extent, more particularly since in its order dated 7-5-2010 the Court permitted the State of Odisha to accept such recommendations of CEC made in the report dated 26-4-2010 as are acceptable to it. (Para 179)

*c* This still leaves open the question of violation of the order passed by the Supreme Court on 12-12-1996 followed by the order dated 4-3-1997, namely, that mining must cease forthwith in forest areas. In regard to this violation, the only benefit (at best) that can be granted to the mining leaseholders is till 6-1-1998 when the affidavit was filed in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman Thirumulpad*, (2014) 6 SCC 167. With effect from 7-1-1998 any mining activity in forest and DLC lands would clearly be completely illegal and unauthorised and the benefit that the mining leaseholders have derived from this illegal mining would be subject to Section 21(5) of the MMDR Act. Therefore, the price of the iron ore and manganese ore mined by the mining leaseholders from 7-1-1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining leaseholders. (Para 180)

*d* *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 3 SCC 312; *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 6 SCC 167; *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 6 SCC 167, 172 (footnote 1), referred to

*e* 7-1-1998 has been fixed as the cut-off date despite the orders dated 12-12-1996 and 4-3-1997 only for the reason that it is possible that some mining leaseholders were not aware that they were inadvertently conducting mining operations on DLC lands which were identified by the State of Odisha as forest lands on the directions of the Court. For the purposes of Section 21(5) of the MMDR Act, they are entitled to the benefit of doubt along with the other mining leaseholders. (Para 183)

*f* Therefore, the suggestion of CEC that only a part of the notional value (in this case 70%) of the iron ore and manganese ore produced by the mining leaseholders should be recovered is not acceptable. Section 21(5) of the MMDR Act should be given full effect and the recovery should be to the extent of 100%. (Para 185)

*g* Mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining leaseholder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining leaseholder

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to the State of Odisha. However, whatever payment has already been made by the mining leaseholders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether. (Para 186)

a

A violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act, but the mining leaseholders would be entitled to the benefit of any temporary working permission granted. (Para 187)

*T.N. Godavarman Thirumulpad v. Union of India*, (2011) 15 SCC 658; *T.N. Godavarman Thirumulpad v. Union of India*, (2011) 15 SCC 681, *relied on*

b

To avoid any misunderstanding, confusion or ambiguity, it is clarified as follows:

(1) A mining project that has commenced prior to 27-1-1994 and has obtained a no-objection certificate from SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernisation activity after 27-1-1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernisation activity, a certificate to this effect is absolutely necessary from SPCB, which would be reviewed by the Impact Assessment Agency.

c

d

(2) The renewal of a mining lease after 27-1-1994 will require an EC even if there is no expansion or modernisation activity or any increase in the pollution load.

(3) For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27-1-1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.

e

(4) There is no doubt that a new mining project after 27-1-1994 would require a prior EC.

(5) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.

f

(6) With effect from 14-9-2006 all mining projects having a lease area of 5 ha or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.

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(7) For a mining lease of iron ore or manganese ore of less than 5 ha area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.

(8) Any mining activity carried on after 7-1-1998 without an FC amounts to illegal or unlawful mining in terms of the provisions of Section 21(5) of

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MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.

a (9) In the event of any overlap, that is, illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining leaseholder.

(10) No mining leaseholder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation. (Para 188)

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d **R. Environment Law — General Principles of Environmental Law — Precautionary Principle/Sustainable Development/Inter-Generational Equity Principle — Instances re Areas/Industries — Mining policy — Judicial interference — Scope of — Held, Court cannot interfere with mining policy or lay down limits on extent of mining activity that should be permitted by the State Government or Central Government — Therefore, prayers on basis of principles of intergenerational equity, not tenable — But considering that National Mineral Policy, 2008 is only in pen and paper and also obsolete (that is, 10 years old), Central Government directed to revisit said policy and announce a fresh, more effective, meaningful and implementable policy (Paras 207 to 211 and 230)**

*Held :*

e The petitioner sought to impress the need to consider intergenerational equity and if possible to place a limit on the extent of mining in the State of Odisha by referring to an article titled: “Intergenerational equity: a legal framework for global environment change” by Edith Brown Weiss. He laid emphasis on three principles that form the basis of intergenerational equity, that is, the principle of “conservation of options”, the principle of “conservation of quality” and the principle of “conservation of access”. (Paras 207 to 210)

f The Court cannot lay down limits on the extent of mining activities that should be permitted by the State of Odisha or by the Union of India. Nevertheless, it does appear that there is no effective check on mining operations nor is there any effective mining policy. The National Mineral Policy, 2008 (effective from March 2008) seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve. The National Mineral Policy, 2008 is almost a decade old and a variety of changes have taken place since then, including (unfortunately) the advent of rapacious mining in several parts of the country. Therefore, it is high time that the Union of India revisits the National Mineral Policy, 2008 and announces a fresh and more effective, meaningful and implementable policy. The Union of India is directed to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development. The exercise should be completed by 31-12-2017. (Paras 211 and 230)

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h SS-D/58937/C

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Advocates who appeared in this case :

Ashok Desai, Rakesh Dwivedi and Gopal Subramaniam, Senior Advocates ([Prashant Bhushan, Advocate) for the appearing parties.

<b>Chronological list of cases cited</b>	<b>on page(s)</b>	<b>a</b>
1. WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), <i>Common Cause v. Union of India</i>	572c-d	
2. (2016) 11 SCC 455, <i>Common Cause v. Union of India</i>	529c-d	
3. (2016) 4 SCC 469, <i>State of Rajasthan v. Gotan Lime Stone Khanij Udyog (P) Ltd.</i>	573a	
4. WP (C) No. 114 of 2014, order dated 7-10-2015 (SC), <i>Common Cause v. Union of India</i>	529a	<b>b</b>
5. IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC), <i>Common Cause v. Union of India</i>	528d-e	
6. (2014) 14 SCC 160, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	525d-e, 537g-h	
7. (2014) 14 SCC 155, <i>Common Cause v. Union of India</i>	526a-b, 526d, 527c, 527d-e	
8. (2014) 6 SCC 590, <i>Goa Foundation v. Union of India</i>	527b, 535g, 536b	<b>c</b>
9. (2014) 6 SCC 167, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	523g, 524d, 567b	
10. (2014) 6 SCC 167, 172 (footnote 1), <i>T.N. Godavarman Thirumulpad v. Union of India</i>	523e-f, 523f-g, 523g-h	
11. IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC), <i>T.N. Godavarman Thirumulpad v. Union of India</i>	575b, 575c	<b>d</b>
12. IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC), <i>T.N. Godavarman Thirumulpad v. Union of India</i>	574g, 575c	
13. IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), <i>T.N. Godavarman Thirumulpad v. Union of India</i>	524b-c, 527g, 537f-g	
14. (2013) 8 SCC 204, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	538c-d	<b>e</b>
15. (2013) 8 SCC 198, <i>T.N. Godavarman Thirumulpad (50) v. Union of India</i>	538b-c, 538c-d	
16. (2013) 8 SCC 154, <i>Samaj Parivartana Samudaya v. State of Karnataka</i>	538d	
17. (2011) 15 SCC 681, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	568f-g	
18. (2011) 15 SCC 658, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	568f-g	
19. (2010) 15 SCC 177, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	523d, 565c, 566c-d	<b>f</b>
20. IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC), <i>T.N. Godavarman Thirumulpad v. Union of India</i>	521f-g, 565b	
21. (2008) 2 SCC 222, <i>T.N. Godavarman Thirumulpad (104) v. Union of India</i>	575b	
22. (2004) 12 SCC 118, <i>M.C. Mehta v. Union of India</i>	547b, 547f, 547f-g, 547g, 548c, 548f-g, 549b-c, 549c, 549c-d, 549e, 550b-c, 551c-d, 552g-h, 553a, 553e	<b>g</b>
23. (2004) 2 SCC 783, <i>Karnataka Rare Earth v. Deptt. of Mines &amp; Geology</i>	558g, 559a, 559g-h	
24. (1997) 3 SCC 312, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	564d-e, 567a, 567f-g	
25. (1997) 2 SCC 267, <i>T.N. Godavarman Thirumulpad v. Union of India</i>	522f, 563g-h, 563g-h, 564g-h, 566f, 567a, 567f-g, 568a-b	<b>h</b>
26. WP (C) No. 202 of 1995, <i>T.N. Godavarman v. Union of India</i>	521d	

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27. 1989 Supp (1) SCC 504, *Rural Litigation and Entitlement Kendra v. State of U.P.* 563e-f
- a 28. (1987) 1 SCC 213, *Ambica Quarry Works v. State of Gujarat* 563b, 563e-f
29. (1985) 3 SCC 643, *State of Bihar v. Banshi Ram Modi* 562e, 563d
30. (1975) 2 SCC 22 : 1975 SCC (Tax) 227, *Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra* 558a, 559g-h
31. 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL), *Director of Public Prosecutions v. Schildkamp* 559d-e

b The Judgment of the Court was delivered by  
**MADAN B. LOKUR, J.**— The facts revealed during the hearing of these writ petitions filed under Article 32 of the Constitution suggest a mining scandal of enormous proportions and one involving megabucks. The lessees in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment and forests and perhaps caused untold misery to the tribals in the area. However, to be fair to the lessees, they did the detail steps taken to ameliorate the hardships of the tribals, but it appears to us that their contribution is perhaps not more than a drop in the ocean — also too little, too late.

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***Facts leading up to the report of the Central Empowered Committee***

2. Rabi Das, the editor of a daily newspaper called *Ama Rajdhani* filed IAs Nos. 2746-48 of 2009 in a pending writ petition being *T.N. Godavarman v. Union of India*<sup>1</sup>. He prayed, inter alia, for the following directions from this Court:

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“(a) Issue a direction to the Central Empowered Committee to conduct an exhaustive fact-finding study of the illegal mining in Keonjhar, Sundargarh and other districts of Orissa;

e (b) Direct appointment of a “Commission” to investigate and study the modalities of the illegal machinations, fix responsibility on individuals (in Government and outside it) and recommend remedial measures to be immediately implemented by the Government of India and the Government of Orissa;

f (c) Direct the respondents to take effective and appropriate action to ensure closure/stoppage of all the illegal mining activities in the areas concerned and direct prosecution and punish all those found guilty of this illegal mining in violation of the Mines and Minerals (Development and Regulation) Act, 1957; the Forest (Conservation) Act, 1980 and other relevant laws.”

g 3. The applications were taken up for consideration on 6-11-2009<sup>2</sup> when notice was issued to the Central Empowered Committee (for short “CEC”) to file its report/response within six weeks.

1 WP (C) No. 202 of 1995

h 2 *T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC), wherein it was directed:

“Taken on board. Issue notice to CEC to file its report/response within six weeks.”

4. On 26-4-2010 CEC submitted an interim report which was noted by this Court and taken on record. The report was of a general nature but contained quite a few recommendations. Some of the recommendations presently relevant are as follows:

“(b) Even otherwise Rule 24-A(6), MCR, 1960 does not authorise the lessee to operate a mine without the statutory clearances/approvals. Therefore, in respect of a mine covered under the “deemed extension” clause, the mining operations should be permitted to be undertaken in the non-forest area of the mining lease only if (i) it has the requisite environmental clearance; (ii) it has the consent to operate from the State Pollution Control Board under the Air and Water Acts; (iii) Mining Plan is duly approved by the competent authority; and (iv) the NPV for the entire forest falling within the mining lease is deposited in the Compensatory Afforestation Fund.

The mining in the forest land included in the mining lease should be permissible only if, in addition to the above, the approval under the FC Act/TWP has been obtained;

(c) No forest land can be leased/assigned without first obtaining the approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon’ble Court while permitting grant of Temporary Working Permission to the mines in Orissa and Goa has made it one of the preconditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining leaseholders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining lease;

(d) In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest like areas) by the Expert Committee constituted by the State Government pursuant to this Hon’ble Court’s order dated 12-12-1996<sup>3</sup>. While processing and/or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (i) the NPV for the entire DLC area included in the mining lease, after deducting the NPV already paid, should be deposited by the leaseholder concerned, and (ii) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as were existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued provided the other statutory requirements and Rules are otherwise being complied with.”

3 T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267

The report concluded by recording as follows:

- a “(a) an attempt has been made for the first time by CEC to comply and analyse the status of all the mining leases in a State and to suggest effective and remedial measures—something made possible because of the unstinted cooperation extended by the senior functionaries of the Forest and Mines Departments of the State Government; and
- b (b) the above recommendations if accepted and implemented will, besides ensuring that mining is done in compliance with the statutory provisions, result in recovery of additional amount towards the NPV, etc. running into hundreds of crores of rupees. It would be appropriate that a part of this additional amount, say 50% is used through an SPV for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. CEC proposes to
- c file detailed schemes in this regard for seeking permission of this Hon’ble Court provided the State of Orissa as well as the MoEF endorse the course of action proposed above.”

The significance of the second conclusion will be discussed by us a little later.

- d 5. Notice was issued on the report returnable on 7-5-2010. On the adjourned date<sup>4</sup>, the following order was passed by this Court: (*T.N. Godavarman case*<sup>4</sup>, SCC p. 179, paras 14-15)

“14. CEC has filed its report. The State would like to file its response.

15. Six weeks’ time is granted for the same. The recommendations of CEC which are acceptable to the State Government can be complied with.”

- e It may be mentioned that some of the recommendations made by CEC have been accepted and implemented by the State of Odisha.

6. The issue of mining in Odisha again came up for consideration on 16-9-2013<sup>5</sup> and this Court passed the following order:

- f “We call for a report from the Central Empowered Committee within a period of six weeks. We direct that the parties of the State Government of Odisha and the Central Government will cooperate with the Central Empowered Committee to enquire into the matter and furnish a report.

The matter be listed on a Monday after six weeks.”

- g 7. With reference to the order passed on 16-9-2013<sup>5</sup> CEC conducted an inquiry and some information was sought from M/s Sarda Mines (P) Ltd. (for short “SMPL”). This was objected to by SMPL who filed an application which was taken up for consideration on 9-12-2013. The following order<sup>6</sup> was passed on that day: (*T.N. Godavarman case*<sup>6</sup>, SCC p. 172, paras 23-25)

“23. By our order dated 16-9-2013<sup>5</sup>, we had called for a report from the Central Empowered Committee within a period of six weeks. It is stated

- h 4 *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 15 SCC 177  
5 *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 6 SCC 167, 172 (footnote 1)  
6 *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 6 SCC 167

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on behalf of the Central Empowered Committee that the report could not be ready as part of the information called for has not been furnished by the State Government.

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24. Mr Venugopal, learned Senior Counsel for the applicant M/s Sarda Mines (P) Ltd. in IA No. 3721 submits that since some of the matters are pending before the High Court, a prayer has been made for not furnishing the required information to the Central Empowered Committee.

25. List this matter in the second week of January 2014. In the meantime, the Central Empowered Committee may not submit its final report.”

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8. The matter was again taken up on 13-1-2014<sup>7</sup> and this Court passed the following order:

“We have heard the learned counsel for the parties.

We have also perused the letter dated 17-10-2013 of the Member Secretary, Central Empowered Committee sent to the Chief Secretary, Government of Odisha along with its annexures and in particular, the statement of details of information and documents sought by the Central Empowered Committee for the meeting convened on 30-10-2013, which cover forest and environmental issues.

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We, accordingly, modify the order dated 9-12-2013<sup>6</sup> and direct the Central Empowered Committee to submit its final report on the queries made by the State Government with regard to the details of the documents sought for in the letter dated 17-10-2013 within a period of six weeks.

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The report will not cover cases other than forest and environmental issues.

e

The lessees and others from whom information is sought for will cooperate, if they do not cooperate the Central Empowered Committee will give its report.

A copy of the interim report of 26-4-2010 will be furnished to the learned counsel appearing for the State of Odisha.

This matter be listed on 20-1-2014 for consideration of the recommendations made by the Central Empowered Committee in the said report dated 26-4-2010.”

f

Thereafter and partly based on reports given by Justice M.B. Shah, a retired Judge of this Court, holding a commission under the Commissions of Inquiry Act, 1952 a writ petition being WP (C) No. 114 of 2014 was filed by Common Cause. Several prayers were made in the writ petition, and some of the more significant prayers read as follows:

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“(a) Issue a writ of mandamus or any other appropriate writ directing the Union of India and the Government of Odisha to immediately stop

7 *T.N. Godavarman Thirumulpad v. Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

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6 *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 6 SCC 167

a forthwith all illegal mining in the State of Odisha and to terminate all leases that are found to be involved in illegal mining and mining in violation of the provisions of the Forest (Conservation) Act, 1980, the environment laws and other laws.

(b) Issue a writ of mandamus or any other appropriate writ directing the Union of India and the Government of Odisha to take action against all the violators involved either directly or indirectly in illegal mining including those named in the report of Justice Shah Commission.

b (c) Issue a writ of mandamus or any other appropriate writ directing a thorough investigation by SIT or CBI under the supervision of this Hon'ble Court, as is recommended by the Justice Shah Commission into illegal mining in Odisha and collusion between private companies/individuals and public officials of the State/Central Governments.

\* \* \*

c (e) Issue a writ of mandamus or any other appropriate writ directing the respondents to recover the illegally accumulated wealth through illegal mining and related activity, as per Section 21(5) of the MMDR Act, 1957 [Mines and Minerals (Development and Regulation) Act, 1957] and launch prosecutions under Section 21(1) of the MMDR Act, 1957, and direct that the money recovered would be used for the welfare of local communities, tribals and villagers.”

d 9. The writ petition was taken up for consideration on 21-4-2014<sup>8</sup> when the following order was passed: (*T.N. Godavarman case*<sup>8</sup>, SCC p. 161, paras 1-4)

e “1. We have heard the preliminary objections with regard to the writ petition and we are not convinced that the writ petition is not maintainable. Issue notice.

2. As the State of Odisha, Union of India and CEC have already been served with the notices, no further notices be issued to them. Notice, however, be issued to Respondents 4 and 5 returnable within four weeks.

f 3. It appears from the averments in para 14 of the writ petition that several lessees are operating without clearances under the Environment (Protection) Act, 1986 and the Forest (Conservation) Act, 1980, and without renewal by the Government. Hence, an interim order needs to be passed in respect of these lessees who are operating the leases in violation of the law.

g 4. For consideration of the interim order that should be passed, only this writ petition be listed on next Monday, 28-4-2014, as first item. It will be open for all parties and intervenors/proposed intervenors to file their respective affidavits. CEC, in the meanwhile, will make out a list of such lessees who are operating the leases in violation of the law. This list be prepared by CEC without reference to the Shah Commission's Report. Liberty is given to the parties to produce their papers before CEC. The

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8 *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 14 SCC 160

State of Odisha and the Union of India will cooperate with CEC to prepare the list.”

***Report of the Central Empowered Committee***

10. CEC gave its final report on 25-4-2014 which was considered by this Court and a detailed interim order was passed on 16-5-2014<sup>9</sup>. The sum and substance of the final report dated 25-4-2014 and the interim order is that in the districts of Odisha that we are concerned with, namely, Keonjhar, Sundergarh and Mayurbhanj, the total number of leases granted for mining iron and manganese ore are 187. Of these, 102 leaseholders did not have requisite environmental clearance [under the Environment (Protection) Act, 1986] or approval under the Forest (Conservation) Act, 1980 or approved mining plan and/or consent to operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974. This Court directed that mining operations in these 102 mining leases shall remain suspended but it will be open to such leaseholders to move the authorities concerned for necessary clearances, approvals or consents and

“as and when the mining lessees are able to obtain all the clearances/ approval/consent they may move this Court for modification of this interim order in relation to their cases”. (*Common Cause case*<sup>9</sup>, SCC p. 157, para 4)

11. This Court also found that 29 out of 187 mining leases had been determined or rejected or had lapsed. It was directed that mining operations in these 29 mining leases will also remain suspended but it would be open to all these lessees concerned to move the authorities for necessary relief and as and when they get the appropriate relief, they could move this Court for modification of the interim order.

12. This Court also found that 53 iron ore/manganese ore mining leases were operational and that they had necessary approvals under the Forest (Conservation) Act, 1980, consent to operate granted by the Odisha State Pollution Control Board and also approved mining plans. (There is no specific mention about environmental clearance.) In addition 3 mining leases were located in forest as well as non-forest land, but mining operations were being conducted in non-forest areas of the mining lease as the leaseholders did not have approvals under the Forest (Conservation) Act, 1980. Therefore a total of 56 iron ore/manganese ore mining leases were operating in the State of Odisha.

13. As far as the break-up of the 56 operational mining leases is concerned, it was found that 14 mining leases were operating on first renewal basis in accordance with the deeming provisions of Section 8(2) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short “the MMDR Act”) read with Rule 24-A(6) of the Mineral Concession Rules, 1960 (for short “the MCR”) and 16 mining leases were operating since lease deeds for grant of renewal had been executed in their favour. The remaining 26 mining

9 *Common Cause v. Union of India*, (2014) 14 SCC 155

leases were operating on second and subsequent renewal basis with the renewal applications pending a final decision with the State Government.

- a **14.** In respect of the 14 first renewal mining leases, this Court permitted them to continue their operations for the time being in view of the deemed renewal provisions. This Court also permitted 16 mining leases to continue to operate since they had lease deeds executed in their favour. With regard to the remaining 26 mining leases operating on second and subsequent renewal applications, this Court drew attention to the decision rendered on 21-4-2014 in
- b *Goa Foundation v. Union of India*<sup>10</sup> wherein it was held that the provision for a second or subsequent deemed renewal was not available in view of Section 8(3) of the MMDR Act. Consequently, these 26 leaseholders were restrained from operating until express orders were passed by the State Government under Section 8(3) of the MMDR Act. Six months' time was granted to the State Government to take a final decision on the renewal applications. This Court
- c left it open to the mining leaseholders to apply for modification of the interim order dated 16-5-2014<sup>9</sup> on obtaining necessary clearances.

**15.** During the hearing of these petitions, we were informed that the balance 26 mining leases are now operational in view of the amendment to Section 8(3) of the MMDR Act with effect from 12-1-2015. However, we are not aware whether these 26 mining leases have the necessary statutory clearances.

- d **16.** We may also mention that pursuant to the liberty granted to move for modification of the interim order of 16-5-2014<sup>9</sup> we have received 17 interim applications for modification. Through a chart handed over to us in Court on 3-5-2017 we have been informed that in respect of two of the 17 applications, that is, Zenith Mining (IA No. 45) and Kavita Agrawal (IA No. 47), the lease has not been extended or has been determined and they do not have any
- e environmental clearance or forest clearance. In respect of J.N. Pattnaik (IA No. 66), there is no forest clearance available. We were also informed that S.A. Karim (IA No. 9) actually had a working lease and had wrongly been included as a non-operational lease.

- f **17.** Be that as it may, the learned counsel for the leaseholders drew our attention to the record of proceedings of 16-5-2014 and particularly the following paragraph appearing therein:

“We have passed interim order in a separate sheet. The Central Empowered Committee will give a final report on the writ petition by the end of July 2014 and the matter will be listed in the first week of August 2014 before the Green Bench.”

- g We are mentioning this in the context of the order passed on 13-1-2014<sup>7</sup> adverted to above to the effect that “The Report will not cover cases other than forest and environmental issues.”

10 (2014) 6 SCC 590

h <sup>9</sup> *Common Cause v. Union of India*, (2014) 14 SCC 155

<sup>7</sup> *T.N. Godavarma Thirumulpad v. Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

**18.** In its final report, CEC has dealt with the following ten topics:

In this final report CEC dealt with the following ten topics:

*I.* Production of iron ore and manganese ore without/in excess of the environmental clearance/Mining Plan/consent to operate. a

*II.* Mining leases operated in violation of the Forest (Conservation) Act, 1980.

*III.* Illegal mining outside the sanctioned mining lease areas. b

*IV.* Mining leases acquired in violation of Section 6 of the MMDR Act, 1957.

*V.* Violation of Rule 37 of the Mineral Concession Rules, 1960 by the lessees.

*VI.* Illegalities involved in the mining leases of Essel Mining & Industries Ltd. c

*VII.* Illegalities involved in the mining lease of Sharda Mines (P) Ltd.

*VIII.* Massive illegal mining in Uliburu Forest land.

*IX.* Inordinate delays in taking decisions by the State Government regarding renewal of the mining leases. d

*X.* Other issues.”

**19.** By an order dated 16-1-2015<sup>11</sup> objections to the final report were permitted and we have since received quite a few objections. When the matter was taken up for consideration by this Court on 7-10-2015 and pursuant

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<sup>11</sup> *Common Cause v. Union of India*, IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC), wherein it was directed:

“*IA No. 35 in IA No. 17 of 2014 in WP (C) No. 114 of 2014*

**1.** Dr Rajeev Dhavan, learned Senior Counsel for the applicant Orissa Mining Corporation Ltd. (Respondent 4), on instructions, seeks permission of this Court to withdraw the application for directions (IA No. 17 of 2014) with liberty to approach the High Court. Permission sought for is granted. The application for directions (IA No. 17 of 2014) is disposed of as withdrawn with liberty to the applicant to approach the High Court. Accordingly, IA No. 35 of 2014 in IA No. 17 of 2014 is allowed. We clarify that we have not expressed any opinion on the prayers made in IA No. 17 of 2014. f

*IAs Nos. 31-32 of 2014 in WP (C) No. 114 of 2014*

**2.** Issue notice. Shri Prashant Bhushan, learned counsel for the petitioner and Shri A.D.N. Rao, learned Amicus Curiae on behalf of the Central Empowered Committee, accept notice. Objections, if any, may be filed within six weeks’ time from today. Whosoever wants to file objections to the report of the Central Empowered Committee filed in Writ Petition (C) No. 114 of 2014, he/they may do so within eight weeks’ time from today. List the matter after eight weeks.” g

a to the order<sup>12</sup> passed on that date, the learned Amicus filed a statement dated 30-10-2015 in a tabular form dealing with each IA filed in respect of the observations and recommendations made by CEC. Thereafter, when the matter was again taken up for consideration the learned Amicus filed a note dated 15-3-2016 wherein the following four issues were flagged:

b “(i) Leases lapsed under Section 4-A(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the MMDR Act, 1957) (11 leases);

(ii) Violation of Rule 24 of the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as MCR, 2016) and Rule 37 of the Mineral Concession Rules, 1960 (hereinafter referred to as the MCR, 1960) (9 leases);

(iii) Illegal mining in forest lands (20 leases); and

c (iv) Iron ore produced without/in excess of the environmental clearance (each of the operating leases involved).”

20. Insofar as the first issue is concerned, it is common ground that that issue has been fully, conclusively and exhaustively dealt with by this Court by a judgment and order dated 4-4-2016 (*Common Cause v. Union of India*<sup>13</sup>). Therefore, the first issue does not survive for consideration by us.

d 21. As far as the remaining three issues are concerned, these overlap with Topics I, II and V dealt with by CEC. Detailed submissions were made before us by the learned counsel for all the appearing parties on these issues as well as by the learned Amicus and the learned Attorney General. We propose to deal with them in this judgment and order.

e 22. We may mention that submissions were also made on Topics III and IV identified by CEC, that is, illegal mining outside the sanctioned mining lease areas and mining leases acquired in violation of Section 6 of the MMDR Act. We will consider these issues as well.

23. As far as Topics VI and VII identified by CEC are concerned, we would like to hear the parties in detail in respect of these issues.

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<sup>12</sup> *Common Cause v. Union of India*, WP (C) No. 114 of 2014, order dated 7-10-2015 (SC), wherein it was directed:

“Order in all the applications except IAs Nos. 57 and 59

g For disposal of all the applications that are listed before us today, we need the assistance of Mr A.D.N. Rao, learned Amicus Curiae, in preparing a tabular form, inter alia indicating the number of application(s), the nature of relief(s) sought in the application(s) and the remarks of the Central Empowered Committee (for short “the Committee”), if any, on those reliefs. Since there are a large number of applications pending before us for urgent orders, we request the Committee to devote its time and prepare the tabular form as desired by us and submit the same before us within three weeks’ time from today. After preparing the said table, Shri Rao, learned Amicus Curiae would supply a copy of the same to all the learned counsel, who have filed the applications before this Court. List the matter on 5-11-2015.”

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<sup>13</sup> (2016) 11 SCC 455

24. No challenges or submissions were made on Topics VIII, IX and X and therefore we accept the report of CEC on these topics.

25. At this stage, we may mention some rather frightening figures mentioned by CEC in its final report. According to CEC, excess mining without environmental clearance or beyond what was authorised by the environmental clearance is 2130.988 lakhs MT of iron ore and 24.129 lakhs MT of manganese ore making a total of 2155.117 lakhs MT of iron and manganese ore. This does not include extraction of ore without forest clearance. These figures give an indication of the extent of excess or illegal or unlawful mining carried out.

26. In terms of rupees, according to CEC the total notional value of minerals produced without an environmental clearance or in excess of the environmental clearance, at the weighted average price of minerals as proposed by the Indian Bureau of Mines comes to about Rs 17,091.24 crores for iron ore and about Rs 484.92 crores for manganese ore making a total of Rs 17,576.16 crores. Again, this does not include mining without forest clearance. It is for this reason that we have referred to the megabucks and rapacious mining.

***Justice M.B. Shah Commission of Inquiry***

27. Apparently, and it appears quite independently of all these developments, the Central Government issued a Notification on 22-11-2010 under the Commissions of Inquiry Act, 1952 whereby it appointed Justice M.B. Shah, a retired judge of this Court to conduct an inquiry on the following Terms of Reference:

“2. (i) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;

(ii) to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;

(iii) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the person responsible for such tampering; and

(iv) to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and the State Governments.

3. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority.”

**28.** In the Preamble to the notification appointing the Commission, it was noted that there were reports that mining, raising, transportation and export of iron ore and manganese ore illegally or without lawful authority was being carried on in various States in one or more of the following forms:

- a “(a) mining without a licence;
- (b) mining outside the lease area;
- (c) undertaking mining in a lease area without taking approval of the State Government concerned for transfer of concession;
- b (d) raising of minerals without lawful authority;
- (e) raising of minerals without paying royalty in accordance with the quantities and grade;
- (f) mining in contravention of a mining plan;
- (g) transportation of raised mineral without lawful authority;
- c (h) mining and transportation of raised mineral in contravention of applicable Central and State Acts and Rules thereunder;
- (i) conducting of multiple trade transactions to obfuscate the origin and source of minerals in order to facilitate their disposal;
- (j) tampering with land records and obliteration of inter-State boundaries with a view to conceal mining outside lease areas;
- d (k) forging or misusing valid transportation permits and using forged transport permits and other documents to raise, transport, trade and export minerals;”

It is in the above context that the Terms of Reference were framed.

**29.** On 1-7-2013 the Commission gave the First Report on Illegal Mining of Iron and Manganese Ores in the State of Odisha. The report contains an executive summary and very briefly the Commission stated that:

- e (i) All modes of illegal mining, as stated in the Notification dated 22-11-2010 of the Central Government are being committed in the State of Odisha;
- f (ii) There is a complete disregard and contempt for law and lawful authorities on the part of many of the emerging breed of entrepreneurs;
- (iii) It appears that the law has been made helpless because of its systematic non-implementation. The executive summary states that the following are discussed in the report:

g “(A) Information regarding mining leases should be placed on website to make mining operations more transparent and to display the information for each lease on the departmental/State website with various conditions which are required to be adhered to by the lessee.

h (B) Misuse of Rule 24-A(6) of the MCR, 1960 [Mineral Concession Rules, 1960] which provides for deemed extension of lease. Application for renewal of mining lease is not decided for one or other pretexts, may be, there is lack of coordination among various departments which are required to decide renewal application. There is gross misuse of deemed refusal and deemed extension of both the

provisions of renewal of leases (before 27-9-1994 and after) under Rule 24-A of the MCR, 1960. This casual and negative approach has caused dearly to the State exchequer in the form of hundred crores of stamp duty and others.

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(C) Violation of the provisions of the Forest (Conservation) Act, 1980, Rules and guidelines and directions issued by the Hon'ble Supreme Court of India.

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(D) Violation of the provisions of the Environment (Protection) Act, 1986.

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(E) Misuse of Rules 10 and 12 of the MCDR, 1988 [Mineral Conservation and Development Rules, 1988] which provides for modification and review of mining plan only for a specific purpose, namely,

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- (i) safe and scientific mining;
- (ii) conservation of minerals;
- (iii) the protection of environment; and
- (iv) in case of modification, explanation for the same.

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(F) *Encroachment*:

On the basis of Google Image, the survey report prepared by the State Government by DGPS method, it was found that in 82 mining leases, there was encroachment. Out of the said leases, re-survey was ordered for 37 leases.”

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30. Soon thereafter, the Commission gave its Second Report on Illegal Mining of Iron and Manganese Ores in the State of Odisha, sometime in October 2013. This report dealt with specific leaseholders and violations committed by them. It is not necessary for us to delve into those specific details.

31. It was submitted before us by the learned counsel for the mining leaseholders that the reports given by the Commission were not acceptable on the ground that a notice had not been given to the leaseholders under Section 8-B or Section 8-C of the Commissions of Inquiry Act, 1952. It was submitted that under these circumstances the reports given by the Commission were vitiated and therefore the foundation of the writ petition filed by Common Cause was taken away. We are not in agreement with the learned counsel for the mining leaseholders.

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32. The First Report given by the Commission was a general, overall perspective on the subject while the Second Report went into specific details of several mining leaseholders — but we are not concerned with those specifics. Therefore, whether notices were or were not issued to the leaseholders who were the subject-matter of discussion in the Second Report is of no consequence.

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**33.** What we are really perturbed about is the facts stated by the Commission in the First Report. So far as this is concerned, we are of the view that no irregularity or illegality has been committed so as to vitiate the First Report. Notwithstanding this, we are not relying upon any of the facts determined by the Commission for the purposes of our judgment and order.

**34.** The procedure followed by the Commission has been mentioned in Volume I Part II of the First Report, but it is not necessary for us to recount each and every detail. Suffice it to say that a resume of the procedure followed will indicate that full opportunity was given to the leaseholders to have their say.

*Resume of the procedure followed by the Commission*

**35.** In March 2011 the Commission sent the first questionnaire to the Secretary concerned of the Government of Odisha seeking the following information regarding each leaseholder:

- c*           “(i) the name of the lessee;  
              (ii) area of the lease;  
              (iii) date of the execution of the lease deed;  
              (iv) present status (renewal, mining plan, mining scheme) approval date;
- d*           (v) production and export particulars from the year 2008-09 up to January 2011; etc.”

**36.** On 20-4-2011 the Commission sent the second questionnaire to the said Secretary concerned seeking further information in a form consisting of 14 questions and 4 tables.

**37.** Thereafter, between 24-8-2011 and 26-8-2011 the Commission issued the first notice to various mining lessees in Odisha seeking information on affidavit as per Pro formas A and B enclosed with the notice. In Pro forma A the leaseholder was asked to submit details which included the details of environmental clearance, forest clearance and renewal of lease and whether the leased mine was in operation or not. In Pro forma B the leaseholder was asked to submit details which included the details of dispatch, domestic consumption and export in million tonnes of iron ore and manganese ore from 2006-07 to 2010-11.

**38.** The Commission visited Odisha from 7-12-2011 to 14-12-2011, from 3-10-2012 to 11-10-2012 and from 31-10-2010 to 8-11-2012. The purpose of the visits was to collect information and seek explanations and gather facts from the Departments concerned of the Government of India and the Government of Odisha. During the visits, the Commission received as many as 140 complaints alleging illegal mining. Accordingly, a public hearing was held in Keonjhar and Bhubaneswar on 11-12-2011 and 12-12-2011.

**39.** On 21-12-2012 and 12-1-2013 several Senior Counsel were given a personal hearing by the Commission including a personal hearing to the Federation of Indian Mining Industries (for short “FIMI”). Following the submissions made, a fresh notice was issued to the leaseholders from 28-1-2013

seeking information in Pro formas A to H. In terms of the fresh notice, the leaseholder was required to verify the facts stated therein (which were collected by the Commission) and if found incorrect then to state the correct facts. The fresh notice specifically mentioned that:

“(i) The lessee shall come fully prepared to answer, related to this matter and submit all related records.

(ii) Explain the production from the leased area without having approval under the FC Act, 1980.

(iii) Explain the production during the deemed extension period without having approval under EIA Notification dated 27-1-1994 and amendments thereon.

(iv) Explain the excess production in violation of EIA Notification dated 27-1-1994 and amendments thereon under the EP Act, 1986.”

**40.** The report mentions the various dates of hearing given to the learned counsel for the leaseholders, the State of Odisha, FIMI, Federation of Indian Chambers of Commerce and Industry (FICCI) and the Ministry of Environment and Forests of the Government of India (for short “MoEF”) which are as follows:

<i>“Hearing No.</i>	<i>Date</i>	<i>Place</i>
1.	21-12-2012	Office of the Commission, Ahmedabad.
2.	12-1-2013	—do—
3.	18-2-2013	—do—
4.	27-2-2013	Circuit House, Bhubaneswar (Odisha).
5.	28-2-2013	—do—
6.	1-3-2013	—do—
7.	2-3-2013	—do—
8.	4-3-2013	—do—
9.	16-3-2013	Circuit House, Annexe, Ahmedabad.
10.	20-3-2013	—do—
11.	23-3-2013	Office of the Commission, Ahmedabad.
12.	2-4-2013	Circuit House, Annexe, Ahmedabad.
13.	3-4-2013	—do—
14.	4-4-2013	—do—
15.	12-4-2013	Office of the Commission, Ahmedabad.
16.	13-4-2013	—do—
17.	21-4-2013	Gujarat University Convention Centre, Nr. Helmet Cross Road, 132 ft. Ring Road, Ahmedabad.
18.	24-5-2013	Office of the Commission, Ahmedabad.
19.	25-5-2013	—do—”

**41.** The number of learned counsel and representatives who were heard by the Commission and with whom interactions took place are mentioned in Annexure A to Vol. I of the First Report. The list of learned counsel runs into 18 pp. — from p. 33 to p. 50 of Vol. I of the First Report. Some individual lawyers

appeared for several leaseholders but the fact of the matter is that everybody who wanted to be heard was given a hearing.

- a **42.** The function of the Commission as stated in the First Report, at the present stage, is best described in the words of the Commission itself. It is stated as follows:

b “9. The function of the Commission, at this stage, is only to inquire, assess the data collected and to submit the report on the said basis. On that basis, some remedial measures are suggested by the Commission for controlling illegal mining and violation of the Acts and/or Rules. For that, there is no question of issuing notices to the lessees.

c For collecting the data and assessing it, the principles of natural justice are fully complied with, as stated above. On the basis of the data submitted by the lessees and the submissions made by the learned counsel for them, the report is submitted.”

d It is further clarified on p. 198 of Vol. I of the First Report that with regard to individual mining leases in which there is a violation of the provisions of the Forest (Conservation) Act, 1980 and/or conditions of environmental clearance, etc. a report would be submitted later on.

- e **43.** It is therefore abundantly clear that the First Report is generally a limited fact-finding enquiry on the basis of information supplied by the mining leaseholders. Therefore, there is absolutely no question of any notice being issued to any mining leaseholder under Section 8-B or the right of cross-examination being granted to any mining leaseholder under Section 8-C of the Commissions of Inquiry Act, 1952. We are satisfied that the Commission made adequate efforts to collect the facts and this collation in the First Report was possible with the assistance of the mining leaseholders and their learned counsel and representatives as well as the government authorities and FIMI and FICCI. Under these circumstances, no leaseholder can seriously contend that the procedure adopted by the Commission in collecting facts was either irregular or not in accordance with law. As mentioned above, any mining leaseholder who wanted to be heard was given an opportunity of being heard and was fully aware of what the Commission was attempting to achieve and if any particular mining leaseholder chose not to associate with it, it was at his or her own peril. Lack of knowledge of the proceedings before the Commission cannot be appreciated and we are quite satisfied that all the mining leaseholders were fully aware of what was going on, if not personally then certainly through their list of learned counsel running into 18 pages or their representatives individually or their Federation.

g **44.** In *Goa Foundation*<sup>10</sup> there was a challenge to the report of the Justice Shah Commission in respect of its conclusions pertaining to the State of Goa. This was dealt with by this Court in paras 11 to 14 of its decision. This Court declined to quash the report in view of the statement made by the learned

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<sup>10</sup> *Goa Foundation v. Union of India*, (2014) 6 SCC 590

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Advocate General of Goa. But, this Court took the view that: (SCC p. 601, para 14)

“14. ... We will, however, examine the legal and environmental issues raised in the Report of the Justice Shah Commission and on the basis of our findings on these issues consider granting the reliefs prayed for in the writ petition filed by Goa Foundation and the reliefs prayed for in the writ petitions filed by the mining lessees, which have been transferred to this Court.”

45. In the present petitions before us, there is no challenge to the reports of the Justice Shah Commission. However, we propose (as in *Goa Foundation*<sup>10</sup>) to confine ourselves to some limited facts adverted to by CEC in its final report. We do not propose to base any of our conclusions on the reports of the Commission.

46. The learned counsel for the petitioners insisted that the illegal or unlawful mining activity carried on in the State of Odisha as noted by the Commission deserves to be investigated by the Central Bureau of Investigation. Reference in this regard was made to the passage in Part III of Vol. I of the First Report of the Commission to the following effect:

“Since this is one of the biggest illegal mining ever observed by the Commission, it is strongly felt that this is a fit case to handover to Central Bureau of Investigation, for further investigation and follow-up action.”

47. Similarly, on p. 125 of Chapter II of Vol. I of the Report, it is stated as follows:

“8. Terms of Reference No. 8 provides that ‘The Commission may take the services of any investigating agency of the Central Government in order to effectively address its terms of reference.’

The Commission, therefore, suggests that Central Bureau of Investigation (CBI) may be directed to investigate into allegations of corruption made against politicians, bureaucrats and others.”

We will consider this at the appropriate stage.

48. Suffice it to say for the time being that the Commission made certain significant observations in Chapter II of the Report to the effect that:

(a) That the tribals in the area have been displaced or stay in pathetic and miserable conditions in same area. There is rampant air pollution with the trees having the colour of minerals making it clear that tribals are forced to breathe polluted air and drink polluted water.

(b) Streams and ground water is polluted and there is hardly any facility of drinking water. Women have been seen fetching water from dirty nalas.

(c) Mining companies and beneficiation plants are drawing water from rivers and nearby water resources are getting depleted at a fast rate. River Baitrani has been seriously affected by this activity.

10 *Goa Foundation v. Union of India*, (2014) 6 SCC 590

a (d) Basic facilities such as medical facilities, shelter/residence, education facilities are absent. Roads have a heavy flow of traffic and on one road of the area about 7000 trucks passed during night time.

(e) The labour is not being paid adequate wages beyond the minimum wages even though the income of the mine owners runs into billions of rupees.

b 49. Adverting to corruption in the area due to illegal mining activities, the Commission felt that the Vigilance Commission was unlikely to conduct an impartial and independent enquiry for arriving at just and proper findings because of external pressures. Accordingly, it would be more appropriate if the Central Bureau of Investigation (CBI) conducts a detailed enquiry into all cases that have been registered between 2008 and 2011. It was also noted that the Railways have issued demand notices to the extent of Rs 1874 crores. The latest position with regard to these notices is not available.

c 50. It was also noted that notices have been issued in 146 cases to various leaseholders for recovery of mined ore as per Section 21(5) of the MMDR Act. In the Koira circle, notices have been issued to 55 lessees for more than Rs 13,000 crores; in Joda circle, notices have been issued to 72 lessees for recovery of more than Rs 44,000 crores; in Keonjhar circle, notices have been issued to 4 lessees for recovery of about Rs 1065 crores; in Koraput circle, notices have been issued to three lessees for the recovery of about Rs 44 lakhs; and in Bolangir circle, notice has been issued to 1 lessee for the recovery of about Rs 29.5 crores. In Baripada circle, notices have been issued to 11 lessees for recovery of more than Rs 467 crores. In other words notices have been issued to the lessees for recovery of more than Rs 59,000 crores! (According to CEC the figure exceeds Rs 61,000 crores)!!

e 51. We have adverted to the reports of the Commission, without relying on them, only to highlight the gravity of the situation and nothing more. The gravity of the situation is also apparent from the report of CEC and the Commission seems to support it.

***Initial contention***

f 52. The initial contention urged on behalf of the respondent leaseholders was that in giving the Report dated 16-10-2014 CEC has exceeded its remit. In this context, reference was made to the order of 13-1-2014<sup>7</sup> in which it is stated that “The Report will not cover cases other than forest and environmental issues”.

g 53. We are of the opinion that this objection deserves immediate rejection. The subsequent orders passed by this Court have been completely overlooked by the learned counsel inasmuch as on 21-4-2014<sup>8</sup> it was specifically noted by this Court that “CEC, in the meanwhile, will make out a list of such lessees who are operating the leases in violation of the law”. Similarly, in the

h <sup>7</sup> *T.N. Godavarman Thirumulpad v. Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

<sup>8</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 14 SCC 160

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record of proceedings of 16-5-2014 it was noted that “The Central Empowered Committee will give a final report on the writ petition by the end of July 2014. ...”

**54.** From a reading of the orders and the proceedings that have been held in this regard from time to time, it is quite obvious to us that the jurisdiction of CEC was not limited and it was expected to give a detailed report on all aspects of illegal mining or mining being carried out without any lawful authority in whatever manner. The initial objection raised on behalf of the leaseholders is therefore rejected.

***Central Empowered Committee***

**55.** The Central Empowered Committee or CEC was first constituted by this Court by an order dated 9-5-2002 [*T.N. Godavarman Thirumulpad (50) v. Union of India*<sup>14</sup>] as an interim body. Thereafter, it was constituted by a Notification dated 17-9-2002 issued under Section 3(3) of the Environment (Protection) Act, 1986 (for short “the EPA”). It has continued functioning and assisting this Court for more than a decade and even though it has been criticised on a couple of occasions, it is now an established body which renders extremely valuable advice to this Court and provides factual material on the basis of which this Court can make some recommendations and pass appropriate orders.<sup>14, 15</sup>

**56.** The details of the functioning of CEC have been discussed by this Court in *Samaj Parivartana Samudaya v. State of Karnataka*<sup>16</sup>. In that decision, questions were raised about the credibility of CEC and while rejecting the submissions, it was made clear that the recommendations made by CEC are subject to the satisfaction of this Court. We need say nothing more except that during the course of hearing of the present petitions, some of the conclusions arrived at by CEC were disputed by the petitioners and even by the learned Amicus and some were supported by the learned counsel for the mining leaseholders, the learned Attorney General and the learned counsel for the State of Odisha. It is therefore quite clear that in the present cases, CEC as a fact-finding body has functioned impartially and it is only on the conclusions arrived at by CEC on the basis of the facts gathered that there can be some debate and discussion. Anyone may disagree with the views of CEC and there is no need to make heavy weather about this at all.

**57.** Insofar as the Report given by CEC on 16-10-2014 (the final report) is concerned, before going into the details thereof, we may mention that CEC has stated that it held meetings with the Chief Secretary and other senior officials of the State of Odisha and others on six dates. It also heard the leaseholders and others on seven dates and it held meetings with three of the leaseholders, that is, Jindal Steel and Power Ltd. (JSPL), Sarda Mines Pvt. Ltd. (SMPL) and Essel Mining and Industries Ltd. (Essel) on 10-9-2014. CEC visited the site of the mining lease of SMPL from 4-3-2014 to 7-3-2014 and had site visits of a number of other lessees from 12-7-2014 to 16-7-2014.

<sup>14</sup> (2013) 8 SCC 198

<sup>15</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (2013) 8 SCC 204

<sup>16</sup> (2013) 8 SCC 154

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**58.** As far as the facts collected by CEC are concerned, there is no dispute with regard to their correctness. CEC has recorded that there are 187 iron ore and manganese ore mining leases in the State of Odisha. On the basis of the material and information collected, a statement was prepared showing leasewise and yearwise details of production of iron ore and manganese ore, permissible production and production without environmental clearance/beyond environmental clearance. The details in this regard have been given as Annexure R-14 to the final report.

**59.** Regarding the correctness of the information, CEC has this to say:

“24. A copy of the abovesaid statement prepared by CEC was made available, through the Director, Mines and Geology, Government of Odisha and also through the Federation of Indian Mining Industries (FIMI), to the lessees of each of the mining leases to enable them to verify the production and other details as given in the statement. During the hearings held before CEC between 5-8-2014 and 12-8-2014 and also in the representations filed before CEC a large number of lessees stated that the yearwise production details are not correctly reflected in the statement. Some of them also stated that the environmental clearance details are not properly reflected in the statement. Therefore, it was decided that (a) the State Government will reconcile the annual production and other details with the respective lessees, and (b) the copies of the environmental clearances may also be filed before CEC by those lessees who are disputing the environmental clearances details provided by the State. Accordingly a meeting was convened by the Director, Mines & Geology (DMG) with the lessees on 14-8-2014 and during which the annual production and other details were reconciled. The reconciled leasewise and yearwise production and other details provided to CEC by the State of Odisha may be seen in the statement enclosed at Annexure R-11 to this Report. The figures modified in the said statement, after reconciliations, are shown in bold print.”

**60.** CEC noted that the Director, Mines and Geology of the Government of Odisha had informed CEC that each leaseholder with the exception of SMPL and JSPL agreed with the reconciled production details. On facts, therefore, there is no dispute with regard to the contents of the report of CEC, although the conclusions might be disputed. Separately, CEC has dealt with the facts concerning SMPL and JSPL pursuant to a meeting held with them on 11-9-2014.

***Statutory provisions***

**61.** The grant of a mining lease is governed by the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (or the MMDR Act), the Mineral Concession Rules, 1960 (or the MCR) and the Mineral Conservation and Development Rules, 1988 (or the MCDR).

**62.** Section 4(1) of the MMDR Act provides that no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the

Rules made thereunder. A “mining operation” is defined in Section 3(d) of the MMDR Act as meaning any operation undertaken for the purpose of winning any mineral. Section 4(2) of the MMDR Act provides that no mining lease shall be granted otherwise than in accordance with the provisions of the said Act and the Rules made thereunder. a

**63.** Section 5(2) of the MMDR Act provides for certain restrictions on the grant of a mining lease. It provides that the State Government shall not grant a mining lease unless it is satisfied that the applicant has a mining plan duly approved by the Central Government or the State Government in respect of the mine concerned and for the development of mineral deposits in the area concerned. b

**64.** Section 10 of the MMDR Act provides for the procedure for obtaining a mining lease and sub-section (1) thereof provides that an application is required to be made for a mining lease in respect of any land in which the mineral vests in the Government and the application shall be made to the State Government in the prescribed form and along with the prescribed fee. c

**65.** Section 12 of the MMDR Act requires the State Government to maintain a set of registers. Among the registers that the State Government is required to maintain are a register of applications for mining leases and a register of mining leases. Every such register shall be open to inspection by any person on payment of such fee as the State Government may fix. d

**66.** Section 13 of the MMDR Act provides for the rule-making power of the Central Government in respect of minerals. The MCR are framed in exercise of power conferred by Section 13 of the MMDR Act.

**67.** Section 18 of the MMDR Act makes it the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution which may be caused by mining operations. The MCDR are framed in exercise of power conferred by Section 18 of the MMDR Act. e

**68.** The distinction between the MCR and the MCDR is that the MCR deal, inter alia, with the grant of a mining lease and not commencement of mining operations. However, the MCDR deal, inter alia, with the commencement of mining operations and protection of the environment by preventing and controlling pollution which might be caused by mining operations. f

**69.** Section 21 of the MMDR Act deals with penalties and sub-section (1) thereof provides that whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to Rs 25,000 or with both. Sub-section (5) of Section 21 of the MMDR Act provides that whenever any person raises without any lawful authority, any mineral from any land, the State Government may recover from such person the minerals so raised or where such mineral has been disposed of the price thereof. In addition thereto the State Government may also recover from such person rent, royalty g  
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or tax, as the case may be for the period during which the land was occupied by such person without any lawful authority.

*a* **Mineral Concession Rules, 1960**

*b* **70.** As far as the MCR are concerned, Rule 22 is of some importance and this provides for an application to be made for the grant of a mining lease in respect of land in which the mineral vests in the Government. An application for the grant of a mining lease is required to be made by an applicant to the State Government in Form I to the MCR. Sub-rule (5) of Rule 22 deals with a mining plan and it requires that a mining plan shall incorporate, amongst other things, a tentative scheme of mining and annual programme and plan for excavation for year-to-year for five years.

*c* **71.** Rule 22-A of the MCR makes it clear that mining operations shall be undertaken only in accordance with the duly approved mining plan. Therefore, a mining plan is of considerable importance for a mining leaseholder and is in essence sacrosanct. A mining scheme and a mining plan are a sine qua non for the grant of a mining lease.

**72.** Rule 27 of the MCR deals with the conditions that every mining lease is subject to. One of the conditions is that the lessee shall comply with the MCDR.

*d* **73.** The format of a mining lease is given in Form K to the MCR and this is relatable to Rule 31 of the MCR which provides that on an application for the grant of a mining lease, if an order has been made for the grant of such lease, a lease deed in Form K or in a form as near thereto as circumstances of each case may require, shall be executed within six weeks of the order, or within such extended period as the State Government may allow.

*e* **74.** Part VII of Form K deals with the covenants of the lessee/lessees. Clause 10 thereof requires the lessee to keep records and accounts regarding production and employees, etc. The lessee is required, inter alia, to maintain a record of the quantity and quality of the mineral released from the leased land, the prices and all other particulars of all sales of the mineral and such other facts, particulars and circumstances, as the Central Government or the State Government may require.

*f* **75.** Clause 11-C is of some importance and it requires that the lessee shall take measures for the protection of the environment like planting of trees, reclamation of land, use of pollution control devices and such other measures as may be prescribed by the Central Government or the State Government from time to time at the expense of the lessee.

*g* **76.** Rule 37 of the MCR deals with the transfer of a lease and provides, inter alia, that a mining lessee shall not without the previous consent in writing of the State Government or the Central Government, as the case may be, assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein. The lessee shall not enter into or make any bona fide arrangement, contract or understanding whereby the lessee will or may directly or indirectly be financed to a substantial extent in respect of its operations or undertakings or be substantially controlled by any person or body of persons.

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Sub-rule (3) of Rule 37 of the MCR enables a State Government to determine any lease if the mining lessee has committed a breach of Rule 37 of the MCR or has transferred any lease or any right, title or interest therein otherwise than in accordance with sub-rule (2) of Rule 37 of the MCR.

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***Mineral Conservation and Development Rules, 1988***

77. The MCDR promulgated under Section 18 of the MMDR Act and referred to in Rule 27 of the MCR are also of some significance. Rule 9 of the MCDR prescribes that no person shall commence mining operations in any area except in accordance with a mining plan approved under Clause (b) of sub-section (2) of Section 5 of the MMDR Act.

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78. The mining plan may be modified in terms of Rule 10 of the MCDR in the interest of safe and scientific mining, conservation of minerals or for protection of the environment. However, the application for modifications shall set forth the intended modifications and explain the reasons for such modifications. The mining plan cannot be modified just for the asking.

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79. Rule 13 of the MCDR provides that mining operations are required to be carried out by every holder of a mining lease in accordance with the approved mining plan. If the mining operations are not so carried out, the mining operations may be suspended by the Regional Controller of Mines in the Indian Bureau of Mines or another authorised officer.

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80. From our point of view, Chapter V of the MCDR dealing with "Environment" is of significance. In this Chapter, Rule 31 of the MCDR provides that every holder of a mining lease shall take all possible precautions for the protection of the environment and control of pollution while conducting any mining operations in the area.

81. Rule 37 of the MCDR requires certain precautions to be taken against air pollution and obliges the mining leaseholder to keep air pollution under control and within permissible limits specified under various environmental laws including the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

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82. Rule 38 of the MCDR requires the holder of a mining lease to take all possible precautions to prevent or reduce the passage of toxic and objectionable liquid effluents from the mine into surface water bodies, ground water aquifer and usable lands to a minimum. It also mandates effluents to be suitably treated, if required, to conform to the standards laid down in this regard. In other words, the provisions of the Water (Prevention and Control of Pollution) Act, 1974 are required to be adhered to by the mining leaseholder.

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83. Rule 41 of the MCDR requires every holder of a mining lease to carry out mining operations in such a manner as to cause least damage to the flora of the area and the nearby areas. Every holder of a mining lease is required to take immediate measures for planting not less than twice the number of trees destroyed by reason of any mining operations and to look after them during the subsistence of the lease after which these trees shall be handed over to the State Forest Department or any other appropriate authority. The holder of a mining

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lease is also required to restore, to the extent possible, other flora destroyed by the mining operations.

- a* **84.** Briefly therefore, the overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980 (for short “the FC Act”). Exploitation of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMDR Act which provides for the termination of a mining lease is applicable. This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc. then the Central Government may request the State Government to prematurely terminate a mining lease.

*d* ***Environment Impact Assessment Notification of 27-1-1994***

**85.** As can be seen from the statutory scheme adverted to above, protection and preservation of the environment is a significant and integral component of a mining plan, a mining lease and mining operations — and rightly so.

- e* **86.** Keeping this in mind, an Environment Impact Assessment Notification dated 27-1-1994 was issued by the Central Government in exercise of powers conferred by Section 3(1) and Section 3(2)(v) of the EPA read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986. The Environment Impact Assessment Notification dated 27-1-1994 (for short “EIA 1994”) is a prohibitory notification and directs that on and from the date of its publication in the Official Gazette:

- f* (i) expansion or modernisation of any activity (if pollution load is to exceed the existing one); and  
(ii) a new project listed in Schedule I to the notification;

shall not be undertaken unless it has been accorded environmental clearance (for short EC) by the Central Government in accordance with the procedure specified in the Notification.

- g* **87.** The Notification provides, among other things, that in case of mining operations, site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years from commencing mining operations. What this means is that on receipt of an EC a mining leaseholder can extract a mineral only from a specified site, up to the sanctioned capacity and only for a period of five years from the date of the grant of an EC. This is regardless of the quantum of extraction permissible in the mining plan or the mining lease and regardless
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of the duration of the mining lease. Consequently, a mining leaseholder would necessarily have to obtain a fresh EC every five years and can also apply for an increase in the sanctioned capacity. There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted. Thus, the EC takes precedence over the mining lease or to put it conversely, the mining operations under a mining lease are dependent on and “subordinate” to the EC.

**88.** On 4-5-1994 an Explanatory Note was added to EIA 1994. We are concerned with the 1st Note which deals with the expansion and modernisation of existing projects. This reads as follows:

**“1. Expansion and modernisation of existing projects.**—A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the existing levels. The words “pollution load” will in this context cover emissions, liquid effluents and solid or semi-solid wastes generated. A project proponent may approach the State Pollution Control Board (SPCB) concerned for certifying whether the proposed modernisation/expansion activity as listed in Schedule I to the notification is likely to exceed the existing pollution load or not. If it is certified that no increase is likely to occur in the existing pollution load due to the proposed expansion or modernisation, the project proponent will not be required to seek environmental clearance, but a copy of such certificate issued by the SPCB will have to be submitted to the Impact Assessment Agency (IAA) for information. The IAA will however, reserve the right to review such cases in the public interest if material facts justifying the need for such review come to light.”

**89.** The Note is significant and from its bare reading it is clear that if any proposed expansion or modernisation activity results in an increase in the pollution load, then a prior EC is required. The project proponent should approach the State Pollution Control Board concerned (for short “SPCB”) for certifying whether the proposed expansion or modernisation is likely to exceed the existing pollution load or not. If the pollution load is not likely to be exceeded, the project proponent will not be required to seek an EC but a copy of such a certificate from SPCB will require to be submitted to the Impact Assessment Agency which can review the certificate.

**90.** What is the requirement, if any, under EIA 1994 with regard to an existing mining lease where there is no proposal for expansion or modernisation? Does such a mining leaseholder require an EC to continue mining operations? This is answered in the 8th Note which is also of some importance and this reads as follows:

**“8. Exemption for projects already initiated.**—For projects listed in Schedule I to the notification in respect of which required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Boards have been obtained before 27-1-1994, a project proponent will not be required to seek environmental clearance from the IAA. However those units who have not as yet commenced production will inform the IAA.”

**91.** The above Note makes it clear that existing mining projects that have a no-objection certificate from SPCB before 27-1-1994 will not be required to obtain an EC from the Impact Assessment Agency. Of course, this is subject to the substantive portion of EIA 1994 and the 1st Note. However, if the existing mining project does not have a no-objection certificate from SPCB, then an EC will be required under EIA 1994.

**92.** Two questions immediately arise from a reading of the 1st and the 8th Note. The first question is: What is the base year for considering the pollution load while proposing any expansion activity? The second question is: What is the duration for which an EC is not necessary for an ongoing project which does not propose any expansion, or to put it differently, what is the validity period for a no-objection certificate from SPCB?

**93.** In our opinion, as far as the first question is concerned, a reading of EIA 1994 read with the 1st Note implies that the base year would need to be the immediately preceding year, that is, 1993-94. This is obvious from the opening sentence of the 1st Note, that is,

“A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the *existing levels*.” (emphasis supplied)

In its report, CEC has taken 1993-94 as the base year and we see no error in this. Even the MoEF in its Circular dated 28-10-2004 stated with regard to the expansion in production:

“If the annual production of any year from 1994-95 onwards exceeds the annual production of 1993-94 or its preceding years (even if approved by IBM), it would constitute expansion.”

If that expansion results in an increase in the pollution load over the existing levels, then an EC is mandated.

**94.** It was contended on behalf of the mining leaseholders that in terms of the Circular of 28-10-2004 the annual production even prior to 1993-94 could be considered for ascertaining if there was an expansion or not. We cannot accept this submission for a variety of reasons. For one, the *existing levels* mentioned in the 1st Note clearly have reference to the immediately preceding year and not to a preceding year in a comparatively remote past. Secondly, a very high annual production in any one year is not reflective of a consistent pattern of production — it could very well be a freak year and that freak year certainly cannot be a basic standard or the norm to measure expansion. Then if the interpretation sought to be given is accepted, there would be an absence of consistency and a lack of uniformity with different mining leaseholders having different base years. This is hardly conducive to good governance. Finally, EIA 1994 was intended to prevent the existing environmental load from increasing based on the existing data of the immediate past and not data of a few years gone by. We may add that the only exception that could be made in this regard would be if there is no production during 1993-94. In that event, the immediately

preceding year would be relevant and that is the only reasonable interpretation that we see for the use of the words “or its preceding years”.

**95.** On the question of the duration or exemption period from an EC in respect of a project that has commenced prior to 27-1-1994 the substantive portion of EIA 1994 and the 8th Note grant an exemption from the requirement of obtaining an EC if there is no expansion and the existing pollution load is not exceeded. In any event, a no-objection certificate from SPCB is necessary for continuing the mining operations. Consequently, even if any mining leaseholder does not have an EC or does not require an EC for continuing mining operations (but has a no-objection certificate from SPCB), the absence of an EC would not have an adverse impact on the mining leaseholder unless of course, there was an expansion in the mining operations without any certificate from SPCB. In addition to this, the validity period (if any) of the certificate from SPCB is important — we have not been made aware whether there is such a validity period or not.

**96.** The contention of the learned counsel for the mining leaseholders that EIA 1994 was rather vague, uncertain and ambiguous cannot be accepted. In our opinion, on a composite reading of EIA 1994, it is clear that:

(i) A no-objection certificate from SPCB was necessary for continuing mining operations;

(ii) An expansion or modernisation activity required an EC unless the pollution load was not exceeded beyond the existing levels;

(iii) The base year for determining the pollution load and therefore the proposed expansion would be with reference to 1993-94;

(iv) Whether an expansion or modernisation would lead to exceeding the existing pollution load or not would require a certificate from SPCB which could be reviewed by the IAA;

(v) New projects require an EC; and

(vi) Existing projects do not require an EC unless there is an expansion or modernisation for the duration (if any) of the validity of the certificate from SPCB.

We need not say anything more on this subject since CEC has proceeded to discuss the issue of mining in excess of the EC or in excess of the mining plan only from the year 2000-01 onwards. The prior period may, therefore, be ignored and it is the period from 2000-01 onwards which is actually relevant for the present discussion.

**97.** It was submitted by the learned counsel for the mining leaseholders that the MoEF had caused some confusion with regard to the requirement of an EC at the time of renewal of a mining lease. In this connection, reference was made to a Press Note of July 1994 and a Letter dated 19-6-1997 of the MoEF to the Chief Conservator of Forests in the MoEF.

**98.** The learned counsel for the mining leaseholders sought to buttress their submission that EIA 1994 was vague and ambiguous by mentioning two Circulars issued by the MoEF on 5-11-1998 and 27-12-2000 extending

a the period for obtaining an EC for new units. However, these circulars are apparently not on our record (which goes into 148 volumes) and therefore we cannot make any comment about them. These circulars were mentioned to also contend that even for new units the absence of an EC would not have an adverse impact on them, since the period for obtaining an EC was extended from time to time. A reference was also made to a Circular dated 14-5-2002 which later on became the subject of consideration by this Court in *M.C. Mehta v. Union of India*<sup>17</sup>. A reading of the Circular of 14-5-2002 indicates that several units had come up in violation of EIA 1994. The MoEF had taken the view that such units may be permitted to apply for an EC by 31-3-1999 which was then extended to 30-6-2001 by Circulars dated 5-11-1998 and 27-12-2000, respectively.

b **99.** By the Circular dated 14-5-2002 the deadline for applying for an EC was extended up to 31-3-2003 as a last and final opportunity to obtain an ex post facto EC in respect of units which had commenced mining operations without obtaining a prior EC in violation of EIA 1994. The Circular also stated that:

c “... Suitable directions shall be issued by all States/UTs under the Environment (Protection) Act to units to stop construction activities/operations of all such units that fail to apply for environmental clearance by 31-3-2003. Units which fail to comply with these directions shall be proceeded against forthwith under the relevant provisions of the Environment (Protection) Act, 1986 without making reference to this Ministry.”

d **100.** It was submitted that in view of these ambiguous and unclear signals emanating from the MoEF which resulted in confusion being worse confounded, the mining leaseholders were not clear whether or not they were required to obtain an EC particularly in respect of pre-EIA 1994 mining leases and operations.

e **101.** As mentioned above, these dates and the text of the circulars were emphasised by the learned counsel for the leaseholders to contend that it was not obligatory for the mining leaseholders, who did not expand their mining operations, to obtain an EC and in any event the period for obtaining an EC was extended till 31-3-2003 with ex post facto approval. In this context, reliance was placed on *M.C. Mehta*<sup>17</sup> referred to above.

f **102.** We are not in agreement with the contention of the learned counsel for the mining leaseholders on the interpretation given to the various circulars for the reasons given above and must also correctly appreciate the decision of this Court in *M.C. Mehta*<sup>17</sup>.

g **103.** In *M.C. Mehta*<sup>17</sup> the issue that arose for consideration was whether mining activity in the Aravalli Hills causes environmental degradation and what directions are required to be issued. While considering this issue, this Court also considered EIA 1994 and the Circular dated 14-5-2002. In doing so, this Court categorically held in para 37 of the Report that the intention of the MoEF was not to legalise the continuance of mining activity without complying with the requisite stipulations. If that were unfortunately so, then it would demonstrate

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a lack of sensitivity of the MoEF to the principles of sustainable development and the object behind issuing EIA 1994. This Court said: (SCC p. 161)

“37. ... It does not appear that MoEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification. In any case, a statutory notification cannot be notified [modified] by issue of circular. Further, if MoEF intended to apply this circular also to mining activity commenced and continued in violation of this notification, it would also show total non-sensitivity of MoEF to the principles of sustainable development and the object behind the issue of notification. The circular has no applicability to the mining activity.”

**104.** Adverting to the MMDR Act, this Court expressed the view in para 52 of the Report that the approval of a mining plan does not imply that a mining leaseholder can commence mining operations. The mining leaseholder is nevertheless obliged to comply with statutory provisions including the EPA and other laws. It was said: (*M.C. Mehta case*<sup>17</sup>, SCC p. 169)

“52. The grant of permission for mining and approving mining plans and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving mining plan and scheme by the Ministry of Mines, the Central Government is deemed to have approved mining and it can commence forthwith on such approval. ... A mining leaseholder is also required to comply with other statutory provisions such as the Environment (Protection) Act, 1986; the Air (Prevention and Control of Pollution) Act, 1981; the Water (Prevention and Control of Pollution) Act, 1974 and the Forest (Conservation) Act, 1980. Mere approval of the mining plan by the Government of India, Ministry of Mines would not absolve the leaseholder from complying with the other provisions.”

**105.** This Court also considered the question of the applicability of EIA 1994 to the renewal of an existing mining lease. It was held that the said notification would apply to the renewal of a mining lease that came up for consideration post 27-1-1994. In other words, for the renewal of a mining lease, an EC was required by the mining leaseholder. It was held in para 77 of the Report: (*M.C. Mehta case*<sup>17</sup>, SCC p. 180)

“77. We are unable to accept the contention that the notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage

<sup>17</sup> *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

a of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification.”

b **106.** It is clear from the decision rendered by this Court that EIA 1994 is mandatory in character; that it is applicable to all mining operations— expansion of production or even increase in lease area, modernisation of the extraction process, new mining projects and renewal of mining leases. A mining leaseholder is obliged to adhere to the terms and conditions of a mining lease and the applicable laws and the mere fact that a mining plan has been approved does not entitle a mining leaseholder to commence mining operations. In *M.C. Mehta*<sup>17</sup> this Court concluded that EIA 1994 is clearly applicable to the renewal of a mining lease.

c **107.** Subsequent to the decision in *M.C. Mehta*<sup>17</sup> two clarificatory Circulars were issued by MoEF on 28-10-2004 and 25-4-2005. These were adverted to by the learned counsel for the mining leaseholders but in our opinion they are not relevant except to the extent that they make it explicit that following the decision of this Court in *M.C. Mehta*<sup>17</sup>, an EC is required to be obtained before the renewal of a mining lease and that the term “expansion” would include an increase in production or the lease area or both.

d **108.** It was submitted on behalf of the mining leaseholders that the possibility of getting an ex post facto EC was a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. We do not agree. We have referred to various provisions of the MMDR Act and the Rules framed thereunder to indicate the statutory importance given to the protection and preservation of the environment. This was also emphasised in *M.C. Mehta*<sup>17</sup> in which it was also stated that: (SCC p. 161, para 37)

e “37. ... It does not appear that MoEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification.”

f It appears to us that the MoEF was, in a sense, cajoling the mining leaseholders to comply with the law and EIA 1994 rather than use the stick. That the mining leaseholders chose to misconstrue the soft implementation as a licence to not abide by the requirements of the law is unfortunate and was an act of omission or commission by them at their own peril. We cannot attribute insensitivity to the MoEF or even to the mining leaseholders to environment protection and preservation, but at the same time we cannot overlook the obligation of everyone to abide by the law. That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994.

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<sup>17</sup> *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

***Environment Impact Assessment Notification of 14-9-2006***

**109.** On 14-9-2006 another EIA Notification was issued by the MoEF. This notification (for short EIA 2006) required prior EC for projects or activities mentioned in the Schedule to it both for major as well as minor minerals if the leased area is 5 ha or more. We were informed that several mining leaseholders, in compliance with EIA 2006, applied for and were granted an EC. a

**110.** It was submitted by the learned counsel for the mining leaseholders that the confusion, vagueness and uncertainty caused by EIA 1994 and subsequent circulars and other communications did not end with the issuance of EIA 2006. Reference was made to a Circular dated 13-10-2006 which deals with interim operational guidelines till 13-9-2007 in respect of applications made under EIA 1994. We do not see the relevance of this circular (which really dealt with transitional issues) not only for the reason given in *M.C. Mehta*<sup>17</sup> that circulars cannot override statutory notifications but also because it deals with the procedure for considering applications made under EIA 1994. b

**111.** Reference was also made to a Circular dated 2-7-2007. The passage relied upon reads as follows: c

“It is clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and/or there is no enhancement of production. In the event of any increase in lease area and or production, such projects would need to obtain prior environmental clearance. Further, all such projects which have been operating without any environmental clearance would obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production.” d

**112.** The aforesaid Circular relates to three categories that is:

(i) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;

(ii) If there was an increase in the lease area or enhancement of production, an EC was required by the mining leaseholder; f

(iii) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production.

**113.** Reference was also made to an Office Memorandum dated 19-8-2010. However a reading of this document brings out that it basically relates to construction at site but makes it clear that no activity relating to any project covered under EIA 2006 including civil construction could be undertaken without obtaining a prior EC except fencing of the site to protect it from getting encroached and construction of temporary sheds for the guards. g

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<sup>17</sup> *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

**114.** Reference was also made to Office Memorandums dated 16-11-2010 and 12-12-2012 but having gone through them we find them of little relevance as they deal with procedural issues only.

**115.** All that we need to say on this subject is that there is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations were commenced on mining leases before 27-1-1994 (or even thereafter). Post EIA 2006, every mining leaseholder having a lease area of 5 ha or more and undertaking mining operations in respect of major minerals (with which we are concerned) was obliged to get an EC in terms of EIA 2006.

**116.** An attempt was then made by the learned counsel for the mining leaseholders to get out of the rigours of EIA 1994 and EIA 2006 by contending that some of them had modified the mining plan (with approval) and that therefore they had extracted iron ore or manganese ore, as the case may be, in terms of the mining plan but not necessarily in terms of the EC that had been obtained, if at all.

**117.** We have already held that a mining plan is subordinate to the EC and in *M.C. Mehta*<sup>17</sup> it was held by this Court that having an approved mining plan does not imply that a mining leaseholder can commence mining operations. That being so, a modified mining plan without a revised or amended EC, is of no consequence. What the contention of the learned counsel suggests to us is that under the shield of a modified mining plan, illegal or unlawful mining in the form of mining without an EC, mining by over-reaching EIA 1994 and EIA 2006 was being carried out.

**118.** The contention apart, the subterfuge of obtaining a modified mining plan to get over the adverse effects of excess and illegal or unlawful production of iron ore or manganese ore was deprecated by the Ministry of Mines of the Government of India. In a Letter dated 29-10-2010 addressed to the Controller General, Indian Bureau of Mines it was pointed out that the State Governments had expressed a concern that the Indian Bureau of Mines (IBM) had been modifying mining plans for allowing an increase in production of ore without adequate intimation to the State Governments. A concern was raised that such a revision was often being used to increase production of ore, which is sometimes not accounted for in mining operations in the mining lease concerned. It was made clear that all modifications of mining plans shall be effective prospectively only and earlier instances of irregular mining shall not be regularised through a modification of the mining plan.

**119.** In a subsequent Letter dated 12-12-2011 addressed to the Chief Secretary in the Government of Orissa the said Ministry of Mines noted that there were violations of the actual production limit laid down in the mining plan and that the State Government had finally taken steps to curb illegal mining in respect of overproduction of minerals. There was a reference to suggest (and we take it to be so) that 20% deviation from the mining plan (in terms of overproduction) would be reasonable and permissible. However, it appears from a reading of the communication that illegal mining was going on

<sup>17</sup> *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

beyond the 20% deviation limit and that appropriate steps were needed to curb these violations. The learned counsel for the petitioners submitted that such egregious violations must be firmly dealt with by cancellation or termination of the mining lease and a soft approach is not called for.

**120.** In this context, it is worth noting that a High Level Committee (called the Hoda Committee) on the National Mineral Policy noted in its Report dated 22-12-2006 in para 3.47 as follows:

“3.47 An EMP [Environment Management Plan] has to be prepared under the MCDR and got approved by IBM. However, this EMP is not acceptable to the MoEF. The miner has to prepare two EMPs separately—one for IBM and another for MoEF. The Committee suggests that IBM and MoEF should prepare guidelines for a composite EMP so that IBM can approve the same in consultation with MoEF’s field offices. This will eliminate anomalous situations where increase of even a few tonnes in production requires project authorities to get a fresh EMP approved from the MoEF although the IBM allows a grace of  $\pm 10\%$ , keeping in view the fluctuations in the market situation and process complexities. If a single EMP is accepted in principle such anomalies can be resolved in advance. The Committee feels the MoEF should also have a cushion of  $\pm 10\%$  in production while giving EIA clearance.”

**121.** The above passage indicates that the permissible variation in production as per the Indian Bureau of Mines is  $\pm 10\%$  but according to the Letter dated 12-12-2011 issued by the Ministry of Mines, the reasonable variation limit could be  $\pm 20\%$ . It is not clear why there was a shift in the variation, but as rightly pointed out by the learned counsel for the petitioners, the fact that in some cases the variation exceeded 20% was a cause for concern which necessitated strict and punitive action.

**122.** A submission was made by the learned counsel for the mining leaseholders to the effect that since many of them had been granted the first deemed statutory renewal of the mining lease under Rule 24-A of the MCR, the requirements of EIA 1994 would not be applicable. We were shown various amendments made to Rule 24-A of the MCR from time to time particularly the amendments made on 10-2-1987, 7-1-1993, 27-9-1994, 17-1-2000, 18-7-2014 and 8-10-2014. In our opinion, none of these are of any consequence, the reason being that for the purposes of renewal of the mining lease, an application is required to be made by the mining leaseholders and the deemed renewal clause under Rule 24-A of the MCR will come into operation only after an application for renewal is made in Form J in Schedule I of the MCR. Under Rule 26 of the MCR, the State Government may refuse to renew the mining lease. That apart, the position in environmental jurisprudence with regard to the renewal of a mining lease has been made explicit by this Court in *M.C. Mehta*<sup>17</sup>. Even otherwise, in view of EIA 1994, it is quite clear that the renewal of a mining lease would require a prior EC.

17 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

**123.** We may also draw attention in this regard to a Circular dated 28-10-2004 issued by the MoEF wherein it was stated that in view of the decision in *M.C. Mehta*<sup>17</sup> all mining projects of major minerals of more than 5 ha lease area that had not yet obtained an EC would have to do so at the time of renewal of the lease.

**124.** Finally, it was submitted that whenever an EC is granted, it would have retrospective effect from the date of the application for grant of an EC. In this context, it was pointed out that there were enormous delays in granting an EC and that the Hoda Committee had noted with reference to EIA 2006 that if all goes well, the grant of an EC takes about 232 days whereas the international norm is that an EC is granted within six months or 180 days. According to the additional affidavit filed by some mining leaseholders, the period of 232 days mentioned by the Hoda Committee was actually a conservative estimate and that in fact it takes anything up to 390 days for the grant of an EC. It was submitted that the position was even worse under EIA 1994 since the MoEF rarely showed any urgency in the grant of an EC. Examples were cited before us to show that in some instances the grant of an EC took more than two years. Taking all this into consideration it was submitted that it would be more appropriate that the EC is given retrospective effect from the date of the application.

**125.** We are not in agreement with the learned counsel for the mining leaseholders. There is no doubt that the grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in *M.C. Mehta*<sup>17</sup> even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant.

#### ***Illegal mining***

**126.** A question raised by the learned counsel for the mining leaseholders concerned is the interpretation of the expression “illegal mining”. Reliance was placed on the report of CEC which refers to Rule 2(ii-a) of the MCR to conclude that the violation of any rule within the mining lease area would not come within the definition of “illegal mining” except where there has been a violation of the Rules framed under Section 23-C of the MMDR Act. According to CEC:

“17. Illegal mining has been defined as mining operations undertaken by any person in any area without holding a mining lease. It does not

<sup>17</sup> *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

include violation of any rules within the mining lease area except the Rules made under Section 23-C of the MMDR Act, 1957. The mining lease area shall be considered as an area held with lawful authority by the lessee [refer Rule 2(ii-a), MCR, 1960].”

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127. As can be seen from the above, there is a difference of opinion between CEC and the Commission on what is illegal mining or mining without lawful authority and we will give our views on the subject.

128. According to the lessees a mining operation only outside the mining lease area would constitute “illegal mining” making illegal mining lease centric. We are unable to accept this narrow interpretation given by CEC and relied upon by the learned counsel for the mining leaseholders.

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129. The simple reason for not accepting this interpretation is that Rule 2(ii-a) of the MCR was inserted by a Notification dated 26-7-2012 while we are concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral.

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130. It is not, as suggested by the learned counsel, that illegal mining is confined only to mining operations outside a leased area. Such an activity is obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible for us to accept the narrow interpretation sought to be canvassed by the learned counsel for the mining leaseholders particularly since we are dealing with a natural resource which is intended for the benefit of everyone and not only for the benefit of the mining leaseholders.

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### *Encroachments*

131. Section 4(1) of the MMDR Act makes it clear that no person can carry out any mining operations except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the Rules made thereunder. Obviously therefore, any person carrying on mining operations without a mining lease, is indulging in illegal or unlawful mining. This would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining.

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132. In its report, CEC has dealt with illegal mining outside the sanctioned mining areas. It is stated that 82 mining leases for iron ore and manganese

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ore were identified by the Commission where there were encroachments in the form of illegal mining pits, illegal overburdened dumps, etc.

- a* **133.** In respect of these 82 mining leases, the State of Odisha appointed a Committee on the suggestion of the Commission, to survey and identify the exact extent and location of the sanctioned lease area, lease area under occupation of the mining leaseholder and the area under encroachment/illegal mining. The Committee or the Joint Survey consisted of officers of the Revenue Department, Forest Department and Mining Department of the State of Odisha
- b* who carried out a field survey in respect of 39 mining leases. The findings of the field survey or the Joint Survey were verified by a team comprising of the Director, Mines, Chief Engineer, ORSAC and the Additional Secretary, F & E Department of the Government of Odisha.

- c* **134.** It is mentioned in the report of CEC that the Joint Survey for each of the 39 mining leases is technically sound and reliable. However, in respect of some of the leases, it would be desirable for the State Government to take another look at the results of the field survey. Unfortunately, CEC has not identified these mining leases that require another look. Be that as it may, the fact is that a joint survey has not been conducted in respect of 43 mining leases.

- d* **135.** We are of the view that for completing the record and taking the report of CEC to its logical conclusion, it would be appropriate if a fresh Joint Survey is conducted by officers concerned of the Government of Odisha from the Revenue Department, the Forest Department, the Mining Department and any other department that may be deemed necessary. The Forest Survey of India, the MoEF, the Indian Bureau of Mines and the Geological Survey of India should also be associated in the Joint Survey. In our opinion, it would also be appropriate if CEC is also associated in the Joint Survey and the best and latest
- e* technology should be made use of including satellite imagery and thereafter a report is submitted in this Court on or before 31-12-2017 after hearing the 82 lessees identified by the Commission.

*Adherence to the mining plan*

- f* **136.** A side issue raised by the learned counsel for the mining leaseholders in this regard was the necessity (if any) of adhering to the annual plan or calendar plan of mining. It was contended that a mining leaseholder could mine in excess of the annual plan. While it is so, this submission must be tempered and appreciated in the proper context. A mining plan is valid for a period of five years but there could be a 20% variation in extraction over and above the mining plan. This is the maximum that is stated to be reasonably permissible
- g* according to the Ministry of Mines. In terms of Rule 22(5) of the MCR a mining plan shall incorporate a tentative scheme of mining and annual programme and plan for excavation from year-to-year for five years. At best, there could be a variation in extraction of 20% in each given year but this would be subject to the overall mining plan limit of a variation of 20% over five years. What this means is that a mining leaseholder cannot extract the five year quantity (with a
- h* variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. If any other interpretation is given,

it would lead to an absurd situation where a mining leaseholder could extract the entire permissible quantity under the mining plan plus 20% in one year and extract miniscule amounts over the remaining four years, and this could be done without any reference to the EC. The submission of the learned counsel in this regard simply cannot be accepted.

**137.** In the Letter dated 12-12-2011 sent by the Secretary in the Ministry of Mines of the Government of India to the Chief Secretary of the Government of Odisha (adverted to above) concerning violation of annual production limit laid down in the approved mining plan, it was stated, inter alia, that an analysis of production and violations in 104 mining leases for bulk minerals in the last ten years was undertaken by the Indian Bureau of Mines. It was noted that in 71 cases there was excess ore produced beyond the reasonable variation limit of 20%. It was noted that this was partly due to the failure of the State machinery to restrict the movement of minerals.

**138.** In a further Letter dated 5-9-2012 it was reiterated that any violation of the mining plan or the mining scheme noticed by the State Government should be immediately brought to the notice of the Indian Bureau of Mines to initiate suitable action. It was reiterated that transit passes to such mines should not be issued by the State Government so as to stop any additional outgo. It was added:

“Needless to say any revision on the limits of production is subjected to statutory clearances under Environment and Forest laws. Having said that, the State Mining and Geology officials should not also lose focus on taking stringent action against any instances of illegal mining, undertaken outside the leased area, and passed off as excess production.”

It is quite clear from the correspondence placed before us that as far as the Union of India is concerned, any violation of the requirements of the law has to be firmly dealt with.

**139.** With reference to the interpretation of Section 21(5) of the MMDR Act (which we shall soon consider) it was stated as follows:

“Section 21(5) of the MMDR Act is clearly applicable on such land which is occupied without lawful authority. It is clarified that in the context of the MMDR Act, 1957, violations pertaining to mining operations within the mining lease area are to be dealt with only in terms of the provisions of the Mineral Conservation and Development Rules, 1988. The State Governments have clear powers to tackle any offences related to mining outside the mining lease area in terms of Section 23-C of the MMDR Act, 1957. However, the interpretation that a land granted under a mining lease by the State Government can be held to be occupied without lawful authority on the grounds of violation of provisions of any other law of the land is not appropriate and such interpretation may not stand in the court of law. Such Act or Rules, including the Environment (Protection) Act, 1986, or the Forest (Conservation) Act, 1980, etc. clearly provide penalties for violations under those laws. This aspect may be clarified to the State Accountant General also.”

**140.** All that we need say for the present is that the interpretation given in the aforesaid Letter to Section 21(5) of the MMDR Act is not fully correct.

- a* While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law.

***Section 21 of the MMDR Act***

- b* **141.** The discussion on illegal or unlawful mining takes us to the question of the consequence of illegal or unlawful mining and the interpretation of Section 21(1) and Section 21(5) of the MMDR Act.

- c* **142.** Section 21(1) of the MMDR Act is clearly relatable to a penal offence and applies if any one contravenes the provisions of Section 4(1) of the MMDR Act. Section 4(1) of the MMDR Act prohibits the undertaking of any mining operation in any area except under and in accordance with the terms and conditions of a mining lease and the Rules made thereunder. Therefore, when a person carries out a mining operation in any area other than a leased area or violates the terms of a mining lease, which incorporates the mining plan and which requires adherence to the law of the land, that person becomes liable for prosecution under Section 21(1) of the MMDR Act. In the event of a conviction,
- d* he or she shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to Rs 5 lakhs per hectare of the area.

- e* **143.** As far as Section 21(5) of the MMDR Act is concerned, according to CEC the provision is applicable only if a person indulges in illegal mining outside the mining lease area. Consequently, Section 21(5) of the MMDR Act is not attracted even if the mineral raised within the mining lease area is without an EC or beyond the quantity prescribed by the EC or beyond the quantity permitted in the mining plan. In such a situation, the provisions of the EPA or the MCR come into play. This interpretation is supported by the learned counsel for the mining leaseholders who affirm that Section 21(5) of the MMDR Act is mining lease area centric. In other words, according to CEC and the learned counsel, for the purposes of Section 21(5) of the MMDR Act illegal mining is
- f* mining outside the mining lease area and Section 21(5) of the MMDR Act has to be understood in that light.

- g* **144.** Reference was also made to the Explanation to Rule 2(ii-a) of the MCR where it is stated that for the purposes of this clause, the violation of any rules, other than the Rules made under Section 23-C of the MMDR Act, within the mining lease area by a holder of a mining lease shall not include illegal mining. In other words, it was submitted that Section 21(5) of the MMDR Act is required to be understood in the context of Rule 2(ii-a) of the MCR.

- h* **145.** It was submitted by Shri Ashok Desai learned Senior Counsel for one of the intervenors, that the penalty postulated by Section 21(5) of the MMDR Act though an imposition of a pecuniary liability, is punishment for the commission of an offence. By referring to *Khemka & Co. (Agencies) (P)*

*Ltd. v. State of Maharashtra*<sup>18</sup> it was contended that the liability sought to be imposed by Section 21(5) of the MMDR Act is not a liability that is created by a clear, unambiguous and express enactment. a

**146.** As far as the Union of India is concerned, in its affidavit filed on 20-1-2017 by Shri Sudhakar Shukla, Economic Advisor in the Government of India, Ministry of Mines, it is submitted (and this submission is supported by the learned Attorney General in his oral submissions) that Section 21(5) of the MMDR Act is in two parts. The first part refers to the raising of minerals without any lawful authority from *any land*. The second part is in addition to what is recoverable under the first part. The addition is to the effect that when a person raises a mineral from any area not in his or her lawful authority, that person is also liable to pay the rent, royalty or tax for the period during which the land was occupied without lawful authority. b

**147.** It is further submitted that “illegal mining” as defined in Rule 2(ii-a) of the MCR is also required to be read in the context of Rule 26(4) and Rule 27(4-A) of the MCR which deal with the refusal to renew a mining lease if the mining leaseholder is convicted of illegal mining and the determination of a mining lease in the event the mining leaseholder is convicted of illegal mining. It is submitted that the definition of “illegal mining” in the MCR must be strictly construed and limited to the provisions of the MCR and cannot apply to the provisions of Section 21(5) of the MMDR Act. c

**148.** In conclusion, it is reiterated by the Union of India on affidavit as follows: d

“55. That considering all the above, the Ministry would like to submit that the provisions of sub-section (5) of Section 21 would apply to all minerals raised without any lawful authority, be it forest clearances or environment clearances or any other such legal requirements. e

56. That penalties would arise under Section 21(5) of the MMDR Act, 1957, in respect of any form of mining activity without lawful authority. Mining outside lease area would on the face of it amount to mining without lawful authority and would attract the provisions of Section 21(5); and, in addition, *all forms of mining without lawful authority including that in breach of the limits imposed by the environmental clearance carried out within the lease area would also invite penalties under Section 21(5).*” (emphasis supplied) f

**149.** On behalf of the State of Odisha, it was submitted by Shri Rakesh Dwivedi learned Senior Counsel by relying upon *Karnataka Rare Earth v. Deptt. of Mines & Geology*<sup>19</sup> that what is sought to be achieved by Section 21(5) of the MMDR Act is to recover the price of the mineral that has been illegally or unlawfully or unauthorisedly raised with an intention to compensate the State for the loss of the mineral owned by it, the loss having been caused by a person who is not authorised by law to raise that mineral. There is no element of penalty g

18 (1975) 2 SCC 22 : 1975 SCC (Tax) 227

19 (2004) 2 SCC 783 h

involved in this and the recovery of the mineral or its price is not a penal action but is merely compensatory. This is what this Court had to say in *Karnataka*

a *Rare Earth*<sup>19</sup>: (SCC pp. 791-92, paras 12-15)

“12. Is sub-section (5) of Section 21 a penal enactment? Can the demand of mineral or its price thereunder be called a penal action or levy of penalty?

b 13. A penal statute or penal law is a law that defines an offence and prescribes its corresponding fine, penalty or punishment. (*Black’s Law Dictionary*, 7th Edn., p. 1421.) Penalty is a liability imposed (sic imposed) as a punishment on the party committing the breach. The very use of the term “penal” is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrongdoer in favour of the person wronged, not limited to the damages suffered. (*See Aiyar, P. Ramanatha: The Law Lexicon*, 2nd Edn., p. 1431.)

c 14. In support of the submission that the demand for the price of mineral raised and exported is in the nature of penalty, the learned counsel for the appellants has relied on the marginal note of Section 21. According to Justice Singh, G.P.: *Principles of Statutory Interpretation* (8th Edn., 2001, at p. 147), though the opinion is not uniform but the weight of authority is in favour of the view that the marginal note appended to a section cannot be used for construing the section. There is no justification for restricting the section by the marginal note nor does the marginal note control the meaning of the body of the section if the language employed therein is clear and spells out its own meaning. In *Director of Public Prosecutions v. Schildkamp*<sup>20</sup> Lord Reid opined that a sidenote is a poor guide to the scope of a section for it can do no more than indicate the main subject with which the section deals and Lord Upjohn opined that a sidenote being a brief précis of the section forms a most unsure guide to the construction of the enacting section and very rarely it might throw some light on the intentions of Parliament just as a punctuation mark.

d e f 15. We are clearly of the opinion that the marginal note “penalties” cannot be pressed into service for giving such colour to the meaning of sub-section (5) as it cannot have in law. The recovery of price of the mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled in law to raise the same. There is no element of penalty involved and the recovery of price is not a penal action. It is just compensatory.”

g 150. We are in agreement with the view expressed by the learned Attorney General and Shri Dwivedi as also the view expressed in *Karnataka Rare Earth*<sup>19</sup>. The decision in *Khemka & Co.*<sup>18</sup> is not at all apposite. There is no ambiguity in Section 21(5) of the MMDR Act or in its application. We are also

h <sup>19</sup> *Karnataka Rare Earth v. Deptt. of Mines & Geology*, (2004) 2 SCC 783

<sup>20</sup> 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL)

<sup>18</sup> *Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra*, (1975) 2 SCC 22 : 1975 SCC (Tax) 227

of the opinion that though Section 21(1) of the MMDR Act might be in the realm of criminal liability, Section 21(5) of the MMDR Act is certainly not within that realm.

**151.** In our opinion, Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from *any land*. In that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words “any land” are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of Section 21(5) of the MMDR Act being extraction without lawful authority. It would also attract Section 21(1) of the MMDR Act. In any event, Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by a person only outside the mining lease area — it includes a violation committed even within the mining lease area. This is also because the MMDR Act is intended, among other things, to penalise illegal or unlawful mining on any land including mining lease land and also preserve and protect the environment. Action under the EPA or the MCR could be the primary action required to be taken with reference to the MCR and Rule 2(ii-a) thereof read with the Explanation but that cannot preclude compensation to the State under Section 21(5) of the MMDR Act. The MCR cannot be read to govern the MMDR Act.

**152.** What is the significance of this discussion? It was submitted that CEC has taken the following view:

“... it may be appropriate that 30% of the notional value of the iron and manganese produced by each of the lessees without/in excess of the environmental clearances may be directed to be recovered from the lessees concerned and with the explicit understanding the lessees as well as the officers concerned will continue to be liable for action under the provisions of the respective Acts.”

**153.** The learned counsel for the petitioners and the learned Amicus were of the opinion that the provisions of Section 21(5) of the MMDR Act require that the entire price of the illegally mined ore should be recovered from each defaulting lessee. Similarly, in its affidavit, the Union of India differs with the recommendation of CEC. According to the affidavit of the Union of India this would be contrary to the statutory scheme and in fact 100% recovery should be made under the provisions of Section 21(5) of the MMDR. We may note that only to this extent, the learned Attorney General differed with the view expressed by the Union of India and submitted that the recommendation of CEC to recover only 30% of the value of the illegally mined ore should be accepted.

**154.** In our opinion, there can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee — it should be 100%. If there has been illegal mining, the defaulting lessee must bear the consequences of the illegality and not be benefited by pocketing 70% of the illegally mined ore. It simply does not stand to reason why the State should be

a compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill-gotten manner.

*Calculations on merits*

b **155.** The issue now is with regard to the calculations made by CEC with regard to the production of iron ore and manganese ore without or in excess of the EC and/or the mining plan. As already mentioned above, the figures were not disputed (except by JSPL and SMPL). Therefore, only the application of the figures requires consideration and so we do not need to examine each individual case. However, to understand and appreciate the manner in which CEC has arrived at its figures, we may state that this has been specifically mentioned by CEC in its report. The basis of the calculations is as follows:

c “(a) the production during the year 1993-94 has been considered as the permissible production during each year till the mining lease did not have the environmental clearance;

d (b) the permissible production for the year in which the environmental clearance was obtained for the first time has been considered on pro rata basis of (a) the prescribed annual production, and (b) the date of the grant of the environmental clearance. For this purpose the environmental clearance granted on or before 15th of a month has been considered valid for the entire month. Where the environmental clearance has been granted after 15th of a month it has been considered valid from the subsequent month. For example if the environmental clearance for a mining lease has been granted say on 10-10-2008 for an annual production of say 12 lakhs MT then in that case the permissible production for the mining lease for the year 2008-09 would be taken as 6 lakhs MT ( $12 \times 6/12$  lakh MT) and 12 lakhs MT per annum in the subsequent year; and

e (c) wherever a mining lease having environmental clearance has been granted revised environmental clearance for a higher production the permissible annual production for the year, during which the revised environmental clearance has been granted, has been considered on pro rata basis of the quantities prescribed in the earlier environmental clearance and the revised environmental clearance. For example if the mining lease was having environmental clearance for annual production of 12 lakhs MT and say on 28-9-2009 it has been granted revised environmental clearance for annual production of say 24 lakhs MT then in that case the permissible production for the year 2009-10 would be taken as 18 lakhs MT ( $12 \times 6/12 + 24 \times 6/12$ ) and 24 lakhs MT per annum in subsequent years.”

f **156.** A submission made by the mining leaseholders was that the maximum production in any year up to 1993-94 should be considered as the base for making the calculations. Such a contention was also urged before CEC and was rejected. We have examined this contention independently and are of the view that the base year of 1993-94 is most appropriate — we have already given our reasons for this. Some lessees might lose in the process while some of them

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might benefit but that cannot be avoided. In any event, each mining leaseholder is being given the benefit of calculations only from 2000-01 and is not being “penalised” for the period prior thereto. We think the mining leaseholders should be grateful for this since it was submitted by the learned counsel for the petitioners and the learned Amicus that the penalty should be levied from the date of EIA 1994. In our opinion, the cut-off from 2000-2001 (without interest) is undoubtedly reasonable and there can hardly be any grievance in this regard. The mining leaseholders cannot have their cake and eat it too, along with the icing on top.

157. Since the recommendation made by CEC in this regard is not totally unreasonable, we accept that the compensation should be payable from 2000-2001 onwards at 100% of the price of the mineral, as rationalised by CEC.

***Violation of the Forest (Conservation) Act, 1980***

158. Before dealing with the violations of Section 2 of the Forest (Conservation) Act, 1980 (for short “the FCA”), it is necessary to give a brief background.

159. The FCA came into operation initially through the Forest (Conservation) Ordinance, 1980 with effect from 25-10-1980. The said Ordinance was repealed and subsequently the FCA came into effect on 25-12-1980.

160. Section 2 of the FCA provides that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, inter alia, that any forest land or any portion thereof may be used for non-forest purposes.

161. The interpretation of Section 2 of the FCA first came up for consideration in *State of Bihar v. Banshi Ram Modi*<sup>21</sup>. In that case, Banshi Ram Modi was granted a mining lease for mining and winning mica. During the course of mining operations, feldspar and quartz were discovered. Modi then applied to the Central Government to include these minerals in the lease. The State Government agreed to do so but did not obtain the previous approval of the Central Government for the inclusion of the two minerals in the original lease.

162. The Central Government took the view that since its previous approval had not been obtained for inclusion of feldspar and quartz in the mining lease, Modi could not be permitted to mine these two minerals. This led Modi to approach the High Court with the contention that he was not breaking up or clearing any forest land other than the land on which mining operations were already being carried on. The High Court allowed the writ petition but feeling aggrieved, the State of Bihar preferred an appeal in this Court.

163. The question before this Court was a narrow one, namely, whether prior approval of the Central Government is necessary in respect of a mining lease, granted for winning a certain mineral prior to the coming into force of the FCA, if the lessee applies to the State Government after the FCA came into force for permission to win and carry any new mineral from the broken up area?

**164.** While answering this question in the negative, it was held that after the commencement of the FCA no fresh breaking up of forest land or no fresh clearing of the forest on any such land could be permitted by the State Government or any authority without the approval of the Central Government. However, in respect of broken up land, it was held that if the State Government permits the lessee to remove any discovered mineral, it cannot be said that there has been a violation of Section 2 of the FCA particularly since there is no breaking up of any fresh forest land.

**165.** Subsequently in *Ambica Quarry Works v. State of Gujarat*<sup>22</sup> when the lease of the mining holder came up for renewal, the FCA had already come into force. Since the Forest Department of the State of Gujarat refused to give a no-objection certificate, the application for renewal of the lease was rejected. The question that arose for consideration was whether, after coming into force of the FCA, the mining leaseholder was entitled to renewal of the mining lease. While answering the question in the negative this Court held that the renewal of a lease cannot be claimed as a matter of right. The primary purpose of the FCA was to prevent deforestation and ecological imbalance as a result of deforestation. Therefore, the primary duty under the FCA was to the community and the obligation to society must predominate over the obligation to the individuals. While distinguishing *Banshi Ram Modi*<sup>21</sup> this Court held that renewal of the lease would lead to further deforestation or at least it would not help in reclaiming the area where deforestation had already taken place. The primary purpose of the FCA is to prevent further deforestation and any interpretation must subserve that purpose and implement the FCA. Under the circumstances, it was held, considering the scheme of the FCA that refusal to renew the lease without prior approval of the Central Government was not unjustified.

**166.** This view was reiterated in *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>23</sup> It was held that the FCA does not permit mining in a forest area. Reiterating the view expressed in *Ambica Quarry Works*<sup>22</sup>, it was observed that compliance with Section 2 of the FCA is necessary as a condition precedent even for the renewal of a mining lease. This Court went so far as to hold that if any decree or order has already been obtained by any of the mining leaseholders, from any court relating to renewal of their lease, the same shall stand vacated and similarly, any appeal or other proceeding taken to obtain a renewal or against any order or decree granting renewal shall also become non est.

**167.** The definition of the word “forest” for the purposes of the FCA came up for consideration in *T.N. Godavarman Thirumulpad v. Union of India*<sup>3</sup>. In its decision of 12-12-1996<sup>3</sup> this Court observed that during the course of hearing

<sup>22</sup> (1987) 1 SCC 213

<sup>21</sup> *State of Bihar v. Banshi Ram Modi*, (1985) 3 SCC 643

<sup>23</sup> 1989 Supp (1) SCC 504

<sup>3</sup> (1997) 2 SCC 267

it appeared that there is a misconception about the true scope of the FCA and the meaning of the word “forest” used therein. Consequently, there is also a misconception about the need for prior approval of the Central Government as mandated by Section 2 of the FCA in respect of certain activities in a forest area, which activities are more often of a commercial nature.

**168.** In this context, it was held that “forest” must be understood according to its dictionary meaning and it would cover all statutorily recognised forests, whether designated, reserved, protected or otherwise. It was further held that “forest” would also include any area recorded as a forest in the government records irrespective of the ownership. With this in mind, this Court directed that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance with Section 2 of the FCA all ongoing activity within any forest in any State throughout the country, without prior approval of the Central Government must cease forthwith. This particular direction given by this Court is of immense significance.

**169.** This Court further directed each State Government to constitute within one month an Expert Committee, inter alia, to identify areas which are “forest” irrespective of whether they are so notified, recognised or classified under any law and irrespective of the ownership of the land of such forest.

**170.** Pursuant to the directions given by this Court, the State of Odisha constituted District Level Committees (for short “DLC”) for identification of forest lands. After the identification process, appropriate affidavits were filed by the State of Odisha in this Court in 1997-98, the last being dated 6-1-1998.

**171.** In the meanwhile, in *T.N. Godavarman Thirumulpad v. Union of India*<sup>24</sup> this Court passed certain directions on 4-3-1997 with regard to what was categorised as mining matters. The directions given by this Court are as follows: (SCC p. 315, para 9)

“9. We direct that—

(1) where the lessee has not forwarded the particulars for seeking permission under the FCA, he may do so immediately;

(2) the State Government shall forward all complete pending applications within a period of 2 weeks from today to the Central Government for requisite decisions;

(3) applications received (or completed) hereafter would be forwarded within two weeks of their being so made.

(4) the Central Government shall dispose of all such applications within six weeks of their being received. Where the grant of final clearance is delayed, the Central Government may consider the grant of working permissions as per existing practice.”

**172.** It was also made clear that the order passed by this Court including the earlier order dated 12-12-1996<sup>3</sup> shall be obeyed and carried out by the Central

<sup>24</sup> (1997) 3 SCC 312

<sup>3</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

Government and the State Governments notwithstanding any order or direction passed by a court including a High Court or Tribunal to the contrary.

*a* **173.** From the above, it is explicit that in terms of the orders passed by this Court, there was a complete ban on non-forest activity on forest lands with effect from 12-12-1996. The only issue that remained was identification of all such lands by the District Level Committees and as mentioned above this exercise was completed by the State of Odisha on or about 6-1-1998. The lands identified by DLC are compendiously referred to as DLC lands.

*b* **174.** In this background in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman Thirumulpad*<sup>2</sup> CEC was directed to submit a report which it did on 26-4-2010. It was recommended by CEC that given the peculiar circumstances prevailing in the State of Odisha, mining operations in the entire DLC lands included in the mining leases, may be allowed to continue on payment of the net present value (NPV) subject to the fulfilment of other statutory requirements and rules being complied with.

*c* **175.** By an order dated 7-5-2010<sup>4</sup> this Court directed that the recommendation of CEC acceptable to the State Government could be complied with. Consequently, the State of Odisha appears to have implemented the recommendations regarding recovery of NPV and realised an amount of about Rs 1750 crores as additional NPV.

*d* **176.** We have been informed that in addition to the above, the mining leaseholders have subsequently deposited an amount under the heading of penal compensatory afforestation which was introduced through guidelines issued by the MoEF on 3-2-1999. The guidelines in this regard were communicated by the Assistant Inspector General of Forest to the Chief Secretary of all the States and Union Territories and the relevant portion thereof reads as follows:

*e* “4.3.1 Cases have come to the notice of the Central Government in which permission for diversion of forest land was accorded by the State Government concerned in anticipation of approval of the Central Government under the Act and/or where work has been carried out in forest area without proper authority. Such anticipatory action is neither proper nor permissible under the Act which clearly provides for prior approval of the Central Government in all cases. Proposals seeking ex post facto approval of the Central Government under the Act are normally not entertained. The Central Government will not accord approval under the Act unless exceptional circumstances justify condonation. However, penal compensatory afforestation would be insisted upon by the MoEF on all such cases of condonation.

*f* 4.3.2 The penal compensatory afforestation will be imposed over the area worked/used in violation. However, where the entire area has been

*g* *h* <sup>2</sup> *T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC)

<sup>4</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 15 SCC 177

deforested due to anticipatory action of the State Government, the penal compensatory afforestation will be imposed over the total lease area.”

177. It was submitted by the learned counsel for the lessees that since additional NPV as well as an amount towards penal compensatory afforestation has been paid by the defaulting mining leaseholders, the violation of Section 2 of the FCA stands condoned or in any event the illegal or unlawful mining in forest lands stands regularised.

178. CEC did not accept this submission made on behalf of the mining leaseholders on the ground that no retrospective forest clearance has been granted and even otherwise there is no provision to condone or regularise the violation of Section 2 of the FCA.

179. We are of the opinion that the view expressed by CEC in this regard is partially correct. Given the fact that the defaulting mining leaseholders have been asked to pay and have paid additional NPV as well as an amount towards penal compensatory afforestation, it must be assumed that the violation of the FCA has been condoned to a limited extent, more particularly since in its order dated 7-5-2010<sup>4</sup> this Court permitted the State of Odisha to accept such recommendations of CEC made in the report dated 26-4-2010 as are acceptable to it. The relevant recommendations made by CEC read as follows:

“(c) No forest land can be leased/assigned without first obtaining the approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon’ble Court while permitting grant of temporary working permission to the mines in Orissa and Goa has made it one of the preconditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining leaseholders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining leases;

(d) In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest-like areas) by the Expert Committee constituted by the State Government pursuant to this Hon’ble Court’s order dated 12-12-1996<sup>3</sup>. While processing and/or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (i) the NPV for the entire DLC area included in the mining lease, after deducting the NPV already paid, should be deposited by the leaseholder concerned, and (ii) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as were existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued

4 *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 15 SCC 177  
3 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

provided the other statutory requirements and rules are otherwise being complied with.”

*a* **180.** This still leaves open the question of violation of the order passed by this Court on 12-12-1996<sup>3</sup> followed by the order dated 4-3-1997<sup>24</sup>, namely, that mining must cease forthwith in forest areas. In regard to this violation, the only benefit (at best) that can be granted to the mining leaseholders that we are concerned with, is till 6-1-1998 when the affidavit was filed in this Court in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman*<sup>6</sup>. With effect from 7-1-1998 any mining activity in forest and DLC lands would clearly be completely illegal and unauthorised and the benefit that the mining leaseholders have derived from this illegal mining would be subject to Section 21(5) of the MMDR Act. Therefore, the price of the iron ore and manganese ore mined by the mining leaseholders from 7-1-1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining leaseholders.

*c* **181.** The report of CEC dated 16-10-2014 deals with 51 mining leases. It has been recorded by CEC that of them 15 mining leases have been found not involved in undertaking mining operations in violation of the FCA. There are 16 mining leases that have violated the provisions of the FCA between 25-10-1980 and 1999-2000 and the State Government in some of the cases has already issued a show-cause notice to the mining leaseholders. It is further stated that most of the violations pertain to the period prior to 12-12-1996. CEC has not made any particular recommendation in regard to these 16 mining leases nor do we, except to direct the State Government to promptly take a decision on the show-cause notice preferably within a period of four months and in any case before 31-12-2017.

*e* **182.** CEC has also dealt with 18 other mining leaseholders (other than M/s Essel Mining and Industries Ltd. relating to the Kasia Iron Ore Mines and Jilling-Langlotta Iron & Manganese Ore Mines). With regard to these 18 mining leaseholders, the view taken by us above would hold good and clearly they are liable to compensate the State for the entire price of the iron ore and manganese ore illegally mined with effect from 7-1-1998 until the forest clearance was obtained by the mining leaseholder concerned.

*f* **183.** We have fixed 7-1-1998 as the cut-off date despite the orders dated 12-12-1996<sup>3</sup> and 4-3-1997<sup>24</sup> only for the reason that it is possible that some mining leaseholders (we do not know how many) were not aware that they were inadvertently conducting mining operations on DLC lands which were identified by the State of Odisha as forest lands on the directions of this Court. For the purposes of Section 21(5) of the MMDR Act, they are entitled to the benefit of doubt and along with them, the other mining leaseholders before us.

*h* <sup>3</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

<sup>24</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 3 SCC 312

<sup>6</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 6 SCC 167

**184.** CEC in this regard has observed as follows:

“It will be seen that in the above cases the mining operations have been done in the forest land in violation of the Forest (Conservation) Act, 1980 and consequently also in violation of this Hon’ble Court order dated 12-12-1996<sup>3</sup>. CEC recommends that 70% of the notional value of the iron ore and manganese produced by the lessees by undertaking mining operations in the forest land in violation of the Forest (Conservation) Act, 1980 may be directed to be recovered from the respective lessees. Wherever the mineral production is both from the forest land as well as non-forest land then in such cases the notional value of the production from the forest land may be calculated on pro rata basis of the extent of the forest land and non-forest land involved. The notional value of the mineral, time-limit for payment of the compensation, use of the amount received as compensation and other conditions as decided by this Hon’ble Court in respect of the production without/in excess of the environmental clearance may be directed to be followed on pari-passu basis.”

**185.** For the reasons that we have already expressed above, we are not in agreement with CEC that only a part of the notional value (in this case 70%) of the iron ore and manganese ore produced by the mining leaseholders should be recovered. We are of the view that Section 21(5) of the MMDR Act should be given full effect and so we reiterate that the recovery should be to the extent of 100%.

**186.** There may be some overlap in the period when mining operations were conducted by the mining leaseholders without an EC and/or an FC. We make it clear that mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining leaseholder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining leaseholder to the State of Odisha. We order accordingly. However, we make it clear that whatever payment has already been made by the mining leaseholders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether.

**187.** We may note that this Court has held in *T.N. Godavarman Thirumulpad v. Union of India*<sup>25, 26</sup> that a violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act, but we make it clear that the mining leaseholders would be entitled to the benefit of any temporary working permission granted.

<sup>3</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267  
<sup>25</sup> (2011) 15 SCC 658  
<sup>26</sup> (2011) 15 SCC 681

***Conclusions on the issues of mining without an EC or FC or both***

**188.** To avoid any misunderstanding, confusion or ambiguity, we make the

*a* following very clear:

*b* (1) A mining project that has commenced prior to 27-1-1994 and has obtained a no-objection certificate from SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernisation activity after 27-1-1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernisation activity, a certificate to this effect is absolutely necessary from SPCB, which would be reviewed by the Impact Assessment Agency.

*c* (2) The renewal of a mining lease after 27-1-1994 will require an EC even if there is no expansion or modernisation activity or any increase in the pollution load.

*d* (3) For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27-1-1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.

(4) There is no doubt that a new mining project after 27-1-1994 would require a prior EC.

*e* (5) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.

*f* (6) With effect from 14-9-2006 all mining projects having a lease area of 5 ha or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.

(7) For a mining lease of iron ore or manganese ore of less than 5 ha area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.

*g* (8) Any mining activity carried on after 7-1-1998 without an FC amounts to illegal or unlawful mining in terms of the provisions of Section 21(5) of the MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.

*h* (9) In the event of any overlap, that is, illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining leaseholder.

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(10) No mining leaseholder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation.

a

***Violation of Section 6 of the MMDR Act***

**189.** We have examined the report of CEC with regard to the alleged violation of Section 6 of the MMDR Act and find that there have been several amendments to Section 6 relating to the maximum area for which a mining lease may be granted to a person. The following is the result of the amendments:

b

1. From 1-6-1958 to 11-9-1972—maximum lease area 10 sq miles.
2. From 12-9-1972 to 9-2-1987—maximum lease area 10 sq km or 1000 ha in any one State.
3. From 10-2-1987 to 17-12-1999—maximum lease area 10 sq km or 1000 ha in any part of the country.
4. From 18-12-1999 till date—maximum lease area 10 sq km or 1000 ha in one State.

c

**190.** While the word “person” has not been defined in the MMDR Act, a reading of Section 5 thereof indicates that the State Government shall not grant a mining lease to any person unless such person is an Indian national or a company as defined in the Companies Act, 1956 and subsequently in the Companies Act of 2013.

d

**191.** Sub-section (2) of Section 6 of the MMDR Act provides that a person acquiring by, or in the name of, another person a mining lease which is intended for him/her shall be deemed to be acquiring it himself/herself.

**192.** For the purposes of determining the total area that can be acquired for mining operations, Section 6(3) of the MMDR Act provides that the area held under a mining lease by a person as a member of a cooperative society, company or other corporation or a Hindu Undivided Family or a partner of a firm shall be deducted from the area referred to so that the sum total of the area held by such person under a mining lease only as such member or partner or individually may not in any case exceed the total area specified.

e

**193.** In this background, CEC examined the case of seven mining leaseholders. They are:

f

1. Essel Mining and Industries Limited
2. Rungta Mines Limited
3. Rungta Sons Pvt. Limited
4. Bonai Industrial Company Limited
5. Feegrade & Co. Pvt. Limited
6. M/s Mangilal Rungta
7. Jindal Steel & Power Limited

g

**194.** As far as Essel Mining and Industries Ltd. is concerned we propose to deal with this mining leaseholder on another occasion since even CEC has placed this mining leaseholder in a special category.

h

**195.** Similarly, so far as Rungta Mines Ltd., Rungta Sons Pvt. Ltd. and M/s Mangilal Rungta are concerned, although CEC has come to the conclusion that these persons have not acquired mining leases in violation of Section 6 of the MMDR Act, there are some critical observations made by the Commission with regard to the “Rungta Group”. The learned counsel for the petitioner submitted that the view of CEC in this regard needs reconsideration. Since the “Rungta Group” was not heard by us, we propose to hear the above Rungta companies to ascertain, inter alia, whether there has been any violation of the provisions of Section 6 of the MMDR Act.

**196.** As far as Jindal Steel & Power Ltd. is concerned, we propose to hear this company on another occasion since the suggestion of CEC is that it is the benami holder of Sarda Mines Pvt. Ltd. If it is so held to be a benami holder of Sarda Mines Pvt. Ltd. then there is a violation of Section 6 of the MMDR Act. However, CEC has refrained from making any observations or recommendation in this regard. Accordingly, we propose to hear Jindal Steel & Power Ltd. on a later occasion on this limited issue.

**197.** As far as Bonai Industrial Company Ltd. and Feegrade & Co. Pvt. Ltd. are concerned, CEC has concluded that they have not violated Section 6 of the MMDR Act. That being the position, and nothing having been shown to the contrary, we accept the recommendation of CEC in this regard.

**d** *Violation of Rule 37 of the Mineral Concession Rules, 1960*

**198.** CEC has discussed the possible violation of Rule 37 of the MCR. In this context, it was noted that there were several mining leaseholders who had entered into raising contracts which were actually a transfer of the lease as postulated by Rule 37 of the MCR.

**199.** On this basis the State of Odisha constituted a Committee on 8-7-2011 to carry out a study of the financial transactions between the mining leaseholders and the raising contractors to determine whether there is a prima facie violation of Rule 37 of the MCR.

**200.** On an examination of the material before it the Committee concluded that eight mining leaseholders violated Rule 37 of the MCR. These mining leaseholders are as under:

- (i) R.P. Sao, Guali Iron Ore Mines, Keonjhar
- (ii) Indrani Patnaik, Unchabali Iron Ore Mines, Keonjhar
- (iii) M/s K.J.S. Ahluwalia, Nuagaon Iron Ore Mines, Keonjhar
- (iv) M/s Aryan Mining & Trading Corporation Pvt. Ltd., Narayanposhi Iron Ore Mines, Sundergarh
- (v) M/s Mideast Integrated Steel Ltd., Roida, Sidhamatha Iron Ore Mines, Keonjhar
- (vi) Kavita Agrawal, Kusumdihi Manganese Mines, Sundergarh
- (vii) Mala Roy & Others, Jalabari Iron Ore Mines, Keonjhar
- (viii) M/s Sharda Mines (P) Ltd., Thakurani Iron Ores Mines, Keonjhar

**201.** Pursuant to the report of the Committee, a show-cause notice was issued to these mining leaseholders by the State of Odisha. Six of the mining leaseholders (other than M/s Aryan Mining & Trading Corporation Pvt. Ltd. (for short Aryan) and Kavita Agrawal (Kusumdihi Manganese Mines) challenged the show-cause notice and the decision of the Committee by filing revision petitions under Section 30 of the MMDR Act read with Rule 55 of the MCR before the Central Government. The challenge to the show-cause notice was on the ground that persons who were not government servants could not have been included in the Committee and also that the Committee was not notified in the Official Gazette as required by Section 26(2) of the MMDR Act.

**202.** The Central Government set aside the order constituting the Committee and the State of Odisha has challenged the orders of the Central Government before the Orissa High Court through writ petitions. We are told that the writ petitions filed by the State of Odisha are pending in the High Court.

**203.** As far as Aryan is concerned, we were informed that the matter was pending with the State of Odisha and a request was made to us to permit the State of Odisha to pass a final order on the submissions made by Aryan. On 28-4-2017<sup>27</sup> we had permitted the State of Odisha to pass final orders but we are not aware whether any orders have since been passed.

**204.** As far as Kavita Agrawal is concerned, her lease was terminated by the State of Odisha and the Central Government also dismissed her revision petition on 28-4-2014. The said mining leaseholder has since filed a writ petition which is pending in the Orissa High Court.

**205.** During the course of hearing it was proposed by the learned counsel appearing for some of the mining leaseholders that it might be appropriate if the raising contracts between these eight mining leaseholders and the raising contractors are given a fresh look. This suggestion was not acceptable to one of the mining leaseholders. However, we are of the opinion that the suggestion is reasonable and it will be appropriate if in fact a fresh look is given to the raising contracts entered into by the mining leaseholders and the raising contractors. We are also of the opinion that such an order ought to be passed with the consent of the mining leaseholders since any delay in disposal of the issue would not really subserve the interests of anybody including the mining leaseholders.

**206.** Accordingly, for considering the appointment of an appropriate committee in respect of the eight mining leaseholders mentioned above, we

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<sup>27</sup> *Common Cause v. Union of India*, WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), wherein it was directed:

“It has been pointed out by Mr Rakesh Dwivedi, learned Senior Counsel appearing for the State of Odisha and Mr Arvind Datar, learned Senior Counsel appearing for Aryan Mining and Trading Corporation that the proceedings pursuant to the show-cause notice under Rule 37 of the Mineral Concession Rules are complete and both of them say that a final order may be passed pursuant to the show-cause notice. We permit the authorities to pass the order. Arguments heard in part. List the matters on 2-5-2017 as part-heard matters.”

would like to hear the learned counsel for the parties. We make it clear that the proposed committee will be entitled to lift the corporate veil, the importance of which in cases such as the present, has been emphasised in *State of Rajasthan v. Gotan Lime Stone Khanij Udyog (P) Ltd.*<sup>28</sup>

***Intergenerational equity***

**207.** Mr Prashant Bhushan, learned counsel for the petitioner sought to impress upon us the need to consider intergenerational equity and if possible to place a limit on the extent of mining in the State of Odisha by referring to an article titled: “Intergenerational equity: a legal framework for global environment change” by Edith Brown Weiss. He laid emphasis on three principles that form the basis of intergenerational equity.

**208.** The first principle relied on is called the principle of “conservation of options”. This requires each generation to conserve the diversity of the natural and cultural resource base in such a manner that the options available to future generations are not restricted. It was submitted that the extent of mining activities being carried on in Odisha indicate that the entire iron ore will perhaps be fully extracted within a period of 30 years and nothing would be available for future generations. Therefore some sort of a limit would have to be placed on the mining operations.

**209.** The second principle relied on is the principle of “conservation of quality”. This was with reference to the submission that future generations should not be subjected to a quality of the planet worse than what it is today. In other words, future generations are also entitled to quality enjoyment of the diversity in the natural and cultural resource base.

**210.** The third principle relied upon was the principle of “conservation of access” which is to say that future generations have an equitable right to access the diversity of the natural and cultural resource base as is available to the present generation.

**211.** There is no doubt considerable substance in the submission particularly if this is considered in the light of intergenerational rights and obligations which have been dealt with in the said article. However, it is really not for this Court to lay down limits on the extent of mining activities that should be permitted by the State of Odisha or by the Union of India. Nevertheless, this is an aspect that needs serious consideration by the policy and decision-makers in our country in the governance structure. At present, keeping in mind the indiscriminate mining operations in Odisha, it does appear that there is no effective check on mining operations nor is there any effective mining policy. The National Mineral Policy, 2008 (effective from March 2008) seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve. We are of the opinion that the National Mineral Policy, 2008 is almost a decade old and a variety of changes have taken place since then, including (unfortunately) the advent of rapacious mining in several parts of the country. Therefore, it is

high time that the Union of India revisits the National Mineral Policy, 2008 and announces a fresh and more effective, meaningful and implementable policy within the next few months and in any event before 31-12-2017. We are constrained to pass this direction in view of the facts disclosed in these petitions and in judgments delivered by this Court with regard to mining in Goa and Karnataka.

*Inquiry by the Central Bureau of Investigation*

**212.** It was emphasised by Shri Prashant Bhushan that because of the rampant illegal or unlawful mining being carried out in Odisha, there should be an enquiry by the Central Bureau of Investigation (for short “CBI”) to ascertain and determine the persons involved either in turning a Nelson’s eye to rampant illegal or unlawful mining or being conspirators in the activity and the extent of the illegal or unlawful mining. It was submitted that the Justice Shah Commission had very strongly recommended an inquiry conducted by CBI and criminal elements being brought to book for the despoliation of the land.

**213.** For the present, we do not propose to direct an investigation or inquiry by CBI for the reason that what is of immediate concern is to learn lessons from the past so that rapacious mining operations are not repeated in any other part of the country. This can be achieved through the identification of lapses and finding solutions to the problems that are faced. Undoubtedly, there have been very serious lapses that have enabled large-scale mining activities to be carried out without forest clearance or environment clearance and eventually the persons responsible for this will need to be booked but as mentioned above, the violation of the laws and policy need to be prevented in other parts of the country. The rule of law needs to be established. We are therefore of the view that it would be appropriate if an Expert Committee is set up under the guidance of a retired Judge of this Court to identify the lapses that have occurred over the years enabling rampant illegal or unlawful mining in Odisha and measures to prevent this from happening in other parts of the country.

**214.** There is no doubt that the recommendations of the Commission can form a platform for the study but it is also necessary to use technology for maintenance of registers, records and data through computers, satellite imagery, videography and other technology tools so that the natural wealth of our country is not rapaciously exploited for the benefit of a few to the detriment of a large number, many of whom are tribals inhabiting the land for several generations.

*Utilisation of funds by the special purpose vehicle*

**215.** In IAs Nos. 2746-48 of 2009 filed by Rabi Das, an order was passed on 27-1-2014<sup>29</sup> relating to the preparation of a scheme by CEC for setting up a special purpose vehicle (SPV) for tribal welfare and area development works. The relevant extract of the order reads thus:

“50% of the additional amounts of net present value (NPV) recovered by the State of Odisha from the mining lessees will be used by the

<sup>29</sup> *T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC)

a State of Odisha through a special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. The State of Odisha will accordingly file within four weeks from today, a comprehensive plan for the development of tribals out of the aforesaid funds, taking into consideration their requirements of health, education, communication, recreation, livelihood and cultural lifestyle as indicated in this Court's judgment in *T.N. Godavarman Thirumulpad (104) v. Union of India*<sup>30</sup>."

b **216.** Subsequently on 28-4-2014<sup>31</sup> this Court accepted the scheme prepared by the Government of Odisha in consultation with the Central Empowered Committee. The scheme was captioned "Setting up of special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of mineral bearing areas in the State of Odisha". This Court then passed the following order on 28-4-2014<sup>31</sup>:

c "Pursuant to orders passed by this Court on 27-1-2014<sup>29</sup>, the Government of Odisha in consultation with the Central Empowered Committee has prepared a scheme captioned "Setting up of special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of mineral bearing areas in the State of Odisha.

d The Central Empowered Committee has submitted a report dated 9-4-2014 and has recommended that the scheme prepared by the Government of Odisha may be approved by this Court and the ad hoc CAMPA may be directed to transfer to the SPV 50% of the additional amount of the NPV recovered from the mining leaseholders by the State of Odisha for undertaking tribal welfare and development works.

e We have perused the scheme prepared by the State Government of Odisha and the recommendation of the Central Empowered Committee and we approve the scheme and direct ad hoc CAMPA to transfer to the SPV 50% of the additional amount of the NPV within a month for undertaking tribal welfare development works.

f The interlocutory applications be listed in the month of July 2014."

**217.** Some of the salient features of the scheme are as follows:

g 5. The SPV will undertake specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. These will include works/projects related to livelihood intervention, health, water supply and sanitation, education, special programmes for development of women and children, entrepreneurial development of local people, communication and infrastructure projects and agro

30 (2008) 2 SCC 222

31 *T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC)

h 29 *T.N. Godavarman Thirumulpad v. Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC)

silvi-horticultural based livelihood projects through identified agencies/  
Government Departments. While taking up such projects/works a bottom  
up planning and participatory approach will be followed.

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9. The general superintendence of the affairs will be vested in its Board  
of Directors including (a) to receive grants/funds and have custody of the  
same; (b) to approve Annual Budget estimates and sanction the expenditure  
within the limits of the budget; (c) to enter into any agreement for and  
on behalf of the SPV; (d) institute and defend legal proceedings; (e) to  
consider and approve the annual report, audit report, annual accounts and  
the financial estimates of the SPV; (f) to prescribe procedure to be followed  
for implementation of the projects/works and for maintenance of accounts;  
and (g) to undertake any other ancillary activities/works for the furtherance  
of the objective of the SPV.

b

(a) The funds made available to the SPV will be utilised only for  
the purpose for which the SPV has been set up and will not be used for  
any other purpose or transferred to any other authority; and

c

(b) The composition of the Board of Directors of the SPV, as  
provided in the present scheme, will be modified only after obtaining  
permission from the Hon'ble Supreme Court.

d

10. The accounts of the SPV will be internally audited annually  
by the Chartered Accountant firms empanelled with the CAG/Principal  
Accountant General, Odisha. The audit of the accounts of the SPV, receipts  
as well as expenditure, will be done annually by the office of the Principal  
Accountant General, Odisha.

11. The State Government has, earlier, registered a society, namely,  
Society for Inclusive Development of Mineral Bearing Areas of Odisha,  
which has been registered vide Registration No. 23354/74 of 2011-12  
under the Societies Registration Act, 1860 to act as SPV for the purpose.  
It is now proposed to wind up the said Society and to replace it with  
“Odisha Mineral Bearing Areas Development Corporation” to be set up  
under Section 25 of the Companies Act.

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218. It appears that the scheme has been implemented with the Chief  
Secretary of Odisha as the ex-officio Chairman of the SPV. There are several  
other members and directors of the SPV. There is no further information  
available with this Court with regard to the implementation of the scheme.

219. During the course of hearing, some of the mining leaseholders  
represented by Shri Gopal Subramaniam, Senior Advocate offered to deposit  
and in fact did deposit an amount of Rs 237.05 crores for utilisation by the  
SPV for carrying out welfare works and activities in the districts of Keonjhar,  
Sundergarh and Mayurbhanj in Odisha. The deposit was made by way of a  
cheque on 6-4-2017 and was without prejudice to the rights and contentions of  
the lessees. In terms of our directions, the Registry has encashed the cheque and

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- kept the amount in a short-term fixed deposit. We have mentioned this only to point out that there are huge amounts available with the special purpose vehicle
- a for tribal welfare and area development works and we have absolutely no idea about the utilisation of the funds or whether they are in fact being used for tribal welfare and area development works. We also expect that as a result of the orders that we are passing today, very large amounts will again be made available to the State of Odisha. These amounts should also be kept with the special purpose vehicle.
- b **220.** To ensure that the amounts are utilised for the benefit of tribals in the affected districts and for area development works, we would like the Chief Secretary of Odisha to file an affidavit stating the work done as well as providing the audited accounts of the receipt and expenditure of the SPV from its inception.
- c **Conclusion**
- 221.** In view of the findings above, we dispose of the writ petitions to the extent of the directions that we have already given.
- 222.** IAs Nos. 45 (filed by Zenith Mining) and 47 (filed by Kavita Agrawal) are dismissed since their lease has not been extended or has been determined
- d and they do not have any environmental clearance or forest clearance.
- 223.** IA No. 66 (filed by J.N. Pattnaik) is also dismissed since there is no forest clearance available.
- 224.** We have been informed that S.A. Karim (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease.
- e Accordingly, IA No. 9 (filed by S.A. Karim) is also dismissed but as being infructuous. However, it is made clear that the State Government should ensure that the lessee S.A. Karim in fact has valid statutory clearances.
- 225.** Pending show-cause notices issued by the State Government should be decided by 31-12-2017 (if not already decided) after hearing the noticees concerned.
- f **226.** We would like to hear Jindal Steel and Power Ltd., Sarda Mines Private Ltd., Rungta Group of Companies and Essel Mining and Industries Ltd. on the applications filed by them. For this purpose list the matter again after two weeks so that a convenient date of hearing can be fixed.
- 227.** The amounts determined as due from all the mining leaseholders should be deposited by them on or before 31-12-2017. Subject to and only after compliance with statutory requirements and full payment of compensation and other dues, the mining leaseholders can restart their mining operations.
- g **228.** We would also like to hear the eight mining leaseholders concerned on the question of appointing an appropriate committee in respect of the applicability of Rule 37 of the Mineral Concession Rules to them.
- h

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**229.** We would also like to hear the learned counsel for all the parties with regard to setting up of an Expert Committee presided over by a retired Judge of this Court to identify the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to the State of Odisha but generally to all other States where mining activities are proceeding on a large scale. For the present, we pass no direction with regard to any investigation by CBI.

*a*

**230.** We direct the Union of India to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development. The exercise should be completed by 31-12-2017.

*b*

**231.** The Chief Secretary of Odisha should file an affidavit as indicated by us within a period of six weeks and in any case on or before 30-9-2017. The Registry will list these petitions along with the affidavit immediately after its receipt for our consideration.

*c*

**232.** All other pending IAs are disposed of in terms of our orders.

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**(2018) 18 Supreme Court Cases 257**

a (BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)  
GOEL GANGA DEVELOPERS INDIA PRIVATE  
LIMITED .. Appellant;

*Versus*

b UNION OF INDIA THROUGH SECRETARY MINISTRY OF  
ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.  
Civil Appeals No. 10854 of 2016 with Nos. 10901 of  
2016 and 5157-58 of 2018†, decided on August 10, 2018

c **A. Environment Law — Environmental Clearance/NoC/Environment  
Impact Assessment (EIA) — Specific Clearances — Development Projects —  
Environment Impact Assessment (EIA) Notification, 2006 — Construction  
in violation of the environmental clearance (EC), as in the present case, in  
violation of the clearance granted under Noti. dt. 4-4-2011 — Establishment  
and Effect of — “Built-up area” under Notis. dt. 4-4-2011 and 14-9-2006 —  
Concept of floor space index (FSI)/floor area ratio (FAR) — Non-relevance of,  
for computation of “built-up area” for which EC is granted**

d — **Imposition of damages of Rs 100 crores or 10% of project cost,  
whichever was higher, for violation of environmental clearance in addition  
to Rs 5 crore damages imposed by NGT, instead of directing demolition —  
Detailed coercive directions issued to ensure deposit of these damages within  
six months**

e — Held, the concept of FSI or non-FSI may be relevant for the purposes  
of building plans under municipal laws and regulations but it has no linkage  
or connectivity with the grant of EC and both will have an equally deleterious  
effect on the environment — When EC is granted for a particular construction  
it includes both FSI and non-FSI areas — Held, the built-up area under the  
Noti. dt. 14-9-2006 means all constructed area which is not open to the sky and  
the built-up area under the Noti. dt. 4-4-2011 means all covered area including  
basement and service areas

f — EC dt. 4-4-2008 was granted to the project proponent for construction  
of built-up area 57,658.42 sq m, whereas the total construction raised by it was  
1,00,002.25 sq m — Rejecting the contention of project proponent that while  
calculating the built-up area the constructions mentioned in Rr. 15.4.1.1(a), (b)  
and (c), 17.7.3 and 15.4.2 of the Pune Municipal Corporation Development  
Control Rules, 1982 were to be excluded, held, the construction raised  
g by the project proponent was in violation of the environmental clearance  
granted to it — However, considering that the project proponent had already  
taken money and a large number of flats and shops had already been

h † Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC  
OnLine NGT 4213 [National Green Tribunal, (Western Zone) Pune Bench, Application No. 184  
of 2015 (WZ), dt. 27-9-2016] and *Tanaji Balasaheb Gambhire v. Union of India* [National Green  
Tribunal, (Western Zone) Pune Bench, Review Application No. 35 of 2016, dt. 8-1-2018]

occupied and persons belonging to the middle class had invested their life's earnings, demolition not ordered/directed — However, inter alia, damages of Rs 100 crores or 10% of the project cost, whichever was higher, in addition to Rs 5 crores as levied by NGT, imposed on the project proponent — Words and Phrases — “Built-up area” — Pune Municipal Corporation Development Control Rules, 1982, Rr. 15.4.1.1(a), (b) & (c), 17.7.3 and 15.4.2 (Paras 14, 17, 53, 58.2, 66.1, 66.2 and 66.9)

a

**B. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Review petition — Who can hear and where — Held, the powers of review which NGT exercises are akin to those of a civil court — In terms of Or. 47 R. 5 CPC, a review petition should normally be heard by the same Bench which passed the original order**

b

— Further, this normal rule should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter — Further, under sub-rule (2) of R. 22 of 2011 Rules the matter should ordinarily be heard at the same place of sitting where it was originally decided, however, this is not a mandatory direction — National Green Tribunal (Practices and Procedure) Rules, 2011 — Rr. 22(2) and 22(3) — Civil Procedure Code, 1908 — Or. 47 R. 5 — Practice and Procedure — Review (Paras 36, 38 and 40)

c

**C. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Exercise of power of review — Impermissibility of, when appeal already pending**

d

— Statutory appeal was pending in the Supreme Court against the original order when the respondent's review application, inter alia, praying for demolition of the illegal structures and enhancement of compensation, was taken up for hearing by NGT — In the present case, held, project proponent/appellant had not only challenged original order of NGT on the ground that he had not violated EC but also on the ground that the damages awarded were highly excessive — Therefore, the Bench hearing the review application erred in holding that review application was maintainable — Civil Procedure Code, 1908 — Or. 47 R. 1(2) — Practice and Procedure — Review (Paras 7, 45 and 47)

e

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**D. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Damages for carrying out construction in violation of environmental clearance (EC) — Quantification of — Carbon footprint as basis**

g

— Rejecting the contention that damages should be assessed on the basis of “carbon footprint”, held, the courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles — However, in a case where expert evidence is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, court may rely upon

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a such data — Evidence Act, 1872 — S. 45 — Words and Phrases — “Carbon footprint” (Paras 59 to 63)

**E. Environment Law — Environment (Protection) Rules, 1986 — Rr. 3 to 5 — EIA Notifications issued under — Cannot be varied/abrogated by officials of MoEF — Environment (Protection) Act, 1986, S. 4**

b **F. Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Environmental Clearance/NoC — Improper grant of — Fine imposed upon the PMC and direction given by NGT to PMC to take appropriate action against the erring officials, and directions to enquire into conduct of other officials concerned, also upheld**

c The project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m.

d The project proponent applied for environmental clearance (EC) for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. EC was granted to the project proponent on 4-4-2008.

e The original applicant filed an application before the National Green Tribunal (“NGT”, for short) claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws.

f The case of the project proponent was that the term “built-up area” is synonymous with “floor space index” or FSI and that the constructed area, which is exempted from FSI area, or is a non-FSI area, is not a part of the “built-up area”. The project proponent contended that while calculating the built-up area, the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 of the Pune Municipal Corporation Development Control Rules, 1982 (“DCR”, for short), in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. It was contended that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008. The stand of the Union of India and the original applicant was that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006.

g The issues involved in this appeal were:

1. Whether the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance.

2. Whether NGT could have entertained a review application/reviewed its order dated 27-9-2016, when an appeal against the same was already pending before the Supreme Court?

h

*Held :*

Under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area. (Para 16)

a

Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. (Para 17)

b

c

***Notification dated 4-4-2011***

It is not at all necessary to decide whether the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests is clarificatory or is in substitution of the original notification of 2006. There is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. (Para 19)

d

***Clarification dated 7-7-2017***

The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. Since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by the office memorandum dated 7-7-2017 issued by the Joint Director, Ministry of Environment, Forests and Climate Change. (Para 22)

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*Common Cause v. Union of India, (2017) 9 SCC 499, relied on*

***Environmental clearance (EC) for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017***

SEIAA has laid down general conditions for pre-construction phase and the first condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. (Para 27)

g

In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to grant EC by treating the project as falling under Category B-2. Furthermore, the EC

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- a dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. (Para 28)

*Allegations made by the original applicant against various officials*

- b The law is well settled that no person can be condemned unheard. It would, therefore, not be fair to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. (Para 30)

However, as far as their official capacity is concerned, NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and therefore, directions given by NGT in its order dated 27-9-2016 in this regard, upheld. (Para 31)

- c Prima facie, the Principal Secretary, Environment Department, Government of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. His actions need to be looked into and, therefore, direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned, upheld. (Paras 32 and 66.8)

- d *Challenge to the order dt. 8-1-2018 passed in Tanaji Balasaheb Gambhire, 2018 SCC OnLine NGT 302*

- e Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT. (Para 34)

- f A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. (Para 38)

- g Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of the Supreme Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. (Para 39)

- h According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall “ordinarily” be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. (Para 40)

*Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167 : 1980 SCC (Tax) 222, referred to a

In terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. (Para 43)

*Malthesh Gudda Pooja v. State of Karnataka*, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, relied on

*Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 919; *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918, referred to b

As far as the facts of this case are concerned, the original applicant could have raised all issues which he raised in the review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in the Supreme Court as he has done now. In this context, once the Supreme Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application. (Para 45) c

The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before the Supreme Court. (Para 47)

*Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4217; *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954, referred to d

On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter. (Para 51) e

*Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4201; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208; *Tanaji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214, referred to f

***Is demolition the only answer?***

Now there are 807 flats and 117 shops which are either constructed or under construction. Keeping in view the interest of these third parties who were not parties before NGT, in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. (Para 53) h

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a The project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse. (Para 54)

b The project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. (Para 64)

c The base year has been fixed as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws. (Paras 64 and 66.9)

d The project proponent is granted six months' time to deposit the amount of damages imposed above in the Registry of the Supreme Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to the project proponent to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of the Court. (Para 66.13)

e ***Whether the original applicant is entitled to special damages?***

This litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted. (Para 57)

*Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213, partly reversed  
*Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302, reversed

h

VN-D/61010/S

Advocates who appeared in this case :

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a

b

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11. 2016 SCC OnLine NGT 4210, *Tanaji Balasaheb Gambhire v. Union of India* 283b-c
12. 2016 SCC OnLine NGT 4209, *Tanaji Balasaheb Gambhire v. Union of India* 282f-g, 283d-e
13. 2016 SCC OnLine NGT 4208, *Tanaji Balasaheb Gambhire v. Union of India* 282d, 282f-g f
14. 2016 SCC OnLine NGT 4207, *Tanaji Balasaheb Gambhire v. Union of India* 282b-c
15. 2016 SCC OnLine NGT 4206, *Tanaji Balasaheb Gambhire v. Union of India* 282b-c
16. 2016 SCC OnLine NGT 4205, *Tanaji Balasaheb Gambhire v. Union of India* 282b-c g
17. 2016 SCC OnLine NGT 4204, *Tanaji Balasaheb Gambhire v. Union of India* 282b-c
18. 2016 SCC OnLine NGT 4203, *Tanaji Balasaheb Gambhire v. Union of India* 282b-c
19. 2016 SCC OnLine NGT 4202, *Tanaji Balasaheb Gambhire v. Union of India* 283c
20. 2016 SCC OnLine NGT 4201, *Tanaji Balasaheb Gambhire v. Union of India* 282b h

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a	21. 2016 SCC OnLine NGT 1330, <i>Tanaji Balasaheb Gambhire v. Union of India</i>	282e, 282e-f
	22. 2015 SCC OnLine NGT 838, <i>Tanaji Balasaheb Gambhire v. Union of India</i>	282d-e
	23. (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, <i>Malthesh Gudda Pooja v. State of Karnataka</i>	279a
	24. 2009 SCC OnLine Kar 919, <i>Malthesh Gudda Pooja v. State of Karnataka</i>	279a-b
	25. 2009 SCC OnLine Kar 918, <i>Malthesh Gudda Pooja v. State of Karnataka</i>	279b-c
b	26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, <i>Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi</i>	278g-h

The Judgment of the Court was delivered by

**DEEPAK GUPTA, J.**— Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No. 10854 of 2016 is allowed.

c 2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as “the original applicant”) before the National Green Tribunal (“NGT”, for short) being Application No. 184 of 2015.

d 3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016<sup>1</sup> allowed the application in the following terms: (*Tanaji Balasaheb case*<sup>1</sup>, SCC OnLine NGT para 54)

f “54. For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

g 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board. a

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent 9-PP by the officer of PMC, we impose fine of Rs 5 lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs 5 lakhs shall be paid within one month. b

3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of FSI and BUA in terms of which order dated 31-5-2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31-5-2016. c

4. PMC, DoE and SEIAA are directed to pay cost of Rs 1 lakh each to the applicant within 4 weeks.” d

4. Aggrieved by the aforesaid order of NGT, the project proponent filed Civil Appeal No. 10854 of 2016. Pune Municipal Corporation (“PMC”, for short) also challenged the said order insofar as it adversely affects PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018<sup>2</sup> and Direction 1 in the original order dated 27-9-2016<sup>1</sup> was modified and substituted as under: (*Tanaji Balasaheb case*<sup>1</sup>, SCC OnLine NGT para 54) e

“54. ...‘1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several environment laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.’ ” f g

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018<sup>2</sup>, which we have allowed. h

2 *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

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a 7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016<sup>1</sup> as well as the order dated 8-1-2018<sup>2</sup> passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

*The factual matrix*

b 8. The facts briefly stated are that the project proponent purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m. From the documents placed on record, it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 m, 30 m and 18 m bisected this plot into two which for the sake of convenience were referred to as Plot c No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas, etc. The remaining area is referred to as the “balance plot area” which in this case works out to 46,993.79 sq m. Out of this “balance plot area” 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving “net d plot area” of 41,455.21 sq m. Prima facie these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the “net plot area”. We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.

e 9. On 12-3-2007, the project proponent applied for sanction of layout and building proposal plan on an area of 15,141.70 sq m, originally depicted as Plot No. 3 and the sanctioned FSI was 15,313.16 sq m. Thereafter, on 5-9-2007, revised layout plan was submitted for an area measuring 28,233.23 sq m and the sanctioned FSI was 39,526.54 sq m. The project proponent applied for EC for the project and in the proposal dated 27-6-2007, he had shown that he f would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. The EC was granted to the project proponent on 4-4-2008. Paras 2 and 3 of the communication granting EC read as under:

g “2. The project proponent is proposing for construction of group housing project at Sl. Nos. 35 to 40, Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs 10,737.14 lakhs. The project involves construction of 12 buildings with stilt, basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq m. Total built-up area as indicated is 57,658.42 sq m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213  
2 *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and horticulture purpose. The solid waste generated from the buildings will be 1500 kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

3. EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under Category 8(a) of the EIA Notification, 2006 subject to the strict compliance with the specific and general conditions mentioned below:”

10. EC was granted, subject to certain conditions. We may refer to certain relevant conditions which read as under:

*“Part A—Specific conditions*

I. Construction phase

\* \* \*

v. Permission to draw and use groundwater for construction work shall be obtained from competent authority prior to construction/operation of the project.

\* \* \*

5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.”

***Concept of “built-up area” under the Notification dated 14-9-2006***

11. It is not disputed that EC was granted for built-up area of 57,658.42 sq m. The main dispute is with regard to the interpretation of the term “built-up area”. The case of the project proponent is that the term “built-up area” is synonymous with “floor space index” or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the “built-up area”. On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forests and Climate Change is that the built-up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws.

12. The learned Senior Counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 (“DCR”, for short). Under DCR, no building can be constructed without grant of building permission/commencement certificate by Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein layout plans, building plans, etc. have to be submitted. The main emphasis was on Rule 2.13 of DCR, which defines “built-up area” as follows:

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a “2.13. **Built-up area.**—Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule 15.4.2.”

Rule 2.39 defines “floor area ratio” as follows:

b “2.39. **Floor area ratio (FAR).**—The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot.

$$\text{FAR} = \frac{\text{Total converted area on all floors}}{\text{Plot area}}$$

*Note.*—The term FAR is synonymous with floor space index (FSI).”

13. Strong reliance is placed on Rule 15.4.2, which reads as under:

c “15.4.2. In addition to Rules 15.4.1.1(a), (b) and (c) and 17.7.3, the following shall not be included in covered area or FAR and built-up area calculations:

(a) A basement or cellar space under a building constructed on stilts and used as parking space, and air conditioning plant rooms used as accessory to the principal use;

d (b) Electric cabin or substation, watchman’s booth of maximum size of 1.6 sq m with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

(c) Projection as specifically exempted under these Rules;

e (d) Staircase room and/or lift rooms above the topmost storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these Rules;

*Note.*—The shaft provided for lift shall be taken for covered area calculations only on one floor up to the minimum required as per these Rules;

f (e) One room admeasuring 2 m × 3 m on the ground floor of cooperative housing societies or apartment owners/cooperative societies buildings and other multi-storeyed buildings as office-cum-letter box room;

g (f) Rockery, well and well structures, plant, nursery, water pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

(g) (*Deleted*);

(h) Sanitary block subject to provision of Rule 15.4.1(a) and built-up area not more than 4 sq m.”

h 14. The contention of the learned Senior Counsel appearing for the project proponent is that while calculating the built-up area the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 in addition to the

areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008.

**15.** On the other hand, the stand of the Union of India and the original applicant is that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006. The building/construction projects are covered by Item 8 of the schedule to the EIA Notification dated 14-9-2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being “Category A” and “Category B”. “Category A” projects require clearance by the Central Government in the Ministry of Environment, Forests and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form “Category B” of the schedule including modernisation and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of “Category B” into B-1 and B-2. B-1 projects require Environmental Impact Assessment (EIA) Report to be prepared and scoping to be done whereas B-2 projects do not require any Environmental Impact Assessment Report. Item 8 of the schedule, with which we are concerned, reads as follows:

“(1)”	(2)	(3)	(4)	(5)
<b>8</b>		<b><i>Building/Construction projects/Area development projects and townships</i></b>		
(a)	Building and construction projects		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(b)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(b) shall be appraised as Category B-1.”

**16.** From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines “built-up area” to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area.

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- 17.** Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006.

**Notification of 4-4-2011**

- 18.** Our attention has been drawn to the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:

- “The built-up area for the purpose of this Notification is defined as ‘the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects’.”

This notification clearly defines “built-up area” as all constructed area including basement and service areas without any exception.

- 19.** The learned Senior Counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasise that this definition also is in consonance with the concept of grant of EC for construction as explained

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above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

*Clarification dated 7-7-2017*

20. Strong reliance has been placed by the project proponent on the office memorandum dated 7-7-2017 issued by Dr Ashish Kumar, Joint Director, Ministry of Environment, Forests and Climate Change. The said office memorandum reads as follows:

F. No. 22-35/2017-IA.III

Government of India

Ministry of Environment, Forests and Climate Change

(Impact Assessment Division)

\*\*\*\*\*

Indira Paryavaran Bhawan

Jor Bag Road, Aliganj,

New Delhi - 110 003

Dated 7-7-2017

*OFFICE MEMORANDUM*

*Sub.: Clarification on the date of applicability of Notification No. S.O.(E) 695 dated 4-4-2011 issued by MoEF & CC defining "built-up area" of the project.*

The Ministry is in receipt of a reference dated 3-4-2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on the abovementioned subject. CREDAI has requested that the definition of built-up area (BUA) given vide Notification No. S.O. 695(E) dated 4-4-2011 should have prospective effect.

2. The matter has been examined in the Ministry. BUA defined in Notification No. S.O. 1533 (E) dated 14-9-2006 mentions at Item 8(a) Columns 4 and 5 "built-up area for covered construction, in the case of facilities open to sky, it will be the activity area".

3. The Ministry has further defined BUA vide its Notification No. S.O. 695 (E) dated 4-4-2011 which reads as, "the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project".

4. The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built-up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of competent authority.

sd/-

(Dr Ashish Kumar)

Joint Director Ph: 011-24695474

Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

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a **21.** It is urged on the basis of the aforesaid memorandum that prior to the Notification dated 4-4-2011, the built-up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant, it has been urged that this memorandum is meaningless and that it has been issued when the matter was pending before NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

b **22.** Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The Notification dated 14-9-2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued, the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. c No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011 to d which we have adverted above. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office e memorandum.

**23.** We are also of the view that the so-called office memorandum is not at all clarificatory in nature. As held by us above, the notification of 2006 with regard to “built-up area” was absolutely clear and needed no clarification. We fail to understand how the concept of built-up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office f memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 7-7-2017.

**24.** This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forests and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these g communications in our judgment in *Common Cause v. Union of India*<sup>3</sup>. We expect the officials of the Ministry of Environment, Forests and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

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25. In view of the above, we are clearly of the view that the EC granted to the project proponent on 4-4-2008 was for constructing a total built-up area of 57,658.42 sq m and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

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*Environmental clearance dated 20-11-2017*

26. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows:

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“(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m<sup>2</sup> as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m<sup>2</sup> which includes the area of previous EC (dated 4-4-2008) 57,658.42 m<sup>2</sup> and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m<sup>2</sup>. After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m<sup>2</sup>. SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States.”

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27. The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq m, and non-FSI area measuring 46,088.47 sq m. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq m. In Plot No. 2, the construction raised on an FSI area is 630.55 sq m and on the non-FSI area is 4,858.57 sq m and, therefore, the total construction already raised in Plot No. 2 is 5489.12 sq m. The total construction raised by the project proponent is 1,00,002.25 sq m against the built-up area of 57,658.42 sq m mentioned in the EC of 4-4-2008. This could not have been ignored by SEIAA.

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28. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to

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a grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016<sup>1</sup>. We may note that the official who passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

c *Allegations made by the original applicant against various officials*

c **29.** NGT in its order dated 27-9-2016<sup>1</sup>, has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by PMC.

d **30.** The original applicant, both in his original application filed before NGT and in appeal filed before us as well as in other proceedings, has made serious allegations against individual officers of PMC as well as SEIAA and specially the Principal Secretary, Environment Department, Government of Maharashtra. However, for reasons best known to the original applicant, none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.

e **31.** However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016<sup>1</sup> in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

f **32.** We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Government of Maharashtra

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016<sup>1</sup>, NGT held as follows: (*Tanaji Balaseheb case*<sup>1</sup>, SCC OnLine NGT para 42)

“42. From the extracted portion of the order dated 31-5-2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but FSI consumed i.e. 48,617.14 sq m which is within the EC limit as against the actual construction activity which has exceeded over 1,00,000 sq m BUA. Hence, we set aside that order/communication dated 31-5-2016.”

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before NGT. Despite that, while granting fresh EC on 20-11-2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31-5-2016 and the matter has been considered afresh. When the letter dated 31-5-2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10-3-2015 to 13-3-2015 and the 87th meeting of SEIAA held on 10-8-2015 to 12-8-2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to NGT within 3 months which will thereafter pass appropriate directions in the matter.

***Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire v. Union of India***<sup>2</sup>

33. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

34. Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT.

35. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by

<sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213  
<sup>2</sup> 2018 SCC OnLine NGT 302

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a the Tribunal sitting at any other place. Sub-rule (3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

**36.** Since the powers of review which NGT exercises are akin to those of a civil court, it would be pertinent to refer to the relevant portions of Order 47 of the Civil Procedure Code, 1908, which read as follows:

b **“1. Application for review of judgment.**—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

c and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

d (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

\* \* \*

e **5. Application for review in court consisting of two or more Judges.**—

f Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same.”

g **37.** The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment<sup>2</sup> in review was pronounced by NGT.

h **38.** We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review

<sup>2</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. In the present case, the review application was based mainly on the contention that the affidavit dated 18-5-2016 was not taken into consideration by the Bench.

**39.** It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

**40.** Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule (2) of Rule 22 will come into operation. According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall “ordinarily” be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

**41.** In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by V.R. Krishna Iyer, J., “A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon”<sup>4</sup>. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another

<sup>4</sup> *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167, p. 173, para 14 : 1980 SCC (Tax) 222

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a Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

b 42. We may refer to the judgment of this Court in *Malthesh Gudda Pooja v. State of Karnataka*<sup>5</sup>. In that case, a writ appeal was disposed<sup>6</sup> of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed<sup>7</sup> and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since  
c the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

d “18. Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An  
e application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision  
f was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench  
g may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

h 5 (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473

6 *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 919

7 *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918

19. Benjamin Cardozo's celebrated statement in *The Nature of Judicial Process* (pp. 12-13) is relevant in this context:

'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions ... In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.'

20. Necessarily, therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

43. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are:

43.1. The Judges who heard the matter originally have applied their mind and would know best the facts and legal position;

43.2. They will be in the best position to appreciate the matter in issue when a review is filed;

43.3. If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

43.4. Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

44. We may again re-emphasise that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

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a **45.** Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order 47 Rule 1(2) CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this case are concerned, we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application.

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d **46.** We may add that on 21-12-2016<sup>8</sup>, the review application itself was listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, which adjourned the matter to 25-1-2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25-7-2017<sup>9</sup>, the said Bench considered this objection raised by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held as follows: (*Tanaji Gambhire case*<sup>9</sup>, SCC OnLine NGT)

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f “Having perused the record, we find that the appellant is seeking quashing of the order of compensation in totality and the review applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the applicant and appellant in the said appeal. Exception to sub-clause (2) of Order 47 Rule 1 of the Code of Civil Procedure, therefore, does not come to the help of Respondent 9. We are, therefore, of the considered opinion that the review application is maintainable. Plea of non-maintainability of the review application is rejected.”

g **47.** We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are, therefore, clearly of the opinion that the Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

h **48.** We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement

<sup>8</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4217

<sup>9</sup> *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954

of damages to be imposed on the basis of “carbon footprint” relying on the affidavit dated 18-5-2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18-5-2016.

**49.** Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016<sup>10</sup> and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016<sup>11</sup>, 5-4-2016<sup>12</sup>, 18-4-2016<sup>13</sup>, 22-4-2016<sup>14</sup>, 2-5-2016<sup>15</sup> and 5-5-2016<sup>16</sup> before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

**50.** The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016<sup>17</sup> on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015<sup>18</sup> had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016<sup>19</sup> directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016<sup>19</sup> before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016<sup>17</sup>. On 23-5-2016<sup>20</sup>, the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

10 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4201

11 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204

12 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205

13 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206

14 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219

15 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203

16 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207

17 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208

18 *Tanaji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838

19 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330

20 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209

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a In this order also there is no reference to the affidavit with regard to carbon footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20-7-2016 praying that in the meantime he had obtained permission of the Environment Department and SEIAA to which we have adverted hereinabove.

b **51.** The original applicant sought time to file counter-affidavit. The matter was adjourned<sup>21</sup> to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016<sup>22</sup>, the matter was got adjourned to 2-8-2016 on which date<sup>23</sup> some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016<sup>24</sup>, 19-8-2016<sup>25</sup>  
c and 24-8-2016<sup>26</sup> when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016<sup>1</sup>. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of  
d the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016<sup>20</sup> or on 24-8-2016<sup>26</sup> on which dates the original application was reserved for orders.

e **52.** We are of the considered view that the review application should have been heard by a Bench headed by Dr Justice Jawad Rahim who was admittedly available and in fact continues to be a member of NGT. Therefore, we are constrained to set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*<sup>2</sup> dated 8-1-2018.

f ***Is demolition the only answer?***

**53.** The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. The learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss.

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21 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215  
22 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210  
23 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211  
24 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202  
25 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212  
26 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214  
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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213  
20 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209  
2 2018 SCC OnLine NGT 302

As pointed out above, now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loath to legalise illegal constructions but in the present case we have no option but to do so.

**54.** We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016<sup>1</sup> that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

***Whether the original applicant is entitled to special damages?***

**55.** On behalf of the original applicant various issues were raised before us which had not been raised before NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of cultural centre. This averment is not correct as pointed out by the Senior Counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal.

**56.** On the other hand, it was contended by the learned Senior Counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any groundwater, however, it has utilised the groundwater and violated the condition of the EC. Reliance

<sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

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a is placed on certain photographs showing water being pumped. On the other hand, on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

b **57.** We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21-10-2011 about deficiency in service. This notice was replied to on 17-11-2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22-2-2012. This complaint was decided on 20-11-2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Disputes Redressal Commission both by the project proponent and original applicant in February 2015. It appears that thereafter there were complaints and counter-complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 2-12-2015 and it was only thereafter on 7-12-2015 an application was filed in NGT by the original applicant. We are highlighting these facts only to emphasise the fact that this litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

e ***Quantification of damages***

**58.** We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of NGT. While assessing the damages we may note certain facts:

f **58.1.** The EC was granted on 4-4-2008 but construction commenced after issuance of consent to establish dated 20-6-2009 and the EC would be valid for a period of 5 years from the date of such consent i.e. up to 19-6-2014;

**58.2.** The EC dated 4-4-2008 was granted for construction of built-up area of 57,658.42 sq m, whereas admittedly, as of now the constructed built-up area is 1,00,002.25 sq m. Therefore, there is clear-cut violation of the terms of the EC;

g **58.3.** Any construction raised after 19-6-2014 is without any EC especially since we have held that EC granted on 20-11-2017 is invalid.

***Carbon footprint***

h **59.** The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of “carbon footprint”. In the

absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

**60.** In the original application filed by the original applicant before NGT, there is no reference to carbon footprint. Even when evidence was initially led, no reference was made to the same. The concept of carbon footprint was introduced by the original applicant only in his affidavit dated 18-5-2016. In fact, according to the project proponent, this affidavit was not even filed on 18-5-2016. It appears to us that there is no order of NGT specifically permitting the original applicant to file such an affidavit. The submission of the original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*<sup>2</sup> dated 8-1-2018.

**61.** The courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of carbon footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

**62.** We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18-5-2016 filed before NGT are based on assumptions some of which we have not found to be correct, namely — (1) use of groundwater; (2) reduction of cultural centre space; (3) construction of basements, etc.

**63.** We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of carbon footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

**64.** Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats

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a and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating  
b the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the  
c base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short “TDR”) with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project  
d proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

**65.** Normally, this Court is not inclined to grant ex post facto EC. However, in the peculiar facts of this case, we direct that once the project proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.  
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***Findings and directions***

**66.** We summarise our findings and directions as follows:

**66.1.** That built-up area under the notification of 14-9-2006 means all constructed area which is not open to the sky.

f **66.2.** Built-up area under the Notification of 4-4-2011 means all covered area including basement and service areas.

**66.3.** The communication dated 7-7-2017 is totally illegal and accordingly quashed.

**66.4.** The original application cannot be treated as a public interest litigation.

g **66.5.** We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties.

**66.6.** That the order dated 27-9-2016<sup>1</sup> of NGT is upheld except insofar as Direction 1 is concerned.

**66.7.** The order in review application passed by NGT on 8-1-2018<sup>2</sup> is held to be totally illegal and is accordingly set aside.

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<sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213  
<sup>2</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

**66.8.** We uphold the original order dated 27-9-2016<sup>1</sup> holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 4-4-2008. We uphold the fine imposed upon PMC and the direction given to PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27-9-2016 and will submit his report to NGT within three months from today.

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**66.9.** We impose damages of Rs 100 crores or 10% of the project cost, whichever is higher, on the project proponent and in addition thereto, project proponent will pay Rs 5 crores as levied by NGT in its order dated 27-9-2016<sup>1</sup>.

**66.10.** Project proponent shall not be permitted to raise construction of two buildings having 454 tenements.

**66.11.** We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including clubhouse.

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**66.12.** The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted ex post facto environmental clearance in the peculiar facts of the case, on such terms and conditions as the environmental authority deems fit and proper.

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**66.13.** The project proponent is granted six months' time to deposit the amount of damages imposed in terms of Direction 66.9 supra in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s Goel Ganga Developers India Pvt. Ltd. to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.

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**66.14.** The matter be listed on 22-10-2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

**67.** All the appeals are disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

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<sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

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**(2019) 18 Supreme Court Cases 494**  
(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

3-Judge  
Bench  
2019  
March 5

MANTRI TECHZONE PRIVATE LIMITED . . . Appellant; a

*Versus*

FORWARD FOUNDATION AND OTHERS . . . Respondents. b

Civil Appeals No. 5016 of 2016<sup>†</sup> 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 b

**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 c

— 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 d

— 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 e

— 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) f

[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.] g

<sup>†</sup> 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) h

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

*a* — 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)

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

*c* — 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* **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**

*e* — 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 —  
*f* 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**

*g* — 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 or 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 reappraisal of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappraisal 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 reappraisal 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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a 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*

b 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)

c 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)

d 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)

e 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)

f *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*  
g *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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a 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, b Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

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|   | 2. 2016 SCC OnLine NGT 637, <i>Forward Foundation v. State of Karnataka</i>   | 508e                                   |
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| d | 6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, <i>Chunilal V. Mehta &amp; Sons Ltd. v. Century Spg. &amp; Mfg. Co. Ltd.</i> | 516e-f                                 |

The Judgment of the Court was delivered by

e **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<sup>1</sup> and 4-5-2016<sup>2</sup> respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short “the Tribunal”).

f **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”).

g **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<sup>2</sup>. 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<sup>2</sup> 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

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<sup>1</sup> *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5

<sup>2</sup> *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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a 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”).

c **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.

d **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.

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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a 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.

b 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.

c 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.

d 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

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<sup>1</sup> at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*<sup>1</sup>, 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.

<sup>1</sup> *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5

(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.

a (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.

b (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.

c (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.

d (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  
e to law by the project proponent in that area, after taking approval of the  
Tribunal.

f (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<sup>3</sup> passed the following order: [*Core Mind Software & Services  
(P) Ltd. case*<sup>3</sup>, SCC OnLine SC paras 2-5]

g “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

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

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. a

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<sup>1</sup> can also be raised. b

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.” c

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

**“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. e

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. f

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

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 h

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<sup>2</sup> as under:  
(*Forward Foundation case*<sup>2</sup>, 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, 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.

g 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 by CPCB/MoEF.

h 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

<sup>2</sup> *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 Balandur 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.

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

b (vi) The entire green belt created under the directions of this Tribunal should not 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.

c (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.

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d 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.

e 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).

f **General directions**

g 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.

h 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.

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.

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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.

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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.

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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 plan and the entire project may be revised in accordance with law.

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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.

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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

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<sup>2</sup> 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

<sup>2</sup> *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409

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a 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.

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d **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.

e **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.

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h **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.*<sup>5</sup> 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

<sup>5</sup> 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

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a seek reappraisal of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappraisal 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 reappraisal 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.

b 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 c 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.

d 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.

e 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 f the Tribunal has been cloaked with respect to restoration of the environment.

g 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.

h 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*

*Lal v. ESI Corpn.*<sup>6</sup>, 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

<sup>6</sup> (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

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a 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.

b **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.

c **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.

d **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.

e **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<sup>1</sup> as under: (*Forward Foundation case*<sup>1</sup>, 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.”

<sup>1</sup> *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*<sup>1</sup>, 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 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.”

*c* **54.** In our view, 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’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 reappraisal of factual matrix by this Court under Section 22 of the NGT Act.

*e* **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 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.

*f* **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. 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 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.

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<sup>1</sup> *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5

**58.** After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*<sup>1</sup>, 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<sup>2</sup>: (*Forward Foundation case*<sup>2</sup>, 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.

a (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.

b 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.

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

d 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:

e 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.

f 62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016<sup>2</sup> 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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2021 SCC OnLine SC 897

In the Supreme Court of India  
(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

Civil Appeal Nos. 12122-12123 of 2018  
Municipal Corporation of Greater Mumbai ... Appellant(s);  
*Versus*  
Ankita Sinha and Others ... Respondent(s).

With

Civil Appeal No. 86/2019  
Civil Appeal No. 5902/2019  
Civil Appeal No. 6273 of 2021  
(Arising out of SLP(C) No. 6732/2021)  
Civil Appeal No. 6274 of 2021  
(Arising out of SLP(C) No. 5930/2021)  
Civil Appeal No. 6275 of 2021  
(Arising out of SLP(C) No. 6733/2021)  
Civil Appeal No. 6276 of 2021  
(Arising out of SLP(C) No. 16448 of 2021)  
Diary No. 11655/2021  
Civil Appeal No. 6277-6278 of 2021  
(Arising out of SLP(C) No. 16449-16450 of 2021)  
Diary No. 13789/2021  
Civil Appeal No. 6279 of 2021  
(Arising out of SLP(C) No. 16451 of 2021)  
Diary No. 13811/2021  
Civil Appeal No. 6280-6281 of 2021  
(Arising out of SLP(C) No. 16452-16453 of 2021)  
Diary No. 13890/2021  
Civil Appeal No. 2897/2021  
Civil Appeal No. 6282 of 2021  
(Arising out of SLP(C) No. 11426 of 2021)  
Civil Appeal No. 6283 of 2021  
(Arising out of SLP(C) No. 11427 of 2021)  
Civil Appeal No. 6262 of 2021  
Diary No. 16948 of 2021  
Civil Appeal No. 6284 of 2021  
(Arising out of SLP(C) No. 11798 of 2021)  
Civil Appeal No. 6285 of 2021  
(Arising out of SLP(C) No. 12669 of 2021)  
Civil Appeal No. 6286 of 2021  
(Arising out of SLP(C) No. 16454 of 2021)  
Diary No. 19534/2021

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal  
No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

6732/2021), Civil Appeal No. 6274 of 2021 (Arising out of SLP(C) No. 5930/2021), Civil Appeal No. 6275 of 2021 (Arising out of SLP(C) No. 6733/2021), Civil Appeal No. 6276 of 2021 (Arising out of SLP(C) No. 16448 of 2021), Diary No. 11655/2021, Civil Appeal No. 6277-6278 of 2021 (Arising out of SLP(C) No. 16449-16450 of 2021), Diary No. 13789/2021, Civil Appeal No. 6279 of 2021 (Arising out of SLP(C) No. 16451 of 2021), Diary No. 13811/2021, Civil Appeal No. 6280-6281 of 2021 (Arising out of SLP(C) No. 16452-16453 of 2021), Diary No. 13890/2021, Civil Appeal No. 2897/2021, Civil Appeal No. 6282 of 2021 (Arising out of SLP(C) No. 11426 of 2021), Civil Appeal No. 6283 of 2021 (Arising out of SLP(C) No. 11427 of 2021), Civil Appeal No. 6262 of 2021, Diary No. 16948 of 2021, Civil Appeal No. 6284 of 2021 (Arising out of SLP(C) No. 11798 of 2021), Civil Appeal No. 6285 of 2021 (Arising out of SLP(C) No. 12669 of 2021), Civil Appeal No. 6286 of 2021 (Arising out of SLP(C) No. 16454 of 2021) and Diary No. 19534/2021

Decided on October 7, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:—

*"Estragon : Let's go.*

*Vladimir : We can't.*

*Estragon : Why not?*

*Vladimir : We're waiting for Godot."*<sup>1</sup>

2. Leave granted in the Special Leave Petitions.

3. The consideration to be made in these matters is whether the National Green Tribunal (for short "the NGT") has the power to exercise *Suo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

4. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an article titled "*Garbage Gangs of Deonar : The Kingpins and Their Multi-Crore Trade*" in the online news portal, *The Quint*. The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

5. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that '*damage to the environment and public health is self-evident*' and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

6. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise *suo motu* jurisdiction.

7. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita

Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

8. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No. 86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No. 71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of *suo motu* jurisdiction, by the NGT.

9. Mr. Anand Grover, the learned Senior Counsel was appointed as the *Amicus Curiae* to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act *suo motu* without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since *suo motu* power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

10. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted both counsel argue for keeping away the *suo motu* power from the NGT.

11. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered v. Dharminder Bhohra* wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus. Section 19(25)

conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

12. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore v. Union of India*<sup>3</sup>, opined on behalf of a Division Bench that,

"67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."

13. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak v. Achyut Kashinath*<sup>4</sup>, observed as under:—

"34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

14. The second limb of contention is that the Act is applicable to 'disputes' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara v. Rajendra Singh Bhandari*<sup>5</sup> wherein the term 'substantial question relating to environment' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

"19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.

20. ...In *Prabhakar v. Deptt. of Sericulture* [*Prabhakar v. Deptt. of Sericulture*, [(2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report : (SCC p. 21)

"34. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:

"*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'

35. *Black's Law Dictionary*, 5<sup>th</sup> Edn., p. 424 defines "dispute" as under:

'*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'

15. The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.*<sup>6</sup> Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

"41. ...Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act....."

43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re [Powers, Privileges and Immunities of State Legislatures, In re, [(1965) 1 SCR 413 : AIR 1965 SC 745]*, made in the following words : (SCR p. 499 : AIR p. 789, para 138)

"138. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.

'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England, Vol. 9, p. 349*]'."

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL [BSNL v. TRAI, [(2014) 3 SCC 222]*, we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J. v. Ministry of Environment & Forests [Wilfred J. v. Ministry of Environment & Forests, [2014 SCC OnLine NGT 6860]* must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

17. The argument has been that the superior Courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any *suo motu* exercise.

#### I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

19. The precursor to the NGT Act was the 186<sup>th</sup> Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:—

“It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts.”

20. The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

21. The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186<sup>th</sup> Law Commission Report provided the following reasoning,

“Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar v. Union*

of India, [(1997) 3 SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."<sup>2</sup>

22. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

23. This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

## II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

24. The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2, 3, 4, 5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow:—

"2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a

specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

25. A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

26. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186<sup>th</sup> Law Commission Report highlighting that the body so created, would aim to "*achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure*". An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

27. The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

28. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

29. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT.

### III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

for purposive interpretation. The Statute will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus,

"When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.

It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds : a compelling rule by Lord Somervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

31. The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

32. The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. v. State of Bihar*<sup>8</sup>,

"...the office of all judges is to make such construction as shall suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

33. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by—

- (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
- (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

34. Justice Frankfurter of US Supreme Court in '*Some Reflections on the Reading of Statutes*', has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.

...

Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'.<sup>9</sup>

35. Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co. v. Ryan*, and the same is taken as a lodestar in our quest,

"the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"<sup>10</sup>.

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.<sup>11</sup> The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

#### IV. SALIENT STATUTORY FEATURES OF NGT ACT

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "*any person aggrieved including any representative body/organization*" and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

38. While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

*"24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

39. The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

40. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to

the environmental principles and even hauling up authorities for inaction, when need be.

41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

42. Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

43. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

#### V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum v. UOI*<sup>12</sup>; *M.C. Mehta v. UOI*<sup>13</sup> etc.]

45. The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

46. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

47. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186<sup>th</sup> Law Commission Report,

"The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

48. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "*dispute*", but the formulation of *decisions*.

49. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*<sup>14</sup>, highlighted the NGT's role in the context, in the following words:—

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

50. In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

#### VI EXERCISE OF SUO MOTU POWER BY NGT

51. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

52. Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd. v. Forward Foundation*<sup>15</sup>, Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:—

"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 the 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."

53. As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

54. Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

"46. ... 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, leaves 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."

55. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri v. DDA*<sup>16</sup> was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of 'Merits Review' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

"503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

56. Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

57. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.)*<sup>17</sup> where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

"The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

58. The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

### VII. UNIQUENESS OF NGT VIS-A-VIS OTHER TRIBUNALS

59. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya v. All Dimasa Students Union*<sup>18</sup>, fittingly observed thus:—

"163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. CIT* [*L. Hirday Narain v. CIT*, [(1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14 : (SCC p. 359)

"14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private— of a citizen."

61. Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

62. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

"The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."<sup>19</sup>

### VIII. THE SUI GENERIS ROLE OF NGT

63. The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur v. State of Punjab*<sup>20</sup>, wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

"14. The concept of *sui generis* is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbitrate is entrusted acts *sui generis*, that is, on its own and not under any law."

64. In *DG NHA v. Aam Aadmi Lokmanch*<sup>21</sup>, Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:—

"38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

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76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued."

65. In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

66. The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

67. The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multidimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

## IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

68. Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo motu* cognizance of matters, for effective discharge of its mandate.

69. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

"14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose : Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

70. The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

71. In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

72. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

73. It may also be relevant to bear in mind that while dealing with contested cases,

the NGT is required to pass "award" and "order" and the statute repeatedly uses the word "decision". Therefore, it is appropriate to correlate the word "decision" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab v. Shamlal Murar*<sup>22</sup> has so correctly prioritized the substantive rights and observed succinctly,

"8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

75. While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10 of the Rio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

#### X. THE PRECAUTIONARY PRINCIPLE

76. Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise<sup>23</sup> has expounded on the proactive role of the authorities in the following passage:—

"Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."<sup>16</sup> The precautionary foundation of *Vorsorgeprinzip* has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies."

77. The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

78. As earlier seen, S.20 of the NGT Act which includes the term "decision", in addition to "order" and "award", also require the Tribunal to apply the '*Precautionary Principle*' and the statutory mandate being relevant is extracted:—

"20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other '*decisions*' or '*orders*' to governmental authorities or polluters, when they fail to "to anticipate,

*prevent and attack the causes of environmental degradation*"<sup>24</sup>. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

80. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, '*The Nature of the Judicial Process*', stated thus,

"It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

81. The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

#### XI. ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.<sup>25</sup> Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

83. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law*, wrote the following evocative passage on the concept of environmental justice,

"Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."<sup>26</sup>

84. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

"Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school",

whereas the people who reside there do little or nothing to harm their community."<sup>27</sup>

85. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "equal footing" conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

86. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of *locus standi*.

"The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."<sup>28</sup>

87. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the 'Blindfold of Lady Justice', which symbolizes "the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."<sup>29</sup> The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

#### IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights<sup>30</sup>, liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.<sup>31</sup>

89. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.<sup>32</sup> Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar v. State of Bihar*, this Court explicitly held the following,

"Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."<sup>33</sup>

90. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the 'Absolute Liability Principle'<sup>34</sup> by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

mechanisms in this sphere have been created, on account of this Court's initiative.

"The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. ...The right was recognized as part of the right to life in 1991. ... The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."<sup>35</sup>

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.<sup>36</sup> There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the 'at risk' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.<sup>37</sup>

92. Justice T.S. Doabia in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

"The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.

...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."<sup>38</sup>

93. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

94. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority v. Central Empowered Committee*<sup>39</sup> so succinctly said that,

"40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are *sui generis*. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts.”

95. It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

“With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade.”<sup>40</sup>

96. The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

#### X. CONCLUSION:

97. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

98. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists<sup>41</sup> with many countries declaring climate emergencies and many others being urged to follow suit<sup>42</sup>.

100. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle*, or the *'Great Law of the Iroquois'* (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

101. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".<sup>43</sup> Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *servicing the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

103. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

104. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

105. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

106. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

107. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

108. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

<sup>1</sup> *Beckett, S.* (1954). *Waiting for Godot : Tragicomedy in 2 Acts.*

<sup>2</sup> (2013) 15 SCC 341

<sup>3</sup> (2008) 1 SCC 125

<sup>4</sup> (2011) 9 SCC 541

<sup>5</sup> (2018) 11 SCC 734

<sup>6</sup> (2019) 19 SCC 479

<sup>7</sup> Chapter II, 186<sup>th</sup> Law Commission Report.

<sup>8</sup> (1955) 2 SCR 603; AIR 1955 SC 661

<sup>9</sup> 47 Columbia Law Review 527

<sup>10</sup> 293 US 388 (1935) (dissenting)

<sup>11</sup> *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279.

<sup>12</sup> (1996) 5 SCC 647

<sup>13</sup> (1997) 2 SCC 353

<sup>14</sup> (2012) 8 SCC 326

<sup>15</sup> (2019) 18 SCC 494

<sup>16</sup> 2021 SCC OnLine SC 7.

<sup>17</sup> (1999) 2 SCC 718

<sup>18</sup> (2019) 8 SCC 177

<sup>19</sup> GILL, G. (2020). *Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall?* Asian Journal of Law and Society, 7(1), 85-126.

<sup>20</sup> (1999) 2 SCC 131

<sup>21</sup> 2020 SCC OnLine SC 572

<sup>22</sup> (1976) 1 SCC 719

<sup>23</sup> Scott La Franchi, *Surveying the Precautionary Principle's Ongoing Global Development : The Evolution of an Emergent Environmental Management Tool*, [32 B.C. Env'tl. Aff. L. Rev. 679 (2005)

<sup>24</sup> *Vellore Citizens (supra), S. Jagannathan v. Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board v. C Kenchappa*, (2006) 6 SCC 371.

<sup>25</sup> Schlosberg D, *Defining Environmental Justice : Theories, Movements, and Nature* (Oxford University Press 2009)

<sup>26</sup> Schiffer, L. J., & Dowling, T. J. (1997). *Reflections On The Role Of The Courts In Environmental Law.* Environmental Law, 27(2), 327-342.

<sup>27</sup> Jeff Todd, *A "Sense of Equity" in Environmental Justice Litigation*, [44 HARV. ENVTL. L. REV. 169, 193 (2020).

<sup>28</sup> Supra Note 26.

<sup>29</sup> Ibid

<sup>30</sup> *Rural Litigation And Entitlement Kendra v. State Of U. P.*, AIR 1985 SC 652, *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613, *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577

<sup>31</sup> See M.A.A. Baig, *Environmental Law And Justice*(1996). Domenico Amirante, *Environmental Courts In Comparative Perspective : Preliminary Reflections On The National Green Tribunal Of India* (2012). M.K. Ramesh, *Environmental Justice : Courts And Beyond*, Indian Jo. Of Env'tl. L. 20(2002).

<sup>32</sup> Maheshwara Swamy, N. *Law Relating to Environmental Pollution and Protection*. India, Thompson Reuters, Vol.I, Ed.5.

<sup>33</sup> (1991) 1 SCC 74.

<sup>34</sup> *M.C. Mehta v. Union of India*, [(1987) 1 SCC 395.

<sup>35</sup> Rajamani, Lavanya. 2007. *Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*. *Journal of Environmental Law*

<sup>36</sup> *Supra*, Note 19.

<sup>37</sup> *M.C. Mehta v. Union of India*, (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action v. Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board II v. M.V. Nayudu*, (2001) 2 SCC 62.

<sup>38</sup> Justice T.S. Doabia, *Environmental & Pollution Laws in India*, 3<sup>rd</sup> Ed., Vol 2 (2017).

<sup>39</sup> (2021) 4 SCC 309

<sup>40</sup> Domenico Amirante, *Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India*, 29 *Pace Env'tl. L. Rev.* 441 (2012)

<sup>41</sup> Indian Network for Climate Change Assessment, *Climate Change and India : A 4X4 Assessment - A sectoral and regional analysis for 2030s*, Ministry of Environment and Forests, Government of India, 16 November 2010

<sup>42</sup> Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

<sup>43</sup> *Supra* Note 23.

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