

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
APPEAL NO. 54 OF 2018

IN THE MATTER OF:

H.P. RAJANNA

...APPELLANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

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RAJ PANJAWANI, SENIOR ADVOCATE

Filed BY

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PLACE:- DELHI**DATED:- 03.09.2020**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
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CONCISE SUBMISSIONS OF SENIOR COUNSEL FOR THE APPELLANT

MOST RESPECTFULLY SHOWETH:

1. Built-up area and Categorization – Mis-declaration in Form - I

Documents:

(i) Form – I: Page 58 (Annexure A-4) (at page 60 serial no. 2,3 and 6):
Built-up area shown as 1,28,193.9sq.mtr and categorized as B-2 project.

(ii) Conceptual Plan: (Page 753):
- Submitted by project proponent Respondents No. 11 & 12 before SIEAA along with Form-I.

As per the said Plan total built-up area including FRA+ non-FAR construction comes to 1,68,444.91 sq. mtrs. In addition, there is "other components" of constructions, namely, 280 KLD + 210 KLD (STP) + Deep recharge wells all along the lake buffer zone boundary as well as all around the boundary of project site on all sides (storm water drainage systems The tabulation thereof, which has been extracted from the said conceptual plan is annexed herewith as **Annexure A**. A legible copy of conceptual plan (at page 753) along with the marking of relevant figures is annexed as **Annexure B**.

(iii) The Environment Clearance letter dated 10.01.2018: (page 46):
- the permissible built-up area is mentioned as 1,28,193.9 sq. mtrs.

(iv) Building Development Plan (Page 270 Annexure R-3):

– The BDA, Respondent No. 4 approved the development plan, which indicated both FAR + Non-FAR built-up area.

The total combined built up area works out to 2,35,076.81 sq. mtrs, which has been stated in the Affidavit filed by BBMP, Respondent No. 5 (page 390 at para 22) + increase in number of flats and reduced parking area despite increase in number of flats.

(v) BWSSB, Respondent No. 9 – NOC dated 30.10.2018 (Page 827 at 828): -

This NOC observes that the "site area is 51698.16 Smt. and with total built up area is 171755.37 Smt."

(vi) Committee Report dated 29.06.2020 (page 575 at page 611 and 613):

-The committee limits itself to "FAR area (built up area) m²" 1,25,663.06.

(vii) Form – I: (Page 75):

-undertaking by project proponent Respondent No. 11 that information given is correct and if found false, environment clearance would be revoked.

(viii) EIA Notification, 2006, clause (vi) para 8-

- Mandates that if information found false, environment clearance will be revoked.

Case Law:

(i) Goel Ganga Developers India Pvt. Ltd. v/s Union of India, (2018) 18 SCC 257:- para 14 to 16 and para 28 & 64.

(ii) Hanuman Aroskar v/s Union of India, (2019 SSC Online 441): Para 64, 76, 86, 88 and 135.

Submissions:

EC is Invalid:

- (i) Mis- declaration / false declaration of area and categorization.
- (ii) SEIAA appraised the project as B-2 project under clause 8(a) of Schedule to the EIA Notification, 2006. In spite, that the project squarely falls under Category B-1 read with clause 8 (b) of the said Schedule.
- (iii) Prior Environment Impact Assessment (EIA) not conducted, which is mandatory for all B-1 projects under para 7 of EIA Notification 2006.
- (iv) Lastly, the extent of construction by concretization of Rajkaluva was not disclosed nor mentioned in any map. The length and width of construction over Rajkaluva has been indicated in the Expert Committee Report dated 29.06.2020 (page 574 at 601).
- (v) Consequently, the environment clearance dated 10.01.2018 is invalid and bad in law.

2. Rajkaluva and its Buffer:**Documents:**

- (i) Form-I: Serial no. 1.22 (page 58 at page 65):
 - Rajkaluva described as Primary nalah.
- (ii) Environment clearance letter dated 10.01.2018 (Page 46 at page 50, serial no. 48):
 - indicate/accepts Rajkaluva as primary nalah and impose condition that the buffer shall be maintained as green belt and prohibits construction.
- (iii) Topo Map produced before SEAC (page 57 Annexure A-3):
 - Rajkaluvaitis shown as Primary nalah.
- (iv) Village Map: (page 130 of IA, 140 of 2019):
 - This map shows the Primary Rajkaluva connecting the two lakes namely Kasavanahalli lake (up stream lake) and Kaikondrahalli Lake (Down stream lake). Distance between these two lakes is mentioned at

page 74 of Form – I (Serial No. 2). A more legible copy of the village map is annexed as **Annexure C**.

- (v) Committee Report dated 29.06.2020 (Page 575 at 600):
- clause 7.2 of the report has permitted construction within the buffer zone.

Pleadings:

- (i) Reply of project proponent, Respondent No. 11 :- (Page 162 (para 6)). Project proponent categorically admits existence of primary drain within project site.
- (ii) Reply of BBMP dated 05.09.2018, Respondent No. 5 – Page 64 at Para 5:-
- The reply of BBMP states about the existence and location of 1 primary and 2 secondary Rajkaluva on the Project Proponents said land.
- (iii) Written submissions filed by BBMP on 27.08.2020 reiterates their reply filed on record

Case Law:

- (i) Forward Foundation &Ors. v/s State of Karnatak&Ors., O.A. No. 222 of 2014, order dated 04.05.2016 (page 62 at 65 of Compilation of judgment on behalf of Appellant)
- (ii) Court on its Own Motion v/s State of Karnataka, O.A. No. 125 of 2017, order dated 06.12.2018:- Para 19 (4) read with para 20 (page 19 at 20 and 21(b) of Compilation of judgment on behalf of the Appellant.
- (iii) MantriTechzone Pvt. Ltd. v/s Forward Foundation and Ors, (2019) 18 SCC 494.

submissions:

- (i) Buffer of the Rajkaluva has to be maintained as green as it would defeat its very purpose.

- (ii) The conditions imposed by the environment clearance continue to operate and as per clause No. 48 of the Specific Conditions, no construction activity can be undertaken in buffer zone and it has to be maintained as green belt.
- (iii) Concretization of Rajkaluva not permitted as per the direction issued by this Honble Tribunal in the Court on its own motion case.

3. Lake buffer

Document:

- (i) Environment clearance letter dated 10.01.2018 (Page 46 at page 50, condition no. 48):
 - prohibits any kind of construction on the buffer of the lake and directs it to be maintained as green belt.
- (ii) RMP 2015 (Page 199 at 238 clause 4.12.2(ii) of the Valley drain paragraph: sub- clause (iii)):
 - prohibits any construction in Lake Buffer area.
- (iii) Committee report dated 29.06.2020: Page 575 at 600:
 - permits construction in Lake Buffer area.

4. Ecological Sensitivity

- (i) Form – I (Page 58 at 74 serial no. 2):- Only two lakes mentioned within 15 km aerial distance from the project.
- (ii) Additional Affidavit of the Appellant (Page 712 at 716 para 7 & 11):- Details of all areas including lakes, fauna and flora, which are important for ecological reason have been elaborated.

Submissions:

- (i) The aforesaid facts relevant for ecological evaluation have not been disclosed in Form – I.
- (ii) If Environment Impact Assessment had been conducted, all such ecological factors would have been considered as they come within 15 km aerial distance from the project.

5. Wetland

Documents:

- (i) National Wetland Atlas prepared by ISRO for MoEF (Page 144 to 146 of IA 140 of 2019 read with para 10 & 11 at page 125 & 126 of IA. 140 of 2019).
- (ii) Committee report dated 29.06.2020 at Page 604:- Finding of the committee is that the surrounding area of the lake and Rajkaluva cannot be considered as wetland.

Pleadings:

- (i) BBMP, Respondent No. 5 Affidavit dated 05.09.2018 (page 360 at 366 para 7 to 11) elaborates on the existence of the wetland, catchment area and the zone of influence at the said site.
- (ii) I.A. 140 of 2019 by Appellant (Page 116 at 125 and 126 at para 10 & 11) in details states the existence of the wetland.

Case Law:

- (i) M.K. Balakrishnan and ors. v/s Union of India, (2017) 7 SCC 805 at page 107 of compilation of judgment filed by the Appellant
- (ii) Order dated 04.10.2017 (page 4 of the order) in M.K. Balakrishnan and ors. v/s Union of India annexed as **Annexure D**.
- (iii) M.K. Balakrishnan v/s Union of India, (2009) 5 SCC 507 at Page 57 at Page 58 of para 2 of compilation of judgment filed by the Appellant.

Submissions:

- (i) Rule 4 of The Wetlands (Conservation and Management) Rules, 2010 continue to apply in view of the judgment in M.K. Balakrishnan and Ors. v/s Union of India, (2017) 7 SCC 805 page 107 at 113 para 23 of compilation of judgment filed by the Appellant. The applicability of 2010 Wetland Rules has been reiterated by the Hon'ble Supreme Court in

order dated 04.10.2017 passed in M.K. Balakrishnan and ors. v/s Union of India.

- (ii) The said project admittedly falls within the outer boundaries of the two inter linked lakes namely Kasavanahallilake and Kaikondrahalli Lakes, which are less than 1 km apart. It has two secondary and one primary Rajkaluva passing through it, which Primary Rajkaluva is the main water channel connecting the said two lakes.
- (iii) In any event, applying the precautionary principle, the said project should not be permitted until the wetland area is scientifically mapped and its buffer earmarked.
6. Other miscellaneous grounds of challenge mentioned in the appeal, objections and written submissions including that of Kharab land, for the sake of brevity are not being reiterated in this note.

RAJ PANJAWANI, SENIOR ADVOCATE

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NEW DELHI- 110048

PLACE:- DELHI

DATED:- 03.09.2020

ANNEXURE -A

THE FOLLOWING VALUES ARE AS CAN BE DISCERNED FROM THE CONCEPTUAL PLAN SUBMITTED BY THE PROJECT PROPONENT BEFORE SEAC

Common Values of Project

Total FAR achieved	93423.70 Sq Mts
Parks and open spaces	4833.73
Civil amenities	2524.18
Total	100781.61 Sq Mts

PHASE-2

Parking	17605.05
FAR deductions	18,442.05
Lift and Ramps	837.0
Shafts	706.0
Total	37,590.1Sq Mts

PHASE-1

Parking	13,835.20 Sq Mts
FAR deductions	14,688.20
Shafts	696.0
Lifts and Ramps	853.0
Total	30,073.2 Sq Mts

Grand Total:

Common Values of Project +Phase-1 + Phase-2- 100781.61 Sq + 37590.1 sq mts + 30073.2 Sq Mts

Total 1,68,444.91 Sq Mts

Other components of constructions

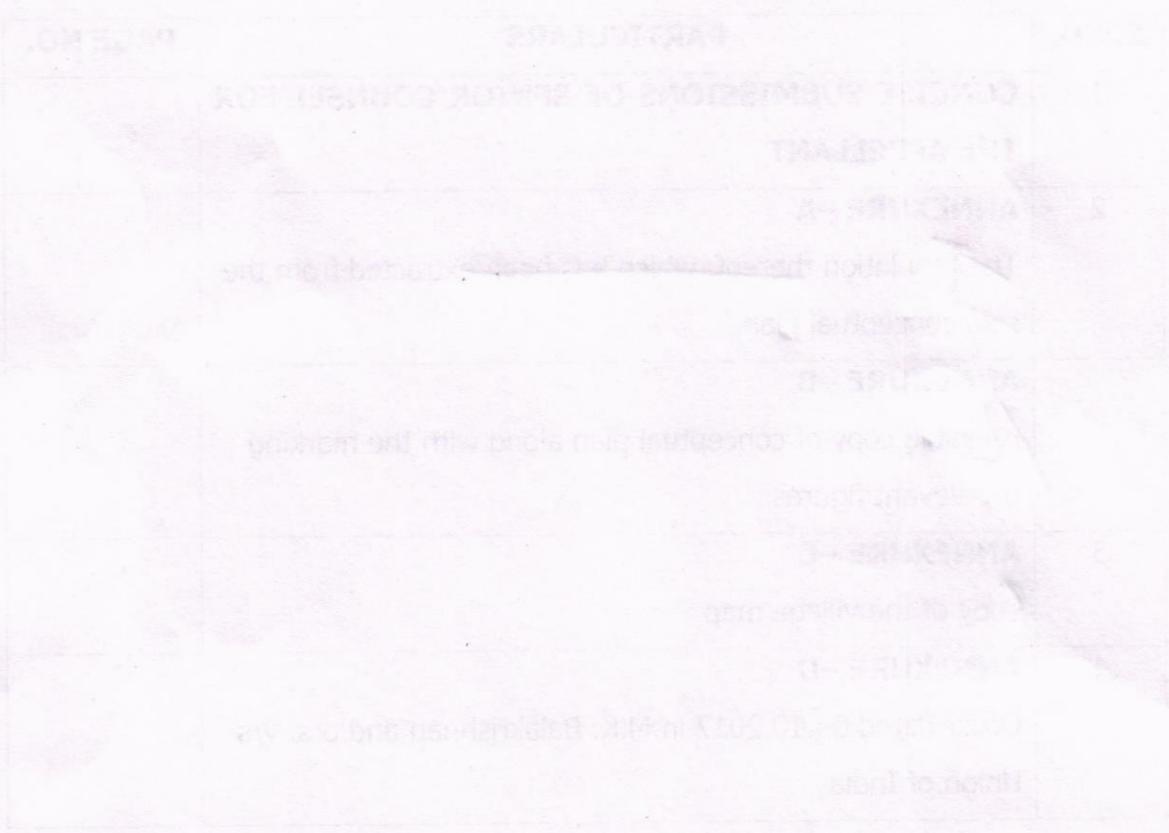
280 KLD + 210 KLD (STP) + Deep recharge wells all along the lake buffer zone boundary + all around the boundary of project site on all sides (storm water drainage systems)

Therefore, 1,68,444.91 Sq Mts + other components of constructions stated above did not undergo appraisal by SEAC. Further, SEAC did not apply its mind on this fundamental aspect. Thus, vitiating the entire process since inception. Consequently, EC is vitiating.

Annexure - B

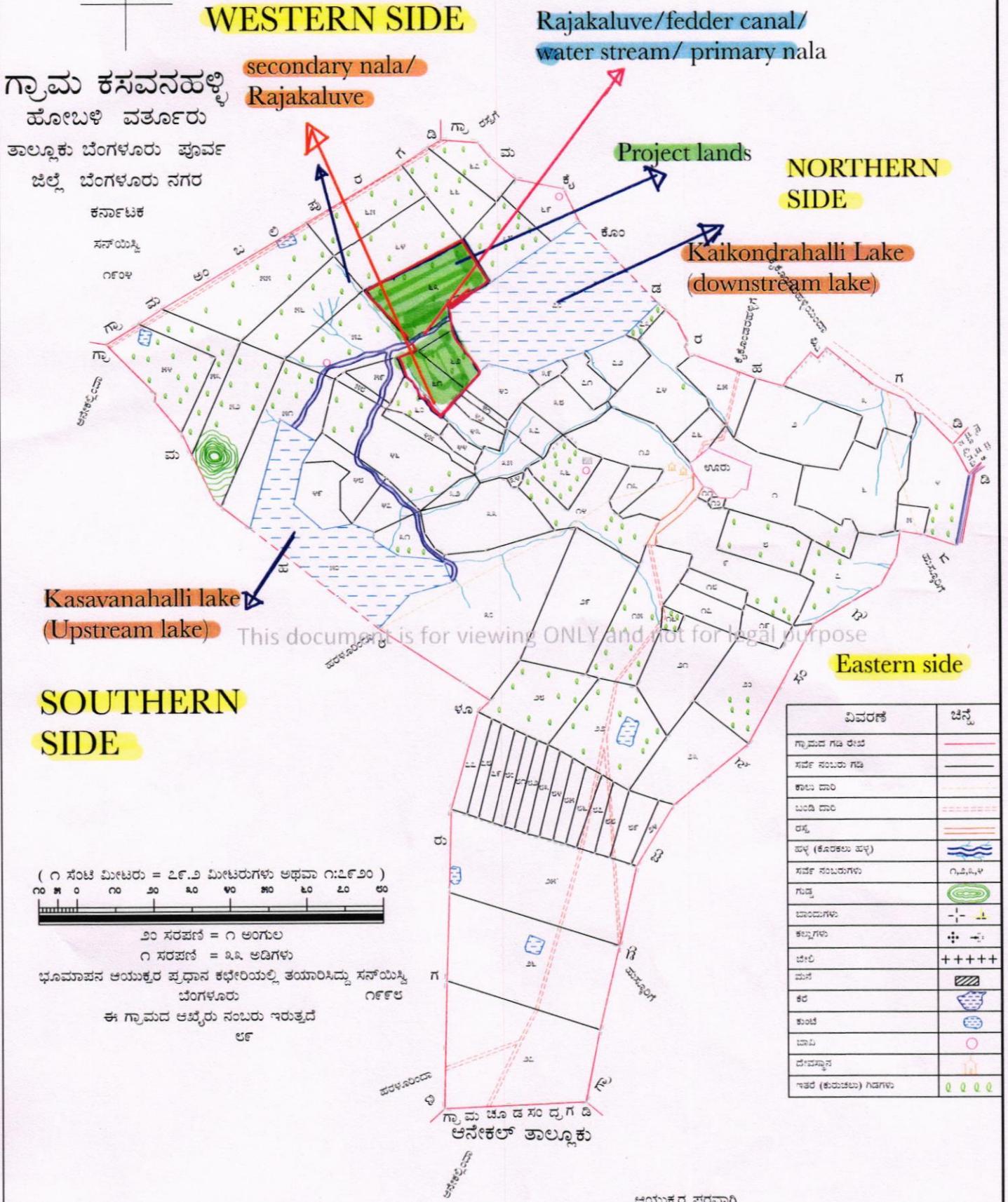
1049

Map.



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PLACE - DELHI
DATE - 02.09.2023



ಗ್ರಾಮ ಕಸವನಹಳ್ಳಿ
ಹೋಬಳಿ ವರ್ತೂರು
ತಾಲ್ಲೂಕು ಬೆಂಗಳೂರು ಪೂರ್ವ
ಜಿಲ್ಲೆ ಬೆಂಗಳೂರು ನಗರ
ಕರ್ನಾಟಕ
ಸರ್ಕಾರ
೧೯೭೫

WESTERN SIDE

Rajakaluve/fedder canal/
water stream/ primary nala

secondary nala/
Rajakaluve

Project lands

**NORTHERN
SIDE**

Kaikondrahalli Lake
(downstream lake)

Kasavanahalli lake
(Upstream lake)

This document is for viewing ONLY and not for legal purpose

Eastern side

**SOUTHERN
SIDE**

(೧ ಸೆಂಟಿ ಮೀಟರು = ೩೯.೩೭ ಮೀಟರುಗಳು ಅಥವಾ ೧:೩೯.೩೭)
೦ ೫ ೦ ೧೦ ೨೦ ೩೦ ೪೦ ೫೦ ೬೦ ೭೦ ೮೦ ೯೦ ೧೦೦

೨೦ ಸರಪಳಿ = ೧ ಅಂಗುಲ
೧ ಸರಪಳಿ = ೩.೩ ಅಡಿಗಳು

ಭೂಮಾಪನ ಆಯುಕ್ತರ ಪ್ರಧಾನ ಕಛೇರಿಯಲ್ಲಿ ತಯಾರಿಸಿದ್ದು ಸರ್ಕಾರದ
ಬೆಂಗಳೂರು
ಈ ಗ್ರಾಮದ ಆಚೆಯ ನಂಬರು ಇರುತ್ತದೆ
೧೯೯೮

ವಿವರಣೆ	ಚಿಹ್ನೆ
ಗ್ರಾಮದ ಗಡಿ ರೇಖೆ	—
ಸರ್ಕಾರದ ಗಡಿ	—
ಕಾಲುವೆ	—
ಬಂದಿ	—
ರಸ್ತೆ	—
ಹಳ್ಳಿ (ಕೊರಗಲು ಹಳ್ಳಿ)	—
ಸರ್ಕಾರದ ಗಡಿ	—
ಗುಡ್ಡ	—
ಬಾವುಗಳು	—
ಕಲ್ಲುಗಳು	—
ಚೇರಿ	+++++
ಮನೆ	—
ಕೆರೆ	—
ಕುಳಿ	—
ಬಾವಿ	—
ದೇವಸ್ಥಾನ	—
ಇತರೆ (ಕುರುಡು) ಗಿಡಗಳು	—

೦೯ ಸರ್ಕಾರ ನಕಾಶೆ
(೨ ನೇ ೦೯ ಕ್ಲಾಸಿಫಿಕೇಷನ್ ಪ್ರಕಾರ ೧೯೭೫)

ಆಯುಕ್ತರ ಪರವಾಗಿ
ಭೂಮಾಪನ ಕಂದಾಯ ವ್ಯವಸ್ಥೆ ಮತ್ತು
ಭೂದಾಖಲೆಗಳ ಇಲಾಖೆ, ಬೆಂಗಳೂರು

ಕ್ರಮ ರೂಪಾಯಿ :

ಗಣಕೀಕೃತ ನಕ್ಷೆ ತಯಾರಿಸಿದವರು:



ಕರ್ನಾಟಕ ರಾಜ್ಯ ದೂರ ಸಂವೇದಿ ಅನ್ವಯಿಕ ಕೇಂದ್ರ
ಮಾಹಿತಿ ತಂತ್ರಜ್ಞಾನ ಮತ್ತು ಜೈವಿಕ ತಂತ್ರಜ್ಞಾನ ಇಲಾಖೆ
ಕರ್ನಾಟಕ ಸರ್ಕಾರ, ಬೆಂಗಳೂರು

ಮೂಲನಕ್ಷೆ ತಯಾರಿಸಿದವರು ಮತ್ತು ಒದಗಿಸಿದವರು:



ಭೂಮಾಪನ ಕಂದಾಯ ವ್ಯವಸ್ಥೆ ಮತ್ತು ಭೂದಾಖಲೆಗಳ ಇಲಾಖೆ
ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ITEM NO.4

COURT NO.3

Annexure - D
SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

1051

Writ Petition(s) (Civil) No(s). 230/2001

M.K. BALAKRISHNAN & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 04-10-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. Gopal Sankaranarayanan, Adv.
Mr. Shrutanjaya Bhardwaj, Adv.
Ms. Veera Mahuli, Adv.
Mr. Naresh Kumar, AOR

For Respondent(s) /
applicant(s)
UOI/Delhi

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Mr. A.K. Panda, Sr. Adv.
Mr. Wasim A. Qadri, Adv.
Mr. Ajay Kumar Singh, Adv.
Ms. Binu Tamta, Adv.
Mrs. Sunita Sharma, Adv.
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Mr. Shalinder Saini, Adv.
Mr. G.S. Makker, Adv.
Mr. B.V. Balram Das, Adv.
Mr. S.A. Siddiqui, Adv.
Mr. Satya Siddiqui, Adv.
Mr. Zaki Kazmi, Adv.

Intervenor

Mr. Jayant Bhushan, Sr. Adv.
Mr. Ketan Paul, Adv.
Ms. Reeja Varghese, Adv.
Mr. Chirayu Jain, Adv.

Signature Not Verified
Digitally signed by
SANJAY KUMAR
Date: 2017.10.06
11:15:56 IST
Reason:

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the petitioner and the learned Additional Solicitor General.

We have been informed that the Wetland Rules have since been notified and they are now called the Wetlands (Conservation and Management) Rules, 2017. These Rules have come into force on the date of publication in the official gazette, that is, 26th September, 2017.

Learned counsel for the parties say that they have very serious objections to some of these Rules. It is submitted that it appears that the Central Government has abdicated its responsibility under the Environment (Protection) Act, 1986 and instead of delegating its powers, it has abdicated its power in favour of the State Governments. We have also been informed that the Central Wetlands Regulatory Authority has since been disbanded and the State Wetlands Authority and the National Wetlands Committee have been constituted under Rules 5 and 6 of the new Rules.

With regard to the expenditure on Ramsar Convention sites, we have been informed by learned Additional Solicitor General that the audited accounts have so far been received from the States of West Bengal, Madhya Pradesh and Odisha. Audited accounts have not been received from any other State with regard to the Ramsar

Convention sites.

We have also been informed that apart from Ramsar Convention sites, further funds have been given to the States and the Union Territories for conservation of wetlands. No audited accounts have been received in regard to these funds disbursed as well as their expenditure by the State Governments and the Union Territories.

With regard to the brief documents required to be furnished under the old Rules, it appears that only ten States and one Union Territory have responded. It appears that there is now no necessity of brief documents under the new Rules. We make it clear that this does not mean that the earlier brief documents already submitted can be discarded completely. The contents of these brief documents will still be followed as far as the implementation of the Wetlands (Conservation and Management) Rules, 2017 is concerned.

Finally, with regard to the satellite images, we are told that the Space Application Centre would require between 12 to 18 months to make an inventory of 1,75,740 wetlands as they exist today. We make no comment on this but request learned Additional Solicitor General to re-check with the Space Application Centre since the wetlands are diminishing in our country at a very fast rate. It is very likely that many more will disappear by the time the task is completed by the Space Application

Centre.

We make it clear and reiterate that in terms of our order dated 8th February, 2017, 2,01,503 wetlands that have been mapped by the Union of India should continue to remain protected on the same principles as were formulated in Rule 4 of the Wetlands (Conservation and Management) Rules, 2010.

Learned counsel for the parties may file their objections to the new Rules within a period of two weeks. We direct that only one set of objections should be filed and both learned counsel should sit together and arrive at some consensus on the objections.

We further direct the State Governments that have not complied with earlier orders or directions given by the Central Government should do so within a period of four weeks from today failing which we will be constrained to require the presence of the Chief Secretaries of the State Governments in addition to imposition of heavy costs keeping in mind the necessity of conserving whatever water bodies are left in the country.

List the matter for further directions and for hearing on the objections to the new Rules on 9th November, 2017.

We would require the presence of a senior officer of the Ministry of Environment, Forests and Climate Change, Government of India to be present in Court on the next date of hearing so that any questions that may be raised

can be answered immediately. Needless to say, the senior officer who should be present in Court should be well-versed with the subject. The files on the basis of which the new Rules have been framed may also be kept ready for perusal when the matter is taken up.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
COURT MASTER