

Filed on: 07.07.2021

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI**

**MEMORANDUM OF ORIGINAL APPLICATION**

(Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act 2010)

**APPLICATION No. 72 OF 2021**

**BETWEEN**

P. R SASIKUMAR & ANR ..... **APPLICANTS**

*Versus*

UNION OF INDIA & ORS.....**RESPONDENTS**

**REJOINDER FILED AGAINST THE COUNTER AFFIDAVIT FILED BY THE  
RESPONDENT No.3**



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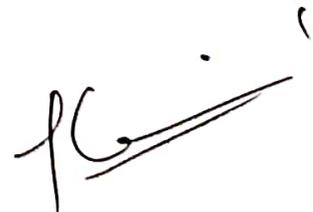
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Date: 05.07.2021

Place: Kochi



**COUNSEL FOR THE APPLICANTS**

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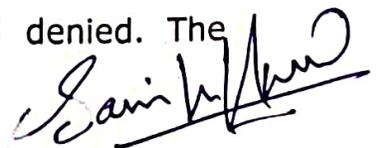
UNION OF INDIA & ORS.....**RESPONDENTS**

**REJOINDER FILED AGAINST THE COUNTER AFFIDAVIT FILED BY THE**  
**RESPONDENT No.3.**

I, P.R. Sasikumar, aged 56 years, S/o Raghavan Nair, Padma vilasam, Muzakulam (s) P.O, Peruva, Kottayam district, Kerala – 686610, do hereby solemnly affirm and state:

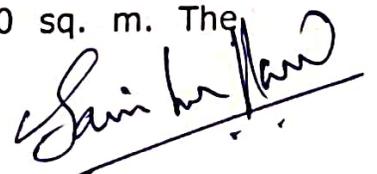
1. I am the 1<sup>st</sup> applicant in the abovementioned memorandum of original application and as such am conversant with the facts and circumstances of the case and am competent to swear to this affidavit on behalf of the 2<sup>nd</sup> applicant also. I submit that I have read the counter affidavit filed on behalf of the 3<sup>rd</sup> respondent. I wish to deny all the contents of the same as false, except to the extent expressly admitted to hereunder. Without prejudice to the generality of the above denial, the following rejoinder is tendered.
2. The applicants herein reserve the right to file a detailed rejoinder affidavit against the Counter affidavit filed by the 3<sup>rd</sup> Respondent, bringing more facts to prove the case of the applicants before this Hon'ble Tribunal. Applicants are filing this rejoinder as a preliminary rejoinder against the counter affidavit filed by the 3<sup>rd</sup> Respondent.
3. It is submitted that the averments and allegations raised by the respondent in Paragraphs No. 1 to 4 are not true and denied. The





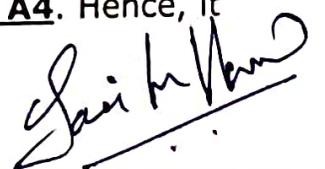
applicants herein submits that as pointed out by the CE Southern Railway Ernakulam office, as the curvature proposed is only 1850m, the anticipated speed of 200 km/ hr cannot be attained for the project. Copy of the letter dated 10.06.20& 15.06.20 from Southern Railway reveals this fact. In the case of the Semi-High Speed train announced recently from Pune to Nashik, the curvature proposed is 4000 m and hence the speed proposed is 250 km/hr. The applicants herein submit that as per Annexure R3(a) and R3(b), the pre-investment activities up to 100 crores alone can be undertaken. This being a Rs. 63940 Crore project and the cost towards land acquisition alone is estimated at 13,265 crore rupees. In such scenario, land acquisition is virtually impossible by undertaking the same and restricting it to 100 crores. The averments raised by the respondent that the present project is highly prestigious for the State of Kerala and that the State is ambitious for early completion and commissioning of the project does not provide a ground for the fact that the respondents herein can flout the procedures established by law and take advantage of the loopholes and at the cost of the environment. There is absolutely no study, materials or documents to show that the project in question is essential and no less damaging, cost effective alternative is available.

4. It is submitted that the averments and allegations raised by the respondent in Paragraphs No. 5 to 10 are not true and denied. The averment of the respondent that the Silverline project is a railway project and do not require environmental clearance from the MoEF vide notification dated 14.09.2006 is not correct. As stated earlier, the project is styled by the respondent as a railway project and hence they claim that an environmental clearance is not required from the 1<sup>st</sup> respondent or any other statutory body. Entry 8 of the Schedule of the EIA Notification, 2006 does show that railway projects has not been specifically mentioned in the entry, they will be covered under Entry 8 of the EIA Notification of 2006 in as much as they are constructional or development projects. They would squarely fall under the heading township or development projects. Where the area covered is equal to or more than built up areas is equal to or more than 1,50,000 sq. mtr, they have to be treated as category A projects. As admitted by the 3<sup>rd</sup> respondent, the total land area required for the project is 1383 hectares, land area for alignment is 1082 hectares and land for station area is 246 hectares, which obviously exceeds more than 1,50,000 sq. m. The

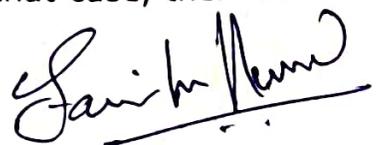
entries have to be given a purposive interpretation. The interpretation which is held to achieve object has to be granted to such entries. The 3<sup>rd</sup> Respondent has admitted in Para.2.2.1 of their EIA document that their project is Category A, and Category A projects are having significant adverse environmental impacts and are irreversible, unprecedented in nature. This is not strictly a railway project. It is a standalone project with an idea to develop real estate business. In order to make the project viable and tenders have already been invited for development of 2500 acres of land for construction of smart cities and other commercial establishments. Also 300 acres of land owned by Fertilizers and Chemicals Travancore Ltd (FACT) and 100 acres owned by Hindustan Machine Tools (HMT) at Ernakulam have already been included for development of smart cities. Hence, large extent of construction including high boundary walls on both sides of around 450 Kilometres of the track. Hence, according to the applicants, prior environment clearance is a statutory mandatory requirement for the project. The applicants herein submits that the agency which conducted the EIA is not a reputed firm as claimed by the 3<sup>rd</sup> Respondent, as they are not in the accredited list of MoEF&CC even for the construction sector. It was submitted by the 3<sup>rd</sup> Respondent that the EMP was done by the firm, but the same is not available anywhere in the public domain, and no mention about the same in the EIA.

5. The averment raised by the 3<sup>rd</sup> respondent that the classification of the project as 'Construction Project' is not misleading and is perfectly true. The respondent is silent about the Tender No. KRDCCL/90/2019 dated 07.08.2019 which was invited for construction of smart cities and other commercial establishments adjacent to 10 stations in 2500 acres of land, with the intention of unlocking the land value. The averment raised by the respondent that they have conducted a study and a report by the CED and the same would suffice in the place of a detailed EIA and EMP study is not correct and denied. In fact, the 3<sup>rd</sup> respondent has now invited the tender for carrying out an Environmental Impact Assessment Study / field work and preparation of Comprehensive Environment Impact Assessment Report (CEIA), Environment Management Plan (EMP), Detailed Social Impact Assessment (SIA), Resettlement Action Plan (RAP) And Indigenous People Plan (IPP) for proposed Silverline Semi High-Speed Rail. A true photocopy of the notice inviting tender issued by the KRDCCL is produced herewith and marked as **Annexure A4**. Hence, it

is evident on the part of the respondent that they themselves are convinced with the fact that the present study which they rely on is insufficient. The 3<sup>rd</sup> Respondent has virtually admitted the legal contentions of the applicants herein and have decided to do a Comprehensive EIA. This alone is sufficient to hold that any project activity can be started only after the Comprehensive EIA and EMP is prepared and made available for scrutiny.

6. It is submitted that the averments and allegations raised by the respondent in Paragraphs No. 11 to 15 are not true and denied. The applicants herein submit that the averment raised by the respondent that the project which they are undertaking does not require environmental clearance on the basis of Annexure R3(d) is not correct and denied. As stated by the applicants, the respondent is carrying out the present project in such large scale and can be considered only as a constructional or development projects. In fact, to be specific they would squarely fall under the heading township or development projects. The averments raised by the respondents that the present project does not require an environmental clearance as the same is a green project is not true and denied. It is to be noted that a green project classification has no relation whatsoever with its environmental impact. Where a new project is being established in a new area, other than the expansion of an existing project, it will be considered a green project. Such projects will tend to cause more damage than what is expected from the expansion of an existing project. The 3<sup>rd</sup> respondent has styled the argument in such a way to show that the present project being ecologically friendly as a green project. The applicants herein submit that all the railway projects which are operating in Kerala are running on electrical power and hence all the existing railway projects are green projects using renewable source of energy and there is no such speciality for this project in particular. The importance of conducting an EIA study is to identify the issues that would arise as a result of the construction of such a large project which extends from Thiruvananthapuram to Kasargod and as to what are the mitigatory measures to be taken. The averment by the respondent that the project will not fall within the purview of building/construction project or township project to enforce the applicability of Schedule 8 of the notification as held in Vikranth Tongad's case is not true and denied. It is true that the said Judgment stands stayed by the Hon'ble Supreme Court. But it is to be noted that in that case, there was



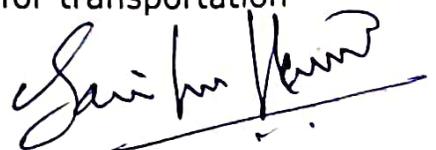
an issue with regard to the demolition of the construction of Delhi Metro Rail and hence the interference of the Hon'ble Apex Court was on a different footing altogether. Moreover, when the Apex Court has stayed the judgment in Vikranth Tongad's case and the same is pending consideration, the stay is only with respect to that project only and only applicable to the facts and circumstances of that case. That should not be considered as a blanket stay for the legal arguments held therein, or matters involving violation of the provisions of EIA Notification. The judgment of the Division Bench of the Kerala High Court in *Abdu Rahiman Vs District Collector, Malappuram* reported in **2009(4) KHC 283** governs the field regarding the stand to be taken by the lesser member bench of courts on the circumstance of staying the larger bench decision by the Supreme Court. The Division Bench categorically held that the Single Bench shall follow the dictum in the Judgment of the Division Bench even if it is stayed by the Supreme Court.

Merely because the DB Judgment is stayed doesn't loose its binding precedent. When a larger bench of the National Green Tribunal, Principal Bench has interpreted the provisions of the EIA Notification in favour of the Environmental Protection, and held a Judgment, even if it is stayed by the Hon'ble Supreme Court on the facts and circumstances of that case, this Hon'ble Tribunal has to follow the dictum passed by the Principal Bench, unless otherwise finally decided by the Supreme Court. The above-mentioned Judgment in **2009(4) KHC 283** necessitates the judicial system to follow a precedent unless reversed by a higher court.

7. Moreover, the said case was that of a project involving that of only a metro rail project of distance at around 100 kms only and the same scenario cannot be equated in the case of the present project. Here tender is already invited for development of 2500 acres of land as smart cities and other commercial establishments, this project should be treated as a building/ construction project or township project if not at least a real estate project. Again Noida and other metro rail projects are around 100 KM only, but this project is 530 km and hence the metro concept is not applicable here. Moreover in the case of metro rail projects, the construction is mainly via duct, except near the stations. But here in the present case except 88 km of via duct, the rest is at ground level, with high boundary walls on both sides. The construction for boundary walls on both sides itself will be around 1 crore sq mts, which is not applicable for any metro rail projects. Moreover, the

proposed development of 2500 acres of land, for which tender was floated, prior clearance from MOEF&CC is required as per EIA Notification. This type of large construction and area development was never a question in the Vikranth Tongad's case. The project in the present case is passing through many eco sensitive areas, mangroves and hence prior clearance as per the CRZ notification 2011 is mandatory. Also as per circular No. F 19-172/2018 -IA 111 of MOEF&CC dated 28.05.20, Clause 3(a) projects shall draw up a sustainable EMP. IRSDC must have the EMP for the respective station development project duly approved by the EnHM Directorate of the Ministry of Railways before undertaking any physical development at site. As per provision III (i), No construction shall be allowed to obstruct the natural drainage through the site on wetland and water bodies. As 132 km of the track, some of the stations and construction of some of the smart cities are through paddy fields and other low lying areas, wetland and water bodies, EMP & prior clearance from MOEF&CC is required. A true photocopy of the circular No. F 19-172/2018 -IA 111 of MOEF&CC dated 28.05.2020 is produced herewith and marked as **Annexure A5**.

8. It is respectfully submitted that, Annexure A5 clearly defines the Building and Construction projects in "Railway Land" for Commercial Development in and around Railway Stations". Even for argument sake, the general exemption given for railway can be used only for development in and around stations, and not far off. Here, in this project, the land proposed to be developed is being owned by FACT at Ambalamugal & HMT at Kalamassery, for which tender had already been floated, are 10km & 5 km away respectively from the proposed Ernakulam Station at Kakanad. It is not at all 'in and around railway station' and therefore cannot claim as a project associated with the proposed project as claimed by the 3<sup>rd</sup> Respondent. Ministry of Environment has issued Annexure A5 with an intention to discourage real estate developments in the name of railway projects. Hence the attempt of the 3<sup>rd</sup> Respondent is purely a commercial real estate business not connected with the proposed silver line project.
9. It is submitted that the averments and allegations raised by the respondent in Paragraphs No. 16 to 20 are not true and denied. The averment raised by the respondent with regard to the fact that the project will reduce pollution and dependency on trucks for transportation

of goods is not correct and denied. The applicants herein submit that for passenger train, a 17 axle load track is only required, whereas for transportation of goods, a 25 tonnes axle load track is required. That itself means the cost will escalate by 50 % and hence the transport of goods in the train will not materialise. Accordingly avoiding of pollution by prevention of trucks traffic is ridiculous. Moreover, being a standalone project within the State of Kerala, without any connection to other states, there will not be any effective goods traffic in this train service. So far to the best of the knowledge of the applicants, there is no formal sanction for the project, from Railway Board, Central Government and Niti Aayog. In fact, it is also learnt that the Southern Railway Ernakulam had directed KRDCL, to change the alignment in many sectors. The respondent in Paragraph No. 17 has stated that along with the rapid EIA, an EMP was also done, however, it is not mentioned anywhere in the rapid EIA report. The averment raised by the respondent that the present project was carefully selected so that it does not pass through any reserve forest or eco-sensitive area is not true and contradictory to the statements made in the counter affidavit. The applicant submits that the present project passes through many areas involving mangroves. Also, the decision of KRDCL to go ahead with another comprehensive EIA itself shows that the earlier study report is insufficient. Also, the averment that the Hon'ble High Court of Kerala has decided the matter in totality vide Annexure R3(f) is not true and denied. The issues raised in the present case was never a subject matter of the case which before the Hon'ble High Court. It is to be noted that the respondent has wrongly stated the said case has been dismissed, in fact the same has been disposed of wherein the respondents have assured that they will proceed with the project only with the concurrence of the Central Government Railway Board and other statutory authorities. This is accordingly recorded by the Court. Further it was directed that in the said case that if the properties of the petitioners therein are to be acquired, it shall be strictly as per Land Acquisition Act 30 of 2013 in true letter and spirit. The Land Acquisition Act 30 of 2013 stipulates that a Social Impact Assessment study is to be conducted before resorting to land acquisition. However, in the present case, they are going to initiate such proceedings without a Social Impact Assessment study is not done so far.



10. It is submitted that the averments and allegations raised by the respondent in Paragraphs No. 21 to 26 are not true and denied. The averments with regard to the fact that the project will be a game changer in the arena of transport industry has already been countered and denied by the applicants in the above mentioned paragraph and is not repeating the same again. Also to be noted that the respondent herein admits to the fact that they have not even obtained several of the permissions from the statutory authorities till date. Now the KRDC states that they intend to repeat another EIA study for finalizing the terms of reference. Thus, the earlier EIA study after spending around 33 Lakhs rupees from the public exchequer, giving it to an unaccredited agency, is basically sheer wastage of public money. The applicants herein believe that such expenses should be recovered from the persons responsible for the wastage of money from the state exchequer. The averment that the applicants are not the competent persons to file the present case is not true and denied. The property of the second applicant is at Maneed near Piravom and the same is proposed to be acquired for the project. The first applicant will face heavy traffic congestion in his area, as high boundary wall will be constructed right in front of his house in Mulakulam, thereby he also is affected by the proposed project. Moreover, in the 2018 flood, his house was partially submerged and his family members were rescued in country boats. Now that high boundary walls being proposed to be constructed in front of his house, will prevent the natural flow of water and if flooding comes, even the rescue operation will not be possible. Hence, he also is badly affected by this project. The aspect of flooding of the areas of the applicants properties during monsoon season has not been considered in the name sake EIA study, till date.
11. There is absolutely no transparency in the functioning of the 3<sup>rd</sup> Respondent. The DPR of the project is hidden from the public and even from this Hon'ble Tribunal. A copy of the Detailed Project Report would reveal that the constructions planned by the 3<sup>rd</sup> Respondent are only real estate in nature and has nothing to do with the railway project. The Railway Board has not granted any permission so far. If nothing to be hidden, the 3<sup>rd</sup> Respondent would have produced a copy of the DPR in public domain. The lack of transparency in implementation also would detrimental to the sustainable development.



12. It is pertinent to note that the eco system of several endangered migratory birds will be affected if the proposed alignment is permitted very close to Kadalundi Bird Sanctuary. The proposed line closely pass through the same and this is the only bird sanctuary and community reserve in the State that facilitates migratory birds even from far away countries. Most sensitive eco-system of migratory birds will be seriously impacted due to the construction and operation of the proposed project. The kole wetlands at Thrissur is also famous for the eco-system of rare migratory birds. It is an internationally acclaimed wetland. The proposed project passes through kole wetland where a lot of threatened birds are seen. [www.ebird.org](http://www.ebird.org) is a world famous portal holding credible information about the rare / threated bird species all over the world, including their location, eco-system. Superimposing the proposed project line over the map of threatened birds in Kerala would show that the line is passing through critical areas of threatened species of birds, in many areas including at Thrissur. A true photocopy of the map of threatened birds in Kerala with K-rail alignment on it is produced herewith and marked as **Annexure A6**. A true copy of the Google map image of the project site Kadalundi Bird sanctuary having the proposed line on it is produced herewith and marked as **Annexure A7**. A true copy of the Google map image of the project site Dharmadom Mangrove Forest having the proposed line on it is produced herewith and marked as **Annexure A8**.

13. That, there are several such ecologically sensitive and fragile sites through which the project in question is proposed. These sites are assets of our nation. Even as per the National Environment Policy, 2006, these areas have to be protected as such from any sort of destruction. The project in question would cause irreparable damage to the precious eco-system. Any further step in the project in question would be detrimental to the National Environment Policy, 2006. Duty of the State to protect and improve the environment, biodiversity and eco-systems cannot be ignored simply stating that the project is prestigious and important. It has to be proved beyond doubt by the project proponent that it won't cause any detrimental impact on the environment, and also will go in tune with the Constitutional duty to protect and improve the Environment.



14. It is to be noted that the 17 Sustainable Development Goals have been adopted as a guiding Policy of the Union of India and State of Kerala. Eradicating poverty is the 1<sup>st</sup> SDG in the priority list. Industry, Innovation and Infrastructure is listed as 9<sup>th</sup> in the SDG. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent is proposed to invest huge amount of money on the project in question, without addressing the poverty and hunger in Kerala. As per the statement made in the legislature, more than 1,30,000 Scheduled Caste and Schedule Tribe families have no home of their own to reside. No effective steps have been taken by the State of Kerala to provide them a shelter. Spending more than One Lakh Crore rupees for an economically, environmentally and socially disastrous project like the project in question, is against the Principle of Sustainable Development.
15. The project of the 3<sup>rd</sup> Respondent involves both construction and mining. Unimaginably high amount of mining would be required for the proposed project. There are accredited consultants in the field of Mining as well as Construction. The 3<sup>rd</sup> Respondent has to engage an accredited consultant who is competent to assess the environment impact of mining and construction, proposed by the 3<sup>rd</sup> Respondent. Merely finding lame excuse to escape from such duty is to be discouraged and rejected as such. Environment Impact Assessment would not only show the impact of the project on the environment, but also the impact of environment on the project. Areas where soil piping are identified, can be avoided if a proper scientific Comprehensive EIA is done before starting any activity of the project.
16. Hon'ble Supreme Court has held in the matter of **Karnataka Industrial Areas Development Board vs Sri C. Kenchappa & Ors** in **Civil Appeal No. 7405 of 2000**, about the sustainable development. It was held by the Hon'ble Apex Court that:

"The concept of sustainable development was propounded by the 'World Commission on Environment and Development', which very aptly and comprehensively defined it as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. Survival of mankind depends on following the said definition in letter and spirit.




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Sustainable use of natural resources should essentially be based on maintaining a balance between development and ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved."

The project in question proposed by the 3<sup>rd</sup> Respondent violates the Principle of Sustainable Development. It will destroy several eco-systems in Kerala and will cause irreparable damage to the environment. Eco-system service value is intangible and is an asset of the Country. Destroying it in the name of development, is against the principle of Sustainable Development.

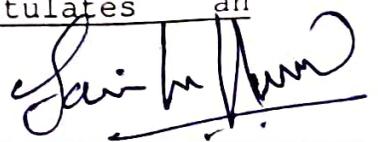
17. It is submitted that, the **Rio declaration on Environment and Development** in 1992 mandated in no uncertain terms that prior environmental clearance is mandatory for big projects. Principle 17 states,

"Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment are subject to a decision of a competent national authority."

It is submitted that Principle 15 of the Rio declaration mandates that precautionary approach shall be widely applied. These obligations have been accepted by our country and hence there can be no derogation from these obligations. Going by such International Principles, Union of India and State of Kerala are duty bound to conduct a scientific EIA study and obtain approval from the competent authority before undertaking any activity in the ground.

18. It is reiterated that the Hon'ble Supreme Court in the matter of **Centre for Environment Law, WWF-I Vs Union of India & Others** reported in **2013 (8) SCC 234** at para 39 held thus,

"39. Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an

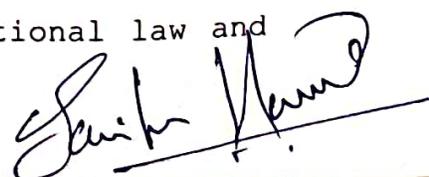


anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focussed thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based benefits to humans. Ecocentrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans."

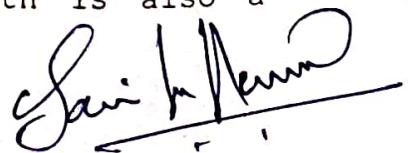
The project in question is not in keeping with this principle as well.

19. It is submitted that the Hon'ble Supreme Court in **Research Foundation for Science Technology and Natural Resource Policy v. Union of India** ( AIR 2007 SC (Supp) 852), while re-affirming the principle known as "precautionary principle" which is a concept of sustainable development as formulated in **Research Foundation for Science Technology National Resource Policy v. Union of India and another** ( 2005 (10) SCC 510), has quoted paragraph No.16 of the said Judgment, which reads as follows :

"The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our country is now well settled. **In Vellore Citizens' Welfare Forum v. Union of India** a three-Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in Vellore Citizens' Welfare Forum case that these principles are accepted as part of the customary international law and

hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of **A.P. Pollution Control Board v. Prof. M.V. Nayudu** where, after referring to the principles noticed in **Vellore Citizens' Welfare Forum** case the same have been explained in more detail with a view to enable the courts and the tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the Working Group of the International Law Commission in 1996 on Prevention of Transboundary Damage from Hazardous Activities to include the need for the State to take necessary legislative, administrative and other actions to implement the duty of prevention of environmental harm. Environmental concerns have been placed on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by Courts as facets of those fundamental rights and hence enforceable as such {see **People's Union for Civil Liberties v. Union of India and Anr.** } The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The rights to information and community participation for protection of environment and human health is also a



right which flows from Article 21. The Government and authorities have, thus to motivate the public participation. These well-shrined principles have been kept in view by us while examining and determining various aspect and facets of the problems in issue and the permissible remedies."

The Respondents herein permitting the project in question without proper EIA, EMP and Environmental Clearance and also without any transparency in process is clearly violating the above principle.

20. Therefore, all the contention raised by the 3<sup>rd</sup> respondent in their counter affidavit is liable to be discarded and the application may be allowed in the interest of justice, equity and good conscience.



**COUNSEL FOR THE APPLICANTS**



**SIGNATURE OF APPLICANTS**

#### VERIFICATION

We, P.R. Sasikumar, aged 56 years, S/o Raghavan Nair, Padma vilasam, Muzakulam (s) P.O, Peruva, Kottayam district, Kerala - 686610 and Vinu Kuriakose, aged 63 years, S/o Late TC Kuriakose, Nechoor P.O, Piravom, Kottayam district - 686664, the applicants herein, do hereby verify that the contents of the above paragraphs No. 1 to 20, are true to the best of my knowledge and that we have not suppressed any material fact.



**SIGNATURE OF APPLICANTS**

Date: 05.07.2021

Place: Kochi

15  
**NOTICE INVITING TENDER**

Annexure A4

**KERALA RAIL DEVELOPMENT CORPORATION LIMITED (KRDCL)**

KRDCL invites E-Tenders against Tender No: KRDCL/29/2021. Closing Date/Time: 14/07/2021 at 16:00 hr. Bidders will be able to submit their original bid up to closing date and time only. Manual offers are not allowed against this tender, and such manual offer received shall be ignored.

Contractors are allowed to make payments towards Tender fee and Earnest Money Deposit against this tender only through payment modes available on [www.etenders.kerala.gov.in](http://www.etenders.kerala.gov.in) portal. Manual payments through Demand draft, Banker Cheque, Deposit receipts, FDR etc., are not allowed.

Name of Work	Carrying out Environmental Impact Assessment Study / field work and preparation of Comprehensive Environment Impact Assessment Report (CEIA), Environment Management Plan (EMP), Detailed Social Impact Assessment (SIA), Resettlement Action Plan (RAP) And Indigenous People Plan (IPP) for proposed Silverline Semi High-Speed Rail between Thiruvananthapuram to Kasaragod (about 532 Kms long).
Website from which Tender Documents and any additional information can be downloaded.	<a href="http://www.etenders.kerala.gov.in">www.etenders.kerala.gov.in</a>
Earnest Money Deposit	Rs1 (EMD is exempted but for uploading in e tender portal against EMD Rs1/- has to be paid.) (Declaration to be submitted in the form Annexure-A in the Tender Document)
Tender Fee/Cost of the tender document	Rs.5000/- (Rupees Five Thousand only.) (Tender form cost is exempted to MSE firms, Declaration to be submitted in the form Annexure-B in the Tender Document)
Tender Value	Rs. 96,86,600 /- (Rupees: Ninety Six Lakhs Eighty Six Thousand and Six Hundred only)
Tender Validity	120 Days from the date of submission.
Completion of work	14 months
Tender type	Open
Bidding System	Single Stage Two Packet System
Date & Time of Publishing Tender.	24/06/2021 18:00hr.
Tender Closing Date Time	14/07/2021 16:00hr.
Date of Pre- Bid Meeting	30/06/2021 11:00hr. (Interested participants may attend Pre-bid meeting through online for which they should sent a request to official mail id ( <a href="mailto:info@keralarail.com">info@keralarail.com</a> ) for online meeting ID and password.
Last date for receiving queries	02/07/2021 18:00hr.
KRDCL response to queries latest by	08/07/2021 18:00hr.
Date of Tender opening	16/07/2021 11:00hr.
Bidding Style	Lumpsum rate quoting.

Note: If the date of submission of Tenders happens to be a Public Holiday, Tenders will be opened on the next day.

*This is the true copy of the document  
marked as EXHIBIT-P  
ANNEXURE A4 offered  
in above case*

ADVOCATE

F.No.19-172/2018- IA.III  
 Government of India  
 Ministry of Environment, Forest and Climate Change  
 (IA-III Section)  
 \*\*\*

Indira Paryavaran Bhawan  
 Jorbagh Road, New Delhi-110003  
 28 May, 2020

Sub: Commercial development of Railway land in and around Railway Stations – prior environmental clearance under the provisions of the EIA Notification, 2006 - reg.

This is regarding letter No. IRSDC/HQ/Civil/01/RB/1853 dated 14.11.2019 from Indian Railway Stations Development Corporation Limited (IRSDC), seeking clarification on the requirements of prior environmental clearance (EC) under the provisions of EIA Notification, 2006 in respect of projects for commercial development of railway land.

2. The matter has been examined in the Ministry in the light of following submissions made, *inter-alia*, by IRSDC in support of their request:

- (i) Section 11(da) of the Railways Act provides special dispensation for the 'railways' to be exempted from seeking clearances under other statutes.
- (ii) Harmonized Master List of Infrastructure Subsectors issued by the Ministry of Finance, recognizes commercial development of railway land as a part of transport and logistics sub-sector of railways.
- (iii) IRSDC had also sought opinion of the Ministry of Law and Justice, who have recognized that commercial development on railway land would be covered within the term 'Railway' for the purposes of Railway Act.

3. In light of the submissions made by IRSDC and deliberations thereon, the undersigned is directed to convey that:

Projects in Land appurtenant to 'railway', identified for commercial development in and around the railway stations shall be exempt from seeking prior environmental clearance under the provisions of the EIA Notification, 2006 subject to the following:

- (a) The projects shall draw up a sustainable Environment Management Plan, taking in to account all factors related to environment management viz. air pollution, water load, water pollution, land degradation, etc. The Ministry of Railways have an established Environment and Housekeeping Management (EnHM) Directorate, to specifically cater to environmental concerns and mitigative measures in all facets of railway operations. IRSDC must have the Environment Management Plan for the respective station development project, duly approved by the EnHM Directorate of the Ministry of Railways, before undertaking any physical development at site.



- (b) While individual station development projects may not process a specific Environmental Clearance from concerned SEIAA under the provisions of the EIA Notification, commercial development of building infrastructure in the premises shall be required to fulfil standard environmental safeguards and stipulations, as listed in Annexure.
- (c) The above notwithstanding, MoEFCC reserves the right to monitor and verify the compliance of the stipulated guidelines / norms under the provisions of Environment (Protection) Act and its various subordinate legislations.

This issues with the approval of Hon'ble Minister for Environment, Forest and Climate Change.

Encl: As above.

  
(Dr. Vinod K Singh)  
Scientist E  
Tel: 011-24695398

To,

**Managing Director & Chief Executive Officer,**  
Indian Railway Stations Development Corporation Limited  
7<sup>th</sup> Floor, Tower 1, Konnectus Building,  
Bhabhuti Marg,  
New Delhi - 110002

Copy for information to:

**Additional Member** (EnHM), Ministry of Railways, Railway Board, Rail Bhawan, New Delhi - 110001.



Annexure**Environmental Guidelines: Building and Construction projects in "Railway Land" for Commercial Development in and around Railway Stations****I. Statutory compliance:**

- i. The project proponent shall obtain all necessary clearance/ permission from all relevant agencies including town planning authority before commencement of work. All the construction shall be done in accordance with the local building byelaws.
- ii. The approval of the Competent Authority shall be obtained for structural safety of buildings due to earthquakes, adequacy of firefighting equipment etc as per National Building Code including protection measures from lightening etc.
- iii. The project proponent shall obtain forest clearance under the provisions of Forest (Conservation) Act, 1980, in case of the diversion of forest land for non-forest purpose involved in the project.
- iv. The project proponent shall obtain the necessary permission for drawl of ground water / surface water required for the project from the competent authority.
- v. A certificate of adequacy of available power from the agency supplying power to the project along with the load allowed for the project should be obtained.
- vi. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department shall be obtained, as applicable, by project proponents from the respective competent authorities.
- vii. The provisions of the Solid Waste (Management) Rules, 2016, e-Waste (Management) Rules, 2016, and the Plastics Waste (Management) Rules, 2016 shall be followed.
- viii. The project proponent shall follow the ECBC/ECBC-R prescribed by Bureau of Energy Efficiency, Ministry of Power strictly.

**II. Air quality monitoring and preservation**

- i. Notification GSR 94(E) dated 25.01.2018 of MoEF&CC regarding Mandatory Implementation of Dust Mitigation Measures for Construction and Demolition Activities for projects requiring Environmental Clearance shall be complied with.
- ii. A management plan shall be drawn up and implemented to contain the current exceedance in ambient air quality at the site.
- iii. The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g. PM<sub>10</sub> and PM<sub>2.5</sub>) covering upwind and downwind directions during the construction period.
- iv. Diesel power generating sets proposed as source of backup power should be of enclosed type. The diesel generator sets to be used shall be low sulphur diesel type and shall conform to rules made under the Environment (Protection) Act, 1986.



- v. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. The location of the DG sets may be decided with in consultation with State Pollution Control Board. The gaseous emissions from DG set shall be dispersed through adequate stack height as per CPCB standards. Acoustic enclosure shall be provided to the DG sets to mitigate the noise pollution.
  - vi. Construction site shall be adequately barricaded before the construction begins. Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3-meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murrum and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.
  - vii. Sand, murrum, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.
  - viii. Wet jet shall be provided for grinding and stone cutting.
  - ix. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.
  - x. All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Management Rules, 2016.
  - xi. For indoor air quality, the ventilation shall be ensured as per provisions of National Building Code of India.
- III. Water quality monitoring and preservation**
- i. The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site, on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.
  - ii. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
  - iii. The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent.
  - iv. A certificate shall be obtained from the local body supplying water, specifying the total annual water availability with the local authority, the quantity of water already committed, the quantity of water allotted to the project under consideration and the balance water available. This should be specified separately for ground water and surface water sources, ensuring that there is no impact on other users.



- v. At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
- vi. Installation of dual pipe plumbing for supplying fresh water for drinking, cooking and bathing etc and other for supply of recycled water for flushing, landscape irrigation, car washing, thermal cooling, conditioning etc. shall be done.
- vii. Use of water saving devices/ fixtures (viz. low flow flushing systems; use of low flow faucets tap aerators etc) for water conservation shall be incorporated in the building plan.
- viii. Separation of grey and black water should be done by the use of dual plumbing system
- ix. Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
- x. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016 Rain water harvesting recharge pits/storage tanks shall be provided for ground water recharging as per the CGWB norms.
- xi. A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.
- xii. All recharge should be limited to shallow aquifer.
- xiii. No ground water shall be used during construction phase of the project.
- xiv. Any ground water dewatering should be properly managed and shall conform to the approvals and the guidelines of the CGWA in the matter. Formal approval shall be taken from the CGWA for any ground water abstraction or dewatering.
- xv. No sewage or untreated effluent water would be discharged through storm water drains.
- xvi. Onsite sewage treatment of capacity of treating 100% waste water to be installed. The installation of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the Ministry before the project is commissioned for operation. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.
- xvii. Periodical monitoring of water quality of treated sewage shall be conducted. Necessary measures should be made to mitigate the odour problem from STP.
- xviii. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health



and Environmental Engineering Organization (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.

**IV. Noise monitoring and prevention**

- i. Ambient noise levels shall conform to residential area/commercial area/industrial area/silence zone both during day and night as per Noise Pollution (Control and Regulation) Rules, 2000. Incremental pollution loads on the ambient air and noise quality shall be closely monitored during construction phase. Adequate measures shall be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB / SPCB.
- ii. Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.
- iii. Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.

**V. Energy Conservation measures**

- i. Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.
- ii. Outdoor and common area lighting shall be LED.
- iii. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.
- iv. Energy conservation measures like installation of CFLs/ LED for the lighting the area outside the building should be integral part of the project design and should be in place before project commissioning.
- v. Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.
- vi. Solar power shall be used for lighting in the apartment to reduce the power load on grid. Separate electric meter shall be installed for solar power. Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.



**VI. Waste Management**

- i. A certificate from the competent authority handling municipal solid wastes, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project shall be obtained.
- ii. Disposal of muck during construction phase shall not create any adverse effect on the neighboring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.
- iii. Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Solid waste shall be segregated into wet garbage and inert materials.
- iv. Organic waste compost/ Vermiculture pit/ Organic Waste Converter within the premises with a minimum capacity of 0.3 kg /person/day must be installed.
- v. All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
- vi. Any hazardous waste generated during construction phase, shall be disposed off as per applicable rules and norms with necessary approvals of the State Pollution Control Board.
- vii. Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include Fly Ash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.
- viii. Fly ash should be used as building material in the construction as per the provision of Fly Ash Notification of September, 1999 and amended as on 27<sup>th</sup> August, 2003 and 25<sup>th</sup> January, 2016. Ready mixed concrete must be used in building construction.
- ix. Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.
- x. Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.

**VII. Green Cover**

- i. No tree can be felled/transplant unless exigencies demand. Where absolutely necessary, tree felling shall be with prior permission from the concerned regulatory authority. Old trees should be retained based on girth and age regulations as may be prescribed by the Forest Department.
- ii. A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. The landscape planning should include plantation of native species. The species with heavy foliage, broad leaves and wide

canopy cover are desirable. Water intensive and/or invasive species should not be used for landscaping. An area shall be earmarked for 'Green belt' development.

- iii. Where the trees need to be cut with prior permission from the concerned local Authority, compensatory plantation in the ratio of 1:10 (i.e. planting of 10 trees for every 1 tree that is cut) shall be done and maintained. Plantations to be ensured species (cut) to species (planted)
- iv. Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.

#### VIII. Transport

- i. A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.
  - a. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.
  - b. Traffic calming measures.
  - c. Proper design of entry and exit points.
  - d. Parking norms as per local regulation.
- ii. Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards be operated only during non-peak hours.
- iii. A detailed traffic management and traffic decongestion plan shall be drawn up to ensure that the current level of service of the roads within a 05 kms radius of the project is maintained and improved upon after the implementation of the project. This plan should be based on cumulative impact of all development and increased habitation being carried out or proposed to be carried out by the project or other agencies in this 05 Kms radius of the site in different scenarios of space and time and the traffic management plan shall be duly validated and certified by the State Urban Development department and the P.W.D./ competent authority for road augmentation and shall also have their consent to the implementation of components of the plan which involve the participation of these departments.

#### IX. Human health issues

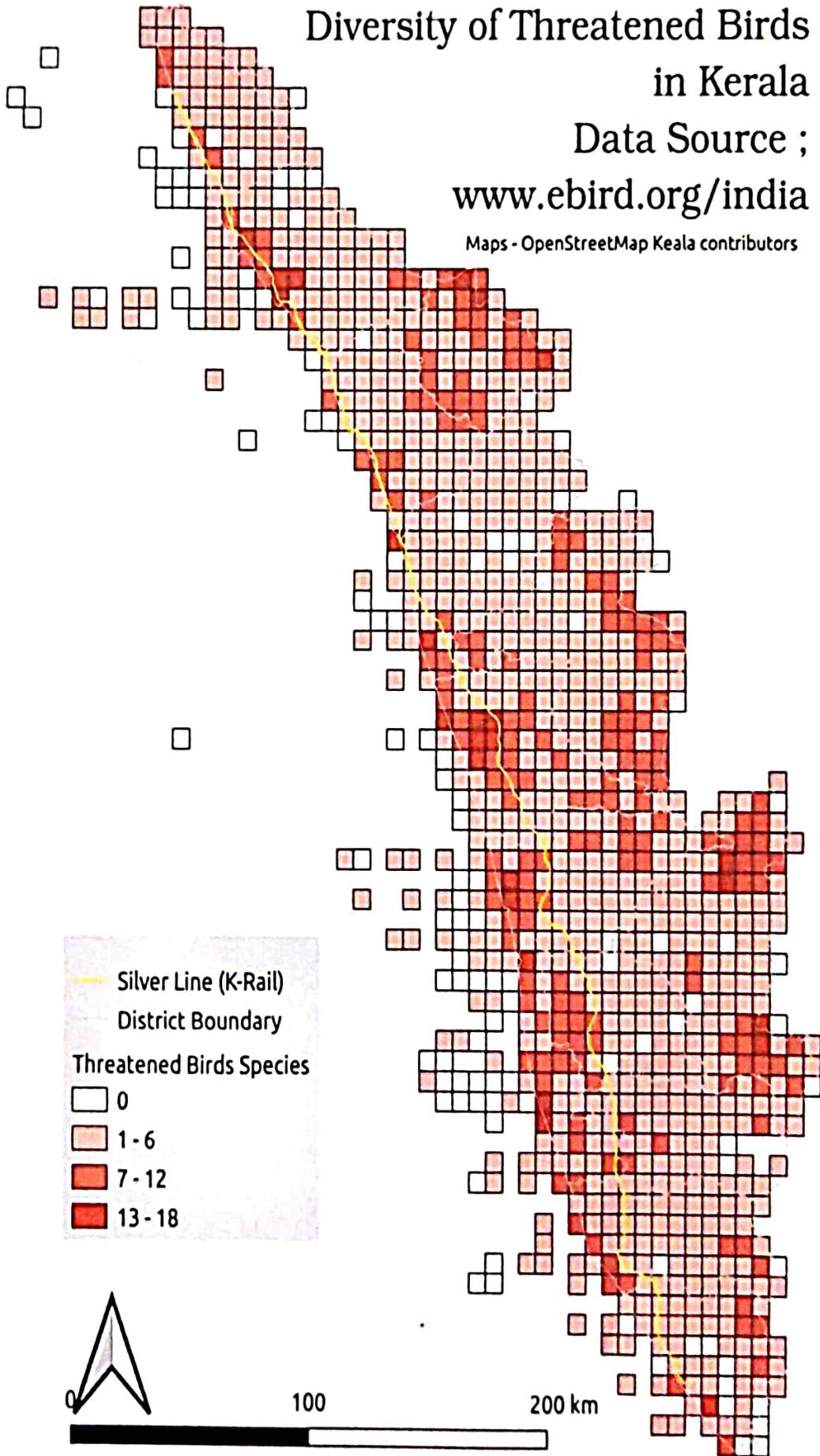
- i. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.
- ii. Emergency preparedness plan based on the Hazard identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.
- iii. Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile

- STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.
- iv. Occupational health surveillance of the workers shall be done on a regular basis.
  - v. A First Aid Room shall be provided in the project both during construction and operations of the project.
- X. **Environment Policy and Environment Management Plan (EMP)**
- i. The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe for standard operating procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest / wildlife norms.
  - ii. A separate Environmental Cell both at the project and company head quarter level, with qualified personnel shall be set up under the control of senior Executive, who will directly report to the head of the organization.
  - iii. An Environment Management Plan (EMP) shall be drawn up for the respective station development project and shall be duly approved by the EnHM Directorate of the Ministry of Railways before undertaking any physical development at the site.
  - iv. Action plan for implementing the respective EMPs and environmental guidelines along with responsibility matrix of the company shall be prepared and shall be duly approved by competent authority.

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ANNEXURE A5 ref check  
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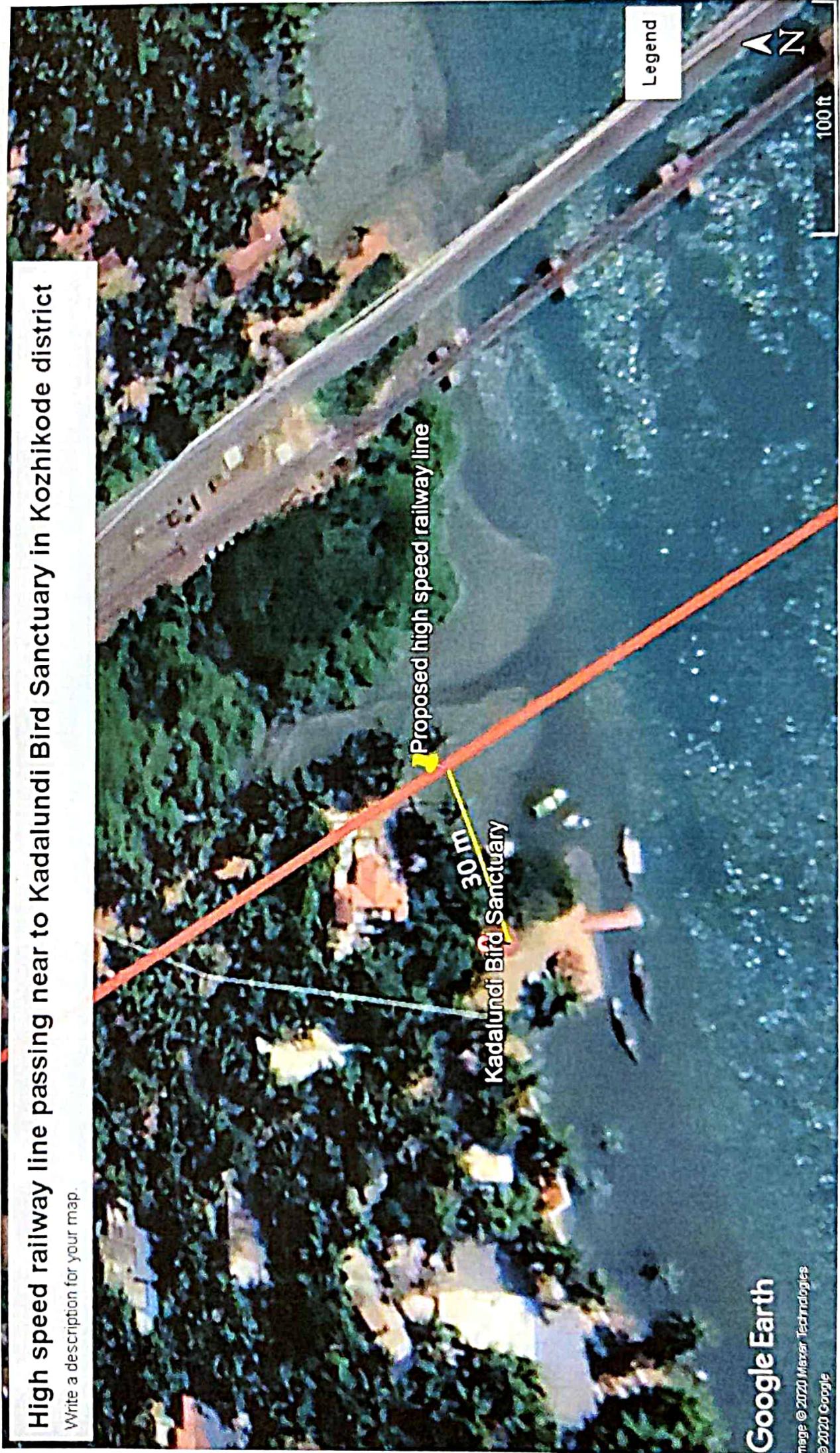
**ADVOCATE**



Thanks to all eBirders of Kerala

*This is the true copy of the document  
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*[Signature]*  
ADVOCATE



*This is the true copy of the document  
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in above case*

*[Signature]*  
ASSOCIATE

High speed railway line passing through mangrove forest at Dharmadom, Thalassery taluk in Kannur district.

Write a description for your map.



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 ADVOCATE