

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH, PUNE

M.A. No. 11 / 2024

IN

ORIGINAL APPLICATION NO. 139 / 2024

Alpesh Desai

... Applicant

v.

State of Gujarat &Ors.

... Respondents

SUBMISSIONS BY THE APPLICANT

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Pune

Date 10-10-2024



Adv. Aniruddha Kulkarni  
Counsel for the Applicant

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

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M.A. No. 11 / 2024

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Alpesh Desai

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SUBMISSIONS BY THE APPLICANT

I, Alpesh Desai, the applicant in the present case do hereby state as under –

1. My father Shri. Bharat.N.Desai, R/o.Dilpli Falia, at Umarsadi, Taluka- Pardi, Dist.Valsad, Gujarat -396125, had sent a letter Dt. 30.06.2022 to the Hon'ble Principal bench regarding damage to our agricultural land and the fruit Orchard trees standing therein, as it got flooded due to the diversion of river Balakhadi, done by the Dedicated Freight Corridor Corporation of India Ltd. (DFCCIL) for laying the freight corridor railway line. The said Railway line is being laid near to our lands bearing survey number 1993, 1984 between Railway line pole No. 222/7 to 222/13. The Railway line is running North – South and my land is to the East side of the Railway Land.

2. Hon'ble Principal bench taking cognizance of above referred letter registered Original Application No. 784/2022. Vide order Dt. 13<sup>th</sup> March 2023, the Hon'ble Principal Bench has noted that there is damage to environment. It is also observed that there is diversion of Balakhadi Pardi perennial stream which is done by the contractor of Dedicated Freight Corridor Corporation of India Ltd. (DFCCIL), due to which my Orchard got submerged. A joint committee comprising of GPCB, Irrigation Dept. and District Magistrate Valsad was constituted.
3. My land is situated, Survey No.1984 & 1993 opposite to Railway Line pole No. 222/7 to 222/13, Balakhadi of Pardi Taluka. The total area of our land is 13005 & 29980Sq. Mtrs./ Hectare. Our family have purchased said land before the year 2001 and I along with my other family members have been in continuous occupation and are absolute owners of the said land. We have about 225 number of chikoo trees, 250 number of Mango trees and 75 Number of coconut trees on the said land. The Balakhadi flows from North to South which was at a distance of approximately more than 5 Mtrs. from our land. Since number of years we were getting good income which was around Rs.1800 per annum per tree.
4. When the contractor of DFCCIL started laying the Railway Line and started doing other allied works, they closed the natural course of the Rain water by closing the natural *Kotar* (natural basin of the stream) with sand and thereby diverted the course of the Balakhadi. Due to such unplanned activities of the contractor of DFCCIL, from the monsoon of year 2019, the Northern and Southern side of our plot started getting flooded due to rainwater entering into

our Orchard which previously was not entering and was flowing down through the natural drain. Due to heavy monsoons and the gushy flow of the water passing through our plot, soil started getting eroded. After the intensity of rains and thereby reducing the intensity of the flow of river water we observed that water did not drain out through our plot and it got stagnant into our plot.

Copy of comparative google images showing the flow of watercourse before and after the DFCCIL contractor diverting the flow. **Annexure 1.**

Images showing waterlogged orchard due to diversion of water course by DFCCIL. **Annexure 1A.**

5. Due to the said water logging, many trees which were bearing good Mango & Chickoo fruits started getting damaged and we started suffering financial losses due to the same. We came to the conclusion that the water accumulation was being caused due to the unplanned closure of the natural drain, *Kotar* and construction of a service road by the contractor of DFCCIL. The contractor never consulted us before undertaking the said work, DFCCIL never issued us any communication stating that they are undertaking the said work, especially the diversion of the Balakhadi by closing the natural drains and closing of the *kotar*.
6. Looking to this serious situation we addressed a letter to the District Collector, Valsad in May 2019 and on 3<sup>rd</sup> July, 2019 stating our grievance and redressing the same. The District Collector forwarded our complaint to the Chief Project Manager (North), DFCCIL on 4<sup>th</sup> July, 2019, telling them to take appropriate action to solve the issue and submit a report back to the collector office and

also inform the applicant. Copy of the District Collectors letter dated 4<sup>th</sup>July, 2019 to the DFCCIL is annexed as **Annexure 2**.

7. On 30<sup>th</sup> June, 2022 my father sent a letter to the Principal Bench of the National Green Tribunal, Delhi highlighting his grievance with the hope that the Hon'ble Tribunal will take cognizance of the issue and provide relief to us.
8. The DFCCIL did not take any cognizance of the Collector's letter of 2019 and we continued to suffer. On 10<sup>th</sup> October, 2022 my father again addressed the letter to the District Collector. The District Collector vide their letter Dt.5<sup>th</sup> November, 2022, informed the Chief Project Manager (North) DFCCIL that it is necessary to arrange the rain water channel which has not been done and also the damage caused by changing the flow of the 200-300 years old Balakhadi (bay). Further the District Collector informed to the Chief Project Manager (North) DFCCIL that it is mandatory to get compensation for the loss caused in the said matter. District Collector's letter to DFCCIL dated 5<sup>th</sup> November, 2022 is annexed as **Annexure 3**.
9. On 13<sup>th</sup> March 2023 the Principal Bench took cognizance of our issue, they registered an O.A. 784 of 2022 whereby the Hon'ble Principal Bench constituted a joint committee comprising of GPCB, Irrigation Department, Horticulture department, Mamladar Pardi, DILR office Valsad and District Magistrate. The committee was directed at taking appropriate remedial action, and submit the said action taken report with the Pune Bench of this Hon'ble Tribunal. Order Dt. 13<sup>th</sup> March 2023 is annexed as **Annexure 4**.

10. In pursuance to the Hon'ble Tribunals order Dt: 13<sup>th</sup> March, 2023, the Executive Engineer and the Deputy Executive Engineer of the Damanganga Canal Division, Water Resources Department, Govt. Of Gujarat conducted a site inspection on 9<sup>th</sup> May,2023. The observations of their report are as follows –

- a) Land of the applicant is the Survey No. 1993 & 1984, opposite to the Railway line pole No. 222/7 to 222/13, Balakhadi of Pardi Taluka.
- b) The catchment area Rainwater of Pardi Taluka passes through Balakhadi and meets the Kotharkhadi and then into the sea.
- c) The Rainwater previously was passing adjacent to the land of the applicant, and through the land owned by Railways and was meeting the Balakhadi near to the Railway line and thus rainwater was getting discharged in natural way.
- d) The DFCCIL have made a service road which has blocked the natural rain through which the rainwater was getting discharged. The said land filling has resulted into a small bund, due to which water changed its course and it started flooding the applicant's land as well as other adjoining fields.
- e) Balakhadi has been shown in the village map of year 1884 that is prior to Railway.
- f) DFCCIL has not diverted the flow of the Rainwater stream to Balakhadi in a proper way and therefore the water is getting diverted towards the adjoining area which includes the applicant's land.

- g) The new diversion is not doing proper discharge through the natural drains.
- h) As the rainwater is passing through the applicant's field and is accumulating over there, it will cause further soil erosion. Already 1 to 2 feet of land has already eroded.**

11. The Irrigation Dept. has suggested the following measures –

- a) A pucca drain should be made from the vacant land running parallel to the service road passing adjacent to the land of the applicant up to the Balakhadi river. It should be having length of approx. 300mtrs. and width between 1.5 to 2 mtrs. This will prevent damage to the agricultural lands.
- b) As regards the applicants land, a protective wall having length of 150 – 200 mtrs. having height up to the level of the applicant's land should be built. This will prevent further soil erosion.

Copy of the visit report dated 9<sup>th</sup> May 2023 is annexed as **Annexure 5**.

12. The Deputy Director of Horticulture Dist. Valsad also carried out site inspection on 9<sup>th</sup> May,2023. The said report was submitted by them to the Resident Additional District Collector, Valsad. The Sub Divisional Officer, Pardi, Tehsildar-Pardi, Executive Engineer, Irrigation Dept., the Regional Officer, GPCB Vapi and the applicants were present during the site inspection. Observations of the site inspection reports are as follows –

- a) Earlier between the land of the applicant and the railway line there used to be a natural *kotar* through which rain water use to pass and meet the Balakhadi.
- b) Railways closed the said *kotar* by doing land filling and made a service road due to which the water changed its course and got diverted towards the applicants Orchard field and started flooding it.
- c) Due to water logging soil erosion is taking place and damage to chikoo and Mango trees were getting damaged.
- d) Water was not found to be polluted.

13. Conclusions and recommendations of the reports are as follows –

- a) Land filling done by Railways needs to be removed and the natural *kotar* needs to be reopened.
- b) The Railways should construct a protective wall towards the land of the applicants, admeasuring 200 – 250 mtrs. Then the water can be prevented from going to the applicant's field.

The said report has been signed by three GPCB officials, copy of the said report is annexed as **Annexure 6**.

14. The said committee members even conducted a *Panchanama* having similar observations as those of the above report copy of the *Panchanama* dated 9<sup>th</sup> May, 2023 is annexed as **Annexure 7**.

15. The Mamlatdar, Pardi on 10<sup>th</sup> May, 2023 submitted a report to the District collector Valsad. Observations of the said report are as under –

- a) The Railway agency DFCCIL have done land filling which has caused the natural *kotar* closed and have also constructed road which has resulted diversion of the water stream which is causing flooding and accumulation of water in the applicant's land causing damage to the fruiting trees.
- b) Irrigation Department has noted the change in the course of the natural flow of the stream due to the land filling and closing of *kotar* done by the contractor of the DFCCIL. The water logging is causing soil erosion. They have suggested construction of a pucca canal between the applicant's land & the up to Balakhadi, which should be 300 mtrs in length and 1.5 to 2mtrs. in breadth, which will help prevention and damage to the land as well as to the trees.
- c) The Irrigation Department has further suggested construction of a protection wall having a length of 150-200 mtrs. And having height up to the applicant's land, thus further soil erosion will be prevented. Construction of canal as well as wall shall be taken by the DFCCIL.
- d) The Horticulture Department has observed 51 chikoo trees having age of 30 to 35 years, 7 Coconut trees of 30 years and 23 Mango (Kesar) trees of 25 years. The Horticulture Department based on the circular No.- LAQ- 22 – 2018/ 1550/GH Dt. 12<sup>th</sup> January, 2021, issued by the Revenue Department of Gujarat, has done the valuation of the trees. Accordingly the 51 Chikoo trees have been valued at Rs.19,58,400/- ( Rs.38,400/- Per tree), 7 Coconut trees have been valued at Rs.1,05,000/- ( Rs.15,000/- Per tree) and 23 Mango (Kesar trees) have been valued at Rs.9,20,000/- (Rs.40,000 Per tree).

- e) The environment Department has observed that water logging into the applicant's land has caused soil erosion and has also damaged the trees. No polluted dirty water was seen at the applicant's land.
  - f) Railways has done land fillings in the natural *kotar* and it needs to be re-opened and cleared.
  - g) If the Railway Department constructs protective Wall of 200-250 mtrs. Then water can be prevented from going into the farm of applicant during Monsoon.
16. The Agricultural Experimentation Centre, Paria, Taluka Pardi, Dist. Valsad have submitted a spot inspection report to the Dist. Collector on 17 May 2023. The observations of the said report are as follows -
- a) During inspection, Soil Erosion was observed and fruit bearing trees like mango and chikoo trees were found to be dehydrated.
  - b) Soil Erosion and wilting of trees has been caused due water logging. Water logging has been caused due to change in the natural course of water caused by the land filling and closing of *kotar* done by the contractors of DFCCIL. Land filling has resulted into creation of a check dam. As there is no other way for water to flow and therefore it is getting diverted towards the agricultural field as they are in a low lying area of the same.
  - c) Valsad area falls in very heavy rainfall zone, therefore water logging remains for a prolonged time causing soil erosion and affecting the fruit bearing trees.

- d) During the visit no water logging was found.
17. On 12<sup>th</sup> September 2023, the Resident Additional Collector of Valsad directed the Sub-Divisional Officer to urgently submit action taken report as per the directions of the Hon'ble NGT. Copy of the letter dated 12<sup>th</sup> September, 2023 is annexed as **Annexure 8**.
18. The Dy. Collector Pardi had filed a complaint U/S 133 of CrPC against the Chief Project Manager's DFCCIL. The said complaint was filed with the Sub-Divisional Magistrate Pardi, District Valsad. On 16<sup>th</sup> September 2023 the Sub-Divisional Magistrate issued a Show Cause notice against DFCCIL. The said case is pending. Copy of the show cause notice is annexed as **Annexure 9**.
19. On 25<sup>th</sup> September 2023 the District Collector Valsad issued a letter to the DFCCIL. The Collector apprised about the observations of the joint committee who had visited the applicants land and had given remedial measures. The Collector directed the DFCCIL to do the civil work of construction of protective wall and canal for proper channelization of water and for prevention of further soil erosion.
20. The Collector informed the DFCCIL that they are responsible due to the acts committed by their contractor, which has caused damaged to the applicants land and fruit bearing trees. The Collector further directed that DFCCIL or their contracting agency will have to pay Rs.29,83,400/- to the applicant towards the damage caused to the 51 Chikoo trees, 7 Coconut trees & 23 Mango (Kesar) trees. The said calculation was done by the Joint Committee

as per the Hon'ble NGT's order Dt. - 13<sup>th</sup> March, 2023. The Collector further directed to submit an action taken report within 15 days to their office. Copy of letter dated 25<sup>th</sup> September 2023 which is annexed as **Annexure 10**.

21. The DFCCIL vide their letter Dt. 28<sup>th</sup> September 2023 addressed to the District Collector Valsad refuted all the allegations made by the applicant and the observations made by the joint committee. They refused any responsibility for the damage caused to the applicant's lands and the fruit bearing trees. They further refused to pay any compensation as determined by the joint committee. The DFCCIL took the defence that the Joint Committee did not involve them during the site visit by giving them advanced notice and without hearing their side they were made responsible for the damage caused to the applicants land and trees. Copy of letter Dt. 28<sup>th</sup> September 2023 is annexed as **Annexure 11**.

22. The District Collector issued a letter Dt. 30<sup>th</sup> October 2023 to the Executive Engineer and The Deputy Executive Engineer, Damanganga Canal Sub-Division and to the field officer DFCCIL Valsad. The District Collector directed that a spot inspection by the Joint Team of the above mentioned officers including DFCCIL should be made and a report should be submitted within 5 days. Copy of letter Dt. 30<sup>th</sup> October 2023 is annexed as **Annexure 12**.

23. The DFCCIL addressed as letter Dt. 4<sup>th</sup> December 2023 to the District Collector stating that a complaint U/s. 133 of CrPC filed by SDM is pending with the Sub Divisional Magistrate which was verified by the Joint Committee excluding DFCCIL. Therefore, they again requested for Joint site

Inspection involving them. Copy of letter dated 4<sup>th</sup> December 2023 is annexed as **Annexure 13**.

24. The District Collector issued a letter Dt. 12<sup>th</sup> December 2023 to the Executive Engineer and The Deputy Executive Engineer, Damanganga Canal Sub-Division and to the field officer DFCCIL Valsad. The District Collector directed that a spot inspection by the Joint Team of the above mentioned officers including DFCCIL should be made and a report should be submitted within 5 days. Copy of letter dated 12<sup>th</sup> December 2023 is annexed as **Annexure 14**.

25. The Executive Engineer Damanganga Canal Sub-Division Vapi submitted the Joint Inspection Report to the District Collector, vide their letter Dt. 19<sup>th</sup> December 2023. The said Committee included DFCCIL. Observations of the committee are as follows –

- a) The work of making service road and tracks parallel to DFCCIL track is being carried out by the DFCCIL through their contractor M/s. Express Freight Consortium. DFCCIL is supervising the work.
- b) DFCCIL has constructed road in its own land after extending all the existing Railway Bridges to dispose the Rain water.
- c) Complainants land is lying in low area and water gets accumulated in his land in case of heavy rainfall.
- d) The committee studied the approved drawing by DFCCIL and they found out that many works including retaining wall, drain and nala at the location are incomplete. The contractor of DFCCIL should carry

out work as per the approved drawing and complete at the earliest so that no water logging and landslide problem will occur in upcoming Monsoon season as it had occurred in previous 5 Monsoon season since 2019.

- e) It was further observed that DFCCIL's contractor is discharging water to the private land as there is no proper water drainage arrangement available along the alignment of the Railway Line. Further, the embankment made by DFCCIL's contractor for making road got damaged due to heavy rainfall causing water flow from railway tracks resulting in landslides and disturbing the adjacent private land. The committee proposed making of retaining wall of appropriate size all along parallel to the road made by DFCCIL's contractor starting from New Pardi Station building (DFC chainage 221/3) to DFC chainage 222/27, length of approximate 1500 mtrs. This is to be done by DFCCIL to retain Earthwork, to make drainage of appropriate capacity to discharge the Rain water. By making this drainage arrangement water logging problem will be minimised.
- f) The pathway of Balakhadi drain was shifted due to construction of DFCCIL embankment. The Balakhadi drain coming from eastside needs to be properly trained. The kaccha drain length going parallel to DFCCIL Railway Land is to be made of concrete with appropriate size by DFCCIL contractor so that water is discharged to the nearest minor bridge number 56. The Kaccha drain length shall also be adequately

laid so that the water finds space to be discharged to the nearest minor bridge without any hindrance.

26. The committee recommended DFCCIL to carry out balance work as proposed above within 2 to 3 months of time period so that, further water logging problem will not occur in upcoming Monsoon season. The same has not been done yet by DFCCIL and the applicants land has been flooded this year as well.
27. On 26<sup>th</sup> January, 2024 the applicants father addressed to the registrar of this Hon'ble Tribunal. He has highlighted that DFCCIL has not carried out the balance work as per their own drawings. The embankment made in creek for the service road also got damaged in rainy season due to heavy water flow from the railway tracks during monsoons and the applicant's farm was again flooded.
28. The DFCCIL themselves are not following up with the timeline which was set by the committee wherein they themselves were members. They are not abiding by the directions given by the District collector Valsad and due to the inaction on their part the Environment continues to suffer.
29. As per the circular number LAQ-22-2018/G, Dt- 12January, 2021, issued by the revenue department Govt. Of Gujarat, Solatium of 100 Percent has to be paid of the amount of compensation which is to be awarded to a farmer in case of loss caused to him, for determining the value of the trees under the Right To Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013.

30. The District Collector, the Horticulture Department and the joint committee all failed to take into consideration the existence of 27 Teak wood trees which also wilted along with the 51 Chikoo, 07 Coconut and 23 Mango (Kesar) trees. I have made the calculation of all the trees and the Solatium amount which I am claiming as Environment damage compensation according to the Government of Gujarat's circular Dt- 12<sup>th</sup> January, 2021.

The compensation calculation is as follows –

<b>Sr. No.</b>	<b>Name of tree.</b>	<b>Age</b>	<b>Value of tree (In Rs.)</b>	<b>Tree no.</b>	<b>Amount( InRs.)</b>
1	Mango (Kesar&Hapus)	30	40,000/-	23	9,20,000/-
2	Coconut	30	15,000/-	7	1,05,000/-
3	Chikoo	30	38,400/-	51	19,58,400/-
4	Teak wood	25	30,000	27	8,10,000/-
				<b>Total</b>	<b>37,93,400/-</b>
			Solasium@ of 100 percent.		<b>37.93,400/-</b>
				<b>Grand total</b>	<b>75,86,400/-</b>

31. Being an innovative farmer the applicant's father was carrying out innovation since 2013 to have superior quality of chikoo fruits in the orchard which was affected due to the ill-planning of DFCCIL. He presented his innovation at the Indian Council of Agricultural research – All India Co-Ordinated Research Project of Fruits on 24<sup>th</sup> January 2024 at Navsari Agricultural University, Gujarat. The research results are now recommended to the farmers by Navsari Agricultural University. This will help all the farmers growing Chikoo to increase their incomes and contribute to the Agrarian Economy of the country.

32. On 10-09-2024, the Applicant made an RTI Application to the Deputy Executive Engineer, Damangana Canal Division, Padri, Narmada Water Resources Department, Govt. of Gujarat, asking information whether their Department had given permission to the DFCCIL for diversion of Balakhadi. The said Department vide their reply dated 25-09-2024 has clearly stated that they haven't given any such permission to the DFCCIL.

Copy of the reply to RTI application annexed as **Annexure 15**.

33. The action on part of the DFCCIL of diverting the natural flow of water hereby flooding our farmland has resulted into irreparable loss and damage to the environment. The inaction on their part of not doing the necessary Civil work for remedying the situation is further degrading the environment. Around 2 Acres of land has got damaged, soil erosion has happened and it continues to happen with the increasing intensity of rainfall.

34. Compensating a small farmer like me and restoring the degraded environment is not an impossible task for the DFCCIL which is a Public Sector Undertaking under the Ministry of Railways, Govt. of India. The Hon'ble Supreme Court of India in *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388, by invoking the Principle of *Parens Patrie* has held that, the State is the custodian of all the natural resources in the country and it has to ensure that all the citizens are entitled to the benefits arising out of judicious use of such natural resources. The state cannot in any way use these natural resources to the detriment of the well being of its citizens.
35. The Hon'ble Supreme Court laid down the Doctrine of Public Trust in the said case. It was founded on the ideas that certain common properties such as rivers, sea-shore, forests & the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The said sources being a gift of nature, they should be made freely available to everyone irrespective of the status of life. **(Para No. 24)**
36. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the public rather than to permit their use for private ownership for commercial purpose. Public at large is the beneficiary of the Sea-Shore, running waters, airs, forests and ecologically fragile lands. The state as a trustee is under a legal duty to protect the natural resources. **(Para No. 34)**

Copy of the judgment dated 13<sup>th</sup> December, 1996 *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388 is annexed as **Annexure 16**.

37. The above caselaw is squarely applicable at the case at hand and the balance of convenience lies in the favour of the applicant. Therefore, the applicant is entitled for compensation and Solatium which should be paid by the DFCCIL, for which appropriate directions may kindly be passed. This should be paid in addition to the civil engineering works which are recommended by the Joint Committee. As observed by the joint committee the works are partly completed & therefore directions should be issued to the DFCCIL to complete the works at the earliest to prevent further destruction of the environment.
38. The Hon'ble Tribunal is bound by Section 20 of the NGT Act, which states that the Tribunal should apply Principles of Polluters Pay, Sustainable Development and Precautionary Principle. By invoking the Principle of Polluters Pay, The DFCCIL should be directed to pay the applicant, compensation for environmental damage amounting to the tune of Rs. 75,86,400/- ( Rupees Seventy Five Lakh, Eighty Six Thousand, Four Hundred Only).
39. By invoking The Principles of Sustainable Development and Precautionary Principle, the DFCCIL should be directed to carry out the Civil Engineering work as suggested by the Joint Committee at the earliest to prevent further environmental degradation. Development shouldn't be at the cost of damaging the environment.
40. **Under Schedule II of the NGT Act, [Sec. 15(4) and Sec. 17(1)] clause J, compensation or relief or damage may be claimed on account of any harm, damage or destruction, to flora including aquatic flora, crops,**

**vegetables, trees and orchards can be claimed. Therefore, it is well within the jurisdiction of this Hon'ble Tribunal to award Environment Damage Compensation to the applicant, payable by the DFCCIL.**

41. By filing a separate Form II, the applicant has paid the court fees of Rs.75,864/- for claiming personal damages.
42. The applicant reserves the right to amend the pleading of the present affidavit and to file any further affidavit.

VERIFICATION

I, Alpesh Desai, the Applicant in the present case do hereby verify and declare that the statements made in the aforesaid paras are true and correct to the best of my knowledge and information and I believe the same to be true and that no material has been concealed therefrom.

Place –

Date 08-10-2024

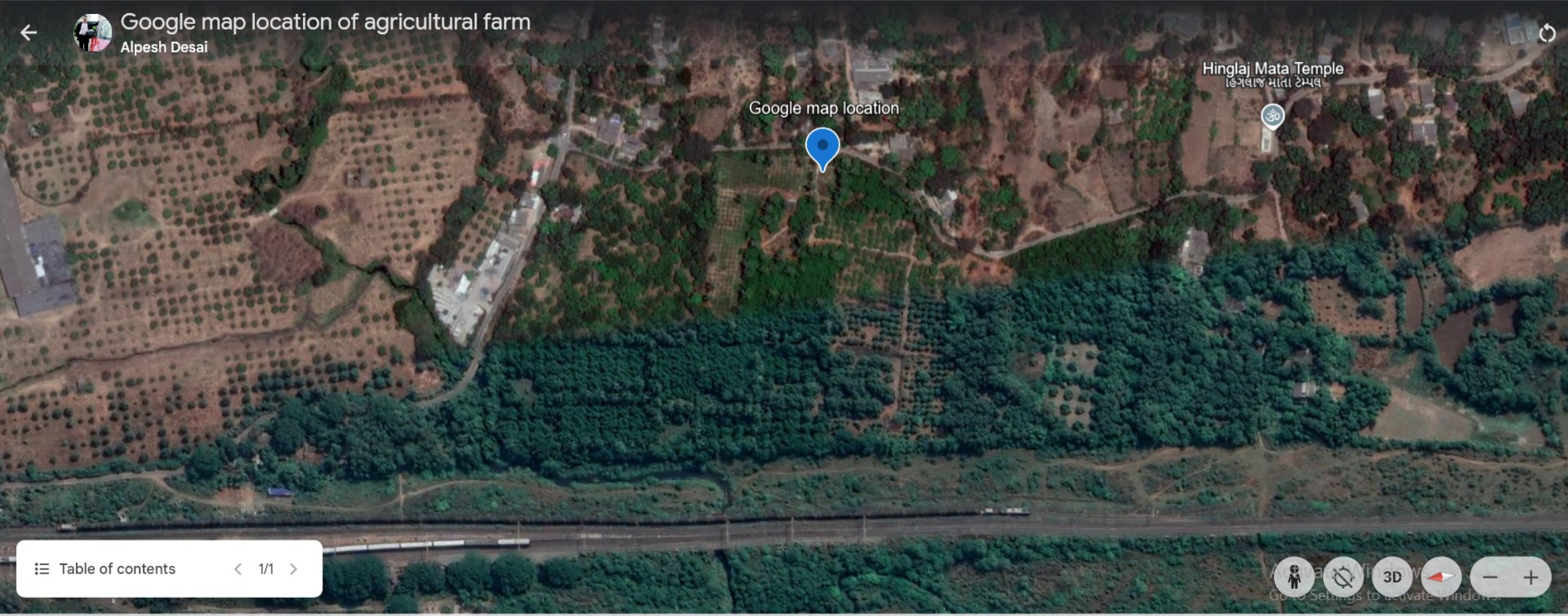


Alpesh Desai

Applicant

Historical Imagery < 2018-04-30 >

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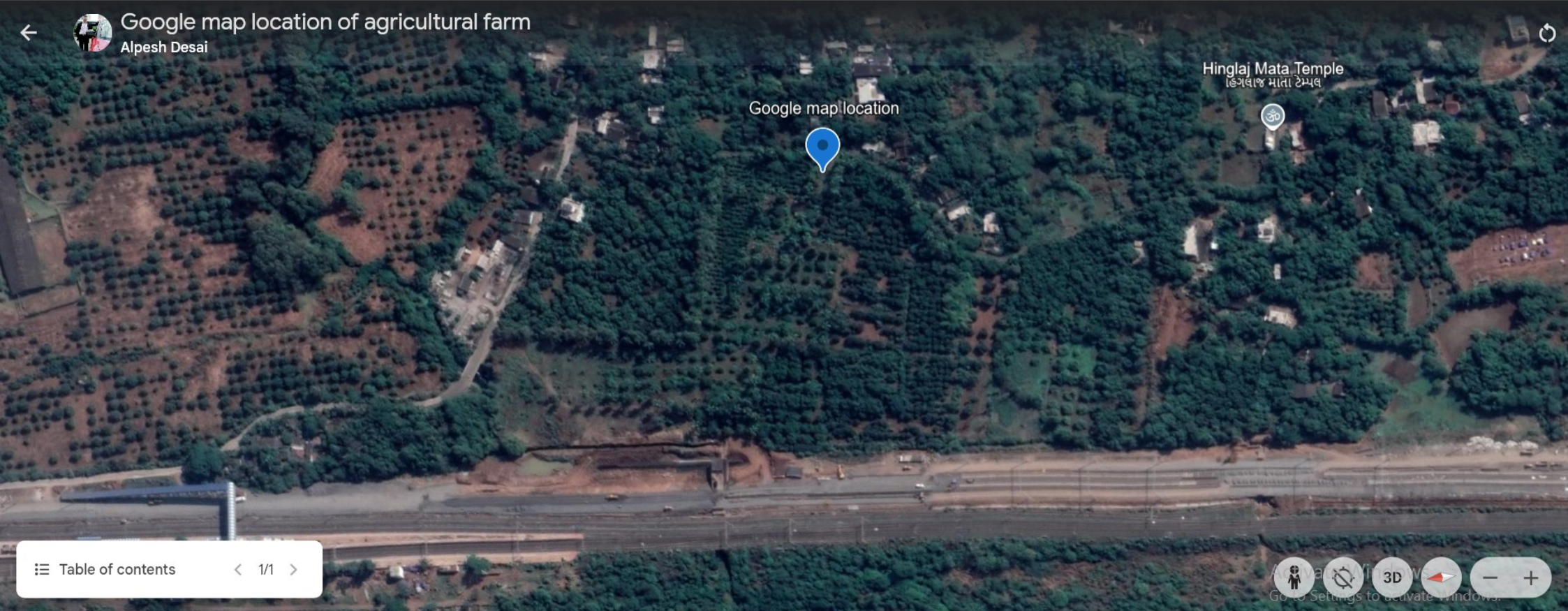


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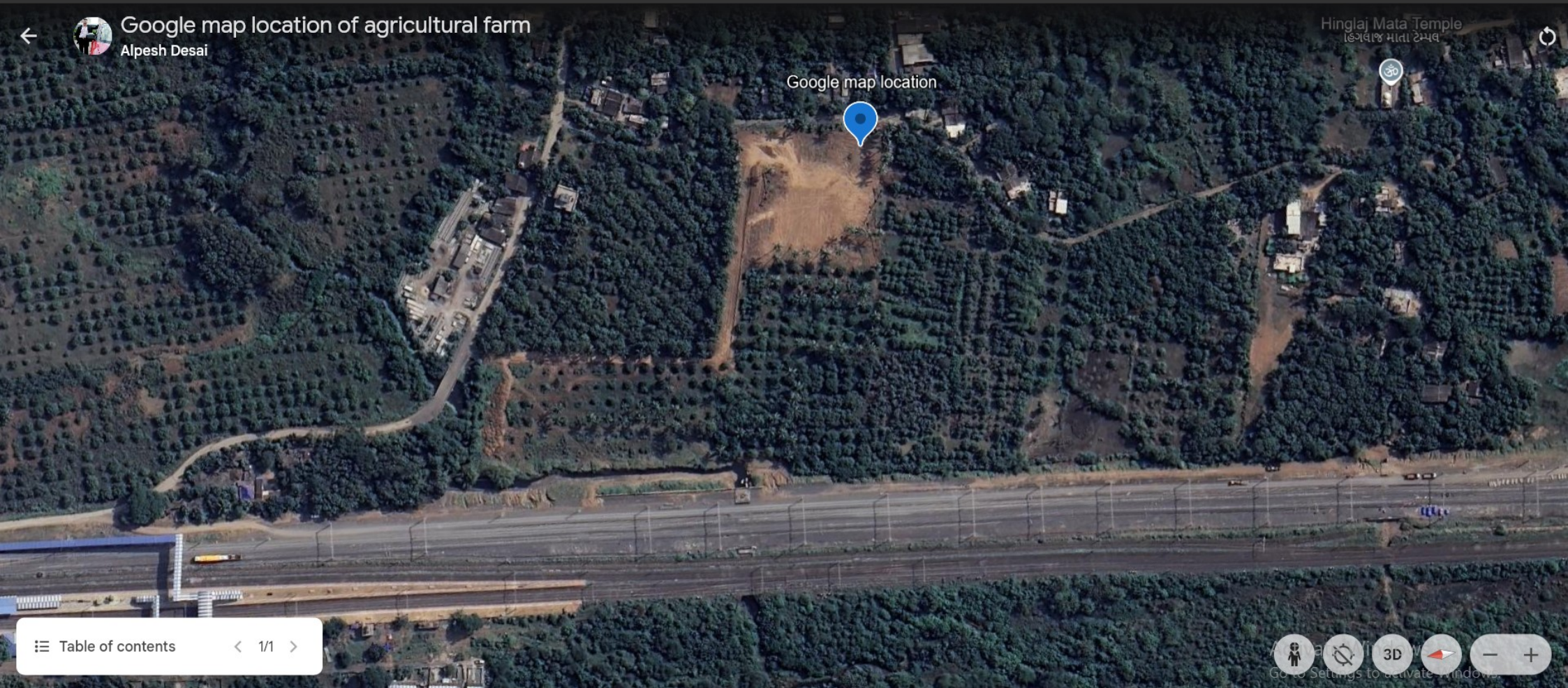
Timeline: 2017, 2018, 2019, 2020, 2021, 2022



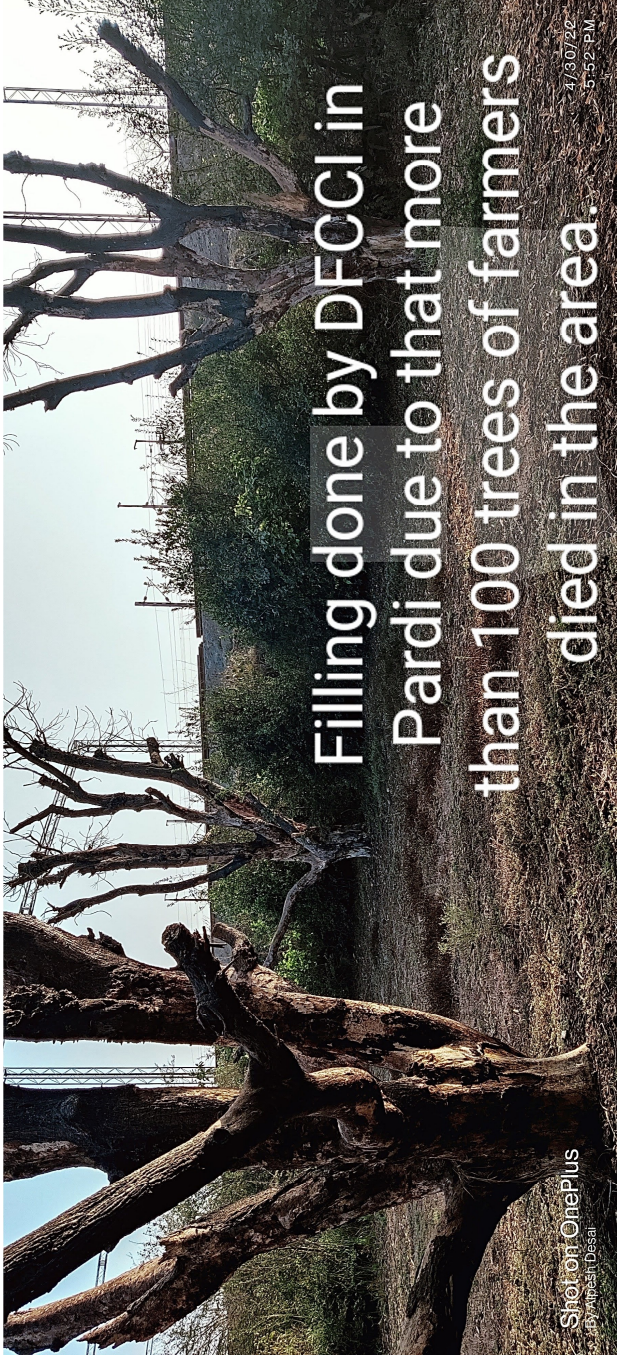
Historical Imagery < 2022-04-07 >

2017 2018 2019 2020 2021 2022











Shot on OnePlus  
By Abhishek Desai

7/7/22  
9:16 AM

**Collector Office ,Valsad**  
**Jilla Seva Sadan, Tithal Road, Valsad**  
**Ph.No.02632-253613 F-243417**  
 Email ID- collector-val@gujarat.gov.in

No.ACB/WATER LOGGING/Ws./2019  
 2360

Dt. 06/07/2019  
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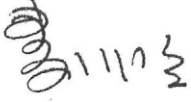
To,  
 Chief Project Manager, (North)  
 DFCC,  
 Mumbai

**Subject:** - Regarding the issue of water logging at the west side of Pardi Railway Station where the DFCC Railway line work is continue.

**Ref. :-** E-mail of Harshadkumar Tandel Dated-03/07/2019.

With reference to the above cited subject, it is to inform you that from the reference E-mail, the applicant Mr. Bharatabhai N. Desai, Mantri of Bharatiya Kisan Sangh, Pardi Taluka has submitted the application regarding the issue of water logging at the West side of Pardi Railway Station where the DFCC Railway line work is continue. The copy of that application is attached here with.

Kindly take appropriate action to solve the indicated issue and report to this office and also inform to applicant.

  
 4/5/19  
 (C.R. Kharsani)  
 Collector & DM  
 Valsad

*24/08*  
 ✓ **Copy forward to :**

Mr. Bharatabhai N. Desai, Mantri of Bharatiya Kisan Sangh, Pardi Taluka.  
 Res. : Dipli Faliya, Umarasadi Ta. Pardi Dist. Valsad - for kind information.



Collector & District Magistrat, Valsad.

Jilla Seva Sadan, Valsad-396001.

E-MAIL:COLLECTOR-VAL@GUJARAT.GOV.IN

Office Tel. No.:- 02632-244274,244279,253731,253613,244386

Office Fax No :-02632-249335,243417,244270 Control Room :- 02632-243238

No.ACB/MSCI/ws. ૫૬૪/2022

Dated. 05/11/2022

To,  
Chief Project Manager (North),  
DFCCIL, 7<sup>th</sup> Floor, Central Railway,  
New Administrative Building,  
D.N.Road, CST Mumbai,  
Maharashtra-400001.

**Sub:- Regarding issue of water logging at the side of Pardi Railway Station where the DFCCIL Railway line work is continue.**

**Ref:- Letter of Mr. Bharatbhai N.Desai (Farmer) dated.10/10/2022.**

With reference to the above cited subject, it is to inform you that the applicant Mr. Bharatbhai N. Desai has submitted the application regarding laying of Freight Corridor line by Western Railway is in progress at Pardi, Dist-Valsad station on the eastern side. It is necessary to arrange the rain water channel which has not been done and also the damage caused by changing the flow of the 200-300 years old river (bay). It is proposed here to get compensation for the loss caused in the above matter. The copy of application is attached here with.

Kindly take appropriate action to solve the indicated issue and report to this office and also inform to applicant.

(A.R.Jha)

Resident Additional Collector  
Valsad

Copy Forward to :-

Mr. Bharatbhai N. Desai  
Dipali Faliya, Umarsadi Village,  
Ta: Pardi,  
Dist. Valsad.

.....For your kind information.

Item No. 10

Court No. 2

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**(By Video Conferencing)**

Original Application No. 784/2022

Alpesh Desai

Applicant

Versus

State of Gujarat

Respondent

Date of hearing: 13.03.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Alpesh Desai, Applicant in Person

**Application is registered based on a complaint received by post/e-mail**

**ORDER**

1. Heard applicant in person.
2. This original application under Section 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') has been registered on a letter petition dated 30.06.2022 sent by Shri Bharat N. Desai r/o Dilpli Falia, At-Umarsadi, Tal-Pardi, Dist. Valsad, Gujarat.
3. The complaint is that the complainant is owner of an Orchard of mango, chiku, teak wood etc. situated adjacent to railway land. A freight Corridor Contractor is carrying out work near applicant's orchard, diverting water used for the construction activities into agriculture land of the complainant causing damage to trees standing on the orchard land of the complainant. In this regard, several complaints were made from time to time to various authorities but despite the fact that the concerned contractor is causing damage to environment, no appropriate action has

been taken by the authorities concerned. The contractor is also diverting river water from its original situation to east side of the river on which side the complainant land is touching railway land and due to diversion of this river water, the orchard land of the complainant is getting submerged and waterlogged.

4. In our view, the grievance raised in the matter, at the first instance, can be looked into by the local authorities and for purpose whereof we constitute a joint Committee comprising State PCB, Irrigation Department and District Magistrate, Valsad who shall visit the site, collect relevant information and if finds any violation of environmental laws and norms, would take appropriate remedial action in accordance with law within two months.

5. District Magistrate, Valsad shall be the nodal agency for coordination and compliance of this order.

6. Copy of action taken report shall be filed by the said Committee before the Registrar, Pune Bench of this Tribunal by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF, who shall, if find necessary for any further order, place the matter before the Bench.

7. Subject to above directions, the application is disposed of.

8. A copy of this order be forwarded to State PCB, Irrigation Department and District Magistrate, Valsad by e-mail for compliance.

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

March 13, 2023  
Original Application No. 784/2022  
SN

Hon. National Area Tribunal દ્વારા તા. 13/03/2023 ના રોજ Original application No 784/2022 માં કરેલ હુકમ મુજબ સંયુક્ત કમિટી બનાવી સ્થળ તપાસ કરી અહેવાલ સાદર કરવા બાબત.

તા. 09/05/2023 ના રોજ સમય 11:00 કલાકે સંયુક્ત કમિટી દ્વારા રજૂઆત વાળી જગ્યાની સ્થળ ( Location N-20'30"38.78", E - 72'55"29.15" ) તપાસ કરવામાં આવેલ. સ્થળ તપાસ કરતાં જણાવેલ કે, અરજદારશ્રીની જમીન કે જેના નવા સર્વે નંબર 1993 પાસે (રેલ્વે લાઈન પોલ નં. 222/7 થી 222/13 ની સામે ) પારડી તાલુકાની બાલાખાડી પસાર થાય છે. પારડી તાલુકાનું ક્રેમ-ટનું વરસાદી પાણી બાલાખાડીમાં થઈને કોથાર ખાડી તથા પાર નદીમાં મળીને સમુદ્રમાં મળતું હોય છે. તેમજ અરજદારશ્રીની જમીન કે જેના નવા સર્વે નંબર 1984 ની (રેલ્વે લાઈન પોલ નં. 221/39 થી 222/3 ની સામે ) ઉપરવાસના ખેતરો તેમજ પોણીયા વિસ્તારની ખેત જમીનોનું વરસાદી પાણી અરજદારશ્રીની જમીનમાં થઈ રેલવેની જમીનમાં આવેલ કુદરતી વહેણથી બાલાખાડીમાં વરસાદી પાણીનો નિકાલ થતો હતો. હાલમાં D.F.C.C. દ્વારા પોતાની જમીનનો પુરેપુરો ઉપયોગ કરીને સર્વિસ રોડ બનાવવામાં આવેલ છે. જેના લીધે આશરે 300 મીટર જેટલું કુદરતી વહેણ જે રેલવેની જમીનમાંથી જતી હતી, જે પુરી દેવામાં આવેલ છે. D.F.C.C. દ્વારા કરેલ સદર કામગીરીના લીધે એક પ્રકારની આડબંધ આકાર લેવા પામેલ હોઈ, બાજુના ખેતરો જે નીચાણવાળા વિસ્તારમાં આવેલ હોઈ જેમાં વરસાદી પાણીનો નિકાલ ન થવાથી પાણી ભરાવાના પ્રશ્નો ઉપસ્થિત થયેલ છે.


આમ, D.F.C.C. દ્વારા કરેલ કામગીરીના લીધે વરસાદી પાણીનો નિકાલ કુદરતી વહેણ દ્વારા બાલાખાડીમાં ન થવાથી અરજદારશ્રીની જમીનમાં ભેગું થતાં Water Logging થવા પામેલ છે. અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નંબર 1993 પાસે આવેલ. પારડી તાલુકાની બાલાખાડી જે રેલવેની જમીનમાંથી પસાર થાય છે. જે ગામના નકશામાં પણ છે. જે બાલાખાડીના વહેણને D.F.C.C. દ્વારા સદર કામગીરી અર્થે રેલવેની માલીકીની જગ્યામાં પરંતુ અરજદારશ્રીની જમીનમાંથી ડાયવર્ટ કરવામાં આવેલ છે. પરંતુ એમના દ્વારા બાલાખાડીના વહેણને યોગ્ય રીતે ડાયવર્ટ કરવામાં ન આવતા બાલાખાડીનો ડાયવર્ટ કરેલ વહેણનો નવો પ્રાય ચોમાસાની ઋતુ દરમિયાન વરસાદી પાણીના નિકાલ અર્થે યોગ્ય રીતે કાર્ય કરી શકે એમ નથી. જેના કારણે અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નંબર 1993 વાળી જમીનમાં વરસાદી પાણીનો નિકાલ દરમિયાન વધુ ધોવાણ થવાની શક્યતા રહેલ છે. હાલમાં, સદર કામગીરીના લીધે અરજદારશ્રીની જમીનમાં આશરે 1-2 ફુટ જમીનનું ધોવાણ થયેલ હોવાનું જણાય છે.

તારણ:-

- ખરેખરમાં DFCC દ્વારા રેલવેની જમીનમાં જે કુદરતી વહેણ હતું, જે પરાપૂર્વથી ચાલી આવેલ જે કુદરતી વહેણને માટીપુરાણ કરી વરસાદી પાણીના નિકાલનો અન્ય કોઈ વિકલ્પ ન રાખી હાલમાં વરસાદી પાણીના નિકાલમાં અવરોધ ઉત્પન્ન કરેલ છે.


નિવારણ:-

- અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નં. ૧૯૮૪ વાળી જમીન પાસે (રેલ્વે લાઈન પોલ નં. 221/39 થી 222/3 ની સામે) આવેલ કુદરતી વહેણને માટીપુરાણ કરી બંધ કરવામાં આવેલ જ્યાં એક પ્રકારનો આડબંધ આકાર લેવા પામેલ છે. જ્યાં અરજદારશ્રીની જમીનમાં પાણીનો ભરાવો થવા પામેલ ત્યાં સર્વિસ રોડની પેરેલલ બાજુમાં જગ્યા છે, એ જગ્યામાંથી પાકી નીક અરજદારશ્રીની જમીન થી બાલાખાડી સુધી આશરે ૩૦૦ મી. લંબાઈમાં તેમજ આશરે ૧.૫ મી. થી ૨.૦ મી. પહોળાઈમાં બનાવવામાં આવે તો ખેતીની જમીનમાં નુકશાન થતું અટકાવી શકાય.
- અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નં. ૧૯૮૩ વાળી જમીન પાસે (રેલ્વે લાઈન પોલ નં. 222/7 થી 222/13 ની સામે ) આવેલ બાલાખાડીના વહેણને યોગ્ય કરવામાં આવે તેમજ અરજદારશ્રીની જમીન પાસે હાલમાં સ્થળ ઉપર અમુક અંતર સુધી આશરે ૧૦-૧૫ મીટર જેટલી પ્રોટેક્શન વોલ બનાવવામાં આવેલ છે, તે પ્રોટેક્શન વોલ આશરે ૧૫૦-૨૦૦ મીટર જેટલી લંબાઈમાં તથા અરજદારશ્રીની જમીનના લેવલ સુધી ઉંચાઈમાં કરવામાં આવે તો અરજદારશ્રીની જમીનમાં વધુ ધોવાણ થતું અટકશે.

  
નાયબ કાર્પોરાલક ઇજનેર

દમણગંગા નહેર પેટા વિભાગ નં .૧૧

પારડી

  
કાર્યપાલક ઇજનેર

દમણગંગા નહેર વિશાખા વિભાગ નં .૦૩

બલીઠા-વાપી

Report

As per the order passed by the Hon. National Area Tribunal in Original application No. 784/2022 dated 13/03/2023 for forming the Joint Committee and after carrying out the spot inspection, to submit the report

On 09/05/2023 at 11.0 hours the Joint Committee, has carried out the inspection of the land for which representation has been made (Location N-20', 30', 38.78" E-72' 55' 29.15") where the inspection is carried out. Upon making the spot inspection it is found that the land of the applicant which is near to the new Survey no.1993 (opposite to the railway line Pole No.222/7 to 222/13) Balakhadi of Pardi taluka passes. The catchment area rain water of Pardi taluka passes through Balakhida and meeting at Kothar Khadi and Paar river into the sea. Also the land of the applicant of new Survey no.1993 (opposite to the railway line Pole No.222/7 to

222/13) the catchment area fields and the agricultural of poniya area, the rain water going through the land of the applicant, goes into the Bala khadi situated in the land of railway by natural flow and thus the disposal of rain water was taking the place. At present the DFCC using its own land fully, has made service road. Due to this the natural flow of approximately 300 meters, which was going through the railway land, which has been filled up, due to this work done by the DFCC, as one type of check dam has taken place, the adjoining fields which are located in low lying area, wherein due non-disposal of rain water, the questions of water logging have arisen.

Thus, DFCC has done this work due to which the natural flow for disposal of the rain water, as could not be done in the Balakhadi, and as the same has logged in the land of the applicant, water logging has taken place. Near to the land of the applicant as the land of new survey No.1993 and wherein the Balakhadi of Pardi Taluka which passes

through the railway land, the same is also shown in the village map. The flow of said Balakhadi, has been diverted from the land of the applicant and not by the DFCC in the land having the ownership of the railway for the above work, but as it has not properly diverted the Balakhadi flow, the new path of the diverted flow of Balakhadi during the monsoon season, is not able to function properly for the purpose of disposal of rain water. Due to this, the land of the applicant which is having new Survey No.1993 during the disposal of the rain water there is possibility of further erosion. At present, due to this work, in the land of applicant it is found erosion of approximately 1-2 feet of land has taken place.

Conclusion:

\* In fact, the natural flow in the rail way land by DFCC, which has continued since generations, the said natural flow due to sand filling and not keeping any other option for disposal of the rain

water, at present hurdle has been created in disposal of the rain water,

Resolution:

\* The land of the applicant which is having new Survey no.1993 (opposite to the railway line Pole No.222/7 to 222/13) whereat there is natural flow has been closed by sand filling whereat one type of check dam has taken shape where it has resulted in water logging in the land of the applicant, there near to the parallel service road there is space-land and from that land if pucca drain is made <sup>till</sup> from the land of the applicant up to Balakhadi approximately having length of 300 meters and width of approximately 1.5 meter to 2.0 meters, the damage can be prevented to the agriculture land.

\* In respect to the land of the applicant new Survey no.1993 (opposite to the railway line Pole No.222/7 to 222/13) wherein if the flow of Balakhadi is made proper and also near to the land of the applicant at present at the site up to some distance

protection wall has been constructed of approximately 10-15 meters, the said protection wall is having length of approximately 150-200 meters and if its height is made upto the level of the land of the applicant then further erosion in the land of the applicant will be prevented.

Sd/-

Deputy Executive  
Engineer

Daman Ganga Canal  
Sub Division No.11

Pardi

Sd/-

Executive Engineer  
Daman Ganga Canal Sub  
Branch Division No. 03  
Balitha-Vapi

Hon. National Area Tribunal દ્વારા તા. 13/03/2023 ના રોજ Original application No 784/2022 માં કરેલ હુકમ મુજબ સંયુક્ત કમિટી બનાવી સ્થળ તપાસ કરી અહેવાલ સાદર કરવા બાબત.

તા. 09/05/2023 ના રોજ સમય 11:00 કલાકે સંયુક્ત કમિટી દ્વારા રજૂઆત વાળી જગ્યાની સ્થળ ( Location N-20'30"38.78", E - 72'55"29.15" ) તપાસ કરવામાં આવેલ. સ્થળ તપાસ કરતાં જણાવેલ કે, અરજદારશ્રીની જમીન કે જેના નવા સર્વે નંબર 1993 પાસે (રેલ્વે લાઈન પોલ નં. 222/7 થી 222/13 ની સામે ) પારડી તાલુકાની બાલાખાડી પસાર થાય છે. પારડી તાલુકાનું ક્રેમ-ટનું વરસાદી પાણી બાલાખાડીમાં થઈને કોથાર ખાડી તથા પાર નદીમાં મળીને સમુદ્રમાં મળતું હોય છે. તેમજ અરજદારશ્રીની જમીન કે જેના નવા સર્વે નંબર 1984 ની (રેલ્વે લાઈન પોલ નં. 221/39 થી 222/3 ની સામે ) ઉપરવાસના ખેતરો તેમજ પોણીયા વિસ્તારની ખેત જમીનોનું વરસાદી પાણી અરજદારશ્રીની જમીનમાં થઈ રેલવેની જમીનમાં આવેલ કુદરતી વહેણથી બાલાખાડીમાં વરસાદી પાણીનો નિકાલ થતો હતો. હાલમાં D.F.C.C. દ્વારા પોતાની જમીનનો પુરેપુરો ઉપયોગ કરીને સર્વિસ રોડ બનાવવામાં આવેલ છે. જેના લીધે આશરે 300 મીટર જેટલું કુદરતી વહેણ જે રેલવેની જમીનમાંથી જતી હતી, જે પુરી દેવામાં આવેલ છે. D.F.C.C. દ્વારા કરેલ સદર કામગીરીના લીધે એક પ્રકારની આડબંધ આકાર લેવા પામેલ હોઈ, બાજુના ખેતરો જે નીચાણવાળા વિસ્તારમાં આવેલ હોઈ જેમાં વરસાદી પાણીનો નિકાલ ન થવાથી પાણી ભરાવાના પ્રશ્નો ઉપસ્થિત થયેલ છે.

આમ, D.F.C.C. દ્વારા કરેલ કામગીરીના લીધે વરસાદી પાણીનો નિકાલ કુદરતી વહેણ દ્વારા બાલાખાડીમાં ન થવાથી અરજદારશ્રીની જમીનમાં ભેગું થતાં Water Logging થવા પામેલ છે. અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નંબર 1993 પાસે આવેલ. પારડી તાલુકાની બાલાખાડી જે રેલવેની જમીનમાંથી પસાર થાય છે. જે ગામના નકશામાં પણ છે. જે બાલાખાડીના વહેણને D.F.C.C. દ્વારા સદર કામગીરી અર્થે રેલવેની માલીકીની જગ્યામાં પરંતુ અરજદારશ્રીની જમીનમાંથી ડાયવર્ટ કરવામાં આવેલ છે. પરંતુ એમના દ્વારા બાલાખાડીના વહેણને યોગ્ય રીતે ડાયવર્ટ કરવામાં ન આવતા બાલાખાડીનો ડાયવર્ટ કરેલ વહેણનો નવો પ્રાથ યોમાસાની ઋતુ દરમિયાન વરસાદી પાણીના નિકાલ અર્થે યોગ્ય રીતે કાર્ય કરી શકે એમ નથી. જેના કારણે અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નંબર 1993 વાળી જમીનમાં વરસાદી પાણીનો નિકાલ દરમિયાન વધુ ધોવાણ થવાની શક્યતા રહેલ છે. હાલમાં, સદર કામગીરીના લીધે અરજદારશ્રીની જમીનમાં આશરે 1-2 ફુટ જમીનનું ધોવાણ થયેલ હોવાનું જણાય છે.

તારણ:-

- ખરેખરમાં DFCC દ્વારા રેલવેની જમીનમાં જે કુદરતી વહેણ હતું, જે પરાપૂર્વથી ચાલી આવેલ જે કુદરતી વહેણને માટીપુરાણ કરી વરસાદી પાણીના નિકાલનો અન્ય કોઈ વિકલ્પ ન રાખી હાલમાં વરસાદી પાણીના નિકાલમાં અવરોધ ઉત્પન્ન કરેલ છે.


નિવારણ:-

- અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નં. ૧૯૮૪ વાળી જમીન પાસે (રેલ્વે લાઈન પોલ નં. 221/39 થી 222/3 ની સામે) આવેલ કુદરતી વહેણને માટીપુરાણ કરી બંધ કરવામાં આવેલ જ્યાં એક પ્રકારનો આડબંધ આકાર લેવા પામેલ છે. જ્યાં અરજદારશ્રીની જમીનમાં પાણીનો ભરાવો થવા પામેલ ત્યાં સર્વિસ રોડની પેરેલલ બાજુમાં જગ્યા છે, એ જગ્યામાંથી પાકી નીક અરજદારશ્રીની જમીન થી બાલાખાડી સુધી આશરે ૩૦૦ મી. લંબાઈમાં તેમજ આશરે ૧.૫ મી. થી ૨.૦ મી. પહોળાઈમાં બનાવવામાં આવે તો ખેતીની જમીનમાં નુકશાન થતું અટકાવી શકાય.
- અરજદારશ્રીની જમીન કે જેનો નવો સર્વે નં. ૧૯૮૩ વાળી જમીન પાસે (રેલ્વે લાઈન પોલ નં. 222/7 થી 222/13 ની સામે ) આવેલ બાલાખાડીના વહેણને યોગ્ય કરવામાં આવે તેમજ અરજદારશ્રીની જમીન પાસે હાલમાં સ્થળ ઉપર અમુક અંતર સુધી આશરે ૧૦-૧૫ મીટર જેટલી પ્રોટેક્શન વોલ બનાવવામાં આવેલ છે, તે પ્રોટેક્શન વોલ આશરે ૧૫૦-૨૦૦ મીટર જેટલી લંબાઈમાં તથા અરજદારશ્રીની જમીનના લેવલ સુધી ઉંચાઈમાં કરવામાં આવે તો અરજદારશ્રીની જમીનમાં વધુ ધોવાણ થતું અટકશે.

  
નાયબ કાર્પોર્ટલક ઇન્જનેર

દમણગંગા નહેર પેટા વિભાગ નં .૧૧

પારડી

  
કાર્યપાલક ઇન્જનેર

દમણગંગા નહેર વિશાખા વિભાગ નં .૦૩

બલીઠા-વાપી

Report

As per the order passed by the Hon. National Area Tribunal in Original application No. 784/2022 dated 13/03/2023 for forming the Joint Committee and after carrying out the spot inspection, to submit the report

On 09/05/2023 at 11.0 hours the Joint Committee, has carried out the inspection of the land for which representation has been made (Location N-20', 30', 38.78" E-72' 55' 29.15") where the inspection is carried out. Upon making the spot inspection it is found that the land of the applicant which is near to the new Survey no.1993 (opposite to the railway line Pole No.222/7 to 222/13) Balakhadi of Pardi taluka passes. The catchment area rain water of Pardi taluka passes through Balakhida and meeting at Kothar Khadi and Paar river into the sea. Also the land of the applicant of new Survey no.1993 (opposite to the railway line Pole No.222/7 to

222/13) the catchment area fields and the agricultural of poniya area, the rain water going through the land of the applicant, goes into the Bala khadi situated in the land of railway by natural flow and thus the disposal of rain water was taking the place. At present the DFCC using its own land fully, has made service road. Due to this the natural flow of approximately 300 meters, which was going through the railway land, which has been filled up, due to this work done by the DFCC, as one type of check dam has taken place, the adjoining fields which are located in low lying area, wherein due non-disposal of rain water, the questions of water logging have arisen.

Thus, DFCC has done this work due to which the natural flow for disposal of the rain water, as could not be done in the Balakhadi, and as the same has logged in the land of the applicant, water logging has taken place. Near to the land of the applicant as the land of new survey No.1993 and wherein the Balakhadi of Pardi Taluka which passes

through the railway land, the same is also shown in the village map. The flow of said Balakhadi, has been diverted from the land of the applicant and not by the DFCC in the land having the ownership of the railway for the above work, but as it has not properly diverted the Balakhadi flow, the new path of the diverted flow of Balakhadi during the monsoon season, is not able to function properly for the purpose of disposal of rain water. Due to this, the land of the applicant which is having new Survey No.1993 during the disposal of the rain water there is possibility of further erosion. At present, due to this work, in the land of applicant it is found erosion of approximately 1-2 feet of land has taken place.

Conclusion:

\* In fact, the natural flow in the rail way land by DFCC, which has continued since generations, the said natural flow due to sand filling and not keeping any other option for disposal of the rain

water, at present hurdle has been created in disposal of the rain water,

Resolution:

\* The land of the applicant which is having new Survey no.1993 (opposite to the railway line Pole No.222/7 to 222/13) whereat there is natural flow has been closed by sand filling whereat one type of check dam has taken shape where it has resulted in water logging in the land of the applicant, there near to the parallel service road there is space-land and from that land if pucca drain is made <sup>till</sup> from the land of the applicant up to Balakhadi approximately having length of 300 meters and width of approximately 1.5 meter to 2.0 meters, the damage can be prevented to the agriculture land.

\* In respect to the land of the applicant new Survey no.1993 (opposite to the railway line Pole No.222/7 to 222/13) wherein if the flow of Balakhadi is made proper and also near to the land of the applicant at present at the site up to some distance

protection wall has been constructed of approximately 10-15 meters, the said protection wall is having length of approximately 150-200 meters and if its height is made upto the level of the land of the applicant then further erosion in the land of the applicant will be prevented.

Sd/-

Deputy Executive  
Engineer

Daman Ganga Canal  
Sub Division No.11

Pardi

Sd/-

Executive Engineer

Daman Ganga Canal Sub  
Branch Division No. 03

Balitha-Vapi

## પંચકયાસ

આથી અમો નીચે સહી કરનારા પંચો.....

(૧) નામ - પ્રકાશભાઈ રમણલાલ દેસાઈ

ઉ.વ.આ. - ૭૦ વર્ષ

ધંધો - ખેતી

રહેવાસી - દીપલી ફળીયા, ઉમરસાડી, તા. પારડી, જિ. વલસાડ

મોબાઈલ નં. - ૯૯૨૦૯૮૭૫૬૪

(૨) નામ - અનિલભાઈ મણીલાલ દેસાઈ

ઉ.વ.આ. - ૬૫ વર્ષ

ધંધો - ખેતી

રહેવાસી - દીપલી ફળીયા, ઉમરસાડી, તા. પારડી, જિ. વલસાડ

મોબાઈલ નં. - ૯૯૭૮૨૦૭૬૦૫

૩) નામ - જ્ઞેઠાનંદ નીચલદાસ ગુલાણી

ઉ.વ.આ. - ૪૯ વર્ષ

ધંધો - વ્યાપાર

રહેવાસી - બાલાખાડી કિલ્લા પારડી

મોબાઈલ નં. - ૯૯૨૫૧૧૦૮૩૨

તે આજ રોજ તા. ૦૮/૦૫/૨૦૨૩ ના રોજ સવારે ૧૧-૦૦ કલાકે મોજે - પારડી, પોણીયા રેલ્વે ફળીયા મુકામે તમો રૂબરૂ હાજર થાઈ લખાવીએ છીએ કે તમારી નાયબ કલેક્ટર શ્રી પારડી પ્રાંત અને સાથે આવેલ અન્ય વિભાગના અધિકારીશ્રીઓની ઓલખ આપી મોજે - પારડી, તા. પારડી ગામના સર્વે નં. ૧૯૯૩ તથા ૧૯૮૪ વાળી જમીનના માલિકોએ નામદાર નેશનલ ગ્રીન ડ્રીબ્યુનલ (NGT) ન્યુ દિલ્હી ને ફરેલ અરજીના કામે સ્થળ તપાસ માટે આવેલ હોય અમોને આ સ્થળ તપાસની કામગીરી પૂર્ણ થાય ત્યા સુધી સ્થળે હાજર રહી પંચોતરીકેની ફરજ બજાવવા માટે સમજૂત કરતા અમોએ આ સરકારી કામ માટે પંચો તરીકે રહેવાની સંમતી આપી

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ઉપરોક્ત અરજદારશ્રી / જમીન માલિકોએ નામદાર નેશનલ ગ્રીન ડ્રીબ્યુનલ (NGT) ન્યુ દિલ્હી તા. ૩૦/૦૬/૨૦૨૨ ના રોજ કરેલ અરજી બતાવેલ અને વાંચી સંભળાવેલ છે, ત્યાર બાદ તમો તમામ અધિકારીશ્રીઓની સાથે સ્થળ નિરિક્ષણની કાર્યવાહી શરૂ કરવામાં આવી

અમોને વાદવાળી જમીનની ગામ નમુના નં. ૭/૧૨ની નક્કલ બતાવેલ છે, જેમાં કબજેદાર તરીકે નીચેની વિગતે નામો ચાલી આવેલ છે.

- (૧) સર્વે નં. ૧૯૯૩ ( જુનો સર્વે નં. ૧૯૭૨/પૈકી ૨ ) ક્ષે. બાગાયત - હે. ૨ - ૯૯ - ૮૦ ચો. મી. આકાર રૂ. ૫.૬૦ પૈસા વાળી જમીન (૧) ભરતભાઈ નારણજીભાઈ દેસાઈ (૨) કલ્પનાબેન ભરતભાઈ દેસાઈ (૩) અલ્પેશભાઈ ભરતભાઈ દેસાઈ (૪) અર્પિતાબેન ભરતભાઈ દેસાઈ ના નામે ચાલી આવેલ છે,
- (૨) સર્વે નં. ૧૯૮૪ ( જુનો સર્વે નં. ૧૯૭૨/પૈકી ૧ ) ક્ષે. બાગાયત - હે. ૧ - ૭૦ - ૫૨ ચો. મી. આકાર રૂ. ૩.૩૦ પૈસા વાળી જમીન (૧) વિરેનભાઈ ગુણવંતભાઈ દેસાઈ (૨) કૃપાલી ગુણવંતભાઈ દેસાઈ (૩) નિલેશ પ્રમોદરાય દેસાઈ (૪) અર્પિતા નિલેશ દેસાઈ ના સંયુક્ત નામે ચાલી આવેલ છે. જેની ચતુર્થ સીમા નીચે મુજબ છે.
- (૧) સર્વે નં. ૧૯૯૩ ( જુનો સર્વે નં. ૧૯૭૨/પૈકી ૨ ) ની ચતુર્થ સીમા -

ઉત્તર - પારડી સ્ટેશન થી પોણીયા થી નેશનલ હાઈવે તરફ જતો રસ્તો

દક્ષિણ - વિરેનભાઈ ગુણવંતભાઈ ની વાડી

પૂર્વ - ગાંધી કુટુંબની વાડી તથા પોણીયા ગામમાં જતો ગ્રામ્ય રસ્તો

પશ્ચિમ - વેસ્ટન રેલ્વેનો સર્વિસ રોડ તથા વેસ્ટન રેલ્વે ટ્રેક

- (૨) સર્વે નં. ૧૯૮૪ ( જુનો સર્વે નં. ૧૯૭૨/પૈકી ૧ ) ની ચતુર્થ સીમા -

ઉત્તર - અરજદારશ્રીની સંયુક્ત માલિકીની સર્વે નં. ૧૯૯૩ વાળી જમીન

દક્ષિણ - રમેશભાઈ પટેલ ની સંયુક્ત માલિકીની જમીન

પૂર્વ - પોણીયા ગામમાં જતો ગ્રામ્ય રસ્તો

પશ્ચિમ - વેસ્ટન રેલ્વેનો સર્વિસ રોડ તથા વેસ્ટન રેલ્વે ટ્રેક

સર્વે નં. ૧૯૯૩ ની સ્થળ નિરિક્ષણ કરતાં આ જમીનની પશ્ચિમ દીશામાં રેલ્વે ટ્રેક લગો લગ આશરે ૨૦૦ મીટર માટી પુરણ કરી બાલાખાડી કોતર વહેણ સંપૂર્ણ બંધ કરેલ છે, બાલાખાડી કોતરનું વહેણ બદલી રેલ્વેની જમીનમાં ખોદકામ કરીને પાણીના નીકાલ માટે વહેણ બદલેલ છે, જેના કારણે સર્વે નંબર ૧૯૯૩ વાળી જમીન નું આશરે ૧ થી ૨ ફૂટનું ધોવાણ થયેલ છે, તેમજ રેલ્વેની એજન્સી દ્વારા અરજદારશ્રીની સંયુક્ત માલિકીની સર્વે નં. ૧૯૯૩ વાળી જમીનમાં માટી નાખવામાં આવેલ છે, પરિણામે ચોમાસાની ઋતુમાં ઉપલા વિસ્તારમાંથી આવા પાણીનો સંગ્રહ થવા પામે છે, અને ફળાવ આડોને નુકશાન પહોંચાડેલ છે, વધુમાં આ સર્વે નંબરની લાગુ રેલ્વે એજન્સીના કોન્ટ્રાક્ટર દ્વારા બાલાખાડી કોતરની શરૂઆતથી આશરે ૧૫ મીટર જેટલી પોટેક્શન વોલ કરવામાં આવેલ છે, જે અધુરી છે. ઉક્ત વિગત અમો પંચો ની હાજરીમાં સ્થળ તપાસ કરતાં જણાય આવેલ છે, વધુમાં આ પ્રોટેક્શન વોલ ૧૫ મીટર બાદ અધુરી રાખવામાં આવેલ હોવાથી ખેતીની જમીનમાં વધુ નુકશાન તેમજ ધોવાણ થવાની સંભાવના રહેલ છે, આમ ઉપરોક્ત હકિકત જોતા તથા સ્થળ પરિસ્થિતી જોતા પ્રોટેક્શન વોલ ૧૫ મીટર થી વધારી પૂરી ઉચાઈ સાથે રેલ્વે ગળનાળા સુધી લંબાવવામાં આવે તો ખેતીની જમીનને નુકશાન થતુ ટાળી શકાય તેમ છે.

વધુમાં સર્વે નં. ૧૯૯૩ વાળી જમીનમાં નાખતા અરજદારશ્રીના વાડીમાં આવેલ ચીકુ ના આશરે ૬૦ જેટલા નાના - મોટા આડો, ૯ જેટલી નાળીયેરી, તથા ૭ જેટલા સાગ આડો ને નુકશાન થવા પામેલ છે.

## રાઇટ ટુ ઇન્ફોર્મેશન એક્ટ હેઠળની નકલ

સર્વે નં. ૧૮૮૪ ( જુનો સર્વે નં. ૧૮૭/૨/પૈકી ૧ ) વાળી જમીનમાંથી પોણીયા ગામનું વરસાદી પાણી તેમજ અરજદારશ્રીની જમીનની ઉપરવાસના ખેતરો નું વરસાદી પાણી અરજદારશ્રીની જમીનમાં થઈ રેલ્વેની જમીનમાં આવેલ કુદરતી વહેણ માંથી પસાર થઈ બાલાખાડીમાં જતુ હતુ પરંતુ રેલ્વેની જગ્યામાં માટી પુરણ થવાથી પાણી નો નિકાલ થતો ન હોવાથી સર્વે નં. ૧૮૮૪ વાળી જમીનમાં ચોમાસા દરમ્યાન પાણી નો ભરાવો રહે છે, જેના કારણે અરજદારશ્રીની આંબાના આશરે ૨૩ જેટલા ઝાડો તથા સાગના આશરે ૨૧ જેટલા ઝાડો સુકાઈ ગયેલ છે, અને અરજદારશ્રીની જમીન બીન ઉપજવ થવા પામેલ છે. આમ ઉપરોક્ત હકિકત જોતા તથા સ્થળ પરિસ્થિતી જોતા અરજદારશ્રીની જમીનમાં પાણીનો ભરવા થવા પામેલ ત્યા રેલ્વે સર્વિસ રોડની સમંતર બાજુની જગ્યામાં પાકી નીક અરજદારશ્રીની જમીનથી રેલ્વે ગળનાલા સુધીની લંબાઈમાં તેમજ આશરે ૧.૫ થી ૨ મીટર પહોળાઈમાં બનાવવામાં આવે તો ખેતીની જમીનને નુકશાન થતુ ટાળી શકાય તેમ છે.

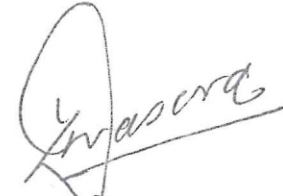
આમ ઉપરોક્ત લખાવ્યા મુજબનો સ્થળ સ્થિતિનો પંચક્યાસ અમો પંચોના લખાવ્યા મુજબ બરાબર અને સાચો છે, જે અમોએ વાંચી-સમજી-વિચારી - સભાન અવસ્થામાં કોઈ પણ પ્રકારના દાબ દબાણ વગર નીચે સહિ કરેલ છે.

સ્થળ - પારડી

તારીખ - ૦૪/૦૫/૨૦૨૩

- (૧) પ્રદીપ રાજેશ્વર
- (૨) અમીત રાજેશ્વર
- (૩) જીતેન્દ્ર રાજેશ્વર

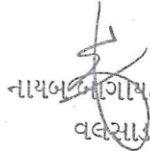
૩૦૩



નાયબ કલેક્ટર

અને

પ્રાંત અધિકારી પારડી



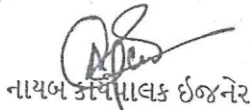
નાયબ મેગિસ્ટ્રેટ નિયામક

વલસાડ



મુખ્ય અધિકારી

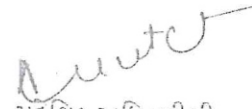
પારડી



નાયબ કમિશનર ઇન્જનેર

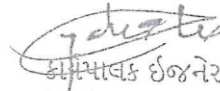
દમણ ગંગા નહેર પેટા વિભાગ નં. - ૧૧

પારડી



પ્રદેશિક અધિકારીશ્રી

ગુજરાત પોલ્યુશન કંટ્રોલ બોર્ડ વાપી



કમિશનર ઇન્જનેર

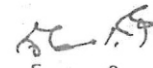
દમણ ગંગા નહેર વિશાખા વિભાગ નં. ૦૩

બલીદા -વાપી



ચીફ ઓફિસર

નગર પાલીકા પારડી



હેડ ક્વાર્ટર આસીસ્ટન્ટ

જિલ્લા નિરીક્ષકશ્રીની કચેરી, વલસાડ

UNDER THE RIGHT TO INFORMATION ACT

**PANCHNAMA (SITE INSPECTION REPORT)**

We the undersigned Panch witnesses:

1 Name- Prakashbhai Ramanlal Desai  
Age around 70 years, Occupation Agriculture,  
Residing at Dipli Faliya, Umarsadi,  
Taluka Pardi, District Valsad  
Mob. No. 9920987564

2 Name- Anilbhai Manilal Desai  
Age around 65 years, Occupation Agriculture,  
Residing at Dipli Faliya, Umarsadi,  
Taluka Pardi, District Valsad  
Mob. No. 9978207605

3 Name- Jethanand Nichaldas Gulani  
Age around 49 years, Occupation Business,

Residing at Balakhadi Killa Pardi

Taluka Pardi, District Valsad

Mob. No. 9825110832

Today on 09/05/2023 at 11.00 hours appearing personally at village pardi, at Poniya Railway Faliya before you it is stated that, introducing yourself as the Deputy Collector, Pardi Prant and other officer of various departments come with him and in connection with the land of village Pardi, Taluka Pardi of Survey No.1993 and 1984 the land owners have filed an application to the Hon'ble National Green Tribunal (NGT), New Delhi with reference to which as they have come for spot inspection, till the time when the work of this spot inspection is not over, we have been requested to be the Panch witnesses and to perform the duty by remaining personally present at the site and we have given the consent to be the panch witnesses in this government work.

The above applicant/land owners have filed an application dated 30/06/2022 before the Hon'ble

National Green Tribunal (NGT), New Delhi has been shown and read over. Thereafter, along with all you the officers, the process of spot inspection has been commenced.

We have been shown the copy of Village Form No. 7/12 of the disputed land wherein as occupiers the following names have continued to appear:

(1) Survey no. 1993 (Old Survey no.197/2 paiki2) admeasuring irrigated H Are SM= 2-99-89 land revenue assessment charges of Rs.5.60 land in the names of (1) Bharatbhai Naranjibhai Desai (2) Kalpanaben Bharatbhai Desai (3) Alpeshbhai Bharatbhai Desai (4) Arpitaben Bharatbhai Desai

(2) Survey no. 1984 (Old Survey no.197/2 paiki1) admeasuring irrigated H Are SM= 1-70-52 land revenue assessment charges of Rs.3.30 land in the names of (1) Virenbhai Gunvantbhai Desai

(2) Krupali Gunvantbhai Desai (3) Nilesh Pramodray Desai (4) Aipita Nileshbhai Desai and it is bound by the following four directional boundaries:

(1) Survey no. 1984 (Old Survey no. 197/2/paiki2)  
bound by four directional boundaries:

On or towards North- The Road going from Pardi Station to Poniya to National Highway

On or towards South- Orchid of Viranbhai Gunvantbhai

On or towards East- Gandhi family orchid and the rural rod going to Poniya village

On or towards West- Western Railway service road and Western Railway track

(2) Survey no. 1984 (Old Survey no. 197/2/paiki1)  
bound by four directional boundaries:

On or towards North- Land having joint ownership of the applicant of Survey No. 1993

On or towards South- Land having ownership of Rameshbhai Patel

On or towards East- rural rod going to Poniya village

On or towards West- Western Railway service road and  
Western Railway track

Upon spot inspection of Survey no. 1993, towards Western side of this land adjoining to the railway track, by filling up sand of approximately 200 meters, the Balakhadi ravine flow has been totally closed. Due to change of flow of Balakhadi ravine, in doing the digging in the railway land the flow for water disposal has been changed. Due to this, the land of Survey no.1993 has been eroded approximately 1m to 2 feet. Also, the railway agency in respect to the land of Survey No.1993 having joint ownership of the applicant sand has been filled in the land. As a result, in the monsoon season, water logging of such water from the catchment area occurs and fruit bearing trees have been damaged. Further, the contractor of the adjoining railway agency to this survey number, has made protection wall of around 15 meters from the beginning of Balakhadi ravine which is incomplete. The above facts have been observed during the spot inspection carried out

in presence of we the Pach witnesses. Further, as this protection wall after 15 meters is left incomplete, there is possibility of causing further damage to the agriculture land and its erosion. Thus looking to the above facts and looking to the situation at the site, if the protection wall extended from 15 meters with full height upto the railway culvert, then damage caused to the agriculture land can be avoided.

Further, in the land of Survey no. 1993, the trees located in the orchid of the applicant approximately 60 small and big chikoo trees, 9 coconut trees and 7 teak wood trees have been damaged.

From the land of Survey No. 1984 (Old Survey No. 197/2/paiki 1) the rain water of Poniya village and the rain water from the catchment area fields of the land of the applicant, going through the land of the applicant, passing through the natural flow in the railway line and was going to Balakhadi. However du sand filling in the railway land, as the water is

not disposed, in the land of Survey No.1984, during the monsoon, water logging takes place, due to which reason, approximately 23 trees of mango and around 21 teak trees of the applicant have been dehydrated. (Dried)

The land of the applicant has become infertile. Looking to the above facts and situation at the site, water logging has taken place in the land of the applicant and there in the land parallel and near to the railway service road, if pucca drain is made with length from the land of the applicant to the railway culvert and width of approximately 1.5 to 2 meters, then damage to the agriculture land can be averted.

Thus, as stated herein above, this Panchnama of the situation at the site has been drawn as stated by we the Panch witnesses which is true and correct, and after reading, understanding, thinking over it in conscious condition without any type of pressure-force we have put our signatures herein after.

Place: Pardi

Date: 09/05/2023

1 sd/-

2 sd/-

3 sd/-

BEFORE

Sd/-

Deputy Collector and  
Prant Officer, Pardi

Sd/-

Regional Officer  
Gujarat Pollution  
Control Board, Vapi

Sd/-

Deputy Horticulture  
Director  
Valsad

Sd/-

Executive Engineer  
Daman Ganga Canal Sub  
Canal Division No.3  
Balitha-Vapi

Sd/-

Mamlatdar, Pardi

Sd/-

Chief Officer  
Municipality, Pardi

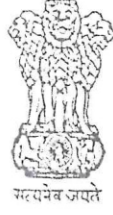
Sd/-

Deputy Executive  
Engineer  
Daman Ganga Canal  
Sub Division No.11  
Pardi

Sd/-

Head Quarter Assistant  
Office of the District  
Inspector, Valsad

આમૃત મહોત્સવ



જિલ્લા સેવા સદન, જલારામ બાપા મંદીર  
રોડ, વલસાડ, જિ.વલસાડ-૩૯૬૦૦૧  
ફોન.નં. (૦૨૬૩૨) ૨૪૪૨૭૪, ૨૪૪૨૭૯  
ફેક્સ નં. (૦૨૬૩૨) ૨૪૯૩૩૫, ૨૪૩૪૧૭  
Email- collector-val@gujarat.gov.in

કલેક્ટર અને જિલ્લા મેજિસ્ટ્રેટની  
કચેરી, જિલ્લો: વલસાડ

નં.એસીબી/એમએસસી/NGT/વશી. ૨૬૦૩ /૨૦૨૩

તા.૧૦/૦૮/૨૦૨૩

અગત્યનું/સમયમર્યાદા

પ્રતિ,

પ્રાંત અધિકારીશ્રી,

પારડી

વિષય :- Hon. National Green Tribunalની Original Application No. 784/2022

Dt.13/03/2023 બાબત

સંદર્ભ :- આપની કચેરીના પત્ર નં જમન/એનજીટી/અહેવાલ/વશી./૬૭૮/૨૦૨૩ તા.૧૦/૦૫/૨૦૨૩

સવિનય ઉપરોક્ત વિષય અન્વયે જણાવવાનું કે, સંદર્ભ દર્શિત પત્રથી મોજે- પારડી, પોણિયા રેલ્વે ફળિયા તા.પારડીના સ.નં.૧૯૯૩ ક્ષે.હે.૨-૯૯-૮૦ ચો.મી. સ.નં.૧૯૮૪/૧ ક્ષે.હે. ૧-૩૦-૦૫ ચો.મી. તથા સ.નં.૧૯૮૪/૨ ક્ષે.હે. ૦-૪૦-૪૭ ચો.મી. જમીન બાબતે સંયુક્ત અહેવાલ તા.૧૦/૦૫/૨૦૨૩ ના રોજ અત્રેની કચેરીએ મોકલવામાં આવેલ છે. અહેવાલ મુજબ સદર સર્વે નંબરવાળી જમીનમાં હાલમાં આંબાની ફલમો તથા ચીકુના ઝાડ આવેલ છે. આ જમીનની પશ્ચિમ દિશામાં છેડા લાગુ રેલ્વે ખાતાની સંપાદિત જમીનમાં વર્ષોથી વરસાદી પાણી કુદરતી વહેણ મારફત નિકાલ થતો હતો. જે વહેણ પર વલસાડથી મુંબઈ તરફના ટ્રેક લગોલગ માટી પુરાણ કરી રસ્તો બનાવવાથી બંધ થયેલ છે. જેથી આ રસ્તો આશરે ૩૦૦ મીટર જેટલો લંબાઈનો બનાવેલ છે. સ.નં.૧૯૮૪/૧ તથા ૧૯૮૪/૨ વાળી જમીનમાં ઉપરવાસમાં આવેલ પારડી વિસ્તારનું વરસાદી પાણીની આવક તથા સ.નં. ૧૯૯૩ વાળી જમીનમાં થઈને આવતું વરસાદી પાણી ઉપરોક્ત માટી પુરાણના કારણે યોગ્ય નિકાલ થઈ શકતો નથી. વધુમાં પાણીના ભરાવાના કારણે અને માટી પુરાણના કારણે વહેણ બદલાતાં અરજદારની જમીનમાંથી વરસાદી પાણીનું નવું વહેણ ડાયવર્ટ થતાં જમીનનું ધોવાણ થાય છે અને પાણીના ભરાવાના કારણે આંબા-૨૩, ચીકુ-૫૧, નારીયેળી-૭ જેટલા ઝાડ સુકાઈ ગયેલ છે જેથી ફલીત થાય છે કે પર્યાવરણને નુકસાન થયેલ હોવાનું જણાવેલ છે.

સદર બાબતે નેશનલ ગ્રીન ટ્રીબ્યુનલએ તપાસ કરી કાર્યવાહી કર્યા અંગેનો અહેવાલ મંગાવવામાં આવેલ હોય તોય અગ્રતાના ધોરણે આપના સંયુક્ત અહેવાલને ધ્યાને લઈ નિયમોનુસારની કાર્યવાહી કરી કાર્યવાહી અહેવાલ અત્રે મોકલવા વિનંતી છે. જેથી નેશનલ ગ્રીન ટ્રીબ્યુનલને સમયમર્યાદામાં અહેવાલ મોકલી શકાય.

(એ. આર. જહા)

નિવાસી અધિક કલેક્ટર  
વલસાડ

OFFICE OF THE COLLECTOR AND DISTRICT MAGISTRATE,

DISTRICT VALSAD

District Seva Sadan, Jalaram Mandir Road, Valsad,

District Valsad 396 00`

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No. ACB/MSC/NGT/VASHI 2603/2023 Date 12/09/2023

IMPORTANT/TIME LIMIT

To

The Prant Officer

Pardi

Subject: - Regarding the matter of Hon. National  
Green Tribunal Order Original Application No.  
784/2023 dated 13/03/2023

Ref.: - Your office letter No.  
Jaman/NGT/Aheval/Vashi/678/2023 dated 10/05/2023

It is respectfully submitted in connection  
with the above subject that, vide letter referred to

herein above in respect to the land of S. No.1993 of village Pardi, Paliya Railway Faliya, Taluka Pardi admeasuring H Are SM= 2-99-80 and of S. No. 1984/1 admeasuring H Are SM= 1-30-05 and S. No. 1984/2 admeasuring H Are SM= 0-40-47 with respect to which the joint report has been sent to this office on 10/05/2023. As per the report in the lands of the said survey numbers, at present there are mango granted trees and chikoo trees. On the Western side of this land, at the end there is land acquired by the Railway Department, wherein for years the rain water was getting disposed of through natural flow. On the said flow, parallel to the track from Valsad to Mumbai, by sand filling road has been made the same has been closed. Therefore, this road is made which having length of approximately 300 meters. In the lands of S. No.1984/1 and 1984/2 the income of rain water received from the Pardi area in the catchment, and going through the land of S. No. 1993, the rain water coming due to the above sand filling cannot be properly disposed of. Further due to water logging and sand filling, as the flow has been

changed, from the land of the applicant the new flow of rain water on getting diverted, it results into erosion of the land and due to water logging, 23 trees of mango, 51 chikoo trees and 7 coconut trees have been dehydrated. Therefore, it is reflected that damage has been caused to the environment.

With respect to this matter, the National Green Tribunal after conducting the inquiry has sought for the report for the action taken and therefore, on top priority basis, taking into consideration your joint report, taking the action as per the rules and regulations, it is requested to submit the action taken report to this office so that the report can be submitted in time limit to the National Green Tribunal.

Sd/-

(A.R. Jaha)

Resident Additional Collector

Valsad

# ડી.જે.વસાવા, સબ ડીવીઝનલ મેજિસ્ટ્રેટ પારડીની કોર્ટમાં

નં. એમએજ/સીઆરપીસી/કલમ-૧૩૩/કેસ નં. ૦૧/૨૦૨૩

**RPAD**

✓ અરજદારશ્રી :: ભરતભાઈ એન.દેસાઈ,  
રહે. દિપલી ફળીયા, ઉમરસાડી,  
તા. પારડી, જી. વલસાડ  
વિરુદ્ધ  
સામાવાળા :: ચીફ પ્રોજેક્ટ મેનેજર (ઉત્તર)  
ડી. એફ. સી. સી. આઈ. એલ,  
સાતમો માળ (સેન્ટ્રલ રેલ્વે), ડી. એન. રોડ  
છત્રપતિ શિવાજી ટર્મિનલ એરીયા,  
મુંબઈ, મહારાષ્ટ્ર-૪૦૦૦૦૧

કિર્મીનલ પ્રોસીજર કોડ-૧૯૭૩ ની કલમ ૧૩૩(૧)(ક) હેઠળની કાર્યવાહી

આ કામ અરજદારશ્રી ભરતભાઈ એન.દેસાઈ, રહે. દિપલી ફળીયા, ઉમરસાડી, તા. પારડી, જી. વલસાડનાઓએ તા. ૩૦/૦૧/૨૦૨૨ના રોજથી મે. સ્ટ્રક્ચર જનરલ નેશનલ ગ્રીન ટ્રિબ્યુનલ ફરીફ કોર્ટ હાઉસ, કોપર-નીક્સ માર્ગ, નવી દિલ્હીને અરજી કરી તેમની મોજે. પારડી, તા. પારડીના રી. સ. નં. ૧૯૯૩ તથા ૧૯૮૪ વાળી જમીનમાં રેલ્વે એજન્સી ડી. એફ. સી. સી. દ્વારા વર્ષોથી તેમની જમીનને લાગુ રેલ્વે સંપાદિત જમીનમાં ચાલી આવેલ કુદરતી વહેણ કે જેમાંથી પારડી અરજદારની તથા આસપાસના વિસ્તાર માંથી આવતું વરસાદી પાણીના નિકાલમાં માટી પુરાણ કરી રસ્તો બનાવવાનાં કારણે બંધ કરવામાં આવેલ છે. જેના પરિણામ ખેતીની જમીનમાં પાણીનો ભરાવો થાય છે. તથા જમીનમાં આવેલ ફળાઉ ઝાડોને નુકશાન થવા પામેલ છે. જે બાબતે યોગ્ય નિરાકરણ ન આવવાથી નેશનલ ગ્રીન ટ્રિબ્યુનલને અરજી કરેલ હતી. અરજદારની આ અરજી પર ન્યે એનજીટી દ્વારા તા. ૧૩/૦૩/૨૦૨૩ ઓરીજનલ એપીલિકેશન નંબર- ૭૮૪/૨૦૨૨ અન્વયે પત્ર કરવામાં આવેલ છે. સદર પત્રના અનુસંધાને મે. કલેક્ટર સાહેબ વલસાડ દ્વારા તેઓના હુકમ નં. એસીબી/એમએસસી/NGT/વશી. ૧૧૫૭/૨૦૨૩, તા. ૦૪/૦૫/૨૦૨૩થી અધિકારીશ્રીઓ ૧. સબ ડીવીઝનલ મેજિસ્ટ્રેટશ્રી પારડી પ્રાંત, ૨. કાર્યપાલક ઈજનેરશ્રી દમણગંગા નહેર વિ. ૩, બલીઠા-વાપી ૩. પ્રાદેશિક અધિકારી, ગુજરાત પોલ્યુશન કંટ્રોલ બોર્ડ વાપી ૪. નાયબ બાગાયત નિયામકશ્રી, વલસાડ ૫. મામલતદારશ્રી, પારડી ૬. નાયબ કાર્યપાલક ઈજનેર દમણગંગા નહેર પેટા વિભાગ-૧૧ પારડી ૭. ચીફ ઓફિસરશ્રી, પારડી ૮. હેડ ક્વાર્ટર્સ આસિસ્ટન્ટ DILRશ્રીની તે ટીમના રીપોર્ટ મુજબ રેલ્વે એજન્સી ડી. એફ. સી. સી. દ્વારા જમીનને લાગુ રેલ્વે સંપાદિત જમીનમાંથી વર્ષોથી ચાલી આવેલ કુદરતી વહેણ કે જેમાંથી પારડી તથા આસપાસના વિસ્તાર માંથી આવતું વરસાદી પાણી માટી પુરાણ કરી રસ્તો બનાવવાનાં કારણે કુદરતી પાણી વહેણ બંધ કરવામાં આવેલ છે. જેના પરિણામે અરજદારની જમીનમાં તથા લાગુમા અન્ય જમીનોમાં પણ પાણીનો ભરાવો થાય છે. જેના કારણે અરજદારશ્રીની તથા લાગુમાં આવેલ જમીનમાં આવેલ ફળાઉ ઝાડોને નુકશાન થવા પામેલ છે. જેનાથી સંબંધિત લોકો માટે અડચણરૂપ હોવાનું પ્રાથમિક દૃષ્ટિએ માનવાને કારણે ઉપસ્થિત થયેલ છે. જેથી આ નોટીશથી ફોજદારી કાર્યરીતિ અધિનિયમ-૧૯૭૩ ની કલમ-૧૩૩ અન્વયે હુકમ કરી, શા માટે કાયદેસરના પગલા ન લેવા તે બાબતે કારણો દર્શાવવા આગામી તા. ૨૭/૦૮/૨૦૨૩ના રોજ સમય ૧૨.૦૦ કલાકે આપને રૂબરૂ નીચે સહી કરનાર અધિકારીસમક્ષ હાજર રહેવા જણાવવામાં આવે છે. દર્શાવેલ સમયે અને સ્થળે હાજર રહેવામાં ચૂક થશે તો, આપેલ નોટીસના બચાવમાં આપને કોઈ રજુઆત કરવાની નથી તેમ માનીને આગળની કાયદેસરની કાર્યવાહી કરવામાં આવશે. જેની નોંધ લેવા જણાવવામાં આવે છે.

આજ તા. ૨૬/૦૮/૨૦૨૩ ના રોજ મારી કચેરીના સહી, સિક્કા કરવામાં આવ્યા. પક્ષકારોને જાણ કરવી.



(ડી.જે.વસાવા)  
સબ ડીવીઝનલ મેજિસ્ટ્રેટ  
પારડી

True

translation

IN THE COURT OF D.J. VASAVA, THE SUB DIVISIONAL  
MAGISTRATE, PARDI

NO. MAG/CRPC/SECTION 133/CASE NO.01/2023

RPAD

Applicant: BHARATBHAI N. DESAI  
Residing at Dipli Faliya,  
Umarsadi, Taluka Pardi,  
District Valsad

VERSUS

Respondent: Chief Project Manager (North)  
DFCCIL  
Seventh Floor (Central Railway)  
DN Road, Chhatrapati Shivaji  
Terminal Area, Mumbai  
Maharashtra- 400 001

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PROCEEDINGS UNDER SECTION 133(1) OF THE CRIMINAL  
PROCEDURE CODE 1973

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In the present case applicant Shri Bharatbhai N. Desai, residing at Dipli Faliya, Umarsadi, Taluka Pardi, District Valsad, by filing an application on 30/06/2022 to the Hon'ble Registrar General, National Green Tribunal, Farid Court House, Copernicus Marg, New Delhi, stating that, the land situated in the village boundaries of Pardi, Taluka pardi, of R.S. No. 1993 and 1984, the Railway Agency DFCC has in respect to the land acquired by railway, wherein there is natural flow of water and through which the rain water coming from Pardi of the applicant and the surrounding areas, due to sand filling, road has been made and due to this the same has been closed. As a result, in the agricultural land, it results into water logging and damage has been caused to the fruit bearing trees on the said land. With respect to this application of the applicant the NGT has sent letter dated 13/03/2023 in connection with Original Application No. 784/2022. With reference to the said

letter, the Hon'ble Collector, Valsad vide his order No. ACB/MS/NGT/Vashi.1157/2023 dated 04/05/2023, has stated that as per the report submitted by the officers 1. Sub Divisional Magistrate, Pardi Prant, 2. Executive Engineer, Damanganga Canal D-3, Balitha-Vapi, 3. Regional officer, Gujarat Pollution Control Board, Vapi 4. Deputy Horticulture Director, Valsad 5. Mamlatdar, Pardi 6. Deputy Executive Engineer, Daman Ganga Canal Sub Division -11 Pardi, 7. Chief Officer, Pardi 8. Head Quarter Assistant, DILR according to which adjoining to the land acquired by Railway Agency DFCC, from which the land the natural flow of water continued for years from which the rain water coming from the Pardi and surrounding areas, due to making of the road by doing sand filling, the natural water flow has been stopped. As a result, in the land of the applicant and in the adjoining other lands also water logging takes place. As a result of this, the fruit bearing trees existing on the land of the applicant and in the adjoining lands are damaged. Due to this, prima facie reason has arisen to believe that it is a hurdle to the concerned people.

Therefore, by this notice, by passing an order under Section 133 of the Criminal Procedure Code 1973, why legal actions should not be taken, to show cause for the said matter, on coming 27/09/2023, at 12.00 hours you are directed to remain personally present before the undersigned officer. If default is committed, in remaining present at the above-mentioned time and place, then believing that you have not to submit anything in defence to the notice issued, further legal proceedings will be initiated, for which it is hereby informed to note.

Today on 16/09/2023 issued under my signature and seal of my office. The parties be informed.

Sd/-

(D.J. Vasava)

Sub Divisional Magistrate

Pardi

THE SEAL OF SUB DIVISIONAL MAGISTRATE PARTI, DIST.

VALSAD

 <p>75 આઝાદીનો અમૃત મહોત્સવ</p>	<p><b>Collector Office, Valsad</b>  <b>Jilla Seva Sadan, Tithal Road, Valsad</b>  <b>Ph.No.02632-253613- F-243417</b>  <b>Email ID- collector-val@gujarat.gov.in</b></p>	 <p>મત્સ્યેષુ જયતે</p>
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No.ACB/WATER LOGGING/Ws ૨૧/૨૦૨૩  
૨૧૧૧

Dt. ૨૬/૦૯/૨૦૨૩

પ્રતિ,  
 ચીફ પ્રોજેક્ટ મેનેજર (ઉત્તર),  
 ડીએફસીસીઆઈએલ, 7વી મંજિલ,  
 મધ્ય રેલ્વે, નયા વહીવટી ભવન,  
 ડી.એન.રોડ, સીએસટી મુમ્બઈ,  
 મહારાષ્ટ્ર-400001

વિષય: માનનીય નેશનલ ગ્રીન ટ્રિબ્યૂનલ કી ઓરીજનલ અપ્લીકેશન નં. 784/2022  
 તા.13/03/2023

સંદર્ભ: (1) નં.જમન/એનજીટી/અહેવાલ/વર્શી.૬૭૮/૨૦૨૩ તા.૧૦/૦૫/૨૦૨૩

(2) જા.નં.: નકૃપુ/કૃપ્રાકે/એઆરએસ-૮/૭૧૪-૭૧૬/૨૦૨૩ તા.૧૭/૦૫/૨૦૨૩

ઉપરોક્ત વિષય કે અંતર્ગત યાચિકાકર્તા ભરતભાઈ એન. દેસાઈ રહે-દિપલી ફલિયા, અમરસાહી તહેસીલ-પારડી દ્વારા મોજે-પારડી, પોણિયા રેલવે ફલિયા સર્વે નં. 1993, સર્વે નં. 1984/1 ઓર 1984/2 મેં જમીન કા અધિગ્રહણ સર્વિસ રોડ રેલવે એજેસી ડીએફસીસી દ્વારા કિયા ગયા હૈ. સર્વિસ રોડ કો યાચિકાકર્તા કી ભૂમિ સે ઁન્ના બનાને તથા જલ નિકાસી વ્યવસ્થા (કાંસો) ન બનાને તથા પારડી એવં આસપાસ કે ક્ષેત્રોં કે વર્ષા જલ કે નિસ્તારણ કો રોકને સે યાચિકાકર્તા કી ભૂમિ મેં લંબે સમય તક પાની જમાવ હોતા હૈ. જિસસે યાચિકાકર્તા કી ભૂમિ કા કટાવ હોતા હૈ. એવં ઉસ ભૂમિ પર ફલદાર વૃક્ષ હૈ. ઉચિત સમાધાન ન હોને કે કારણ યાચિકાકર્તા ને માનનીય. નેશનલ ગ્રીન ટ્રિબ્યૂનલ મેં મુકદમા ઢાયર કિયા હૈ.

યાચિકાકર્તા કે ઢાવે કે તહત માનનીય. નેશનલ ગ્રીન ટ્રિબ્યૂનલ ને 13/03/2023 કો મૂલ આવેદન નં. 784/2022 કે અનુસાર એક સંયુક્ત ટીમ બનાકર સ્થલ કા નિરીક્ષણ કરને ઓર ક્ષતિ કે સંવંધ મેં કારંવાઈ કરને કા આદેશ ઢિયા ગયા થા. સંદર્ભ આદેશ કે અનુસાર, સ્થાન કા નિરીક્ષણ કરને ઓર કિસી ખી પર્યાવરણીય કાનૂનોં ઓર માનકંડોં કા ઉલ્લંઘન હોને પર આવશ્યક કારંવાઈ કરને ઓર રિપોર્ટ કરને કે લિએ ડિપ્ટી કલેક્ટર ઓર પ્રાંત અધિકારી, પારડી કે નેતૃત્વ મેં સંવંધિત વિભાગ કે અધિકારીયોં કી એક ટીમ કા ગઠન કિયા ગયા થા. જિસમેં ક્ષેત્રીય અધિકારી ગુજરાત પ્રદૂષણ નિયંત્રણ બોર્ડ વાપી, ઉપ વાગવાની નિયામક વલસાડ, કા. ઈ. દમનગંગા નહર વિશાખા પ્રભાગ નં. 03 વલિઠા વાપી, તહેસીલદારશ્રી પારડી, મુખ્ય અધિકારીશ્રી નગરપાલિકા પારડી, ના.કા.ઈ. દમનગંગા નહર ઉપવિભાગ નં. 11 પારડી એવં હેડ ક્વાર્ટર આસિસ્ટન્ટ, જિલા નિરીક્ષક કાર્યાલય વલસાડ દ્વારા ઢિનાંક 10/05/2023 કો સંયુક્ત રિપોર્ટ મેજી ગઈ હૈ એવં

कृषि प्रायोगिक केंद्र नवसारी कृषि विश्वविद्यालय पारिया, पारडी जी.बलसाड ने स्थल का निरीक्षण कर दिनांक 17/05/2023 को रिपोर्ट भेजी गई है।

संयुक्त टीम की रिपोर्ट के अनुसार मोजे-पारडी, पोणिया रेलवे फलिया, पारडी सर्वे नं. 1993 सर्वे नं. 1984/1 एवं सर्वे नं. 1984/2 की जमीन पर वर्तमान में आम और चीकू के पेड़ हैं। इस भूमि के पश्चिमी भाग में रेलवे विभाग की सम्पादित भूमिमें वर्षों से प्राकृतिक अपवाह के माध्यम से वर्षा के जल का निकास होता था। जिस पर बलसाड से मुंबई की ओर जाने वाले ट्रैक के समांतर मिट्टी पुरान करके सर्विस रास्ता बनाने से बंद हो गया है। यह सड़क करीब 300 मीटर लंबी बनाई गई है। पारडी क्षेत्रके उपरवास की वर्षा आय जल भूमि सर्वे नं. 1984/1 एवं 1984/2 में तथा सर्वे नं. 1993 वाली भूमिमें से होकर आने वाले वर्षा के जल का उपरोक्त स्थिति के कारण समुचित निपटान नहीं हो पाता है। इसके अलावा, जल-जमाव, मिट्टी के कटाव और जल प्रवाह में बदलाव के कारण याचिकाकर्ता की भूमि में वर्षा जल का नया प्रवाह जाता है और मिट्टी का कटाव होता है तथा जल-जमाव के कारण आम-23, चीकू-51, नारियल-7 के पेड़ सूख गए हैं। इससे यह साबित होता है की पर्यावरण को क्षति पहुँची है।

गुजरात सरकार के महसूल विभाग के परिपत्र संख्या LAQ-22-2018/1550/घ, दिनांक 12/01/2021 के परिपत्र के मुताबिक, क्षतिग्रस्त पेड़ों के मूल्य का अनुमान निम्नानुसार लगाया जा सकता है।

क्रं.	पेड़ों की विगत	अंदाजीत उम्र	7 सालसे उपरके पेड़की महत्तम किंमत (प्रति वृक्ष)	पेड़ोंकी संख्या	7 सालसे उपरके वृक्ष की महत्तम किंमत एवं कुल रकम
1	चीकू	30 से 35 वर्ष	रु 38,400	51	रु 19,58,400
2	नारियल (उच्च किस्म)	30 वर्ष	रु 15,000	7	रु.1,05,000
3	आम (केसर)	25 वर्ष	रु.40,000	23	रु. 9,20,000
कुल					रु 29,83,400/-

संयुक्त टीम ने निकट भविष्य में याचिकाकर्ता की भूमि में जल जमाव को रोकने के लिए निम्नलिखित सुझाव दिए हैं।

(1) सर्वे नं. 1984 (रेलवे लाइन पोल नं. 221/39 से 222/3 के सामने) याचिकाकर्ता की भूमि के पास प्राकृतिक प्रवाह को मिट्टी पुरान करके बंद कर दिया गया है, जहां एक प्रकार का बांधने आकार ले लिया है।

याचिकाकर्ता की भूमि में जहां जल जमाव हुआ है वहां सर्विस रोड के समानांतर किनारे पर जगा है यदि इस जगे पर याचिकाकर्ता की भूमि से बालाखाडी तक लगभग 300 मीटर लंबाई एवं लगभग 1.5 मीटर से 2.0 मीटर चौड़ाई तक पक्की जल निकासी व्यवस्था (कांसो) का निर्माण किया जाता है तो कृषि भूमि को होने वाले नुकसान को रोका जा सकता है।

(2) याचिकाकर्ता की सर्वे नं. 1993 के पास (रेलवे पोल नं. 222/7 से 222/13 के सामने) बालाखाडी नाले की मरम्मत करायी जाये तथा याचिकाकर्ता की भूमि के पास लगभग 10 से 15 मीटर की सुरक्षा दीवार का निर्माण कराया जाये। कुछ दूरी यदि निर्मित सुरक्षा दीवार को लगभग 150 से 200 मीटर की लंबाई तक याचिकाकर्ता की भूमि के स्तर तक उठाया जाता है, तो याचिकाकर्ता की भूमि का और कटाव रुक जाएगा।

(3) रेलवे द्वारा वर्षा जल निकासी के लिए जल निकासी व्यवस्था (कांसो) जिन्हें फिर से खोलने की आवश्यकता है।

(4) यदि रेलवे विभाग द्वारा याचिकाकर्ता की भूमि की ओर लगभग 200 से 250 मीटर तक सुरक्षा दीवार का निर्माण करा दिया जाए तो बरसात के मौसम में खेत में होने वाले पानी के जमाव को रोका जा सकता है।

याचिकाकर्ता की भूमि और फलों के पेड़ों को नुकसान डीएफसीसी द्वारा निर्मित सर्विस रोड बनाने से हुआ है यह साबित होता है। इसलिए आपको या आपकी एजेंसी को रु. २९,८३,४००/- (रुपे उनतीस लाख तीरसो हजार चारसो पुरे) का भुगतान याचिकाकर्ता को करना होगा। तथा आगे ने याचिकाकर्ता की भूमि को नुकसान ना हो इस तरहसे जल निकासी की योग्य व्यवस्था करने का सुचन दिया जाता है। साथ ही आपके द्वारा की गई कारवाई की रोपोर्ट 15 दिनमें हमारे ओफिस को देनी होगी। उस बात पर खास ध्यान दें।



(क्षिप्रा एस. आग्रे)

कलेक्टर और डिस्ट्रिक्ट मेजीस्ट्रेट  
वलसाड

नकल सविनय रवाना: रजीस्ट्रारथ्री, नेशनल ग्रीन ट्रीब्यूनल, पुणे सुचीत करने हेतु



डेडीकेटेड फ्रेट कोरीडोर

डेडीकेटेड फ्रेट कोरीडोर कॉर्पोरेशन ऑफ इन्डिया लि.

भारत सरकार (रेलमंत्रालय) का उपक्रम

Dedicated Freight Corridor Corporation of India Ltd.

A Govt. of India (Ministry of Railway) Enterprise

7th Floor, Central Railway, New Administrative Building, D. N. Road, Mumbai – 400001, Tel. 022-22634185

MUM/N/EN/CTP-12/Pardi / 416  
To,  
The Collector & District Magistrate  
Valsad, Gujarat

Date : 28/09/2023

Sub: Hon'ble National Green Tribunal Application No. 784/2022 dated 13.03.2023

29 SEP 2023

Ref: (i) Your office Letter No. ACB/Waterlogging/Ws2918-2919/2023 dated 25.09.2023

(ii) DY CPM/Engg/Valsad/DFCCIL's Note dated 27.09.2023

डिस्ट्रिक्ट मॅजिस्ट्रेट, वलसाड  
220230550497

The project of Dedicated Freight Corridor between JNPT – Dadri is an important infrastructure project of National importance. The work in Vaitarna – Sachin section is being carried out by DFCCIL (Central PSU of Ministry of Railways). The work on this project stretch is at the verge of completion. After commissioning of this project the speed of freight goods transport with in country will increase and cost of transport will decrease resulting in decrease in cost of products which will directly benefit the common citizen of India. Further these freight trains will decrease the load of Road transport resulting in decrease in pollution and traffic, which will give direct benefit to the common citizen of India. The products of farmers, industries and common people will be transported in an efficient way from one place to another place with in very short time. This project is only to enhance the economy of the many states including GUJARAT state .Moreover this project of DFCCIL is being regularly monitored at the PMO level for its early commissioning.

The statement stated by Shri. Bharat N. Desai/Mr.Alpesh Desai in the letter to National Green Tribunal is not correct. DFCCIL is doing nothing illegal in construction of embankment and Track which is a government project. DFCCIL has made embankment in its own land and provided drainage facility as per existing railway drainage. Regarding this, already many times joint site visit has been conducted with Mr. Alpesh Desai and this issue has been explained many times by the field officers at Valsad of DFCCIL.

DFCCIL does not agree with the blame made by Shri. Bharat N. Desai/Mr.Alpesh Desai. As per natural topography, their land is in very low-lying area and water logging will occur in case of heavy rain until they make some proper drainage arrangement in his own land. DFCC has worked in its own area and has not blocked any Bridges. All existing bridges under railway are extended below DFC track also. Further, there is no River exists at the said location. It is a sewer drain of Pardi Nagarpalika which were illegally diverted through Railway land in past. Even through DFCCIL has not closed this but shifted to Railways Boundary and properly connected with existing Railway Bridge to enable construction of DFCCIL Track with enabling smooth flow of water. DFCCIL can not be blamed without any firm ground of any issue.

Further Kindly refer the google earth image photographs, which substantiate that the issue of waterlogging during monsoon period was a prevailing condition way before DFC work has started in this section because the complete referred land of complainant comes under low lying area. Further, the enclosed photographs also proves that the complainant has cut his trees between Feb-21 to Oct-21, well before start of DFC embankment & retaining wall for reason best known to him

Handwritten notes and signatures on the left margin, including dates like 25/9/23 and 30/9.

Handwritten signature and date: 28/09/2023

and therefore, DFC work is not at all responsible for damage to his trees or orchard. It can be well understood from the enclosed photographs that sufficient free space beyond toe of DFC embankment is available for the nallah to cater the water and channelize it to nearby Minor Bridge No. 56.

As mentioned in your letter, after getting application by the land holder to National green tribunal dated 13/03/2023 via application number 784/2022 a joint team was made to inspect the site and take necessary action regarding the damage. The detailed remarks of the points raised by Joint team/Committee are as follows:

1. DFCC has constructed Railway track and service road in its own land and has not blocked any Bridges. All existing bridges under railway are extended below DFC track also. Further, there is no River exists at the said location. It is a sewer drain of Pardi Nagarpalika which were illegally diverted through Railway land in past. Even through DFCCIL has not closed this but shifted to Railways Boundary properly connected with existing Railway Bridge to enable construction of DFCCIL Track. The land of petitioner (Survey No. 1984 IR pole No. 221/39 to 222/3) is already in low-lying area and to avoid any water logging in their area during heavy rain fall, they have to make some proper drainage arrangement in their own land. This water logging is in no way related to the construction of the DFCCIL track.
2. DFCCIL would like to submit that work of retaining wall is being carried out as per the approved drawing for Nallah Diversion MNB 56 -Drg no -12/NB /DG/550, dt. 01/11/2019. The work of retaining wall shall be taken up at the earliest after receding of current monsoon. The status of retaining wall vis-à-vis the balance scope is tabulated as under: -

Sr no	Scope as per Approved Drawing		Status of work as on 20.09.23	Remarks
	Activity	Scope		
1	Retaining wall - south side of Minor bridge(MNB) No 56 (DFC Embankment side)	L= 10 m (28+333 to 28+343)	10 m completed (28+333 to 28+342)	Completed as per site condition
2	Retaining wall - north side of MNB 56 (DFC Emb. side)	L=99m (28+351 to 28+450)	L=80m (28+351 to 28+431)	Completed as per site condition.
3	Retaining wall on the ROW side	*L= 92 m (28+350 to 28+442) *As per site condition	Yet to start	140 m from Ch. 28+350 to 28+490 to be constructed as per site requirement
4	300 mm thick Stone Flooring Nalla with cement Groiut (1:3)	L=160 m (28+350 to 28+510)	Yet to start	To be completed as per from Ch. 28+350 to 28+510
5	P.C.C. Drop wall	L=60 m (28+450 to 28+510)	40 m completed (28+431 to 28+475)	Completed as per site condition
7	Gabion wall on DFC Emb. Side	No provision in Drawing	L=50 m completed	Balance to be constructed from 28+431 to 28+471

*CA*  
28.09.2023

Sr no	Scope as per Approved Drawing		Status of work as on 20.09.23	Remarks
	Activity	Scope		
			(28+471 to 28+521)	
8	Gabion wall on ROW Side	No provision in Drawing	20 m (28+490 to 28+510)	Completed as per site condition


\*A sketch showing completed & balance retaining wall works are enclosed for reference. The work shall be carried out as per approved drawing of DFCCIL/Railway.

- DFCCIL/Railway has not blocked any waterway as all the work by DFCCIL is executed in the Railway land only.
- The work will be carried out as per approved design drawings of DFCCIL/Railways

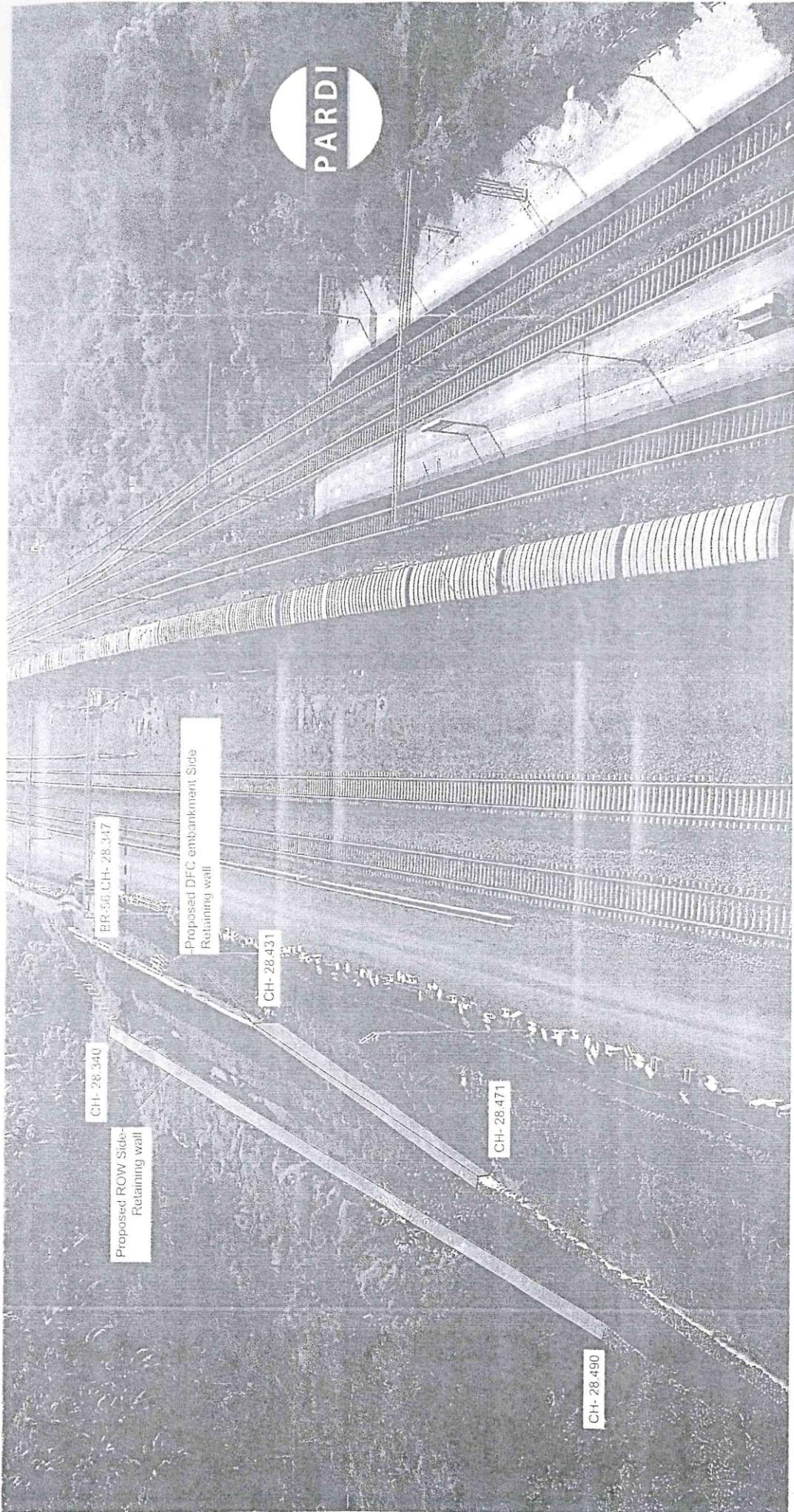
As stated in your above referred letter, in the joint team, the officials/officers of DFCCIL/Railway were not involved /informed to represent their point of view inspite of the fact that the DFCCIL field office is situated in Valsad itself. Hence DFCCIL/Railway department doesn't not agree with the points raised in this letter which is totally one sided and misleading. As explained in above paras, there is no any water logging due to construction of DFCCIL track in its own land. Hence, DFCCIL/Railway is not attributable to any damage occurred to petitioner due to water logging and doesn't agree with the claims or blame raised against DFCCIL/Railway by this joint team/ committee.

However, if further clarification is required, a joint team may be formed along with the petitioner and officials/officers of DFCCIL to have a joint inspection of the site so that, if there is any issue, then the same may be resolved.

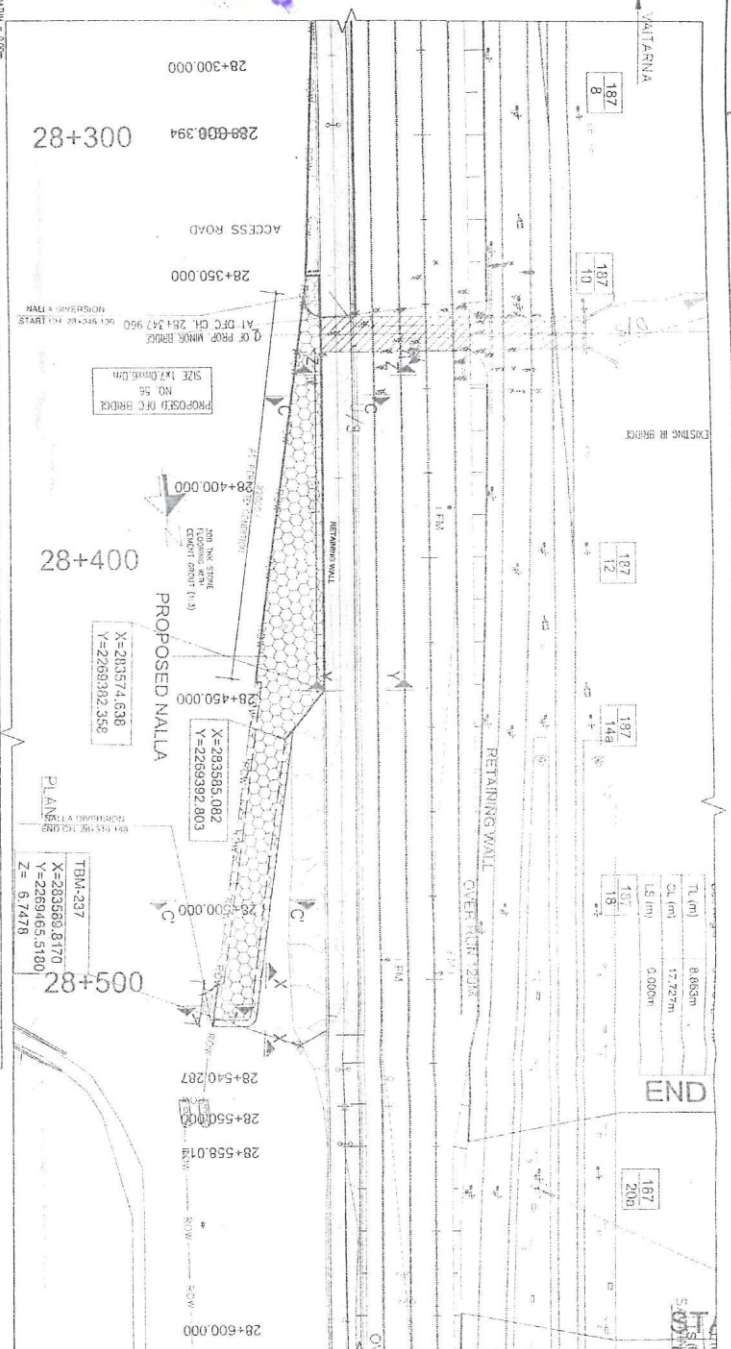
- Encls: (i) sketch of planned retaining walls  
(ii) Sketch of extension of Bridge No 56

  
26/09/2023  
(Vikas Kumar)  
CGM/Mumbai(N)  
DFCCIL

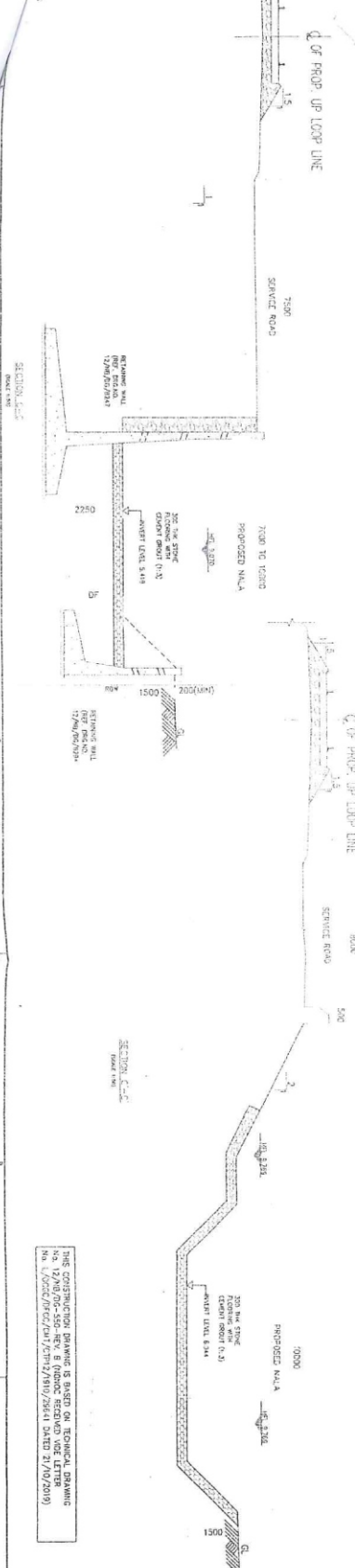
- Copy: (i) Hon'ble National Green Tribunal, Pune for kind information please  
(ii) DY CPM/Engg/Valsad /DFCCIL- for information & necessary action please.  
(iii) ED/Infra/WDFC



રાણે કે ઇલેક્ટ્રીશિયન એન્ડ હેલ્થના નાણે



STATIONING	PROPOSED FORMATION LEVEL AS PER PROFILE (m)	EXISTING GROUND LEVEL (m)	PROPOSED ROAD LEVEL (m)	PROPOSED INVERT LEVEL (m)	H/L	REF. EARTH	SPACING (m)	PROPOSED P.C. CHAINAGE (m)
28+300.000	12.872	13.272	12.872	12.872	0.000	0.000	0.000	0.000
28+350.000	13.071	13.272	13.071	13.071	0.000	0.000	0.000	0.000
28+400.000	13.151	13.272	13.151	13.151	0.000	0.000	0.000	0.000
28+450.000	13.236	13.272	13.236	13.236	0.000	0.000	0.000	0.000
28+500.000	13.332	13.272	13.332	13.332	0.000	0.000	0.000	0.000
28+550.000	13.430	13.272	13.430	13.430	0.000	0.000	0.000	0.000
28+600.000	13.479	13.272	13.479	13.479	0.000	0.000	0.000	0.000



- LEGENDS & ABBREVIATIONS:**
- ▲ - PROPOSED
  - - EXISTING
  - - THICKNESS
  - - UNIFORMITY
  - D/S - DOWNSTREAM SIDE
  - U/S - UPSTREAM SIDE
  - - COVER LINE
  - - BED LEVEL
  - - TOP OF CONCRETE
  - - TOP OF REINFORCING
  - - DOWN

**SECTION X-X**  
(EXISTING NALLA CROSS SECTION)  
(GROSS SECTIONAL AREA=2.90sqm (APPROX))  
(SCALE 1:50)

**SECTION Y-Y**  
(EXISTING NALLA CROSS SECTION)  
(GROSS SECTIONAL AREA=2.24sqm (APPROX))  
(SCALE 1:50)

**SECTION Z-Z**  
(EXISTING NALLA CROSS SECTION)  
(GROSS SECTIONAL AREA=2.75sqm (APPROX))  
(SCALE 1:50)

**NOTE:**  
1. ALL DIMENSIONS ARE IN MILLIMETERS UNLESS OTHERWISE SPECIFIED.  
2. DIMENSIONS SHALL BE TO THE CENTER OF THE MEMBER.  
3. UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS SHALL BE TO THE CENTER OF THE MEMBER.  
4. APPROXIMATE TO THE NEAREST 100mm UNLESS OTHERWISE SPECIFIED.

**REFERENCE DRAWINGS:**  
22/10/2020 - 22/10/2020  
22/10/2020 - 22/10/2020

**STUP CONSULTANTS PVT. LTD.**  
P. 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



સત્યમેવ જયતે

જિલ્લા સેવા સદન, જલારામ બાપા મંદીર રોડ,  
વલસાડ, જિ. વલસાડ-૩૮૬૦૦૧

ફોન. નં. ૨૪૮૩૩૫, ૨૪૮૩૩૫, ૨૪૩૪૧૭

ફેક્સ નં. (૦૨૬૩૨) ૨૪૮૩૩૫, ૨૪૩૪૧૭

Email- collector-  
val@gujarat.gov.in

# કલેક્ટર અને જિલ્લા મેજિસ્ટ્રેટની કચેરી : વલસાડ

નં.એસીબી/એમએસસી/વશી.૩૪૬૬/૨૦૨૩

તા-૩૦/૧૦/૨૦૨૩

પ્રતિ,

- (૧) કાર્યપાલક ઈજનેરશ્રી દમણગંગા નહેર વિશાખા વિ.૩, બલીદા વાપી
- (૨) નાયબ કાર્યપાલક ઈજનેરશ્રી દમણગંગા નહેર પેટા વિભાગ-૧૧ પારડી
- (૩) શ્રી મનોજદાસ, ફિલ્ડ ઓફિસરશ્રી, DFCC, વાપી(વલસાડ)

વિષય:- NGT-784/2022 અન્વયે સ્થળ તપાસ કરી રિપોર્ટ કરવા બાબત.

સંદર્ભ: (૧) નામદાર એન.જી.ટી. Original Application No.784/2022,

તા-૧૩/૦૩/૨૦૨૩

(૨) અત્રેની કચેરીના હુકમ નં.એસીબી/એમએસસી/વશી.૧૧૫૭/૨૦૨૩

તા.૦૪/૦૫/૨૦૨૩

(૩) નં.જમન/એનજીટી/અહેવાલ/વશી.૬૭૮/૨૦૨૩ તા.૧૦/૦૫/૨૦૨૩

(૪) MUM/N/EN/CTP-12/Pardi/416 Dt.28/09/2023

ઉપરોક્ત વિષય અન્વય જણાવવાનું કે, નેશનલ ગ્રીન ટ્રિબ્યુનલ એક્ટ, ૨૦૧૦ ની કલમ ૧૪ અને ૧૫ હેઠળની અરજદારશ્રી અલ્પેશ દેસાઈની અરજના આધારે Hon.National Green Tribunal દ્વારા તા. ૧૩/૦૩/૨૦૨૩ ના રોજ Original Application No.784/2022 માં કરેલ હુકમ મુજબ નીચે દર્શાવેલ વિગતે સંયુક્ત કમિટી બનાવી અરજદારશ્રીની રજુઆત મુજબ સ્થળ તપાસ કરી. સંયુક્ત મુલાકાત અહેવાલ મુજબ જો કોઈ પર્યાવરણીય કાષ્ટકો અને ધોરણોનું ઉલ્લંઘન થયેલ જણાય તો તે અંગે જરૂરી સુધારાત્મક પગલાં ૨ મહિનામાં લેવા સૂચવેલ છે. અને કરેલ કાર્યવાહીનો રીપોર્ટ Registrar Purne bench of Hon.NGT ને મોકલી આપવા જણાવેલ છે.

Hon National Green Tribunal Original Application No.784/2022માં પેરા નં.૪માં જણાવ્યા મુજબ કમિટીની રચના કરવાની થતી હોય અત્રેની કચેરીના સંદર્ભિત (૨) પત્રથી કમિટીની રચના કરી સ્થળ તપાસ અહેવાલ આપવા જણાવેલ. જે અંતર્ગત સંદર્ભિત (૩) પત્રથી અહેવાલ અત્રેની કચેરીએ સાદર કરેલ છે. પરંતુ DFCCના સંદર્ભિત પત્ર (૪) થી DFCCના અધિકારીઓને સામેલ ન કર્યા હોય ફરીથી તેમના અધિકારીઓને સાથે રાખી સ્થળ તપાસ કરવા જણાવેલ જે અંતર્ગત ઉપરોક્ત મુજબના અધિકારીઓની સંયુક્તટીમ દ્વારા સ્થળ તપાસ કરી તે અંગેનો રીપોર્ટ અત્રેની કચેરીએ દિન-૫માં કરવા જણાવવામાં આવે છે.

(મે.કલેક્ટર સાહેબના નોંધ પર મળેલ આદેશાનુસાર)

(એ.આર.જહા)  
નિવાસી અધિક કલેક્ટર

OFFICE OF THE COLLECTOR AND DISTRICT MAGISTRATE,  
DISTRICT VALSAD

District Seva Sadan, Jalaram Mandir Road, Valsad,  
District Valsad 396 00`

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No. ACB/MSC/NGT/VASHI 3468/2023 Date 30/10/2023

To

1 The Executive Engineer, Damanganga Canal Sub  
Branch Div. 3, Balitha, Vapi

2 The Deputy Executive Engineer, Daman Ganga  
Canal Sub Division -11, Pardi

3 Shri Manoj Das, Field Officer, DFCC, Vapi  
(Valsad)

Subject: - With respect to NGT/784/2022 regarding  
submitting the report after conducting the spot  
inspection

Reference:

1 Hon'ble National Green Tribunal Order Original  
Application No. 784/2023 dated 13/03/2023

it is required to form a committee vide this office letter referred to at Sr. No.2, after forming the committee, it is directed to submit the spot inspection report. With reference to which vide letter referred to at Sr. No. 3 herein above, the report has been submitted to this office. However, vide letter referred to at Sr. No.4 herein above of DFCC, as the officers of the DFCC are not involved, it has been stated to carry out the spot inspection keeping present its officers. With respect to the same, it is directed to carry out the spot inspection by the joint team of the above-mentioned officer and submit report in this respect to this office within 5 days.

(As per the order received by the Hon'ble Collector)  
on Noting)

Sd/-

(A.R. Jha)

Resident Additional Collector



डेडीकेटेड फ्रेट कोरीडोर कॉर्पोरेशन ऑफ इन्डिया लि.

भारत सरकार (रेलमंत्रालय) का उपक्रम

Dedicated Freight Corridor Corporation of India Ltd.  
A Govt. of India (Ministry of Railway) Enterprise

7<sup>th</sup> Floor, Central Railway, New Administrative Building, D. N. Road, Mumbai – 400001,  
Tel. 022-22634185, Fax 022-22634184

MUM/N/EN/CTP-12/Pardi/416

Date :04.12.2023

To,  
**District Collector**  
**Valsad, Gujarat**

Sub: National Green Tribunal Application No. 784/2022 (Complaint of Shri Bharat N Desai regarding nalla Diversion at Pardi)

Ref: (i) This office's earlier letter of even no. dated 28.09.2023  
(ii) Your Office Letter No. ACB/Waterlogging/Ws2918-2919/2023 dated 25.09.2023

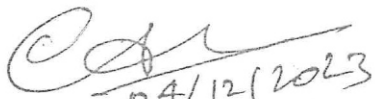
Regarding the above referred subject, a hearing is going on in the court of SDM-Pardi. This is based on the complaint of Shri Bharat N Desai (Farmer) which were verified by inspection of a joint team consisting of the officials of state Govt. of various department **excluding DFCCIL Officials.**

In this connection, vide letter under reference (i) above, it was requested to have a joint site inspection with State Govt. Official along with DFCCIL to clarify the points of view of DFCCIL at site as in earlier inspection, DFCCIL was not informed and inspection of site was done unilaterally. This inspection is not yet conducted inspite of requesting several times by DFCCIL officers..

Therefore, in view above it is once again requested to kindly instruct the concerned officers/officials to have a joint site inspection along with DFCCIL before next hearing date i.e. 06.12.2023 so that the matter may be clarified at site by DFCCIL.

An early action in the matter is highly solicited please

इलेक्ट्रिकल, वलसाड  
- 6 DEC 2023  
घनपत्र नंबर 220230664570  
वर्कशीट नंबर 3523

  
04/12/2023  
(Vikas Kumar)  
CGM/Mumbai(N)  
DFCCIL

Copy: 1. Hon'ble National Green Tribunal, Pune- for kind information please.  
2. Dy.CPM/Engg /Valsad/DFCCIL,- for information & n.a.

AS  
G. M. M. S.  
16/12/23  
MSC  
9/12

કલેક્ટર અને જિલ્લા  
મેજિસ્ટ્રેટની કચેરી, વલસાડ



જિલ્લા સેવા સદન, જલારામ બાપા મંદીર રોડ,  
વલસાડ, જિ. વલસાડ-૩૮૬૦૦૧  
ફોન. નં. (૦૨૬૩૨) ૨૪૪૨૭૪, ૨૪૪૨૭૯  
ફેક્સ નં. (૦૨૬૩૨) ૨૪૯૩૩૫, ૨૪૩૪૧૭  
Email- collector-val@gujarat.gov.in

નં.એસીબી/એમએસસી/વશી.૩૮૭૭/૨૦૨૩

તા- ૧૨/૧૨/૨૦૨૩

સ્મૃતિપત્ર-૧

પ્રતિ,

- (૧) કાર્યપાલક ઇજનેરશ્રી દમણગંગા નહેર વિશાખા વિ.૩, બલીઠા વાપી
- (૨) નાયબ કાર્યપાલક ઇજનેરશ્રી દમણગંગા નહેર પેટા વિભાગ-૧૧ પારડી
- (૩) શ્રી મનોજદાસ, ફિલ્ડ ઓફિસરશ્રી, DFCC, વાપી(વલસાડ)

વિષય:- NGT-784/2022 અન્વયે સ્થળ તપાસ કરી રિપોર્ટ કરવા બાબત.

સંદર્ભ: (૧) નામદાર એન.જી.ટી. Original Application No.784/2022,

તા-૧૩/૦૩/૨૦૨૩

(૨) અત્રેની કચેરીના હુકમ નં.એસીબી/એમએસસી/વશી.૧૧૫૭/૨૦૨૩

તા.૦૪/૦૫/૨૦૨૩

(૩) નં.જમન/એનજીટી/અહેવાલ/વશી.૬૭૮/૨૦૨૩ તા.૧૦/૦૫/૨૦૨૩

(૪) MUM/N/EN/CTP-12/Pardi/416 Dt.28/09/2023

(૫) અત્રેની કચેરીના પત્ર નં. એસીબી/એમએસસી/વશી.૩૪૬૮/૨૦૨૩ તા.૩૦/૧૦/૨૦૨૩

(૬) MUM/N/EN/CTP-12/Pardi/416 Dt.04/12/2023

ઉપરોક્ત વિષય અન્વયે જણાવવાનું કે, નેશનલ ગ્રીન ટ્રિબ્યુનલ એક્ટ, 2010 ની કલમ 14 અને 15 હેઠળની અરજદારશ્રી અલ્પેશ દેસાઈની અરજીના આધારે Hon.National Green Tribunal દ્વારા તા. ૧૩/૦૩/૨૦૨૩ ના રોજ Original Application No.784/2022 માં કરેલ હુકમ મુજબ નીચે દર્શાવેલ વિગતે સંયુક્ત કમિટી બનાવી અરજદારશ્રીની રજૂઆત મુજબ સ્થળ તપાસ કરી. સંયુક્ત મુલાકાત અહેવાલ મુજબ જો કોઈ પર્યાવરણીય કાયદાઓ અને ધોરણોનું ઉલ્લંઘન થયેલ જણાય તો તે અંગે જરૂરી સુધારાત્મક પગલાં ૨ મહિનામાં લેવા સૂચવેલ છે. અને કરેલ કાર્યવાહીનો રીપોર્ટ Registrar Purne bench of Hon.NGT ને મોકલી આપવા જણાવેલ છે.

Hon National Green Tribunal Original Application No.784/2022માં પેરા નં.૪માં જણાવ્યા મુજબ કમિટીની રચના કરવાની થતી હોય અત્રેની કચેરીના સંદર્ભિત (૨) પત્રથી કમિટીની રચના કરી સ્થળ તપાસ અહેવાલ આપવા જણાવેલ. જે અંતર્ગત સંદર્ભિત (૩) પત્રથી અહેવાલ અત્રેની કચેરીએ સાદર કરેલ છે. પરંતુ DFCCના સંદર્ભિત પત્ર (૪) અને (૬) થી DFCCના અધિકારીઓને સામેલ ન કર્યા હોય ફરીથી તેમના અધિકારીઓને સાથે રાખી સ્થળ તપાસ કરવા જણાવેલ જે અંતર્ગત ઉપરોક્ત મુજબના અધિકારીઓની સંયુક્ત ટીમ દ્વારા સ્થળ તપાસ કરી તે અંગેનો રીપોર્ટ અત્રેની કચેરીએ દિન-૭માં કરવા જણાવવામાં આવે છે.

(મે.કલેક્ટર સાહેબના નોંધ પર મળેલ આદેશાનુસાર)

(એ.આર.જહા)  
નિવાસી અધિક કલેક્ટર  
વલસાડ

OFFICE OF THE COLLECTOR AND DISTRICT MAGISTRATE,  
DISTRICT VALSAD

District Seva Sadan, Jalaram Mandir Road, Valsad,  
District Valsad 396 00`

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No. ACB/MSD/NGT/VASHI 3877/2023 Date 12/12/2023

To

1 The Executive Engineer, Damanganga Canal Sub  
Branch Div. 3, Balitha, Vapi

2 The Deputy Executive Engineer, Daman Ganga  
Canal Sub Division -11, Pardi

3 Shri Manoj Das, Field Officer, DFCC, Vapi  
(Valsad)

Subject: - With respect to NGT/784/2022 regarding  
submitting the report after conducting the spot  
inspection

Reference:

1 Hon'ble National Green Tribunal Order Original  
Application No. 784/2023 dated 13/03/2023

2 This office order No. ACB/MSV/VASHI/1157/2023  
dated 04/05/2023

3 No. Jaman/NGT/Aheval/Vashi 678/2023 dated  
10/05/2023

4 MUM/N/EN/CTP-12/Pardi/416 Dt. 28/09/2023

5 This office letter No. ACB/MSV/VASHI 3468/2023  
dated 30/10/2023

6 MUM/N/EN/CTP-12/Pardi/416 Dt. 04/12/2023

With reference to the above subject, it is to be stated that based on the application of the applicant Alpesh Desai under Section 14 and 15 of the National Green Tribunal Act 2020, the hon. National Green Tribunal vide its order dated 13/03/2023 passed in Original Application no. 784/2022 as per the following details, forming Joint Committee as per the submission of the application, after carrying out the inspection, as per the joint visit report if violation of any environmental laws and norms is found then in this connection the requisite corrective measures are directed to be taken within 2 months and the Action Taken Report is stated to be submitted to the Registrar, Pune Bench of Hon. NGT.

The Hon. National Green Tribunal as stated in para-No.4 of the Original Application No.784/2020 as it is required to form a committee vide this office letter referred to at Sr. No.2, after forming the committee, it is directed to submit the spot inspection report. With reference to which vide letter referred to at Sr. No. 3 herein above, the report has been submitted to this office. However, vide letter referred to at Sr. No.4 and 6 herein above of DFCC, as the officers of the DFCC are not involved, it has been stated to carry out the spot inspection keeping present its officers. With respect to the same, it is directed to carry out the spot inspection by the joint team of the above-mentioned officer and submit report in this respect to this office within 5 days.

(As per the order received by the Hon'ble Collector)  
on Noting)

Sd/-

(A.R. Jha)

Resident. Additional Collector

## નર્મદા જળ સંપત્તિ પાણી પુરવઠા અને કલ્પસર વિભાગ

Deputy Executive Engineer , Damanganga Canal, Sub Division No.11, Pardi

નાયબ કાર્યપાલક ઈજનેર, દમણગંગા નહેર પેટા વિભાગ નં. ૧૧, પારડી

Beside Mamlatdar Office  
National Highway No.08  
Pardi (Damni Zapa)  
Tal.:- Pardi, Dist.:- Valsad.  
Tel. (0260)- 2993402



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મામલતદાર કચેરીની બાજુમાં

નેશનલ હાઈવે નં. ૦૮

પારડી ( દમણી ઝાંપા)

તા.:- પારડી, જી.:- વલસાડ.

ટેલીફોન નં.(૦૨૬૦)-૨૯૯૩૪૦૨

E-mail :- deedcsd11pardi@gmail.com

જા.નં.:દ.ન.પે.વિ.-૧૧/પારડી/પીબી-૧/RTI-Umarsadi/ ૫૫૨

તા. ૨૫/૦૮/૨૦૨૪

PART IV-A GUJATAT GOVT. GAZETTE EX. 26-04-2010

નમૂનો -૩

( જૂઓ નિયમ-૪ (૧) )

અરજદારને માહિતી આપવા અને/ અથવા તેનો અસ્વીકાર કરવા બાબત

પ્રતિ,

ભરતભાઈ નારણજી દેસાઈ,

દિપલી કુંળિયા,

ગામ- ઉમરસાડી, તા.-પારડી, જી. વલસાડ.

વિષય :- જાહેર માહિતી અધિકાર અધિનિયમ - ૨૦૦૫ હેઠળ માહિતી આપવા બાબત.

શ્રી ભરતભાઈ નારણજી દેસાઈ ની તા. ૧૦/૦૮/૨૦૨૪ ની અરજી.

ઉપરોક્ત વિષય અન્વયે જ્ય ભારત સહ જાણાવવાનું કે, અરજદારશ્રી ભરતભાઈ નારણજી દેસાઈની જાહેર માહિતી અધિકાર અધિનિયમ-૨૦૦૫ હેઠળ માંગેલ માહિતીની અરજી અત્રેની કચેરીએ માહિતી અર્થે અરજી અત્રેની કચેરીએ તા. ૧૦/૦૮/૨૦૨૪ ના રોજ મળેલ છે. જેની માહિતી નીચે મુજબ છે.

અનુ.નં	મુદ્દાઓ	જવાબ
૧.	બાલાખાડી, તા. પારડી, ગામ પારડી જેનો થોડો ભાગ રેલવેની જમીનમાંથી પરાપુર્વથી (કદાચ હજારો વરસ પહેલાથી) જાય છે. અને આ બાલાખાડી મારફત ઉમરસાડી ,કોટલાવ, પારડી વગેરે વિસ્તારનું પાણી વાહન થઈ અંતે તે સમુદ્રમાં જાય છે. આ બાલાખાડીને તેના મુળ સ્થાનેથી બદલવામાં આવી છે. તે વરસાદનું પાણી વાહન કરવામાં સક્ષમ નથી, માટે આ વિસ્તારમાં વરસાદનું પાણી ભરાય છે. પાણીનો પ્રવાહ ભરાવાના કારણે અમારા ઝાડો તેમજ જમીનને નુકશાન થયેલું છે. બાલાખાડીને તેના મુળ સ્થાનેથી ખસેડવા માટે આપશ્રીના વિભાગ દ્વારા ડી.એફ.સી.સી. ને મંજૂરી આપી હોય તો તેની કોપી	બાલાખાડીને તેના મુળ સ્થાનેથી ખસેડવા માટે અત્રેની કચેરી દ્વારા ડી.એફ.સી.સી. ને કોઈ મંજૂરી આપવામાં આવેલ નથી.

	અમોને આપવા વિનંતી. જો મંજુરી નહીં આપી હોય તો તે જાણાવવા વિનંતી.	
૨.	ડી.એફ.સી.સી. દ્વારા ભરાણી કરવામાં આવી તે પહેલાં રેલવેની જમીનમાં પૂર્વ બ્રાજુના ભાગ માંથી ( બાલાખાડીના રેલવેના કલવર્ટની દક્ષિણમાં ) વરસાદનું પાણી બાલાખાડીમાં ઠલવાયા બાદ આગળ જતું હતું. આ કાંસ અંધ કરી તેના પર સર્વિસ રોડ માટે આશરે ૧૨ ફુટની ડિંચી ભરાણી કરી હોવાથી પાણીનો ભરાવો થયો અને ઝાડો મારી ગયા, જમીનમાં ધોવાણ થયું. આ કાંસ પુરવા બાબતે આપની ઓફિસમાંથી મંજુરી લેવામાં આવી હોય તો તેની કોપી આપવા વિનંતી. જો મંજુરી નહીં લેવામાં આવી હોય તો તે પ્રમાણે જણાવવા વિનંતી.	કાંસ પુરવા બાબતે અંગેની કચેરીએથી ડી.એફ.સી.સી. ને કોઈ મંજુરી આપવામાં આવી નથી.

આપનો વિશ્વાસુ



જાહેર માહિતી અધિકારી અને

નાયબ કાર્યપાલક ઈજનેર,

દમણગંગા નહેર પેટા-વિભાગ નં. ૧૧,

પારડી

નકલ સાદર રવાના પ્રતિ શ્રી - કાર્યપાલક ઈજનેર, દમણગંગા નહેર વિશાખા વિભાગ નં-૩, ખલીદા (વાપી) તરફ જાણ સારું.

- શ્રી ભરતભાઈ નારણજી દેસાઈ, દિપલી ડુંગિયા, ગામ- ઉમરસાડી, તા. -પારડી, જી. વલસાડ. તરફ જાણ સારું.

25-09-2024

Bharatbhai Naranji Desai, Dipali Paliya, Village- Umarsadi, Date- Pardi, Dist. Valsad.

Subject:-

Regarding the provision of information under the Right to Public Information Act – 2005. Date of Shri Bharatbhai Naranji Desai. Application dated 10/09/2024.

According to the above subject, Jai Bharat to inform that the petitioner Bharatbhai Naranji Desai's application for information sought under the Right to Information Act-2005 has been received by the office of this office. Received on 10/09/2024. The information is as follows,

1. Balakhadi, dt. Pardi, village Pardi whose small portion passes through the railway land (maybe thousands of years ago) . Through this Balakhadi, the water of Umarsadi, Kotlav, Pardi etc. areas is transported and finally it goes to the sea. This Balakhadi has been replaced from its original location. Due to this reason rain water does not pass through smoothly, so the area gets flooded with rain water. Our trees and soil have been damaged due to flooding. To shift Balakhadi from its original position if your office has given permission to DFCCI then please provide us the copy of the same.

Answer : Our Office has not given any permission to DFCCI for shifting of Balakhadi Creek.

2. Before filling work done by DFCCI there was kotar on the east side of railway line (On south side of Balakhadi culvert ), rain water used to flow through this kotar and was merging in balakhadi creek. But because of atleast 12feet height filling done for service road by DFCCI kotar has vanished, and rain water does not get drain and water logging has started, our trees in that area died. If DFCCI has taken permission to fill up this kotar from your office then provide us the copy of the same and if permission not taken from your office then also please provide same.

Answer: Our office has not given any permission for filling up kotar.

Your's Faithfully,

Signature

PUBLIC INFORMATION OFFICER AND DEPUTY EXECUTIVE ENGINEER,

DAMANGANGA CANAL SUB-DIVISION NO. 11,

Pardi.

**(1997) 1 Supreme Court Cases 388**

(BEFORE KULDIP SINGH AND S. SAGHIR AHMAD, JJ.)

M.C. MEHTA . . Petitioner;

*Versus*

KAMAL NATH AND OTHERS . . Respondents.

Writ Petition (C) No. 182 of 1996<sup>†</sup>, decided on December 13, 1996

**Constitution of India – Arts. 21 and 32 – Ecology – Public Trust doctrine – Is part of the Indian law – It extends to natural resources such as rivers, forests, seashores, air etc. for the purpose of protecting the ecosystem – Lease granted by State Govt. of riparian forest land for commercial purpose to a private company having a Motel located at the bank of river Beas – Motel management interfering with natural flow of river by blocking natural relief/spill channel of the river – Held, State Govt. committed breach of public trust – Prior approval granted by Govt. of India, Ministry of Environment and Forest and lease granted in favour of the Motel quashed – Polluter Pays Principle applicable – Accordingly the polluter company liable to compensate by way of cost for restitution of environment and ecology of the area – Other directions issued – Doctrines – Public Trust**

A news item appeared in Indian Express stating that a private company Span Motels Pvt. Ltd., in which the family of Kamal Nath (a former Minister for Environment and Forests) had direct link, had built a club at the bank of River Beas by encroaching land including substantial forest land which was later regularised and leased out to the company when Kamal Nath was the Minister. It was stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future floods. The Supreme Court took notice of the news item because the facts disclosed therein, if true, were be a serious act of environmental-degradation on the part of the Motel. Disposing of the writ petition

*Held :*

The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made

freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case* clearly show the judicial concern in protecting all ecologically important lands, for example fresh

 Page: 389

water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the Public Trust doctrine is a part of the law of the land.

(Paras 23 to 25, 33, 34 and 39)

*"Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention", Michigan Law Review, Vol. 68, part 1, p. 473, relied on*

*Illinois Central Railroad Co. v. People of the State of Illinois, 146 US 387 : 36 L Ed 1018 (1892); Gould v. Greylock Reservation Commission, 350 Mass 410 (1966); Sacco v. Development of Public Works, 532 Mass 670; Robbins v. Deptt. of Public Works, 244 NE 2d 577; National Audubon Society v. Superior Court of Alpine County (Mono Lake case), 33 Cal 3d 419; Phillips Petroleum Co. v. Mississippi, 108 S Ct 791 (1988), relied on*

*Priewev v. Wisconsin State Land and Improvement Co., 93 Wis 534 (1896); Crawford County Lever and Drainage Distt. No. 1, 182 Wis 404; City of Milwaukee v. State, 193 Wis 423; State v. Public Service Commission, 275 Wis 112, referred to*

*Marks v. Whitney, 6 Cal 3d 251; United Plainsmen v. N.D. State Water Cons. Comm'n, 247 NW 2d 457 (ND 1976), cited*


The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

(Para 35)

In the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. Therefore, the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. The lease transactions are in patent breach of the trust held by the State Government.

(Paras 36 and 22)

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Further, the admissions by the Motel management in various letters written to the Government, the counter-affidavits filed by the various government officers and the report placed on record by the Board clearly show that the Motel management has by their illegal constructions and callous interference with the natural flow of River Beas has degraded the environment. The Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river. It is now settled by the Supreme Court that one who pollutes the environment must pay to reverse the damage caused by his acts.

(Paras 21 and 38)

*Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 : JT (1996) 7 SC 375, followed

*Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 : JT

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(1996) 2 SC 196, *cited*

Therefore, the Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. NEERI is directed through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use. The Motel shall not discharge untreated effluents into the river. The Himachal Pradesh Pollution Control Board is directed to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report to the Court by 17-12-1996. To be listed on 18-12-1996.

(Para 39)

R-M/17231/C

Advocates who appeared in this case:

In person, for the Petitioner;

H.N. Salve, Senior Advocate (M.S. Vashisht, Rajiv Dutta, Shiv Pujan Singh, J.S. Attri and L.R. Rath, Advocates, with him) for the Respondents.

***Chronological list of cases cited***

***on page(s)***

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2. (1996) 3 SCC 212 : JT (1996) 2 SC 196, *Indian Council for Enviro-Legal Action v. Union of India* 414c-d

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3. 532 Mass 670, *Sacco v. Development of Public Works* 409e-f

4. 350 Mass 410 (1966), *Gould v. Greylock Reservation Commission* 408f

5. 275 Wis 112, *State v. Public Service Commission* 410a

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6. 247 NW 2d 457 (ND 1976), *United Plainsmen v. N.D. State Water Cons. Comm'n* 412c-d

7. 244 NE 2d 577, *Robbins v. Deptt. of Public Works* 409g

8. 146 US 387 : 36 L Ed 1018 (1892), *Illinois Central Railroad Co. v. People of the State of Illinois* 408b, 408d-e

9. 193 Wis 423, *City of Milwaukee v. State* 410a

10. 182 Wis 404, *Crawford County Lever and Drainage Distt. No. 1* 410a

11. 108 SCt 791 (1988), *Phillips Petroleum Co. v. Mississippi* 412g, 412g-h

12. 93 Wis 534 (1896), *Priewev v. Wisconsin State Land and Improvement Co.* 410a

13. 33 Cal 3d 419, *National Audubon Society v. Superior Court of Alpine County* 410d-e, 412e-f, 412f

14. 6 Cal 3d 251, *Marks v. Whitney* 411b-c, 411g

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The Judgment of the Court was delivered by

**KULDIP SINGH, J.**— This Court took notice of the news item appearing in the *Indian Express* dated 25-2-1996 under the caption — “Kamal Nath dares the mighty Beas to keep his dreams afloat”. The relevant part of the news item is as under:

“Kamal Nath's family has direct links with a private company, Span Motels Private Limited, which owns a resort — Span Resorts — for tourists in Kullu-Manali Valley. The problem is with another ambitious venture floated by the same company — Span Club.

The club represents Kamal Nath's dream of having a house on the bank of the Beas in the shadow of the snow-capped Zanskar Range. The club was built after encroaching upon 27.12 bighas of land, including substantial forest land, in 1990. The land was later regularised and leased out to the company on 11-4-1994. The regularisation was done when Mr Kamal Nath was Minister of Environment and Forests.... The swollen Beas changed its course and engulfed the Span Club and the adjoining lawns, washing it away.

For almost five months now, the Span Resorts management has been moving bulldozers and earth-movers to turn the course of the Beas for a second time.

The heavy earth-mover has been used to block the flow of the river just 500 metres upstream. The bulldozers are creating a new channel to divert the river to at least one kilometre downstream. The tractor-trolleys move earth and boulders to shore up the embankment surrounding Span Resorts for laying a lawn. According to the Span Resorts management, the entire reclaiming operation should be over by March 31 and is likely to cost over a crore of rupees.

Three private companies — one each from Chandigarh, Mandi and Kullu — have moved in one heavy earth-mover (hired at the rate of Rs 2000 per hour), four earth-movers and four bulldozers (rates varying from Rs 650 to Rs 850 each per hour) and 35 tractor-trolleys. A security ring has been thrown all around. ... Another worrying thought is that of the river eating into the mountains, leading to landslides which are an

occasional occurrence in this area. Last September, these caused floods in the Beas and property estimated to be worth Rs 105 crores was destroyed. ... Once they succeed in diverting the river, the Span management plans to go in for landscaping the reclaimed land. But as

of today, they are not so sure. Even they confess the river may just return.

'Mr Kamal Nath was here for a short while two-three months ago. He came, saw what was going on and left. I suppose he knows what he is doing', says another executive.

The District Administration pleads helplessness. Rivers and forest land, officials point out, are not under their jurisdiction. Only the Kullu Conservator of Forests or the District Forest Officer can intervene in this case.

But who is going to bell the country's former Environment and Forests Minister?

Interestingly, a query faxed to Kamal Nath for his views on these developments fetched a reply from Mr S. Mukerji, President of the Span Motels Private Limited.

Admitting that the Nath family had 'business interests' in the company since 1981, he said, 'the company is managed by a team of professional managers and Mr Kamal Nath is not involved in the management activity of the company'.

'The Board comprises professionals, some of whom are friends and relatives of the Nath family', Mr Mukerji said. He expressed surprise that a reference had been made to Rangri and Chakki villagers 'since these villagers are at least 2/3 kilometres away and not even on the river side'.

He said the Span Club was 'not for the exclusive use of any one individual'. 'We would like to emphasize that we are only "restoring the river" to its original and natural course and are restoring our land and of those of neighbouring villagers similarly affected by the flood.'


He maintained that 'Mr Kamal Nath has definitely not been to Span Resorts in the last two months and in fact, to the best of my knowledge, has not travelled to Kullu Valley for quite some time now. ... In any case, we had never 'blocked' any channel in the vicinity of Span.' "

**2.** Mr Kamal Nath filed one-page counter-affidavit dated 8-6-1996. Paras 1 and 3 of the counter are as under:

"I say that I have been wrongly arrayed as a respondent in the above petition inasmuch as I have no right, title or interest in the property known as 'Span Resorts' owned by 'Span Motels Private Limited'.

I further say that the allegations made in the press reports based on which this Hon'ble Court was pleased to issue notice are highly exaggerated, erroneous, mala fide, mischievous and have been published only to harm and malign the reputation of this

respondent.”

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**3.** On behalf of Span Motels Private Limited (the Motel), Mr Banwari Lal Mathur, its Executive Director, filed counter-affidavit. Paras 2 and 3 of the counter are as under:

“I say that Mr Kamal Nath who has been arrayed as Respondent 1 in the above writ petition has no right, title or interest in the property known as SPAN RESORTS owned by Span Motels Pvt. Ltd. or in the lands leased out to the said company by the State of Himachal Pradesh.

I say that the shareholding of SPAN MOTELS PVT. LTD. is as under:

	<i>No. of Shares held</i>	<i>% Shareholding</i>
Mrs Leela Nath	32,560	42
EMC Projects Pvt. Ltd.	14,700	19
SHAKA Properties Pvt. Ltd.	15,000	19
SHAKA Estate & Finance Pvt. Ltd.	15,000	19
Capt. Alok Chandola	250	01
	<hr/>	<hr/>
	77,510	100

**4.** It was not disputed before us by Mr Harish Salve, learned counsel appearing for Mr Kamal Nath, that almost all the shares in the Motel are owned by the family of Mr Kamal Nath. We do not wish to comment on the averment made on oath by Mr Kamal Nath that he has “no right, title or *interest* in the property known as Span Resorts owned by Span Motels Private Limited”.

**5.** Mr B.L. Mathur filed an additional counter-affidavit dated 30-7-1996 on behalf of the Motel. The counter-affidavit mentioned above states that government land measuring 40 bighas 3 biswas situated alongside Kullu-Manali Road on the bank of River Beas was granted on lease to the Motel for a period of 99 years with effect from 1-10-1972 to 1-10-2071. The lessee was granted permission to enter and occupy the said area for the purpose of putting up a Motel and for installing ancillaries in due course as may be subsequently approved by the lessor. We may refer to paras 6 and 7 of the lease deed dated 29-9-1972 which are as under:

“The lessee shall not dig deep pits of trenches in the said land, which may lead to the danger of erosion and shall make good the

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lessor defects caused by their acts of defaults within one month of notice by the lessor.

In the event of said land being required by lesser for any other purpose, whatsoever the lessor will be entitled to terminate this lease at any time by giving six months' notice in writing to the lessee and the lessee shall not be entitled to any compensation whatsoever on account of such termination."

**6.** The current management (Shri Kamal Nath's family) took over the Motel in the year 1981. Fresh lease was signed on 29-11-1981. The new lease was for the same period from 1972 to 2071. Paras 4 and 5 of the additional affidavit are as under:

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"I say that the Motel commenced operations in 1975. There are over 800 trees in this area of 40 bighas. The Motel has two clusters with 8 dwelling units of 3 rooms each. The rooms are nowhere near the river — the distance between the cluster of rooms and the beginning of the river basin is about 10 metres — actually the river is another 30 metres therefrom. Thus, the effective distance between the edge of the river and the cluster of rooms is 40 metres.

I say that in the peak of the flood, the river did not come closer than 10 metres to the rooms and did not, therefore, pose any danger to the rooms, particularly there are no problems qua rooms as the rooms are on a higher level — at least 5-7 metres at their closest point."

Along with the additional affidavit the correspondence between the Motel and the Government has been annexed. In a letter dated 19-10-1988 addressed to the Chief Minister, Himachal Pradesh, the Motel gave details of the flood-damage during the year 1988 and finally requested the Government for the following steps:

"Further it is imperative that the Government take immediate steps to stop erosion of the land under lease to us. It would appear that strong concrete blackened retaining walls will be necessary to be placed at appropriate points to protect the landmass around us."

**7.** The Motel addressed letter dated 30-8-1989 to the Divisional Forest Officer, Kullu. The relevant part of the letter is as under:

"When we acquired our land on lease, there were no clear demarcations of the surrounding areas and boundaries. There has existed a stretch of waste and 'banjar' (Class III) forest land in a longitudinal strip along the river bank admeasuring about 22.2

bighas, contiguous and adjacent to our leased land. Over the years, and especially after the *severe flood erosion* last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and 'banjar' area, beautified and landscaped it, planted ornamental, fruiting and varied forest trees extensively such that it blends with our estate and with the surrounding flora and environment in a harmonious manner. A revenue map along with all Revenue Department records covering this entire area, is forwarded enclosed herewith for your reference and perusal.

We are aware that in accordance with the Forest Conservation Act of 1980, the use of forest land by private agency even for natural development and afforestation scheme, requires alternative matching compensatory afforestation land areas to be surrendered by the concerned party, after due approval of the Government. In view of this statutory precondition, we wish to submit that we can immediately surrender to the Government nearly 28 bighas and 13 biswas of private agricultural cultivated land located at Village MAJHACH, (Burua), MANALI, in exchange for the above-mentioned 22.2 bighas of Class III

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banjar forest land adjoining our land in Village Baragran Bihal, which we request for transfer to our company in lieu of the land we are willing to surrender. The specific revenue maps and records concerning this area of land at Village Majhach, are also enclosed herewith for your kind perusal."

It is obvious from the contents of the letter quoted above that the Motel had encroached upon an additional area of 22.2 bighas adjoining to the leasehold area. Apart from that the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along the river banks. The Motel was keen to have the encroached land by way of exchange/lease. A request to that effect was repeated in the letter dated 12-9-1989 addressed to the Divisional Forest Officer, Kullu. The Motel again repeated its request for lease of the additional land by the letter dated 9-7-1991. The said letter further stated as under:

"We would also like to mention that the banjar land adjoining our hotel, referred to in para 1 above, lies along the bank of River Beas which erodes it every year. About ten years ago almost 4 bighas of this land were washed away and the onflowing water has posed a

serious threat to our hotel buildings and adjoining area. To protect our property we were compelled to erect deep protection embankments along the banjar land in question at huge cost the details of which will be sent to you shortly. If our proposal is accepted for the exchange of land it will become possible for us to take further steps to protect this land.”

**8.** The Divisional Forest Officer, Kullu sent reply dated 12-1-1993 which stated as under:

“In this connection it is intimated that at present we are not having funds to put crates and spurs along the river side near your hotel to check the soil erosion, as indicated in your letter referred to above. In order to protect your property from the damage, you can carry out such works at your level, subject to the condition that the ownership of the land would vest with Forest Department and the Department would not be liable to pay any amount incurred for the purpose by you at a later stage and you would not claim any right on government property.”

The above-quoted letter can be of no consequence because much before the said letter the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along the river bank. This is obvious from the contents of the letter dated 30-8-1989 (quoted above).

**9.** The Motel addressed a letter dated 21-6-1993 to the Chief Secretary, Himachal Pradesh wherein it is clearly stated that the adjoining land measuring 22 bighas and 3 biswas had been reclaimed by the Motel. The relevant part of the letter is as under:

“Adjoining our Resort and contiguous to our leased land is a stretch of Class III — banjar forest land in a longitudinal strip along the river bank admeasuring 22 bighas and 3 biswas. This was a stony piece of land and used to get flooded every year during monsoons and often got

washed away and reduced in size by river erosion year by year. This land was reclaimed by us and protected by an embankment and filling from the river side.”

The said letter further states as under:

“Similarly on the river side part of our leased land there used to be floods and erosion every year. If we would have let this continue, the leased land would have also got reduced every year. In order to protect our leased land and to save damage to our hotel property, we

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at our own considerable expense and cost built stone and wire-mesh -crated embankment all along the river bank. This not only protected our hotel land but also the forest land...

In 1988 there were severe floods when every portion of leased land got washed away. It became imperative for us at considerable expense to build an embankment on the river front along the leased property. In order to build an embankment on the river front along the leased property the washed away area and part of the river bank had to be filled at huge cost. Once the river bed and the washed away area was filled, the choice before us was either to put soil on it and grow grass and trees to secure it or let it remain unsecured and aesthetically displeasing. We chose the former. As a result of land-filling and embankment our leased area when measured will obviously show an increase. This increase is not an encroachment but reclamation with the objective of protecting the leased property."

**10.** In the letter dated 7-8-1993 addressed to the Divisional Forest Officer, the Motel again asked for lease of adjoining area. The relevant part of the letter is as under:

"We had explained in our previous letters dated 21-6-1993 and 23-7-1993 (copies of which have been sent to you with our letter dated 5-8-1993) the circumstances under which we had to spend enormous sum of money in protecting and reclaiming the forest land adjoining our Resort. It had become necessary for us to undertake this reclamation and protection work by filling the land from the river bed, constructing embankments, retaining walls and crating etc. in order to protect the land leased by the Government to our Span Resort and property thereon but we were unable to complete the entire work as we were restrained from carrying on with the work under undue allegations of encroachment on the forest land...

In order to expedite the process of commencing protection work on an urgent basis on the forest land, we propose that the forest land be given to us on long lease coterminous with the lease of the land granted by the Government for our Span Resorts. This could be done by a supplementary lease as it is imperative to save the land under the original lease.

All we have done is to reclaim and protect the land from erosion by constructing crates, retaining walls and embankments along River Beas

by investing huge amounts which unfortunately have all been washed

away due to floods and now requires reconstruction to save the forest land and our adjoining property from total destruction.”

**11.** The Government of India, Ministry of Environment and Forests by the letter dated 24-11-1993 addressed to the Secretary, Forest, Government of Himachal Pradesh, Shimla conveyed its prior approval in terms of Section 2 of the Forest (Conservation) Act, 1980 for leasing to the Motel 27 bighas and 12 biswas of forest land adjoining to the land already on lease with the Motel. A lease deed dated 11-4-1994 regarding the said land was executed between the Himachal Government and the Motel. The additional affidavit filed by the Motel refers to the prior approval granted by the Government of India as under:

“In the Ministry of Environment and Forests, the proposal was cleared by the Secretary and forwarded to the Forest Advisory Committee bypassing the Minister concerned. The Forest Advisory Committee cleared the proposal subject to severe restrictions — and also certain restrictions which are not normally imposed in such cases. The proposal was then cleared at the level of the Prime Minister and by a letter of 24-11-1993, approval was communicated to the State Government and SMPL.”


**12.** It may be mentioned that Mr Kamal Nath was the Minister-in-charge, Department of Environment and Forests at the relevant time. What is sought to be conveyed by the above-quoted paragraph is that Mr Kamal Nath did not deal with the file. The correspondence between the Motel and the Himachal Government referred to and quoted by us shows that from 1988 the Motel had been writing to the Government for the exchange/lease of the additional forest land. It is only in November 1993 when Mr Kamal Nath was the Minister, in charge of the Department that the clearance was given by the Government of India and the lease was granted. Surely it cannot be a coincidence.

**13.** This Court took notice of the news item — quoted above — because the facts disclosed therein, if true, would be a serious act of environmental-degradation on the part of the Motel. It is not disputed that in September 1995 the swollen Beas engulfed some part of the land in possession of the Motel. The news item stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future floods. In the counter-affidavit filed by the Motel, the allegations in the news item have been dealt with in the following manner:

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“(l) If the works were not conducted by the Company, it would in future eventually cause damage to both banks of the river, under natural flow conditions.

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(m) By dredging the river, depth has been provided to the river channel thus enhancing its capacity to cope with large volume of water.

(n) The wire crates have been put on both banks of the river. This has been done to strengthen and protect the banks from erosion and NOT as any form of river diversion. It is not necessary to divert the river because simply providing greater depth and removing debris deposits enhances the capacity of the river to accommodate greater water flow.

(o) I further state that the nearly 200 metres of wire crates which have been put on the left bank of the river (the river bank on the opposite side of SPAN) is in the interest of the community and nearby residents/villages. This left bank crating protects the hillside where RANGRI, CHAKKI and NAGGAR are located.

(s) After the floods, it was observed, that the boulders and rubble deposits were obstructing and hindering the flow of the river and thus, it was the common concern of the Company as well as of the Panchayat of Village BARAGRAN BIHAL to carry out dredging measures to provide free flow of the river water.

(t) Accordingly alleviation measures conducted by the Company and the villagers of BARAGRAN BIHAL were as under:

(i) *Dredging of debris deposit* : Debris deposits in river basin which had collected due to the floods were removed by dredging. This deepens the channel and thus allows larger flow of water.

(ii) *Strengthening of both banks with wire crates* : Wire crates are the common method of protection of bank erosion. Accordingly wire crates were put along the opposite side (left bank) to protect the landslide of the hillside wire on which Village RANGRI is perched, Wire crating was also put on the Resort side of the river (right bank) to strengthen and protect the bank against erosion. All the wire crating runs along the river flow and not as an obstruction or for any diversion.

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(w) It is further submitted that whereas the report mischievously

refers to villagers of Rangri, Chakki and Naggar nowhere does it take into account the very real problems of villagers of Baragran Bihal which is located immediately on the right bank near the SPAN Resort who were seriously affected by the floods. Chakki, Rangri and Naggar villages have not at all been affected by the floods and there is no remote possibility of these villages being affected due to the flood-protection works conducted by the Company."

In the additional affidavit filed by the Motel the facts pleaded are as under:

"(ii) it had become necessary for them to undertake this reclamation and protection work by filling the land from river bed, constructing embankments, retaining walls and crates, etc. in order to protect the land leased by the Government to the Resort and the property thereon.

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(vii) The forest land which is susceptible to heavy river erosion by floods involves high cost for its protection from getting washed away every year and would be protected by construction of embankments and filling from the river side by the Company. ... local community of Kullu and Manali and surrounding villages will benefit."

**14.** Mr G.D. Khachi, Under Secretary (Revenue), Government of Himachal Pradesh in the counter-affidavit filed in this Court stated as under:

"(iii) That subsequently, a piece of land measuring 21-09 bighas was encroached by M/s Span Motels. On coming to the notice of the Government of such encroachment, the Government of Himachal Pradesh in Revenue Department took action and reportedly got the encroached land vacated, and the possession of which has been taken over by the Forest Department.

That on 21-22 July, 1992, the then Chief Secretary to the Government of Himachal Pradesh visited the site who drew the inference that M/s Span Motels Ltd. were still using the encroached land. The copy of note on inspection of the then Chief Secretary is annexed as R-1.

That immediately on receipt of the recommendations of the then Chief Secretary (Annexure R-I), the Department of Forest started working at the site but in the meantime, it was decided to lease out a piece of land measuring 27-12 bighas which includes the said

encroached land measuring 21-09 bighas. The lease granted by the Government of Himachal Pradesh in Revenue Department vide letter No. Rev. D(G)6-53/93, dated 5-4-1994 is annexed as Annexure R-II after obtaining the approval of Government of India, Ministry of Environment and Forest, New Delhi vide letter No. 9-116/93-ROC, dated 24-11-1993 (copy annexed as Annexure R-III) for the purpose of protecting earlier leased land.

That the developmental activities which was being undertaken by M/s Span Motels Ltd. came to the knowledge of the Government from the news item which appeared in the Press and field officers of all the departments concerned took an exercise to carry out the inspection and reported the matter to the Government.”

**15.** C.P. Sujaya, Financial Commissioner-cum-Secretary (Irrigation and Public Health), Government of Himachal Pradesh in her counter-affidavit filed in this Court, inter alia, stated as under:

“Admitted to the extent that the Span Resorts management had deployed heavy earth-moving machinery to reclaim their land and to divert/channelise the course of river to its course which it was following prior to 1995 floods by dredging and raising of earthen and wire-crated embankments.

The flow of river has been changed/diverted by dredging/raising of wire-crated embankments and creating channel from a point u/s of Span

Resorts to d/s of Span Resorts. The approximate length of channel is about 1000 metres.

Admitted to the extent that Villages Rangri and Chakki are located on left bank of River Beas. However, channelization of river has been done slightly away from the toe of foothills except for the last about 500 metres where it is running along the foothills.

The hill on which Villages Rangri and Chakki are situated consists of small boulders embedded in sandy strata and is quite fragile/unstable in nature. Therefore, this reach of river is prone to landslides in the normal course also. However, it is feared that flow of river along the foothills may hasten/aggravate the process of landslides. The Span Management has provided wire-crated embankment in a reach of about 90 metres on left bank and about 270 metres on right bank to channelise the flow and also to reclaim part of land on right bank of River Beas.

Admitted to the extent that the diversion/channelization of river has been done to restore it to its course of pre-1995 floods and in doing so, by raising the earthen and wire-crated embankments, some land of villagers situated on right bank of River Beas has also been reclaimed along with land of Span Resort.”

**16.** This Court by the order dated 6-5-1996 directed the Central Pollution Control Board (the Board) through its Member Secretary to inspect the environments around the area in possession of the Motel and file a report. This Court further ordered as under:


“Meanwhile we direct that no construction of any type or no interference in any manner with the flow of the river or with the embankment of the river shall be made by the Span Management.”

**17.** Pursuant to this Court's order dated 6-5-1996 the Board filed its report along with the affidavit of Dr S.P. Chakrabarti, Member Secretary of the Board. It is stated in the affidavit that a team comprising Dr Bharat Singh, Former Vice-Chancellor and Professor Emeritus, University of Roorkee, Dr S.K. Ghosh, Senior Scientist and former Head, Division of Plant Pathology (NF), Kerala Forest Research Institute, Peechi, Trichur and Dr S.P. Chakrabarti, Member Secretary, Board was constituted. The team inspected the area and prepared the report. Para 4.2 of the report gives details of the construction done by the Motel prior to 1995 floods. The relevant part of the paragraph is as under:

“To protect the newly-acquired land, SMPL took a number of measures which include construction of the following as shown in Fig. 2:

- (a) 8 nos. studs of concrete blocks 8 m long and 20 m apart on the eastern face of the club island on the upstream side,
- (b) 150 m long stepped wall also on the eastern face of club island on the downstream side,

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(c) A 2 m high bar of concrete blocks at the entry at the spill channel, and

(d) Additional 8 nos. studs also 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the SMPL.

While (a) & (b) were aimed at protecting the club island from the main current, (c) was to discourage larger inflow into the spill channel. Item (d) was meant to protect the main resort land of SMPL if heavy flow comes into the spill channel.

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The works executed in 1993 were bank protection works, and were not of a nature so as to change the regime or the course of river. A medium flood again occurred in 1994. Partly due to the protection works, no appreciable damage occurred during this flood. The main current still continues on the left bank.”

**18.** The happening of events in the vicinity of the Motel during the 1995 flood and the steps taken by the Motel have been stated in the report as under:

“A big slip occurred on the hillside on the left bank, at a distance about 200 m upstream from the point where division into main and spill channels was occurring, on the afternoon of September 4, 1995. This partially blocked the main left side channel which was relatively narrow at this location. This presumably triggered the major change of course in the river, diverting the major portion of the flow into spill channel towards the right and almost over the entire land area of the club island. The entire club building and the plantation as well as the protection works built in 1993 were washed away. Heavy debris was deposited on this land. Damage occurred on the right bank also but the buildings of the main SMPL resort remained more or less unaffected. A large hotel and many buildings on the right bank, almost adjacent to SMPL in the downstream were also washed away. The bar of blocks at the upstream end of the spill channel as well as most of the studs on this channel were also washed away. Some remnants of five downstream studs could be seen at the time of the visit. After the passage of 1995 flood, SMPL have taken further steps to protect their property as shown in Fig. 3. These are as follows:

1. The left side channel (the main channel), which had become less active, has been dredged to increase its capacity. Wire crate revetments (A, B & C) on both banks of this channel have been made to direct the flow through this channel. These revetments and earth restoration work done would curtail the entry of water into the right side relief/spill channel which had developed into the main channel during the flood. A relatively small channel (the relief/spill channel) still exists and carries very little flow. Bulk of the flow is now going into the left bank channel.

On the left bank, there are steep unstable slopes at higher elevations left after the slides during the flood. These are likely to

slip in any case, and if so happens, may block the left channel again. This land belongs to some villagers from Rangri. The left bank channel

is again sub-dividing into two streams (D) and the small stream is flowing close to the toe of the hills for a distance of about 500 to 600 m before it turns towards midstream. Some of the dredged material is piled on the right bank and some on the divide between the main channel and the subsidiary channel on the left. Slips can be seen in this reach of 500-600 m even now, and erosion at toe may aggravate sliding tendency. SMPL has also put 190 m wire crates (C) as protection against erosion of this bank, which may be helpful up to moderate flood conditions.

The dredging and channelisation of the left bank channel, though aimed at protecting SMPL land, should normally keep high intensity of flow away from both banks in moderate floods. This should thus not be a cause of concern. In high floods, the water would spill or spread beyond this channel. Due to restriction of entry in the right relief/spill channel, though the works may not withstand a high flood, there may be a tendency for more flow towards the left bank. However, the river is presently in a highly unstable regime after the 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future."

The conclusion given by the inspecting team in the report are as under:

"6.4 M/s Span Motels Private Limited had taken some flood-control measures at the immediate upstream by construction of wire crates (Fig. 3) on both sides (A, B and C) and also dredged the main channel of the river by blasting the big boulders and removing the debris. The flood-control measures, taken by them on the right bank of the main channel and at the mouth of relief channel after the 1993 flood, were also washed off. There is no sign of any boundary of the premises of the newly-acquired land.

6.5 The mouth of the natural relief/spill channel has been blocked by construction of wire crate and dumping of boulders (A & B). The area has almost been levelled. Although a little discharge was observed due to seepage through boulders and flowing through the remnants of the relief channel to the downstream, the channel is blocked by a stonewall across the channel (F) at the downstream of M/s SMPL by a private property owner who has even constructed two wells (E) on the bed of the channel. This indicates the intention of the occupiers of the right bank properties in the concerned stretch in favour of filling up of the natural spill/relief channel.

6.6 M/s Span Motels has not consulted any Flood Control Expert as it appeared from the way of construction of the wire crate. No proper revetment was done while crating. As such, these cratings may not last long.

6.7 In the process of channelising the main course, the main stream has been divided into two, one of which goes very near to the left bank (G) because of which fresh land slip in future is not ruled out.

6.8 The relief channel is supposed to be the government land. Construction of any sort to block the natural flow of water is illegal and no permission has been taken from the department concerned.

6.9 The lease agreement of 1994 had the clause for protection of the land but it should have been done not by blocking the flood spill/relief channel.

6.10 Relief channel is the shortest path between the two bends. Any future slip on left bank due to training of discharge at its foot may cause flood on the right bank where the leasehold land (1994) exists.

6.11 No new construction should be allowed in this flood-prone area except flood-protection measures. No economic activity should be undertaken in the aforementioned stretch.

6.12 Since newly-acquired land of M/s SMPL is located on the flood plain sandwiched between the main channel and the relief/spill channel, the land may be de-leased and the Forest Department take care of plantation in the area after adequate flood-control measures are taken by the Irrigation Department. This is necessitated in view of the fact that the left bank opposite SMPL is very steep (almost vertical) and is subjected to potential threat of land slip to block the channel and cause change of course of the river flow again.

6.13 Even if land slips occur, the impact will be local, limited only to the stretch of Beas River near SMPL.

6.14 The river is presently in a highly unstable regime after 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future. A long-term planning for flood control in Kullu Valley needs to be taken up immediately with the advice of an organisation having expertise in the field, and permanent measures shall be taken to protect the area so that recurrence of such a heavy flood is mitigated permanently."

**19.** On a careful examination of the counter-affidavits filed by the parties, the report placed on record by the Board and other material placed on record, the following facts are established:

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1. The leasehold area in possession of the Motel is a part of the protected forest land owned by the State Government.

2. The forest land measuring 27 bighas and 12 biswas leased to the Motel by the lease deed dated 11-4-1994 is situated on the right bank of the river and is separated from the Motel by a natural relief/spill channel of the river.

3. A wooden bridge on the spill channel connects the main Motel land and the land acquired under the 1994 lease deed.

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4. 22.2 bighas out of the land leased to the Motel in 1994 was encroached upon by the Motel in the years 1988/89.

5. Prior to the 1995 floods the Motel constructed 8 studs of concrete blocks 8 m long and 20 m apart on the upstream bank of the river, 150 m long stepped wall on the downstream side of the river and 2 m high bar of concrete blocks at the entry of the spill channel and additional 8 studs 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the Motel.

6. After the 1995 floods the Motel has dredged the left side channel (the main channel) of the river to increase its capacity. Wire crate revetments on both banks of the main channel of river have been made to direct the flow through the said channel. This has been done with a view to curtail the entry of water into the right side relief/spill channel.

7. The Motel has constructed 190 m wire crates on the bank of the river (upstream). The dredged material is piled up on the banks of the river. The dredging and channelising of the left bank has been done on a large scale with a view to keep high intensity of flow away from the Motel.

8. The dredging of the main channel of river was done by blasting the big boulders and removing the debris.

9. The mouth of the natural relief/spill channel has been blocked by wire crates and dumping of boulders.

10. The construction work was not done under expert advice.

11. The construction work undertaken by the Motel for channelising the main course has divided the main stream into two, one of which goes very near to the left bank because of which, according to the report, fresh land slip in future cannot be ruled out.

**20.** The report further indicates that the relief channel being part of

the natural flow of the river no construction of any sort could be made to block the said flow. According to the report no permission whatsoever was sought for the construction done by the Motel. The Board in its report has further opined that the clause in the lease agreement for protection of land did not permit the Motel to block the flood spill/relief channel of the river. The report categorically states that no new construction should be allowed in this flood-prone area and no economic activities should be permitted in the said stretch. It has been finally recommended by the inspection team that the land acquired by the Motel under the 1994 lease deed is located on the flood plain, sandwiched between the main channel and the relief/spill channel and as such it should be de-leased so that the Forest Department may take care of the plantation in the area and also preserve the ecologically fragile area of River Beas.

**21.** Mr Harish Salve vehemently contended that whatever construction activity was done by the Motel on the land under its possession and on the area around, if any, was done with a view to protect the leasehold land from floods. According to him the Divisional Forest Officer by the letter dated

12-1-1993 — quoted above — permitted the Motel to carry out the necessary works subject to the conditions that the department would not be liable to pay any amount incurred for the said purpose by the Motel. We do not agree. It is obvious from the correspondence between the Motel and the Government, referred to by us, that much before the letter of the Divisional Forest Officer dated 12-1-1993, the Motel had made various constructions on the surrounding area and on the banks of the river. In the letter dated 30-8-1989 addressed to the Divisional Forest Officer, Kullu — quoted above — the Motel management admitted that “over the years, and especially after the severe flood erosion last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and banjar area”. The “Banjar area” referred to in the letter was the adjoining area admeasuring 22.2 bighas which was not on lease with the Motel at that time. The admissions by the Motel management in various letters written to the Government, the counter-affidavits filed by the various government officers and the report placed on record by the Board clearly show that the Motel management has by their illegal constructions and callous interference with the natural flow of River Beas has degraded the environment. We have no hesitation in

holding that the Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river.

**22.** The forest lands which have been given on lease to the Motel by the State Government are situated at the bank of River Beas. Beas is a young and dynamic river. It runs through Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left. The river is fast-flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The right bank of River Beas where the Motel is located mostly comes under forest, the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.

**23.** The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled *An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources* published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

"Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis

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of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom;

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these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.'

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".'

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the

inform all of our social institutions.”

**24.** The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullius*) or by every one in common (*res communis*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article “*Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention*”, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — ‘perpetual use was dedicated to the public’, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

**25.** The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general

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public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

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“Three types of restrictions on governmental authority are often thought to be imposed by the public trust : first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

**26.** The American law on the subject is primarily based on the decision of the United States Supreme Court in *Illinois Central Railroad Co. v. People of the State of Illinois*<sup>1</sup>. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands — a mile strip along the shores of Lake Michigan extending one mile out from the shoreline — to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust — for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in *Illinois Central*<sup>1</sup> “articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties”.

**27.** In *Gould v. Greylock Reservation Commission*<sup>2</sup> the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the

public interest. In 1886 a group of citizens interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorised the Commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the Tramway Authority. The

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plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:

“The profit-sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit.”

Professor Sax's comments on the above-quoted paragraph from *Gould* decision are as under:


“It hardly seems surprising, then, that the court questioned why a State should subordinate a public park, serving a useful purpose as relatively undeveloped land, to the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the State's authority to change the use of a certain tract of land.... *Gould*, like *Illinois Central*, was concerned with the most overt sort of imposition on the public interest : commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court has also confronted a more pervasive, if more subtle, problem — that concerning projects which clearly have some public justification. Such cases arise when, for example, a highway department seeks to take a piece of parkland

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or to fill a wetland.”

**28.** In *Sacco v. Development of Public Works*<sup>3</sup>, the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court found the statutory power inadequate and held as under:

“the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which the legislature provided for ... is to preserve such lands so that they may be enjoyed by the people for recreational purposes.”

**29.** In *Robbins v. Deptt. of Public Works*<sup>4</sup>, the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, “wetlands of considerable natural beauty ... often used for nature study and recreation” for highway use.

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**30.** Professor Sax in the article (Michigan Law Review) refers to *Priewev v. Wisconsin State Land and Improvement Co.*<sup>5</sup>, *Crawford County Lever and Drainage Distt. No. 1*<sup>6</sup>, *City of Milwaukee v. State*<sup>7</sup>, *State v. Public Service Commission*<sup>8</sup> and opines that “the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and to work out a reasonable meaning for the public trust doctrine than have the courts of any other State”.

**31.** Professor Sax stated the scope of the public trust doctrine in the following words:

“If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of

way for utilities, and strip mining of wetland filling on private lands in a State where governmental permits are required.”

**32.** We may at this stage refer to the judgment of the Supreme Court of California in *National Audubon Society v. Superior Court of Alpine County*<sup>9</sup>. The case is popularly known as “the Mono Lake case”. Mono Lake is the second largest lake in California. The lake is saline. It contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tufa (*sic*) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the City of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of Mono Lake were imperilled. The plaintiff environmentalist — using the public trust doctrine — filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge's request for clarification of the

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State's public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

“By the law of nature these things are common to mankind — the air, running water, the sea and consequently the shores of the sea.’ (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns ‘all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.’ ”

The Court explained the purpose of the public trust as under:

“The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in *Marks v. Whitney*<sup>10</sup>, ‘[p]ublic trust easements (were) traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to

hold that the traditional triad of uses — navigation, commerce and fishing — did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that '[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the State is not burdened with an outmoded classification favouring one mode of utilization over another. There is a growing public recognition that one of the important public uses of the tidelands — a use encompassed within the tidelands trust — is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favourably affect the scenery and climate of the area.'

Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour probably qualifies the lake as a 'fishery' under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological — the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds. Under *Marks v. Whitney*<sup>10</sup>, it is clear that protection of these values is among the purposes of the public trust."

The Court summed up the powers of the State as trustee in the following words:

"Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in

rare cases when the abandonment of that right is consistent with the purposes of the trust...."

The Supreme Court of California, inter alia, reached the following conclusion:

"The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it

demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, *Some Reflections on Environmental Considerations in Water Rights Administration*, 2 Ecology L.Q. 695, 710-711 (1972); Comment, 33 Hastings L.J. 653, 654.) As a matter of practical necessity the State may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen v. N.D. State Water Cons. Comm'n*<sup>11</sup> at pp. 462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust."

The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.

**33.** It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case*<sup>9</sup> clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case*<sup>9</sup> to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co. v. Mississippi*<sup>12</sup> the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*<sup>12</sup> assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but

on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our

natural resources.

**34.** Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

**35.** We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

**36.** Coming to the facts of the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of the riverbed. Even the Board in its report has recommended de-leasing of the said area.


**37.** This Court in *Vellore Citizens' Welfare Forum v. Union of India*<sup>13</sup> explained the "Precautionary Principle" and "Polluters Pays Principle" as under : (SCC pp. 658-59, paras 11-13)

"Some of the salient principles of 'Sustainable Development', as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of

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Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication

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of Poverty and Financial Assistance to the developing countries. We are, however, of the view that 'the Precautionary Principle' and 'the Polluter Pays Principle' are essential features of 'Sustainable Development'. The 'Precautionary Principle' — in the context of the municipal law — means:

- (i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

'The Polluter Pays Principle' has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*<sup>14</sup>. The Court observed : (SCC p. 246, para 65)

'... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country'.

The Court ruled that : (SCC p. 246, para 65)

'... Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on'.

Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas'. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such

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polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land.”

**38.** It is thus settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts.

**39.** We, therefore, order and direct as under:

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1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.

2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated 24-11-1993 and the lease deed dated 11-4-1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original-natural conditions.

3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.

4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.

5. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated 29-9-1981. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.

6. The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect

the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.

8. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report by 17-12-1996. To be listed on 18-12-1996.

**40.** The writ petition is disposed of except for limited purpose indicated above.

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<sup>†</sup> Under Article 32 of the Constitution of India

<sup>1</sup> 146 US 387 : 36 L Ed 1018 (1892)

<sup>2</sup> 350 Mass 410 (1966)

<sup>3</sup> 532 Mass 670

<sup>4</sup> 244 NE 2d 577

<sup>5</sup> 93 Wis 534 (1896)

<sup>6</sup> 182 Wis 404

<sup>7</sup> 193 Wis 423

<sup>8</sup> 275 Wis 112

<sup>9</sup> 33 Cal 3d 419

<sup>10</sup> 6 Cal 3d 251

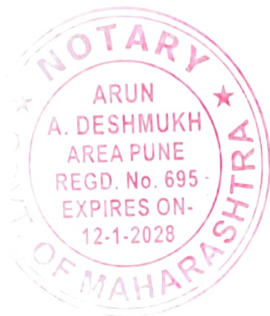
<sup>11</sup> 247 NW 2d 457 (ND 1976)

<sup>12</sup> 108 SCt 791 (1988)

<sup>13</sup> (1996) 5 SCC 647 : JT (1996) 7 SC 375

<sup>14</sup> (1996) 3 SCC 212 : JT (1996) 2 SC 196

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disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH, PUNE

M.A. No. 11 / 2024

IN

ORIGINAL APPLICATION NO. 139 / 2024

Alpesh Desai ... Applicant

v.

State of Gujarat & Ors. ... Respondents

AFFIDAVIT BY THE APPLICANT IN SUPPORT OF HIS SUBMISSIONS

I, Alpesh Desai, the applicant in the present case do hereby state on solemn affirmation as under –

- 1. I have filed my written submissions in support of the case.
- 2. The said submissions may be considered part and parcel of this affidavit. They are not reproduced here to avoid repetition.
- 3. I am swearing this affidavit in support of the said submissions.

Whatever is stated above is true and correct to the best of my knowledge, ability, and belief and I affirm it to be true.

Place – PUNE

Date – 08/10/2024



*Alpesh Desai*

Alpesh Desai

Applicant

**BEFORE ME**

*A. A. Deshmukh*  
08/10/2024

**A. A. DESHMUKH**  
NOTARY STATE OF MAHARASHTRA  
PUNE  
REG NO. 695



**NOTED AND REGISTERED**  
**AT SERIAL NUMBER** 610/2024