

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

IN THE MATTER OF:

H.P. RANJANNA

...APPELLANT/APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

INDEX

Sr. No.	Particulars	Page No.
1.	Written note on arguments on behalf of Respondent no. 11 and 12	1-10
2.	ANNEXURE A True copy of order dated 02.03.2020	11
3.	ANNEXURE B The Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lokmarch & Ors. [2020 SCC Online SC 572]	12-49
4.	ANNEXURE C Keystone Realtors Pvt. Ltd. Vs. Shri Anil V Tharthare & Ors. (2020 (2) SCC 66)	50-60
5.	ANNEXURE D Forward Foundation vs. State of Karnataka (Original Application No. 222 of 2014)	61-98
6.	ANNEXURE E Mantri Techzone Pvt Ltd. Vs. Forward Foundation (2019 SCC Online SC 322)	99-118

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Place: New Delhi:

Date: 26/08/2020

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WRITTEN NOTE ON BEHALF OF RESPONDENT NO. 11 AND 12

MOST RESPECTFULLY SHOWETH:

1. That Survey No. 61/2, 62 and 63/2 of Kasavanhalli Village, Varthur Hobli, Bengaluru East Taluk, Bengaluru, pertains to the Project Proponent i.e. Respondent No. 11 and 12 herein (hereinafter referred to as 'the property'). Construction of the building "*Godrej Reflection*" started only after obtaining all the necessary approvals. The Project Proponent was granted the following permissions:

Sl No.	Approval required to be obtained	Authority/Board	Date of procurement
1.	Registration of Khata in the name of Wonder Projects Development Pvt Ltd.	<u>BBMP</u>	07.01.2016
2.	Amalgamated Khata	<u>BBMP</u>	20.10.2016
3.	NOC from Airport Authority of India	AAI	20.10.2016
4.	NOC from Bharat Sanchar Nigam Limited	BSNL	26.12.2016
5.	Government Order for Change of Land use from Industrial (Hi-Tech) to Residential As per the Revised Master Plan 2015 the Said Properties falls under Industrial (Hi-tech) zone	UDD - Urban Development Department	24.10.2017
6.	BDA Order- Change of Land Use for Change of Land use from Industrial (Hi-Tech) to Residential	Bangalore Development Authority (BDA)	08.12.2017
7.	Approval for Construction of Drain from Executive Engineer - post approval from Commissioner of BBMP	<u>Storm Water Drain Department of BBMP</u>	02.08.2017
8.	<u>NOC from Fire and Emergency services - Phase -1 (Godrej Reflections) (Pg 664 - 665 of the documents filed by Respondent No. 7)</u>	Department of Fire and Emergency Services	22.12.2017
9.	<u>Environmental Clearance</u> from Ministry of Environment and Forests (EC) (Pg. 40-51 of the documents	Ministry of Environment and Forests (MOEF)	10.01.2018

	filed by the Appellant, also at Pg. 463-472 of the documents filed by KSPCB)		
10.	NOC from Bangalore Electricity Supply Company	Bangalore Electricity Supply Company (BESCOM)	31.01.2018
11.	Relinquishment Deed for Block 1 and 2, relinquishing the Park and Open space Area	Bangalore Development Authority (BDA)	17.02.2018
12.	Development Plan approved by Bangalore Development Authority (Pg 270 of the documents filed by Project proponent on 19.05.2018)	Bangalore Development Authority (BDA)	07.03.2018
13.	Registration of RERA (Real Estate and Regulation Act) for Godrej Reflection as per Section 4(2)(d) of RERA Act, Sanction Plan approved from Competent Authority needs to be filed before obtaining RERA certification. Project Proponent have uploaded Development Plan dated 07.07.2017 to RERA for obtaining the approval, which was accordingly, granted	Real Estate and Regulation Act (RERA)	29.03.2018
14.	NOC from Fire and Emergency services - Phase -1 (Godrej Lake Gardens) (Pg 666 - 710 of the documents filed by Respondent no. 7)	Department of Fire and Emergency Services	20.04.2018
15.	Building Plan approval from Bruhat Bangalore Mahanagara Palike – Godrej Reflections - but <u>the application was made on 27.11.2017</u> (Pg 436 of the documents filed by Project proponent on 07.02.2019)	<u>Bruhat Bangalore Mahanagara Palike (BBMP)</u>	<u>30.08.2018</u>
16.	<u>Consent for Establishment from Karnataka Pollution Control Board, whereas the Project Proponent started construction of “Godrej Reflection” only in April 2019 and the construction of “Godrej Lake Gardens” has still not commenced.</u> Further, condition 46 of the building license provides that the NOC form KSCPCB needs to be submitted by the Developer within 30 days from the date of sanction, which was done by Project Proponent. Hence CFE is not mandatory for obtaining building license. (Pg 429 of the documents filed by Project proponent on 07.02.2019 as well as Pg 495 of documents filed by KSPCB)	<u>Karnataka Pollution Control Board (KSPCB)</u>	<u>12.10.2018</u>

18.	NOC from Bangalore Water Supply and Sewerage Board (Pg 442 of the documents filed by Project proponent on 07.02.2019)	Bangalore Water Supply and Sewerage Board (BWSSB)	30.10.2018
19.	Registration of RERA (Real Estate and Regulation Act) for Godrej Lake Garden, Refer Section 4(2)(d) of RERA Act	Real Estate and Regulation Act (RERA)	25.05.2019
20.	Building Plan approval from Bruhat Bangalore Mahanagara Palike – Godrej Lake gardens	<u>Bruhat Bangalore Mahanagara Palike (BBMP)</u>	28.05.2019
21.	Civic Amenities Site Building Plan Approval	Bangalore Development Authority (BDA)	29.11.2019

2. Post obtaining all the approvals, the Project Proponent commenced construction on 24.04.2019. However, the Appellant herein, without any lawful grounds, and with the aim to harass and browbeat the Project Proponent, to further his malafide intent, filed the captioned Appeal. **In the captioned Appeal, all the State Authorities/ Environment Authorities supported the stand of the Project Proponent.** However, it was only Respondent No. 5 i.e. BBMP, who contradicted its own action, wherein on one hand it granted all permissions to the Project as shown in Sr. No. 1, 2, 7, 15, 20, above, and on the other hand took a stand of objecting to the Project before this Hon'ble Tribunal. It is relevant to note that BBMP gave its first approval in 2016. Thereafter, BBMP filed its objections before NGT on 05.09.2018. It is relevant to note that post this BBMP on 28.05.2019 sanctioned the Building Plan to the Project Proponent. It is relevant to note that, every Department did due diligence and gave appropriate sanctions, post which they became functus officio. However, a perusal of the above would show that that the objections of BBMP are artificially created to harass the Project proponent, as despite objecting to the Project sanctions, BBMP has not withdrawn its sanctions, granted thus far.
3. During pendency of the Appeal two Original Applications (OA) were filed by i.e. *OA No. 602/2019 pertaining to the property*, and *OA No. 281/2019 pertaining to a different property bearing Survey No. 71/1, 72/1, 72/2, 74/5B and 73* (hereinafter referred to as "another property") in the matter titled *Mahadevpura Parisaraamrakshane Mattu Abhivrudhi Samiti vs UOI*, alleging environmental non-compliance by some other party near Kaikondrahalli Lake. **It is relevant to note that the only commonality in both the OA's is that both the above properties are around the same lake called Kaikondarahalli Lake, in Bangalore City.** This Hon'ble Tribunal had on 11.03.2019 appointed Joint Committee in

OA No. 281/2019 comprising of KSPCB, BBMP and BDA to survey another property/project bearing Survey No. 71/1, 72/1, 72/2, 74/5B and 73. Another Joint Committee came to be constituted by this Hon'ble Tribunal vide order dated 19.07.2019, in OA No. 602/2019 comprising of CPCB, SEIAA, KSPCB and MoEF & CC, specifically to survey 'the property'.

4. The Joint Committee in OA 281 of 2019, filed its report with this Hon'ble Tribunal, *which had no bearing or relevance with the property*. However, on 03.02.2020, Appeal No. 54/2018 and OA 602 of 2019 got listed along with OA 281 of 2019, before this Hon'ble Tribunal. *It is apparent from the records that no report of the Joint Committee constituted in OA No. 602/2019 qua the property, was filed before NGT*. A perusal of page 24 of the report filed in OA 281/2019, would show that "As there is a separate OA 602/2019 on this project, the same will be inspected by the Committee as per the Order dated 19.07.2019 and separate report will be submitted by the Committee." This inspection in OA 602 of 2019, was done by the Committee, on 05.02.2020 giving a separate report.
5. However, before the report in OA 602 could be filed, this Hon'ble Tribunal, while relying on the false representation of the Appellant and Respondent No. 5, passed an order on 03.02.2020, cancelling the Environment Clearance granted to the Project Proponent.
6. Aggrieved by the same the Project Proponent filed a Civil Appeal before Hon'ble Supreme Court bearing no. 1713/2020. On 02.03.2020, the Hon'ble Supreme Court issued notice on the Appeal and directed the Joint committee constituted in OA 602/2019, to file its report before the Registry of the Hon'ble Supreme Court. True copy of the order dated 02.03.2020 is annexed as **ANNEXURE A**.
7. It is interesting to note that the Joint Committee inspected the site on three occasions i.e. on 26.07.2019, 30.12.2019 as well as on 05.02.2020 (i.e. after passing of the order dated 03.02.2020), wherein the officials of BBMP (Respondent no. 5) were also present, for inspecting the project site, as is evident from a bare perusal of **Pg. 15, 16 and 18** of the Report wherein BBMP cooperated with the Committee and did not raise any objections about the environmental compliance of the Project.
8. Finally, on 14.07.2020 the said Joint Expert Committee filed its report with the Hon'ble Supreme Court. The Report categorically and conclusively cleared 'the Project' as environmentally compliant and fulfilling all conditions of EC granted

on 10.01.2018. As such vide judgment dated 11.08.2020, the Hon'ble Supreme Court set aside the impugned order on the ground that this Hon'ble Commission never had the opportunity to go through the report, while passing the impugned order, and remanded the matter back to this Hon'ble Tribunal to decide the dispute upon taking into consideration the Joint Committee report submitted in OA 602/2019.

9. It is submitted that the Joint Committee of experts was constituted in OA 602 of 2019 for inspecting the property. Subsequently, *by order dated 29.07.2019, the MoEF was also added to be a part of the Committee to give wider representation and credibility to the Committee.* It is respectfully submitted that OA 281 of 2019 cannot be compared or brought within the ambit of analysis of the Committee report arising out of OA 602 of 2019. It is an undisputed and admitted position that OA 281 itself says that it does not cover the project in question and that the said project is covered by a separate committee, constituted and formed under OA 602. Therefore, OA 281 itself rules out its report from being evaluated while analyzing the report filed under OA 602. *The report filed by the said Joint Committee is based on scientific and technical inputs/ evidence of environmental experts who studied the issue, made site inspections and only thereafter furnished its report. Thus, it cannot be said that the constitution and report of the experts in OA 281 of 2019 and OA 602 of 2019 are in conflict with each other.* Reliance in this regard is placed on para 81 the judgment passed by the Hon'ble Supreme Court in "*The Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lokmanch & Ors.*" [2020 SCC Online SC 572], which is annexed as ANNEXURE B.
10. A perusal of the Joint committee report (consisting of MoEF & CC, CPCB, KSPCB, BBMP-SWD Department, Assistant Director Land Records, as members who furnished their reports) would highlight the detailed nature in which the experts of environment matters/ State Authorities have dealt with every single allegation of the Appellant.

Report-page no.	Details as per Affidavit of Compliance filed by KSPCB before Hon'ble Supreme Court
page 3	<ul style="list-style-type: none"> • Residential Project have not encroached upon or have been constructed in wetlands or Rajakaluves • The construction is being carried out as per modified sanction plan of BBMP leaving Buffer Zones and Drains • The Construction is in accordance with the approved drawings • Adequate space is earmarked with green belt and holding surface run off rain as per EC condition stipulated in KSEIAA
page 9	<i>Godrej has covered only 22.63% of the area against the max permissible</i>

	<p><u>are of 55%.</u></p> <p><u>Further page 35 (of the report) 53.26% of the total are is available for green belt which is more than the required 43%. Thus, complying with SEIAA condition.</u></p>
Page 11 & Page 33	All the approvals have been procured by Godrej. A list of the same can also be found from Pg 10-12 of the Report
page 14	Concludes that the land utilization is considered as residential use.
page 14	Godrej has obtained confirmation letter of Change in Land Use from BDA on 08.12.2017 for change of land use from Industrial (Hi-Tech) use to Residential use.
page 17	Mentions about the existence of a temporary structure of 2500 sq.ft. which is used as a site office
page 22 & 23	Gives a detailed chart of Godrej complying with the Buffer Zone norms not only as per the judgment of Forward Foundation vs. State but also as per Mantri Techzone vs. Forward Foundation.
page 24	Provides a table highlighting permitted activities in the buffer zone, as per RMP 2015, which includes the existence of 8 mtr driveway, and STP.
page 25 & page 34	States that BBMP has given approval to Godrej to construct U-type RCC drain
page 28	The property is not in Wetland in terms of the definition of International Union for the Conservation of Nature and Natural Resources (IUCN), as well as from the Ramasar Convention. The Report also states that property in question also does not fall under the category of Eco-sensitive Zone
page 32 and page 29	EC issued by SEIAA dated 10.01.2018 mentioned the total built up area as 1,28,193.9 sq. mtrs.sq. mtrs., the proposed project consists of 2 residential blocks. The report further records that the number of units have been reduced to 625 while comparing with EC. Now the total built up area is 1,25,663.06 sq. mtrs.sq. mtrs. Accordingly, the total built up area of the project is less than 150000 sq. mtrs. The Report further records that the EC approved by SEIAA is right as per the threshold limit. As per CFE granted by KSPCB the total built up area of the projects is 1,28,193.9 sq. mtrs. Even as per BBMP's sanction plan dated 28.05.2019 the net built up area is 1,25,663.06 which is much less than the permission granted under EC to construct sq. mtrs.
page 36 and page 37	The Joint Committee at Page 36 records that the Proponent is submitting compliance report on EC and CFE conditions to MoEF & CC and KSPCB. At Page 36 the Committee further records that Environmental Clearance and Consent for Establishment have been granted based on verification of information and documents available on records as per relevant Acts and Rules. Further the said land is not eco-fragile/ wet land and the said land has been classified as Industrial Hi-Tech under the BDA Revised Master Plan (RMP) 2015. Accordingly, the Project Proponent has obtained change of land use from Industrial (Hi-Tech) to Residential. At Page 37 the Committee records that the residential projects in question has not encroached upon or have been constructed on the wetlands and Rajkaluves. The construction is carried out as per the Modified Sanction plan of BBMP by leaving required Buffer Zone of Lake and Drains. The construction is found in accordance with the approved drawings. Adequate space is earmarked for development of Green Belt and holding surface run-off during rain as per EC conditions stipulated by SEIAA.

Pg 53 and 53A	<p>BBMP in its separate report has opined that after verifying the spot, it shows that as per the village map two streams originate from Kasavanhalli lake and flow towards Kaikondrahalli lake. These streams flow in the Survey No. 57 and 63 and since they flow in the Kharab area of the respective survey numbers, the said drain in survey no. 63 is "<u>to be considered as a secondary drain</u>". This report further states that single line drain is spotted and the same is called agricultural drain or feeder channel, and the same ends on the Secondary drain. Since single line drain terminates at Secondary drain the said drain is a Pillu Kaluve, for which Buffer is not applicable. Since these single line drains runs in various Survey Nos., the same is treated as Tertiary Drain.</p> <p>@ Pg 53A, the report further states that the said spot was also verified with respect to RMP-2015, as per which some portion of the eastern part of the project site is marked as valley zone. On verification at spot the drain marked in RMP 2015 is not constructed, however the area earmarked for valley is kept as non-construction zone. On verification buffer at the spot from building line to the center of the valley zone is 34.55 mtrs, which is above the prescribed buffer for Secondary drain (25 mtrs).</p> <p>The said area was verified with the plan sanctioned by BBMP. As informed earlier the nala in survey no. 63 is considered to be Secondary drain. However, the building line of each of the towers is more than 50 mtrs. Away from the edge of the nala.</p> <p>Therefore, it is found that there is no violation of the Buffer area by M/s Wonder Projects and M/s Godrej Properties pertaining to storm water drains in the premises in question. Further permission obtained by Project Proponent for construction of Storm water drain is as per approved drawings.</p>
Pg 55	<p>Qua the issue of concretization by the Project proponent, the construction of RCC box type culvert is also as per the permission granted by BBMP, which has endorsed the same at Pg 55 of the report,</p>

11. With respect to the issue of the Appellant qua the Project Proponent not adhering to the EC, it is a settled position of law that in the event there is **expansion** beyond the approved EC, **only then is the Project Proponent required to obtain fresh Environment clearance**. Reliance is placed on *Keystone Realtors Pvt. Ltd. vs. Shri Anil V Tharthore & Ors.* (2020 (2) SCC 66) annexed herewith as **ANNEXURE C**. In this case, the Court observed that *EIA Notification, 2006, at para 2, imposes restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact has been assessed and approved by the grant of an EC*. The judgment in para 13 further states that the crucial point which must be noted in the said Notification is *the phrase, "expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted"*. However, **in the present case there has been no expansion but a reduction in the area granted by the EC, which is also evident from page 29 the report**. It records that EC issued by SEIAA dated 10.01.2018 mentioned the total built up area as 1,28,193.9 sq mtrs, consisting of 655 units, however, the Project Proponent have

reduced the units to 625 thereby reducing the total built up area to 1,25,663.06 sq mtrs., which is less than 150000 sq. mtrs. As such, the above action cannot be termed as an expansion. *Furthermore, by reducing the number of units, the Project proponent have endeavored to reduce the population load on the land.*

12. It is submitted that in the marking of Nala's/ Rajakaluve is done based on the revenue records. BBMP has also *notified a map on its official website in this regard*. In the present case, the classification of Nala as Primary happened based on the Village Map of the year 1904. However, when the Joint Committee inspected the site the Storm Water Department of BBMP (i.e. the relevant Authority) on verification opined that the same is in fact a Secondary Nala (Report dated 04.03.2020 (**@ Pg 53 of the Report**)). As such based on the opinion of the appropriate department i.e. Storm Water Department of BBMP, the Joint Committee accepted the conclusion of BBMP that *the streams flowing in survey numbers flow in Kharab area of respective Survey numbers and also since two streams joints together in Survey No. 57 and flow in Survey No. 63, the said drain in Survey No. 63 is to be considered as Secondary Drain.*
13. Furthermore, the allegations of the Appellant (i) that the Kharab land falls in the Nala has also been dealt with by the Storm Water Department of BBMP at Pg 53 of the Report (detailed as above). A perusal of the Village Map (**filed at Pg 18 of the Report**), would show that the Nala has been categorized as Kharab since 1904 (as is written in Kannada, in the last line), as such the allegation that Kharab land is now falling under Naia, does not hold any water; (ii) The sewage water flowing in the Nala is also falsified from the fact that the expert Joint Committee itself had visited the project in question thrice and has not reported any such illegality by the Appellant; (iii) Project Proponent has constructed the Gas Bank/LPG Tank in the Buffer Zone, is also wrong. The said Gas Bank/ LPG Tank has in fact been constructed on the valley zone (which is also as per the RMP 2015 Regulation 4.12.2, which states that any construction that does not obstruct the flow of the water is allowed, also **@ Pg. 199** of documents filed by Project proponent on 19.05.2018) and not on the Buffer Zone, which is also clear from the Report of the Joint Committee which has in fact clarified that the Project Proponent has not undertaken any construction in the Buffer Zone; (iv) Breach of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974, is a false allegation. The said provision talks about obtaining the CFE (**at page no. 429 – 435** filed by Project Proponent) before commencing construction. As per the chart of permissions provided above, the CFE was obtained on 12.10.2018, whereas the

Project proponent started construction only in April 2019; (v) Furthermore, Block 1 and 2 is also called as Tower 1 and 2, difference between tower and wing is that each individual building is considered as 1 tower and they consists of several wings which completes the tower, hence, no breach of EC; (vi) CDP of Bangalore was notified in June 2007 under the Town and Country Planning Act, wherein 'the project' was categorized as **Industrial Hi Tech (also can be seen from the Joint Committee Report @ Pg 12-14)**, further the authority had called for objections before finalizing the said CDP and executing the same, if the said land were to be considered as "wetland" objections qua the same could have been raised and recorded then and the conversion wouldn't have happened. Since no objections were received, the land was categorized as Industrial Hi Tech Zone, post which on 24.10.2017 the land was further converted into residential area by Metropolitan Commissioner, Bangalore Metropolitan Region Development Authority (BMRDA). The Project Proponent have also obtained confirmation letter of change of land use from BDA on 08.12.2017 for the change of land use from Industrial Hi-Tech use to residential use (**@Pg 14 of the Report**)

14. That the Joint Committee independently and physically visited/inspected the site and measured the distances from the lake and nalas on three occasions, and found to be in compliance with all the parameters as laid down by this Hon'ble Tribunal in the judgment of *Forward Foundation vs. State of Karnataka* (Original Application No. 222 of 2014), annexed herewith as **ANNEXURE D**, as well as the judgment of *Mantri Techzone Pvt Ltd. Vs. Forward Foundation* (2019 SCC Online SC 322), annexed herewith as **ANNEXURE E** which makes the Report of the Committee even more credible. It is relevant to note that in the case of *Forward Foundation (Supra)* this Hon'ble Tribunal provided the distance from the Rajakaluves, waterbodies and wetlands, in para 63 General conditions 1, to be maintained at 75 m: from the periphery of Lake boundary, 50 mtrs from the edge of primary Rajakaluve, 35 mtrs from the edge of secondary Rajakaluve and 25 mtrs from the edge of tertiary Rajakaluve. The judgment further recorded that the **"offending constructions raised by Respondent no. 9 and 10 such as boundary wall shall be demolished which falls within such areas"**. Pursuant thereto this judgment was challenged before the Hon'ble Supreme Court in the matter of *Mantri Techzone (Supra)*. The Hon'ble Supreme Court in **para 60-62** of the said judgment has held that the order of 04.05.2016 (the judgment of *Forward Foundations vs. State*) is hereby set aside, **except** the directions issued against Respondent No. 9 and 10 qua the **offending constructions (as highlighted above)** undertaken by Respondent No. 9 and 10 in that project. As

per the judgment of the Supreme Court, the Buffer limits were restored to 30 mtrs. from Lake Boundary, 50 mtrs. from Primary Nala, 25 mtrs. from Secondary Nala and 15 mtrs. from Tertiary Nala. As such, the position qua the buffer zone as it stood prior to the judgment of this Hon'ble Tribunal in Forward foundation (*supra*) was restored by Mantri Techzone (*Supra*).

15. It is relevant to note that the directions qua the changed buffer limits passed in Forward Foundation (*supra*) was mandated only qua Respondent no. 9 and 10 in that proceeding, as is evident from a perusal of general conditions contained in para 63 of the said judgment which states that "*Thus, we direct the distance in the case of Respondent Nos. 9 and 10 from Rajakaluves, Waterbodies and wetlands shall be maintained as below...*" *It is relevant to note that the aforesaid observation was not maintained for all the projects around Bangalore city, as can be seen from the language of the judgment.* Even otherwise, the Project proponent in the present case has not only complied with the directions of Forward Foundation (*supra*) but also with the directions of Mantri Techzone (*Supra*). (*Reliance is placed on the Joint Committee report, which was prepared by the Committee as well as BBMP, and Clause 4.12.2 (ii) of the Revised Master Plan 2015 (RMP 2015)*).
16. The aforesaid discussion would show that the Project Proponent has *kept the principle of sustainable development in mind while constructing the said project, as is evident from all the compliances done by the Project Proponent, which have also been established by the Joint Committee Report.* As such nothing survives in the present matter. The Appellant has been raising frivolous objections and Respondent No. 5 is blowing hot and cold by sanctioning the permissions and providing reports to the Committee stating that the Project Proponent is in compliance of all its conditions, and on the other hand challenging the said approvals before this Hon'ble Tribunal with the sole purpose to mislead this Hon'ble Tribunal. This clearly shows connivance on the part of Respondent No. 5 with the Appellant herein. Thus, the present Appeal is liable to be dismissed considering all the grounds as mentioned above.

FILED THROUGH:

Astha
Venancio D'Costa / Astha
Counsel for Respondent No. 11 and 12

Place: New Delhi:

Date: 26/08/2020

ITEM NO.20

COURT NO.1 SECTION XVII
S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).1713/2020

WONDER PROJECTS DEVELOPMENT PVT. LTD. & ANR. Appellant(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(FOR ADMISSION and IA No.31845/2020-EX-PARTE STAY and IA No.31846/2020-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 02-03-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s) Dr. A.M. Singhvi, Sr. Adv.
Mr. Pinaki Misra, Sr. Adv.
Mr. Joy Basu, Sr. Adv.
Mr. V. D. Costa, Adv.
Ms. Astha, Adv.
Mr. Himanshu Sharma, Adv.
Ms. Gauri Goel, Adv.
Mr. Kanak Bose, Adv.
Mr. Faisal Sherwani , AOR

For Respondent(s) Mr. P.S. Patwalia, Sr. Adv.

Mr. Abhimanue Shrestha, AOR*

Mr. Hetu Arora Sethi, AOR
Mr. Darpan K.M, Adv.
Mr. Rahul Jain, Adv.

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

Issue notice both on the present appeal as also on the application for *ad interim ex parte* stay.

As prayed for, the respondents may file their respective reply affidavit within a period of ten days. Rejoinder affidavit, if any, be filed by the appellants within one week thereafter.

List the matter after three weeks.

In the meantime, the report in O.A. No.602/2019 shall be filed in the Registry of this Court.

Validity unknown

Digitally signed by
SANJAY KUMAR-II
Date: 2020.03.02
17:42:08
Reason

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

TRUE COPY

Civil Appeal No. 6932 of 2015

(Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch

2020 SCC OnLine SC 572

In the Supreme Court of India

(BEFORE ROHINTON FALI NARIMAN, S. RAVINDRA BHAT AND V. RAMASUBRAMANIAN, JJ.)

Civil Appeal No. 6932 of 2015

**Director General (Road Development) National Highways Authority of
India ... Appellant(s);**

Versus

Aam Aadmi Lokmanch and Others ... Respondents.

With

C.A. No. 5971 of 2019

C.A. No. 4379 of 2018

C.A. No. 2741 of 2020

(Arising out of Diary No. 19018 of 2018)

C.A. No. 6862 of 2018

C.A. No. 2742 of 2020

(Arising out of SLP (C) No. 28178 of 2018)

C.A. No. 11803 of 2018

C.A. No. 2743 of 2020

(Arising out of SLP (C) No. 1706 of 2019)

C.A. No. 2744 of 2020

(Arising out of Diary No. 1632 of 2019)

Civil Appeal No. 6932 of 2015, C.A. No. 5971 of 2019, C.A. No. 4379 of 2018, C.A. No. 2741 of 2020 (Arising out of Diary No. 19018 of 2018), C.A. No. 6862 of 2018, C.A. No. 2742 of 2020 (Arising out of SLP (C) No. 28178 of 2018), C.A. No. 11803 of 2018, C.A. No. 2743 of 2020 (Arising out of SLP (C) No. 1706 of 2019) and C.A. No. 2744 of 2020 (Arising out of Diary No. 1632 of 2019)

Decided on July 14, 2020

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.:— Leave granted in SLP (C) Nos. 28178/2018, 1706/2019, Diary No. 19018 of 2018 and 1632 of 2019. With consent of counsel for the parties, they were tagged with the companion civil appeals and heard finally.

2. On 06 June, 2013, when Ms. Vishakha Wadekar, was driving her car with her young daughter, Sanskruti Wadekar she had no inkling that danger lurked round the corner of the highway; over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter. The directions made by the Pune bench of the National Green Tribunal, on an application by a registered organization, (the respondent in the appeal, the Aam Aadmi Lokmanch, hereafter "Lokmanch") are the subject matter of the appeals (CA 6932/2015 by NHAI; CA 5971/2019; CA 11803/2018 and CA 6862/2018) before this court. The other appeals by special leave question the judgments and orders of the Bombay High Court, which upheld the regulations framed pursuant to the order of the NGT. The High Court negated the challenge to those regulations in the writ petitions presented before it.

3. The facts in brief are that the National Highways Authority of India (hereafter "NHAI") had entered into an agreement with M/s P.S. Toll Road (Pvt.) Ltd., a unit/undertaking of Reliance Infrastructure Ltd. (which is arrayed as the ninth respondent; PS Toll Road (Pvt.)


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Ltd. hereafter referred to as "the concessionaire") on 10.03.2010 for the maintenance and operation of the Pune-Satara section of National Highway No. 4, to an extent of 140 kms. The scope of the agreement included construction of the project (i.e. the highway stretch) as well as its operation and maintenance for a period of 24 years. The agreement included stipulations mandating safety to the highway users (clause 18.1.1). The NHAI was duty bound to appoint experienced safety consultants for carrying out safety audits of Project Highways (clause 18.1.2), the expenditure for which was to be borne by the concessionaire (clause 18.1.3). An elaborate highway monitoring mechanism was also contemplated by the agreement (clause 19.1) through which by the seventh of each month, an independent engineer was to furnish a report after due inspection (of the operation and maintenance arrangements), containing defects or deficiencies (clauses 19.2). Additionally, the independent engineer was to require the concessionaire to carry out specified tests for confirming that the highway was operated in accordance with applicable standards (clause 19.3). Other stipulations included, *inter alia*, requirements that the concessionaire had to carry out remedial measures (Clause 19.4.1) within a period of 15 days after receipt of the report of the independent engineer. The concessionaire was put to terms in that if relevant repairs or remedial measures were not undertaken, the NHAI could recover damages in terms of Clause 17.8.1. Another obligation cast on the concessionaire was to send a periodic report of various occurrences, including "unusual occurrences on the Project Highway" such as death or injury to any person (clause 19.6), any obstruction, or "flooding of Project Highway".

4. In the meanwhile, the fifth respondent (who has filed CA 5971/2019 against the NGT's order, hereafter referred to as "Rathod") on 03.01.2011 applied to the Government of Maharashtra for a license to extract minor minerals. This license was sought in respect of land bearing survey number 112A to look more to an extent of 5 acres and 93 cents. The license was granted by the appropriate authority of the government. By clause 1 of the terms of this license, the period of the license was two months; clause 5 stated that for extraction and minor minerals digging, work could not exceed more than 20 feet down side of the land surface.

5. Apparently soon after the license was taken over, certain demands were made regarding construction of a connecting road to the village. The materials on record by way of letters written to the local panchayat are to the effect that as a result of construction of the highway and due to the passage of time the existing road had been washed away. Consequently, the 2 km stretch from the left side of the new tunnel going up to the village was virtually non-existent. The panchayat requested that the road should be strengthened and widened.

6. On 31.01.2011, the local authorities of the State government issued a show cause notice to Rathod alleging that debris were stored illegally on the site. It was alleged that this was contrary to Section 48 of the Maharashtra Land Revenue Code, 1966 (hereafter "land revenue code"). Again, on 16.06.2011, the local panchayat issued a notice (which is on the record) stating that as a result of mineral extraction, the natural flow of rainwater was being obstructed. The notice also added that two heavy machines in non-performing condition were lying idle on the land and two JCB machines were also stationed there. Rathore evidently received these notices; this is attested by his replies to the Tehsildar and other local authorities. After obtaining a report from the local officials, the Tehsildar, Bhore issued an order directing payment of Rs. 1,271,200 by Rathod for violation of the land revenue code on account of illegal extraction and use of minor minerals.

7. This activity of excavation and piling of debris, did not go unnoticed on the part of NHAI; it wrote to the Collector of Pune, pointing out that:

"...large scale and indiscriminate excavation in the upper side hills of New Katraj Tunnel at both ends is in progress. Due to this excavation, drainage system above and near tunnel has been affected. This may lead to seepage of water inside tunnel roof thereby collapse of walls and ceiling of tunnel resulting in collapse of tunnel and may lead to major mishap. The collapse in tunnel will block the entire traffic of NH4 from Mumbai/Pune to Bangalore and vice versa leading to chaotic situation."

8. The letter also mentioned specifically that Rathod had been notified; it sought action from the state government.

9. In the early hours of the morning of 6th June, 2013, due to the monsoon, there was heavy rainfall at Mauje Shindewadi Tehsil, Bhore and the surrounding areas. Water flowing through the hills at Mauje Shindewadi entered the road near the octroi post of the Pune Municipal Corporation, at Mauje Shindewadi Tehsil Bhore, District Pune, on NH-4, with great force. This created an obstacle in the form of a large sheet of water. Under these conditions, when the Alto car driven by Vishakha Wadekar and her daughter Sanskruti, was obstructed, they alighted to wade across to safety; however, the water gushed with great intensity and swept them away, resulting in their death. The resulting magisterial inquiry under Section 176, Code of Criminal Procedure resulted in a report dated 04.10.2013. The Sub-Divisional Magistrate who inquired into the incident appointed an expert, whose report was considered; he also visited the site and held several hearings. During the hearings, pursuant to notices issued to various parties, the statements of Rathod, the local police authorities, eyewitnesses (Abhay Arvind Ranade, Vineet Vasant George and relatives of the deceased), the Project Director (General Manager) of NHAI, the team leader of the independent engineering firm associated with checking quality of maintenance of the highway, etc. were recorded.

10. Soon after the incident, the Lokmanch, through its president, filed an application under Section 14(1) read with Sections 16 and 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act"), seeking mandatory injunction to restore natural contours at the foot base of the hill that had been destroyed by Rathod. Besides, general relief by way of directions to other respondents to take necessary action for the protection of hills from destruction and for maintaining foot base design of the hills in the natural survey was sought.

11. The material produced before the NGT by the State of Maharashtra in the form of an affidavit revealed that large scale destruction of hills by individuals and concerns who had been given short term mining licenses, had occurred. According to the affidavit, there were 62 cases, and in many cases "hill-cutting" was resorted to by developers. The state had apparently imposed fines and penalties for these illegal activities.

12. The NGT, in its impugned order, commenting on the role of Rathod, held as follows, while justifying the imposition of liability upon that respondent:

"It appears from the record that land Survey No. 112, is owned by the Respondent Nos. 5 and 6 and their family members. There are hills in the said land. They illegally cut hills without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. Acts of the Respondent Nos. 5 and 6 made the area of hill fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. At many places, the hill cutting is noticed prior to and after the pathetic incident and now inquiry is undertaken by the concerned revenue officials."

13. Thereafter, the NGT based on its reasoning that the regulation of some activities, especially involving anything affecting hills has to be strictly regulated, directed as follows:

"12. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area, which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:

Hill - noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.

The wordbook has given meaning of expression 'Hill' as follows:

231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a mountain and is lower in elevation. Hills rise less than

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305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.

Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock."

13. Draft Development Control Regulation Plan (DCR) of Pune is yet not approved by the PMC or Government. The cutting of hill by the Respondent Nos. 5 and 6, created destruction to render a part of land useless, including development thereof for plantation of trees. It goes without saying that the destruction of hill could not have occurred without connivance or at least purposeful act or omission by the Project Proponent i.e. NHA I (Respondent No. 9). It is in the affidavit of Mr. Rajeskumar Kundal, that agreement requires to take necessary steps for stoppage of illegal construction activity at Katraj hill top. However, a Notice dated 25th April, 2011, was issued to the Respondent No. 5 and copy of the same was marked to the Tehsildar, Bhore before occurrence of the incident. The Collector, Pune was requested to look into the matter. The authorities were thus, asked to take appropriate steps for stoppage of illegal activity in order to avoid major mishap and to ensure not to occur. They stated that one Mrs. Vishakha Vadekar, and her daughter died due to water flow, which gushed from the hill top and poured on the road.

14. We do not find any significant material to show that the Respondent No. 9 (NHA I) has taken reasonable steps to avoid the untoward incident. We do not find copies of the complaint made by NHA I to the authority. Assuming for a moment that such communications were made at the fag end of April, 2011, yet, it was responsibility of NHA I to persuade said authority or the higher authority about inaction after 2011. The incident of raining in which Mrs. Vishakha Vadekar and her daughter had flown away, is said to have occurred on 10th July, 2013. Obviously, the Respondent No. 9, appears to have kept silence for about two (2) years, inspite of knowledge that the work of hill cutting was going on. In our opinion, NHA I (Respondent No. 9) perhaps was likely to be impliedly benefited due to the illegal act of hill cutting due to availability of murum, stones and soil for the work for its project. The contractor of NHA I was, therefore, interested in keeping the fingers crossed.

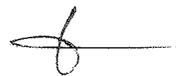
15. Considering probability and circumstances appearing on record, we have no hesitation in holding that there took place degradation of environment to large extent due to hill cutting at Katraj. We have further no hesitation in holding that the hill cutting occurred due to illegal acts of the Respondent Nos. 5, 6 and with or due to act of omission of the Respondent No. 9. They are liable to pay compensation to the legal representatives of the victims of incident in question. They are also liable to pay restitution charges and penalty for causing damage to the environment, in order to avoid such incident in future.

16. We deem it proper to give certain further directions to the concerned authority. In keeping with these findings, we direct:

17. a) The Respondent Nos. 5, 6 and 9 shall pay amount of Rs. 50 Lakhs as joint penalty imposed on them for causing environmental damage in the nearby area of Katraj, due to the hill-cutting.

b) This amount shall be deposited with Collector (Pune) within six (6) weeks, else Collector can recover the amount as arrears of Land Revenue. This amount shall be deposited by Collector in special escrow account, and the amount be spent for environmental protection and conservation activities, including hill protection and conservation in the district.

c) The Respondent Nos. 5, 6 and 9 shall jointly and severally pay amount of Rs. 15 Lakhs towards compensation to the legal representatives of deceased Mrs. Vishakha



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Vadekar, and her daughter if identity of legal representatives is proved before the Collector. The above three (3) Respondents shall immediately within four (4) weeks, deposit such amount in the office of Collector, Pune for payment to the legal representatives of deceased in the incident. The Collector may issue a publication for locating legal representatives of above deceased women for payment of compensation and pay to them compensation after satisfaction of identity of the legal representatives by making due proportion as provided under the relevant provisions of the Succession Act.

d) The Respondent Nos. 5, 6 and 9 shall also deposit amount of Rs. 10 Lakhs with the office of Collector for plantation of trees in order to restore damage caused to environment, though it may not be a sufficient remedy.

e) The Respondent Nos. 1, 2, 3, 4, 7 and 8 shall give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. So also, instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages.

f) In case of emergency or public purpose, the Hill cutting may be done by the concerned office of the Collector/Commissioner by passing a reasoned order or if so required by Law as provided under the Environment (Protection) Act, 1986 and the Regulations thereunder."

14. Rathod, the NHA and three other appellants (Patel India Pvt. Ltd., Fern Constructions (India) Ltd. and D.B. Realty Ltd.) have preferred appeals against the impugned order of the NGT; their grievance is from the general directions issued in the impugned order, implicating buildings near hills.

15. In the second set of matters, i.e. the appeals by special leave, the facts are that acting on the directions of the NGT, the State of Maharashtra invoked its powers under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and directed, by a notification/circular dated 14.11.2017 that development (relating to construction) was impermissible in an area abutting hills up to 100 feet.

16. By the impugned common judgment, the High Court held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. The court further held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune. It was also observed that:

"In Regulation 2 we have the definitions and as far as Part II is concerned, that is general planning and building requirements. Regulation 11.1 says that no piece of land shall be used as site for construction of building if the site is hilly and having gradient more than 1:5. Thus, these stipulations are already in place. What the National Green Tribunal brought to the notice of the authorities is indiscriminate cutting of hills in the Katraj Ghat. This unauthorized construction by breaking of hills resulted in an accident. That is why the NGT directed that on hill tops and hill slopes and the portion at the foot of the hill and surrounding 100 feet, no construction activity should be permitted and no development permission be issued and such directions be issued to the Municipal Corporations and Municipal Councils. Bearing in mind that there are in place legal provisions restricting the development activity on hill top and hill slope zones, all that the NGT and this Government Resolution directs is that in cases where there has already been a permitted development activity within 100 feet of the hill, then, no permission for additional construction be granted nor any development be permitted by sanctioning additional Floor Space Index (FSI) or Transferable Development Rights (TDR). In the event in sanctioned development plans if area of the above nature is in buildable zone,

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then, for carrying out development in such zone and while granting individual development permissions, an area of 100 feet surrounding the hills should be demarcated as non-buildable. It can be used as open space, road etc. We are surprised that an order and direction of the NGT traceable to and in accordance with the planning law it challenged before us. Further, the directions of the State Government, which are but reiteration of the existing regulations, are under challenge. The impugned Government Resolution is in consonance with the provisions of the MRTP Act and the constitutional mandate enshrined in Article 21 and 48 thereof.

24. We are not in agreement with Dr. Sathe, Mr. Godbole and Dr. Saraf that merely because such directions are issued in exercise of the powers conferred by sub-section (1) of section 154, the development Plan for the limits of the Municipal Corporations, namely Pune and Mumbai is altered or modified. We are also not impressed by their argument that by such a Government Resolution, a modification is brought about in the Development Control Regulations and all this is without recourse to the specific powers conferred by the MRTP Act. In other words, these are bypassed and by a Government Resolution, the above stand amended. In that regard our attention has been invited to the provisions in the MRTP Act enabling modifications or changes in the Development Plan and the procedure prescribed in that behalf.

25. We do not see any modification to the plan being brought about by the subject Government Resolution. If at all, the directions therein complement the provisions of the Development Control Regulations for the cities of the Mumbai and Pune or the concerned Municipal Corporation/Municipal Council areas. As it is, there was no permission to construct buildings other than a electric sub-stations, water works etc. on hill tops. As far as these slopes are concerned, by their very nature, a hill slides down and if the slope is steep, then, no construction activity can be carried out. There is no guarantee or assurance that any construction activity in such areas would be able to withstand a landslide or accidents, resulting from erosion of the hills on account of natural reasons. It is experienced that human intervention is necessarily not responsible for a landslide, mudslide etc. On account of natural causes and calamities, such events can occur. Apart from that, the occurrence increases because of human intervention including a construction activity carried out at the foot of the hill or on top thereof. It is also possible if the hill is cut from its sides indiscriminately. It is also possible if there is damage to a hill while extracting minor minerals. The hill then becomes uneven. Then, it is not possible to prevent any calamity. Hence, in-order to take care of the natural calamities and which have occurred in various places in the State of Maharashtra recently and also on account of unrestricted and unregulated breaking and cutting of the hills resulting in accidents endangering human life and safety that these supplemental directions have been issued. If they are for efficient administration of the Act and if they subserve larger public interest, then no fault can be found with the Government Resolution. Each of the operative directions, namely, serial Nos. 1, 2 and 3 of this Government Resolution subserve this object and purpose. If the Government Resolution has been issued after the attention of the Government has been invited to an accident in Katraj Ghat occurring due to unauthorized and illegal cutting of hills, then, it is not as if the State Government has construed it as a command or a binding order and issued the subject Government Resolution. The attention of the State Government being invited to such illegal and unauthorized so also uncontrolled, unregulated and unrestricted hill-cutting, that in order to prevent the same, the Government stepped in. It took recourse to its power conferred by section 154 of the MRTP Act in order to prevent future occurrences of this nature. If accidents and calamities can be prevented by timely intervention of the State Government in this manner, then, we do not think that on the specious and unsubstantiated pleas of the petitioners, we should strike down the Government Resolution."

17. The NHA in its appeal contends that the NGT fell into error in issuing sweeping directions against it without considering that was no evidence to establish that it was in any way responsible for the degradation of the environment, which led to the tragedy. It is urged by Senior Counsel Mr. P.S. Narasimha that the NGT's findings are contrary to



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established facts and have also resulted in grave miscarriage of justice. He highlighted that there was no material on record to establish that the NHAI was in any way culpable or had failed to perform a public duty or neglected to avert a foreseeable calamity. Elaborating on this, it was urged that the illegal mining activity was not carried on within the right-of-way or the carriageway of the highway. What occurred was the result of an act of God, i.e. extremely heavy rains, which resulted in flooding on the highway caused entirely on account of the debris collected which acted to obstruct the smooth flow of water.

18. It was highlighted that in any case, the NHAI could not be held responsible or made liable for the occurrence which led to the tragedy. Mr. Narasimha also argued that the NGT did not return any finding that the construction of the highway was in any way contrary to environmental clearances or permissions secured by the NHAI. Therefore, the findings of the Tribunal in so far as they pertained to the neglect or alleged omission of the NHAI, were contrary to law. He urged that the findings were illogical and irrational, and deserve to be set aside.

19. The NHAI also highlights that it wrote letters to the local administration on 24.04.2011 and 15.07.2011, seeking its intervention on account of the illegal mining and activities and hill destruction, for which Rathod was responsible. However, the State government did not take any action. Likewise, Rathod did not take any remedial steps or cease the activity. The resultant tragedy entirely on account of the omissions of the state's authorities to take action and the neglect and culpable negligence on the part of Rathod, was the cause of the tragedy and the events which led to the loss of two lives. It was also emphasized that the direction to pay compensation was contrary to legal principles and undermined the law. It was argued that neither the NHAI nor its concessionaire had any control over the activities of the state, which granted the mining licences. Rathod, the licensee, had continued illegal mining in the vicinity causing the accumulation of debris. This in turn, resulted in the obstruction of a culvert which resulted in collection of a large volume of water. A huge sheet of water gushed out into the highway, sweeping away the car, tragically resulting in the death of two individuals. It was argued that in these circumstances, the NHAI could not be saddled with the responsibility of either paying damages to the dependents and legal representatives of the deceased nor could it be made liable to restore the environment through the payment of Rs. 50 lakhs or any part of it.

20. Rathod urges that the NGT's findings against him are contrary to law. He argues that the NGT did not implead those who had standing, i.e. the legal representatives of the deceased; in fact, they had filed a civil suit, claiming compensation against him, as well as the NHAI and the state, for alleged negligence and tortious liability. In those proceedings, the court is bound to record evidence and render findings based on the facts. The NGT could not thus have unilaterally, based on a one-sided view of the materials, held that he was liable.

21. It was submitted that the allegation that Rathod was primarily responsible for degradation of the hill, which clogged the culverts and water channels, resulting in the tragedy, was contrary to the facts. Mr. Vijay Verma, counsel for Rathod, relied on some portions of the magisterial report to say that the NHAI had the report of an independent engineer, who had pointed to certain deficiencies on the part of the concessionaire. Therefore, to hold him responsible for the tragedy, and direct him to pay a huge sum of Rs. 15 lakh and further pay amounts towards environmental damage, was unwarranted.

22. It was argued that the NGT could not have issued directions with respect to payment of any sums, in the absence of any application by the legal representatives of the deceased. It is further argued in Rathod's appeal that apart from issuing notice for recovery of amounts towards alleged illegal mining, neither the state authorities nor the NHAI took any positive remedial action for strengthening the culvert and the catch water drains which were in disrepair, and constructed on the hill above the tunnel for drainage of rainwater. The masonry on the culvert for draining water was choked due to lack of maintenance. Such maintenance was the sole responsibility of the concessionaire and for that, the NHAI had to be held liable. It is also highlighted that Section 18 of the NGT Act mandates that the procedure established by the statute to exercise jurisdiction had to be followed. Since the


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legal heirs of the deceased had not applied to the NGT for any relief and had instead approached the civil court claiming compensation on account of wilful neglect and culpable inaction on the part of NHAI, the NGT ought to have left the matter for proper decision in accordance with the evidence led. Instead the NGT took upon itself the task of a judging the appellant as one of those responsible for the incident. It is emphasised that the mining activity carried on was in accordance with the license and if there was any irregularity that was cured on payment of fine. So far as the collection of debris which ultimately led to the overflow of water and the deaths of two individuals goes, it is argued that the proper functioning of the drainage system would have ensured that such collection of vast quantities of water would not have occurred. Therefore, the inaction of the NHAI in taking timely action and intervening with the state authorities, led to the tragic incident. The responsibility for this incident could not have been placed at the doorstep of Rathod. The actions of Rathod, it is stated were too remote and could not have been the subject of damages at all.

23. In the appeals (by special leave as well as the statutory appeals by third parties), where the grievance is on account of the directions issued by the State of Maharashtra under Section 154 of the MRTP Act, the third party appellants challenge the order of the NGT arguing that the provisions of the NGT Act, especially sections 14, and 19 do not authorise that tribunal to issue sweeping and unilateral directions requiring stoppage and cessation of all manner of building activity or developments within hundred feet of hill slopes. It is highlighted that such sweeping directions are illogical and are not based on any scientific study or analysis. It is argued that the NGT has issued general directions couched in a vague manner in para 17(e) of its order.

24. These appellants argue that the Bombay High Court also fell into error and did not appreciate that the entire basis of the Directions/Resolution of 14.11.2017 by the State of Maharashtra were the directions issued by the NGT. Highlighting various provisions of the MRTP Act, learned counsel argued that wherever development codes were formulated, they were in accordance with established principles, after following the prescribed procedure. Based upon these codes and the building regulations framed by various town planning departments, clearances and permissions/approval for development and construction were issued. It was argued that the mandatory and sweeping nature of the directions in para 17 (e) by the NGT has resulted in these directions being embodied in the impugned resolution, which has a catastrophic effect on those clearances.

25. Learned senior counsel, Mr. Shyam Divan, highlights that apart from the fact that the definition of 'hill' is vague, and even the regulations under the MRTP Act are silent in this regard, the NGT failed to consider that the impact of its directions and the impugned notification, in hilly terrains where the population is concentrated in particular areas, in small towns, semi urban and rural areas would be devastating inasmuch as all nature of buildings would be banned. It is pointed out that hill development is based upon consideration of individual local soil conditions, the stability of the surrounding terrain, etc. All these are taken into account by individual local town planning authorities when they permit or refuse permission to individual development or construction projects. The uniform adoption of the "no construction within the hundred feet area" rule, it is submitted, is completely contrary to well-established principles of town planning.

26. It is argued that the directions issued by the state government impugned in the writ petitions before the Bombay High Court, are contrary to the provisions of the MRTP Act inasmuch as they amount to supplanting provisions of the existing master plan and other development codes, which have the force of law and were framed after widespread consultations. It is pointed out that the provisions of the MRTP Act require that any change in such codes or master plans would have to be made after mandatory due consideration of objections, which are to be preceded by publication of the proposals. By directing the state government to follow the order in paragraph 17(e), the NGT in fact made directions contrary to law. It is argued that the state also acted contrary to the express provisions of the MRTP Act inasmuch as it did not follow the procedure required by the Act to change the master plan and the development codes.



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27. It is further submitted that the NGT's directions were the basis of the state government's notification. It was argued that the state government's blind adherence to these directions amounted to abdication of its duties, was in contravention of express provisions of the MRTP Act and also amounted to acting on the dictates of another authority. It was submitted that for these reasons, the impugned notification cannot be sustained. Counsel relied on the decision of this court in *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.*² to highlight that the NGT has a narrow and circumscribed jurisdiction in regard to issuing directions as well as ordering compensation.

28. The Lokmanch justified the order of the NGT and blamed the NHAI, the concessionaire, Rathod and the state government for not taking adequate and timely measures in public interest. It is alleged that proper channels were not created and maintained alongside the highway to avoid water clogging on the main carriageway. It is argued that existing water channels were extremely narrow and were incapable of handling significant volumes, and that even those channels were clogged due to construction debris which had fallen on the sides. It is pointed out that under Section 4 of the National Highways Act, 1956 (hereafter "Highways Act") "highways" include lands appurtenant thereto, all bridges, culverts, tunnels, causeways and other structures constructed on or over the highway and all fences, trees, posts, etc. The duty of keeping them in good repair, clearly was that of the NHAI and the concessionaire.

29. So far as the Rathod's role is concerned, learned counsel, Ms. Shilpa Chohan, submitted that the NGT acted well within its rights and acted within its jurisdiction in entertaining and proceeding with the application, under Sections 14 read with 16 and 18 of the NGT Act. The Lokmanch sought mandatory injunction to restore the natural contour at the foot base of the hills, particularly the hill that was destroyed by the private respondents. It was submitted that apart from the enquiry report of the magistrate/sub-divisional officer, a report was also commissioned by the NGT through the local *tehsildar*; that report dated 15.09.2014 disclosed that unauthorised hill destruction under the pretext of minor mineral extraction was widespread during 2011-2013. This report showed that as many as 62 cases of hill destruction (mostly indulged in by developers), came to light. Many of these occurred without obtaining any permit or authorisation and were plainly illegal.

30. It is argued further that the private respondents were permitted to extract minor minerals only for a short period. However, they exceeded not only the permit, but also went further and destroyed the hill for the purpose of mining minerals. This over-mining as well as hill destruction was not within the permission or the terms of the license. It is highlighted that "hill cutting" or hill destruction causes shortening of hills, poses a potential danger of soil erosion and reduces vegetation, forestry, flora and fauna, and deprives natural support to the earth, therefore ultimately posing an environmental hazard to nearby areas, including residential areas. It is argued that the destruction of hills results in the distortion of the flow of streams and rivers, which change their courses resulting in heavy loss to human life and also to flora and fauna, besides at times, destruction of property. It is submitted that the NGT's decision requiring payment of compensation was within its jurisdiction; to support this, learned counsel relied upon the provisions of Schedule II to the NGT Act, particularly referring to the heads of compensation relief for damages that can be claimed and granted, i.e. death, permanent, temporary, or total, or partial disability or other injury, damages to private property, expenses incurred by the government for any administrative or legal action, or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of the environment. It was submitted that the statutory basis for calculating these damages under Schedule II to the NGT Act is provided by Section 15, which empowers the NGT to provide relief and compensation to victims of pollution in terms of Schedule I for restitution of property, restitution of environment, and also importantly Section 17, which empowers the NGT to direct the payment of compensation on account of death of or injury to any person or damage to property, under all any of the heads specified in Schedule II, which is the result of any accident or is an adverse impact of any activity or operational process. It is submitted that there is nothing in the enactment which confines the jurisdiction of the NGT


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to adjudicate complaints, especially those relating to fatalities caused by environmental damage, to applications initiated by legal representatives or persons directly affected. It is submitted that if a particular accident or incident is so widespread as to affect an entire area, it would be well within the jurisdiction of the NGT to entertain an application made by anyone. Learned counsel highlighted the difference in phraseology between Sections 15 and 17 on the one hand, and Section 18 on the other. It is submitted that Section 18(2) clearly is without prejudice to the provisions contained in Section 16 and primary jurisdiction can be invoked by the Tribunal upon being moved by anyone in this regard.

31. Ms. Chohan cited the decision of this court in *Mantri Technoze Pvt. Ltd. v. Forward Foundation*³ to say that the NGT could legitimately issue directions which are binding on all other statutory authorities. She also relied on Section 33 of the NGT Act, emphasizing that the enactment overrides all other enactments. Reliance was also placed on the decision in *Hanuman Laxman Aroskar v. Union of India*.⁴

32. The State of Maharashtra supported the arguments made on behalf of the Lokmanch. It was pointed out that the jurisdiction to issue general directions to preserve and protect the environment, through restitution orders is found in Section 15(1)(c) of the NGT Act. It is also submitted that the power and jurisdiction to order compensation in the case of death, is independent and can be invoked in case of fatal accidents, as is evident from the provisions of Schedule II. The state further argues that the judgment of the Bombay High Court too is unexceptionable, inasmuch as it correctly appreciated and upheld the exercise of regulatory power under Section 154 of the MRTP Act. Counsel urged that the said provision was amended in 2015 and in the absence of any challenge to it, the exercise of power after due consideration of relevant factors, could not be countenanced.

The Issues

33. Four issues arise for consideration. Firstly, the jurisdiction of the NGT to award compensation; secondly the merits and soundness of the NGT's decision to award compensation and the legal principles applicable; thirdly, the NGT's wide directions with respect to the ban on construction in and around foothills and lastly, the *vires* of the directions/notifications issued under Section 154, MRTP Act.

I. Jurisdiction of the NGT

34. The relevant provisions of the NGT Act are extracted below:

"2. Definitions. — (1) In this Act, unless the context otherwise requires
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(m) "substantial question relating to environment" shall include an instance where—

(i) there is a direct violation of a specific statutory environmental obligation by a person by which—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;

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14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed

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within a further period not exceeding sixty days.”

15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,

- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
- (i) an order made, on or after the commencement of the National Green Tribunal Act,


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2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

17. Liability to pay relief or compensation in certain cases.

- (1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.
- (2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.
- (3) The Tribunal shall, in case of an accident, apply the principle of no fault

18. Application or appeal to Tribunal.

- (1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.
- (2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--
- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organisation; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

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(3) *The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.*

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29. Bar of jurisdiction.—(1) *With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.*

(2) *No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court.*

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33. Act to have overriding effect.—*The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

35. A plain reading of the above provisions of the NGT Act would reveal that the tribunal possesses two kinds of power and jurisdiction: one, primary jurisdiction under Sections 14-15, and appellate jurisdiction under Section 16. Under Section 14, the NGT has the power to adjudicate upon disputes relating to "*civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved*" relating to the implementation of "*the enactments specified in Schedule I*" [Section 14 (1)]. The other provisions [Sections 14(2) and (3)] are incidental to the primary jurisdiction under Section 14(1). Section 15, on the other hand, is couched in wide terms. Section 15 (1) provides that compensation or damages can be given by the NGT to "*victims of pollution and other environmental damage arising under the enactments specified in the Schedule I*" [Section 15 (1)(a)]; for restitution of property damaged [Section 15(1)(b)] and for restitution of the environment for such area or areas [Section 15(1)(c)]. Section 15(2) is procedural; Section 15(3) prescribes the period of limitation for applications. Section 15(4) enables the NGT to, having regard to the damage to public health, property and environment,

"divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit."

36. The enactments specified under Schedule I are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991; and the Biological Diversity Act, 2002.

37. Schedule II reads as follows:

"SCHEDULE II [See sections 15(4) and 17(1)] HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED

(a) *Death;*

(b) *Permanent, temporary, total or partial disability or other injury or sickness;*

(c) *Loss of wages due to total or partial disability or permanent or temporary disability;*

(d) *Medical expenses incurred for treatment of injuries or sickness;*

(e) *Damages to private property;*



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- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
- (g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;
- (h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;
- (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
- (j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;
- (k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;
- (l) Loss and destruction of any property other than private property;
- (m) Loss of business or employment or both;
- (n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance."

38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

39. The reference to Schedule II, in Section 15(4) is not merely by way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Schedule I. The wide language of that provision enables the tribunal (NGT) to direct, *inter alia*, payment of compensation, "having regard to the damage to public health, property and environment". This interpretation is borne out by a reading of Section 17(2) regarding the apportionment of liability for payment of compensation.

40. In the decision of this court reported as *Hinch Lal Tiwari v. Kamala Devi*², this court held that ponds constituted public utility and were meant for common use. The court held that ponds could not be allotted or commercialised, and that filling up of ponds was illegal. Recently, in *Jitendra Singh v. Ministry of Environment*³, the Court quoted and applied the observations in *Hinch Lal* (supra), in the context of an appeal directed against an order of the NGT which had summarily dismissed an application under Sections 14 and 15 of the NGT Act seeking directions to cease the filling up of ponds in the Greater Noida Industrial Development Area.

41. Long ago, in *State of Tamil Nadu v. Hind Stone*², this court made following observations:

"6. Rivers, Forests, Minerals and such other resources constitute a Nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the Regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957 ..."

42. Likewise, in *Lafarge Umiam Mining (Pvt.) Ltd. v. Union of India*³ these pertinent observations were made:

"75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the

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concepts of "sustainable development". It is equally well settled by the decision of this Court in *Narmada Bachao Andolan v. Union of India* that environment has different facets and care of the environment is an ongoing process. These concepts Rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply."

43. Recently, in *State of Meghalaya v. All Dimasa Students Union, Dima-Hasao District Committee*² this court had affirmed a part of the decision of the NGT issuing directions in respect of large-scale mining in the state of Meghalaya, on the ground that it had an adverse impact on the environment. This was despite the fact that mining and the subject of mines is not specified in the list of enactments under the first schedule. The court also approved the NGT's directions, appointing experts, to assess the impact of such mining on the environment.

44. The legal position and jurisdiction of NGT was considered by this court in *Mantri Techzone* (supra) where it was held that the NGT has "special jurisdiction" for "enforcement of environmental rights." It was held that:

"41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.

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46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP."

45. It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act." Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.

46. As noticed earlier, Section 17 (1) refers to first schedule enactments; it talks of death of, or injury to, any person "or damage to any property or environment" which "has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment" in Schedule I. One of the enactments is the Environment Protection Act, 1986 (hereafter "EPA").

47. The definition of "environment" under the EPA is wide and is an inclusive one: "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property".¹⁰ Similarly, "environmental pollutant" and "environmental pollution" are defined as follows:

"environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;¹¹

"environmental pollution" means the presence in the environment of any environmental pollutant;¹²

48. Section 3(1) of the EPA confers upon the Central Government, wide power in relation to protection of the environment:

"3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."

49. Long back, in *M.C. Mehta v. Union of India*¹³ this court recognized the potential harm to the environment caused by mining operations:

"Legal parameters

45. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the

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right to enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar [(1991) 1 SCC 598.]

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47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied."

50. Acting under the provisions of the EPA, the Central Government had issued a notification on 14.09.2006, mandating Environmental Impact Assessment (EIA) in exercise of its power under Section 3(2) of the EPA read with Rule 5 of the rules framed thereunder. In terms of this notification, environment impact assessment and clearance was necessary for different processes and industries. Mining too, was included as part of the notification; the only exception was that minor mineral leases for an area below five hectares were exempted. Clearly, therefore, the Central Government included within the purview of the EPA, major and minor mineral extraction.

51. Several irregularities were noticed over a period of time, with regard to minor mineral extraction, including sand, and there was need for introducing stringent regulations for those activities. A report of the then Ministry of Environment and Forests (MoEF, now MoEF&CC) submitted in 2010 was critical of the prevailing norms. As a result, this court and the NGT issued orders and directives making ECs compulsory for projects less than five hectares. The Central Government too initiated measures.

52. The following observations of this court were made in *Deepak Kumar v. State of Haryana*¹⁴:

"18. Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. The decision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country.

19. For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:

"4.0. Issues and recommendations

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It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises

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only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.

Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.

It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

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4.5. Requirement of mine plan for minor minerals

At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

4.6. Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals

Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

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4.8. Uniform minor mineral concession rules

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.

4.9. Riverbed mining

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

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5.0. Conclusion

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However,


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the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States."

(emphasis supplied)

20. The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

21. Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.

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28. The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.

29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly."

53. By virtue of a notification,¹⁵ environmental clearance is necessary even for minor mineral extraction where the area of operation is less than 5 hectares; the procedure has been outlined under Appendix XI of that notification. Clearly, therefore, mining of even minor minerals, when resorted to on a large scale (i.e. where more than a few leases or permits are granted), has a potential impact on the environment. In the facts of this case, the state had granted no less than 62 minor mineral permits in the vicinity; unauthorized activity (in the form *inter alia*, of over-mining and piling of debris) had resulted in the imposition of the penalty. Clearly, there was violation of the EPA in the present case, because Rathod's mining lease covered an area in excess of 5 hectares; it fell within the regulatory notification of 2006. There is nothing on record to show that the relevant

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clearance was obtained by Rathod. Plainly, therefore, the facts of the present case disclosed violation of the EPA—an enactment listed in Schedule I of the NGT Act. This meant that the NGT's jurisdiction under Section 15(1)(a) and Section 17 could not have been disputed.

54. This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land "*and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property*" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case.

II. Was the direction to pay compensation towards death, and damages towards restitution justified?

55. In the present case, the deceased were concededly travelling on the highway. The incident of flooding occurred, and was caused due to clogging of the water channels. The report of the sub divisional magistrate indicated that the Inspecting Engineer (Arvi Associates, a firm) had given a report after inspection. On behalf of the independent engineering firm appointed by the NHAI, an oral deposition was given before the sub-divisional officer. It was stated that the roadside channel and culvert from where water is disposed of, had been rendered screen blinded and a pipeline of 1.2 m diameter existed there for disposal of water. The necessity of remedial action was communicated to the concessionaire, before the occurrence of the accident. It was also stated that in terms of the instructions of the NHAI, the concessionaire was informed about the deficiency on 15.05.2013 and by a further letter dated 04.06.2013. An action plan for completing pre-monsoon work was sought from the concessionaire. However, the concessionaire did not submit an action plan despite lapse of one month.

56. The SDO's report noted that the culvert had been constructed from the new tunnel and was existing from 2004. Apparently a 1m diameter pipe was positioned in the culvert and had made a causeway. One hotel also had constructed an approach road and placed a 950 MM pipe. The existing drainage capacity of the octroi post and the hotel was insufficient due to heavy rains as a result of which rainwater was not totally drained. This water started accumulating on the road. Certain ramps were also constructed by Tata Motors for its convenience; they were removed by the concessionaire; nevertheless, the ramps were prepared again. The existing cross drainage provision was of a sub-culvert-type structure and the size at the time of the old highway was 1m x 1 m. The report further observed that the natural drainage and sides of hills of the highway was adversely affected and had been tampered with. The disposal of water on the right side overhead of the tunnel through the cross train on the old highway *via* the catch drain and subsequently the channels for the water flow were choked due to development work and adversely affected the clearance of rain water. The report indicates that after the accident on 06.06.2013, the local administration cleared the debris which had created obstacles, to facilitate the free flow of water into the catch drain culvert and further flow of water.

57. The legal position regarding highways is outlined in two enactments, i.e. the National Highways Act, 1956 ("the Highways Act") and the NHAI Act. The provisions of the Highways Act, to the extent they are relevant are as follows:

"4. **National highways to vest in the Union.** — All national highways shall vest in the Union, and for the purposes of this Act "highways" include—

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- (i) all lands appurtenant thereto, whether demarcated or not;
- (ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and
- (iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.

5. Responsibility for development and maintenance of national highways.—It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

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8A. Power of Central Government to enter into agreements for development and maintenance of national highways — (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof."

58. Section 16 of the NHAI Act spells out the functions of the NHAI; it reads as follows:

"16. Functions of the Authority.— (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government."

59. Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of the highway in question (i.e. the stretch of 140 kms on which the accident occurred). The question is whether the NHAI, which indisputably owns and controls the highway, and on whose behalf it was constructed, and for which the maintenance and operation agreement was entered into, led to a duty of care, to the users (of the highway).

60. This issue had arisen in *Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum*¹⁶ in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed the writ petition. This court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The court noticed previous English decisions¹⁷ and stated that:

"18. The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of

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tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of *volenti non fit injuria*, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time correlative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

19. Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the correlative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 192 of CPC or with leave of court under Order I, Rule 8 CPC by public-spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.

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24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority

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in creating the danger that attracts the duty of care as envisaged in *Sheppard v. Borough of Glossop* [(1921) 3 KB 132 ; 1921 All ER Rep 61, CA]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action....

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39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail. ..."

61. In the UK, the duty of a highway authority was described by Diplock L.J. in *Griffiths v. Liverpool Corporation*¹⁸ as follows:

"The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute."

62. Again, Diplock, LJ stated in *Burnside v. Emerson*¹⁹ described the duty as follows:

"in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition."

63. Later, in *Haydon v. Kent County Council*²⁰ Lord Denning M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:

"If section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical repair, so that whether in particular circumstances that duty has arisen is to be decided 'as a question of fact and degree,' it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence under section 58 has been made out. Parliament did not define those facts for the purpose of section 41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea of the amount and nature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty."

64. In *Stovin v. Wise*²¹, the defendant emerged from a side road and ran down the plaintiff, because she was not keeping a proper look-out. When she was sued for damages, the defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council, which had the duty to maintain the road should have done something to improve it. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that "Drivers of vehicles must take the highway network as they find it". It was held that statutory power could not be converted into a common law duty.

The council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had entrusted it with general responsibility for the highways and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed,

"In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised."

65. *Stovin* (supra) and its enunciation that the existence of a public duty did not *per se* extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in *Gorringe v. Calderdale Metropolitan Borough Council*²². The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in *Robinson v. Chief Constable of West Yorkshire Police*²³, which observed as follows:

"32 *At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies: see, for example, Entick v. Carrington (1765) 2 Wils KB 275 and Mersey Docks and Harbour Board v. Gibbs (1866) LR 1 HL 93. Dicey famously stated that "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen": The Law of the Constitution, 3rd ed (1889), p 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act 1947, section 2.*

33. *Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority: see, for example, Dorset Yacht Co. Ltd. v. Home Office [1970] AC 1004, as explained in Gorringe's case 2004 (1) WLR 1057, para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question: Geddis v. Proprietors of Bann Reservoir (1878) 3 App Cas 430. It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.*

34. *On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in Michael's case [2015] AC 1732, para 97, "the common law does not generally impose liability for pure omissions". This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police" [2016] CLJ 128:*

"In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger."

35. *As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm: see, for example,*

Barrett v. Enfield London Borough Council [2001] 2 AC 550 and Phelps v. Hillingdon London Borough Council [2001] 2 AC 619, as explained in Gorringe's case 2004 (1) WLR 1057, paras 39-40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body: see, for example, Smith v. Littlewoods Organisation Ltd. [1987] AC 241, concerning a private

body, applied in *Mitchell v. Glasgow City Council* [2009] AC 874, concerning a public authority.

36 That is so, notwithstanding that a public authority may have statutory powers or duties enabling or requiring it to prevent the harm in question. A well known illustration of that principle is the decision of the House of Lords in *East Suffolk Rivers Catchment Board v. Kent* [1941] AC 74. The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then "it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power] could generate a common law duty of care": Gorrings case 2004 (1) WLR 1057, para 23.

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40 However, until the reasoning in the *Anns* case was repudiated, it was not possible to justify a rejection of liability, where a prima facie duty of care arose at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including *Hill's case* [1989] AC 53. The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in Gorrings case. Since that case, a public authority's non-liability for the consequences of an omission can generally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.

41 Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function: the true question is whether, properly construed, the statute excludes the liability which would otherwise arise: see Gorrings case 2004 (1) WLR 1057, para 38, per Lord Hoffmann.

42 That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable."

66. In *Yetkin v. Mahmood*²⁴, where injury was caused to a highway user by shrubs which had overgrown and impeded visibility, the court upheld the claim for damages. The court observed as follows:

"...The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority's powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The judge held that that failure was a cause of this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the judge erred in dismissing the claim. He should have held that primary liability was established."

67. A similar approach was indicated by this court in *Municipal Corpn. of Delhi v. Sushila Devi*²⁵ (where a tree fell on a passer-by causing injury) the court upheld the findings that the municipal corporation was liable, stating that:

"**13.** By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the

defendant is liable for any injury caused by the fall of the tree (see *Brown v. Harrison* [1947 WN 191 : 63 TLR 484], *Quinn v. Scott* [(1965) 1 WLR 1004 : (1965) 2 All ER 588] and *Mackie v. Dumbartonshire County Council* [1927 WN 247]). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In *Municipal Corpn. of Delhi v. Subhagwanti* [AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect", — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable."

68. This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in *Vadodara Municipal Corporation v. Purshottam V. Muranj*²⁶.

69. The terms of the agreement which the NHAI entered into with the concessionaire clearly contemplated the safety of highway users (Clause 18.1.1) and an elaborate highway monitoring mechanism (Clause 19.1). The agreement also required any unusual occurrences to be reported; an independent engineer was required to, and did inspect the highway. The reports of the inspecting engineer reveal that the deficiencies by way of narrowing of water channels, and the unusual collection of debris, were noted. Even before the incident, the NHAI was alive to this; it had separately written to Rathod, and later to the local administration about it through its letter dated 15.04.2011. That letter is revealing; it *inter alia*, states that:

"During pre-monsoon rains all the excavated muck has been carried to NH4 along with rain water and block Satara bound traffic lane for quite some time. The problem will be severe during heavy rains of July and August.

As such safety of highway and tunnel is completely at stake due to indiscriminate cutting of hills on upper side of tunnel and both the end."

70. Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, *prima facie*, disclose their liability.

71. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this court, was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, given the gravity of the matter and the danger posed to the members of the public. The initiation

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of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. This position is clear from the proviso to Section 18(1) which reads as follows:

"Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application."

72. The above provision clearly implies that an application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs have instituted a suit. The ends of justice would be served if that suit (Special Civil Suit No. 890 of 2014 before the Court of the Civil Judge Senior Division, Pune) is directed to revive and continue it; a direction is issued to the concerned court (Court of the Civil Judge Senior Division, Pune). The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a *prima facie* determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay Rs. 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). This court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment by Rathod and NHAI of Rs. 10 lakhs too, in this court's opinion, cannot be found to be at fault. It is upheld. The NHAI and Rathod shall comply with the directions of the NGT and deposit the sum of Rs. 15 lakhs with the said court within four weeks, in equal proportion. The sum Rs. 10 lakhs shall be deposited in the same proportion, in court, to be disbursed to the state government for restoring the environment and carrying out afforestation/planting of trees etc.

Point Nos III and IV: Correctness of NGT's directions contained in Para 17 (e) of its impugned order, and the legality of the order/notification of the state of Maharashtra, issued under Section 154, MRTP Act

73. As to the third point, two issues arise for consideration - firstly, the power of the NGT to issue directions banning development and building activities of the kind contained in Para 17(e) of its impugned order, and secondly, the correctness of the procedure adopted while issuing such directions, in this case.

74. In the *All Dimasa Student Union case*²², this court considered the nature of powers and jurisdiction of NGT. The relevant discussion is as follows:

"156. What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and 16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows²³:

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157. Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What subsection (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Subsection (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of

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CPC inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:

"10-A. Commission for scientific investigations.—(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule 9."

158. Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10-A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above."

75. The court also took note of Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 (framed under Sections 4(4) and 35 of the NGT Act).²² This court then held as follows:

"160. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.

163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. CIT* [*L. Hirday Narain v. CIT*, (1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)

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164. We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case."

76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the


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nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.

78. Courts in the US, notably the US Supreme Court, have been faced with problems arising from regulatory adjudication. The scope of such decision making which resembles an adjudicatory outcome by courts, was considered in *Securities Exchange Commission v. Chenery Corp.*²⁰ This case arose from an order of the Securities Exchange Commission (SEC) refusing to approve a utility company's bankruptcy reorganization plan, due to that plan's favourable treatment of management's stock purchases during the reorganization period. The SEC originally had based its disapproval on its understanding of general corporation law principles. The Supreme Court initially struck down that decision as a misreading of the principles. On remand, the SEC reaffirmed its rejection of the reorganization plan. But this time, the SEC relied on its interpretation of the standards of the Public Utility Holding Company Act of 1935. When the Supreme Court decided the appeal for the second time, it affirmed the SEC's order. The court clarified that SEC would be allowed to establish such an interpretation by means of a particularized order rather than a general regulation and observed that:

"Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case by case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primary in the informed discretion of the administrative agency."

79. Similar observations were made by this court in *PTC India v. Central Electricity Regulatory Commission*²¹. The court stated as follows, after analysing the provisions of the Electricity Act 2003:

"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law.

50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though

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Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow."

80. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.

81. Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded-without any *rationale* and based on no scientific or technical evidence, or experts' opinion, that development and construction should not be carried out within 100 feet of a "lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops". The decisions of this court, including the *All Dimasa Students Union case* (f.n. 9); *Mantri Technoze Pvt. Ltd. case* (f.n.3); the *Hanuman Laxman Aroskar case* (f.n. 4) and the *Tamil Nadu Pollution Control Board case* (f.n. 2) all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

82. To consider the last issue, i.e. validity of the notification/direction issued by the state government, it is necessary to briefly outline provisions of the MRTP Act. The MRTP Act was framed and enacted for the purpose of use, planning and development in the regions (of Maharashtra). This was through the establishment of Regional Planning Boards, New Town Development Authorities and Special Planning Authorities, as the case may be, for specified "notified areas". The Act provides for the preparation of development plans, appointment of Special Planning Authorities for notified areas, and creation of new towns for designated areas by means of development authorities. The MRTP Act also enables compulsory acquisition of land for public purposes in respect of the plans and for purposes connected therewith. The Act provides for an elaborate procedure for preparation of the regional plan by a Regional Planning Board ("the board") and development plan by any planning authority. The board has to follow the procedure contained in Chapter II(C). Section 16 provides the procedure - the regional boards have to (after necessary survey) prepare land-use maps for the region, and prepare a draft regional plan, after which they have to publish a notice about the plan in the Official Gazette, inviting objections and suggestions from any person with respect to the draft plan. The board has to refer the objections, suggestions and representations received by it to the Regional Planning Committee ("the committee" hereafter) appointed under Section 10 for consideration and report. The committee, after giving a reasonable opportunity of being heard to the affected persons has to submit its report to the board, after which the board has to prepare the regional plan after considering the suggestions, objections and representations and the report of the committee. This is to

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be submitted to the State Government for approval. On approval of the plan by the State Government under Section 15, the final regional plan has to be published under Section 17.

83. Chapter III deals with the procedure for preparation of development plans by a planning authority. Section 23 provides that the planning authority should make a declaration of its intent to prepare such a plan and publish the same in the Official Gazette, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette. Thereafter under Section 26, the planning authority has to prepare a draft development plan, not later than two years from the date of notice published under Section 23, and publish the notice in the Official Gazette stating that the development plan has been prepared, once again inviting objections or suggestions from any person with respect to the draft plan within a period of sixty days from the notice. Section 27 provides that the planning authority having regard to, and guided by the proposals made in the regional plan, shall not carry out any modification therein without prior concurrence of the Regional Planning Board. Section 28 mandates the planning authority to consider suggestions or objections received by it under Section 26(1) and provide a reasonable opportunity of being heard to any person including the representatives of the Government who may have filed any objections or suggestions, and thereafter modify or change the plan in such manner, as provided under Section 28(4). Section 29 further provides for modification of the draft development plan, which is of substantial nature. By this, a planning authority or the Town Planning Officer is required to publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modification not later than sixty days from the date of such notice. The section then requires the authority concerned to consider all objections and suggestions received by it and give a reasonable opportunity of being heard to any person including representatives of government departments who may have filed any objections or made any suggestions in respect of the draft development plan before making such modifications or changes in the draft development plan. Section 30 requires the planning authority to submit the draft plan to the State Government for approval, within twelve months from the date of publication of the notice under Section 26 that the draft plan has been prepared. Section 31 provides that the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette, sanction the draft development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft development plan to the planning authority for modifying the plan as it may direct, or refuse to accord sanction. It further provides that where the modifications proposed to be made by the State Government are of a substantial nature, the State Government has to follow the procedure contemplated under Section 28 to give a reasonable opportunity of hearing to the objectors before finalizing the modification.

84. Section 37 confers powers on a planning authority to carry out such modification in a final development plan as will not change its character. This power could be exercised by a planning authority after publishing a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification, not later than one month from the date of such notice. This section also enjoins the planning authority to serve notice on all persons affected by the proposed modification and, after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction. Section 40 provides for appointment of a Special Planning Authority for developing certain notified areas, and Section 40(1)(c) provides that the State Government may, by notification in the Official Gazette appoint Bombay Metropolitan Region Development Authority (BMRDA) established under the Bombay Metropolitan Region Development Authority Act, 1974 to be the Special Planning Authority for developing any undeveloped area specified in the notification as a notified area. Section 116 then lays down that a Special Planning Authority shall have all the powers of a planning authority as provided in Chapter VII of the MRTP Act for the special purpose of acquisition of such land in the notified area either by agreement or under the Land Acquisition Act.

85. So far as plans and developments that were approved before the impugned

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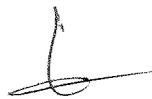
notification was issued, this court is of the opinion that they cannot be disturbed and the right of the applicants, be they developers, builders or owners of land or plots, cannot be prejudiced or adversely affected. This is evident from a ruling of this court in *7. Vijayalakshmi v. Town Planning Member*³². This court stated that town planning legislations (like the MRTP Act) are regulatory; and that when a development plan is in force during the proposal for its amendment, courts should not interfere with them on the assumption that the approved plan for building or development, would not be eventually permitted. It was held that:

"Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force."

86. This court has ruled, that even modification to an existing development plan, under the MRTP Act, under Section 37, is in the nature of a legislative function. This court had observed under *Pune Municipal Corpn. v. Promoters and Builders Assn*³³ speaking of Section 37 (1) that:

"4. Reading of this provision reveals that under clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. Deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, the Government may do so with or without modifications. The Government could impose such conditions as it deems fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.

5. Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate



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legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720], SCC paras 5 and 27. See generally H.S.S.K. Niyami v. Union of India [(1990) 4 SCC 516] and Canara Bank v. Debasis Das [(2003) 4 SCC 557 : 2003 SCC (L&S) 507].) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat [1990 Supp SCC 397].) Therefore, the view adopted by the High Court does not appear to be correct.

87. This issue was again underscored by this court in *Machavarapu Srinivasa Rao v. Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority*,³⁴ where it was held as follows, in respect of provisions of the Andhra Pradesh (Urban Areas) Development Act, 1975:

"20. An analysis of the above-noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3)."

88. In a decision which concerned change in development plan under the MRTP Act, this court observed that any changes in a development or master plan involve consultations and a high degree of expertise, in *MIG Cricket Club v. Abhinav Sahakar Education Society*³⁵:

"28. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable. We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of the State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same."

89. Now, under the provisions of the MRTP Act³⁶, regional plans and development plans have to take into account features such as soil conservation, preservation of natural features, prevention of flooding etc, while factoring planning for each city or area concerned. In turn, such regional and development plans would constitute the blueprint for local town planning authorities to grant or refuse permission to individual applicants. In these circumstances, the use of Section 154 of the MRTP Act, in the present case, in fact amounted to a modification of all plans - regional, development, etc. Such modification (by way of absolute prohibition in construction) was not preceded by any manner of public consultation, much less previous invitation of objections or consideration of the views of affected parties. It is in this background that one has to consider the argument of the state, which found favour with the High Court, that such notification was issued in public interest.

90. The unamended Section 154 of the MRTP Act read as follows:

"154 Control by the State Government

- (1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.
- (2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State


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Government on such dispute shall be final."

91. Section 154 (1) was amendment by a substitution (with effect from 22.04.2015). The new provision [Section 154 (1)] reads as follows:

"154. (1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions."

92. Directions can be issued "notwithstanding" any other provisions of the Act, "for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time." No doubt, the non-obstante clause has an overriding effect on other provisions of the Act. However, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which outline detailed procedures that have to be necessarily followed, in the absence of which, time and again courts have intervened and held that such modifications (without following prescribed procedure or without prescribed consultations) are illegal, the power has to be resorted to for good and adequate reasons. The direction, impugned in the present case, on the face of it, is not premised on any central or state government programmes, policies or projects. The impugned notification reads as follows:

GOVERNMENT OF MAHARASHTRA
URBAN DEVELOPMENT DEPARTMENT
Madam Cama Road
Hutatma Rajguru Chowk
Mantralaya, Mumbai 400032
Government Resolution No. TPS-1817/ANS-90/97/UD-13
dated 14 November 2017

The Development schemes are prepared for area in jurisdiction of planning authorities under the Maharashtra Regional Development and Town Planning Act, 1966. In the context of unauthorised constructions undertaken by hill cutting, at Katraj Ghat District Pune, the Hon'ble National Green Tribunal, Pune has, by order dated 19 May 2015 in Application Number 4/2014, issued orders and instructed to inform all Mahanagar Palik/Nagarpalika in the state not to give any development permission for constructions on the hilltop and 100 feet distance from the hill slopes. A provision already exists in development control regulations that no development is permissible on the hilltop and no hill slopes having a gradient of more than 1:5. Considering the order dated 19 May 2015 of the Hon'ble National Green Tribunal in exercise of powers under section 154 of the Maharashtra Regional Town Development and Town Planning Act 1966 the following the directions were issued to all planning authorities in the state:

DIRECTIONS

- 1. The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills upto 100 feet should be shown as No development/Open space Reservation.*
- 2. In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR.*
- 3. In the event the 100 feet area abutting hills is under No Development Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for nonbuildable purposes such as open space, road et cetera.*

In the name of and by order of the Hon'ble Governor State of Maharashtra"

93. There are several authorities for the proposition that though an administrative order


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need not necessarily comply with principles of natural justice such as granting hearing, yet, administrative decisions or orders have to be based on some reasons. In *Shri. Sitaram Sugar Mills Company v. Union of India*,³² (which concerned the zoning regulations for the purpose of levy sugar under the relevant statutory order, in terms of the Essential Commodities Act), the Supreme Court held as follows:

"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable ultra vires."

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

94. In *Ceellular Operators Association v. Telecom Regulatory Authority of India*,³⁸ this court held that subordinate regulatory legislation, can be set aside in judicial review, if they show no rationale or are arbitrary:

"62. In view of the aforesaid, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the impugned Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, would render the impugned Regulation manifestly arbitrary and unreasonable."

63. Secondly, no facts have been shown to us which would indicate that a particular area would be filled with call drops thanks to the fault on the part of the service providers in which consumers would be severely inconvenienced. The mere ipse dixit of the learned Attorney General, without any facts being pleaded to this effect, cannot possibly make an unconstitutional regulation constitutional. We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Also, the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. In the circumstances, it is not necessary to go into the appellants' submissions that call drops take place because of four reasons, three of which are not attributable to the fault of the service provider, which includes sealing and shutting down towers by municipal authorities over which they have no control, or whether they are attributable to only two causes, as suggested by the Attorney General, being network-related causes or user-related causes. Equally, it is not necessary to determine finally as to whether the reason for a call drop can technologically be found out and whether it is a network-related reason or a user-related reason."

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66. The reason given in the Explanatory Memorandum for compensating the consumer is that the compensation given is only notional. The very notion that only notional compensation is awarded, is also entirely without basis. A consumer may well suffer a call drop after 3 or 4 seconds in a voice call. Whereas the consumer is charged only 4 or 5 paise for such dropped call, the service provider has to pay a sum of rupee one to the said consumer."

This cannot be called notional at all. It is also not clear as to why the Authority decided to limit compensation to three call drops per day or how it arrived at the figure of Re 1 to compensate inconvenience caused to the consumer. It is equally unclear as to

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why the calling party alone is provided compensation because, according to the Explanatory Memorandum, inconvenience is suffered due to the interruption of a call, and such inconvenience is suffered both by the calling party and the person who receives the call. The receiving party can legitimately claim that his inconvenience when a call drops, is as great as that of the calling party. And the receiving party may need to make the second call, in which case he receives nothing, and the calling party receives Re 1 for the additional expense made by the receiving party. All this betrays a complete lack of intelligent care and deliberation in framing such a regulation by the Authority, rendering the impugned Regulation manifestly arbitrary and unreasonable."

95. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders, only underlines the lack of any application of mind on the part of the State, while issuing them.

96. For the above reasons, we hold that the impugned judgment of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14.11.2017) are hereby quashed.

97. In view of the above discussions, CA 6932/2015 and CA 5971/2019 are hereby disposed of in terms of the directions in this judgment. The other appeals by special leave by third parties, against the NGT's order, and the order of the NGT, are partly allowed in the above terms. There shall be no order on costs.

¹ In terms of Clause 19.4.2, the measure of damages which NHA1 could recover was calculable in terms of each days delay in complying with the remedial measures suggested by the engineer, based on the "higher (a) 0.5% of the Average Daily Fee and (b) 0.1% of the cost of such repair or repair estimated by the Independent Engineer" The same clause (17.8.1) stated that:

"Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this agreement and the Authority shall be entitled from such date to recover damages, to be calculated and paid for each day of the delay until the breach is cured, at the higher of (a) 5% (five percent) of Average daily fee and 1% (one percent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession. The recovery of such damages shall be without prejudice to the rights of the Authority under this agreement, including the right of termination thereof."

² 2019 SCC OnLine SC 221.

³ (2019) 18 SCC 494

⁴ (2019) 15 SCC 401

⁵ (2001) 6 SCC 496

⁶ 2019 SCC OnLine SC 1510

⁷ (1981) 2 SCC 205

⁸ (2011) 7 SCC 338

⁹ (2019) 8 SCC 177

¹⁰ Section 2(a) EPA

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¹¹ Section 2(b) EPA

¹² Section 2(c) EPA

¹³ (2004) 12 SCC 118

¹⁴ (2012) 4 SCC 629

¹⁵ No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette

¹⁶ (1997) 9 SCC 552

¹⁷ *Gorris v. Scott* [(1874) 9 Exch 125] and *Kilgollan v. William Cooke & Co. Ltd.* (1956) 2 All ER 294, CA]

¹⁸ [1967] 1 Q.B. 374

¹⁹ [1968] 1 W.L.R. 1490

²⁰ [1978] Q.B. 343

²¹ 1996 (3) All ER 801

²² 2004 (1) WLR 1057

²³ 2019 (2) All ER 1041

²⁴ 2011 QB 827

²⁵ (1999) 4 SCC 317 at page 323

²⁶ (2014) 16 SCC 14

²⁷ See f.n.9 (supra).

²⁸ "**19. Procedure and powers of Tribunal.**—(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Penal Code, 1860 and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

²⁹ The said rule reads as follows:

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

³⁰ 332 U.S. 194 (1947)

³¹ (2010) 4 SCC 633

³² (2006) 8 SCC 502

³³ (2004) 10 SCC 796

³⁴ (2011) 12 SCC 154

³⁵ (2011) 9 SCC 97

³⁶ Section 14 and 22

³⁷ (1990) 3 SCC 223

³⁸ (2016) 7 SCC 703

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66

SUPREME COURT CASES

(2020) 2 SCC

(2020) 2 Supreme Court Cases 66

2019
Dec. 3

(BEFORE DR D. Y. CHANDRACHUD AND AJAY RASTOGI, JJ.)

KEYSTONE REALTORS PRIVATE LIMITED

.. Appellant;

Versus

2-Judge
Bench

ANIL V. THARTHARE AND OTHERS

.. Respondents.

Civil Appeal No. 2435 of 2019[†], decided on December 3, 2019

Environment Law — Development Projects — Environment Impact Assessment Notification 2006, bearing S.O. 1533 — Paras 2 and 7 — Interpretation of — Objectives of EIA Notification, clarified

— Amendment of environmental clearance (EC) which had already been granted, for expansion of projects — Impermissibility of — Fresh clearance can be obtained from authorities for expansion, held, only by following procedure laid down under Para 7(ii) — Mandatory nature thereof, emphasised

— On facts held, amendment of EC for expansion of the project was impermissible — NGT direction of imposition of Rs One crore towards compensatory costs, affirmed — Expert committee to evaluate environmental impact and to suggest total compensatory costs to be imposed

— Held, EIA Notification seeks to ensure protection and preservation of environment during execution of new projects and expansion or modernisation of existing projects — It imposes restrictions on execution of new projects and on expansion of existing projects, until their potential environmental impact has been assessed and approved by grant of EC

— In a case where text of provisions require interpretation, court must adopt an interpretation which is in consonance with object and purpose of legislation or delegated legislation as a whole — EIA Notification was adopted with intention of restricting new projects and expansion of new projects until their environmental impact could be evaluated and understood — It cannot be disputed that as size of project increases, so does magnitude of project's environmental impact — Interpretation lending meaning that EIA Notification which would permit, incrementally or otherwise, project proponents to increase construction area of project without oversight from Expert Appraisal Committee or State Level Expert Appraisal Committee (SEAC), as applicable — It is not for courts to lay down bright-line test as to what constitutes marginal increase and what constitutes material increase — As EIA Notification currently stands, expansion within limits prescribed by Schedule is subject to procedure set out in Para 7(ii)

— Plain reading of second half of Para 2(ii) would indicate that it applies to cases where project was initially below threshold limits stipulated in Schedule but after the proposed expansion, would breach threshold limits — Therefore, it does not cover a case where project had already crossed lower threshold limit set out in Schedule and expansion does not cross upper limit stipulated by Schedule

[†] Arising from the Judgment and Order in *Anil Tharthare v. State of Maharashtra*, 2019 SCC OnLine NGT 876 [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 122 of 2018 (Earlier Appeal No. 9 of 2014), dt. 11-2-2019]

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KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE

67

a — Para 2(ii) must be r/w Para 7(ii) — Para 7(ii) lays down exact procedure to be followed by project proponent in case of expansion — Two crucial aspects of Para 7(ii) are: (A) it uses phrase “expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted”; and (B) qualifying language referring to breaching threshold limits “after expansion” is absent — “Expansion” can occur even after grant of EC when project first crossed the lower limit stipulated in threshold — It is not necessary for project to breach upper limit after expansion — Therefore close reading of Para 7(ii) would mean that even after obtaining EC if project is expanded beyond limits for which the prior EC was obtained, fresh application would need to be made even if expansion is within upper limit prescribed in Schedule

c — If Para 2(ii) does not cover a case where expansion is within limits stipulated by Schedule, project proponent may incrementally keep increasing size of project area over time — This would result in significant increase in project size without assessment EIA resulting from expansion — Such outcome would defeat entire scheme of EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by relevant regulatory authorities

d — There is considerable merit in observations of Committee constituted by MoEF that requirement of an EC at time of expansion forms a critical step in environmental clearance regime — It assists officials not just in evaluating and mitigating any adverse impact caused by expansion but also in assessing whether project proponent is in compliance with their existing obligations — Crucially, any form of expansion necessarily puts a strain on local environment and infrastructure and needs to be carefully evaluated in holistic manner

e — Lower limit of Entry 8(a) of Schedule is built-up area of 20,000 sq m and upper limit is 1,50,000 sq m — Environmental impact of construction of 1,50,000 sq m is drastically more than 20,000 sq m — At the time of second increase in present case, total construction area of appellant’s project enlarged from 32,395.17 sq m to 40,480.88 sq m — As result of such expansion, appellant constructed 16 addition flats which were sold at prevailing market rate — Appellant did not comply with procedure set under Para 7(ii) — It rather sought amendment to EC — Amendment to EC dated 13-3-2014 did not discuss potential environmental impact of increase in construction area — But merely records that construction area now stands at 40,480.88 sq m

f — Procedure set out under Para 7(ii) exists to ensure that where project is expanded in size, environmental impact on surrounding area is evaluated holistically considering all relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area — This was not done in case of appellant’s project — Held, it was not open to authorities to grant amendment of EC without following procedure set out in Para 7(ii)

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— As appellant had completed construction, authorities were denied ability to evaluate environmental impact and suggest methods to mitigate any environmental damage — Therefore, only remedial measures may be taken — Hence, direction of NGT to appellant to deposit Rs One crore affirmed — Expert committee constituted by NGT directed to continue its evaluation of project so as to bring environmental impact as close as possible to that contemplated in EC dt. 2-5-2013 and also suggest compensatory exaction to be imposed on appellant — Housing and Real Estate — Building/Planning Norms — Development Permission/Occupancy Certificate/NOC/Environmental NOC — Interpretation of Statutes — Basic Rules — Purposive construction/interpretation/Mischief rule/Heydon's rule — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Restitution — Disgorgement of Gains of Wrongdoer (Paras 6 and 13 to 21)

Anil Tharthare v. State of Maharashtra, 2019 SCC OnLine NGT 876, affirmed

Keystone Realtors (P) Ltd. v. Environment Department, 2016 SCC OnLine Bom 9340, cited

The appellant, a project proponent of residential redevelopment, received commencement certificate. When project commenced, area was 8720.32 sq m. As area of construction was increased to 32,395.17 sq m, the appellant applied for Environmental Clearance (EC) under Environment Impact Assessment (EIA). The State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC for total construction of 32,395.17 sq m. The appellant increased total construction area by 40,480.88 sq m. Therefore, in environmental clearance given on 2-5-2013, the appellant sought amendment. Accordingly, amendment was granted to EC dated 2-5-2013.

Respondent 1 challenged grant of amended environmental clearance before the National Green Tribunal (NGT). The appellant raised several grounds questioning maintainability of petition before NGT. The contentions raised by the appellant were rejected. The appellant approached the High Court, which held that appeal on behalf of Respondent 1 not maintainable and challenge to the environmental clearance barred by limitation. However, this dispute was transferred to Principal Bench of NGT and decided against the appellant, which is challenged in this appeal. While dismissing the appeal, the Supreme Court held as above.

G-D/63343/C

Advocates who appeared in this case :

Mukul Rohatgi, Senior Advocate (Kunal Tandan, Pranaya Goyal, Aman Raj Gandhi, Nikhil Rohatgi, Abhishek Sharma, Ms Sanjana Arora, Ms Richa Saudilya and Ms Narayani Bhattacharyya, Advocates) for the Appellant;
Aditya Pratap, Munawwar Naseem, Chirag M. Shroff, Ms Mahima C. Shroff, Ms Yashika Verma and Riya Thomas, Advocates) for the Respondents.

Chronological list of cases cited

- | | <i>on page(s)</i> |
|--|-------------------|
| 1. 2019 SCC OnLine NGT 876, <i>Anil Tharthare v. State of Maharashtra</i> | 69a |
| 2. 2016 SCC OnLine Bom 9340, <i>Keystone Realtors (P) Ltd. v. Environment Department</i> | 70d |


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KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE (*Dr Chandrachud, J.*)

69

The Judgment of the Court was delivered by

a **DR D.Y. CHANDRACHUD, J.**— The present civil appeal arises from an order dated 11-2-2019¹ of the Principal Bench of the National Green Tribunal (NGT). In its order, NGT held that the increase in the total construction area of the appellant's project was an "expansion" under a Notification (bearing number S.O. 1533) dated 14-9-2006 (EIA Notification) of the Ministry of Environment and Forests. NGT found that the appellant had undertaken an
b "expansion" as set out in Para 2 of the EIA Notification without complying with the regulatory procedure prescribed. The appellant was directed to deposit an amount of rupees one crore with the Central Pollution Control Board (CPCB). Noting that the construction at the project site had been completed, NGT appointed a five-member expert committee to study the impact of the appellant's expanded project and to suggest remedial measures.

c *The facts*

d 2. The appellant is the project proponent of a residential redevelopment, called "Oriana Residential Project" situated at CTS No. 646, 646 (Pt) Gandhinagar, Bandra (East), Mumbai 400 050. On 8-6-2010 the appellant received a commencement certificate to carry out the development and erect
e a building situated at the project property. The appellant began construction. When the construction commenced, the total construction area was 8720.32 sq m. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 sq m. Under the EIA Notification, an Environmental Clearance (EC) was necessary if the total construction area exceeded 20,000 sq m. Hence, the appellant applied for an EC under the EIA Notification.

f 3. The fourth respondent, the State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC. It is not in dispute that at the time when EC dated 2-5-2013 was granted, the total construction area of the project was 32,395.17 sq m.
g The grant of EC was conditional on the appellant obtaining a "consent for establishment" from the Maharashtra Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

h 4. By a letter dated 24-9-2013, the appellant informed the Environment Department of the Government of Maharashtra, the second respondent, that the construction area was being further increased by 8085.71 sq m, as a result of which the total construction area of the project would stand enhanced to 40,480.88 sq m. In its letter, the appellant sought an "amendment" to EC dated 2-5-2013 by the third respondent to reflect the increase in the total construction area. On 13-3-2014, the third respondent granted an "amendment" to EC dated 2-5-2013 on the ground that there was only a "marginal increase

¹ *Anil Tharthare v. State of Maharashtra*, 2019 SCC OnLine NGT 876

6
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in built-up and construction area". The third respondent noted the changes in the specification of the project as follows:

Description	As per EC dated 2-5-2013		Amendment	
FSI area	16,346.32 sq m		21,365.54 sq m	
Non-FSI area	16,048.85 sq m		19,115.34 sq m	
Total construction area	32,395.17 sq m		40,480.88 sq m	
Nos. of tenements	Members 64	Sale 61	Members 64	Sale 77
Building configuration	Member	2 Basement	Member	2 Basement

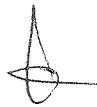
5. The first respondent, claiming to be a resident of MIG Colony, Gandhinagar, Bandra East, Mumbai, challenged the grant of the amended EC dated 13-3-2014 before the Pune Bench of NGT. In response, the appellant filed two applications, challenging the standing of the first respondent and contending that the challenge was barred by limitation. By an order dated 4-5-2016, the Pune Bench of NGT rejected the applications questioning the maintainability of the proceedings and setting up the bar of limitation. The appellant filed a writ petition before the High Court of Judicature at Bombay to challenge the decision of the Pune Bench of NGT. The Bombay High Court, allowing the writ petition held by an order dated 23-8-2016², that the appeal was not maintainable at the behest of the first respondent, and the challenge against the grant of the amended EC dated 13-3-2014 was barred by limitation. By an administrative order dated 31-7-2018, the dispute was transferred from the Pune Bench of NGT to the Principal Bench which heard the parties and delivered the impugned order.

Relevant clauses of the EIA Notification

6. The present dispute raises important questions regarding the interpretation of the EIA Notification. The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernisation of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact has been assessed and approved by the grant of an EC. Para 2 of the EIA Notification reads thus:

"2. Requirement for prior Environmental Clearance (EC): The following projects or activities shall require prior environmental clearance from the regulatory authority concerned, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

² *Keystone Realtors (P) Ltd. v. Environment Department*, 2016 SCC OnLine Bom 9340



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KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE (*Dr Chandrachud, J.*)

71

(i) All new projects or activities listed in the Schedule to this notification;

a

(ii) *Expansion and modernisation of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the sector concerned, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation;*

b

(iii) Any change in product — mix in an existing manufacturing unit included in Schedule beyond the specified range.” (emphasis supplied)

7. The Schedule to the EIA Notification classifies potential projects into Category ‘A’ and Category ‘B’ based on their size and potential environmental impact. Category ‘A’ projects require project proponents to secure an EC from the Ministry of Environment, Forests and Climate Change. Category ‘B’ projects require project proponents to secure an EC from the SEIAA, based on the recommendations of SEAC. Where a project falls within the parameters stipulated in the Schedule, Para 2 of the EIA Notification provides that no construction work shall begin unless an EC is granted in regard to three types of activity: (i) new projects or activities provided in the Schedule, (ii) expansion or modernisation of existing projects or activities provided in the Schedule, and (iii) changes in the product mix in existing manufacturing units provided in the Schedule beyond the specified range. The present dispute raises questions as to how the second type of activity, the “expansion” of existing projects, should be construed under the EIA Notification.

c

d

8. In order to secure an EC, the project proponent must submit an application in the manner set out in Form 1 and Supplementary Form 1-A (if applicable) of the EIA Notification. Under Para 7(i) of the EIA Notification, the project proponent must also submit a pre-feasibility report. However, in the case of projects under Item 8 of the Schedule, only a conceptual plan is required to be submitted. Para 7(ii) of the EIA Notification states that:

e

“7(ii) *Prior Environmental Clearance (EC) process for expansion or modernisation of change of product mix in existing projects:*

f

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernisation of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product mix shall be made in Form 1 and they shall be considered by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultation and the application shall be appraised accordingly for grant of environmental clearance.” (emphasis supplied)

g

h

Clause (ii) of Para 2 of the EIA Notification requires the project proponent to secure an EC from the relevant regulatory authority prior to undertaking any “expansion” of an existing project. Para 7(ii) further stipulates that all applications for an EC in cases of “expansion” resulting in the increase of production capacity or lease area beyond the capacity/area stipulated in the previous EC shall be made in the manner set out in Form 1 or 1-A (as applicable).

9. The appellant’s application in Form 1 acknowledges that the project fell under Entry 8(a) of Schedule 1 of the EIA Notification. Entry 8 deals with “Building and Construction projects having a built-up area of or greater than 20,000 sq m but less than 1,50,000 sq m”. Entry 8 of the Schedule to the EIA Notification is as follows:

8 — Building/Construction projects/Area Development projects and Townships			
8(a)	Building and construction projects	and $\geq 20,000$ sq m and $< 1,50,000$ sq m of built-up area	Built-up area for covered construction: in the case of facilities open to the sky, it will be the activity area
8(b)	Townships and area development projects	Covering an area ≥ 50 ha and or built-up area $\geq 1,50,000$ sq m	All projects under Item 8(b) shall be appraised as Category B1

Issue

10. In applying for the original EC, the appellant submitted an application in Form 1 as required under the provisions of the EIA Notification. The total construction area identified in the appellant’s Form 1 was 32,395.17 sq m. However, in September 2013 the appellant informed the second respondent of an increase by 8085.71 sq m as a result of which the total construction area of the project would be 40,480.88 sq m. In seeking an “amendment” to EC dated 2-5-2013 the appellant did not submit an updated Form 1. Further, the “amendment” to EC was granted by the SEIAA without the recommendations of SEAC. The issue before this Court is whether the “amended” EC dated 13-3-2014 granted by the SEIAA without following the procedure stipulated in Para 7(ii) of the EIA Notification is valid.

Submissions

11. Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant submitted that:

11.1. When construction began, the total construction area of the appellant’s project was 8720.32 sq m. As the EIA Notification requires projects with a total built-up area of or more than 20,000 sq m to procure an EC prior to the start of construction, no EC was required before construction of the appellant’s project commenced;

11.2. Pursuant to the first increase, when the appellant’s project crossed the 20,000 sq m threshold provided for in the EIA Notification, the appellant submitted Form 1 and was granted a valid EC dated 2-5-2013 by the third respondent;

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KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE (*Dr Chandrachud, J.*)

73

a 11.3. Pursuant to the second increase, the built-up area of the appellant's project only marginally increased by 8085.71 sq m to a total construction area of 40,480.88 sq m, which is within the upper limit of 1,50,000 sq m prescribed by Entry 8(a) of the Schedule to the EIA Notification. Therefore, the second increase was not an "expansion" within the meaning of clause (ii) of Para 2 of the EIA Notification and no fresh Form 1 or EC was required at the time of the second increase;

b 11.4. Clause (ii) of Para 2 only applies to situations where the project crosses the lower or upper threshold limits stipulated in the Schedule. Any increase in production capacity or construction area *within the limits* set out in the Schedule would not constitute an "expansion" within the meaning of Clause (ii) of Para 2 and does not require compliance with the procedure under Para 7(ii) of the EIA Notification;

c 11.5. The increase in the appellant's project is only marginal and does not have an adverse impact on the environment;

11.6. The SEIAA applied its mind to the appellant's request for an "amendment"; noted that the increase in construction area was only marginal and issued an amendment to the original EC dated 2-5-2013; and

d 11.7. NGT had no basis to impose the fine of rupees one crore on the appellant.

12. Joining issue with the above submissions, Mr Aditya Pratap, learned counsel appearing on behalf of the first respondent submitted that:

e 12.1. Under clause (ii) of Para 2 read with Para 7(ii) of the EIA Notification, any expansion beyond the "threshold limit" requires a fresh EC. The appellant's project had crossed the threshold limit of 20,000 sq m and the second increase of 8085.71 sq m constituted an "expansion beyond the threshold limit" and hence required a fresh EC;

f 12.2. Once a project breaches the lower threshold limit set out in the Schedule to the EIA Notification, any expansion or modernisation, even within the upper threshold set out in the Schedule, will require the submission of a fresh Form 1 and the matter to be placed before the Expert Appraisal Committee or SEAC, as applicable in accordance with Para 7(ii) of the EIA Notification;

12.3. Adopting the appellant's interpretation of Clause (ii) of Para 2 would defeat the object and purpose of the EIA Notification as a whole. It would allow project proponents to incrementally increase the construction area and over time significantly impinge on the environmental impact of the project without seeking a fresh EC;

g 12.4. If the law prescribes an act to be done in a particular manner, it must be done only in that manner and no other. Under Para 7(ii) of the EIA Notification, it was incumbent on the SEIAA to place the matter before SEAC for appraisal and recommendations; and

h 12.5. The EIA Notification is an operationalisation of the precautionary principle, which forms a part of the environmental law of India. The EIA Notification must be read in a manner which gives effect to the precautionary principle.

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Interpreting Paras 2 and 7

13. The central controversy between the parties to the present dispute is the manner in which Paras 2 and 7 of the EIA Notification should be interpreted. Clause (ii) of Para 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an “expansion”. Clause (ii) uses the phrase “expansion...beyond the limits specified for the sector concerned”. The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under Para 2. However, the above language in Clause (ii) is further qualified by the phrase “that is, projects or activities which cross the threshold limits given in the Schedule *after* expansion or modernisation”. A plain reading of the second half of Clause (ii) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (ii) of Para 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.

14. However, Clause (ii) of Para 2 must be read with Para 7(ii) of the EIA Notification. Para 7(ii) lays down the exact procedure to be followed by a project proponent in the case of an expansion. Two crucial points must be noted with respect to Para 7(ii). First, it uses the phrase, “expansion with increase in production capacity *beyond the capacity for which prior environment clearance has been granted*”. Second, the qualifying language referring to breaching the threshold limits “after expansion” is absent. An “expansion” can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of Para 7(ii) would support the interpretation put forth by the first respondent — that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within the upper limit prescribed in the Schedule.

15. The dangers effectively articulated by the learned counsel for the first respondent are real. If Clause (ii) of Para 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(a) of the Schedule is a built-up area of 20,000 sq m and the upper limit is 1,50,000 sq m. It cannot be doubted that the environmental impact of a construction of 1,50,000 sq m is drastically more than construction of 20,000 sq m. If the appellant’s argument is accepted in totality, a project proponent could potentially secure an EC for constructing 20,000 sq m and by

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KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE (*Dr Chandrachud, J.*)

75

a “amendment” steadily increase the area of construction up to 1,50,000 sq m without submitting an updated Form I or any substantive review by SEAC.

16. We note that subsequent to the EIA Notification being published in 2006, a draft notification was issued on 19-1-2009³. The draft notification proposed the following amendment:

b “In Para 2 [of the EIA Notification], after sub-para (iii), the following shall be inserted; namely:

However modernisation or expansion proposals without any increase in pollution load, and, or without any additional water and or land requirement are exempted from the provisions of this Notification:

c Provided that, a self-certification, stating that the proposals shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent.”

d 17. Prior to adopting the draft notification, hearings were conducted and written comments were solicited from various stakeholders including: (i) Central Ministries and Departments, (ii) State Governments and their Agencies, (iii) Industries and their Associations, and (iv) Civil Society including NGOs. A committee was constituted by the Ministry of Environment and Forests, Government of India which published a report in October 2009. The committee specifically recommended against the adoption of the above amendment, noting:

e “The amendments propose to exempt modernisation and expansion of projects based on a self-certification by project authorities that there is no increase in pollution load. *It is totally unacceptable that the modernisation and expansion of projects be removed from the environmental clearance regime, with or without the requirement of self-certification.* There are several industries operating in critically polluted areas or are in violation of their environmental clearance conditions, which need to be considered before the expansion of a project is considered. What is to be considered is not just whether there is an increase in pollution load but also the current impact of the project and its compliance with environmental clearance conditions. We can provide clear examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion which includes adding new components to the existing industrial operations, etc. This has allowed several projects to continue their activities and expand despite blatant non-compliance. Finally, it is only with industrial, thermal power and other such related operations that one can decide on parameters of pollution. *Development projects like highways, airports and other infrastructure projects which seek to expand might have a detrimental impact due to factors such as change in land use (i.e. construction over a wetland, grassland or agricultural land, etc.).* Despite this, the project proponent can certify that there is no change in pollution

3 Notification S.O. 195 (E) dated 19-1-2009.


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load and hence expansion is to be allowed. *The current process seeks a detailed EIA report to determine whether impacts can be mitigated. If the amendment is brought into force, it will simply do away with this critical and necessary step in the environmental clearance process.* Therefore, this amendment should not be allowed.

* * *

The draft notification takes a myopic view of environmental and social impact of modernisation and expansion. *Any modernisation/expansion projects will necessarily entail increase in production, increase in transportation, increase in pressure on the local infrastructure and local natural resources and increase in the pollution load during the construction phase.* So, even if a modernisation/expansion does not lead to an increase in the pollution load or water or land requirement within the factory premises during the operation phase, it will lead to an increase in environmental and social impact outside the premise.” (emphasis supplied)

18. The draft amendment was not adopted in subsequent amendments to the EIA Notification. We find considerable merit in the observations of the committee that the requirement of an EC at the time of expansion forms a critical step in the environmental clearance regime. According to the committee, it assists officials not just in evaluating and mitigating any adverse impact caused by the expansion but also in assessing whether the project proponent is in compliance with their existing obligations. Crucially, any form of expansion necessarily puts a strain on the local environment and infrastructure and needs to be carefully evaluated in a holistic manner.

19. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project’s environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a “marginal” increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the Government in its wisdom were to prescribe that a one-time “marginal” increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of there being a violation of

76 COPY

KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE (*Dr Chandrachud, J.*)

77

a the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in Para 7(ii).

b 20. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 sq m to 40,480.88 sq m. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under Para 7(ii) of the EIA Notification but rather sought an "amendment" to EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The "amendment" to EC dated 13-3-2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 sq m. c The procedure set out under Para 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an "amendment" to EC without following the procedure set out in Para 7(ii) of d the EIA Notification.

e 21. We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken. NGT has already directed the appellant to deposit rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the f directions of NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in EC dated 2-5-2013 and also suggest the compensatory exaction to be imposed on the appellant.

g 22. The appeal is dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

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ANNEXURE D



61

MANU/GT/0075/2016

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

Original Application No. 222 of 2014

Decided On: 04.05.2016

Appellants: **The Forward Foundation, A Charitable Trust and Ors.**
Vs.

Respondent: **State of Karnataka and Ors.**

Hon'ble Judges/Coram:

Swatanter Kumar, J. (Chairperson), M.S. Nambiar, J. (Member (J)), Dr. D.K. Agrawal, Member (E), A.R. Yousuf, Member (E) and Bikram Singh Sajwan, Member (E)

Counsels:

For Appellant/Petitioner/Plaintiff: Raj Pajwani, Sr. Adv., Megha Mehta Agrawal and Rishabh Parikh, Adv.

For Respondents/Defendant: Devraj Ashok, Adv.

Case Note:

Environment - Clearance - Violation of - Compensation - Section 20 of the National Green Tribunal Act - Present applications filed with a prayer to issue direction to Respondent No. 1, to take cognizance of reports prepared by Respondent No. 2 and 6 respectively, to take coercive and punitive action including restoration of ecological sensitive land and that valley land is to be maintained as a sensitive area with no development of any sort to keep ecologically balance of area undisturbed, which were earlier disposed with certain directions - Held, as per Section 20 of Act, it is mandates that while passing any order or decision or award Tribunal, shall apply Principles of sustainable development, precautionary principles and polluter pays principles - Therefore while applying above, Respondent No. 9 and 10 who caused environmental degradation are liable to pay environmental compensation - Considering fact that compared to Respondent No. 9, Respondent No. 10 has not commenced actual construction activity - But they have carried out various preparatory work including excavation and depositing huge quantity of earth, creating a hillock at premises and thereby caused environmental degradation - In the interest of justice Court reduce the compensation originally fixed in Main judgment and direct Respondent No. 10 to pay an environmental compensation of 3% of cost of project instead of 5% imposed - Both Respondents (Project Proponents) shall submit an appropriate plan in view of conditions imposed in present judgment and amended Environmental Clearance that would be issued. [1], [47],[60],[61],[62] and[63]

ORDER

Swatanter Kumar, J. (Chairperson)

1. The three applicants filed the application with a prayer to issue direction to Respondent No. 1, the State of Karnataka, to take cognizance of the reports dated

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12th June, 2013 and 14th August, 2013 prepared by Respondent No. 2 and 6 respectively, to take coercive and punitive action including restoration of ecological sensitive land and that the valley land is to be maintained as a sensitive area with no development of any sort to keep the ecological balance of the area undisturbed, were disposed, vide the common Judgment dated 07th May, 2015, issuing the following directions:--

"1. We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated herein after.

- a. Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
- b. CEO of the Lake Development Authority, Karnataka State.
- c. Chief Town Planner of BBMP, Bangalore.
- d. Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
- e. Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
- f. Dr. Siddharth Kaul, former Advisor to MoEF.
- g. An Senior Officer from the National Institute of Hydrology, Roorkee.

2. Member Secretary of the Karnataka State Pollution Control Board shall act as the Convenor of the Committee and would submit the final report to the Tribunal.

3. The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies, with particular reference to lakes.

4. The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of respondent Nos. 9 and 10 or by any of the projects in the area in question.

5. Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

6. The Committee shall substantially notice if any of the conditions of the

Environmental Clearance order in each case of respondent Nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

7. The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

8. Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

9. The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent Nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent Nos. 9 and 10 respectively.

10. In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.

11. Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent Nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.

12. The committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.

13. The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.

14. For the reasons stated in the judgment respondent No. 9 is liable and shall pay a sum of Rs. 117.35 Crores, while respondent No. 10 shall pay a sum of Rs. 22.5 Crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and noncompliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15. We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly."

2. Respondent No. 9 and 10 challenged the Judgment before the Hon'ble Supreme Court of India in Civil Appeal No. 4829 of 2014 and 4832 of 2015 respectively. The appeals were disposed by the Hon'ble Supreme Court of India on 20th May, 2015 holding that it would be more appropriate for the Appellants to file application before the Tribunal with a prayer to recall the order and decide afresh on merits after hearing the parties, as the Tribunal knows better as to what transpired at the time of hearing. Their Lordship held as follows:--

"One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs. 117.35 crores against original respondent No. 9 (the appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty.

Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

3. The Respondent No. 9 and 10 therein filed M.A. No. 596 of 2015 and M.A. No. 603 of 2015 respectively before the Tribunal. Relevant prayer in M.A. No. 603 of 2015 was to recall the Judgment dated 07th May, 2015 "to the limited extent of findings returned and direction issued under issue No. 5 as framed in para 19 of the Judgment and to grant an opportunity of hearing to Respondent No. 10 on the merits of the Original Application. The prayer in M.A. 596 of 2015 was also to recall the order dated 07th May, 2015, 'reconsidering and review the aforesaid order after hearing the matter afresh in the manner indicated and observations made in the order dated 20th

May, 2015 by the Hon'ble Supreme Court of India in Civil Appeal No. 4832 of 2015.' The crux of the case of Respondent No. 9 and 10 in their applications is that arguments were addressed only in respect of maintainability and limitation and not on the reliefs granted. The grievance of Respondent No. 9 and 10 was that they could not address arguments either on, their liability to pay the environmental compensation or the quantum of the compensation, if any, to be awarded. Both the applications were disposed vide order dated 06th April, 2016 as follows:--

"Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf"

4. Karnataka Industrial Area Development Board (for short 'KIADB'), the Respondent No. 7, allotted the land to Respondent No. 9 and 10 vide Notification dated 23rd April, 2004 and 07th May, 2004 respectively for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), the respondent No. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. According to the Applicant the Revenue Map in respect of properties as referred in the land lease Agreements has multiple Rajakaluves. According to the Applicant the development projects in question are on the catchment and wetland areas which feed the Rajakaluves, which in turn drain rain water into Bellandur Lake. It was alleged that the project would thus encroach two Rajakaluves of 1.38 acres and 1.23 acres each. The State Level Expert Appraisal Committee (for short the 'SEAC') in its various meetings examined the project. It required respondent No. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), Respondent No. 5. It also observed that the project lies between the above stated two lakes. Respondent No. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11th November, 2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area. The Applicant would allege that Respondent No. 9 obtained NOC from Respondent No. 5 by concealing material facts and by misrepresenting that NOC is required only for residential units, which forms a very minuscule part of the total project. Respondent No. 9 had approached the Karnataka State Pollution Control Board (for short the 'KSPCB'), Respondent No. 4 herein, for obtaining clearance which was granted on 4th September, 2012, subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. The applicant contends that the grant of consent provided with the condition that Environmental Clearance shall be obtained from the Competent Authority and no construction shall be commenced until such clearance was granted.

5. The case is that Respondent No. 9 has violated such conditions and commenced construction of the project. There was also violation of the stipulations in relation to buffer zone and construction over Rajakaluves was commenced over the ecologically sensitive area of the Lake catchment area and valley, in utter disregard to the statutory compliances. The conversion of the land from 'Protected Zone' to 'Residential Sensitive' area is violative of the law. The Project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development

activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. The Respondent Nos. 9 and 10 started leveling the land by filling it with debris, causing damage to the drains. The conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the Rajakaluves have been violated and it affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture also depends on the Bellandur Lake. The construction over the wetland between the two lakes is also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). Though in its meeting dated 29th September, 2012, State Environment Impact Assessment Authority decided to close the file pertaining to Respondent No. 9, for non-submission of requisite information and rejected the application in November, 2012; Respondent No. 10 commenced construction on the project in full swing. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A.T. Ramaswamy which stated that there were 262 water bodies in Bangalore city in 1961, which drastically came down because of trespass and encroachments. It was also affirmed that about 840 Kms. of Rajakaluves have been encroached upon in several places and now are mere sewage channels. The Hon'ble High Court appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil in Writ Petition No. 817/2008 (Environment Support Group and Another v. State of Karnataka) to suggest immediate remedial action to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore city. Other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore Metropolitan Area which recommended to maintain good water surface in Bellandur tank and also to ensure that the water is not polluted. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas. The Applicant sought the reliefs contending that the construction of respective projects by Respondents No. 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

6. The Respondent No. 9 in the reply contended that the respondent corporation was incorporated with the objective of establishing an Information Technology Park and R&D Centre with facilities such as residential complexes, parks, education centers and other allied infrastructure within a single compound. This respondent had submitted the proposal to establish such Information Technology Park and other facilities and requested the State Government to allot land for the project. It was considered in the 78th High Level Committee meeting held on 21st June, 2000 and it was approved by the government on 06th July, 2000. Before the State High Level Committee, the Respondent had mentioned that it would require 110 acres of land, 25MW of power and 4 lakh litres of water/day. The lands for the project were initially notified by the BDA, later on the lands were de-notified, vide Notification dated 10th February, 2004. Subsequently, the lands were allotted to the respondent vide letter dated 28th June, 2007. Considering the overall development of the State, respondents proposed a "Mixed Use Development Project" consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of

13,50,454.98 Sq Mtrs. The Project was conceived as a zero waste discharge project. The project is located at the Southern side of the Bellandur Lake. Towards the North, adjacent to the Project site lies vast stretch of lands belonging to the Defence. Towards the East, which is completely developed lies, the Project of Respondent No. 10 and another developer is also developing a project on the western side. The Respondent No. 9 obtained sanction plan on 4th July, 2007 which was being renewed from time to time. They obtained NOC from Airport Authority of India on 09th April, 2010, certificate from Dr. Ambedkar Institute of Technology on 15th April, 2010 and from Bharat Sanchar Nigam Ltd. (BSNL) on 16th April, 2010. Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), issued NOC on 26th April, 2011 for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited granted NOC for arranging power supply to the proposed residential and commercial building. Environmental Clearance was granted by State Environment Impact Assessment Authority; vide communication dated 17th February, 2012. NOC was issued by Director General of Police on 04th September, 2012. After grant of the Environmental Clearance the same was published in the leading newspapers "Kannada Prabha" and the "Indian Express" on 12th and 14th March, 2012 respectively.

7. The Respondent No. 9 later on modified the building plan which was approved by Respondent No. 7, vide letter dated 30th August, 2012, which was valid up to 10th August, 2014. They started the construction of the project in November, 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. The constructions were raised in accordance with the plans and conditions of the Environmental Clearance and consent orders. The Respondent No. 9 has not violated any of the conditions and has not caused any adverse impact on the ecology and environment. The allegation covering and blocking the Rajakaluves, drying the wetland and raising of the constructions thereupon adversely affecting the lake, are specifically disputed and denied. It was contended that the Respondent No. 9 has spent Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, etc. and they have availed financial assistance from various banks and financial institutions. Namma Bengaluru Foundation, Citizen's Action Forum, Koramangala Residents Association and others, on the basis of a report prepared by Professor T.V. Ramachandra, filed a Public Interest Litigation in the High Court of Karnataka (Writ Petition No. 36567-36574/2013), raising allegation that project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court did not grant any interim order as prayed. It is still pending. Meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BBMP') issued a show cause notice to respondents. The Respondent No. 9 challenged the same before the Hon'ble High Court in Writ Petition No. 366-367 of 2014 and 530-625/2014. The Hon'ble High Court stayed the operation of the show cause notice. Another notice was also issued by Respondent No. 7 directing stoppage of work on 02nd January, 2014. It was challenged by the Respondent No. 9 in Writ Petition No. 792 of 2014 and vide order dated 07th January, 2014 operation of the stay order was also stayed. In view of the pendency of the Writ Petition before the Hon'ble High Court the original application is not maintainable. They have also contended that the petition filed before the Tribunal is barred by time and as the Environmental Clearance granted was published in the newspaper on 03rd June, 2013. There is no jurisdiction to condone the delay. It was also contended that the Applicants have suppressed the facts and made mis-representation of material facts and therefore they are not entitled for any relief.

8. The Respondent No. 10 has also raised a similar plea with regard to the

maintainability of the Application. It was also contended that the conversion of land use from 'Protected Zone' to 'Residential Sensitive' in the Master Plan does not fall within the jurisdiction of the Tribunal. Respondent No. 9 submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25 acres of land around the outer ring road in Bangalore. The clearance certificate was issued on 27th March, 2004. Respondent No. 10 submitted a revised proposal for fresh clearance in respect of the same project on 31st August, 2007. The revised proposal was with the investment of Rs. 179.22 crores. The State High Level Committee had cleared the project and communicated to the respondent on 25th January, 2008. The properties are located in between Bellandur Lake and Agara Lake, but there are no primary storm water drain and secondary storm water drains that exist in the above properties. The application of the respondent seeking sanction of development and building plan in respect of the properties was allowed and as directed by Respondent No. 7, respondent deposited Rs. 1,28,56,830/-. Respondent No. 10 also obtained clearance from various authorities including NOC from Airport Services Centre, Hindustan Aeronautics Limited on 17th March, 2010, NOC from Bharat Shanchar Nigam Ltd. on 30th March, 2011, NOC was obtained from Karnataka Power Transmission Corporation Ltd. on 22nd May, 2012, NOC from Karnataka State Fire & Emergency Services on 03rd August, 2012, NOC certificate from Bangalore Water Supply & Sewerage Board, Karnataka State Pollution Control Board and State Level Environment Impact Assessment Authority were respectively obtained on 04th April, 2013, 03rd June, 2013 and 30th September, 2013.

9. The Hon'ble High Court of Karnataka did not grant any interim relief in Writ Petition No. 18119 of 2014 earlier. The respondent averred that they are entitled to develop the projects, having received all clearances. The Bellandur Lake does not support fishing activity and the source of water is for domestic purpose. No agricultural activity is carried out in such area. There is no wetland existing on the site in question. The project carried out by Respondent No. 10 in the property belonging to it has no adverse impact on environment. The ENVIS report relied upon by the applicant were prepared by persons interested in opposing the project. In any case, the said report stood superseded by the Environmental Clearance granted on 30th September, 2013 wherein Respondent No. 3 was accorded consent, after considering all the actual facts and on due application of mind. Other respondents have also raised their respective contentions.

10. On these pleadings the following issues were formulated for consideration and determination in the original judgment of the Tribunal:

1. Whether the application filed by the applicants and supported by respondent Nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?
3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?
4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?
5. What relief, if any, are the applicants entitled to? Should or not the

Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?"

11. Question No. 1, Whether the application filed by the applicants is barred by time and thus, not maintainable, was answered that it is not barred by time and the application is maintainable. Question No. 2: whether the petition as framed and reliefs claimed therein, disclose a cause of action and whether the Tribunal has jurisdiction to entertain and decide the application was answered that the application does disclose a cause of action which squarely falls within the ambit of Section 14 and 15 of National Green Tribunal, Act. Question No. 3: Whether the present application is barred by the principle of res judicata and/or constructive res judicata was answered as it is not barred. Question No. 4: Whether the application is maintainable in view of the pendency of the application before the Hon'ble High Court of Karnataka was answered that the culmination of proceedings before the Tribunal into a judgment would not offend the principle of judicial propriety, because of the pendency of the writ petition before the Hon'ble High Court and that the Tribunal should entertain and decide the application, despite the pendency of the Application before the Hon'ble High Court.

12. Though these findings rendered in the Judgment were challenged before the Hon'ble Supreme Court of India, Respondent Nos. 9 & 10 have no case that they were not heard on these questions. In fact their very case is that they addressed arguments only on these issues. Moreover in the Applications M.A. No. 596 of 2015 and M.A. No. 603 of 2015 respondents 9 and 10 did not have a case that further arguments need to be addressed on these issues. On the facts and materials placed before us, we find no reason to take a different view on these questions. Therefore, we reiterate the earlier findings on these questions.

13. The proposed Mixed Use Development Project (MUDP) is located at Agara Village and Jakkasandra Villages of BEGUR/OBLI, Bangalore, South. Special Economic Zone (SEZ) is located between Agara Lake and Bellandur Lake. The Mixed Use Development Project is proposed along Sarajapur road in the catchment of lakes Bellandur and Agara lakes. Agara lake is located at the other side of 40 Meters wide road, while Bellandur lake is 50 Meters away from the project boundary. Rajakaluves (natural drain) is running of along the project site. Proposal envisages construction of residential apartment with (Block-1 (Block A: 2B+G+ 14UF; Block B: 2b+G+10 UF) + Block 2 (2B+G+14UF), retail, hotel & office building with 3B+G+11 UF, SEZ with 3B+G+11UF +Terrace and Non-SEZ 3B+G+12UF+Terrace on the plot area of 2,92,636.03 sq.m. The total built-up area is 11,50,454.98 sq.m. The total water requirement is 4587 KLD and the investment is of Rs. 2347 crores based on the materials and the records the cumulative adverse effect of the activities undertaken by the Respondents were summed up in the main Judgment as follows:

"1. The construction of both the projects had started prior to the grant to Environmental Clearance.

2. The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.

3. Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on

Rajakaluves.

4. Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.

5. Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.

6. Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.

7. The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition Nos. (xxxix) and (xi) in the Environmental Clearance of respondent No. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

14. It was also noticed that the contents of the report submitted by the Committee, Chaired by Justice N.K. Patil, were neither denied nor admitted by Respondent No. 9, though in their reply to the application it was expected to respond to the report. The report of Justice N.K. Patil is to the effect that the lakes and the wetland should be protected in the city of Bangalore and message ought to be taken to protect them and also to remove the encroachment in the lake area as well as Rajakaluves. It was also noticed that large construction activities prejudicial to environment is being attempted in those areas. The report prepared by ENVIS, Centre for Ecology Science, Indian Institute of Science, Bangalore focused on the possible consequences of setting up of SEZ in Bellandur lake area and recommends restoration of these land in the area. Finding that Respondent No. 9 though termed it as speculative based on presumption and Respondent No. 10 brushed it aside contending that it was frivolous and tailor made to support the case of the Applicants and also attacked the report on the ground that Dr. T.V. Ramachandra who prepared the report is a party to another Writ Petition before the Hon'ble High Court of Karnataka and therefore the report is biased as Dr. T.V. Ramachandra was also a member of the Committee which prepared the report, it was found that the objections are untenable. It was also found that Environmental Clearance was granted to Respondent No. 9 on 17th February, 2012 and Respondent No. 10 on 30th September, 2013, but the construction activities were carried out by the Project Proponents much prior to the grant of Environmental Clearance. It was therefore found that Respondent Nos. 9 and 10 are defaulters of statutory provisions, as they could not have started construction of the project before getting the Environmental Clearance. Though it was found that the compensation payable on various counts by the Project Proponent for the environmental

degradation cannot be determined on exactitude, they are liable to pay for violation of law, raising construction unauthorizedly and illegally, for restoration of environment and ecology. A committee was constituted with the Advisor in the Ministry of Environment, Forests and Climate Change dealing with the subject of wetlands, CEO of Lake Development Authority, State of Karnataka, Chief Town Planner of BBMP, Bangalore, the Chairman of SEAC which recommended the grant of Environmental Clearance to the projects, Senior Scientist (Ecology) from the Indian Institute of Sciences, Bangalore, Dr. Siddharth Kaul, former Advisor to Ministry of Environment, Forests and Climate Change and a Senior Officer from the National Institute of Hydrology, Roorkee as members, to submit report on whether the projects in questions have encroached on the wetland and Rajakaluves for construction and if so the adverse environmental and ecological impacts of these projects on the Bellandur Lake, Agara Lake as well as Rajakaluves. The committee was also directed to specify in the report whether any Rajakaluves have been covered by the construction activities of Respondent No. 9 or Respondent No. 10 or by any other projects in the area and the adverse impacts on the surrounding ecology and environment with particular reference to lakes and wetlands and if so the details thereof with reasons. The committee was also directed to report whether any of the conditions of the Environmental Clearances was violated by either Respondent No. 9 or by Respondent No. 10 or both. The committee, as directed, submitted the report and after going through the report, we noticed several deficiencies and noncompliance of directions in the report. Therefore the following order was passed on 10th September, 2015.

"Vide our Judgment dated 07th May, 2015, we have constituted a High Power Committee to comply with the directions contained in Paragraph 85 of the judgment. The judgment passed by the Tribunal was in the nature of preliminary decree and final judgment/decreed on behalf of that was passed after receiving report of the High Powered Committee. The High Powered Committee firstly did not file the report within the stipulated time and now when the report has been filed before the Tribunal, we have no hesitation in observing that the report does not comply with the directions of the Tribunal in its true spirit and substance. Inter-alia, but primarily, we would point out the following deficiencies and non-compliance of the directions issued by the Tribunal in its judgment:--

1. We may notice that the report is not comprehensive and non-compliant in all its major aspects. The stand taken by the Lake Development Authority of Bangalore before the Tribunal is different than the one on the basis of which now the report has been submitted. The committee has also not mentioned the factors relevant for determination of environmental compensation.
2. It is stated in the report that there is unauthorized encroachment and possession taken by the builders of nearly 3 acres and 10 guntas. However, as it appears from the records, the State had allotted 63 acres and 37 guntas of lands to the builders. The builders are in possession of practically of 72 Acres of land which they have covered, including the wetlands and have also raised boundary walls and other constructions. It will be obvious that area occupied would be nearly 12.47 guntas and not 3 Acres and 9 guntas as mentioned in the report. The committee has nowhere referred as to what action is required to be taken and what measures should be adopted to

remedy this very serious wrong committed by the builders.

3. Catchment area and inter-connectivity of the lakes had just been mentioned in the report but without any comments and recommendations as to what steps are required to be taken and what is the extent of damage done by these builders to the ecology and environment, particularly the wetlands of the area in question.

4. The Report does not state categorically as to which of the conditions of the environmental clearance order have been complied with and which have not been complied with. It is completely silent on the consequences and remedial measures on that behalf.

5. The report has vaguely stated that there should be compliance to the statutory regulations for health and sanitation. It was expected to inform the Tribunal as to the existing or proposed projects of STP/ETP as may be required with regard to their capacity, technology to be adopted, etc. The report is completely silent as to what is the point of discharge of sewage and other effluents from the project in question, what remedial measures are required to be taken for ensuring compliance of the law in that behalf, source of water for construction activity and otherwise and its utilization; whether the water will be recycled and to what extent, as it would be evident that the NOC which the Project Proponent has, is only for 18 flats. We are informed by the Committee members who are present, that the builder is expected to construct around 13.5 Lakh Sq. Mtrs. of area. Unfortunately this aspect did not receive the attention of the Committee members.

6. There is no specific recommendation or observation made in relation to compliance to the conditions of the Environmental Clearance, particularly with regard to Buffer Zone and air pollution.

7. (a) It was expected from the Committee to inform the Tribunal as to the measures required to be taken under the sanctioned plans, the various NOCs and clearances granted in relation of air and water pollution and particularly in relation to sewage.

(b) Identification of the 'kharab land' and whether the builder is raising any construction on that land and was such construction at all permissible under the conditions imposed upon the builder and in accordance with law in force?

(c) The Committee should have also examined whether there was violation of the condition, that no leveling and dumping particularly on the Rajakaluves is permitted and if the builder had covered any wetlands and Rajakaluves or was interconnectivity adversely affected and what action has been taken for removal of the dumped material?

(d) What was the status of the show cause notice issued by the Pollution Control Board to the builders and what steps were required to be taken?

Non-providing of such information/recommendation by the Committee has

made it very difficult for the Tribunal to pass final directions and dispose of the matter in accordance with law.

The Tribunal had very high expectations from the Committee constituted of such Senior Officers and who are experts in their respective fields. It cannot be disputed that Bangalore was a city of lake and at one point of time, it had 261 lakes out of which only 68 remains as of today. The Members of the Committee present submit that there are even more water bodies but some of them have dried up as of now.

Be that as it may, this is a fit case where the Hon'ble Expert Members of the Tribunal need to visit the site themselves. Having considered the various aspects of the case and to dispose of this matter expeditiously and in accordance with law, it is necessary that the Hon'ble Expert Members of the Tribunal themselves may visit the site and ensure that there should be meaningful interpretation of facts and the correct position as existing at the site should be placed before the Tribunal in regard to the directions of Tribunal.

The Tribunal at this stage will make a reference to the judgment of the Hon'ble Supreme Court of India in the case of "Ministry of Environment v. Nirma Pvt. Ltd." Appeals No. 8781 - 8783 of 2013, decided by the Hon'ble Supreme Court of India vide its order dated 4th August, 2014. Vide this judgment, the Hon'ble Supreme Court of India upheld the order passed by this Tribunal in that case for inspection of the site by the Hon'ble Expert Members of the Tribunal. The dictum of the Hon'ble Supreme Court of India clearly enunciated that the said order was squarely covered under the provisions of the Order XVIII, Rule-18 of the CPC. Such an approach is not generally adopted by the Tribunal and is adopted by the Tribunal only in exceptional cases and the present case happens to be falling in that class of cases.

In view of the above discussions and to have the complete and comprehensive information necessary for passing the final judgment, we direct as follows:

- (a) All the Members of the High Powered Committee constituted vide our order dated 7th May, 2015 would be present at the site tomorrow i.e. 11th September, 2015 at 11:00 A.M.
- (b) Complete records by all concerned authorities shall be produced before that Committee.
- (c) Hon'ble Dr. D.K. Agrawal and Hon'ble Prof. A.R. Yousuf Expert Members of the Tribunal, would be present and entire further proceedings would be taken in their presence. It shall be ensured that queries mentioned in this order are completely and fully answered.
- (d) We direct the State of Karnataka, all the concerned departments, authorities, Corporations to be present and fully co-operate with the High Powered Committee and to provide all assistance and help to the Hon'ble Expert Members and the Committee.

Let the report be submitted to the Tribunal."

15. Pursuant to the said order the two Expert Members inspected the project area and prepared the Inspection Note copy of which was furnished to all the parties.

16. The Learned Senior Counsel appearing for the Applicants, Respondent Nos. 9 and 10, Respondent Nos. 11 and 12 and the MoEF and other respondents were heard.

17. The Learned Counsel appearing for Respondent Nos. 11 and 12 and the Applicants argued that though Respondent No. 9 and 10 had preferred Appeals challenging the main judgment, they were withdrawn with liberty to approach the Tribunal, and as the Judgment was not interfered by the Hon'ble Supreme Court, Respondent Nos. 9 and 10 are not entitled to challenge the findings in the main Judgment. The Learned Counsel relied on the observations made in the order dated 10th September, 2015 that the main judgment "was in the nature of a preliminary decree and a final judgment has to be passed after receiving the report of the High Power Committee" and argued that when the findings in the preliminary decree cannot be challenged in the subsequent application for passing final decree, Respondent Nos. 9 and 10 are not entitled to challenge any of the findings in the main judgment and therefore they could only address the Tribunal on the quantum of compensation and not the liability to pay compensation. As rightly pointed out by the Respondent Nos. 9 and 10, though in the order dated 10th September 2015 while considering the procedure to be adopted on submission of the report by the High Power Committee, it was observed that the main judgment is similar to a preliminary decree passed and based on the report submitted by the High Power Committee a final decree and judgment have to be passed. The main judgment does not show that it was passed as a preliminary decree. Moreover, the Respondent No. 9 and 10 have challenged the correctness of the said judgment, before the Hon'ble Supreme Court and the Hon'ble Supreme Court granted liberty to approach the Tribunal for hearing on the disputed questions. In such circumstances it cannot be said that when Respondent Nos. 9 and 10 were permitted to address the Tribunal on these aspects, they are not entitled to argue the correctness of the findings on the liability, based on the materials on the record. Moreover, it is not the law that once a preliminary decree is passed, before the final decree is passed, another supplementary preliminary decree cannot be passed. The law has been settled in Ganduri Koteswaramma and Another v. Chakiri Yanadi and Another (MANU/SC/1216/2011 : (2011) 9 SCC 788) by the Hon'ble Supreme Court as follows:

"20. Section 97 of C. P.C. that provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of the court to modify, amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require.

21. It is true that final decree is always required to be in conformity with the preliminary decree. But that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree."

18. Moreover the High Power Committee submitted the Report and objections were

raised on their findings. The Expert Members had inspected the sites and submitted an Inspection Note, copy of which was made available to all the parties. In such circumstances necessarily the said materials have to be considered and Respondent Nos. 9 and 10 are definitely entitled to address the Tribunal on these material aspects which are necessarily to be considered by the Tribunal. Therefore we cannot accept the objection raised by the Appellants and Respondent Nos. 11 and 12 that Respondents No. 9 and 10 cannot be heard on the question of their liability to pay environmental compensation as well as the factum of environmental degradation caused by proceedings with the construction of the projects.

19. The Learned Senior Counsel Mr. R. Venkatramani argued that on the materials available on record, it is clear that Respondent No. 9 did not start the construction work, prior to the granting of Environmental Clearance for the project, and therefore, on that basis Respondent No. 9 cannot be found liable for payment of damages or environmental compensation. It was argued that there is no mention of Valley, catchment or sensitive zone in the revenue records and the Revised Master Plan 2015 (in short 'RMP 2015') does not record the disputed lands as industrial land, though the Project Proponent has intimated objections to the draft Master Plan. The lands having been permitted by HLCC of the Government of Karnataka to be notified for industrial use as early as 2000 and the subsequent action of KIADB in acquiring and allotting the land for the projects shows that classification of certain land as "sensitive" does not apply to the disputed lands. It was argued that the Zonal Regulations for the City of Bangalore published along with RMP 2015 reveals the correct position and, therefore, the State cannot be asked to undertake reconsideration of all clearances and sanctions. It was pointed out that in terms of the Zonal Regulations a buffer zone of 30 meters is to be set aside around lakes and in respect of permissible land usage within the buffer zone, permission of the planning authority will be required and, therefore, outside the buffer zone, developmental activities is not within the domain of the planning authority. The Learned Senior Counsel also argued that both the Planning Authority and Sensitive Zone Committee are bound by the Zonal Regulations and have no statutory authority to deal with the developmental activities outside the buffer zone. The argument is that statutory permission regarding use of property are required to be decided in accordance with the law applicable at that time when the permission was granted and the law includes master plans drawn in exercise of statutory powers. As the land in question was brought under KIADB Act in 2001 and notification was issued under Section 28 (4) of the said Act for acquisition the land in question in April 2004, as per Section 47 of the said Act the Authority is competent to deal with the land placed at its disposal, notwithstanding anything inconsistent under any other law. The Master Plan for the period 1995 to 2005, though extended upto 22nd June, 2007, it was superseded by the RMP 2015 and, therefore, long prior to the revised master plan, the land was not only set apart for industrial purpose but also stood acquired by KIADB. The State Government had approved the project on the land in question on 21st June, 2000 much prior to the coming into force of RMP 2015. RMP 2015 would not apply to statutory process finalized prior thereto. The learned counsel pointed out that the inspection note prepared by the Hon'ble Expert Members (in short 'the Inspection Note') noted the status and nature of the land in question from 1992 onwards as set apart for housing development and the other purposes. Therefore, there is no illegality with regard to the location of the project or on environmental angle. The learned senior counsel also argued that Kharab land is a non issue, as it does not emerge from any record that any portion of the project site stood designated as Kharab lands. As the land was always under cultivation and no record exists indicating any class of Kharab, enquiry on the matter is only academic. The

learned counsel also argued that when the project site was handed over to the respondents, there was no trace of any specified classes of Kharab land to be protected. As the land in question was acquired by BDA in 1991 for public purposes and was declared as industrial area by the Government in 2001, the statements in the revenue map of 1904 lose their significance. As the entire land was acquired by the KIABD without any portion being 'A' or 'B' category land, project proponent is entitled to use the said land without any further reference to the classification. The Learned Senior Counsel argued that the findings in the main judgement that Respondent No. 9 commenced construction before obtaining the Environmental Clearance is factually incorrect. Relying on the inspection report prepared by the Chairman KSPCB dated 11th January, 2012, it was argued that construction was not commenced on 11th January, 2012, as it was recorded that "The proposed site is vacant and is yet to take up construction work". It was also pointed out that the report of the High Power Committee reveals that "M/s. Mantri Technozone Private Ltd." (Formerly called Manipal ETA Pvt. Ltd.) had started construction after obtaining clearances" and in the reply the respondent has specifically pleaded that they commenced construction only during November, 2012 and there is no material to show that any construction had commenced before 17th February, 2012, the date of granting of Environmental Clearance. The learned counsel also argued that the relevant records like tax return, vouchers for the works done and agreement for earth works, all relates to the period subsequent to 17th February, 2012. It was therefore vehemently argued that based on google satellite images, a contrary finding cannot be entered into. The learned Senior Counsel also argued that Respondent No. 9 obtained NOC from Respondent No. 5, only with regard to the residential units and not for the entire project and therefore the case that Environmental Clearance obtained by the Respondent No. 9 is based upon the partial NOC is misconceived. The High Level Committee of the Government of Karnataka had cleared the project on 21st June, 2000 which includes the total water requirement of the entire project being 4 lakh liters per day. The facilities and concessions granted by the State include 4 lakh liters of water per day to be supplied by the Respondent No. 5. The object was to avoid duplication of process of consideration at multiple levels and avoidance of delay. The clearance by the High Level Committee is understood to be a clearance in all aspects. The SEIAA in the 47th meeting recorded that the proponent and Environmental Consultant explained the queries raised by the SEAC during the meeting held on 07th July, 2011 and the project proponent had informed that the project has obtained approval from Single Level Window Clearance Committee of the State and hence separate NOC from the WSSCB is not required. Therefore, it was argued that SEIAA not only noticed the water requirement, but also that all the queries were duly answered. It was also argued that though Appellants had contended that the respondent severely damaged and disturbed Rajakaluves, no material was produced to substantiate the same and digital images though submitted were not duly explained and the observations in the report submitted by the High Power Committee that the excavated soil has been dumped on Rajakaluves resulting in reduction of their width, that conclusion was drawn on the basis of the Notice dated 02nd January, 2014 issued by the KSPCB without adverting to the reply submitted by the respondent to the notice on 27th January, 2014. It was also argued that digital images available to the public are poor aids in drawing any conclusion that any construction debris has been wantonly let loose on the Rajakaluves. The Learned Senior Counsel argued that huge amount of untreated sewage water and storm water flow into Bellandur lake and it would have been humanly impossible to block Rajakaluves without exposing to inundation and flooding of the project land and in any case Respondent No. 9 is willing to take any remedial measures. It was also argued that though imposition of condition No. 39 in

the Environmental Clearance was inappropriate, Respondent No. 9 has not done anything with an intention to commit any wrong. The Learned Senior Counsel pointed out that the inspection note reveals that the said condition that no alteration to the existing topography, is practically impossible to implement considering the type and extent of construction. It was argued that a reasonable interpretation of this condition would lead to a meaning that upon completion of the construction, the sloping pattern and topography of the land should not be altered in such a way that water flow in the direction as it existed earlier shall not be changed or altered, so that the neighboring areas are not inundated. It was further argued that substantial requirement of the construction would ultimately ensure that there is no problem of storm water affecting the lake. The Learned Senior Counsel strenuously argued that the allegation of encroachment of 3 Acres and 10 guntas of lake area in survey No. 43 is baseless as Respondent No. 9 has not raised boundary wall enclosing the said part of the lake. The High Power Committee only noticed that muck was found deposited in the said area. Respondent No. 9 has not dumped the muck in the lake and in any case the problem can be resolved by erection of the boundary wall excluding the said area. The case of encroachment was built based only on the dumping of muck found deposited therein. The Committee had relied on the letter dated 14th August, 2015 issued by KIADB in Kannada language, due to the mistake in the translation and the letter does not disclose any encroachment but only reveals dumping of muck. No part of the said land was enclosed by the Respondent No. 9 either temporarily or permanently. As Respondent No. 9 has not dumped any muck he cannot be penalized and made liable for the same. In any case there is no material to show that the muck was dumped with an intention to encroach the said area. The entire area was opened to the public access prior to 2012. The department of Defence which is occupying the neighbouring land, disputed the boundary identified by KIADB and wanted the respondent to give up their own lands. It was done and identification of the boundary on the northern side of the project is under finalization. It was also argued that the construction would be carried out only as per the sanctioned plan which does not in any way include 3 Acres and 10 Guntas. It was pointed out that outstanding disputes exist with regard to 6 Acres and 19 guntas of private land, which are not part of any sanctioned plan and there is no amalgamation of the said private land with the land allotted to the respondents by KIADB. The sanctioned plan of Respondent No. 9 is confined only to the extent of 63 acres 37 guntas. It was therefore argued that there is no basis for the allegation raised against the Respondent No. 9.

The Learned Senior Counsel therefore argued that the materials on record clearly show that Respondent No. 9 has not caused to any environmental damage or degradation. The Learned Senior Counsel argued that the earlier findings on the violation committed by Respondent No. 9 as well as the liability to pay an environmental compensation of Rs. 117.35 Crores are to be modified.

20. The Learned Senior Counsel Mr. Raju Ramachandran appearing for Respondent No. 10 argued that if the allegations raised against Respondent No. 10 are separately considered, without clubbing the same with the allegations raised against Respondent No. 9, it can only be found that Respondent No. 10 did not commit any violation or environmental degradation and therefore Respondent No. 10 is not liable to pay any damages. The Learned Senior Counsel argued that though the inspection note shows that the lands falls under category 'C' Kharab land and the Kharab lands are required to be classified by the revenue authorities no Kharab land is situated in the project area of Respondent No. 10 as is clear from the lease deed, the possession certificate and the allotment. The project has been classified as industrial land. RMP 2015 does

not indicate existence of any Kharab land in the said area. The Major Storm Water Drains of Bengaluru, August 2010 prepared by the Bruhat Bengaluru Mahanagar Palika (in short 'BBMP') establishes that there are no Kharab/Primary Storm Water drain/Secondary Storm water drain that exist in the property belonging to Respondent No. 10. The Bengaluru Guide Map prepared by the Survey of India also does not indicate any Kharab/Storm Water Drain/Rajakaluves in the said property. On the allegation of violation of buffer zone and dumping of muck in close proximity of Rajakaluves, it was argued that though they were answered in the Inspection Note affirmatively, as per the RMP 2015, 30 meters buffer zone is required to be maintained from the lakes and 50 meters buffer zone from Rajakaluves. The distance of the lake from the proposed building of the respondent No. 10, in the buffer zone of Agara lake is 61 meters and from the buffer zone of Bellandur it is far away. The Learned Senior Counsel also argued that on the Western side the proposed building of Respondent No. 10 is 50 meters away from the Centre of Rajakaluves and on the North Western side there is a unmetalled road, some area reserved park, open spaces and therefore buffer zone of 50 meters will be maintained and on the other side the property is separated by an unmetalled road, a proposed CDP/RMP road and hence buffer zone of 50 meters will be maintained. It was also argued that as Respondent No. 10 has not initiated the construction work, there is no question of dumping any waste or causing any damage to the environment. It was also argued that the land in question originally belonged to private parties and were later acquired by Respondent No. 7 and allotted to Respondent No. 10 by letter dated 17th March, 2008 and when the land was allotted there was no Rajakaluves passing through the said property. It was also argued by the Learned Senior Counsel that High Court of Karnataka in WP 44277 of 2011 (Shobha Developers Ltd. v. BBMP and Others.) already held that the village map will be superseded by the RMP and therefore it can only be found that there did not exist any Rajakaluves within the land belonging to Respondent No. 10 and they did not cause any damage or environmental degradation. The Learned Senior Counsel also argued that BDA constructed roads around Agara lake and one among the road is a ring road and the other is a major arterial road and both roads are abutting Agara lake and they are in between Agara lake and the properties belonging to the Respondent No. 10 and the ring road would be widened from its present width of 22 meters to 45 meters and for that purpose Respondent No. 10 has already agreed to give part of their property required for road formation. It was also argued that the source of water is as sanctioned by NOC dated 04th April, 2013 and a full fledged sewage treatment plant shall be constructed. The Learned Senior Counsel therefore argued that the basis for awarding payment of environmental compensation for commencement of the construction prior to the granting of Environmental Clearance is not true as against Respondent No. 10 as the construction is yet to be commenced. The inspection note would only reveal that Respondent No. 10 has only done the preparatory excavation work and no construction was commenced. Though it was found that Respondent No. 10 is a defaulter of statutory provisions and violated the law, in view of the PIL filed before the High Court of Karnataka and the stay order passed on 16th April, 2014, Respondent No. 10 did not proceed with the construction and he had not committed any violation. Therefore Respondent No. 10 is not liable for any compensation or damage for environment degradation.

21. The Learned Counsel appearing for the Appellants vehemently argued that the earlier findings in the judgment, the facts reported by the High Power Committee appointed by the Tribunal and the Inspection Note submitted by the Expert Members establish that both Respondent No. 9 and 10 caused environmental degradation and hence are liable to pay the damages. The Learned Senior Counsel Mr. Raj Panjwani argued that the Polluter Pays Principle mandates restoration of environment and

invoking the polluter pays principle, Respondent No. 9 and 10 are liable to pay the damages, both general and special. The Learned Senior Counsel argued that the report relied on in the main judgment, the report submitted by the HPC and the Inspection Note, all establish the environmental damages caused by respondents 9 and 10. It was argued that Respondent No. 9 has encroached upon a portion of the Agara lake by dumping the muck, with the intention to treat it as part of their land and the fact that the encroached land has been put into their illegal possession is established from the materials placed on record. The Learned Senior Counsel also argued that Respondent No. 10 has also put the muck on the adjacent Rajakaluves and thereby caused irretrievable damage to the environment. The Learned Senior Counsel argued that the commencement of the construction does not mean construction of the building per se but also include the preparatory work for the construction including excavation of soil for construction of the foundation and the fact that soil has been excavated is not only not disputed but is admitted. It was argued that the damage caused to the lake, the Rajakaluves and the environment is amply clear from the various reports submitted and in such circumstances, there is no reason to vary the findings in the main judgement as claimed by Respondent No. 9 and 10. The Learned Senior Counsel pointed out that as per the Environmental Clearance granted to Respondent No. 9 on 17th February, 2012, the total plot area is 292636.03 Square meters which works out to 72.22 Acres and the land allotted to Respondent No. 9 as per the allotment dated 28th June, 2007 is admittedly only 63 Acres and 37.5 guntas which works out to be 63.94 Acres. It was pointed out that it is admitted by the Respondent No. 9 that 1 Acres and 36.5 guntas, which works out to be 1.91 Acres, could not be taken possession due to the dispute with the Defence and their case is that an extent of 6 Acres and 19 guntas, which works out to be 6.47 Acres, was acquired by Respondent No. 9 through private negotiation. Therefore, the total land which could legally be claimed by Respondent No. 9 is only 71.74 Acres and out of the said land, due to the dispute with the Defence, 1.91 Acres cannot be claimed by Respondent No. 9 and the total land with Respondent No. 9 could therefore be only far less than 72.22 Acres, for which the Environmental Clearance was obtained and if that be so the Environmental Clearance granted warrants modification and with the faulted Environmental Clearance Respondent No. 9 is not entitled to proceed with the construction.

22. Learned Senior counsel Mr. Sajan Poovayya appearing for Respondent Nos. 11 and 12, while supporting the submissions made by the Appellants, pointed out that the findings in the report of the High Power Committee supports the findings rendered in the main judgment that the project proponents are constructing their project on a land classified as sensitive zone as per RMP 2015 and that they have not obtained mandatory clearance from the Sensitive Zone Committee, that the lands allotted to the Project Proponents include lands earmarked for public utilities, garbage facilities, treatment plant, parks and open space in the RMP 2015, that the Project Proponent has dumped the excavated soils on the Rajakaluves causing reduction of their width, that Respondent No. 9 illegally occupied 3 Acre and 10 guntas of land which is part of the lake and only 63 Acres and 37.5 guntas of land was transferred in favour of Respondent No. 9 and without obtaining requisite permissions and clearance the 6 Acres and 19 guntas of private land was illegally amalgamated with the leased land and it vitiates the sanctioned plan for 72 Acres which include the land leased by KIADB, the private land acquired and the unauthorisedly encroached 3 Acres 10 guntas of lake portion and they are not entitled to use Kharab land except for maintaining it as green belt. It was also argued that the Inspection Note establishes that all the leased land, privately acquired land and the encroached land from the lake are parts of the land claimed by Respondent No. 9 and

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the conditions in the Environmental Clearance that the topography shall not be changed has been breached, there are multiple violations by the Project Proponents with regard to the filling of low lying area, discharge of sludge to Rajakaluves, violations of buffer zone, dumping of excess soil in close proximity of Rajakaluves and non-identification of Kharab land which ought to be done before construction of the building. Clearance from BWSSB was received by respondent no 9 only for 18 residential flats and that the developmental project would cause traffic problems and therefore the earlier findings rendered in the main judgment warrants no interference. It was also argued that stringent action is to be taken to protect the lake and waterbodies in the city of Bengaluru and omnibus directions are necessary as developmental activities being undertaken in the vicinity and around the lakes and waterbodies in the city of Bengaluru is increasing day-by-day. The High Power Committee inspected not only the disputed sites but also several other areas. It was argued that apart from the general condition which was part of Environmental Clearance, it is necessary to specify and stipulate detailed protocol of specific and general conditions to be followed by projects of similar constructions so as to preserve and protect the environment and ecology of Bengaluru.

23. Based on the arguments and the materials placed on record the following points arise for consideration.

"1. Whether Respondent No. 9 has commenced the construction of the project before the granting of Environmental Clearance?

2. Whether Respondent No. 9 has encroached any part of the Agara lake and thereby caused environmental degradation?

3. Whether Respondent No. 9 has violated any of the conditions of the Environmental Clearance granted?

4. Whether the Environmental Clearance granted to the project of Respondent No. 9 is to be reviewed?

5. Whether Respondent No. 10 has commenced construction activities before granting of Environmental Clearance?

6. Whether Respondent No. 10 has dumped muck on the adjacent Rajakaluves and thereby reduced its width and caused any environmental damage?

7. Whether Respondent No. 9 and 10 are liable to pay environmental compensation and if so the quantum?"

24. Keeping in view the order of the Hon'ble Supreme Court of India, the peculiar facts and circumstances and more particularly the fact that one of the Hon'ble Expert Member (Dr. D.K. Agrawal) would be demitting the office on 05th May, 2016, we passed the operative part of the Judgment with holding that the reasons would be recorded in the later part of the day. The reasons are recorded below:--

Discussions on Point Nos. 1 to 4:

25. Based on the materials, in the main judgement it was found that Respondent No. 9 commenced the construction work of the project before obtaining the Environmental Clearance, has dumped the muck into a portion of the lake adjacent to

their properties and thereby encroached upon 3 Acres and 10 guntas of land from the lake, violated the conditions in the Environmental Clearance and caused environmental degradation. The argument of the Learned Senior Counsel Mr. Venkataramani is that though a portion of the muck was dumped on a portion of the lake it was not done by the Respondent No. 9 and Respondent No. 9 has not encroached any portion of the lake and in fact has no intention to encroach upon any portion of the lake. The Learned Senior Counsel also argued that the alleged encroached land could always be protected by putting up a boundary wall excluding the alleged encroached land and Respondent No. 9 has no objection for measuring and demarcating the said land and therefore based on that alleged encroachment, it cannot be found that Respondent No. 9 has committed any environmental degradation.

26. Before considering the argument, it is necessary to bear in mind the background of the case. Respondent No. 9 obtained the Environmental Clearance on 17th February, 2012. The relevant portion of the Environmental Clearance reads

"2. It is, inter-alia, noted that M/s. Manipal BTA Infotech Ltd., Bangalore have proposed for construction of mixed use development with residential, retail, hotel, office, SEZ & Non-SEZ on a plot area 2,92,636.03 Sqm out of which net plot area is 2,76,070.75 Sqm. The total built up area is 13,50,454.98 Sqm (Residential Block 1 & 2 -2,91,909.44 Sqm. Retail, Hotel & Office: 3,78,502.13 Sqm. Office SEZ: 6,23,570.87 Sqm. Office Non-SEZ 56,422.54 Sqm). The mixed use development consists of Residential with 748 dwelling units in 2 blocks (Block 1 consists of Block A with 2B+G+14 UF & Block B with 2B+G+10UF and Block 2 consists of 2B+G+14UF), Retail, Hotel (five star & two star hotel consists of 636 rooms) and office building consists of 3B+G+12UF. Total parking space proposed is for 14,675 cars. Total water consumption is 4587 MLD (Fresh water 3259 KLD + Recycling water 1328 KLD) out of which 960 KLD is for retail building, 254 KLD is for Office building, 1718 KLD is for SEZ 239 KLD is for residential block 1,647 KLD is for residential block 2,577 KLD is for five star hotel and 191 KLD is for two star hotel. The wastewater discharge is 3869 KLD out of which 816 KLD from retail building, 216 KLD from office building, 1460 KLD from SEZ, 201 KLD from residential block 1, 543 KLD from residential block 2, 475 KLD from five star hotel and 158 KLD from two star hotel. It is proposed to construct 7 Sewage Treatment Plants with a capacity of 625 KLD (Retail), 225 KLD (Office), 1475 KLD (SEZ), 205 KLD (Residential Block 1), 550 KLD (Residential Block 2), 480 KLD (Five Star Hotel) and 160 KLD (Two Star Hotel). The project cost is Rs. 2347 Crores."

27. It is thus clear that the net plot area for which the Environmental Clearance was granted is 292636.03 Sq.m. It is not disputed that the said square meters area when converted to Acres would be 72.22 Acres (i.e 1 Acre is 4052 Sq.m). The land which was allotted to Respondent No. 9 is admittedly 63 Acres 37.5 guntas. (10 guntas is 0.24 Acres). The said land therefore works out as 63.94 Acres. This fact was also not disputed. Even according to Respondent No. 9 the land acquired through private negotiation was 6 Acres 19 guntas which works out to be 6.47 Acres. Even out of the said lands Respondent No. 9 admits that there is dispute with the Defence on the boundary and ultimately Respondent No. 9 was prepared to give up the said disputed land to the Defence. The fact that the said disputed land is 1 Acre and 36.5 guntas, which works out to be 1.91 Acres, is also not disputed. These are the only lands available with Respondent No. 9. If that be, so the total area including the land



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obtained on allotment and on private negotiation would come to 70.41 Acres. If that be so, Respondent No. 9 could not have legally obtained an Environmental Clearance for a net plot area of 292636.03 Sq.m. which works out to be 72.22 Acres. It is more so, when out of 70.41 Acres, due to the boundary dispute with the Defence, Respondent No. 9 was prepared to give up 1.91 Acres. If that extent is also excluded from the lands available with the Respondent No. 9, the balance land legally available is only 68.50 Acres as against the net plot area of 72.22 acres covered by the Environmental Clearance. The case of the encroachment of the portion of the lake disputed by Respondent no 9 is to be appreciated in that background. The encroached area, which is disputed by the Respondent No. 9, is 3 Acres and 10 guntas which works out to be 3.24 Acres. If that area is also added to the land which Respondent No. 9 is otherwise legally entitled to, it would be 71.74 Acres. If Respondent No. 9 had no intention to encroach upon a portion of the lake, one is not expected to apply for and obtain an Environmental Clearance for an extent of 72.22 Acres, when Respondent No. 9 had obtained only 70.41 Acres, i.e. 63.94 Acres being the land obtained under allotment and 6.47 Acres being the land obtained on private negotiation. Moreover litigation is pending on the 6.47 acres of land and another extend of 1.97 acres of land, though covered under the allotment was disputed by the Defence and Respondent No. 9 was prepared to give up. If the facts are so appreciated, one cannot accept the submissions of the Respondent No. 9 that portion of the lake was not encroached upon.

28. The High Power Committee was specifically directed to report whether the projects in question have encroached upon or are constructing on wetland and Rajakaluves and if so are there any adverse environmental and ecological impacts on the lakes particularly Bellandur lake and Agara lake as well as Rajakaluves. Based on the inspection and verification of records the High Power Committee reported as follows:--

"Further, from the records the area of M/s. MantriTechzone Pvt. Ltd., has increased from 63 acres 37.5 guntas (allotted by KIADB) to 72 acres 12.47 guntas (2,92,636.03 Sq.m as per details submitted to SEAC and KSPCB). Any amalgamation due to addition of land to the project site (allotted by KIADB) requires approval of the High Level Clearance Committee (HLCC) of Government of Karnataka chaired by Hon'ble Chief Minister. However, no such clearance has been obtained by M/s. MantriTechzone Pvt. Ltd."

29. The Committee felt that a detailed field survey of the land pertaining to Respondent No. 9 is necessary, for verifying the encroachment of the lake and Rajakaluves. Based on the directions of the High Power Committee, a joint survey was undertaken by the surveyors and development officers of the Board and prepared a survey sketch. The relevant portion of the report appended to the survey sketch was annexed to the report submitted by the High Power Committee. The English translation of the same reads as follows:

"As per the sketch, an extent of 6-19 Acres is included along with 63-37 1/2 acres of land, which is already handed over. In the land already handed over, 0.02 guntas in Survey No. 15/24, 0-06 1/2 guntas in Survey No. 42, 0.04 guntas in Sy. No. 47, 0-38 guntas in Survey No. 48, 0-26 guntas in Survey No. 50, totaling 1-36 1/2 acres of land, even though included in the 63-37 1/2 acres of land acquired and handed over to M/s. Manipal ETA (presently M/s. Mantri Tech Zone) and same are outside the compound wall constructed by the said project authorities. Further, it is reported that in the adjacent Survey

No. 43, government lake land, muck is dumped in an extent of 3-10 Acres.

1	Final Notification extent for acquisition	75 acres - 16 ½ guntas
2	Land handed over to the Board	63 acres - 37 ½ guntas
3	Land allotted but falling outside the compound wall	1 acres - 36 ½ guntas
4	The land in actual possession	62 acres - 01 guntas
5	Extent of land not handed over due to filling of Writ Petition in the Hon'ble high Court regarding cancellation of land acquisition notification.	6 acres - 19 guntas
	Total area	68 acres - 20 guntas
6	Extent of muck dumping in Government lake in Survey No. 43	3 acres 10 guntas
	Total	71 acres 30 guntas

30. Based on the said report and the survey sketch the High Power Committee has reported as follows:

"The details provided by KIADB vide their letter mentioned above are listed below.

I. Land transferred by KIADB to M/s. Mantri - 63 acres 37.5 guntas

II. Land transferred but not secured by M/s. Mantri (presently outside their boundary wall) - 1 acres 36.5 guntas

III. Transferred land with M/s. Mantri {(I)-(II)}=62 acres 1 guntas

IV. Land not transferred but under litigation within the boundary wall of M/s. Mantri - 6 acres 19 guntas.

V. Survey No. 43, unauthorized occupation of lake area (within the boundary wall of M/s. Mantri) - 3 acres 10 guntas

VI. Total land within the boundary wall of M/s. Mantri {(III)+(IV)+(V)}=71 acres 30 guntas

Therefore, as per KIADB survey, 3 acres 10 guntas (shown in green color in the sketch) is unauthorized occupation of Lake area by M/s. Mantri."

31. It is thus clear that an extent of 3 Acres and 10 guntas in survey No. 43 is dumped with muck and that area is actually part of the lake. Though Respondent No. 9 contended that it was not enclosed within any boundary wall or fencing, the report of the High Power Committee reveals a different picture. As stated earlier, the encroached area of 3 Acre and 10 guntas is described as "Survey No. 43, unauthorized occupation of lake area (within the boundary wall of M/s. Mantri) and total land within the boundary of M/s. Mantri is 71 Acres and 30 guntas". The report further shows that as per the survey, the said 3 Acres and 10 guntas is in the unauthorized occupation of Respondent No. 9. The Inspection Note prepared by the

Expert Members considered this aspect and stated as follows:

"1 The records show that the area allotted to the project comprised of 63 acres 37.5 guntas, whereas, owing to boundary disputes with the adjoining Military Area, they could not take actual possession of 1 acrs 36.6 guntas, thus out of the originally allotted land by KIADB, they are in possession of 62 acres 1 gunta land. According to the records placed, certain plots that were encircled within the above piece of land, have been acquired by them through private negotiations. Such land amounts to 6 acres 19 guntas. As per details furnished by the Revenue department, Survey No. 43 admeasuring 3 acres 10 guntas has neither been allotted by KIADB nor has been acquired by the project proponent, and as such the land in the revenue records as lake area, is unauthorizedly encroached upon by the project proponent and boundary wall has been raised around the entire land admeasuring 71 acres 30 guntas. Thus, unauthorized encroached land needs to be restored."

32. In the light of these materials it can only be found that Respondent No. 9 encroached 3.24 Acres (3 Acres and 10 guntas) of the lake in survey No. 43 and annexed the same with the land allotted to them as well as the land obtained on private negotiations. The modus-operandi of the encroachment is clear viz. dumped the muck first and thereby fill up that portion of the lake and thereafter annex the same with the remaining property. If the intention of dumping the muck was not to encroach and annex that portion of the lake, with their property obtained on allotment and private negotiations, an application for Environmental Clearance along with the approved plan for a net total area 72.22 Acres could not have been made when the total land available was only 70.41 Acres including the land obtained on allotment and private negotiations and that too when possession of 1.91 Acres of the allotted land was not obtained and that was admittedly kept out of the boundary wall constructed by the Respondent No. 9. The plan and proposal for 72.22 acres could have been made only with the intention of making up the difference and extend it by encroaching the portion of land from the nearby lake.

33. Though the High Power Committee reported that Respondent No. 9 had started construction after obtaining clearances and relying on the said observation, the Learned Senior Counsel argued that the inspection report prepared by the Chairman KSPCB supports the said conclusion, on the available materials, we cannot agree.

34. Construction does not mean construction of only the building. Construction envisages different processes starting from clearing the land, excavating the land for the foundation, building the foundation and the work till the entire construction is completed. The inspection report relied on by Respondent No. 9 is the one prepared by Mr. A.S. Sadashivaiah, Chairman of KSPCB based on his inspection dated 11th January, 2012. The relevant portion of the report that "the subject of issue of consent for establishment is discussed in the consent committee meeting held on 18th November, 2011 and the committee recommended for visit of the site by the Chairman and Member Secretary and to call the Project Proponent for technical presentation. Accordingly the proposed site was inspected on 11th January, 2012 and the following observations were made

"The subject of issue of consent for establishment was discussed in the Consent Committee meeting held on 18.11.2011 and the committee recommended for visit of the site by the Chairman and Member Secretary and to call the project proponent for technical presentation. Accordingly the

proposed site was inspected on 11.01.2012 and the following observations were made

1. The proposed site is bounded by natural valley (Raja Canal) in the North.
 2. The proposed site is bounded by Sarjapura main Road and there after Agara lake (Agara lake is about 50 meters) on South side.
 3. The proposed site is bounded by private property, natural valley and Jakkasandra area on West side and
 4. The proposed site is bounded by private property and defense road on East side.
 5. Some part of the proposed land is filled up with soil and debris. Most of the proposed area is low lying and water logged area.
 6. A creek of Bellandur tank back water is with in the proposed land and filled up with water.
 7. The proposed land has not been clearly demarcated from the boundary of the Bellandur tank bed area and natural valley (raja canal) leads to Bellandur tank.
 8. The proposed site is vacant and yet to take up construction work."
- 35.** Even the said report establishes that some part of the proposed land was filled up with soil and debris and most of the proposed area is low lying and water logged. It also establishes that a creek of Bellandur Lake backwater is within the proposed land and is filled with water. It is also clear from the report that the proposed site then was not clearly demarcated from the boundary of Bellandur Tank bed area and the natural valley leads to the Bellandur Tank. True, the report shows that the site was then vacant and construction work was yet to take up. When this report is appreciated in the light of the report submitted by the High Power Committee and the Inspection Note prepared by the Expert Members, it is clear that the low lying area was filled up and excavation work for the construction was undertaken. The relevant portion of the Inspection Note reads:

"a. General topography and physical features seen at the site indicate that huge alterations to the topographic features of the area have been made for the project activities of Respondent No. 9.

b. As per the details collected, cumulative quantity of excavation upto of 3 Meters is 254168.82 cubic meters, excavation upto in the range of 3 to 6 Meters is 136346 Cubic Meters, excavation in the range of 6 to 9 Meters is 21222 Cubic Meters and excavation in the range of 9 to 12 Meters is 8212 Cubic Meters.

c. during the course of site visit, reference to the inspection made by the KSPCB on 2nd January 2014 was made. Subsequently, upon enquiry, original records of the same were perused and it was felt that the report provides valuable insights and photographic evidence to various observations made in the report. A copy of the same is placed at page Nos. K-1375 to K-1384. The Inspection Report of Pollution Control Board in para 3 noted that excess soil from construction was being used within project area for filling low lying

area. In para 5, issue of construction water supply is dealt, Issue of large number of labourers and labour camps and absence of STP in para 6 whereas para 7 records discharge of sullage from labour camp to the Raj kalewas. In para 8b, issue of buffer one violation was noticed and in para 9, dumping of excess soil in close proximity to the Raj Kalewas was noticed. For the various observations, photographic evidence with corresponding indexing on the project layout map has also been annexed to. These photographs with the current photographs indicate the state of affairs that prevailed at the site."

36. Therefore it can only be found that, Respondent No. 9 had commenced the construction much before 17th February, 2012, the date when the Environment Clearance was granted.

37. The Inspection Note reveals that as per the revenue records major portion of the land allotted to Respondent No. 9 was paddy field and the cadastral map of 1956 indicates that irrigation canal/Rajakaluves taking of from upstream Agara tank passed through the area of Respondent No. 9. However, after inclusion of the area in Bangalore Mahanagar Palika and construction of Sarajapur road abutting Agara lake, the area was not under cultivation and the outlets from the Agara Tank for supplying water for irrigation purposes was blocked and at present no evidence is available about the existence of irrigation canal/Rajakaluves. Therefore, though it was not possible to locate the exact location of the Rajakaluves irrigation canal which were in existence in the lands now belonging to Respondent No. 9, it is clear that there originally existed Rajakaluves which were later got obliterated. The report of the High Power Committee also shows that in the case of Respondent No. 9, "the excavated soil has been dumped into Rajakaluves and part of lake bed". Therefore it is clear that Respondent No. 9 had also tampered with the Rajakaluves.

38. The fact that the properties acquired and later allotted to Respondent No. 9 and 10 were agricultural land and they include Kharab lands also was not disputed. Condition No. 38 of the Environmental Clearance granted to Respondent No. 9 which is identical to condition No. 41 of the Environmental Clearance granted to Respondent No. 10 provides that Kharab land cannot be used for any other purpose except for maintaining as green belt area. Condition No. 38 reads

"the project authorities shall not use Kharab land (if any) for any purpose and keep available to the general public duly displaying a board as public property no structure of any kind be put up in the Kharab land and shall be afforested and maintained as green belt only."

39. Though the Learned Senior Counsel appearing for Respondent No. 9 argued that as the land was acquired in 2000 for industrial use and notified for industrial use and therefore when the land was taken by KIADB in 2004 it did not emerge from any record that any portion of the project site stood designated as any class of Kharab lands and when the project site was handed over to the respondents there were no traces of any specified classes of Kharab land that deserved protection, the Inspection Note on Kharab land reads as follows:

"5. Kharab Land details: As per the details furnished by the Revenue Department, one acre and 2 guntas of the land allocated to Respondent No. 9 - M/s. Mantri Tech. Zone falls in 'C' Kharab land which means that it is yet to be classified under 'A' Kharab or 'B' Kharab land. With the present level of alteration to the topography and partial constructions already raised, the

demarcation of especially 'B' Kharab land is crucial to identify the structures that are illegal, however, for this first revenue department has to classify the 'C' Kharab land into Category 'A' and 'B' first."

40. In the light of the materials on record we cannot agree with the submission that no Kharab land is involved. Condition No. 38 of the Environmental Clearance granted shows that it was specifically provided that "The project authorities shall not use kharab land, if any, for any purpose and keep available to the general public duly displaying a board showing as public property. No structure of any kind be put up in the kharab land and shall be afforested and maintained as green belt only."

41. It is clear that Respondent No. 9 did encroach a portion of the lake and caused environmental degradation by putting debris, muck and excavated soil into the lake and Rajakaluves and even filled up the creek of the lake, which originally existed in the property and is therefore guilty of the environmental damage and degradation.

Discussion on Point No. 5 and 6:

42. Based on the materials it was found in the main judgement that Respondent No. 10 had also started construction prior to the grant of Environmental Clearance, there is encroachment on Rajakaluves and Respondent No. 10 has also caused environmental degradation. The report submitted by the High Power Committee shows that Respondent No. 10 has not started any construction activity. The inspection note prepared by the Expert Members shows that in the case of Respondent No. 10 it was noted as follows.

43. "So far construction has not been raised. Only preparatory excavation work has been carried out. However as far as the issue of Kharab land, proximity to Rajkaluves, presence of irrigation channels on originally allotted agricultural land etc. was common as in the case of Respondent No. 9".

44. On traffic congestion which is common to Respondent No. 9 and 10 the inspection report reads

"the traffic density on Sarjapur road falls in category 'C' i.e. overloaded, whereas with the proposed SEZ, it is expected that the traffic in the area will become very poor performance in terms of level of service. As per the lease agreement with KIADB, the project proponent is to upgrade 2 Kms. of this stretch of road to 6 lane road and build an under-pass and over-bridge to reduce the traffic congestion; however, in the meantime, a flyover has already been raised by the Government, thus, the entire issue requires a fresh look."

45. The fact that Respondent No. 10 has also started preparatory excavation work and excavated soil was dumped on the Rajakaluves is absolutely clear from the available materials. Materials on record establishes that Respondent No. 10 commenced the construction work before the Environmental Clearance granted as they have already excavated the soil, levelled the low lying area and levelled the plot. Though the Learned Senior Counsel appearing for Respondent No. 10 argued that the lake is far away from the land belonging to Respondent No. 10, and therefore it cannot be said that Respondent No. 10 caused any environmental degradation or damage to the lake, it is clear that the Rajakaluves is abutting the property of Respondent No. 10. It is also clear that after excavation of the soil the muck were dumped on the Rajakaluves and thereby reduced the width of the Rajakaluves and


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consequently caused environmental degradation, though to a lesser extent than committed by Respondent No. 9. The Environmental Clearance was granted to Respondent No. 10 only on 03rd June, 2013. The case of the Respondent No. 10 is that after obtaining the Environmental Clearance, in view of the PIL filed before the High Court of Karnataka and grant of order of stay on 16th April, 2014, Respondent No. 10 did not proceed with the further construction of work. As excavation of soil forms part of the construction work and it was commenced prior to 03rd June, 2013 it is clear that Respondent No. 10 has also illegally commenced the construction work before obtaining Environmental Clearance.

46. The learned senior counsel appearing for Respondent No. 10 argued that as per RMP 2015 the buffer zone required to be maintained from the lake is 50 meters from the edge of the lake and from the Rajakaluves it is 30 meters from the centre of the Rajakaluves and therefore there is no violation of dumping of excess soil in close proximity of Rajakaluves. In the Inspection Note, based on the inspection report of the Pollution Control Board it was stated that the said inspection report established dumping of excess soil in close proximity to the Rajkaluaves. Though Learned Senior Counsel would argue that as construction was not started, there cannot be dumping of soil, we have already found that there was excavation of the soil a fact which was not disputed. It is, therefore, clear that the excavated soil was dumped on the Rajakaluves. It is thus clear that Respondent No. 10 is also equally guilty as Respondent No. 9, though it was of a lesser degree compared to that of Respondent No. 9.

Discussion on Point No. 8

47. We have already found that Respondent No. 9 and 10 had commenced construction of their projects prior to the grant of Environmental Clearance. No project activity could have been commenced without grant of an Environmental Clearance as provided under EIA Notification of 2006. It is also established that multiple Rajakaluves were flowing through the project sites and there was encroachment on the Rajakaluves. The condition No. 39 on natural sloping pattern of the project site was to maintain the natural hydrology of the area so as to ensure natural flow of storm water, which is to be protected and conserved was violated. As far as the Respondent No. 9 is concerned, they dumped muck and excavated soil on a portion of the lake with an intention to annex that portion to lake as part of their property. We have already discussed in detail the consequences of such activities on the environment and ecology, in the main judgement and therefore it is not necessary to reiterate the same once again.

48. The Hon'ble Supreme Court in *M.C. Mehta v. Kamal Nath* MANU/SC/2107/1998 : (1999) 1 SCC 702 considered the liability for causing pollution and health:

"24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a writ petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. Unfortunately, notice for exemplary damages

was not issued to M/s. Span Motels although it ought to have been issued. The considerations for which 'fine' can be imposed upon a person guilty of committing an offence are different from those on the basis of which exemplary damages can be awarded. While withdrawing the notice for payment of pollution fine, we direct a fresh notice be issued to M/s. Span Motel to show cause why in addition to damages, exemplary damages be not awarded for having committed the acts set out and detailed in the main judgement. This notice shall be returnable within six weeks. This question shall be heard at the time of quantification of damages under the main judgement."

49. The same matter again came up before the Hon'ble Supreme Court and then it was held in MANU/SC/0189/2002 : (2002) 3 SCC 653 as follows:

"8. Even in the judgement of this Court, since reported in Kamal Nath while accepting the claim of the Motels that the sine qua non for punishment of imprisonment and fine is a fair trial in a competent court and that such punishment of imprisonment or fine can be imposed only after the person is found guilty by the competent court, a general and passing reference has also been made to the earlier findings and as a consequence of which only it has been again held that though no fine as such can be imposed and the notice issued by this Court earlier be withdrawn, a fresh notice was directed to be issued to Span Motels Pvt. Ltd. As to why in addition to damages, as directed in the main judgement, exemplary damages cannot be awarded against them "for having committed the acts set out and detailed in the main judgement". Equally, the object and purpose of such levy of exemplary damages was also indicated to serve as "a deterrent for other not to cause pollution in any manner". Having regard to what has been stated supra, the question as to the imposition of exemplary damages and the liability of Span Motels Pvt. Ltd. In this regard has to necessarily depend upon the earlier findings of this Court that the Motel by constructing walls and bunds on the river banks and in the river bed as detailed in the judgement has interfered with the flow of the river and their liability to pay the damages on the principle of "polluter pays" and also as an inevitable consequences thereof. The specification in the NEERI report regarding details of the activities of M/s. Span Motels Pvt. Ltd. and the nature of constructions made in 1993 in Figure 2 that (a) "in 1993, to protect the newly acquired land as also the main resort land, SMPL constructed concrete studs, stepped wall and concrete bars as depicted in Figure 2"; (b) "blocked the mouth of the natural relief/spill channel by dumping of boulders" resulting in the levelling of the leased area; and (c) "at the downstream of M/s. SMPL, a private property-owner has blocked the relief/spill channel by constructing a stonewall across the channel (E and F)" also confirms and only reinforces the need and justification for the indictment already made. The basis for their liability to be saddled with the exemplary costs has been firmly and irreversibly already laid down in the main judgement itself and there is no escape for Span Motels Pvt. Ltd. in this regard. We have to necessarily proceed further only on those bases of facts and position of law, found and declared."

50. The damages that can be awarded in an action based on tort may be nominal, ordinary or exemplary. While the primary object of award of damage is to compensate victim for the harm done to him, secondary object is to punish the offender for his conduct in inflicting the harm. In addition to the normal

compensatory damages which are variously called exemplary damages, punitive damages, vindictive damage or retributory damages could also be awarded. Such damages are awarded where it is found that the conduct of the offender is outrageous and discloses malice, cruelty or the like.

51. In Halsbury Laws of India Volume 9 Page 16

General and Special damages are explained as follows:

"General and special damages - A distinction is frequently drawn between the terms 'general' and 'special' damages, which are used. In the context of liability for loss (usually in contract), general damages are those which arise naturally and in the normal course of events, whereas special damages are those which do not arise naturally out of the defendant's breach and are recoverable only where they were not beyond the reasonable contemplation of the parties (for example, where the plaintiff communicated to the defendant prior to the breach the likely consequences of the breach). Special damages do not mean serious damage in the sense of irreparable loss but damage affecting the plaintiff individually or damage peculiar to the plaintiff or beyond what is suffered by him in common with others. In particular actions, for example, slander and public nuisance, all damages are special damages.

Indiscriminate use of the terms 'general damages' and 'special damages' in varying contexts has blurred the distinction between them. However the difference can be better elucidated in the context of three distinct issues which arise in the award of damages in an action by a plaintiff.

The first distinction between these terms is underscored in issues relating to liability. 'General damages' is usually the term which relates to damages arising in the normal course of things, principally in cases of breach of contract. 'Special damages', however, covers the category of damages arising out of special and extraordinary circumstances beyond the reasonable contemplation of the parties.

The second contrast arises in issues relating to proof of damage. General damages are those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms, for example, damages for harm to reputation in actions for defamation and damages for pain and suffering in actions relating to personal injury. In comparison, special damages, in this context, are those losses which can be calculated in financial terms; these are generally pecuniary losses calculable at the time of trial, for example, claims for loss of earnings, whether past or future, or the cost of care in personal injury actions.

The third context in which the distinction arises relates to pleadings. Special damage refers to those losses which must be proved by evidence, and particulars of the special damage claimed must be specified in the plaint, whereas general damage is that which will be presumed to be the natural or probable consequences of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered and quantification is left to the court."

52. Compensatory damage is to compensate the plaintiff in terms of money for the

damages caused to him by the defendant. The plaintiff is thus compensated for the actual loss suffered by him by the award of compensatory damages, either for breach of contract or for tort whether for pecuniary or non-pecuniary loss. Noncompensatory damages are damages over and above compensatory damages and are based on a different scale. The court may award non-compensatory damages either because there is no injury or damage caused or to punish the defendant for his conduct in inflicting harm to the plaintiff, in addition to the normal compensatory damages. Pecuniary damages are damages paid in respect of damage which can be estimated in and compensated by money. They are damages for all such loss, deprivation or injury as can be made the subject to calculation and of recompense in money and may include loss of earnings, loss of future earning, loss due to damage to goods, loss on breach of contract for sale of goods, loss of profits, expenses of medical treatment or cost of repair or replacement. Non-pecuniary damages are damages for loss or injury, which is not assessable arithmetically by and are generally awarded in actions for tort. This may include damages for personal injuries including pain and sufferings, loss of amenities, physical inconvenience and discomfort, damage to the reputation or damages on account of social discredit or interference with enjoyment of property or mental distress. Consequential damages are damages which do not flow directly and immediately from the act of the party but as a consequence of a wrongful act which are so proximate as to be recoverable. Only such damages that are sufficiently proximate to the course of action as to be the natural consequence of the wrongful act, though even of an interim nature, are recoverable. Normal losses are the losses which every plaintiff will suffer such as general damage, while consequential losses are anything above the normal losses such as profits lost or expenses incurred through the breach and are recoverable if they are not remote. Nominal damages have been defined as a sum of money that may be spoken of but that has no existence in point of quantity or a mere peg on which to hang costs. The plaintiff is entitled to nominal damages where his rights have been infringed, though he has not sustained any actual damage from the infringement or he fails to prove that he has suffered damage or although actual damages has been caused, it arises from the plaintiff's conduct and not from the wrongful act of the defendant or the plaintiff bringing an action only to establish his right and he is not concerned to raise question of actual loss or damage. Nominal damages can be awarded in cases of breach of contract and in torts actionable per se. A small amount of money is awarded as nominal damages. The other class of damages is aggravated, exemplary or punitive damages.

53. In the Halsbury's Laws of India (Supra) at Page 23 they are explained as follows:--

"Aggravated, exemplary or punitive damages - In certain circumstances the court may award more than the normal measures of damages, taking into account the defendant's motives or conduct. Such damages may be 'aggravated' damages' or 'exemplary damages'.

Aggravated damages are compensatory in nature, in that they compensate the victim of a wrong for mental distress, or injury to feelings, in circumstances in which that injury has been caused or increased by the manner in which the defendant committed the wrong, or by the defendant's conduct subsequent to the wrong.

Exemplary damages are punitive in nature and are awarded to punish the wrong doer and not to compensate the plaintiff for any loss.

The Indian courts have been reluctant to award punitive damages and the view taken is that if the offender has to be punished then recourse must be had to the penal law. However, exemplary damages have been awarded by courts in cases of breach of duty by public functionaries, to protect the fundamental rights of the citizen, or for misfeasance in public office because it is an accepted principle and oppressive, arbitrary or un-constitutional action by the government or its servants calls for exemplary damages. Awards of exemplary damages must, however, be made sparingly. If official power has been exercised in a bona fide manner, exemplary damages should not be awarded despite the fact that unintended injury is caused to someone.

Exemplary damages may also be awarded in cases where the defendant has calculated to make a profit for himself which may exceed the compensation payable to the plaintiff, and this extends to cases where the defendant is seeking to gain some object at the plaintiff's expense."

54. The Constitutional Bench of the Hon'ble Supreme Court in *M.C. Mehta and Another v. Union of Indian and Others* MANU/SC/0092/1986 : (1987) 1 SCC 395, considered the environmental damage caused and held that the enterprises must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of the such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that harm occurred without any negligence on its part. It was also held that the quantum of compensation must be co-related to the magnitude and capacity of the enterprises because such compensation must have a deterrent effect. Their Lordship held:

"32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

55. The Hon'ble Supreme Court in *M/s. Sterlite Industries India Limited v. Union of India* (MANU/SC/0284/2013 : (2013) 4 SCC 575) following the said Constitution Bench decision held:

"47 In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled "Financial Performance":

"PBDIT for the financial year 2010-2011 was Rs. 1043 crores, 40% higher than PBDIT of Rs. 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation."

Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and

according to us, any less amount, would not have the desired deterrent effect on the appellant Company."

56. In the *Deepak Nitrite Limited v. State of Gujarat and Others* (MANU/SC/0482/2004 : (2004) 6 SCC 402) the Hon'ble Supreme Court held:

"6. The fact that the industrial units in question have not conformed with the standards prescribed by GPCB, cannot be seriously disputed in these cases. But the question is whether that circumstances by itself can lead to the conclusion that such lapse has caused damage to environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. May be, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of "polluter-to-pay" principle has got to be practical, simple and easy in application. The appellants also do not contest the legal position that if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid."

57. The Hon'ble Supreme Court in *Goa Foundation v. Union of India and Others* (MANU/SC/0388/2014 : (2014) 6 SCC 590) directed to deposit 10% of the cost of the project at the first instance as environmental damage. What was directed was to deposit 10% of the value of the mineral extracted.

58. Following polluter pays principle and the guidelines settled in the above decisions this Tribunal in *Sarang Yadwadkar & Ors. v. Commissioner, Pune Municipal Corporation and Others*, MANU/GT/0051/2013 : 2013 All (1) NGT Reporter (Delhi) 299 directed to pay the environmental damages. In *Krishan Kant Singh v. National Ganga River Basin Authority* 2014 All (1) NGT Reporter 3 (Delhi) 1, the Tribunal directed the Sugar Mills which had operated without consent of the Pollution Control Board and polluted the environment, to pay a compensation of Rs. 5 Crore. That decision was confirmed by the Hon'ble Supreme Court by order dated 21st January, 2015 in Civil Appeal No. 10434 of 2014.

59. Section 20 of the National Green Tribunal Act, mandates that while passing any order or decision or award the Tribunal, shall apply the Principles of Sustainable Development, the Precautionary Principles and the Polluter Pays Principles.

60. Therefore applying Polluter Pays Principle and the settled guidelines settled in the decisions of the Hon'ble Supreme Court and that of the this Tribunal referred to earlier, Respondent No. 9 and 10 who caused environmental degradation are liable to pay the environmental compensation as have been already found in the main judgement.

61. Then the question is on the quantum of compensation Respondent No. 9 was directed to pay 5% of the cost of the project as compensation by the Main Judgment. It was found to be a sum of Rs. 117.35 Crores. We find no reason to vary, reduce or modify the same considering the nature of the environmental degradation caused by the Respondent No. 9 in magnitude and capacity of the project proponents and also the necessity to have a deterrent effect.

62. As far as Respondent No. 10 is concerned he was directed to pay a compensation

of Rs. 22.5 Crores being 5% of the cost of the project in Main Judgement. Considering the fact that compared to Respondent No. 9, Respondent No. 10 has not commenced the actual construction activity. But they have carried out various preparatory work including excavation and depositing huge quantity of earth, creating a hellock at the premises and thereby caused environmental degradation. In the interest of justice we reduce the compensation originally fixed in the Main judgment and direct Respondent No. 10 to pay an environmental compensation of 3% of the cost of the project instead of 5% imposed. Respondent No. 10 is therefore directed to pay an environmental compensation of Rs. 13.5 Crores.

63. On the facts and in the light of the materials on record we find that it is absolutely necessary to issue the following general and specific directions.

"General Conditions or directions:

1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkulewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP - 2015 provides 50m from middle of the Rajkulewas as buffer zone in the case of primary Rajkulewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:--

- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.
- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In

this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

- i. At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.
- ii. All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.
- iii. Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific Conditions/Directions for Respondent 9;

In addition to the above directions which should be equally part of EC condition in respect of respondents Nos. 9 & 10, following specific conditions shall apply to respondent No. 9:

- i. Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.
- ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt.
- iii. Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent No. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agaralake and the Belandur Lake, respondent No. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandurlake.

v. The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.

vi. The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No. 10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General Directions:

1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be

permitted to commence activity only after issuance of amended Environmental Clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law. |

5. Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent No. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been granted for 2,92,636.03 Sq. Meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent No. 9 to submit a fresh layout plan and the entire project may be revised in accordance with law.

7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance."

64. The Original Application No. 222 of 2014 and Miscellaneous Application Nos. 596/2016 and 603/2016 are finally disposed of. Parties to bear their own costs.

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Civil Appeal No. 5016 of 2016

Mantri Techzone Pvt. Ltd. v. Forward Foundation

2019 SCC OnLine SC 322

In the Supreme Court of India

(BEFORE A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

Civil Appeal No. 5016 of 2016

Mantri Techzone Pvt. Ltd. Appellants;

v.

Forward Foundation and Others Respondents.

With

Civil Appeal Nos. 8002-8003 of 2016

Civil Appeal No. 12326 of 2016

Civil Appeal No. 9227 of 2016

Civil Appeal No. 1343 of 2017

Civil Appeal No. 10995 of 2016

Civil Appeal No. 10993 of 2016

Civil Appeal No. 10994 of 2016

Civil Appeal No. 2246 of 2018

Civil Appeal No. 10992 of 2016

Civil Appeal No. 12157 of 2016

Civil Appeal No. 12152 of 2016

Civil Appeal No. 12156 of 2016

Civil Appeal No. 12158 of 2016

Civil Appeal No. 12160 of 2016

Civil Appeal No. 12159 of 2016

Civil Appeal Nos. 4923-4924 of 2017

Civil Appeal No. 14966 of 2017

Decided on March 5, 2019

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.:— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity 'NGT Act') challenging the judgment and order dated 07.05.2015 and 04.05.2016 respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short 'the Tribunal').

2. The appellants in Civil Appeal Nos. 5016 of 2016 and 8002-8003 of 2016 are respondent Nos. 9 and 10 in the Original Application No. 222 of 2014 (hereinafter referred to as 'the respondent Nos. 9 and 10'). The said Application was filed by respondent Nos. 1 to 3 herein (hereinafter referred to as 'the applicants'). Respondent Nos. 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as respondent Nos. 1 to 4 in the application. Respondent Nos. 12 and 13 herein were subsequently impleaded in the application (for short 'the impleaded respondents').

3. The State of Karnataka has filed Civil Appeal Nos. 4923-4924 of 2017, challenging the general condition and direction No. (1) contained in the order of the Tribunal dated 04.05.2016. The other appeals have been filed by different entities,

who were not parties before the Tribunal challenging the order of the Tribunal dated 04.05.2016 insofar as it directs a buffer/green zone of 75 meters in respect of lakes, 50 meters in respect of primary Rajakaluves, 35 meters in case of secondary Rajakaluves and 25 meters in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed O.A. No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short 'the KIADB') to respondent Nos. 9 and 10 vide Notifications dated 23.04.2004 and 07.05.2004 respectively for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), identifies the allotted land as 'Residential Sensitive', though the same land was identified in the Draft Master Plan as 'Protected Zone'. It was further contended that the Revenue Map in respect of properties as referred in the Land Lease Agreements has multiple Rajakaluves (Storm Water Drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rain water into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 acres and 1.23 acres each.

5. The Satellite Digital Images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short 'SEAC'), which was to assist the State Level Environment Impact Assessment Authority (for short 'SEIAA'), held its meetings on various dates to examine the project. It had required the appellant No. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short 'BWSSB') for the project in question. It was also observed that the project lies between the Bellandur Lake and the Agara Lake. Respondent No. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11.11.2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq. mtrs. whereas the built up area, as noted by SEAC, is 13,50,454.98 sq. mtrs. Respondent No. 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent No. 9 had approached the Karnataka State Pollution Control Board (for short 'the KSPCB') for obtaining clearance, which was granted on 04.09.2012 subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by the KSPCB to respondent No. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

7. Applicants further contended that respondent No. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from 'Protected Zone' to 'Residential Sensitive Area' is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely

disturbed and damaged the Rajakaluves. Respondent Nos. 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of Wetlands (Conservation of Management) Rules, 2010 (for short 'Rules of 2010').

8. It was submitted that SEIAA in its meeting dated 29.09.2012, decided to close the file pertaining to respondent No. 10 due to non-submission of requisite information and the application thereof was rejected in November, 2012. Despite the rejection, respondent No. 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 water bodies in the Bangalore city in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 kms. of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the Report of the Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore city. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore Metropolitan Area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas. The applicants claim to have obtained monitoring report of the project by respondent No. 5, Ministry of Environment and Forests, through RTI on 21.08.2013. The report dated 14.08.2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

10. The Lake Development Authority (for short 'the LDA'), after inspection in the catchment area of the Bellandur Lake submitted its report dated 12.06.2013 which confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of KIADB. The LDA has also opined that the land should be classified and maintained as sensitive area. The KIADB called upon respondent No. 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, respondent Nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the Rajakaluves. It was also pleaded that respondent No. 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by respondent No. 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of respondent No. 9 alone is approximately 4.5 million liters per day, i.e. 135 million

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liters per month, which is more than what the BWSSB supplies to the entire Agaram Ward. The construction of respective projects by respondent Nos. 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

11. Respondent No. 9 in its objections contended that it was incorporated with the objective of establishing an Information Technology Park and R & D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High Level Committee meeting held on 21.06.2000 and after examining the proposal, it was approved by the Government on 06.07.2000. Before the State High Level Committee, it had informed that its requirement was 110 acres of land, 25 MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10.02.2004. Subsequently, the lands were allotted vide letter dated 28.06.2007 for which Lease-cum-Sale Agreement was signed on 30.06.2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtrs. The Project was conceived as a zero waste discharge project. The project is located one and a half kms. away from the southern-side of the Bellandur Lake. Towards the North, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the East, lies the Project of respondent No. 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 04.07.2007 which was renewed from time to time.

12. Respondent No. 9 claims that it has obtained NOC from Airport Authority of India on 09.04.2010. Bharat Sanchar Nigam Ltd, vide its communication dated 16.04.2010, granted clearance for the project construction. BWSSB, vide its communication dated 26.04.2011 issued NOC for portion of the proposed construction to be built. The Bangalore Electricity Supply Company Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental Clearance was granted by SEIAA vide communication dated 17.04.2012. The Director General of Police has issued NOC and KSPCB vide order dated 04.09.2012 accorded its consent for construction of the said project subject to the conditions stated therein. It was further stated that after grant of the Environmental Clearance on 17.09.2012, the same was published in the leading newspapers "Kannada Prabha" and "The Indian Express" on 12.03.2012 and 14.03.2014 respectively.

13. It submitted a modified the building plan which was approved by KIADB vide its letter dated 30.08.2012, which was valid up to 10.08.2014. It started the construction of the project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the

Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent No. 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and *mala fide*. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31.08.2007 with an investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to it on 25.01.2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to respondent Nos. 9 and 10, one year time was granted for the implementation of the project which was extended from time to time. The building drawings were approved on 04.07.2007, and the modified building drawings were approved on 26.04.2011 and 30.08.2012 with specific conditions. In its meeting held on 16.07.2013, it was resolved to inform respondent No. 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from the LDA and KSPCB. LDA vide its letter dated 24.09.2013, had informed KIADB that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake with deleterious effects and asked it to stop construction activity of respondent Nos. 9 and 10. However, the validity of the building drawings was again extended up to 10.08.2014. The Lokayukta on 17.12.2013 had written a letter in respect of complaint filed by the South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21.12.2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to respondent No. 9. The Board took a decision which was communicated to respondent No. 9 on 02.01.2014, wherein it asked the respondent No. 9 to stop all construction activities on the allotted lands. The said communication was challenged by respondent No. 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23.12.2013 issued by Bruhat Bengaluru Mahanagara Palike (for short 'BBMP') was also stayed vide order dated 21.01.2014. The proposal submitted by respondent Nos. 9 and 10 had been approved by the State Government. The land allotted to respondent Nos. 9 and 10 does not consist of any Rajakaluves.

16. The LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time it was in the dark. After the complaints, it inspected the Bellandur Lake and the Agara Lake on 12.06.2013 and prepared an inspection report. In the report, it was noticed that large scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 06.07.2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31.08.2013, that respondent No. 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23.09.2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it

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also communicated its objections to KIADB mentioning that construction activity would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by the KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

1. Whether the application filed by the applicants and supported by respondent Nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata*?
4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petitions 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and
5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 07.05.2015 at Annexure A-2, disposed of the applications with the following directions:

- 1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated hereinafter:
 - a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
 - b) CEO of the Lake Development Authority, Karnataka State.
 - c) Chief Town Planner of BBMP, Bangalore.
 - d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
 - e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
 - f) Dr. Siddharth Kaul, former Advisor to MoEF.
 - g) A Senior Officer from the National Institute of Hydrology, Roorkee.
- 2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.
- 3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies with particular reference to lakes.
- 4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake,

- particularly Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify, if any Rajakaluves have been covered by the construction activities of respondent Nos. 9 and 10 or by any of the projects in the area in question.
- 5) Committee should submit in its report, if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.
 - 6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent Nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.
 - 7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report, whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.
 - 8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly in the city of Bangalore.
 - 9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent Nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc. in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent Nos. 9 and 10 respectively.
 - 10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.
 - 11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent Nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.
 - 12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.
 - 13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.
 - 14) For the reasons stated in the judgment, respondent No. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent No. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, on to the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

19. Feeling aggrieved by the said order, respondent Nos. 9 and 10 filed Civil Appeal Nos. 4829 and 4823 of 2015 before this Court. This Court by its Order dated 20th May, 2015 passed the following order:

"One of the main contentions raised by the Appellants in these Appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs. 117.35 crores against the original Respondent No. 9 (the Appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

20. In relation to Issue No. 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 06.04.2016 on these applications as under:

"M.A. No. 603 of 2015 and M.A. No. 596 of 2015"

These Applications have been filed on behalf of the Respondent 9 & 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble SUPREME COURT OF INDIA primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions the M.A. No. 603 of 2015 and M.A. No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned. The Tribunal after hearing the parties passed an order dated 04.05.2016 as under:

"General Conditions or directions:"

1. In view of our discussion in the main Judgment, we are of the considered view

that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP - 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:

- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.
- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

- i. At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.
- ii. All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.
- iii. Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific Conditions/Directions for Respondent 9:

In addition to the above directions which should be equally part of EC condition in respect of respondents nos. 9 & 10, following specific conditions shall apply to

107 COPY

respondent no. 9:

- i. Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.
- ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt.
- iii. Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent No. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agara lake and the Belandur Lake, respondent No. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.
- iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur lake.
- v. The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.
- vi. The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.
- vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various

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breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No. 10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General Directions:

1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.
2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.
3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru.
4. We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.
5. Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.
6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent No. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been granted for 2,92,636.03 Sq. Meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent No. 9 to submit a fresh layout plan and the entire project may be revised in accordance with law.
7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.
8. The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance.

With the above directions, the Original Application No. 222 of 2014 and Misc. Applications Nos. 596/2016 and 603/2016 are finally disposed of while leaving the parties to bear their own costs."

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22. Appearing for the appellants in C.A. No. 5016 of 2016, Shri Mukul Rohatgi, learned senior counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short 'KIAD Act') declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28.06.2007, the land was allotted to the appellant by the KIADB. The SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14.03.2012. Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Section 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further the application is barred by limitation. Though environmental clearance was granted on 17.02.2012 and it was published in two leading newspapers on 12.03.2012 and 14.03.2012, modified plan was approved by the KIADB on 30.08.2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March, 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by the NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22.06.2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short 'the Planning Act').

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned senior counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur lake water body or to Bellandur lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned senior counsel appearing for the appellants, in C.A. Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30.09.2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. Learned Advocate General, Shri Udaya Holla, appearing for the appellant-State of Karnataka in C.A. Nos. 4923-4924 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of the NGT to the extent of setting aside the buffer zone in respect of water bodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of the NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the

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validity or *vires* of any statutory provision/regulation. Therefore, the order of the NGT to that extent is liable to be set aside.

28. Learned senior counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 meters buffer zone around the lakes and a buffer zone of 50 meters, 25 meters and 15 meters from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, the NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 meters around the lake and 50, 35 and 25 meters respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by the NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned senior counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in C.A Nos. 5016 of 2016 and 8002-8003 of 2016 (respondent Nos. 9 & 10). He has no objection to set aside the order in so far as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of the NGT in paragraph (1) of the order dated 04.05.2016 except the directions issued against respondent Nos. 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeal Nos. 4923-4924 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by respondents Nos. 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned senior counsel appearing for the appellants in C.A. No. 5016 of 2016 and C.A. Nos. 8002-8003 of 2016. It is submitted that the Tribunal is a specialized body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(a) of the NGT Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(b) and 15(1)(c), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(b) and 15(1)(c) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(c) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short 'KMC Act'). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and water bodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by respondents 1 to 3 was not an application simplicitor under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12.06.2013 and the Ministry of Environment Forest and Climate Change Monitoring Committee report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of Appellate Jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC'). Under Section 100 of the CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed *in limine*. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

"22. Appeal to Supreme Court.- Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate Appellate Court can exercise jurisdiction, the Court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 of the CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Sir Chunilal V. Mehta and Sons, Ltd. v. Century Spinning and Manufacturing*, 1962 Supp. (3) SCR 549. This Court has laid down the test as under:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so

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whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not *ipso facto* permit the appellants to agitate their appeal to seek re-appreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale re-appreciation of evidence and the factual matrix that has been considered by the Tribunal is *ex facie* impermissible under Section 22. There cannot be fresh appreciation or re-appreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental

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concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.

46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated *supra*, the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP.

48. The second question raised by the appellants is that the petition is barred by time. According to appellants, environmental clearance was granted to the respondent No. 9 on 17.02.2012 for which notice was published in the leading newspaper on 12.03.2012 and 14.03.2012. Modified building plan was approved on 30.08.2012, which was followed up to 10.08.2014. Similar events had taken place in regard to the project of respondent No. 10 who had been granted environmental clearance on 30.09.2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March, 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. The OA No. 222 of 2014 was not an application *simpliciter* under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's ("LDA") Report dated 12.06.2013 and the Ministry of Environment, Forest and Climate Change ("MoEF") Monitoring Committee Report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as

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established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned senior counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11.01.2012 of the Chairman of the KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 acres 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes, and wetland being adversely affected by these projects. That is why, the Tribunal has observed as under:

"72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

- 1) The construction of both the projects had started prior to the grant to Environmental Clearance.
- 2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
- 3) Revenue Map images shows multiple Rajakaluves flowing through the project (s) in question. The images further show encroachment on Rajakaluves.
- 4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
- 5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.
- 6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.

- 7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xi) in the Environmental Clearance of respondent no. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."
- 53.** In paragraph 81, the Tribunal has observed as under:
"81.Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."
- 54.** In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the Expert Members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.
- 55.** We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of re-appreciation of factual matrix by this Court under Section 22 of the NGT Act.
- 56.** Shri R. Venkataramani, learned senior counsel has also raised a subsidiary issue relating to *res judicata*. According to him, respondent Nos. 12 and 13 filed Writ Petition Nos. 3656-57/2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of *res judicata*.
- 57.** The Tribunal has answered this issue in paragraphs 47 to 51 of the order. There was no dispute in so far as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the geneses of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.
- 58.** After elaborately considering this question, the Tribunal has concluded as under:
"51.For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and

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conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor constructive *res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of 'judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka."

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by the respondent Nos. 9 and 10 do not satisfy the basic ingredients to attract the application of *res judicata* or *constructive res judicata*.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 04.05.2016:

"1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP - 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:—

- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.
- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore."

61. We have already noticed that Shri Poovayya has no objection to set aside the

aforesaid impugned portion of the order in so far as the appellants in all the appeals except the appeals filed by respondent Nos. 9 and 10. The aforesaid portion of the order contains not only general directions but also certain directions against respondent Nos. 9 and 10. Therefore, only that portion of the order which does not pertain to respondent Nos. 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

- i) Civil Appeal No. 5016 of 2016 and Civil Appeal Nos. 8002-8003 of 2016 filed by the appellants/respondent nos. 9 and 10 are hereby dismissed. The impugned judgment and order in so far as appellants/respondent Nos. 9 and 10 are concerned is sustained.
- ii) All the other appeals are hereby allowed and the direction/condition No. (1) in the order dated 4.5.2016 is hereby set aside except the direction issued against respondent Nos. 9 and 10.

63. There will be no order as to costs.

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