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

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE … APPELLANT

VERSUS

THE PS-DoE, GoM & ORS. … RESPONDENTS

FILE-A

VOLUME-___

SR.	DESCRIPTION	PAGE NO.
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2.	A true copy of the Final Order & judgment passed by Hon'ble NGT (PB) in OA No. 222/2014, The Forward Foundation & Anr. ***Versus*** State of Karnataka & Ors. vide dated 07.05.2015	
3.	A true copy of the Final Order & judgment passed by Hon'ble NGT (PB) in OA No. 37/2015, S.P. Muthuraman ***Versus*** Union of India & Ors. vide dated 07.07.2015	
4.	A true copy of the Order passed by Hon'ble Supreme Court in **Civil Appeal No(s). 1119-1120/2016**, Satilila Sehkari Awas Samiti Ltd ***Versus*** Union Of India & Ors. vide dated 04.03.2016, **i.e. S.P. Muthuraman Case**	
5.	A true copy of the Order passed by Hon'ble Supreme Court in **Civil Appeal No(s). 5618/2015**, SAS Realtors Pvt. Ltd. ***Versus*** S.P. Muthuraman & Ors. . vide dated 18.07.2018, **i.e. S.P. Muthuraman Case**	
6.	A true copy of the Order passed by Hon'ble Supreme Court in **Civil Appeal No(s). 5016/2016**, Mantri Techzone Pvt. Ltd. ***Versus*** Forward Foundation & Ors. vide dated 05.03.2019	

Date: 30.04.2023

Bombhise

APPELLANT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
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IN THE MATTER OF:

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WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT-MR. TANAJI B. GAMBHIRE:

1. That, the Appellant have filed present Appeal on 05.06.2019 for quashing & setting aside the Environment Clearance dated 07.05.2019 granted by Respondent No. 2-SEIAA to the Residential Building Construction Project undertaken by the Respondent No. 9-M/s. Raviraj Reality-PP in the name & style "Vitoria Lagoon" situated at Survey No. 2A/7A (CTS No. 8) at Village-Bopodi, Taluka-Haveli, District-Pune within local limits & jurisdiction of PMC, on ground set out in Appeal, that the EC is granted to the project proposed in prohibited Zone of blue flood line of Mula River, procured on the basis of false & misleading information given in Form-1 & 1A, it is ex-post facto EC as substantial excavation is carried out & part plinth of Bldg-C and collusion of Respondent Government Authorities & its Officers from PMC and this project have serious adverse impact on the environment & ecology of Mula River, if permitted. Therefore, Appellant seeks relief of quash & set aside of EC, revocation of PMC sanction Plan, action against City Engineer of PMC i.e. Mr. Prashant Waghmare, Mr. Anil appropriate action against SEIAA & SEAC-III members etc.

2. THAT, THE IMPUGNED EC IS ILLEGAL, NULL, VOID AND NEEDS TO BE QUASHED & SET ASIDE ON THE FOLLOWING GROUNDS:

A) Building Construction Project falls under prohibited blue flood line

B) Form-1 & 1A are misleading, defective, suppressing information

C) Joint Committee Stand

D) Irrigation/Water Resource Department Stand

E) MPCB Stand

F) SEIAA Stand & Additional Affidavit dated 21.04.2023

G) PMC Stand & sanction plans are expired and cannot be revalidated

H) **SETTLED POSITION ON REQUIREMENT OF MANDATORY PRIOR ENVIRONMENTAL CLEARANCE UNDER EIA NOTIFICATION, 2006 AND IMPUGNED EC DATED 07.05.2019 IS EX-POST FACTO AND NOT PRIOR EC**

I) **R-9-M/S. RAVIRAJ REALITY-PP STAND & ILLEGAL, CARELESS, MISLEADING, BASELESS, ILLEGITIMATE CONDUCT AND MISCHIEVOUSNESS OF THE R-9-M/S. RAVIRAJ REALITY-PP BY WAY OF ADDITIONAL AFFIDAVIT VIDE DATED 28.04.2023**

J) **R-9-PP IS THE HABITUAL OFFENDER**

K) Actions Against Mr. Prashant Waghmare for illegal grant of Building Sanctions

L) Actions Against the Members of SEAC-III & SEIAA for illegal grant of EC

3. BUILDING CONSTRUCTION PROJECT FALLS UNDER PROHIBITED BLUE FLOOD LINE

That the following dated & events shows the careless, baseless practices adopted by PP with callous attitude in procuring impugned EC dated 07.05.2019

Sr.	Date	Event	Annexure/ Page	Remark
1.	21.09.1989	GoM-Notification by Irrigation Department on flood line marking imposing prohibition on activity	A-3, P@64-66	Prohibited Area #River-Blue Flood Line Area
2.	14.09.2006	MoEF issued notification mandating prior EC for Building Construction projects/Activity	A-4, P@64-103	Restriction, Prohibition, Sr. No. 2.4-Building Material, Word “Flood” Occur: Form-1#8.3,

				#Environmental Sensitivity, Sr. No. 12, Form-1A#2.8, 2.11
3.	11.09.2007	**PMC Notice to PP**	P@593-594	**PP to obtain flood line marking on project site**
4.	02.06.2010	Irrigation Dept. submitted flood line marking plan to PMC	P@488-489	
5.	11.07.2013	Hon'ble NGT Judgment in OA No. 02/2013 for prohibition on construction in blue flood line	A-7, P@145-189	Para-35, 36 & 39
6.	23.11.2015	PMC Revalidation of Sanction Plan	**P@596** Para-4 of Rejoinder, P@566-567	TBUA=20504.40 M²
7.	01.03.2017	Part Plinth Check Certificate for Bldg-C	A-8, P@190	
8.	09.10.2017	GoM released Final Development Plan for PMC Old Limit for period of 2007-2027	A-9, P@191-192	
9.	17.02.2018	GoM Approved excluded part of substantial modifications	A-10, P@193-245	
10.	03.05.2018	GoM-Notification by Irrigation Department on flood line marking imposing prohibition on activity	A-12, P@250-258	Item#3: Blue Line Item#5: Prohibitive Zone Item#7: Prohibitive Zone Uses
11.	11.05.2018	GoM approved Final Development Plan for PMC Old Limit for Excluded Part period of 2007-2027	A-13, P@259-261	
12.	30.07.2018	Revision of sanction Plan	A-15, P@263	
13.	__/__/2018	Application for EC	A-16, P@264-298	False Information, Blue Flood Line, Tress, Building Material,
14.	15.01.2019	SEAC-III Minutes for 80th Meeting	A-18, P@362-374	
15.	27.03.2019	Tree Authority NoC issued by PMC	A-21, P@379 Item#2	Total Available Trees=297
16.	24.04.2019	SEIAA Minutes for 165th Meeting	A-22, P@380-392	
17.	07.05.2019	Impugned EC granted by SEIAA for the project following under prohibited zone of blue flood line	A-1, P@48-61	
18.	06.06.2019	**Appeal No. 48/2019 filed before Hon'ble NGT**	P@01-46	
19.	10.06.2019	Complaint of Appellant to SEIAA & PS-DoE	P@597-627	

20.	15.06.2019	Proposed Direction-SCN Notice by SEIAA to PP	P@628-630	
21.	08.08.2019	Complaint of Appellant to MPCB	P@631-654	
22.	30.01.2020	Hon'ble NGT Order in OA No. 41/2019(WZ)	P@655-661	Demolished PCMC STP
23.	04.06.2020	Hon'ble SC Order in CA No. 2083/2020	P@662-663	Hon'ble SC Confirmed NGT Order in OA No. 41/2019(WZ)
24.	20.07.2020	MPCB rejected CTE	P@494-495	
25.	10.11.2021	Joint Committee Report filed before Hon'ble NGT	P@453-500	

That, Respondent No. 5-Water Resource Department/ Irrigation Department submitted their flood line marking plan to the Respondent No. 6-PMC vide letter dated 02.06.2010 {**P@488-489**} attached to the Joint Committee Report and flood line maps are clearly showing that the project site is falling under prohibited blue flood line of Mula River and as per Government of Maharashtra Notification dated 21.09.1989 {**ANNEXURE-A-3, P@64-66**}, no such construction is permitted in blue flood line and prior to that, PMC issued direction to the Respondent No. 9-PP vide letter dated 11.09.2007 {**P@593-594**} to obtain the flood line marking on the project site. However, PP did not obtain the flood line marking till date as PP is aware that the entire project is falling under prohibited zone of blue flood line, wherein no construction activity is permissible.

Further, Hon'ble NGT vide its Judgment dated 11.07.2013 passed in OA No. 02/2013(PB) {**ANNEXURE-A-7, P@145-189**, **Para-36 & 39**} have clarified that there is prohibition on construction in blue flood line.

Further, knowingly & deliberately, Respondent No. 6-PMC & R-7-Mr. Prashant Waghmare have issued revalidation & revised building & layout sanction vide dated 23.11.2015 {**P@596**} for total proposed BUA of more than **20504.4** M^2 i.e. **more than 20000 M^2** {**Rejoinder Para-4**, **P@566-567**} mandating prior EC under EIA Notification, 2006. However, PP did not obtained any permission

from the Respondent No. 5-Water Resource Department/ Irrigation Department as well as EC and carried out the substantial excavation in the year 2016-17 and also obtained the part plinth check certificate vide dated 01.03.2017 {**ANNEXURE-A-8, P@190**} for an area of **31.75 M²**. And cause substantial irreparable damage to the river, which is environmentally & ecologically sensitive area. Further, PMC released the Development Plans with flood line marking vide dated 09.10.2017 {**ANNEXURE-A-9, P@191-192**} and GoM-Irrigation Department issued Notification vide dated 03.05.2018 {**ANNEXURE-A-12, P@250-258**} on flood line marking & imposing prohibition on activity within blue flood line.

Further, knowingly & deliberately, Respondent No. 6-PMC & R-7-Mr. Prashant Waghmare have issued revalidation & revised building & layout sanction vide dated 30.07.2018 { **ANNEXURE-A-15, P@263**} for the project falling into prohibited blue flood line, wherein no building construction activity is permissible and this is callous attitude of the PMC official towards the implementation & enforcement of Environment protection statues and convenient ignorance & failure too, for the reasons best known to them.

Thereafter, PP applied for the Environment Clearance in view to procure ex-post facto EC {**ANNEXURE-A-16, P@264-298**} and said proposal was considered by SEAC-III for appraisal in its 80th meeting held on 15.01.2019 {**ANNEXURE-A-18, P@362-374**} by recommending it to the SEIAA and SEIAA assessed the proposal in its 165th meeting held on 25.04.2019 {**ANNEXURE-A-22, P@380-392**} decided to grant the EC. Accordingly impugned EC was granted on 07.05.2019 for the building project falling under prohibited zone of blue flood line.

Therefore, this impugned Environment Clearance dated 07.05.2019 under challenge shall be quashed & set aside with exemplary damages for illegal excavation and heavy cost for illegal practices adopted by PP.

4. FORM-1 & 1A ARE MISLEADING, DEFECTIVE, SUPPRESSING INFORMATION:

Project proponent have provided false, misleading, information as below and therefore, Application in the form of **FORM-1 & 1A** {**ANNEXURE-A-16, P@264-298**} is defective & suppressing the information resulted into wrong appraisal & assessment. Appellant have raised this issues in pleading at **Para-M, Page@27-29** of Appeal.

22.	Whether there is any government order/ policy relevant/ relating to the site?	**No**

1.21	Impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers? {**SEIAA Additional Affidavit 21.04.2023**}	NO	Not Applicable
1.24	Changes in water bodies or the land surface affecting drainage or run-off?	NO	**No change in the water bodies or the land use surface affecting natural drainage ways.**
1.4	Pre-construction investigations e.g. bore houses, soil testing?	YES	Soil testing will be carried out.
2.1	Land especially undeveloped or agricultural land (ha)	YES	Proposed site does not fall under Agriculture or Non-Development Zone.
2.4	Construction material stone, aggregates, sand / soil (expected source –MT	YES	Construction materials such as cement, steel, metal sand and bricks will be procured from authorized dealers.
8.3	Could the project be affected by natural disasters causing environmental damage (e.g. floods, earthquakes, landslides, cloudburst etc)?	NO	The project area falls under Zone III as per Map showing Seismic Zones of India. Zone III is of moderate Seismic Intensity. The building design has been planned accordingly
(III) Environmental Sensitivity			
2	Areas which are important or sensitive for ecological reasons -Wetlands,	YES	Mula River : 0.06 km

	watercourses or other water bodies, coastal zone, biospheres, mountains, forests		
12	Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)	No	Earth Quake Zone III Therefore, all relevant design parameters as per zone III have been considered for RCC design of the buildings.

FALSE INFORMATION OF EXISTING TREES

PP has disclosed only 44 no. of existing trees at site and suppressed information of the existing 297 trees. And while granting EC no existing tree is disclosed. {**Appeal Ground, Para-8(q), P@38**}

That, the SEAC-III has recorded that, there are only 44 existing trees on the basis of false information provided by the PP. actually there are 297 existing trees as per NOC. {**Appeal Para-O(f), P@32 & SEAC-III 80th MoM P@ 369**}

That, the Tree Authority of PMC has issued the NOC for garden on 27.03.2019 for the purpose of obtaining EC. It is stated that, there are 297 of existing trees, but PP has disclosed only 44 existing trees before SEAC-III & SEIAA. {**Appeal Para-P(c), P@33, ANNEXURE-A-21, P@379**}

That, the SEIAA has recorded that, there are only 44 existing trees on the basis of false information provided by the PP. actually there are 297 existing trees as per NOC. {**Appeal Para-Q(g), P@36 & SEIAA 165th MoM P@ 387**}

That, considering the false, misleading, defective, suppressing information in Form-1&1A, appraisal by SEAC-III & Assessment of SEIAA is total false and therefore, impugned EC dated 07.05.2019 needs to be quashed & set aside to avoid any unbridle & uncontrolled situation on the environment & ecology.

5. JOINT COMMITTEE STAND

That, the Joint Committee have filed its Report {**Page No. 453-500**} and supported the contention of this Appellant on account of project is falling in prohibited zone of blue flood line of Mula River and also, PP have submitted incorrect information of existing 44 trees, in actual there are 297 trees at site as per NOC of PMC and also CTE is rejected by MPCB and there are two bore wells. Also Joint Committee have admitted that there is plinth check & excavation at site. Therefore, impugned EC dated 07.05.2019 shall be quashed.

6. IRRIGATION/WATER RESOURCE DEPARTMENT STAND

That the Respondent No. 5-Irrigation Department have submitted the flood line marking maps to the Respondent No. 6-PMC vide letter dated 02.06.2010 {**P@488-489**} for Mula river and also, informed Joint Committee through SRO-MPCB vide letter dated 06.09.2010 {**P@486-487**}, that the Entire project land situated at Survey No. 2A/7A, CTS No. 8 is falling under blue flood line and no construction is permissible as per letter dated 17.08.2021 received from Sub-divisional Engineer of Khadakwasala Canal Sub-Division No. 2 and also, informed that, the flood line plans are submitted to the PMC vide letter dated 02.06.2010.

That, the Advocate for the Respondent No. 5 have made statement and same is recorded by this Hon'ble NGT vide its Order dated 27.01.2023 in Para-8, that the Respondent No.5 is relying upon the Joint Committee Report. Therefore, Respondent No. 5-Irrigation Department have supported the contentions raised in the Appeal and for this reasons, impugned EC dated 07.05.2019 shall be quashed & set aside with exemplary & deterrent cost.

7. MPCB STAND VIDE AFFIDAVIT DATED 16.03.2022:

That the MPCB vide its affidavit dated 16.03.2022 {**P@501-503**} have admitted that the MPCB have rejected the Consent to

Establish to the project on account of non-submission of the certificate of Executive Engineer from Irrigation Department vide refusal order dated 27.07.2020 {**P@504-505**} and for this reasons, impugned EC dated 07.05.2019 shall be quashed & set aside with exemplary & deterrent cost..

8. SEIAA STAND AFFIDAVIT DATED 25.01.2023 & ADDITIONAL AFFIDAVIT DATED 21.04.2023

That, the Respondent No. 2-SEIAA vide its reply affidavit dated 25.01.2023 {**P@830-856**} have initially misleaded this Hon'ble NGT on account of stating that the grant of EC dated 07.05.2019 is subject to the General Condition No. V and after, the Hon'ble NGT order dated 27.01.2023, Respondent No. 2-SEIAA vide its affidavit dated 21.04.2023 have changed the stand that, PP have misleaded on account of vital information in respect of the recent government policy ought to be disclosed in item No. 22 of Form-1, item No. 1.21, 1.24, Environmental item#12 etc.

Therefore, considering the final stand of the Respondent No. 2-SEIAA and for this reasons, impugned EC dated 07.05.2019 shall be quashed & set aside with exemplary & deterrent cost.

9. PMC STAND & SANCTION PLANS ARE EXPIRED AND CANNOT BE REVALIDATED

That there is clear cut default & illegality on part of the Respondent No. 6-PMC and Respondent No. 7-Mr. Prashant Waghmare as the Respondent No. 5-Irrigation Department/WRD have submitted their flood line Maps to the PMC vide letter dated 02.06.2010 and confirmed that the project is site affected by the blue flood line and construction is not permissible on project land. However, PMC & Mr. Prashant Waghmare have revised, revalidated the plan vide sanction dated 23.11.2015 {**P@596**} and vide dated 30.07.2018 {**ANNEXURE-A-15, P@263**} and helped & facilitated the R-9-PP in procuring the impugned EC dated 07.05.2019 in illegal manner

and failed to mark the blue flood line on while sanctioning the plans which leaded to grant of this illegal EC. Moreover, as per the conditions of Commencement Certificates and Section-48 of Maharashtra Regional & Town Planning Act, 1966, building sanctions granted to the PP have expired and in present circumstances, any further sanction cannot be granted.

Further, the sanction dated 23.11.2015 {**P@596**} was for more than 20000 M2, but PP is allowed to proceed in illegal excavation and construction of small plinth for building-C. Therefore, Respondent No. 7-Prashant Waghmare holding the position of Head of Building Permission Department, City Engineers as also other important portion related to building permission needs to be put under strict direction in indulging of supporting the PP.

10. SETTLED POSITION ON REQUIREMENT OF MANDATORY PRIOR ENVIRONMENTAL CLEARANCE UNDER EIA NOTIFICATION, 2006 AND IMPUGNED EC DATED 07.05.2019 IS EX-POST FACTO AND NOT PRIOR EC:

a) I state that, the EIA Notification, 2006 mandates prior Environment Clearances as per the interpretation & judgments & Orders passed by Hon'ble NGT and Uphold by Hon'ble Supreme Court as explained below;

Sr.	Date	Event	Para	Page
1.	14.09.2006	EIA Notification, 2006	Para-2, 8 Word "Prior" appears more than 40 times	P@
2.	19.08.2010	OM issued by MoEF on activities permissible prior to obtaining EC	Only fencing & Security Cabin	P@595
3.	23.11.2015	PMC Revalidation of Sanction	TBUA=20504.40 M²	**P@596** Para-4 of Rejoinder, P@566-567
4.	07.05.2015	Hon'ble NGT (PB) Judgment OA No. 222/2014, in Forward Foundation Vs. State of Karnataka & Ors, Hon'ble NGT (PB) Judgment	Issue No. 5 Para-52, 66, 71, 72, 80, 81	

5.	07.07.2015	Hon'ble NGT (PB) Judgment, OA No. 37/2015, SP Muthuraman Vs UoI & Ors.,	Issue No. 5-8 Para No. 108-155 IMP Para-147/P@175 IMP Para-152/P@185	
6.	04.03.2016	Hon'ble Supreme Court Order, **in SP Muthuraman**	Dismissed	
7.	2016-17	**Excavation carried out by PP without prior EC**		
8.	18.07.2018	Hon'ble Supreme Court Order, **in SP Muthuraman**	Dismissed	
9.	05.03.2019	Hon'ble Supreme Court Judgment, in Mantri Techzone Vs. Forward Foundation & Ors Civil Appeal No.	Para-52, 53, 54	P@

b) As per the Orders, judgments & verdict of Hon'ble Supreme Courts Mantri Tech Zone case (i.e. Forward Foundation Case) and S.P. Muthuraman Case, prior Environmental clearance is mandatory under EIA Notification, 2006 for the all the project listed in schedule to the Notification and there cannot be commencement of any construction without obtaining mandatory prior EC under EIA Notification, 2006 and this is the settled position as of now.

c) Therefore, PP have carried out the exaction in the year 2016-17 after obtaining sanction dated 23.11.2015 having total BUA of 20504.40 M2 requiring prior EC under EIA Notification, 2006. For this reason, impugned EC dated 07.05.2019 is ex-post facto and not prior EC.

11. R-9-M/S. RAVIRAJ REALITY-PP STAND & ILLEGAL, CARELESS, MISLEADING, BASELESS, ILLEGITIMATE CONDUCT AND MISCHIEVOUSNESS OF THE R-9-M/S. RAVIRAJ REALITY-PP BY WAY OF ADDITIONAL AFFIDAVIT VIDE DATED 28.04.2023:

That, the Respondent No. 9-PP is trying to regale out the blatant illegality of procuring of EC dated 07.05.2019 for residential building construction project falling under prohibited zone of blue flood line of Mula River and this illegality is committed in collusion with the corrupt Members of SEIAA & SEAC-III as PP have made

statement in hearing dated 27.01.2023, that PP have given his representation and disclosed about the blue flood line.

That, the Respondent No. 9-PP is now filed an additional affidavit vide dated 28.04.2023 and intentionally served on 29.04.2023 around 6.18 PM, just one day before final hearing, wherein PP have stated that, PP have filed application vide dated 18.04.2023 filed before SEIAA on 25.04.2023 for conditional withdrawal of impugned EC dated 07.05.2023, subject to reserving right to construct in future. That, this stand of PP is totally illegal & mischievousness and trying to regale out the his crime committed with help of his deep unholy nexus with corrupt Government Official, those who are conveniently ignoring to perform their duties in letter & spirit of their objective of appointments. Therefore, such affidavit and applications for withdrawal of EC shall not be given any consideration and on contrary, such attempt must be saddled with heavy hands and present Appeal will not become infructuous by such lame attempt of counter blasting the Appeal made by PP to overcome its crime.

Following are the paragraphs, where PP is showing his ill intention to damage the environment & ecology with prior permission of this Hon'ble NGT.

Para No. of PP Affidavit	**PP stand**
Para-3	…. . The Respondent No. 9 has sought also sought the withdrawal of the EC by reserving the rights to construct in future by obtaining necessary permissions in accordance with law. …..
Para-5	I say that, thus, the Respondent No. 9, is withdrawn/surrendered of the said Environmental Clearance dated 7th May 2019. The Respondent No. 9, also reserve its right to construct on the said in future by obtaining necessary permissions in accordance with law as applicable at that point of time. I say that in view of the aforesaid development, the present Appeal is thus rendered infructuous and the Respondent No. 9, therefore prays that it be disposed off.

OM dated 29.03.2022, Para-2	Such practices adopted by the Project Proponents, not only defeat the purpose of the EIA Notification, 2006 but it may also pose an acute threat to the local people living in the vicinity of the project site depending upon the hazardous/ risk associated with the respective development project or activity since the EC conditions remain non-complied.
Letter to SEIAA, MPCB, PMC Dated 18.04.2023 field on 24.04.2023, and 25.04.2023 filed on 26.04.2023	(**Reason for EC Withdraw**) As of now we don't have any plans to develop this property therefore we are withdrawing our EC. However, we reserve our right that if in future we decide to develop we will do after obtaining all require permissions. As of today we are withdrawing this EC subject to our rights to construct in future in accordance with law.

That, therefore, PP have procured the EC in illegal manner and to avoid the final consequences of the Appeal Proceeding and there by defeating the objective & provisions of the EIA Notification, 2006, PP have adopted such illegal procedures to counter blast the Appeal Proceedings and this Hon'ble NGT shall not allowed such practices as this PP has ulterior motive and must be saddled with iron hands to send clear message in the lobby of unapologetic & careless polluters.

12. R-9-PP IS THE HABITUAL OFFENDER:

That the R-9-PP herein and the Respondent No. 16-PP from OA No. 28/2019 are the part of the same business group. Respondent No. 16-PP from OA No. 28/2019 (WZ) is saddled with the Environmental compensation of Rs. 5.90 Crores and also this Hon'ble NGT have directed PMC commissioner to take action against the PMC erring officer for helping PP vide its Order dated 22.02.2022. Therefore, R-9-PP is adopting most careless & reckless practices and manoeuvred & manipulated officials & authorities for obtaining Building sanction plans and Environmental Clearance

even the project is falling into prohibited blue flood line and this PP is not entitle for any equity before law being the habitual offender.

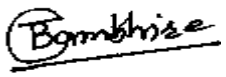
13. THEREFORE, HUMBLE SUGGESTIONS OF APPELLANT ARE AS FOLLOW:

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

Therefore, this Hon'ble NGT may kindly pass appropriate Orders/directions/reliefs in facts & circumstances of the case.

14. Hence this Written Submission.

Date: 30.04.2023



(TANAJI BALASAHEB GAMBHIRE)
APPELLANT

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 222 OF 2014

IN THE MATTER OF:

1. The Forward Foundation
   A Charitable Trust
   Having its registered office at 24/B,
   Haralur Village, HSR Layout Post
   Bangalore 560102
   Through its Secretary

2. Praja RAAG,
   A Society registered under the Karnataka
   Societies Registration Act, 1960
   and having its Registered office at
   C-103, Mantri Classic, 4th Block,
   Koramangala, Bangalore 5600034
   Through its President

3. Bangalore Environment Trust,
   A registered office at A 1-Chartered
   Cottage, Langford Road,
   Bangalore 560025
   Through its Trustee

.....Applicants

Versus

1. State of Karnataka
   Vidhana Soudha
   Bangalore – 560001
   Through its Chief Secretary

2. Ministry of Environment and Forests Regional Office (SZ)
   Kendriya Sadan, IV Floor,
   E and F Wings, 17th Main Road,
   Koramangala II Block,
   Bangalore – 560034
   Through its Addl Principal Chief Conservator of Forests

3. State Level Environment Impact Assessment Authority
   Department of Ecology and Environment
   Room No. 709, 7th Floor,
   M S Building,
   Bangalore – 560001
   Through its Member Secretary

4. Karnataka State Pollution Control Board
Parisara Bhavan,
49, 4th & 5th Floor,
Church Street, Bangalore – 560001
Through its Chairman

5. Bangalore Water Supply and Sewerage Board
Cauvery Bhavan,
Bangalore – 560009
Through its Chairman

6. Lake Development Authority
Parisara Bhavan,
49, Second Floor,
Church Street, Bangalore–560001
Through its Chief Executive Officer

7. Karnataka Industrial Areas Development Board
14/3, 2nd Floor,
Rashtrothana Parishat Buildings,
Nrupathunga Road,
Bangalore – 560001
Through its Chief Executive Officer

8. Bangalore Development Authority
Chowdiah Road,
Bangalore – 560020
Through its Chairman/Commissioner

9. Mantri Techzone Private Limited
(formerly called Manipal ETA P Ltd.)
Having its registered office at
Mantri House, No. 41, Vittal Mallya Road,
Bangalore 560001
Represented by its Managing Director

10. Core Mind Software and Services Private Limited
4th Floor, Solarpuria Windsor,
3, Ulsoor Road,
Bangalore 560042
Represented by its Managing Director

11. Namma Bengaluru Foundation
A registered Public Charitable Trust,
Having its registered office at No. 3J,
NA Chambers, 7th 'C' Main 3rd Cross,
3rd Block, Koramangala,
Bangalore 560034
Represented by its Director Mahalakshmi P.

12. Citizens' Action Forum
A Society registered under the provisions of the Karnataka Societies Registration Act, 1960 and having its registered office at 372, 1st Floor, MK Puttalingaiah Road, Padmanabhanagar, Bangalore 560070
Represented by its authorized signatory Mr. Vijayan Menon

.....Respondents

Counsel for Applicant:

Mr. Raj Pajwani, Sr. Adv. Along with Ms. Megha Mehta Agrawal, Advocate

Counsel for Respondents:

Mr. Devraj Ashok, Advocate for Respondent No. 1, 3, 4 & 5
Mr. B.R. Srinivasa G., Advocate for Respondent No. 7
Mr. R. Venkatramani, Sr. Advocate, Mr. Shekhar G. Devasa, Mr. D. Mahesh, Advocates for respondent No. 9
Mr. Raju Ramachandran, Mr. Devashish Bharuka, Mr. Vaibhav Niti and Mr. Suraj Govindraj, Advocates for Respondent No. 10
Mr. Sajan Poovayya, Sr. Advocate and Mr. Sumit Attri, Advocate for Respondent Nos. 11 & 12

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Professor A.R. Yousuf (Expert Member)

Reserved on: 27th January, 2015
Pronounced on: 7th May, 2015

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

All the three applicants have approached the Tribunal under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), with a common prayer that a direction be issued to respondent no. 1, the State of Karnataka to take cognizance of the

Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further the applicants also prayed for issuance of a direction that the valley land is to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area is not disturbed. Besides this, they even prayed for issuance of such other order or directions as the Tribunal may deem fit in the circumstances of the case and render justice.

The three applicants are either a registered charitable trust and/or a Society, registered under the relevant laws in force. They claim to be keenly interested in protecting the environment and ecology, particularly, in the State of Karnataka. Their principal grievance is in relation to certain commercial projects that are being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage. According to them, it is of alarming significance that the Project has encroached an Ecologically Sensitive Area, namely, the valley and the catchment area and *Rajakaluves* (Storm Water Drains) which drains rain water into the Bellandur Lake. Thus, in the interest of

environment and ecology, they have approached the Tribunal with the above prayers.

2. Shorn of any unnecessary details, the precise facts leading to the filing of this application are that, according to these applicants, the ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short the 'KIADB'), respondent no. 7 herein, to respondent nos. 9 & 10 vide Notifications dated 23rd April, 2004 and 7th May, 2004, respectively. This land was allotted 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'), respondent no. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. It is stated by the applicant that the Revenue Map in respect of properties as referred in the land lease Agreements has multiple *Rajakaluves*. The development projects in question sit right on the catchment and wetland areas which feeds the *Rajakaluves*, which in turn drain rain water into Bellandur Lake. The project will thus encroach two *Rajakaluves* of 1.38 acres and 1.23 acres each. The satellite digital images of the area from year 2000 to 2012 clearly show encroachment upon these *Rajakaluves*, as well as, the manner in which they are covered by this construction. The State Level Expert Appraisal Committee (for short the 'SEAC'), which was to assist State Level Environment Impact Assessment Authority (for short the 'SEIAA'), held its meetings on various dates to examine

the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was 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.

3. It is the case of respondent no. 5 that such NOC was issued but it covers only an area of 17,404 sq mtr, whereas the total built-up area as noted by the SEAC is 13,50,454.98 sq mtr. It is alleged by the applicants 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 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.

4. According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over *Rajakaluves*. The construction has 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 submits 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*. It is also alleged that respondent nos. 9 & 10 have started to level the land by filling it with debris, thus causing damage to the drains. It is further stated that 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. This 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 also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). It is

submitted that SEIAA in its meeting dated 29th September, 2012, decided to close the file pertaining to respondent nos. 10 due to non-submission of requisite information and the application therefore was rejected in November, 2012. Despite the rejection, respondent no. 10 commenced construction on the project in full swing.

5. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A. T. Ramaswamy in the month of July, 2005, 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 have become sewage channels.

6. The Hon'ble High Court of Karnataka in *Environment Support Group and Another v. State of Karnataka, Writ Petition No. 817/2008* appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil to suggest 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. 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, 1986 which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tanks is not polluted. The findings of the Environmental

Information System (ENVIS), Centre for Ecological Science, Indian Institute of Sciences, Bangalore, in May 2013 on the Conservation of the Bellandur Wetlands obligation of Decision Makers is ensure Intergenerational Equity recommended restoration of wetlands and cessation of plan to set up the SEZ in the area. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas.

7. The applicants claim to have obtained the monitoring report of the project by respondent no. 2 through RTI on 21st August, 2013. The report dated 14th August, 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 or operational phase of the project. This breach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

8. The Lake Development Authority (for short 'the LDA'), respondent no. 6 herein, had initiated an inspection in the catchment area of the Bellandur Lake. The report dated 12th June, 2013 confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of respondent no. 7 vide letter dated 7th July, 2013. Respondent no. 6 has also opined that the land should be classified and maintained as Sensitive Area. Respondent no. 7 in furtherance thereto had called upon respondent no. 9 to comply with rules of Ecology and Environment Department and to obtain

necessary approval from respondent nos. 6 and 4. It is alleged that a vague reply had been submitted by respondent no. 9 making certain misrepresentations. 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 also rely upon the fact that the revised Master Plan, 2013 issued by Respondent no. 8 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 is also the case pleaded by the applicant that Respondent no. 9 had obtained the NOC from Respondent no. 5 only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by the Respondent no.9 is based upon the said partial NOC issued by Respondent no. 5 which itself is a misrepresentation. The applicants have pleaded that the projects are bound to create water scarcity as the requirement of project of Respondent no. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what Respondent no. 5 supplies to the entire Agaram Ward. It is stated by the applicants 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.

The applicants have stated that they have filed the application against threat posed to the ecological balance from the ongoing commercial constructions project near Agara Lake and Bellandur Lake, and the same is continuing every day in violation of the law. With these allegations, the three applicants have instituted this application with prayers afore-noticed.

9. Different respondents in the application have filed independent replies as already noticed. Respondent nos. 9 and 10 are the Project Proponents against whom the applicant has raised the principal grievance. Thus, first we may notice the case advanced by respondent nos. 9 and 10. In its replys, respondent no. 9 has submitted that the said 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 centres and other allied infrastructure within a single compound. This respondent 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. Proposal of respondent no. 9 was considered in 78th High Level Committee meeting held on 21st June, 2000 and after examining the proposal, the same 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 from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and 4 lakh litres of water per day from respondent no. 5. The lands for the project were initially notified by the BDA. However, later the lands were de-notified vide notification dated 10th February, 2004. Subsequently, the lands were allotted to the replying respondent vide letter dated 28th June, 2007 for which lease-cum-sale agreement was signed on 30th June, 2007. Considering the overall development of the State of Bangalore, the said 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 mtr. The Project was conceived as a zero waste discharge project. According to this Respondent, the project is located one and a half kilometres away from the southern-side of the Bellandur Lake. Towards the North adjacent to the Project site, lie vast stretches of lands belonging to the Defence, and towards the East, which is completely developed lies the Project of Respondent no. 10 and that another developer is also developing a project on the western side. Respondent no. 9 has submitted that it has obtained sanction plan on 4th July, 2007 which was being renewed from time to time. The Respondent also claims that it has obtained No Objection Certificate from Airport Authority of India on 9th April, 2010, certificate dated 15th April, 2010 from Dr. Ambedkar Institute of Technology and that the Bharat Sanchar Nigam Ltd, vide its communication dated 16th April, 2010, granted clearance for the

project construction. BWSSB, respondent no. 5 herein vide its communication dated 26th April, 2011 issued No Objection Certificate for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited also granted No Objection Certificate for arranging power supply to the proposed residential and commercial building in favour of the Respondent no. 10. Environmental Clearance was granted by SEIAA vide communication dated 17th February, 2012. Director General of Police issued No Objection Certificate and KSPCB vide order dated 4th September, 2012 accorded its consent for construction of the said project site subject to the conditions stated therein.

Respondent no. 9 further states that after grant of the Environmental Clearance on 17th February, 2012, the same was published in the leading newspapers "Kannada Prabha" and the "Indian Express" on 12th and 14th March, 2012 respectively.

11. Respondent no. 9 later modified the building plan and the same was approved by Respondent no. 7 vide its letter dated 30th August, 2012, which was valid up to 10th August, 2014. It is further claimed that 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 respondent further submitted that he has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders. According to him, he has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. The allegation

with regard to the covering and blocking the Rajakaluves (Storm Water Drains) drying the wetland and raising of the construction thereupon adversely affecting the lake, are specifically disputed and denied. The Respondent claims that 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., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties.

12. It is specifically stated by this Respondent that certain print media had published articles stating that construction was unauthorized, illegal and that it was prejudicial to the environmental and ecological interest of that area. Not only this, 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). Besides making the above allegation, it was also alleged in those petitions that the project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court of Karnataka after hearing the parties issued notice, however, denied to pass any interim order of stay as prayed by the petitioners. The said petition is stated to be pending before the Hon'ble High Court.

In the meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BMP') issued a stop work notice to the said respondent in regard to illegal and unauthorized construction as well as its adverse impacts on the lake. Aggrieved from the stop work notice dated 23rd December, 2013, Respondent no. 9 filed a Writ Petition before the Hon'ble High Court being Writ Petition No. 366-367 of 2014 and 530-625/2014in which the Hon'ble High Court vide its order dated 21st January, 2014 stayed the operation of the stop work notice dated 23rd December, 2013. Another notice was also issued by respondent no. 7 directing stoppage of work on 2nd January, 2014, which was again challenged by the respondent no. 9 in Writ Petition No. 792 of 2014 before the same High Court and vide its order dated 7th January, 2014 the operation of the stay order was also stayed by the Hon'ble High Court. Replying respondent has taken up specific pleas with regard to the present application being barred by time because the Environmental Clearance was granted on 17th February, 2012 and even article in the newspapers were published on 3rd June, 2013 as such the present petition has been filed beyond the prescribed period of limitation and the Tribunal has no power to condone the delay which in fact has not even been prayed by the Applicant. According to respondent no. 9, this Tribunal has no jurisdiction to entertain and decide this application in the form and content in which it has been filed, as no question or substantial question of environment has been raised in relation to the Scheduled Acts under the NGT Act, 2010. Another objection raised by respondent no. 9 is that the

applicants are guilty of suppression and misrepresentation of material facts and have not approached the Tribunal with clean hands and also that the proceedings before the Tribunal ought to be dismissed in face of the proceedings pending before the Hon'ble High Court of Karnataka in the Writ Petitions afore-referred. If the dates as stated by the applicant are taken to be correct, even then the application should have been filed within 30 days of the constitution of the Tribunal i.e. 18th October, 2010 and in any case within 60 days thereafter, by showing that they were prevented by sufficient cause. Since the application has been filed much beyond the prescribed period, it is barred by time and suffers from the defect of latches.

13. Respondent no. 10 besides raising the same preliminary objection with regard to the maintainability of the application and jurisdiction of the Tribunal, as raised by respondent no. 9, has also stated that application of applicant is hit by the Principle of *Falsus in Uno, Falsus in Omnibus*. It is also averred that the present application is a cut-paste of the Public Interest Litigation filed before the Hon'ble High Court of Karnataka and that the allegations made therein and in the present application are similar. On merits it is contended that averments made in the application are factually incorrect.

According to respondent no. 10, crux of the dispute is with regard to the allocation of the land and its conversion from 'Protected Zone' to 'Residential Sensitive' in the Master Plan, without giving any reason, which does not fall within the

jurisdiction of the Tribunal. The applicants have raised multifarious proceedings against respondent no. 10 which is an abuse of the process of law and are *mala fide*. The applicant has not only stated identical facts in their application before the Tribunal, but have even submitted the same set of documents as were filed before the Hon'ble High Court of Karnataka, which clearly shows that the application before the Tribunal lacks *bona fides* and there is suppression and misrepresentation of material facts.

14. On merits respondent no. 10 has stated that the State of Karnataka has formulated a policy to invite investment in Karnataka and for that purpose the Karnataka Industries (Facilitation) Act, 2002 had been promulgated. Under this Act, State Level Single Window Clearance Committee and State High Level Clearance Committee were created to examine and clear the projects. All investment projects submitted to Karnataka Udyoga Mitra were forwarded to Single Window Agency, if it was less than the value of Rs 50.00 crores for necessary processing and clearance and for value above Rs 50.00 crores, is placed before the State High Level Clearance Committee for processing and approval. Respondent no. 10 had submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25 acres of land along the outer ring road in Bangalore to which the clearance certificate dated 27th March, 2004 was issued. Respondent no. 10 submitted a revised proposal in respect of the same project and to obtain fresh clearance on 31st August, 2007 and revised proposal was with the investment of Rs 179.22 crores.

The State High Level Committee had cleared the project which was communicated to Respondent no. 10 on 25th January, 2008. According to Respondent no. 10, 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 by respondent no. 10 seeking sanction of development and building plan in respect of the above properties into a Software Technology Park, Hospitality, Commercial and Residential Complex was also allowed and as per the directive of respondent no. 7, respondent no. 10 has deposited a sum of Rs 1,28,56,830. Respondent no. 10 had also taken clearance from various authorities including Environmental Clearance and consent for establishment. The details of the same are as follows:

Sl. No	Date	Document No.	Nature of Document	Issued by	Annexure
1	17.3. 2011	ASC/CM(AO) /181/HAL: BG:58/2011	No Objection Certificate	Airport Services Centre, Hindustan Aeronautics Limited, Bangalore Complex	'R22'
2	30.07. 2011	AGM(TP)/S:6 /IX/2010-11	No Objection Certificate	Bharat Shanchar Nigal Ltd, CGM, Telecom, KTK Circle, Bangalore	'R23'
3	22.05. 2012	CEE(P&C)/SEE /(Plg)/EEE(plg) /K CO-95/F-46611/2012-13/R-50 (75)	No Objection Certificate	Karnataka Power Transmission Corporation Ltd, Chief Engineer, Electric City, Cauvery Bhavan, Bangalore	'R24'
4	03.08. 2012	GBC(1)478/ 2011	No Objection Certificate	Office of Director General,	'R25'

				Karnataka State Fire & Emergency Services	
5	04.04. 2013	BWSSB/EIC/ ACE ® /DCE(M) -II/TA(M)- II/137/2012-13	No Objection Certificate	Bangalore Water Supply & Sewerage Board, Cauvery Bhavan, Bangalore	'R26'
6	03.06. 2013	PCB/136/CNP/ 12/H321	No Objection Certificate	Karnataka State Pollution Control Board, Church Street, Bangalore	'R27'
7	30.09. 2013	SEIAA:37:CON: 2012	No Objection Certificate	State Level Environment Impact Assessment Authority, Karnataka	'R28'

Certain sections of the media had raised some queries to respondent no. 10 to furnish the copy of the Consent to Establish and Environmental Clearance certificate on 30th September, 2013. They had also expressed that the project had started without such clearances. However, upon issuance of Consent to Establish and Environmental Clearance dated 4th June, 2013 and 30th September, 2013 respectively, same were furnished to the reporter of newspaper 'The Hindu', vide letter dated 11th October, 2013. According to respondent no. 10, around this project, much development has already taken place, even around various lakes, but it has not caused any damage to the lakes and similarly, project of respondent no. 10 would also not cause any damage to the area and the lakes. Respondent no. 10 has also referred to the Writ Petition 36567-36574 of 2013, where relief of resumption of land from both the respondent nos. 9 and 10 was prayed. Notice dated

28th February, 2014 was issued by respondent no. 7 to respondent no. 10 containing direction to stop work/ construction activity against which respondent no. 10 had also filed a Writ Petition in the Hon'ble High Court of Karnataka, being Writ Petition No. 18119 of 2014. The Writ Petition was pending and Interim Order was passed. This Respondent claims that they are entitled to develop the projects, having received all clearances. It is specifically stated that the Bellandur Lake does not support any fishing activity or forms a source of water for domestic purpose nor is the agricultural activity carried out at the said area. There are no wetlands and none of the functional aspects of the wetland exist on the site in question. It is also denied that the project carried out by respondent no. 10 on the property belonging to it has any adverse impact on environment. Respondent no. 10 further states that the ENVIS report relied upon by the applicant is prepared by persons interested in opposing his project. In any case, the said report dated 14th August, 2013 stood superseded by the Environmental Clearance dated 30th September, 2013, wherein, respondent no. 3 has accorded consent to the project after considering the actual facts, after due application of mind and by subjecting respondent no. 10 to strict terms and conditions as mentioned in the clearance dated 30th September, 2013. On these averments, respondent no. 10 prays that the application should be dismissed and no relief should be granted by the Tribunal to the applicants.

15. Respondent no. 7 has filed a short reply. He submits that after the possession of the land was handed over to respondent no.

9 and 10, one year time was granted to implement the project, which was extended from time to time. According to respondent no. 7, the building drawings were approved on 4th July, 2007, modified building drawings were approved on 26th April, 2011 and 30th August, 2012 with specific conditions. In the meeting of the KIADB held on 16th July, 2013, it was resolved to inform respondent no. 9 to fully comply with the Ecology and Environment rules as well as to obtain approvals from the respondent no. 6, LDA and respondent no. 4, KSPCB. Respondent no. 6, LDA vide its letter dated 24th September, 2013, had informed respondent no. 7 that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake, with deleterious effects and asked the Respondent no. 7 to stop construction activity of respondent nos. 9 & 10, however, the validity of the building drawings was again extended up to 10th August, 2014. The Lokayukta on 17th December, 2013 had written a letter in respect of complaint filed by South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21st December, 2013 to keep in abeyance the approval accorded and even the revalidations of plans. This was also informed to respondent no. 9. The Board took a decision which was communicated to respondent no. 9 on 2nd January, 2014, wherein it asked the said respondent no. 9 to stop all construction activities on the allotted lands. It is admitted that the said communication was challenged by respondent no. 9 and on the stop work notice, stay was granted by the Hon'ble High Court of Karnataka. Stop

work notice issued by BBMP dated 23rd December, 2013 was also challenged before the Hon'ble High Court and operation of the said communication was stayed vide order dated 21st January, 2014. It is submitted by respondent no. 7 that the project of respondent nos. 9 and 10 had been approved by the Government. It is specifically submitted that the answering respondent had not acquired any *'Rajakaluves'* and the land allotted by respondent no. 7 to respondent no. 10 does not consist of the same. Respondent no. 7 further states that the Storm Water Drains are not always flowing in strict or permanent path and are prone to flow in different paths from time to time. Respondent no. 7 further states that it had allotted 17 acres 33½ guntas of land in favour of respondent no. 10 for the purpose of establishing Software Technology Park, Hospitality, Commercial and Residential Complex and has executed lease-cum-sale agreement on 20th March, 2008.

16. Respondent no. 6 has taken a stand that it was not at all aware of the project initiated by respondent no. 7, KIADB. The said respondent claims it came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time respondent no. 6 was in the dark. After the complaints, the said respondent immediately inspected the Bellandur Lake and the Agara Lake on 12th June, 2013 and prepared an inspection report. In the report, it was noticed that the large scale construction activities in the catchment area of Bellandur Lake was going on and 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. Respondent no. 6, vide its letter dated 6th July, 2013, had questioned the decision of respondent no. 7 and even requested to stop the construction activity and to reclassify the land as non-SEZ area. It was thereafter on 31st August, 2013 that respondent no. 9 wrote a letter to respondent no. 6 for according approval for the proposed development projects. However, vide its letter dated 23rd September, 2013, respondent no. 6 informed respondent no. 7 that the replying respondent had no authority to grant or deny construction projects but at the same time it also communicated their objections to respondent no. 7, mentioning that construction activity would be in contravention to the directions of the Hon'ble High Court of Karnataka as well as of the Hon'ble Supreme Court. Despite these warnings, respondent no. 7 granted approval to the extension of building drawings of the project in favour of respondents no. 9 & 10 on 11th October, 2013 and 3rd January, 2013 respectively, 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, that the natural sloping pattern of the project site shall remain unaltered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite these objections by respondent no. 6, the plans were approved and approvals extended from time to time. Therefore, respondent no. 6 submits that these projects, as approved by

respondent no. 7 would have adverse impacts on Bellandur Lake and Agara Lake.

17. Respondent nos. 1, 3 and 5 though have filed separate replies but they have taken up the stand that the projects have been granted, No Objections Certificates and Environmental Clearance by SEIAA, subject to the conditions noticed above. According to these respondents, if there is any breach, the same would be dealt with in accordance with law. According to respondent nos. 1 & 3, the file of respondent no. 10 was closed by SEIAA, Karnataka on 16th November, 2012 for non-submission of the required information but was later revived in the meeting held on 27th June, 2013 and Environmental Clearance was granted on 30th September, 2013. Both the projects are ongoing projects. The proposals have been considered in accordance with law.

18. Vide order dated 25th July, 2014 of the Tribunal, respondent nos. 11 and 12 were impleaded on their applications. Both these respondents are registered as charitable trust or a society. Replies by both these respondents have been filed wherein they have raised specific objections with regard to allotment of land in Ecologically Sensitive Area in the catchments of the Bellandur Lake for the construction of IT Park and related infrastructure, in flagrant violation of the applicable rules and regulations. According to respondent nos. 11 and 12, the allotment of this land is in contravention of the directions laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Areas Development Board vs. Sri. C. Kenchappa and Ors.*, (2006) 6 SCC 371. It is further

stated that the fact that these projects would essentially result in alteration of natural hydrology of the area and sloping pattern of the project site, clearly shows that there was no application of mind on the part of the concerned authority for granting approvals. The plans sanctioned in favour of respondent nos. 9 and 10 are replete with irregularities and illegalities and despite objections from respondent no. 6, the plans have been renewed contrary to law. For instance, respondent no. 9 had first represented that the project will have a built up area of 1.75 lakh sq. ft. while seeking approval from respondent no. 6, while in reality the built up area is 1.30 crore sq. ft./9.54 lakh sq. mtr., which is evidenced by respondent no. 9's own admission, and is not even disputed by him. The water requirement of the project would be nearly 135 million litres per month, which would exert excessive pressure over the wetland and would also lead to scarcity of water for the residents of the nearby areas. As already stated, the execution of the project will necessarily result in altering the hydrology of the area and the natural sloping pattern of the project site. Therefore, the conditions imposed in the Environmental Clearance are incapable of being complied with. According to these respondents, the Google satellite images that have been placed on record, reveal that the excavation work by respondent nos. 9 and 10 commenced much prior to obtaining approvals by them in 2012 & 2013 respectively, making the construction unauthorised and illegal. The matters before the Hon'ble High Court are stated to be restricted to the prayer for resumption of land and not connected with these proceedings

before the Tribunal. According to these respondents, the stop work orders for the construction of the project have been stayed in terms of the orders of the Hon'ble High Court of Karnataka and are subject to the result of the Writ Petition and the Project Proponents are entitled to claim their equities in the event they failed before the Hon'ble High Court. The Hon'ble High Court had granted the interim order staying the stop work orders primarily on the ground that BBMP did not have jurisdiction to issue such order. According to respondent nos. 11 and 12, respondent no. 10 obtained the Environmental Clearance on 30th September, 2013, but it still does not have the mandated clearance from the BDA which was one of the conditions imposed by the State High Level Clearance Committee on 25th January, 2008. The project consists of residential block and commercial block, among other constructed areas. It is averred that as of present, a very small part of the project has been completed and if the construction of the project is permitted to be completed in all respects, the environment and ecology of the area would suffer and residents and public at large would have to face severe and fatal environmental consequences. These adverse consequences would not only be limited to flooding, water shortage, geological instability but would also affect the Bellandur Lake, which is one of the largest lakes in Bangalore, gathering an area of 338.28 hectares, with catchment area, of approximately 171.17 square kms.

As already noticed, respondent nos. 11 and 12 were ordered to be impleaded as respondents in this case on the condition that they

would withdraw the Public Interest Litigation filed by them before the Hon'ble High Court of Karnataka. These Respondents had thus moved the Hon'ble High Court for withdrawal of the Writ Petitions. However, the Hon'ble High Court only permitted these two Respondents to withdraw themselves from the Writ Petitions in terms of the undertaking given by them before the Tribunal. The Petitioner before the Hon'ble High Court who had not given any undertaking before the Tribunal, their Writ Petitions are still continuing before the Hon'ble High Court. They have denied the allegation that any of them has committed violation of the order of the Tribunal or abused the process of law. It is also denied that the averments made and stand taken by them is false, incorrect and vexatious. Respondent no. 7 had first issued a letter dated 14th August, 2013 requiring respondent no. 9 to comply with the ecology and environmental rules and also to take necessary approval from the LDA, Bangalore and KSPCB before taking up any further activity of the project. Then, it issued the order dated 2nd January, 2014 informing the said respondent that the layout plan has been kept in abeyance and thus the Project Proponent should stop all construction activities in the allotted land until further orders. It is also the case of respondent nos. 11 and 12 that the report by Dr. T. V. Ramachandra is not a report by interested persons, but is part of scientist's social responsibility and the report published in May, 2013 gives the complete and correct position at site. It is their case that the cause of action has arisen on various dates, including first on 11th October, 2013 when respondent no. 7, despite objections

from various authorities, extended its approval of plan, on the conditions stated therein. They have, therefore, submitted that the application is neither barred by time nor can it be contended that it does not raise a specific question of environment within the ambit of the Scheduled Acts under the NGT Act, 2010.

19. From the above pleaded case of the respective parties and the submissions advanced on their behalf, the following questions fall for consideration and determination 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?

Discussion on Merits

1. **Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?**

20. According to respondent no. 9, it had submitted a proposal to establish Information Technology Park, R & D Centre, Residential Complex and other facilities and sought for allotment of lands for the project in the year 2000. On 15th January, 2001, the Government in exercise of powers conferred upon it under Section 3(1) of the Karnataka Industrial Area Development Act, 1966 declared the land in question as an Industrial Area. Preliminary notification for acquisition of land in question was issued on 15th January, 2001 by KIADB and final Notification for acquisition of the land was issued on 23rd April, 2004, which was preceded by a Global Investor meet held on 10th February, 2004. On 28th June, 2007, respondent no. 7 issued the letter of allotment to respondent no. 9 allotting 63 acres 37½ gunta in Agara and Jakkasandra village. The possession certificate in favour of respondent no. 9 was issued on 29th June, 2007 in furtherance to which said respondent had paid the amount and executed the lease-cum-sale agreement. Project lease was sanctioned on 4th July, 2007. Airport Authority issued the NOC on 9th April, 2010. Clearance for the project construction was issued by BSNL on 16th April, 2010. BWSSB issued NOC on 12th May, 2011. Bangalore Electricity Supply Company Ltd. issued NOC on 27th April, 2011. After meetings of the State Level Expert Appraisal Committee and SEIAA, proposal was

considered and Environmental Clearance was granted to respondent no. 9 on 17th February, 2012 for which notice was published in 'Kannada Prabha' and 'Indian Express' on 12th March, 2012 and 14th March, 2012 respectively. Modified building plan had been approved by respondent no. 7 on 30th August, 2012 which was valid up to 10th August, 2014. On 4th September, 2012, KSPCB issued consent for establishment under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act**,** 1981 as per conditions stated in the NOC. On 12th June, 2013, the LDA made a report stating that the KIADB has initiated a colossal mixed–use development project in the catchment area of Bellandur Lake. With reference to these dates and events, respondent no. 9 had advanced the plea that the application is barred by limitation. It is the contention of respondent no. 9, that all material events that would give rise to filing of an application under the provisions of NGT Act, 2010, had occurred on and prior to 17th February, 2012 and as the application was filed before the Southern Zone Bench of the Tribunal on 13th March, 2014, thus, same is hopelessly barred by time and is liable to be rejected on that short ground alone.

Similar events had taken place in regard to the project of respondent no. 10 who had been granted Environmental Clearance on 30th September, 2013. The contention raised by this respondent, which is, without prejudice to its other contentions, is that the grant of Environmental Clearance would put an end to all other challenges and even if the reports dated 12th June, 2013 and 14th

August, 2013 are taken into consideration, even then the application had to be filed within a period of 6 months from the date on which the 'cause of action for such dispute has first arisen' in terms of Section 14 of the NGT Act, 2010. Admittedly, present application has been filed in March, 2014 i.e. much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Even otherwise, the period of 60 days beyond the prescribed period of limitation has long expired and as such the Tribunal will have no jurisdiction to condone the delay. The Applicants contend, which contention is also duly supported by respondent Nos. 11 and 12 that the present application is not an application simplicitor under Section 14 of the NGT Act. It is an application where a specific prayer has been made with reference to the reports dated 12th June, 2013 and 14th August, 2013 for restoration of the Ecologically Sensitive Land and for maintaining the sensitive area in its natural condition, so that ecological balance of the area is not disturbed. This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'. According to the applicants, the present application is even filed within the period of limitation as contemplated under Section 14 of the NGT Act, 2010, for the reason that with reference to the inspection reports dated 12th June, 2013 by respondent no. 6 and 14th August, 2013 by respondent no. 2, various actions had been taken by different authorities, fully substantiating the plea of the applicant that such huge

construction activity in the catchment area of the lakes is bound to have adverse impact on the environment and ecology. According to them, it is evident from the record that on 14th August, 2013, respondent no. 7 had issued a communication to respondent no. 9 to comply with Ecology and Environmental Rules, as well as to take approval from the LDA. Various letters were exchanged between different authorities and the Project Proponent about the progress of the project and its irregularities. A letter of stop work notice was issued by the BBMP on 23rd December, 2013. KIADB also issued a stop work notice to respondent no. 9 on 2nd January, 2014. According to these applicants, in light of these facts, it is the case of 'continuing and/or recurring' cause of action relatable to environmental issues. Thus, the application had been filed within the prescribed period of 6 months even in terms of Section 14 of the NGT Act and the limitation would trigger from each of these dates mentioned above.

21. Sections 14 and 15 of the NGT Act, 2010 to a large extent are self contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The present application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, is within the prescribed period of limitation. The Environmental Clearance was granted to respondent no. 9 vide order dated 17th February, 2012 and all events have occurred thereafter till institution of the petition. The applicant has prayed for relief and restoration of ecology particularly with reference to the catchment areas of Bellandur Lake & Agara Lake. The applicant

could not have availed of any remedy before the Tribunal, prior to 2nd June, 2010 and/or 18th October, 2010 respectively, i.e. the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. The present application for the purposes of Section 15 has been filed within 5 years there-from and thus, has to be treated as within time.

However, what needs to be deliberated upon is whether in terms of Section 14 of the NGT Act, 2010, the present application has been filed within the prescribed period of limitation or not. Section 14(3) mandates that no application for adjudication of dispute under Section 14(1) shall be entertained by the Tribunal unless it is made within the period of 6 months from the date on which the 'cause of action for such dispute first arose'. The jurisdiction of the Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. The dispute or questions that the Tribunal is required to settle must fall within the ambit and scope of Section 14(1) of the NGT Act. In other words, it must be a dispute raising a substantial question relating to environment.

22. The contesting respondents while relying upon the language of Section 14 read cumulatively, contend that the expression 'within the period of 6 months from the date of which the cause of action

for such dispute first arose' mandates that the period of limitation has to be reckoned when the cause of action for such dispute first arose and not thereafter. In the present case, the Environmental Clearance had been granted to respondent no. 9 on 17th February, 2012 and therefore it is their contention that the application could at best be filed by 16th August, 2012 and not thereafter.

23. 'Cause of Action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. *Shri Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511, *A.B.C Laminart Pvt Ltd. v. A.P. Agencies,* AIR 1989 SC 1239].

24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land *simplicitor* or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: *Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr.,* (2004) 9 SCC 512, *J. Mehta v. Union of India*, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, *Kehar Singh v. State of Haryana,* 2013 ALL (I) NGT REPORTER (DELHI) 556, *Goa Foundation v. Union of India,* 2013 ALL (I) NGT REPORTER DELHI 234].

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal*

Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

26. In the case of *State of Bihar v. Deokaran Nenshi and Anr.,* (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

> "5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of *Maya Rani Punj v. Commissioner of Income Tax, Delhi,* (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assesse does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd.,* 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury

which renders the doer of the act responsible and liable for consequence in law.

Thus, the expressions 'cause of action first arose', 'continuing cause of action' and 'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr.,* (2011) 9 SCC 126, *Bal Krishna Savalram Pujari & Ors. v. Sh.*

Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, *G.C. Sharma v. Municipal Corporation of Delhi,* (1979) ILR 2 Delhi 771, *Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga Rao and Ors.,* AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of

action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M. R. Gupta v. Union of India and others,* (1995) 5 SCC 628, the Court held that:

> "The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by

> him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.
>
> The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be *de hors* the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh v. Union of India and Ors.,* 2006 (91) DRJ 324,

M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts

which arise from the same event, may be at different stages. This expression would not *de bar* a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

33. The Environmental Clearance was granted to the project of Respondent no. 9 on 17th February, 2012 and to Respondent no. 10 on 30th September, 2013. Both these Environmental Clearances being appealable in terms of Section 16 of the NGT Act, 2010, their legality and correctness could be challenged within the prescribed period of limitation i.e. 30 days (or within the extended period of 60 days) which has not been done and as already noticed there is no challenge in this application to the grant of the Environmental Clearance. The applicants have primarily raised a challenge within the ambit and scope of Section 14 and 15 of the NGT Act. As already discussed, the application in so far as it prays for the relief of the restoration, it is within the period of limitation of 5 years. According to the applicants, the facts on record disclose violations of the condition of Environment Clearance and poses serious threat

to the environment and ecology because of the reckless construction in the catchment areas of the lakes. During the period of August, 2012 to January, 2014, various notices have been issued by different authorities in relation to the modification of building plans. These stop work notices/ orders and the inspection reports including report by LDA clearly demonstrates that the development project in the catchment area of Bellandur Lake as implemented would probably have adverse effect on the Bellandur Lake. The applicant may not challenge the grant of Environmental Clearance *per se* but upon commencement of the project and in view of their being definite documentary evidence supported by data, that the Project Proponent has committed breaches and implementation of the project is bound to have serious adverse impacts on ecology, environment and particularly the water bodies would give an independent 'cause of action' to him *de hors* the grant of Environmental Clearance. The averments in the application and the record fully satisfy the ingredients of Section 14 of the NGT Act. From those occurrences particularly of January, 2014, a fresh period of limitation has to be reckoned. The applicant may rely upon various reports, notices and orders in support of its claim. Whether the applicant succeeds on merits or not, is a different issue. However, for the purpose of limitation, the dates of these reports, stop work orders and notices would be relevant dates, which would provide the 'recurring cause of action' to the applicant and thus, the application will be within the prescribed period of limitation. In addition to this, the applicant has also prayed for

taking action in accordance with law on the basis of the report dated 14th August, 2013, communication letter of LDA dated 23rd September, 2013, communication dated 12th December, 2013 by LDA to Respondent No. 9, stop work notice dated 23rd December, 2013 issued by BBMP to Respondent No. 9 and stop work notice issued dated 2nd January, 2014 by KIADP to Respondent No. 9. Thus, the application having been instituted on 13th March, 2014 is well within the period of limitation under Section 14 of the NGT Act and for the reasons afore-recorded, we find no merit in the plea of limitation raised on behalf of the Respondents.

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?

34. It is a settled principle that while determining whether the application discloses a cause of action, which would squarely fall within the ambit and scope of the provisions of the NGT Act, the petition has to be read as a whole by the Court or the Tribunal. Thus, we have to examine the cumulative effect of the averments made in the application, read in conjunction with the prayer clause. If upon reading of the entire application together, such cause of action is disclosed, that would fall within the jurisdiction of this Tribunal, the Tribunal would be obliged to entertain and decide such pleas. In the case in hand, the applicant has made reference to various activities in general and illegal and unauthorised activities of respondent nos. 9 and 10 in particular, which are

having adverse effect on the water bodies as well as the water supply to the city of Bangalore. It is alleged that the construction activity that is being carried on by respondent no. 9 is in violation of all the stipulations of the Environmental Clearance. Rampant construction work is being carried on in the buffer zone as well as over and around the Rajakaluves. While pointing out the blatant irregularities, it is also averred that the project is in the midst of fragile wetland area and is bound to severely disturb and damage the Rajakaluves. In terms of the Environmental Clearance, a condition has been imposed that the project proponent shall not disturb the storm water drains, natural valleys, etc. and buffer zone area around the Rajakaluves was to be maintained. However, according to the applicant, the project area is located between two lakes and therefore, the construction is in violation of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. There has been violation of maintaining the buffer zone in accordance with the revised Master Plan of 2015. There has to be 30 meter buffer zone created around the lakes and 50 meter buffer zone created on either side of the Rajakaluves. This has also not been adhered to. Further, the consent had been granted to respondent no. 9 for residential units and not for other activities.

35. While referring the water shortage, the averment is that the project requires 4.5 million litres of water per day i.e. 135 million litre water per month. Such requirement of the project would be beyond the capacity of respondent no. 5, as the quantity of water required for the project would still be more than the water supply

being made by respondent no. 5 to the entire Agaram ward in Bangalore. The NOC issued by respondent no. 5 covers an area of only 17404 sq. meters whereas the total built up area of the construction is 13,50,454.98 sq. meters. Thus, the NOC was partial. Therefore, it is clear that even the Environmental Clearance had been obtained by respondent no. 9 without disclosure of correct facts. Further, the averments are that the construction activity has severely disturbed and damaged the Rajakaluves that run through the entire land and in fact is likely to result in disappearance of the Rajakaluves. Relying upon the two reports dated 12th June, 2013 and 14th August, 2013, it is averred that the project will have disastrous effect on the Agara Lake and the Bellandur Lake. If the construction is not stopped, the sensitive area and its ecology and environment would be at stake. Even the authorities had issued notices/stop work orders to the respondents for the breach of the conditions committed by them and for the construction activity being illegal.

On these averments, the two prayers that have been made is that the respondent - State of Karnataka - should take cognizance of the reports dated 12th June, 2013 and 14th August, 2013 and should take coercive and punitive actions against the respondents, as well as restore the ecology in the sensitive area. Further that, the Government should be directed to maintain the very land as a sensitive area and no development or construction activity should be allowed to be carried on, that would disturb the ecological balance of the area.

36. We have to examine whether on the facts afore-noticed, the prayers made would squarely fall within the scope of implementation of any of the Acts specified under Schedule I to the NGT Act. This Tribunal has three jurisdictions – original, appellate and special jurisdiction, enabling it to grant reliefs of compensation and restitution of property and environment both. Section 14 gives a very wide jurisdiction to the Tribunal to resolve and pass orders in all civil disputes, where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of the enactments specified under Schedule I. Section 16 provides that appeal would lie to the Tribunal against the certain orders passed by authorities and Boards, in relation to the orders specified in clauses (a) to (j) of section 16, which also includes appeal against an order refusing or granting Environmental Clearance for carrying out of any activity, operation or process. Section 15 of the NGT Act gives to the Tribunal jurisdiction to grant relief, compensation and restitution in the event there is a victim of pollution and other environmental damage arising under the enactment specified in Schedule I of the NGT Act, for restitution of property damage as well as for restitution of environment in such areas.

37. The definition of 'environment' under Section 2 (c) of the NGT Act again is widely framed. It is comprehensive enough to take within its ambit all matters in relation to environment. This definition practically covers every activity that will have water, air

and land and inter-relationship, which exists among and between these and the human being, other living creatures, plants, micro-organism and property. This definition is identical to the definition of 'environment' as provided under section 2(a) of the Act of 1986. In terms of the object and purpose of the Act of 1986, it has primarily been enacted to protect and improve the environment and for prevention of hazards to human being, other living creatures, plants and property.

Therefore, both protection and improvement of the environment are two very fundamental aspects of these legislations. Certainly, the applicant has not raised specific challenge to the Environmental Clearances dated 17th February, 2012 and 30th September, 2013 in the present appeal, but what is being questioned is the disappearance and further likelihood of complete extinction of the water bodies in the area in question in the city of Bangalore. Furthermore, since studies have shown serious adverse impacts upon the ecology and environment of the area, the authorities concerned, including the State Government, should take appropriate steps in accordance with law and the ecological degradation or damage should be directed to be restored. Once these reliefs are read in conjunction with the averments made in the record and examined within the domain of Order VII Rule 11 of the Code of Civil Procedure, 1908, then it is not possible to hold that the petition does not disclose a cause of action that would squarely fall within the ambit of the jurisdiction conferred upon the Tribunal in terms of Sections 14 and 15 of the NGT Act.

38. Section 15 of the NGT Act provides not only for relief and compensation to victims of pollution and other environmental damage arising under the enactments specified under Schedule I, but also for restitution of property and damage and restitution of environment for such area or areas. It is a general provision and covers victims of the pollution generally. In contradistinction thereto, Section 17 is a specific provision relating to death or specific injury which has occurred to a person, to a property or environment. Such death or injury has to result from an accident or adverse impact of activity or operation or a process, under any enactment specified under Schedule I, then the person responsible shall be liable to pay such relief or compensation for death, injury or damage, in terms of all or any of the heads specified in Schedule II of the Act and as determined by the Tribunal. This provision is person-specific and relates to such injury which results from an activity, operation or process and imposes liability on the person responsible for that activity, operation or process. Furthermore, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both

these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under Schedule I, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

39. Another contention raised before the Tribunal by the respondents is that as far as grant of restoration under Section 15 is concerned, the applicant has not made out a case invoking the said jurisdiction and furthermore, that Section 15 comes into play post event. This argument cannot be accepted. Firstly, we have already noticed in some detail that the factual matrix of the case as pleaded by the applicant brings out a case for invoking the jurisdiction of the Tribunal under Sections 14 and 15 both. Secondly, Section 15 when construed on its plain language does not mandate a jurisdiction which can be invoked only post event. We are persuaded to hold so because of the clear distinction in language of Sections 15 and 17 of the NGT Act. Section 17 specifically requires that there ought to have been death, injury to any person or damage to any property or environment from an accident or adverse impact of an activity or operation or process where on the liability of the person to pay such relief or

compensation shall be computed on the principle of no fault i.e. strict liability. In contradistinction thereto, Section 15 would operate both to a damage that has occurred as well as the damage which is likely to occur in relation to a property or environment. Of course, such damage will be to the victim of the pollution or other environmental damage arising under the enactments specified in Schedule I. Section 20 of the Act places an obligation on this Tribunal to apply the three principles of Sustainable Development, Precautionary Principle and the Polluter Pays Principle, in settlement of disputes before it. Since the precautionary principle will also be part of Section 15, its applicability in a likely damage to environment or property cannot be excluded. The legislature in its wisdom has enacted two different and distinct provisions. They have to operate in their respective fields, particularly, when their language is distinct and different. A clear distinction between two is that Section 17 would operate only for compensation while Section 15 would deal both with compensation and restitution.

40. The expression 'dispute' is relatable to a question which is a substantial question of environment and such question should arise out of the implementation of the scheduled enactments under the NGT Act. It is a term of wide connotation and once a fact is asserted by one party and disputed by the other it gives rise to a 'dispute'.

41. Wherever a dispute as afore-noticed would arise, it would certainly give rise to a cause of action and accrue a right to sue in favour of an applicant in order to invoke one or the other

jurisdictions of the Tribunal. At this stage it may be useful to refer to the decision of the Tribunal in the case of *Kehar Singh v. State of Haryana,* 2013 ALL (I) NGT REPORTER (DELHI) 556, wherein it was held:

> "16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts

but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: *Rajasthan High Court Advocates Asson. V. Union of India* [(2001) 2 SCC 294], *Sri Nasiruddin v. State Transport Appellate Tribunal* and *Ramai v. State of Uttar Pradesh* [(1975) 2 SCC 671]; *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem* [(1989) 2 SCC 163]; *Bloom Dekor Limited v. Sujbhash Himatlal Desai and Ors.* with *Bloom Dekor Limited and Anr. v. Arvind B. Sheth and Ors.* [(1994) 6 SCC 322]; *Kunjan Nair Sivaraman Nair v. Narayanan Nair and Ors.* [(2004) 3 SCC 277]; *Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr.* [(*2004) 8 SCC 100]; Liverpool and London S.P. and I. Asson Ltd. v. M.V. Sea Success I and Anr.* [(2004) 9 SCC 512]; *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.* [(2005) 4 SCC 417]; *Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors.* [(2006) 3 SCC 100].

17. Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, pre-requisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for

> environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised."

42. The plea raised by the respondents that the application does not disclose any cause of action within the four corners of the statutory jurisdiction of the Tribunal is, therefore, liable to be rejected. The respondent can raise such plea only while on the assumption that the allegations made in the application are correct. In other words, such plea of rejection of plaint is a plea of demurer. Whether the applicant would ultimately be entitled to any relief or not, is a matter different from rejecting the application on the ground of non-disclosure of any cause of action.

43. Specific averments have been made in the application with regard to the construction activities being carried on in an irregular manner, in violation of Environmental Clearance conditions and its adverse impacts upon environment and ecology, particularly, the water bodies in the area. Furthermore, submissions have been made on the basis of reports that refer to the restitution of degraded and damaged ecology and environment, particularly with reference to the water bodies in the concerned areas. A general question with regard to adverse impacts on water supply and water bodies has been prominently raised. These averments have been denied by the project proponents. The authorities which had issued stop work notices to the project proponents have partly supported the case of the applicant, while some other respondents, including official respondents, have supported the project. Thus, these are the

matters which certainly raise a substantial question relating to environment and which arise in relation to implementation of the enactments specified in the Schedule to the NGT Act. Once, such disputes are raised which require determination by the Tribunal, it can hardly be contended that the application does not disclose any cause of action falling within the jurisdiction of the Tribunal.

44. Applicant can make a prayer of restitution of property damaged or of environment of such area under Section 15 of NGT Act. However, applicant has to show that it arises under the enactments specified under Schedule I. Thus, there is hardly any commonality in cause of action and ingredients thereto, required to be pleaded and proved and in the scope of jurisdiction exercisable by the Tribunal under sections 14 and 15 of the NGT Act. Therefore, these provisions are mutually exclusive and contentions of the Respondents that jurisdiction under Section 15 can only be invoked as a consequence of invocation of jurisdiction and orders of the Tribunal either under Section 14 or Section 16 of the Act is devoid of any merit.

45. The Learned Counsel appearing for the respondents, particularly the Project Proponents, while relying upon the judgement of the Hon'ble Supreme Court in the case of *T. Arivandandam v. T.V Satyapal & Ors.,* (1977) 4 SCC 467 and *ITC Ltd. v. Debt Recovery Tribunal,* (1998) 2 SCC 70, contended that the application before the Tribunal does not disclose a cause of action, is a vexatious litigation without merits and is cleverly drafted to create an illusion of a cause of action and therefore the application

should be rejected. In our considered opinion, the respondents cannot take any advantage from any of the judgements cited by them. Firstly, these were the judgements on their own peculiar facts. In the case of *T. Arivandandam* (supra), the Hon'ble Supreme Court was dealing with an appeal against the order of Hon'ble High Court of Karnataka dismissing the revision petition of the petitioner for granting injunction or stay on the order of the Trial Court directing vacation of premises. The Apex Court observed that it was an audacious attempt by the petitioner for seeking more and more time in vacating premises by filing these fake litigations. It was held by the Hon'ble Supreme Court that the plaint was manifestly vexatious and meritless in the sense of not disclosing a clear right to sue and, therefore, the plaint should be rejected. On the other hand, in the case of *ITC Ltd.* (supra), the appeal was filed against the judgment of the Learned Single Judge of High Court of Karnataka, dismissing the Writ Petition filed by the appellant against the orders of the Debt Recovery Tribunal and Appellate Tribunal, rejecting the application of the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Hon'ble Supreme Court had therein observed that non-movement of goods can be for a variety of tenable or untenable reasons but that by itself will not give a reason to the plaintiff to use the word "fraud" in the plaint and cleverly get over any objections that may be raised by way of filing an application under Order VII Rule 11. In these circumstances, it was held that if the plaint in fact did not disclose a cause of action, clever drafting cannot create illusionary cause of

action. Hon'ble Supreme Court also stated that there was gross abuse of process of law repeatedly and observed that a plaint on a meaningful and not formal reading, should disclose the cause of action.

46. In the case in hand, as has already been held by us before, the litigation pending before the Hon'ble High Court of Karnataka and the Tribunal, fall under different jurisdictions. Even the Project Proponents themselves have filed Writ Petitions before the Hon'ble High Court of Karnataka challenging the stop work notices issued to them. In our considered view, on a meaningful reading of the application, particularly seen in light of the reports and other documents placed on record, the application does disclose a cause of action that would squarely fall within the ambit of jurisdiction of this Tribunal vested in it under Sections 14 and 15 of the NGT Act.

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?**

47. The Respondents have raised the plea that the present application of the applicant is barred by the Principles of *res judicata*, constructive *res judicata* and in any case principle analogous thereto. This plea is found on the averment that some

petitioners including Respondent Nos. 11 and 12 had filed a Writ Petition being Writ Petition No. 36567-574 of 2013, before the Hon'ble High Court of Karnataka with the following prayers:-

"PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased to:

(a) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 8 vide Lease cum sale agreement dated 30.06.2007 at Annexure "B", more fully described in the schedule to the said agreement;

(b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 9 vide Lease cum sale agreement dated 20.03.2008 at annexure "C", more fully described in the schedule to the said agreement.

(c) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from, in any manner, further alienating the public land, described in the schedule o the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/non-governmental associates and organizations without following the due process of law;

(d) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from allotting the said land, described in the schedule to the Lease cum Sale Agreement at Annexure B and C, for purpose which may have an adverse consequences on the environment and, in particular the land in issue;

(e) Direct the Respondent no. 1 to appoint a Task Force to look into illegal allotment of land in favour of private persons at the cost of environment and ecology and report to the Respondent no. 1 take action over them;

(f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.

INTERIM PRAYERS

Pending consideration of this writ petition, this Hon'ble Court be pleased to:

(a) Pass an order staying all construction activity under the project being carried out on the land in issue;

(b) Pass an order restraining the Respondent Nos. 8 and 9 from alienating the land described in the schedule

to the Lease cum Sale Agreement at Annexures B and C, or creating any third party rights or encumbrances on the land in issue; and

(c) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case."

48. It is alleged that in the above mentioned Writ Petition, averments similar to that of present application had been made and in fact averments identical to the present petition were made in paragraphs 52 to 55 of the Writ Petition. Furthermore, the applicants did not disclose the factum of filing the Writ Petition before the Hon'ble High Court to this Tribunal. Also, the parties to both the proceedings to some extent are common.

It is also argued that respondent nos. 9 and 10 have also filed two Writ Petitions before the Hon'ble High Court of Karnataka being Writ Petition No. 792 of 2014 and Writ Petition No. 366-367 of 2014, challenging the stop work notices issued to the respective respondents on 23rd December, 2013 and 2nd January, 2014 and that the operation of these notices have been stayed by the Hon'ble High Court on 21st January, 2014.

Thus, it is contended that the issues in the present application are directly and substantially in issue before the Hon'ble High Court of Karnataka and therefore, the present proceedings are barred by the Principle of *res judicata* and/or constructive *res judicata*. Neither the applicant nor respondent nos. 11 and 12 have disputed the filing of these Writ Petitions before the Hon'ble High Court, but have vehemently contended that neither the parties are common nor the issues in both the applications are directly and substantially the same. According to them, there is no commonality

of cause of action or likelihood of a conflict between the judgments. It is therefore, their contention that the application is not liable to be rejected on that ground.

49. The pendency of the Writ Petitions before the Hon'ble High Court would not directly or incidentally render the proceedings before the Tribunal unsustainable. The scope of those Writ Petitions and the reliefs claimed therein are distinct and different. The matters relating to environment or the matters raising serious environmental issues are to be more appropriately tried before the Tribunal. We may at this stage refer to a recent judgment of the Supreme Court of India in the case of *Union of India and Others v. Shrikant Sharma and Others*, Civil Appeal No. 7400 of 2013 decided on 11th March, 2015. The Supreme Court in that case was dealing with a question of law whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of the Tribunal with the leave granted by the Supreme Court against such orders, under Article 136 (2) of the Constitution of India will bar the jurisdiction of the High Court Under Article 226 of the Constitution of India. After discussing the various provisions of the Act and various judgments of the Supreme Court in relation to basic principle for exercising power under Article 226 of the Constitution stated:

> "34.
> (iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: ***Nivedita Sharma***).
> (iv) The High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the

> statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: ***Nivedita Sharma***).
>
> 36. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)*** this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.
>
> In ***Chhabil Dass Agrawal*** this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The Court then proceeded to examine the likelihood of analogous situation that could arise by exercise of such jurisdiction and finally concluded held as under:

> "37.
>
> …Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.
>
> 38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

> 39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy Under Section 30 with leave to appeal Under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court."

50. Now firstly, let us examine if the parties in both these proceedings are common. The present application was instituted by 3 applicants and none of them is a party to the Writ Petition before Hon'ble High Court of Karnataka. The official Respondents are common in both the proceedings. Respondent Nos. 11 and 12 were the petitioners No. 1 and 2 in the Writ Petition before the Hon'ble High Court. However, at a later stage of pendency of this application, they filed M.A. No. 139 and 140 for being impleaded as party to the present application. This application was contested by the respondents including Respondent no. 9 and 10 in the present application and the same was allowed vide order dated 25th July, 2014 passed by the Tribunal. In the said order, it was recorded that both these Respondent Nos. 11 and 12 have given an undertaking to the Tribunal that they would withdraw the Writ Petition that they had filed before the Hon'ble High Court of Karnataka. In compliance to the undertaking given to the Tribunal, these two Respondents filed an application before the Hon'ble High Court and vide order dated 1st August, 2014 passed in Writ Petition No. 36567 of 2013, the name of these two Respondents as Petitioner Nos. 1 and 2 were ordered to be deleted. Thus, as of today, none of the above applicants is the party in the Writ Petition before the High Court

and in fact, they have been impleaded as Respondent Nos. 11 and 12 in consonance with the order of the Tribunal and that of the High Court as afore-referred. Now, we may proceed to deal with the content and scope of these proceedings. Undisputedly, the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide. The jurisdiction of the Tribunal is very limited and it has to exercise it within the limitation of the Statute that created it. There are similar and at some places even identical contentions raised by the applicants in the present application, to the facts averred in the Writ Petition by the Petitioners before the High Court of Karnataka. The prayers in the Writ Petition as referred to above, both generally and substantially relate to acquisition of land, requiring the respondent authorities to resume the land in question, to examine the question of illegal allotment of the land and stop allotment and alienation of land. While the prayers before the Tribunal are and have to be restricted to environmental degradation and its restoration along with treating the areas in question as sensitive areas. The rampant development activities carried out by Respondent Nos. 9 and 10 are stated to have adverse impact on ecology, environment and the water bodies. It is further prayed before tribunal that there should be restoration of ecology of sensitive area. Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the

proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

51. One of the tests in regard to the above is that a 'cause of action' should culminate into a judgment and lose its identity by merging into the result of the judgment. Once a 'cause of action' is culminated into the judgment, the general principle of *res judicata* or *constructive res judicata* bars re-agitating the same issue all over again. The object is to prevent abuse of process of law by re-agitating the same issues in different courts.

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 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.

In light of the above law enunciated by the Supreme Court of India, the contention raised on behalf of the applicant that this Tribunal should entertain and decide the application despite pendency of Writ Petitions before the High Court, deserves to be accepted.

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?

52. Discussion on this issue with reference to the facts of the case would require the Tribunal to decide as to what relief, if any, could be granted to the applicant and whether there is any need for the Tribunal to pass any direction in the interest of environment

and ecology in the peculiar facts and circumstances of the case. As already noticed in the afore-indicated discussions, the serious objection herein is that these projects commenced their construction activities without seeking Environmental Clearance and therefore, the constructions are illegal and unauthorised. These huge constructions of residential, commercial and other purposes are located on the wetlands of different water bodies in the city of Bengaluru. The constructions have been raised even on the catchment areas of the water bodies. With reference to the reports afore-noticed, averments are that these constructions have adversely affected the environment, ecology and particularly the water bodies and their biodiversity. These constructions would have tremendous impact on the water supply to the city of Bengaluru and that there is a likelihood of complete extinguishment of these historical lakes, which have been the basic factor behind maintaining the environmental and ecological balance in the city of Bengaluru.

53. One of the most important facets of deliberation on this issue would be the alleged construction on the wetlands and catchment areas of the water bodies, i.e. the Agara and the Bellandur Lakes. In common parlance, 'wetlands' are the areas where water is the primary factor controlling the environment and the associated plant and animal life. They occur where the water table is at or near the surface of the land or where the land is covered by water.

54. Ramsar Convention uses a broad definition of wetlands. It includes all lakes and rivers, underground aquifers, swamps and

marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

55. The Indian definition of a 'wetland' means "an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of environment and Forest, S.O. number 114 (E) dated the 19th February, 1991."

56. Wetlands are amongst the most productive ecosystems on the Earth, and provide many important services to human society. However, they are also ecologically sensitive and adaptive systems. "Free" services provided by wetlands are often taken for granted, but they can easily be lost as wetlands are altered or degraded in a watershed. Estimates of the per acre value of wetland services run as high as $370,000/acre in 1992 dollars (Heimlich *et al.* 1998). The exact value can be attributed to the type and location of the

wetland, the services it provides, and the economic methods and assumptions used.

57. Ecosystem goods provided by the wetlands mainly include: water for irrigation; fisheries; non-timber forest products; water supply; Pollutant removal, Flood attenuation, Groundwater recharge, Shoreline protection, Wildlife habitat and recreation. Major services include: carbon sequestration, flood control, groundwater recharge, nutrient removal, toxics retention and biodiversity maintenance (Turner et al., 2000).

58. Various services provided by wetlands include Carbon Cycle/ Carbon Sequestration: Swamps, mangroves, peat lands, mires and marshes play an important role in carbon cycle. Though wetlands contribute about 40% of the global methane (CH4) emissions, they have the highest carbon (C) density among terrestrial ecosystems and relatively greater capacities to sequester additional carbon dioxide (CO2). Wetlands provide for habitat for more aquatic, terrestrial, and avian species on an area basis than any other habitat type, making them one of the most ecologically and economically important ecosystems on earth. Thus, wetlands provide for soil life, habitat, biodiversity maintenance and recreation. Wetlands are a service provider to Nutrient Removal, Flood attenuation and Water supply and Ground water recharge and even are a source of employment [Ref: Pant *et. al,* 2003; Groffman and Crawford, 2003; Juliano and Simonovic, 1999; Olewiler, 2004; MFPED, 2004]. It is essential to provide an effective institutional framework to manage water bodies through

governmental and even non-governmental organizations.

59. Bengaluru has many artificial lakes, built for various hydrological purposes and mainly to serve the needs of irrigated agriculture and other allied purposes. The studies placed on record show that lakes of Bengaluru occupy about 4.8 per cent of the city's geographical area (640 square meters) covering both urban and non-urban areas (Krishna M.B. *et al.,* 1996). The number of these lakes has rapidly fallen from 262 in 1960 to 81 in 1985. The quality of water has reduced due to discharge of industrial effluents and domestic sewage. Conversion of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Similarly, between 1973 and 2007, this region lost 66 lakes with a water spread area of around 1100 hectares due to urban sprawl (NitinBassi*et al.,* 2014). General factors affecting wetlands especially lakes are Eutrophication, low dissolved oxygen and pH, sedimentation and heavy metal pollution, biodiversity loss, etc.

60. Studies also reflect that a comparative analysis of drainage network between the Bengaluru urban and rural areas showed that the water bodies in Bengaluru urban district were subjected to intense pressure due to the process of urbanization and increasing population, resulting in loss of interconnectivity, in contrast to water bodies in rural Bangalore, where less pressures from direct human activities were noticed. At Madivala and Bellandur, there is interconnectivity of lakes with the adjacent lakes. Due to conversion and encroachment of two water bodies, connectivity between Yelchenahallikere and Madivala is lost as in the case of

Bellandur and Ulsoor lakes with the conversion of Challegatta tank into a golf course. The GIS analysis revealed that due to developmental activities in the catchment area, the drainage connectivity between the water bodies has been lost.

61. The loss in wetland interconnectivity in Bangalore district is attributed to the enormous increase in population and the reclamation of tanks for various developmental activities. Analysis of Madivala and Bellandur drainage network revealed that encroachment and conversion has resulted in the loss of connectivity between Yelchenhallikere and Madivala. Similarly the drainage network between Bellandur and Ulsoor is lost due to conversion of Chelgatta tank into a golf course (Status of wetlands in Bangalore).

62. In 1995, the National Lake Conservation Authority (NLCA) came up with National Lakes Conservation Plan (NLCP) for Bangalore, specifically aimed at raising the highest state of environmental alarm for dwindling quality of the remnants of the city's lakes. The National Lake Conservation Plan for Bangalore came with the theme of "*Integrated Lake Ecology with Water Quality.* This plan aimed at improving urban sanitation and health conditions, especially for the weaker sections of the society living within the lake catchment area. The plan also called for eco-friendly, low-cost, waste management bio-systems like "engineered wetlands". A total of 4 sub-systems comprising of around 20 lakes were selected for the first phase of the NLCP. These four sub-systems included Agara Lake System (Hulimavu, Doddabegur,

Madiwala, Puttenahalli; AgaraKere); Hebbal System (Narasipura I and II; DoddaBomassandra, HebbalKere, and Nagavara); Bellandur Lake System (Ulsoor, Bellandur, Vartur); and Dorekere System (Vasanthapura, Janardhana, Dorekere, Moggekere). Rs. 5.542 Crore were sanctioned for the restoration of the Bellandur Lake under NLCP in January 2003. The proposal specified the following tasks for the restoration: de-silting of lakes, fencing around the lakes, afforestation and gardening, sewage water treatment, interception chambers, diversion channels, oxidation ponds, de-weeding of lakes, community sanitation, solid waste and garbage disposal, recreational facilities. This was to be a five year phasing project (1995-2000) divided into the catchment area development (CAD); Sewage diversion channels; De-silting and Weed control; Face-lifting of lake; Biological studies and public awareness program; land acquisition, and others. The total cost for five years was estimated at Rupees Twenty-One Crores, Twenty Lakhs and Thirty five thousands.

63. In late 2000, the Research and Development wing of KSPCB published its report on comprehensive monitoring of lakes in and around Bangalore Metropolitan area to assess the state of the water quality. This was an interesting report given the weight of the output carried after the first phase of the city's lakes restoration process. KSPCB's results as a result of water quality monitoring on 44 selected lakes (including all but 2 in the NLCP list) revealed that most lakes still remained highly polluted.

64. The LDA instituted in January 2002, identified about 60 lakes

for immediate restoration soon after it was established. This program, like the NCLP one previously was proposed to be a five year phasing project costing Rs. 250 Crores, almost ten times the estimated cost proposed by the NLCA in 1995. These selected lakes included Ulsoor Lake, Sankey tank, Agara Lake, Narasipura Lake, Lal Bagh Lake, Dodda Bamasandra Lake, Hebbal Lake, Nagavara Lake and Bellandur Lake. The LDA's main objectives were: Resuscitation of lakes to boost aquifers, Diversion and treatment of sewage to generate alternative sources of raw water; improving sanitation and health conditions; and preserving the habitat of aquatic life.

65. The wetland management program generally involves activities to protect, restore, manipulate, and provide for the functions and values emphasizing both quality and acreage by still advocating sustainable usage of them [Walters, C. 1986.]. Management of wetland ecosystems requires an intense monitoring, increased interaction and co-operation among the various agencies (state departments concerned with environment, soil, natural resource management, public interest groups, citizen groups, agriculture, forestry, urban planning and development, research institutions, government, policy makers, etc.). Such management goals should not only involve buffering wetlands from any direct human pressures that could affect the wetlands normal functions, but also in maintaining important natural processes that operate on them that may be altered by human activities. Wetland management has to be an integrated approach in terms of planning, execution and

monitoring requiring effective knowledge on a range of subjects from ecology, economics, watershed management, and planners and decision makers, etc. All this would help in understanding wetlands better and evolving a more comprehensive solution for long-term conservation and management strategies.

We have noticed the above studies on record to bring clarity in regard to the importance of these water bodies and need-oriented significance to maintain the wetlands and catchment areas in the interest of environment, ecology, biodiversity and hydrological balance. The merit or otherwise, of these cases have to be examined in light of these studies, which is a matter of record.

66. It is alleged that respondents 9 and 10 had started the construction activity of their projects without grant of Environmental Clearance and it is sought to be substantiated by placing the Google Images on record. However, it cannot be disputed that subsequently both these respondents obtained ECs for the projects in question on 17th February, 2012 and 30th September, 2013, respectively. After the grant of Environmental Clearance, the respondents were expected to carry on with the projects strictly as per the terms and conditions of the orders granting them Environmental Clearance. The allegation is that they have carried out the constructions in violation of the conditions of the Environmental Clearance and have encroached upon the wetlands and catchment areas of the lakes.

67. The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had

carried out a study and submitted a report on the need for 'Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity'. This report had specifically dealt with the activity of the SEZ projects by Karnataka Industrial Area Development Board in six zones. It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters. The Supreme Court of India, in Civil Appeal No. 1132/2011 while expressing concern regarding encroachment, particularly over lakes, had directed the State Governments to remove encroachments on all community lands. Even the High Court of Karnataka in Writ Petition No. 817/2008 had directed that the lakes should be protected across Karnataka, prohibited dumping of garbage and sewage in lakes, removal of encroachments, plantation of trees in consultation with experts lake surroundings and to declare it a 'No Development Zone' around the lakes. The report also speaks of water shortage by stating that BWSSB had not given NOC to respondent no. 9 and had communicated inability to supply such huge quantity of water on regular basis, as these projects require 4,587 kilolitres water per day (4.58 MLD per day). In this report, the Institute did not approve of the decision of the authorities to go ahead with such huge project, but also made

reference to the ecological and environmental implications as follows: -

"Ecological and Environmental Implications:

- Land use change: Conversion of watershed area especially valley regions of the lake to paved surfaces would alter the hydrological regime.
- Loss of Drainage Network: Removal of drain (Rajakaluve) and reducing the width of the drain would flood the surrounding residential as the interconnectivities among lakes are lost and there are no mechanisms for the excessive storm water to drain and thus the water stagnates flooding in the surroundings.
- Alteration in landscape topography: This activity alters the integrity of the region affecting the lake catchment. This would also have serious implications on the storm water flow in the catchment.
  The dumping of construction waste along the lakebed and lake has altered the natural topography thus rendering the storm water runoff to take a new course that might get into the existing residential areas. Such alteration of topography would not be geologically stable apart from causing soil erosion and lead to siltation in the lake.
- Loss of Shoreline: The loss of shoreline along the lakebed results in the habitat destruction for most of the shoreline birds that wade in this region. Some of the shoreline wading birds like the Stilts, Sandpipers; etc will be devoid of their habitat forcing them to move out such disturbed habitats. It was also apparent from the field investigations that with the illogical land filling and dumping taking place in the Bellandur lakebed, the shoreline are gobbled up by these activities.
- Loss of livelihood: Local people are dependent on the wetlands for fodder, fish etc. estimate shows that wetlands provide goods and services worth Rs 10500 per hectare per day (Ramachandra et al., 2005).

Decision makers need to learn from the similar historical blunder of plundering ecosystems as in the case of Black Swan event (http://blackswanevents.org /? page_id=26) of evacuating half of the city in 10 years due to water scarcity, contaminated water, etc. or abandoning of Fatehpur Sikhri and fading out of AdilShahi's Bijapur, or ecological disaster at Easter Island or Vijayanagara empire.

> It is the responsibility of Bangalore citizens (for intergenerational equity, sustenance of natural resources and to prevent human-made disasters such as floods, etc.) to stall the irrational conversion of land in the name of development and restrict the decision makers taking the system (ecosystem including humans) for granted as in the case of Bellandur wetlands by KIADB."

This report also highlighted the threats faced by the wetlands in Bengaluru with particular reference to SEZ Bellandur wetlands, which is the land in question. The report recorded as follows:

> "Greater Bangalore had 207 water bodies in 1973 (Figure 6), which declined to 93 (in 2010). The rapid development of urban sprawl has many potentially detrimental effects including the loss of valuable agricultural and eco-sensitive (e.g. wetlands, forests) lands, enhanced energy consumption and greenhouse gas emissions from increasing private vehicle use (Ramachandra and Shwetmala, 2009). Vegetation has decreased by 32% (during 1973 to 1992), 38% (1992 to 2002) and 63% (2002 to 2010).

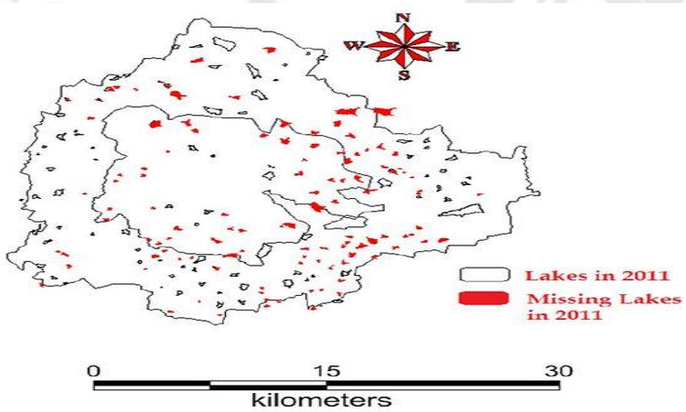

Figure 6: Lakes encroached by land mafia

> Disappearance of water bodies or sharp decline in the number of water bodies in Bangalore is mainly due to intense urbanisation and urban sprawl. Many lakes (54%) were encroached for illegal buildings. Field survey of all lakes (in 2007) shows that nearly 66% of lakes are sewage fed, 14% surrounded by slums and 72% showed loss of catchment area. Also, lake catchments were used as dumping yards for either municipal solid waste or building debris (Ramachandra, 2009a; 2012a). The surrounding of these lakes have illegal constructions of buildings and most of the times, slum dwellers occupy

the adjoining areas. At many sites, water is used for washing and household activities and even fishing was observed at one of these sites. Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

1. Encroachment of lakebed, flood plains, and lake itself;
2. Encroachment of rajakaluves / storm water drains and loss of interconnectivity;
3. Lake reclamation for infrastructure activities;
4. Topography alterations in lake catchment;
5. Unauthorised dumping of municipal solid waste and building debris;
6. Sustained inflow of untreated or partially treated sewage and industrial effluents;
7. Removal of shoreline riparian vegetation;
8. Pollution due to enhanced vehicular traffic.

These anthropogenic activities particularly, indiscriminate disposal of industrial effluents and sewage wastes, dumping of building debris have altered the physical, chemical as well as biological integrity of the ecosystem. This has resulted in the ecological degradation, which is evident from the current ecosystem valuation of wetlands. Global valuation of coastal wetland ecosystem shows a total of 14,785/ha US$ annual economic value. Valuation of relatively pristine wetland in Bangalore shows the value of Rs. 10,435/ha/day while the polluted wetland shows the value of Rs.20/ha/day (Ramachandra et al., 2005). In contrast to this, Varthur, a sewage fed wetland has a value of Rs.118.9/ha/day (Ramachandra et al., 2011). The pollutants and subsequent contamination of the wetland has telling effects such as disappearance of native species, dominance of invasive exotic species (such as African catfish, water hyacinth, etc.), in addition to profuse breeding of disease vectors and pathogens. Water qualityanalyses revealed of high phosphates (4.22-5.76 ppm) levels in addition to the enhanced BOD (119-140 ppm) and decreased DO (0-1.06 ppm). The amplified decline of ecosystem goods and services with degradation of water quality necessitates the implementation of sustainable management strategies to recover the lost wetland benefits.

SEZ in Bellandur Wetlands: Irrational decision of setting up SEZ at Bellandur wetland would affect the lake. The Mixed Use Development Project - SEZ (figure 6) is proposed along Sarjapur Road in a wetland between Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99"E of Longitude and 12°55'24.98" N to 12°55'44.43" N of Latitude with an area of 33 hectare. The proposal of the project is to construct residential areas, offices, and retail and hotel buildings in this area.

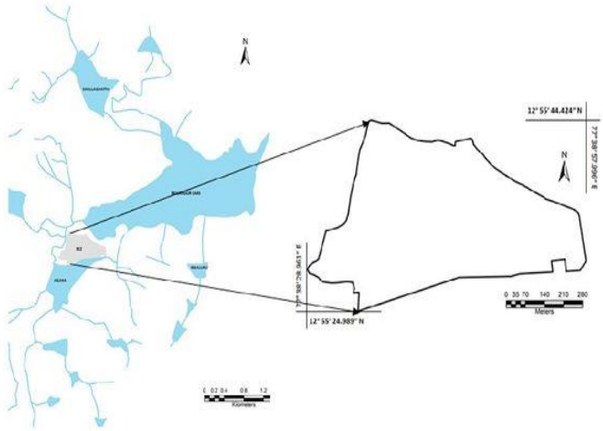

Figure 6: SEZ

Significance of the Region:

1. Wetlands with remediation functional ability (function as *kidneys* of the landscape). Removal of wetlands will affect the functional ability of the lake and would result in the death of Bellandur lake;
2. Considering severe water shortage to meet the drinking water requirement in Bangalore, there is a need to remove deposited silt in the Bellandur lake, which will enhance the storage capacity and in turn helps in mitigating the water requirement;
3. Wetlands aid in recharging groundwater as soil are permeable;
4. Belanduru lake provide food (fish, etc.) and fodder;
5. Retain the excess water and prevent flooding in the vicinity;
6. Large number of farmers in the downstream is dependent on Belanduru lake water for agriculture, vegetable, etc.

Realizing these, BDA has aptly earmarked these regions in CDP 2005 for "ENVIRONMENT PROTECTION AND HERITAGE CONSERVATION". The masterplan includes the protection of valleys and tanks as part of the vision and enforcing the ban on construction over protected areas. CDP 2015: As per CDP 2015, valley region are "No Development Zone"

1. In case of water bodies a 30.0 m buffer of 'no development zone' is to be maintained around the lake (as per revenue records) with exception of activities associated with lake and this buffer may be taken into account for reservation of park while sanctioning plans.
2. If the valley portion is a part of the layout/ development plan, then that part of the valley zone could be taken into account for reservation of parks and open spaces both in development plan and under subdivision regulations subject to fulfilling section 17 of KTCP Act, 1961 and sec 32 of BDA Act, 1976.
3. Rajakaluve/ storm water drains categorized into 3 types namely primary, secondary and tertiary. These drains will have a buffer of 50, 25 and 15m (measured from the centre of the drain) respectively on either side. No activities shall be permitted in the buffer zone."

This technical report was prepared in the year 2013 when these projects had already commenced their constructions. Of course, as per the case of the project proponents themselves, the construction activity was not in full swing.

68. After inspection of the projects in question, another report was prepared by the Regional Office, Southern Zone (Bengaluru) of the Ministry of Environment and Forests, Government of India, in relation to the building project undertaken by respondents no.9, which was sent to the Additional Principal Chief Conservator of Forests (Central), Ministry of Environment and Forests, Bangalore, on 14th August, 2013. It reported on the construction of mixed use development with residential, retail, hotel office, SEZ and Non-SEZ by respondent no.9. In part III of this report, the MoEF commented upon each condition of the order granting Environmental Clearance and compliance thereto. It noticed that the projects are under initial stages, i.e. only levelling and excavation works are going on. It will

be useful to refer to some of the significant observations relating to the compliance of the conditions of the Environmental Clearance in relation to the project of Respondent no.9 in this Report. They read as follows:

Sl. No.	Conditions	Compliance
xiv)	Disposal of muck, construction debris during construction phase should not neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority	The project authorities stated that, the excavated soil from the project site would be stored in Rachenahalli village, K.R. Puram Hobli, Bangalore East Taluk which is about 10 km away from the site and further stated that, the construction debris will be reused/recycled for back filling / sub base work for roads, pavements, drains etc., within the project site and the earth work excavated material will be managed through back filling between foundations on the back side of retaining walls and underground tanks / sumps and also will be reused for filing up low lying areas within the site. As on today the levelling and excavation works are going on. The foundation work of commercial block in Phase-I has

		been started from here the excavated earth is kept just adjacent to this foundation work within the site and agreed to reuse back.
xv)	Soil and ground water samples should be tested at the project site during the construction phase to ascertain that there is no threat to ground water quality by leaching of heavy metals and or other toxic contaminants and reports submitted to SIEAA.	Soil (one location) and ground water (…….location) samples are being tested on monthly basis through the third party. The heavy metal has not been analyzed yet and agreed to analyse in future.
xvi)	Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate water courses and the dumpsites for such material must be secured so that they should not leach into the ground water.	The project authorities assured that hazardous material will not be used in the site.
xx)	Fly ash should be used as building material in construction as per the provisions of fly Ash Notification of September 1999 and amended as on August, 2003.	Fly ash bricks are not used because there is no coal based thermal power plant located within 200 km of the project site.
xxiv)	No ground water is to be drawn without permission from the Central Ground Water Authority.	Agreed to comply. The project construction activities are under initial stages. As gathered that, the ground water is purchased from outside for drinking and sanitation purpose.
xxxiv)	The project authority shall maintain and operate the common	Agreed to comply.

	infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be maintained as it is to ensure natural flow of storm water.	Execution of the project will necessarily sloping pattern of the project site and the natural hydrology of the area and hence specific condition no xxxix cannot be complied.
xl)	Lakes and other water bodies (if any) within and/or at the vicinity of the project area shall be protected and conserved.	The project area is in the catchment area of 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 the project activities either during construction or during operation phase.
B. General Conditions		
ii)	All commitments made by the proponents in their application, and subsequent letters addressed to the SEAC / SEIAA should be accomplished before the construction work of the project is completed.	The project authorities have agreed to implement all the commitments made to the SEAC/ SEIAA before the construction work of the project is completed.
v)	In case of any changes(s) in the scope of the project, the project would require a fresh appraisal by this Authority	Agreed to comply.

xii)	The issuance of Environmental Clearance doesn't confer any right to the project proponent to operate / run the project without obtaining Statutory clearance/sanctions from all other concerned authorities.	Agreed to comply.

There does not appear to be any such similar report in relation to the project of respondent no.10. However, there are other general reports which deal with the project properties of respondent no.10.

69. We have also noticed above that the High Court of Karnataka in W.P. No. 817/2008 had passed certain directions in regard to the preservation of lakes and wetlands in the State of Karnataka. These directions were based upon the report dated 21st February, 2011, submitted to the High Court by the Committee Chaired by Justice N. K. Patil, in relation to the preservation and restoration of lakes in and around the city of Bangalore. In the report, recommendation had been made with regard to preservation of lakes, noticing rapid urbanisation of Bangalore city as the main cause for reduction in water bodies. While referring to an earlier report of 1985, prepared by Shri N. Lakshman Rau Expert Committee, constituted by the Government of Karnataka, it was emphatically stated that necessity of lake preservation is more pronounced in the context of urbanization, when city takes more and more villages into its fold, as in case of Bangalore city. It stated that the lakes are the lung spaces of a city and climate moderators, adding to thermal ambience. Most importantly in this report, emphasis was made on

the role of the LDA in preservation of lakes. It was referred that the LDA was constituted in the year 2002 as a registered society. Its jurisdiction extends over lakes in metropolitan cities area of Bangalore inclusive of Bangalore Metropolitan Region Development Authority area, besides this LDA has jurisdiction over the lakes in other Municipal Corporations and Town Municipal Councils within the State. It is the regulatory, planning and policy making body with nodal functions for protection, conservation, reclamation, restoration, regeneration and integrated development of lakes in its jurisdiction. Another important feature of this report was in relation to augmenting water supply to Bangalore city from these lakes. It stated that Bangalore population was likely to exceed 12 million by 2020 and at the current growth rate, the water shortage may lead to water crisis, if the problem is not tackled with advance planning. Report further stated that, the ground water was depleting and that bore-wells of 700 to 1000 feet deep were quite common in this city. These all were indicators of a grave situation.

70. The Hindu newspaper on 3rd June, 2013 had widely raised the issue of environmental degradation in the catchment area of the Bellandur Lake due to construction of mixed use development projects, as also undertaken by both the respondents no. 9 and 10. After this report, instructions were issued by the CEO of LDA on 4th June, 2013 to inspect the lake premises. Inspection was conducted by Shri S. R. Nagraj, EE, LDA and Sh. C. Nagesh Rao, AEE, LDA. After the inspection, a report dated on 12th June, 2013 was prepared which concluded as under:

> At the time of inspection it was observed that huge construction activities were observed in this catchment area and on enquiry it was informed that the above said land was acquired by the KIADB for SEZ and allotted for different agencies for construction of apartment complexes, malls, etc., Due to huge construction activities in this catchment area there is change of land use and directly impacting the catchment of Bellandur lake.
>
> As per the Para 2 of the report, it is reported that the wet land (a marshland ecosystem typically found around water bodies) has shrunk. It is not the wetland of Bellandur lake. It is achcutland of Agara lake. Originally Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake. It is catchment area which was shrunk due to allotment of agricultural land by KIADB to different agencies for construction of apartment complexes, malls etc.
>
> Hence KIADB"s colossal "mixed – use development project in the catchment area of Bellandur will probably have adverse effect to Bellandur lake.

The above conclusions suggest that these multi-purpose construction activities of huge dimensions could have adverse environmental and ecological impacts. Of course, the report submitted by the MoEF primarily deals with the construction activity and projects of respondent no.9 only. However, the other reports are of general nature which deals with the construction of multi-purpose projects and their adverse impacts on environment, ecology with particular reference to the water bodies like lakes etc.

71. In order to analyse the environmental and ecological impacts of these multipurpose projects appropriately, the case can be divided into two parts: First, what are the irregularities or breaches which the project proponents, i.e. respondent nos. 9 and 10 as stated to have been committed. Secondly, the likely impacts of these

projects upon the environment and ecology of the area in question, particularly on the water bodies.

Proposed Mixed Use Development Project is located at Agara Village and Jakkasandra Village, Begur Hobli, Bangalore South. Special Economic Zone (SEZ) is located between the Agara Lake & Bellandur lake. The Mixed Use Development Project – SEZ is proposed along Sarjapur Road in the catchment of lakes Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99" E of Longitude and 12°55'44.43" N of Latitude with an area of 33 hectare. Agara Lake is located at other side of 45 m wide road whereas Bellandur Lake is just 50 m away from the project boundary. Rajakaluve (Natural Drain) is running all along the project site.

Proposal envisages for 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 sqm. 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.

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 (xl) 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.

73. There are four reports on record which are suggestive enough that there would be adverse impacts of these projects upon the environment and ecology of the area, particularly on the lakes and the wetlands. The report prepared by the Committee chaired by Justice N.K. Patil filed before the Tribunal states that the lakes and the wetlands should be protected in the city of Bangalore. Measures were required to be taken in that direction and to remove encroachment in lake area and *Rajakaluves*. The large construction activity was stated to be prejudicial to the environment in those areas. Contents of this report are neither denied nor admitted by respondent no. 9 who, in its reply, has required contents of the report to be proved by the applicants. On the other hand, respondent no. 10 has submitted that there are no *Rajakaluves* or canal in his property and thus the above recommendations are not applicable to respondent no. 10. The other report on record is prepared by ENVIS, Centre for Ecological Sciences, Indian Institute of Science, Bangalore. This report focuses on possible consequences for setting up SEZ in Bellandur Lake area and also recommends restoration of wetlands in that area. In this report, how the land use

changed from 2007 to 2012 was illustrated, stating that the wetlands have decreased from 32.80 ha to 5.95 ha, whereas the Open land (Conversion of Wetlands to SEZ Construction site) has increased from 0.6 ha to 27.46 ha. Noticing the major violations, it was recorded that development in wetland violates the CDP 2015, which would result into flooding in the vicinity due to encroachment of drains, alterations in topography, encroachment of lake-bed and encroachment of lake itself by dumping debris and filling up of same; there was violation of 30 metre buffer (lake floodplain); traffic congestion and filling of a portion of lake with building debris. While respondent no. 9 termed the report as speculative and based on presumptions, respondent no. 10 denied it as frivolous and baseless and termed it as tailor made to support the case of the applicants. At this stage, we may also notice that in the column of 'Acknowledgement' of this Report, the name of Koramangala Residents Association has been mentioned. It is contended that this Association had approached Dr. T.V. Ramachandran to prepare the Report. The said Resident Association is a party to one of the Writ Petitions before the Hon'ble High Court of Karnataka. Therefore, it is argued that the report stand vitiated because of the self-interest of Dr. T.V. Ramachandran who was a member of the Committee which prepared the said report. On the other hand, the contention of the applicant and respondent nos. 11 and 12 is that Dr. T.V. Ramachandran prepared the said Report as a part of scientists' social responsibility and that the observations and findings of the report by the scientists do not become invalid/*non est* merely

because the study was undertaken at the request of a concerned group of citizens.

74. The objection taken by the respondents does not appeal to us. This report was not prepared by an individual but by a team of scientists from a Government Institute. Apparently, it appears to be in discharge of his scientists' social responsibility that Dr. T.V. Ramachandran participated in preparing this report. However, this issue loses its significance, because it is the content of the report which is to be considered by the Tribunal and not the persons who have prepared the report. There is a vague denial to the contents of the report by the respondents, who have not placed any report on record to contradict the contents of this report, which itself is largely supported by three other reports placed on record.

75. Report which is placed on record by respondent no. 10 is prepared by a Private Consultant, which only mentions that there will be no adverse impacts on environment. This report does not aspire confidence, as it is not data based and in fact, does not meet any of the issues raised in the four reports placed by the applicant on record. The other two reports are the MoEF Monitoring Committee report and the inspection report prepared by the LDA, which we have already discussed in some detail above.

76. The MoEF monitoring report prepared by regional office of MoEF has forwarded on 14th August, 2013 mentions two most significant conditions which have a substantial bearing on the matters in issue before us is with regard to the preservation of the water bodies in Bengaluru and the natural slopping pattern and

natural hydrology of the area to remain unaltered. These conditions having been noticed as not possible to be adhered to, we really do not understand as to how these projects have been permitted to progress any further.

77. Lastly, it is the report of LDA, which as already noticed is the Society created by the Government of Karnataka with a specific purpose of protecting the lakes and the wetlands. This report had specifically recorded that the projects are bound to have adverse impacts on the catchment area of Ballendur Lake. This report has also been denied by the respondents stating that it is frivolous and according to respondent no. 10, there are no wetlands around Bellandur Lake.

78. There is sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the Hon'ble High Court of Karnataka which has granted stay

on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

79. The cumulative effect of the above discussion would be that there is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development. It is the contention of the respondent nos. 9 and 10 that there are large numbers of other projects located around these lakes. If that be so, then we have no hesitation in observing that various regulatory authorities including SEIAA ought to have examined the cumulative Environmental Impact Assessment in these cases on the water bodies as the protection of the water bodies, the wetland and the catchment areas of the lakes is the obligation of these authorities.

80. It was vehemently contended before us that the construction of the projects is nearing completion and huge money of respondent nos. 9 and 10 including investments made by various land and other area purchasers is at stake. Thus, according to these respondents, the application should be declined by the Tribunal only on that fact. We are not impressed with this contention at all. The respondents have started the construction even prior to the grant of Environmental Clearance and instigated the public to invest money. They cannot be permitted to take advantage of their

own wrong. However, it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands. It cannot be disputed that there is serious scarcity of water in the city of Bangalore. Impact of these projects on water bodies ought to have been of fundamental consideration before the authorities concerned. In our considered view, they have failed to take complete notice of this fact and act objectively in light of the laws in force.

81. The project proponents, i.e. respondent nos. 9 and 10 submitted their respective applications for grant of Environmental Clearance to the concerned authorities in the year 2011 and 2012 respectively. The Environmental Clearance was granted to the Project proponents on 17th February, 2012 and 30th September, 2013 respectively. However, construction activities had been carried out by the project proponents much prior to the grant of Environmental Clearance. There is not even an iota, much less valid, reason placed by the project proponents before the Tribunal as to why the applications for Environmental Clearance were moved at such belated stage and why construction was started prior to grant of Environmental Clearance. The provisions of the EIA Notification, 2006 which was in force at all relevant times does not

permit carrying on of any construction or any other activity in relation to the project prior to the grant of Environmental Clearance. The provisions of this Notification admit of no ambiguity that specific project or activities shall not require prior Environmental Clearance. All steps in that direction, including site selection, are the subject matter of scrutiny at the time of grant of Environmental Clearance. The project proponents are clear defaulters of compliance of the statutory provisions. They cannot take advantage of their own wrong of raising construction prior to submission of the application for Environmental Clearance and even grant of Environmental Clearance. The respondent nos. 9 & 10 are intentional defaulters. They violated the law being fully conscious of their obligations under different laws in force. The authorities concerned had sanctioned the building plans of these respondents subject to a specific stipulation that such sanction was subject to grant of other clearances including Environmental Clearance under different laws. Since the construction and allied activities were being carried on contrary to law, they even would be deemed to have caused pollution not only of the environment but more particularly of the lakes and caused obstructions of the Rajakaluves in the area. Applying the Principle of 'Polluter Pays' as contemplated under Section 20 of the NGT Act, the project proponents must be held liable to pay compensation for restoration and restitution of the environmental pollution and degradation. There is sufficient material on record to show that there has been environmental degradation. From the date of grant of

Environmental Clearance, the construction is supposed to be carried on in accordance the conditions of the Environmental Clearance and with due protection of the environment, which the respondents have failed to comply with. The project proponents are liable to pay compensation under the 'Polluter Pays' Principle, for the illegal and unauthorised construction carried on in violation of the environmental laws and prior to grant of Environmental Clearance. One who violates law renders itself liable for consequences of such violations. Respondent nos. 9 & 10 commenced excavation and even construction prior to submission of their application for grant of Environmental Clearance. Obviously at that stage they did not take any protections in the interest of environment and ecology in relation to the project activities. The terms & conditions in that behalf came to be stipulated only in the order granting Environmental Clearance; prior thereto the entire project activity was illegal and unauthorised. The mining, excavation and construction work adversely affected the Lakes and the Rajakaluves. The possible risk and degradation, due to construction and operation of the project include actual damage and even threats to environment and ecology pertaining to pollution, encroachment, eutrophication, illegal mining of soil, loss of Biodiversity, ungoverned human activities and cultural misuse. The consequential damage and degradation of environment and ecology from the activities of these projects can broadly be placed under two distinct heads, while invoking the Polluter Pays Principle. First being the damage that has already

been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. 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.

82. It may not be possible to determine the above compensation with exactitude but that does not mean that the project proponents can avoid liability in that regard. The Supreme Court in the case of *M/s Sterlite Industries (India) Ltd. v. Tamil Nadu PCB & Ors*, JT 2013 (4) SC 388, had directed payment of Rs. 100 crores by the Company which operated without consent of the Board. It needs to be noticed that M/s Sterlite Industries was possessed of the consent from the Board prior as well as subsequent to the period for which the compensation was imposed. In order to comply with the principle

stated by the Hon'ble Supreme Court in the case of *Sterlite Industries* (supra) and as followed in the case of *Sarang Yadwadkar & Ors. v. The Commissioner, Pune Municipal Corporation & Ors,* 2013 ALL (I) NGT REPORTER (DELHI) 299, discussed hereafter, we may refer to some relevant facts and figures from the records before us. The project area of respondent no. 9 is nearly 2,92,636.03 sq. m, while the built-up area is 13,50,454.98 sq.m., with a project cost of Rs. 2,347 Crores. While in the case of respondent no. 10 the plot area is 33,333.00 sq.m., while the built-up area is 72,180.64 sq. m., with a project cost of Rs. 450 Crores. The afore-noticed project activities and construction started much prior to moving of application and grant of Environmental Clearance. The principle which has often been adopted by the Courts, including the Hon'ble Supreme Court in the case of *Goa Foundation v. Union of India and Ors.,* (2014) 6 SCC 590, is to direct deposit of certain percentage of the cost of the project at the first instance. In the case of ***Goa Foundation***, the Supreme Court had directed deposit of 10 per cent of the value of the mineral extracted. In the case of *Krishankant Singh v. National Ganga River Basin Authority* 2014 ALL (I) NGT REPORTER 3 DELHI 1, this Tribunal directed Simbhaoli Sugar Mills which had operated without consent of the concerned Board for a long period and had polluted the environment, Phuldera drain as well as the underground water, to pay a compensation of Rs. Five Crores. The said sugar factory had operated with the consent of the Board prior and subsequent to this period. The compensation was imposed for flouting the law and for causing the pollution. It

may be noticed that the appeal against the said judgment of the Tribunal was dismissed by the Supreme Court in Civil Appeal No. Civil Appeal No. 10434 OF 2014 vide its order dated 21st January, 2015. This liability primarily accrues on account of the illegal and unauthorised activities carried on by the Project Proponents. These are purely commercial ventures of respondent nos. 9 & 10 to make high profits, while causing environmental and ecological degradation and also by carrying on illegal and unauthorised activities, particularly, for the period prior to grant of Environmental Clearance.

83. The drawings and construction plans had been approved by respondent no. 7 vide its letter dated 4th July, 2007 and 22nd April, 2008, for respondent nos. 9 and 10 respectively. Despite this, the applications for seeking Environmental Clearance were moved much later i.e. on 3rd March, 2011 and 4th February, 2012. Even these letters granting approval of drawing and plans had mandated that these Respondents are expected to comply with all bye-laws and even other laws in force. When they applied for renewal of building plans and drawings, the same were granted vide letter dated 11th October, 2013 and 3rd January, 2013 respectively, where specific conditions were stipulated that other laws in force relating to construction and use of premises should be complied with and they were required to install ETP/STPs and use of recycled water for washing and flushing was mandated. From this, it emerges that there was clear onus on the part of these respondents to seek Environmental Clearance before commencing construction, which

they intentionally and flagrantly violated and furthermore, there is nothing on record to show that the conditions with regard to setting up of ETP/STP and recycling of water have fully been satisfied. Furthermore, respondent no. 10 has been issued a specific letter on 18th March, 2013 by respondent no. 7 directing it that no construction works should commence prior to obtaining Environmental Clearance. They were also directed to obtain Consent for Establishment from KSPCB which was also not adhered to. They were required to furnish the requisite information within 7 days. These are the apparent violations of law committed by respondent nos. 9 and 10.

84. We are conscious of the fact that the projects in question have already been granted the Environmental Clearances and that they have raised constructions in furtherance to such Environmental Clearances. Still as discussed above, the matters in relation to conditions of the orders granting Environmental Clearances, adverse impacts of these projects upon the environment, ecology, lakes and wetlands, need for taking preventive and remedial measures for restoration of the environment and ecology as well as protection of the water bodies in future, are the matters which have been examined by us above. We may also appropriately make reference to the judgment of this Tribunal in the case of *Sarang Yadwadkar and Ors. v. The Commissioner, Pune Municipal Corporation and Ors.* 2013 ALL (I) NGT REPORTER (DELHI) 299, wherein under somewhat similar circumstances, the Tribunal had while declining to demolish the construction raised in the project,

issued substantive directions in the interest of environment and ecology and for protection of River Mutha in Pune. The Respondent Corporation had preferred an appeal before the Supreme Court of India being Civil Appeal Diary No. 3445 of 2015, which was dismissed on merits on 12th February, 2015. The Project Proponent was thus directed to comply with the directions of the Tribunal including partial demolition of the project in question. We have already indicated that at this stage the entire amount of compensation payable on various counts by the Project Proponent cannot be determined with exactitude, however, liability to pay for violation of law, raising construction unauthorizedly and illegally, renders the Project Proponent liable to pay the environmental compensation forthwith. The final amounts for restoration of environment and ecology would be determined by the Committee constituted in this judgment. We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs 22.5 crores and Respondent No. 9 would be liable to pay a sum of 117.35 crores.

85. This is a fit case where in exercise of its jurisdiction in terms of Section 20 of the NGT Act, the Tribunal has to invoke both polluter pays principle as well as precautionary principle. Further,

where the Tribunal should also apply the principles of law enunciated by the Supreme Court and this Tribunal in the case of *Sterlite Industries* (supra), *Krishankant Singh* (supra) and *Sarang Yadwadkar* (supra) and issue 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 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, 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.

86. Thus, we dispose of the Original Application No. 222 of 2014 in the above terms while leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Professor A.R. Yousuf
Expert Member

New Delhi
7th May, 2015

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 37 OF 2015
(M.A. NO. 291, 293 & 294 OF 2015)

AND

ORIGINAL APPLICATION NO. 213 OF 2014
(MA 755 of 2014 & M.A. No. 177 of 2015)

IN THE MATTER OF:

S.P. Muthuraman
S/o. Ponnusamy,
No. 204, Railway Feeder Road,
Sankar Nagar Post – 627 357
Tirunelveli Distict.

.....Applicant

Versus

1. Union of India
   Rep. by the Secretary to Government,
   Ministry of Environment and Forests,
   Government of India, Paryavaran Bhavan,
   New Delhi - 110003

2. The State of Tamil Nadu
   Rep. by the Secretary to Government,
   Ministry of Environment and Forests,
   Government of Tamil Nadu,
   Fort St. George,
   Chennai – 600 003

.....Respondents

AND

IN THE MATTER OF:

Manoj Mishra
Convener, Yamuna Jiye Abhiyaan,
178-F, Pocket-4,
Mayur Vihar, Phase-I,
Delhi-110 091.

.....Applicant

Versus

Union of India
Through the Secretary,
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi- 110 003.

……Respondent

ORIGINAL APPLICATION NO. 37 OF 2015

Counsel for Applicant:
Mr. T. Mohan and Mr. A. Yogeshwaran, Advocate.

Counsel for Respondents:
Mr. Vivek Chib, Mr. Asif Ahmed, Ms. Ruchira Goel, Mr. Kushal Gupta, Mr. Joby Varghese and Mr. Ankit Prakash, Advocates for Respondent No. 1
Mr. M. Yogesh Kanna and Ms. J. Janani, Advocates for Respondent No. 2.
Mr. Ashwani Kumar, Sr. Advocate, with M/s. R. Mohan and Mr. V. Balaji
Mr. K.S. Mahadevan and Mr. Krishna Kumar, Advocate
Mr. R. Chandrachud, Advocate

Mr. Ashwani Kumar, Sr. Advocate with M/s. R. Mohan Parasawarn, Mr. Varun Sharma and Mr. Srikantha Sriniwas
Mr. Amit S. Chadha, Sr. Advocate, Mr. R. Chandrachud, Advocate
Mr. Shyamal Anand, Mr. R. Jawahar Lal and Mr. Sarvanna Kumar, Advocates for Respondent No. 3 & 5.

Original Application No. 213 of 2015

Counsel for Applicant:
Mr. Rahul Choudhary and Ms. Neha Kurian, Advocates.

Counsel for Respondents:
Mr. Vivek Chib, Mr. Asif Ahmed, Ms. Ruchira Goel, Mr. Kushal Gupta, Mr. Joby Varghese and Mr. Ankit Prakash, Advocates for Respondent No. 1

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 29th April, 2015
Pronounced on: 7th July, 2015

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this common judgment, we shall dispose of the Original Applications No. 213 of 2014 and 135 of 2014 (upon transfer from SZ Bench, numbered as Original Application No. 37 of 2015) as well as Miscellaneous Applications No. 291, 293, 294 of 2015 in Original Application No. 37 of 2015, Miscellaneous Applications No. 755 of 2014 & M.A. No. 177 of 2015 in Original Applications No. 213 of 2014 and the claims of all the seven interveners/Respondents, as common question of law on somewhat similar facts arise for determination of the Tribunal in all these cases. We may briefly notice the facts of each Original Application giving rise to their filing.

2. In Original Application No. 213 of 2014, the Applicant claims that he is a former member of the Indian Forest Service and is the convener of the "*Yamuna Jiye Abhiyaan*". The Organization is working for promotion of nature conservation as a strategy for establishment of a peaceful world.

3. According to the Applicant, the State is under a constitutional duty in terms of Article 51A of the Constitution of India, to protect and improve the natural environment, including forests, lakes, rivers and wildlife. Respondent No. 1 has issued a Notification dated 14th September, 2006 titled the Environment Clearance Regulations of 2006 (for short 'Notification of 2006'), under the

powers conferred upon it by sub-Section (1) and clause (v) of sub-Section (2) of Section 3 of the Environmental Protection Act, 1986 (for short 'Act of 1986'). As per the provisions of the Notification of 2006, the project or activities falling under Category 'A' of the Schedule require prior permission from the Central Government while project and activities falling under Category 'B' require prior permission from the State Environment Impact Assessment Authority (for short 'SEIAA'). These permissions are to be obtained before any construction work or preparation of the land by the project management except for securing the land is started on project or activity. Respondent No.1 issued the Office Memorandum dated 16th November, 2010 for consideration of proposals involving violation of the Act of 1986 and the Notification of 2006. On 12th December, 2012, the Ministry of Environment, Forest and Climate Change (for short 'MoEF') issued another Office Memorandum, superseding the Office Memorandum of 16th November, 2010. In terms of this Office Memorandum, it was stated that as soon as any case of violation with respect to the Notification of 2006 is brought to the notice of the MoEF, it will proceed to verify the veracity of the complaint through the regional offices and upon such verification the explanation of Project Proponent will be asked for. If the Ministry is satisfied that it is a case of violation, then before proceeding any further, the authorities would require the Project Proponent to submit its environment related policy, plan of action and a written commitment to ensure that violation will not be repeated within 60 days in terms of the Office Memorandum dated

12th December, 2012 and would delist the project in the meanwhile. Other detailed consequences were also provided in the Office Memorandum dated 12th December, 2012. The Office Memorandum dated 12th December, 2012 was further amended by the Office Memorandum dated 27th June, 2013, which i*nter alia*, also provided as under:

> "It is felt that in addition to these guidelines circulated vide aforesaid Office Memorandum dated 12.12.2012, in case of violation cases, the Project Proponent needs to be restrained, through appropriate directions under Section 5 of the Environment (Protection) Act, 1986 from carrying out any construction or operation activity without the required clearance or beyond the level/capacity stated in the existing clearance, as the case may be, till it procures the requisite EC/CRZ Clearance for the same."

4. According to the Applicant all the three Office Memoranda dated 16th November, 2010, 12th December, 2012 and 27th June, 2013 have been placed on record for the first time by the MoEF along with its reply filed in Appeal No. 98 of 2013. Thus, the Applicant has acquired the knowledge of these circulars only during the hearing of the said Appeal. The Applicant challenges the legality and correctness of these circulars on various grounds, including, that these Office Memoranda are contrary to and in contradiction with the provisions of the Notification of 2006; the Notification of 2006 having been issued under the provisions of Section 3 of Act of 1986, cannot be diluted, rendered ineffective or infructuous by issuance of these Office Memoranda. The Notification of 2006 requires that not only the new projects falling under category 'A' and 'B' listed in the Schedule to the Notification of 2006, but even the expansion and modernisation of such existing projects or

activities would require prior Environmental Clearance from the competent authority. The Notification of 2006 further contemplates that prior Environmental Clearance would be necessary even when there is any change in the product mix in an existing manufacturing unit beyond the specified range. It is the case of the Applicant that Para 7 of the Notification of 2006 requires mandatory compliance to the process prescribed for grant of Environmental Clearance. There are four stages i.e. Screening, Scoping, Public Consultation and Appraisal prescribed under Para 7 of the Notification of 2006. This process has to be followed in terms of the Notification of 2006 before a prior Environmental Clearance can be granted to the listed projects. The Applicant alleges that impugned Office Memoranda provide for considering the project of any Applicant where construction has been done already and does not specify the compliance of these four stages prescribed under Para 7 of the Notification of 2006. Therefore, the very purpose of the provisions of Act of 1986 and the Notification of 2006 stands frustrated by these Office Memoranda. If the construction has already commenced and/or even completed, compliance to the provisions of these laws would be impossible. It is the case of the Applicant that the Notification of 2006 has been issued in furtherance to exercise of subordinate delegated legislation for satisfying and complying with the provisions of Section 3 of the Act of 1986 which mandates that 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. The law requires the Project Proponent to take prior Environmental Clearance while these Office Memoranda state exactly to the contrary, thus, encouraging people to flout the law in force on the one hand and cause environmental damage and degradation on the other.

5. In Original Application No. 37 of 2015 (Application 135 of 2014, SZ Bench), the Applicant has impugned the Office Memoranda dated 12th December, 2012 and 27th June, 2013. While raising the challenge on similar grounds as of the Applicant in Original Application No. 213 of 2014, he has further stated that the impugned Office Memoranda are against India's international obligation such as Stockholm Conference, 1972 and Rio De Janeiro Declaration 1992 and has also violated the mandate of Article 51 of the Constitution. It is submitted that environmental management or planning is the study of unintended consequences of a project. Its purpose is to identify, examine, assess and evaluate the likely and probable impacts of a proposed project on the environment and, thereby, to work out remedial action plans to minimize these adverse impacts on the environment. All this is required to be done at a stage before the commencement of the project. The law does not visualise such examination post-commencement and upon completion of the project, in relation to the covered projects and activities. According to the Applicant, the aim and purpose of Environmental Impact Assessment (for short 'EIA') is to inform the process of decision-making by identifying the potentially significant

environmental effects and risks of development proposals and to promote sustainable development by ensuring that development proposals do not undermine critical resource and ecological functions or the well being, lifestyle and livelihood of the communities and people who depend on them. The importance of conducting an exhaustive EIA before any project is granted Environmental Clearance has been acknowledged internationally. The United Nations Environment Programme's (UNEP) Charter states that EIA should be ensured to minimize adverse effects on nature and nature assessments should be included in the fundamental elements of all planning and should be publicly disclosed and deliberated. The EIA Directive (85/337/EEC) of the European Union which is in force since 1985, requires a defined EIA to be implemented by member nations prior to official authorization for projects with potential significant environmental impacts. The very purpose of conducting an EIA before a project is granted clearance is to ensure that no development takes place without sufficient assessment of the risks and damages that would be caused to the environment due to the project's construction and development. The authorization should follow such study and imposition of conditions rather than the converse. The application for seeking Environmental Clearance has to be made in Form 1 or the Supplementary Form 1A, as the case may be. The requisites required under Form 1 have to be supplied prior to the date of commencement of the project except to the extent of arranging land. The State Level Expert Appraisal Committee (for short 'SEAC') has

to assess the project as on that date and stage, then alone it has to recommend whether such project should or should not be granted such Environmental Clearance. According to the Applicant, the impugned Office Memoranda have stated that the projects which have attained substantial physical progress relating to the construction at the site shall be considered by the Expert Committee for the grant of prospective Environmental Clearance, though no Environmental Clearance was obtained prior to commencement of development, as mandated by law. Thus, the impugned Office Memoranda are contrary to law.

The impugned Office Memoranda in question provide that violations could come to the notice of the Ministry at various stages of processing of the proposals and provide for grant of Environmental Clearance even to those projects. Under these Office Memoranda, if a Project Proponent commits breach of the conditions or has already commenced or completed the construction without obtaining required Environmental Clearance for the project, then the concerned State Government is required to initiate credible action on these violations by invoking powers under Section 15 and 19 of the Act of 1986. This is an entirely unworkable system and is even contrary to the federal structure of the Constitution. If this approach and procedure is allowed to be followed then any builder/Project Proponent would complete his project causing irreversible damage to the environment and will then seek post-facto Environmental Clearance from the authorities making it a *fait accompli* situation. In that event, even the most

illegal and irregular projects, which are completely violating the Environmental norms, may have to be legalised and legitimized, which would be contrary to law, would even defeat the potential penal consequences prescribed under the Act of 1986 and thus, would be unable to prevent damage to environment and ecology.

Both the Applicants have relied upon the judgment of the Supreme Court in the cases of *Lafarge Umiam Mining Pvt. Ltd. v. Union of India (UOI) and Ors.*, (2011) 7 SCC 338 and *M.C. Mehta v. Union of India (UOI) and Ors.*, (2004) 12 SCC 118, to contend that the circulars issued by the MoEF cannot nullify a statutory Notification. In the case of *M.C. Mehta* (supra), the MoEF had issued a circular dated 14th May, 2002, thereby providing an opportunity to people to seek clearance in relation to projects which were already operational but in violation of the Notification of 2006. The Supreme Court observed that it showed total non-sensitivity of the MoEF towards the principle of Sustainable Development and the object behind the issuance of the Notification of 2006. The Supreme Court in the case of *M. C. Mehta v. Union of India*, (1987) 4 SCC 463, held that life, public health and ecology have priority over unemployment and loss of revenue. Clearly, the grant of ex post facto Environmental Clearance has not met the approval of Supreme Court legally. According to the Applicants, the circulars are violative of the spirit behind Articles 48A and 51A(g) of the Constitution of India. Under Article 21 of the Constitution, right to a decent and clean environment is a Fundamental Right and thus,

its protection by all, including the State, is a Constitutional obligation.

Before we revert to the case advanced on behalf of the respective Respondents, it is essential for us to notice that a number of applications were filed for impleadment by various Project Proponents who had taken advantage of these impugned Office Memoranda or were in the process of seeking advantage thereof. MA Nos. 232, 281, 282, 166, 97 and 110, all of 2015, were filed for impleadment by different builders. These applications came to be allowed vide order dated 12th February, 2015 and 1st April, 2015 respectively. Vide these orders, the following Respondents were directed to be impleaded as contesting Respondents:

Mr. Y. Pondurai (Respondent No. 3)

M/s Ruby Manoharan Property Developers Pvt. Ltd. (Respondent No. 4)

M/s Jones Foundations Pvt. Ltd. (Respondent No. 5)

M/s SSM Builders and Promoters (Respondent No. 6)

M/s SPR and RG Construction Pvt. Ltd. (Respondent No. 7)

M/s Dugar Housing Ltd. (Respondent No. 8)

6. M/s SAS Realtors Pvt. Ltd. has also filed an application M.A. No. 291 of 2015 for impleadment and directions. The said application was heard when the Original Applications were being heard on merits. The Applicant was permitted to address the Tribunal on the merit and otherwise of his impleadment application, as well as on the Original Applications. Since we had permitted the Applicant to participate in the proceeding and

address argument, this application stood allowed and consequently, M.A. No. 291 of 2015 for impleadment of M/s SAS Realtors Pvt. Ltd. as Respondent No. 9 is also allowed.

7. MAs 293 and 294 of 2015 were filed by M/s Dugar Housing Ltd. and M/s SPR and RG Construction Ltd. respectively, for producing additional documents on record which were permitted and the documents are on the file of the Tribunal. Consequently, both these Applications No. 293 and 294 of 2015 stand allowed.

Still another set of application was filed, being M.A. No. 167, 168, 169 and 172 of 2015 by different builders for impleadment and directions. During the course of hearing, none appeared on their behalf to argue and pursue these applications and resultantly vide order dated 1st April, 2015, these applications were dismissed. However, the Applicants were granted liberty to raise their grievances before the Tribunal or if they had their independent cause of action, by taking recourse to independent remedy in accordance with law.

8. M.A. 755 of 2014 has been filed in Original Application No. 213 of 2014 praying for stay of operation of these Office Memoranda. Since we are dealing with the Original Applications finally by this Judgment, M.A. No. 755 of 2014 does not survive for consideration and is accordingly disposed of. M.A. 177 of 2015 had been filed on behalf of the MoEF for waiver of cost of Rs. 20,000 which was imposed vide order of the Registrar dated 16th February, 2015, for not filing a counter affidavit. Since the arguments have already been concluded and all parties have addressed their

submissions, we do not consider it necessary to direct the payment of the cost imposed by the above order in the interest of justice. Resultantly, this application is allowed. The cost of Rs. 20,000 by order dated 16th February, 2015 is waived. The application is disposed of.

9. The Project Proponents upon their applications were directed to be impleaded as Respondents in the main application. The Applicants as well as these newly added Respondents submitted affidavits, documents and other details in regard to the projects in question. The Applicant in the main application in relation to M/s **Y. Pondurai (Respondent No. 3),** submitted that it is a construction project extending to 28,262.81 sq. mtrs. to which the planning permission was issued on 31st December, 2013. The construction was started even prior thereto on receipt of the recommendation from the Government. The application to SEIAA was filed on 21st February, 2014. On 28th February, 2014, SEIAA informed the Project Proponent that no activity should be carried on prior to grant of Environmental Clearance. SEIAA on 11th March, 2014 asked for photographs of the site to consider the application. On 21st March, 2014, the photographs of the project and an apology along with undertaking were submitted by the Project Proponent to the SEIAA. SEIAA on 1st April, 2014 wrote to Additional Secretary for initiation of prosecution against the said Respondent. The Applicant heavily relies upon this letter of 1st April, 2014 placed on record vide which, the Member Secretary of the SEIAA, Tamil Nadu had written to the Additional Chief Secretary to the Government,

stating that there were repeated breaches on the part of the Project Proponent and that action needs to be taken. The relevant part of the said letter reads as under:

> "I inform that as per the EIA Notification 2006, all new projects or activities or expansion and modernization of those existing projects or activities listed in the schedule to the said Notification with capacity beyond the threshold limits prescribed there under, to obtain prior Environmental Clearance under the provision thereof.
>
> The Proponent vide letter dated 21.03.14 has forwarded the expressing regret over the commencing of construction without obtaining EC and also expressed assurance to not to repeat such violations in future. The Authority after careful consideration decided to address the Additional Chief Secretary, E&F Department, Government of Tamil Nadu to take action against the violation of EIA Notification, 2006 under provision of Environment (Protection) Act 1986.
>
> In the light of the above and as per the clause 5(ii) of O.M. of MoEF, GOI, New Delhi dt: 12.12.2012 (copy is enclosed), it is requested to initiate action against Thiry Y. Pondurai, No. 129, Usman Road, T.Nagar, Chennai – 600 017., by invoking powers under Section 19 of the Environment (Protection) Act 1986 for having started the construction work without obtaining requisite Prior Environmental Clearance. It is requested that the action taken in this regard may be informed to the Ministry of Environment & Forests, Government of India and to this office along with supporting documents to enable us to take further action in the matter."

10. On 22nd April, 2014, the Principal Secretary, FAC wrote to the Principal Secretary, SEIAA, bringing to his notice the Notification issued by the Ministry dated 28th February, 2014 which delegated powers vested under Section 5 of the Act of 1986, to all the State and Union Territory Environment Impact Assessment Authorities, under whose jurisdiction the project was located, to issue show cause notice for the violations committed. On 28th May, 2014, SEIAA wrote to the Principal Secretary that in case of violation of

EIA Notification, 2006, prior to issuance of Environmental Clearance, a show cause notice should be issued and action has to be taken by the State Government. On 5th June, 2014, the Principal Secretary wrote to the Tamil Nadu Pollution Control Board (for short 'TNPCB') requesting them to take legal action in accordance with the Notification of 2006. This resulted in the issuance of show cause notice to Respondent No. 3 on 12th July, 2014 by the TNPCB, reply to which was submitted by the Project Proponent on 23rd July, 2014.

11. On 26th November, 2014, SEIAA informed the Project Proponent that there was substantial progress in the construction of its project which was noticed even during the scrutiny of the application of Respondent No. 3. An affidavit was filed before the Tribunal by the TNPCB in April, 2015 on the basis of inspection conducted by a team on 2nd April, 2015, stating that the civil construction work in all blocks had been completed, however, outer and interior works were being carried on. On 4th April, 2015, the Project Proponent responded to the TNPCB that the structural work was completed long back and the same was started as soon as the principal approval from the Government Housing and Urban Development Department and the planning permit from the Chennai Metropolitan Development Authority (for short 'CMDA') were obtained. According to the Applicant, while referring to the report submitted by SEIAA and other documents on record, it is clear that the total project cost is Rs. 148.25 Crores. It is a project for development of commercial complex consisting of Main Block - 2

basements + ground floor + 10; Service Block – basement + ground floor + 2 floors and MLCP Block – 2 basements + ground floor + 4 floors. According to SEIAA, construction work for the project was under progress at the time of submission of the apology letter and the undertaking. In inspection of 14th April, 2015, it was noticed that civil work of all the blocks were completed.

12. Vide letter dated 26th November, 2014, the Project Proponent had been informed not to carry on any construction activity. Photographs on record taken on 21st March, 2014 had shown digging or excavation of earth and some construction activity at that level. None of the blocks had been completed at that time. While the photographs taken on 14th April, 2015 show that some of the blocks have been completed and even finished internally and exteriorly. The Applicant has also pointed out that in the application for impleadment, it is averred by the Project Proponent that he had made application to SEIAA on 21st February, 2014 for Environmental Clearance, after obtaining planning permission. In the meeting dated 11th March, 2014, SEIAA had asked him to furnish additional documents to which he replied on 21st March, 2014, but in the meanwhile the Project Proponent had commenced construction activity investing huge sums of money. However, in his letter dated 4th April, 2015, a different stand was taken and it was stated that the project was completed long back and was carried out as soon as approval was granted by the Government and after granting of permission and the planning permit being issued by the CMDA. From this, it is clear that the Project Proponent had raised

construction much prior to the submission of the application for the Environmental Clearance on 21st February, 2014. In the application, he falsely declared that he was planning to start the construction activity. He continued with the construction, even after filing the letter of apology and undertaking and despite show cause notice dated 12th July, 2014 continued it till 2nd April, 2015 when the premises were inspected by the SEIAA and TNPCB. In the submission of the Applicant, the entire project of Respondent No. 3 has therefore, been constructed illegally, in an unauthorized manner and by making misrepresentations to the concerned authorities.

Stand of Respondent No. 3 (Mr. Y. Pondurai):

13. The stand of this Respondent is that after obtaining the planning permission, it had applied to SEIAA on 21st February, 2014 seeking the Environmental Clearance for the Project. The Project Proponent was required to file additional documents which he had filed on 21st March, 2014. Construction had been started by the Project Proponent on receipt of the recommendation from the Government and after the Planning Permission had been issued. We may notice here that the Applicant however, submitted while referring to the letter of the Project Proponent dated 4th April, 2015 that even this submission of the Project Proponent is factually incorrect. In the said letter, it has been stated that the project work was structurally completed long back and the same was carried forward as soon as principal letter of approval from the Government, Housing and Urban Development Department was

issued in the year 2013. The construction activity thus, had started even before filing the application before SEIAA for grant of Environmental Clearance.

According to the Project Proponent, the construction was carried out under a *bona fide* belief. The Project Proponent also claimed that it had obtained permission from the Airport Authority on 2nd November, 2012. The condition No. 2 of the letter dated 31st May, 2013 is relied by the Project Proponent to say that Environmental Clearance was to be furnished before issue of the Completion Certificate. Thus, there is no fault of the Project Proponent in raising the construction without Environmental Clearance. According to this Respondent, the main application is not maintainable either on law or on facts. Plea of limitation was also taken by this Respondent but without referring as to how the application is barred by time.

14. In relation to **M/s SPR and RG Construction Pvt. Ltd. (Respondent No. 7)**, the Applicant has averred that planning permit from the CMDA was granted on 20th July, 2012 in which combined basement 1 & 2 + ground floor + 14 floors of block 1 to 9 residential building with 950 dwelling units was permitted. Permissions from various other authorities during the period from 25th February, 2011 to 28th April, 2011 have also been filed on record, but there is variance in the Survey Nos. given in Annexure R8 and R9 and R10, R11, R12, R13. The Project Proponent claims to have filed application to SEIAA on 28th January, 2011, which fact is not admitted by SEIAA. The Project Proponent then moved fresh

application on 12th June, 2013 dated 10th June, 2013 to SEIAA for grant of Environmental Clearance. The Project Proponent had been seeking extra time from SEIAA and in regard to this, reference is made to the letters dated 20th February, 2013, 25th April, 2013 and 21st March, 2013 from SEIAA, reference of which have also been placed on record and it does not refer to the application of the Project Proponent dated 28th January, 2011. SEIAA on 12th June, 2013 acknowledged this application and passed an order that no activity should be undertaken unless Environmental Clearance was granted. On 1st July, 2013, the Project Proponent submitted photographs with the letter of apology, pursuant to the Board meeting of Project Proponent held on 17th June, 2013, assuring non-repetition of violation. Photographs which have been placed on record show that the construction was at the very initial stages i.e. excavation work had been done and pillars were being raised. Further details were asked for by the SEIAA vide its letter dated 22nd August, 2013 clearly mentioning that if the additional particulars were not submitted by 10th September, 2013, the project would be closed without notice. The Project Proponent did not provide the requisite information within the stipulated time. On 13th September, 2013, the Project Proponent submitted some documents with the promise to provide rest of them at a subsequent date. The SEAC on 30th September, 2013 prescribed the TOR which was issued by SEIAA on 7th October, 2013. The TNPCB conducted an inspection on 10th December, 2013 and noticed that the construction activity was being carried on. Later, a compliance

report of the TOR was submitted which mentions about the collection of primary data from August, 2013 to October, 2013 which is prior to even issuance of the data of the TOR. Thereafter, an EIA report was submitted on 28th April, 2014. On 22nd January, 2015, the Project Proponent wrote to the TNPCB, referring to the inspection and denying continuation of construction in violation of the undertaking provided, though a case being C.C. No. 56 of 2014 had been filed against this Respondent which was pending before the Judicial Magistrate, Ambattur. SEIAA on 19th May, 2014 wrote to the Project Proponent to furnish additional details. According to the Applicants, the construction was going on even at that stage. Thereafter, SEAC decided to recommend proposal to SEIAA to issue Environmental Clearance but only after obtaining and considering the information stated in the recommendations. It included even that the landscape area and green area was not to be less than 15 per cent of the total area. On 20th June, 2014, SEIAA asked for further documents from the Project Proponent. The Project Proponent had written a letter to SEIAA vide its letter dated 23rd July, 2014. This letter according to the Applicant is a departure from the CMDA's planning permit since the Project Proponent was sanctioned 9 blocks, while this letter talks of 10 blocks. SEIAA again on 10th November, 2014 required the Project Proponent not to carry out any construction of the project. The 26th November, 2014 letter of the CMDA refers to a new PPA made by the Project Proponent and states that the planning permission application would be returned in the absence of a revised plan incorporating

EIA Clearance for the revised proposal. On 30th January, 2015, the Project Proponent resubmitted revised PPA without EIA and asked for further three weeks time to submit the latest developments for Clearance. The Project Proponent appointed new Consultant on 11th February, 2015 and vide its letter dated 19th February, 2015, CMDA asked for a structural stability certificate.

Pursuant to Tribunal's orders, an inspection was carried out by the Tamil Nadu Pollution Control Board on 2nd April, 2015, based on which an affidavit was filed before the Tribunal, stating that the construction is almost complete in all the blocks and that outer and inner works were going on and construction was going on even on 2nd April, 2015. On 4th April, 2015, the Project Proponent submitted a reply to the show cause notice served by District Environmental Engineer, Tamil Nadu Pollution Control Board, Ambattur, where it was stated that construction had been stopped. From the current photographs placed on record, it is clear that the construction work is at its completion stage in complete contrast to the photographs submitted at the time of the filing of the documents by the Project Proponent. Stop work notice was also issued by the Tamil Nadu Pollution Control Board on 2nd April, 2015 to which the Project Proponent responded on 3rd April, 2015 by stating that they have stopped the construction activity upon the receipt of the stop work notice. According to the Applicant, this Project Proponent had all through violated its letter of apology and undertaking given to SEIAA. It carried on construction illegally and in an unauthorized manner. It even revised its plan and raised

further construction in relation to additional block for which there was no construction permission and other permissions from the authorities. Even till date, the Environmental Clearance has not been granted to this project and the project has caused serious and adverse environmental and ecological impacts.

Stand of Respondent No. 7 (M/s SPR and RG Construction Pvt. Ltd.)

15. Respondent No. 7, M/s SPR and RG Construction Pvt. Ltd. has taken a stand that they are engaged in construction of residential complexes. They intend to construct residential apartments at different Survey Nos. 137/1, 138/1, 148/5A and 148/7A Karambakkam Village, Ambattur Taluk, Thiruvallur District, TN, under the name and style of "Osian Chlorophyll". This Respondent submitted its application to SEIAA on 28th January, 2011 for grant of Environmental Clearance for the project. This project was to have the construction of floors as already indicated with a total project area of 35786.05 sq meters with a built up area of 166479.79 sq meters at a total cost of project of Rs. 251.01 crores as proposed. SEIAA had asked for additional particulars and the Project Proponent was advised to give a presentation before the SEAC which was done by the Project Proponent on 30th September, 2013. The said Expert Appraisal Committee recommended the project for grant of Environmental Clearance subject to furnishing of certain details/approvals. The Respondent claims to have complied with those requirements. According to the Project Proponent, the term of the presiding officer of SEIAA had expired around 2nd March, 2011 and remained so till 4th March, 2012 and

no action was taken on the application submitted by the Project Proponent. While simultaneously pursuing the application with SEIAA, the Project Proponent also took NOCs from different authorities like Airport Authority of India, Chennai, Traffic Police, Chennai Water Supply and Sewage Board and planning permit from CMDA on 28th January, 2013. Because of the non-availability of the Members of SEIAA, the Project Proponents like other builders, started construction after seeking the planning permit. The planning permission was granted subject to the condition that the Project Proponents would obtain Environmental Clearance prior to seeking completion certificate for construction. The Applicant started construction under a *bona fide* belief. It is not disputed by this Respondent that the construction raised by it was objected to by the authorities, but taking into account the circumstances and in view of the circulars, Respondent continued with its construction. An undertaking cum apology was also furnished under the format given by the SEIAA on 26th September, 2013. Appraisal Committee on 17th June, 2014 recommended the project with some observation which the Project Proponents was willing to comply. The said Respondent upon enquiry and vide letter dated 10th November, 2014 came to know that since operation of the had been stayed by the National Green Tribunal, SEIAA had de-listed their application subject to the orders of the Tribunal.

16. It is the specific plea of the Respondent that he had applied for Environmental Clearance which had neither been accepted nor rejected within 45 days despite recommendation by the Expert

Appraisal Committee, thus, there would be deemed sanction in favour of the Project Proponent under the Notification of 2006.

17. The authorities i.e. SEIAA, Tamil Nadu and Tamil Nadu Pollution Control Board have taken up the stand that the construction without prior Environmental Clearance was not permissible. The Tamil Nadu Pollution Control Board vide their letter dated 14th February, 2014 had informed the SEIAA that cases had been registered against violators i.e. Project Proponents. The inspection was conducted and stop work notice was issued on 2nd April, 2015 55 complaints have been filed against the violators including the Respondent - Project Proponents. However, in some cases, the proceedings have been stayed by the High Court of Madras. The unauthorized construction by the Project Proponent was brought to notice as back on 15th July, 2013 and despite orders, the construction was continued which was stopped only upon inspection as on 4th April, 2015. Even on 24th December, 2013, the Project Proponent was served with a notice that no construction should be carried out without grant of Environmental Clearance. The construction work in all the 10 blocks had been completed however some interior work was still to be carried out. The Board of Directors of the Project Proponent had furnished a resolution on 12th July, 2013 along with the letter of apology and assurance that no construction would be carried out. However, this was not adhered to. According to SEIAA, tenure of the State Level Environmental Assessment Authority was notified on 4th April, 2012

and after the completion of 3 years of tenure, the same has ended on 3rd April, 2015. Its reconstitution is awaited.

18. In relation to **M/s Dugar Housing Ltd. (Respondent No. 8)**, according to the Applicant on 28th January, 2013, building permit for the construction of combined basement floor + combined stilt floor + first floor to third floor + two towers with fourth floor to 10th floor residential cum commercial building with 285 dwelling units, community hall, gymnasiums, swimming pool and office space at survey no. 779/2A, 2B, 2C, 2D, 2E & 2F of Korattur Village, Ambattur, Chennai was issued in favour of the said Respondent. This permission states that the Project Proponent had also furnished an undertaking to abide by the terms and conditions put by various authorities specified therein and the Project Proponent was to submit necessary applications to the authorities. However, in para 7, it has been stated specifically that this approval is not final and that the Project Proponent has to approach Commissioner of Corporation, Chennai for issuance of Building Permit under the Local Body Act. On 8th May, 2013, a building license from Corporation of Chennai was applied for and was granted on the same date. However, the averment of the Project Proponent that he had applied for building license on 28th January, 2013 is factually not correct. Thereafter, application for Environmental Clearance was moved to SEIAA for construction of 56,153.22 sq mtr in a total plot area of 11,789 sq mtrs. It is also pointed out by the Applicant that there is serious variance in the documents placed on record. In the letter dated 17th June, 2011 addressed by Fire and Rescue

Services Department to the Project Proponent, it has been stated that plot area in the proposal is 12,006.92 sq mtr and the proposed built up area is 41,327.80 sq mtrs. Vide this letter, the Department had given 'No Objection' to accord planning permit to the proposal, but subject to the satisfaction of the conditions specified in the report. The compliance report was to be submitted before actual Occupancy Certificate is issued and the Department was to conduct re-inspection. In response to the letter and application for Environmental Clearance dated 4th June, 2013 by the Project Proponent, SEIAA had responded vide letter dated 7th June, 2013, acknowledging the receipt of the application and clearly informing the Project Proponent that as per the Notification of 2006 along with amendments therein notified by the MoEF, no activity should be taken in any part of India unless prior Environmental Clearance is granted in accordance with the objective of the National Environmental Policy. This letter specifically requires the Project Proponent not to commence any construction activity other than clearing the site, fencing the site and putting up the temporary structure for accommodation of labour etc. On 21st June, 2013, SEIAA asked the Project Proponent to furnish additional documents including approved building site plan, photographs of the building site and a commitment letter that no activity shall be carried out before obtaining the Environmental Clearance from the competent authority.

19. According to the Applicant, no additional documents or particulars were furnished by the Project Proponent till 20th July,

2013, the last date given by the SEIAA to close their application in event of default in furnishing documents or particulars, without further notice. However, some documents were submitted by the Project Proponent on 30th July, 2013. Various letters including letter dated 21st June, 2013, 8th August, 2013 and 10th September, 2013 were written by the SEIAA to Project Proponent seeking further information. Finally, vide its letter dated 24th September, 2013, SEIAA informed the Project Proponent that SEAC meeting would be held on 30th September, 2013. In the meeting held on that day, SEAC recommended the project for grant of Environmental Clearance, subject to conditions. According to the Applicant, the documents requisitioned were not placed before SEAC as the extract of minutes of meeting of SEAC makes no reference to construction in violation of Notification of 2006 and belies the submission of alleged letter dated 26th September, 2013, which claims to have enclosed Board resolution dated 12th August, 2013. The Tamil Nadu Pollution Control Board conducted inspection of the site on 20th May, 2014 and found that the ground level work had already started which resulted in issuance of a show cause notice dated 21st May, 2014. This inspection report contradicts the resolution dated 12th August, 2013 that has been placed by the Project Proponent on record and therefore, there were clear violations of the Notification of 2006. In the show cause notice, it had been specifically noticed that the construction of the work had been carried out without obtaining Environmental Clearance. The reply to this show cause notice was submitted by Project Proponent

vide their letter dated 16th June, 2014, wherein it was nowhere denied that the construction work was carried on without obtaining Environmental Clearance; in fact, the stand taken was that other clearances except Environmental Clearance have been issued in favour of the Project Proponent. According to the Project Proponent, the project construction was started because there was huge investment involving client's money and the construction has to be taken up on time to deliver the property as committed or else it could lead to huge losses to the developer and unwarranted hassles to the end user. It was averred that after the inspection of the site, the work has been suspended.

20. Upon inspection by the Tamil Nadu Pollution Control Board, it was noticed that the unit had completed construction work of 5 blocks and interior work is under process. It is not clear that when permission was granted for building 2 blocks, how come 5 blocks were constructed. This inspection was conducted on 2nd April, 2015 and stop work notice was issued by the Board on the same day. An inspection had also been conducted on 14th April, 2015. The photographs submitted to SEIAA on 26th September, 2013 and the photographs taken on 14th April, 2015 clearly show that there are environmental violations by the Project Proponent. The entire construction has been raised without grant of Environmental Clearance and even without compliance with other laws, thus, at this stage affecting the environment and ecology of that area. Though, the Project Proponent never applied for the Environmental Clearance on the basis of the revised project but the Tamil Nadu

Pollution Control Board during the course of inspection *inter alia* noticed the existence of revised plan of construction and the non-compliance to the conditions contained in the orders of various authorities.

21. In the latest affidavit of the Tamil Nadu Pollution Control Board that has been placed on record before the Tribunal on 8th April, 2015, it was observed that the unit has almost completed the civil construction work and despite issuance of show cause notice dated 21st May, 2014 and stop work notice issued by Tamil Nadu Pollution Control Board, the Project Proponent carried on with the construction work.

Stand of Respondent No. 8 (M/s Dugar Housing Ltd.)

22. The above factual position is hardly disputed by this Respondent. However, the stand taken by the Respondent is that there were vacancy in SEIAA from 2nd March, 2011 to 4th March, 2012 and therefore, they could not have sought Environmental Clearance. The construction was commenced with a view to avoid delay of the project. Though, there was objection from some of the authorities, the construction activity continued in the interest of the developer and the prospective purchasers. It is not disputed by this Project Proponent that resolution dated 12th August, 2013 was submitted to SEIAA. Finally this Respondent has raised the plea of deemed clearance. According to him, he had submitted an application for Environmental Clearance on 7th June, 2013 and it has not been given or denied till date, therefore, it would be deemed to have been granted to him as per Para 8 of Notification of 2006.

Further, it is averred that in the meeting of the SEAC on 30th September, 2013, the project was not granted Environmental Clearance but recommended to SEIAA for grant of Environmental Clearance, therefore, the permission would be deemed to have been granted. It is also the plea of this Respondent that he had obtained No Objection Certificates from the Air Port Authority, Traffic Police, Fire and Rescue Services, Metro Water Supply and Sewerage Board during the year 2011-2012. He had also obtained planning permit from Chennai Metropolitan Development Authority dated 28th January, 2013 and building permission from Corporation of Chennai dated 28th January, 2013. Since the process was taking time, the construction had been started. The Project Proponent had also tendered apology to SEIAA in compliance of the letters dated 12th December, 2012 and 27th June, 2013.

In response to the above contentions raised by the Project Proponent and some of the official Respondents, it has been stated by the Applicant that the plea of vacancies in SEIAA is irrelevant as the application for Environmental Clearance was moved on 7th June, 2013 and thereafter, there was no vacancy in SEIAA, thus, no prejudice is caused to the Project Proponent on that count. The plea of *bona fide* taken by the Project Proponent is of no consequences because upon violation of the law, they cannot take up the plea of *bona fide,* as they intentionally carried on the construction despite objections from the authorities, show cause notice, stop work notice and even their own undertaking to the authorities not to raise any construction. Now the Project Proponent has completed the

construction and therefore, the misrepresentations made by it to the authorities, including the variation in the plot and construction area, would vitiate the permissions that had been granted to the Project Proponent. Since the application for obtaining the Environmental Clearance is still pending for consideration of the authorities and the Project Proponent had been asked to submit documents, the Project Proponent cannot claim any benefit under the garb of 'deeming fiction'. This principle is not applicable to the case of Respondent No. 8 either on facts and/or on law. The meeting of SEIAA held on 30th September, 2013 had clearly noticed the unauthorized construction that they began in violation of the Notification of 2006 and resolution of the Project Proponent dated 12th August, 2013, which fact is undisputable. The plea of 'deeming fiction' and *bona fide* construction can therefore, hardly be taken by this Project Proponent. SEIAA had while requiring the Project Proponent to comply with the Notification of 2006, clearly mandated on 7th June, 2013 that no construction should be carried out. This has been violated by the Respondent No. 8 frequently. The different figures of plot size and construction area having been submitted by the said Respondent to various authorities, shows that he has not approached the authorities with clean hands and *bonafidely*.

23. According to the Applicant, this project of **M/s Ruby Manoharan (Respondent No. 4)** relates to the construction of basement floor + stilt pt + 1st to 15th Floor residential building with 206 Dus (ground floor pt & 1st Floor pt departmental store and 12th floor swimming pool) on Survey No. 64/2, Vengaivasal Village at

Tamabaram, Velachery Main Road, Vengaivasal, Chennai. It was a project of total built up area of 22,130.944 sq meters on plot of 6,173.40 sq meters. The Project Proponent had moved an application to CMDA for his planning permit, in response to which the Authority on 24th July, 2012 wrote to the Project Proponent to pay development charges and submit other documents. The CMDA on 4th January, 2013 granted planning permit to the project. It needs to be noticed that in the letter dated 24th July, 2012, detailed conditions for compliance were stated which also included a condition that the Project Proponent was to furnish an undertaking that Environmental Clearance would be taken before the said authority could issue the planning permit. After submission of its plan, it appears that the Project Proponent started construction immediately after the issuance of the letter dated 24th July, 2012.

24. On 11th January, 2013, the Project Proponent submitted an application seeking Environmental Clearance. To this application, the authorities (Member Secretary, SEIAA) responded instantaneously and informed the Project Proponent about the necessity to comply with the requirements of the Notification of 2006 and directed the Project Proponent not to raise any construction without obtaining prior Environmental Clearance. The relevant extract of the letter written by SEIAA to the Project Proponent can be usefully reproduced here:

> "It shall be noticed that construction activity towards the project implementation without obtaining prior Environmental Clearance is a cognizable offence under Section 19 of Environment (Protection) Act, 1986 and is also liable to punishment for contravention of the

> provision of the said Act and the Rules or orders and directions, under Section 15, 16 or 17 of the said Act.
> In the above circumstances, it is hereby instructed that the Proponent shall not commence any activity, other than clearing the site, fencing the site and putting up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement."

25. On 15th May, 2013, SEIAA wrote to the Project Proponent requiring them to file additional documents and submit the requisite technical details for grant of Environmental Clearance. These details, required to be furnished by 3rd June, 2013, were not submitted, thereby resulting in issuance of reminder by SEIAA to Project Proponent on 8th July, 2013. This letter was responded to by the Project Proponent on 17th July, 2013, wherein they clearly stated that they shall initiate the activity on the site only after obtaining Environmental Clearance. In this letter, the built up area was stated to be 35,017 sq meters as against 22,139 sq. meters as stated in the letter of the Project Proponent itself dated 11th January, 2013.

26. The Project Proponent was again informed by SEIAA vide its letter on 22nd July, 2013 that he should not carry out any construction activity at the site other than clearing the site, fencing the site and raising temporary structure for accommodation of labour. On 27th August, 2013, the Project Proponent informed the SEIAA that they had submitted the documents and circulated the same to the members of SEAC. Conceptual Plan was submitted by the Project Proponent to SEIAA on 29th August, 2013, in which discrepancies were pointed out by the SEIAA and it asked the Project Proponent to provide reasons for change in the built up area

vide its letter dated 4th September, 2013. It was also pointed out by SEIAA in this letter that the project is located at a distance of 50 mtrs. from Nanmangalam Reserve Forest and thus Project Proponent was asked to furnish No Objection Certificate (for short 'NOC') from the District Forest Officer (for short 'DFO'). The Project Proponent vide their letter dated 13th September, 2013 responded to the letter dated 4th September, 2013 furnishing the 'NOC' from DFO while stating that this 'NOC' from DFO was not necessary, it being a 'B' category project and in relation to the discrepancy in the built up area, it was stated that the difference in area is the consolidation of the Non-FSI and Free of FSI areas, which are otherwise not mentioned in CMDA approved plan. SEIAA again vide its letter dated 24th September, 2013, directed the Project Proponent to furnish the NOC from the DFO on account of the fact that the project was located at a distance of 50 meters from Nanmangalam Reserve Forest. In response, the Project Proponent vide its letter dated 25th September, 2013 stated that the development is categorised as General Building Construction Project and is not covered under the Notification of 2006.

27. The matter was placed in the 44th meeting of SEAC on 30th September, 2013 asking the Project Proponent to furnish additional documents including NOC from DFO and an undertaking as required and the above was communicated by the SEIAA to the Project Proponent vide its letter dated 7th October, 2013. The Project Proponent thereupon vide their letter dated 21st February, 2014 informed SEIAA that the required resolution from the Board of

Directors has been passed during the meeting held on 24th January, 2014 that they would not commit violation of the Notification of 2006 and also that such violations shall not be repeated. Having noticed various violations and non-compliance by the Project Proponent, SEIAA vide its letter dated 11th March, 2014 wrote to the Additional Chief Secretary to the Government that action should be taken against this Respondent in terms of Section 19 of the Act of 1986. This letter was responded to by the Government on 22nd April, 2014, asking SEIAA to take necessary steps. The Tamil Nadu Pollution Control Board filed a complaint against this Respondent before the Court of Judicial Magistrate, Court II, Chengalpattu on 17th July, 2014. The Project Proponent filed an affidavit on 22nd July, 2014 stating that they have stopped the construction activity at site as per commitment in the Board Resolution dated 24th January, 2014 and shall carry on construction only upon securing the Environmental Clearance. On 3rd September, 2014, the Project Proponent requested SEIAA to dispose of its application notwithstanding the order passed by this Tribunal dated 21st May, 2014.

In the meanwhile, Tamil Nadu Pollution Control Board issued a show cause notice to the Project Proponent. The premises were also inspected on 2nd April, 2015 and it was noticed that the construction had been carried on in the past but was found to be stopped at the time of inspection. From the photographs on record which were filed by the Project Proponent before SEIAA on 6th March, 2014 and the photographs taken during the course of

inspection on 15th April, 2015, it is clear that the Project Proponent has violated its own undertaking, orders and directions of SEIAA, as well as other laws in force. Therefore, the Applicant has submitted that the project of Respondent No. 4 has seriously affected the environment and ecology of area and the entire construction is unauthorised and illegal.

Stand of the Respondent (M/s Ruby Manoharan)

28. The stand of the Respondent Project Proponent is that he had obtained the Planning Permit on 4th January, 2013. The Project Proponent had also obtained Airport Authority clearance with regard to height of the building from Director General of Civil Aviation on 17th October, 2011. He also claims to have obtained clearance from the Fire Department. Before the issuance of planning permit by the CMDA, the proposal was approved by the Government Housing and Urban Development Department of the State of Tamil Nadu vide their letter dated 19th June, 2012. Vide their letter dated 24th July, 2012, the CMDA asked the Project Proponent to pay the development charges for land and building, security deposits as well as infrastructure and amenity charges. As per the terms and conditions of this letter, the Project Proponent was called upon to comply with various directions and it was stated that if the directions were not complied with, the sanction was required to be revoked. Even according to the Project Proponent in an affidavit, it has been admitted that they were required to furnish an undertaking to produce 'NOC' for EIA Clearance before obtaining the completion certificate. The Project Proponent started the construction after receipt of the Planning Permit which was valid till

3rd January, 2016. After obtaining the Planning Permit, it applied for grant of Environmental Clearance to SEIAA on 11th January, 2013. After submission of the said application, the Project Proponent was called upon to submit certain documents and provide more particulars. The application of the Project Proponent was pending when interim order was passed by the Tribunal staying the operation of the impugned. Before the SEIAA, the Project Proponent had filed an apology letter on 21st February, 2014. The Project Proponent filed an application before the Southern Bench of National Green Tribunal seeking for direction to SEIAA for considering its application and disposing it expeditiously. Keeping in view the fact that the interim orders of stay have been passed by the Principal Bench at New Delhi, the Project Proponent also filed an application for impleadment, praying that the interim orders passed by the Tribunal on 15th December, 2014 in M.A. 809 of 2014 in Original Application No. 135 of 2014 be vacated.

29. SEIAA and Tamil Nadu Pollution Control Board have taken clear stand that the Project Proponent had carried the construction activity without obtaining Environmental Clearance. The apology filed by the Project Proponent had clearly stated that he will not carry out any construction without obtaining Environmental Clearance and such violation will not be repeated. SEIAA had requested the Government of Tamil Nadu to take action under Section 15 and 19 of the Act of 1986 as per the guidelines of the MoEF against the Project Proponent. According to SEIAA, in view of the interim order passed by the National Green Tribunal, the

application for grant of Environmental Clearance was not processed. According to SEIAA, it had acted in furtherance to the issued by MoEF dated 12th December, 2012 and 27th June, 2013 to consider the application submitted by the Project Proponent. But this application has been de-listed from the pending list of projects, as they are awaiting orders of the National Green Tribunal. The Project Proponent had been informed by various letters including that of 19th November, 2014, not to proceed with the project construction. The site was inspected on 15th April, 2014 and it was noticed that the civil structural work for all the blocks were completed. In reliance thereto, SEIAA has submitted certain photographs.

30. According to the Tami Nadu Pollution Control Board, they had conducted the inspection on 2nd April, 2015 and they noticed that no construction work was going on at the time of inspection. They have also taken photographs in reliance thereto. They were also informed by the Project Proponent on 2nd April, 2015 that all the construction work had been stopped w.e.f 4th April, 2014.

31. According to the Applicant, the project of **M/s Jones Foundation (P) Ltd (Respondent No. 5)** was for construction of Group Development residential project constituting six blocks, stilt + 7 floors out of which 329 are dwelling units, a clubhouse and a ground floor plus one residential building in S. Nos. 170/1A1F2, 1B, 2B, 1C1, 1C2, 2C1, 2C2, 172, 173/1A1, 1A2, 1B1, 1B2, 1C, 1D, 1E&2; at Pallikaranai Village, Tambaram Taluk, Kancheepuram District, Tamil Nadu. The total project area is 20,895.02 sq meters

with built up area of 35,848.88 sq meters with a project cost of Rs. 140 crores. The Project Proponent filed an application seeking planning permission from the CMDA on 19th May, 2010. This remained pending and various correspondences were exchanged between the parties. The planning permission according to the Project Proponent was issued on 3rd August, 2012. In terms of this letter of the CMDA, Project Proponent was required to deposit various charges like development and plot regularisation etc. The Project Proponent was to construct strictly in accordance with the sanctioned plan and no deviation was to be made. Further, it was stipulated that even the building would not be occupied without issuance of the completion certificate by the said authority. Rain water conservation measures as notified by the CMDA were expected to be adhered to strictly. Undertaking was required to be furnished for NOC from the IAF and EIA clearance before the issue of the Completion Certificate. In the event of non-compliance of the conditions, the sanction was liable to be revoked. The Project Proponent started the construction immediately thereafter and carried on with the same. The application for grant of Environmental Clearance was submitted on 3rd February, 2014 which was responded to by SEIAA vide its letter dated 5th February, 2014, directing the Project Proponent not to raise any construction, other than cleaning the site, fencing the site and putting up temporary structure for accommodation of labour. It will be useful to refer to the relevant part of the said letter:

> "Your attention is drawn to the EIA Notification dated 14th September, 2006 along with amendments thereon,

notified by the Ministry of Environment and Forests, Government of India, wherein it has Imposed certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy.

The Government of India, Ministry of Environment and Forests in various circulars have repeatedly emphasized that any activity started or being executed before obtaining an Environmental Clearance from the Competent Regulatory Authority i.e. State Level Environment Impact Assessment Authority shall be construed as a violation, as per the provision of the Environment (Protection) Act, 1986. The Ministry has also delegated required powers and instructed the concerned State Government to take legal action against such proponent who has started project activity without a prior Environmental Clearance for violation, by invoking powers under Section 19 of Environment (Protection) Act, 1986.

It shall be noticed that activity towards the project implementation without obtaining prior Environmental Clearance is a cognizable offence under section 19 of Environment (Protection) Act, 1986 and is also liable to punishment for contravention of the provision of the said Act and the Rules or Orders and directions, under section 15, 16 or 17 of the said Act. In the above circumstances, it is hereby instructed that the Proponent shall not commence any activity, other than cleaning the site, fencing the site and putting up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement.

The receipt of this communication should be acknowledged immediately."

32. Vide their letter dated 10th February, 2014, the SEIAA asked the Project Proponent to submit additional documents as well as the photographs of the construction and a resolution/ undertaking of the Project Proponent. In compliance to these directions, on 27th February, 2014, the Project Proponent submitted an affidavit along with photographs showing status of the site and also other

documents. SEIAA vide their letter dated 4th March, 2014, informed the Project Proponent that construction had commenced and this was in clear breach of the Notification of 2006 and they were asked to furnish a letter of commitment and expression of apology for the same and then alone the proposal would be considered any further. On 10th March, 2014, the Project Proponent submitted an apology and requested that issuance of Environmental Clearance may be considered. The letter of commitment and expression tendered by the Project Proponent read as under:

"**LETTER OF COMMITMENT AND EXPRESSION OF APOLOGY**

We understand the violations on the part of making substantial construction in our project at Survey No.s-170/1C2, 170/1A1F2, 170/2C2, 170/2B, 172, 170/1B, 170/2C2, 170/1C1, 173/1D, 173/1A1, 1A2, 173/1B1,1B2, 173/1E, 2, 173/1C of Pallikarnai Village, Tambaram Taluk, Kanchipuram District, Tamil Nadu in West Anna Nagar, (Near Chettinadu Enclave), Door No: 190 Zone-14 Corporation of Chennai , which is a Multi-storeyed Residential Apartment , with (6-Blovcks –Stilt + 7 Floors and a Club House) for residential purpose with 329 dwelling units by M/s Jones Foundations Private Limited without obtaining prior Environmental Clearance under EIA notification 2006.

The subject was taken up in a meeting held by the Board of Directors of M/s. Jones Foundations Private Limited on 24/02/2014 for consideration of the environment related policy / of action and resolved to ensure that such violations will not be repeated in future.

We here by express our apology for the violations carried out by construction of the project without obtaining prior Environmental Clearance under EIA Notification 2006 and request SEIAA, Tamil Nadu to consider the issuance of the Environmental Clearance for the said project."

33. The Tamil Nadu Pollution Control Board conducted an inspection and issued a show cause notice on 16th July, 2014, clearly evidencing that the construction work was continuing even

as on 15th July, 2014. In the show cause notice, the Project Proponent was required to answer as to why the prosecution should not be initiated against him by filing a complaint as per the powers conferred under Section 19 (a) of the Act of 1986 and as to why recommendation should not be made to the MoEF, Government of India/Government of Tamil Nadu, for the issuance of directions under Section 5 of the Act of 1986 to suspend the construction activity till such time Environmental Clearance is obtained. Reply to this show cause notice was submitted by the Project Proponent on 26th July, 2014, in which it was said that they have already submitted the application in Form I and IA along with a conceptual plan to SEIAA, Tamil Nadu and that they were waiting for grant of Environmental Clearance to the Project. In this letter, it was stated that they have stopped all construction activities pertaining to the project after the show cause notice and that construction would be started only after grant of Environmental Clearance. The Tamil Nadu Pollution Control Board during inspection noticed that the main civil construction work for the residential complex was almost completed and found works such as interior finishing and site cleaning work were going on. The inspection report submitted on 2nd April, 2015 resulted in a stop work notice being issued to the Project Proponent by the Tamil Nadu Pollution Control Board. The photographs submitted by the Project Proponent to SEIAA on 5th January, 2014 and the photographs taken by SEIAA on 15th April, 2015 along with the report of SEIAA, clearly show that the construction work is in violation of the law and is continued illegally

during all this time and this has caused irreparable loss and damage to environment and ecology. The SEIAA vide its letter dated 18th November, 2014 had informed the Project Proponent that his project stands de-listed for grant of Environmental Clearance and would be considered only after further orders of the Tribunal.

The Project Proponent had relied upon the office order dated 21st January, 2010 issued by the Member Secretary, Chennai Metropolitan Development Authority approving the norms and procedures evolved in terms of the guidance of the Monitoring Committee to contend that they had taken permissions from the concerned authorities to raise constructions with reference to this office order dated 21st January, 2010. The office order related to issuance of completion certificate on the basis of these revised guidelines. The office order provided that the insistence for compliance report from other agencies, including CMDA, Tamil Nadu Pollution Control Board, Revenue Department and ELCOT was proposed to be dispensed with. The Project Proponent also claimed that he had obtained other statutory clearances for the purposes of construction and construction had been carried out on the basis of the approved drawings. The Project Proponent conceded in his Application M.A. No. 110 of 2015 that he had commenced and had almost completed the construction activity by investing huge sums of money and has employed large number of labourers as on 3rd February, 2014 when he applied for obtaining the Environmental Clearance. The Project Proponent submits that he was under *bona fide* impression that Environmental Clearance

would be given since all particulars have been complied with. Rest of the facts afore-referred are not disputed. The Respondent stated that the main application of the Applicant was not maintainable and the same should be dismissed.

34. According to the Applicant, **M/s SSM Builders and Promoters (Respondent No. 6)** is a registered partnership firm engaged in the business as civil engineering contractors, lay out promoters, flat promoters, real-estate and housing/commercial project developers. In November, 2012, the Project Proponent submitted a plan for approval to the CMDA for the project 'SSM Housing Complex at Perungalthur, Chennai'. The project was envisaged in an area of 49.28 acres. The proposed housing complex contemplated 59 blocks, out of which 6 blocks were for LIG housing with GF + 3 floors and balance 53 blocks with stilt plus 4 floors comprising of a total 2952 flats. There are six commercial blocks and one club house. The total built up area of the project comes to 37.84 lakhs sq ft. The estimated project cost involved was Rs. 792.56 crores. The application for planning permission was filed with the CMDA on 2nd November, 2012 and revision of this application was sought on 11th December, 2012, 27th December, 2012 and 7th February, 2013. On 11th March, 2013, necessary fee for process was demanded by CMDA from the Project Proponent. On 5th August, 2013, the Planning Permission was granted to the Project Proponent in relation to the project in question. Project Proponent had submitted the application for grant of Environmental Clearance on 24th July, 2013. According to the Applicant, the Project Proponent claims that

he had collected samples for making available for baseline data from July to September, 2013 and that it had commenced construction by 13th August, 2013. However, the Applicant has submitted that the Project Proponent had erroneously classified the project as a category 'B2' project under clause 8(b) of the Schedule to the Notification of 2006, while in Column (2) of Form 1, the Project was categorised as 8(a) under the Schedule of Notification of 2006. It is also averred by the Applicant that the samples have been collected much subsequent to the application for grant of Environmental Clearance and are even pre-dated to the TOR. Furthermore, as they were not collected by an accredited consultant they cannot be used for EIA report. On 1st August, 2013, SEIAA asked for additional documents and particulars so as to proceed with the case. These documents are stated to have been submitted on 20th August, 2013. SEIAA vide its letter dated 19th September, 2013 stated that the ToRs as well as the clarifications should also be furnished in the EIA report. On the basis of the said EIA Report, the Project Proponent was required to take further necessary actions for obtaining Environmental Clearance. The Project Proponent on 14th February, 2014 submitted a Rapid EIA report. On 24th February, 2014, the partners of the Project Proponent passed a Board Resolution expressly apologizing for violations of the Notification of 2006 by commencing construction work without grant of Environmental Clearance and undertook not to commit further violation. In fact, on 19th March, 2014, 'letter of commitment and expression of apology' was submitted to SEIAA. The Tamil Nadu

Pollution Control Board on 11th July, 2014 conducted an inspection of the project. On the basis of this inspection, the Tamil Nadu Pollution Control Board issued a notice dated 15th July, 2014 referring to the whole background, the breaches and violation committed by this Project Proponent and the fact that during inspection on 11th July, 2014, it was found that the residential complex project was under progress without obtaining Environmental Clearance which was violative of Notification of 2006 and documents submitted by the Project Proponent. The Project Proponent thus, was required to show cause within 15 days as to why prosecution should not be launched by filing a complaint as contemplated under Section 19 of the Act of 1986 and also why recommendation should not be made to the MoEF for issuance of direction under section 5 of Act of 1986 stopping operation of the project till such Environmental Clearance is obtained. Reply to this show cause notice was submitted by Project Proponent on 22nd July, 2014. It was stated therein that in response to the issuance of the TOR, the Project Proponent had submitted rapid Environmental Impact Assessment report on 14th February, 2014 and were awaiting Environmental Clearance. It was further stated that they have stopped all construction activity pertaining to the said project and no construction would be carried out without obtaining the Environmental Clearance. On 25th November, 2014, SEIAA issued a letter to the Project Proponent stating that their application stands de-listed and would be processed only after further orders of the National Green Tribunal.

35. Under the orders of the Tribunal, the Tamil Nadu Pollution Control Board had also conducted an inspection of the premises of Respondent No. 6 on 2nd April, 2015. Photographs were also taken by SEIAA on 14th April, 2015. Photographs submitted by the Project Proponent on 26th March, 2014 and the photographs taken on 14th April, 2015 by SEIAA clearly show that there has been frequent violation of the laws in force, Notification of 2006 and even the undertaking of apology given by the Project Proponent itself.

36. On 2nd April, 2015, the inspecting team of Tamil Nadu Pollution Control Board found that the work had been stopped and the photographs taken had supported such observations made by the inspecting team.

Stand of M/s SSM Builders and Promoters (Respondent No. 6)

37. The Project Proponent has taken a stand that it was under a *bona fide* impression that he could commence construction on making an application for Environmental Clearance to SEIAA and once the Planning Permit had been granted by the CMDA. According to Respondent No. 6, he had paid the processing fee of Rs. 5 Lakhs on 27th July, 2013 and after receiving the letter from the CMDA on 5th August, 2013, it had started construction. Submission of documents including rapid Environmental Impact Assessment and issuance of TOR was a genuine basis for the Project Proponent to start construction. Relying upon the dated 12th December, 2012, it is stated that the 'letter of commitment and expression of apology' was submitted on 19th March, 2014. According to the Project Proponent, green space had been left

between the buildings so that there is reduced heat gain. The buildings are designed to maximize the use of solar power, rain water harvesting system have been made and STP's installed to recycle water. According to the Project Proponent, out of 2952 flats and 135 shops, 1566 flats and 82 shops have already been sold and undivided share in the land has been conveyed to the buyers. Thus, third party interests have been created. According to the Project Proponent he would be gravely prejudiced by non-processing of the Environmental Clearance application and has submitted that dated 12th December, 2012 as amended on 27th June, 2013, is in consonance with the Notification of 2006 and the Project Proponent is entitled to the benefit of the process as envisaged under the impugned Office Memoranda. According to the Project Proponent, the main application should thus be dismissed.

38. **S.A.S Pvt. Ltd. (Respondent No. 9)** had filed its application through its authorised signatory which was allowed. The application for intervention/impleadment was filed in furtherance of the interim order dated 21st May, 2014 passed by the Southern Zone Bench at Chennai. Thereafter, vide order dated 15th December, 2014, the operation of the impugned s dated 12th December, 2012 and 27th June, 2013 was stayed by the Principal Bench.

39. According to the Applicant, the project of this Respondent at Village Saligramam, Chennai was for development of residential complex consisting of construction of 2 block with combined lower and upper basements and Block 1 – ground plus 17 floors, block 2

– basement plus ground floor plus 2 floors – Service, Gym and swimming Pool providing 166 residential units. The total project area is 6,985 sq meters with built up area of the project is 28,330.95 sq meters. The estimated cost of the project was 90 crores. According to the Applicant, the planning permission from the CMDA was obtained by the Project Proponent on 30th March, 2012, in furtherance to which building license was obtained by the Project Proponent from Corporation of Chennai on 23rd May, 2012. Thereafter, the Project Proponent commenced the construction without even applying for Environmental Clearance. The Project Proponent applied to SEIAA for obtaining Environmental Clearance on 4th July, 2012. No acknowledgement thereof had been placed on record by the Project Proponent. From the letter of the SEIAA dated 13th March, 2013, it is clear that the application with documents was of 13th March, 2013 itself. In terms of this letter, a bank draft towards the processing fee that was given by the Project Proponent itself, was dated 13th February, 2013. In this very letter, SEIAA had informed the Project Proponent that it shall not commence any construction other than cleaning the site or fencing the site. It was specifically re-emphasized that any construction activity started or being executed before obtaining Environmental Clearance from the competent authority would be in violation of the Act and the Notification. Vide letter dated 19th March, 2013, the Project Proponent was asked to furnish additional documents and additional fee on or before 15th April, 2013 failing which the application would be recorded as closed. The Applicant has stated

that till that date, no clarifications were filed nor the fee submitted. On 25th June, 2013, the Project Proponent passed a Board Resolution expressing apology and submitting an undertaking not to repeat any violation and not to raise any constructions. In this letter of commitment and expression of apology, the Project Proponent prayed for consideration of the issue relating to Environmental Clearance. However, on 18th November, 2014, SEIAA informed the Project Proponent that the project had been de-listed. During the inspection on 14th April, 2015, photographs had been taken which if compared with the photographs submitted by the Project Proponent on 6th May, 2013 reveal that there was clear violation of the law, Notification of 2006 as well as the undertaking given by the Project Proponent.

40. According to the authorities including Tamil Nadu Pollution Control Board and the SEIAA, they came to know of unauthorized construction by the Project Proponent on 13th May, 2013. On 21st May, 2013, Project Proponent had submitted certain photographs taken at the project site. SEIAA while following the guidelines issued by the MoEF had asked the Project Proponent to furnish certain documents. The Project Proponent submitted their Board Resolution dated 25th June, 2013 which was received by the SEIAA on 2nd August, 2013. Thereafter, Member Secretary, SEIAA vide letter dated 8th August, 2013 requested the State Government to take action for violation of the Notification of 2006. Vide letter dated 10th September, 2013, the State Government requested the Tamil Nadu Pollution Control Board to take legal action against the

Project Proponent in terms of Section 19 of the Act of 1986 for having commenced the construction without obtaining prior Environmental Clearance. Thereafter, the Tamil Nadu Pollution Control Board vide its letter dated 3rd June, 2014 informed the Member Secretary, SEIAA, Tamil Nadu that District Environmental Engineer, Chennai has filed a Criminal Complaint in the Judicial Magistrate Court at Saidapet against Respondent No. 9 on 26th May, 2014. It is averred by the authorities that upon compliance with the requirements pointed out by the authorities, the application for Environmental Clearance of the Project Proponent was placed before SEIAA in its 45th Meeting held on 29th – 30th October, 2013. According to SEIAA, the project site was inspected on 14th April, 2015 in the presence of Project Proponent's representative (Site Engineer). It was noticed that civil structural works (core and shell) of all 2 blocks were completed, though at the time of inspection, no work had been carried on. Photographs were taken during the inspection and have been submitted before the Tribunal. The Project Proponent was informed vide letter dated 18th November, 2014 not to proceed with the project construction work, which had not been adhered to. The photographs furnished by the Project Proponent at time of submission of the expression of apology on 6th May, 2013, show that the construction work was structurally in progress but without any walls or without even completion of pillars of any floor. However, photographs taken on 14th April, 2015 show that the building was majorly finished from outside and

inside, which was clearly in violation of the law and the undertaking furnished by the Project Proponent.

Stand of Respondent No. 9 (SAS Realtors Pvt. Ltd.)

41. The stand of the Project Proponent is that he had obtained various approvals from the local authorities since 2011 along with Planning Permission from the CMDA on 30th March, 2012 and Planning Permit from the Chennai Corporation on 23rd May, 2012. The Project Proponent commenced construction activity in compliance with these approvals to meet the timelines promised to its clients for timely delivery of the residential apartments. The authorities thereafter informed the Project Proponent that he is required to obtain Environmental Clearance. The Project Proponent had submitted the application for Environmental Clearance to the SEIAA on 4th July, 2012 but because of the change in the fees payable, the Project Proponent filed a fresh application on 18th February, 2013. In compliance to the Office Memorandum dated 12th December, 2012, it submitted a 'letter of commitment and an expression of apology' on 25th June, 2013, for having commenced construction activity before the receipt of the Environmental Clearance. Thereafter, it was informed to the Project Proponent by the authorities that its application was not processed in view of the stay orders of the Tribunal and that further action would be taken in accordance with further orders of the Tribunal.

42. Further, according to the Project Proponent, action of SEIAA in refusing the grant of Environmental Clearance is violative of legitimate expectation of the Project Proponent, after they have

complied with all the requirements of the dated 12th December, 2012. Since SEIAA failed to comply with the timeline of maximum 105 days provided under Para 8 of the Notification of 2006, the deemed approval would operate in favour of the Project Proponent when there is no rejection of the application from the authorities. According to the Project Proponent the action of SEIAA in delisting its project is violative of Article 14 of the Constitution of India. It is also the submission of the Project Proponent that they have taken all steps in furtherance to dated 12th December, 2012 and therefore, they are entitled to grant of Environmental Clearance and SEIAA has erroneously linked it to the orders of stay passed by the Tribunal. A feeble attempt has been made on behalf of this Respondent to point out that the Notification of 2006 does not apply to residential building projects and it extends only to location of 'industries' or on carrying on of processes and operations. Furthermore, that the Notification of 2006 goes beyond the purview of Rule 5(3) of the Environment (Protection) Rules, 1986 and hence it is *ultra vires*. According to the Project Proponent their application for EC was considered by the SEIAA in its 45th meeting held on 29th – 30th October, 2013 and whatever requirements were to be complied with by the Project Proponent had been complied with. The interim orders of stay on the impugned Office Memoranda by the Tribunal were only in relation to category 'A' projects which require Environmental Impact Assessment, public consultations and Consent to Establish. The project in question is not covered under this category and therefore, the view taken by the Official

Respondents was not correct. The Project Proponent had so claimed even before the authorities.

43. The Project Proponent in its application had submitted that they would challenge the validity and correctness of the Notification of 2006 but no such steps were taken by the Applicant till the conclusion of the arguments.

44. Upon analysis of the case advanced on behalf of the respective parties and as is evident from the pleadings and records before us, we may concisely note the arguments advanced. It is contended on behalf of the Applicant that the Office Memorandum dated 12th December, 2012 and as amended by Office Memorandum dated 27th June, 2013 which provides grant of ex-post facto Environmental Clearance in terms of the Notification of 2006 and the CRZ Notification of 2011 are contrary to these Notifications, themselves. These Office Memoranda at best are administrative orders and therefore, cannot amend or modify the Notifications. It is further the contention of the Applicant that these Office Memoranda are in derogation not only to the Notification of 2006 and the CRZ Notification of 2011 but even of India's International obligations. The Office Memoranda are neither problem solving nor are they compliant with law. These Office Memoranda are not executive orders issued under the authority of Article 73 of the Constitution of India, as these Orders have neither been authenticated by the required authority nor have they complied with the procedure for exercise of executive power under that Article. In fact, they amend the statutory Notification of 2006. The Office Memoranda, in fact,

destroy the very object of the Act of 1986, Notification of 2006 and they have the effect of not only going beyond scope of the Notification of 2006 but even are clearly in derogation to the procedure prescribed under it. The language of the impugned Office Memoranda suggests that they have not been issued in exercise of the powers vested in the Ministry under Section 5 of the Act of 1986 and they are not issued as per the prescribed procedure. They also do not supply the gaps, if any, in the Notification of 2006.

45. According to the Applicants, impugned Office Memoranda are arbitrary and they do not provide for any guidelines. They have an inbuilt element of discrimination and they vest unguided and unfettered discretion with the concerned authority.

Contra to these contentions, the submission on behalf of the Respondents (private Respondents) is that the Office Memoranda have been issued by the MoEF in exercise of its executive powers under Article 73 of the Constitution of India. The source of power of the Union of India to issue such Memorandum is relatively under Article 73 of the Constitution of India, as the executive power of the Union extends to matters on which Parliament is competent to legislate under Article 246 of the Constitution. Furthermore, the impugned Office Memoranda do not have the effect of supplanting or even diluting the mandate of the Notification of 2006. On the contrary, they are in consonance with and in furtherance of the Notification of 2006 and supplement it. The requirement of prior Environmental Clearance is not diluted by these Office Memoranda

since they do not permit commencement of project prior to grant of Environmental Clearance. It is further the contention of the Project Proponents that the situations which are not specifically contemplated under the Notification of 2006 are dealt with by the Office Memoranda. In other words, the Office Memoranda supply the gaps in the Notification of 2006 and further the cause of the Notification. The Office Memoranda do not pose any fetters on the powers conferred on the State or Central Government under the Act of 1986 or the Notification of 2006. They, in fact, direct enforcement of Section 15 and 19 of the Act of 1986 to prosecute the violators.

46. The Project Proponents - Respondents have also contended that they have acted in furtherance to the Office Memoranda, followed the requisite procedure and have invested huge amounts and as such the Tribunal should permit the grant of Environmental Clearance to these projects and dismiss the application of the Applicants.

47. Some of the Respondents have taken up the plea of deeming fiction as contained in Para 8 (iii) of the Notification of 2006 to contend that the Environmental Clearance would be deemed to have been granted to them as their applications were not disposed off within the specified time. Some of the Respondents have also contended that the Notification of 2006 is not applicable to their projects which are for building residential complexes.

Still, some of the Respondents have further contended that the Notification of 2006 is invalid and is liable to be set aside on the

ground of discrimination, vagueness etc. Respondent no. 9 having raised this plea in its application, had reserved its right to challenge the validity and correctness of Notification 2006, however, till the matter was reserved for judgment, neither any such effort was made by such Respondent nor actual application was filed challenging the Notification of 2006. Thus, we do not propose to go into the challenge to the Notification of 2006 in these petitions of the Respondents. Respondent no. 9 has even relied upon the said Notification of 2006 to contend that the Office Memoranda are valid, issued by the Competent Authority in exercise of its powers and are supplementing the Notification of 2006. In these circumstances it is neither necessary nor required by the Tribunal to examine the correctness or otherwise of Notification of 2006.

48. According to the MoEF, the Office Memoranda have been issued in exercise of the powers conferred upon the Ministry and are hence, executive instructions. According to the Ministry, they supplement the Notification of 2006.

49. The State of Tamil Nadu and Tamil Nadu Pollution Control Board have not taken any specific stand in their replies in relation to the validity of Office Memoranda but have stated that the other private Respondents being violators, they have taken action against them as per the directives of the MoEF in the impugned Office Memoranda. The private Respondents have violated the conditions of the Notification of 2006 and they have taken action against them under Section 19 and 25 of the Act of 1986. SEIAA has taken up the stand that because of violations of the Office Memoranda, they

have taken action against the private Respondents (Project Proponents) and have de-listed their projects from the grant of Environmental Clearance. During the course of inspection these authorities have taken photographs and submitted inspection reports to the Tribunal. It is stated that tenure of SEIAA had ended on 3rd April, 2015 and is under process of being re-constituted.

50. As evidenced from the facts averred and the stand taken by respective parties, the entire controversy revolves around the validity, enforcement and consequences of the impugned Office Memoranda afore-referred. To put it precisely, the stand of the MoEF and the private Respondents 3 to 9 is that the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the Ministry in exercise of its Executive Power under Article 73 of the Constitution of India. These Office Memoranda are having the force of law and are merely explanatory or supplementary to the Notification of 2006. These Office Memoranda provide and facilitate grant of Environmental Clearance through the same process as contemplated under Notification of 2006 to the projects which have already commenced construction without obtaining prior Environmental Clearance. It is contended that Office Memoranda further the cause of the Notification of 2006 and the provisions of law. The Office Memoranda are neither violative nor are in contradiction to the Act of 1986, the Rules framed thereunder, or the Notification of 2006.

51. Some of the private Respondents have also contended that the Office Memoranda have been issued in conformity with Section 3

and 5 of the Act of 1986, that issuance of such Memoranda is aided by the 'doctrine of implied or necessary powers' and that they are also entitled to the grant of Environmental Clearance as a result of 'deeming fiction' under Para 8 of the Notification of 2006.

Further, the contention of the private Respondents in particular is that they had started the projects after taking clearance as well as different permissions from various authorities and in accordance with law. At some stage of the construction, they had also filed applications for obtaining Environmental Clearance from the concerned authorities. The Terms of Reference of the building permission from CMDA even prescribed that Environmental Clearance should be taken before grant of Completion Certificate. The constructions carried out by them, though without obtaining Environmental Clearance, were for *bona fide* reasons and keeping in view the fact that not only the Project Proponents but even third parties had heavily invested in these projects. For the above reasons, they claimed to be entitled to the benefit of the Office Memoranda and consequently for protection to their construction projects.

On the contrary, the submission of the Applicants is that the impugned Office Memoranda issued by the Ministry are merely administrative orders and are in violation of the provisions of the Act of 1986, the Rules framed thereunder and in particular, the Notification of 2006. The Office Memoranda not only dilute the provisions of the Notification of 2006 but completely upset the scheme of environmental protection as contemplated under the

environmental laws. On their plain reading, they are *ultra vires* the Notification of 2006 and the Ministry had no jurisdiction to issue such Office Memoranda. These Office Memoranda are not supplementing but are supplanting the Notification of 2006. Such exercise of powers is impermissible in law. Further, the contention of the Applicants is that while some of the private Respondents did not even apply for Environmental Clearance and went on to raise the construction of their respective projects being fully aware and being put to notice that they were not entitled to carry on such construction work, the other Project Proponents completely ignored and / or violated their legal obligations and applied for grant of Environmental Clearance at a stage when their respective projects were reaching structural completion. In law, none of the private Respondents could have undertaken any activity, much less construction activity, of their projects, except the preparation of the site etc, prior to grant of Environmental Clearance. All these Respondents have violated the law and raised constructions illegally and in an unauthorised manner. It is the case of the Applicant that the plea of *bona fide* belief in raising construction is a sham. Not only the private Respondents started construction but even violated their own undertaking given to the SEIAA by continuing with the construction, in fact, with a greater vigour to complete their projects and render all environmental restrictions and laws otiose. The plea of investment by third parties is equally unfounded and *mala fide*. They have invested amounts and even mislead the public at large for making investments being fully aware of the fact that the entire

construction is illegal and unauthorised. These constructions have resulted in serious adverse environmental impacts and are prejudicial to the ecology and biodiversity of the area in question.

52. Applicants have seriously contended that neither a deeming fiction nor the doctrine of necessity applies to the facts and circumstances of the case. There was no compliance to the provisions of Section 3 and 5 of the Act of 1986 and thus, these cannot be directions issued under the stated provisions. In fact, that is not even the case of MoEF, the issuing authority. Thus, the application should be allowed and the Respondents should be held liable for violation of law, raising unauthorised and illegal construction and degrading and damaging the environment and ecology, in addition to the principal prayer that the Office Memoranda be quashed.

53. In order to analytically examine the correctness and merit of the rival contentions raised, it would be appropriate for us to formulate the issues that fall for consideration of the Tribunal. Precisely, they can be stated as under:

1. Whether the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof?
2. Are the above Office Memoranda *ultra vires*, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder?

Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.

3. Whether this Tribunal has no jurisdiction to quash both the impugned Office Memoranda?
4. Are the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8 (iii) of the Notification of 2006 and if so, to what effect?
5. Whether the provisions of Notification of 2006 requiring Environmental Clearance prior to commencement of construction are mandatory or directory and consequences thereof?
6. What is the status of structures raised by and the conduct of the private Respondents and its effect in law (statutory provisions relating to environment)?
7. What are the environmental impacts of the projects in question upon environment, ecology and biodiversity?
8. What relief, if any, any of the parties to the present proceedings are entitled to?
9. What directions, if any, need to be issued by the Tribunal in the peculiar facts and circumstances of the present case?

DISCUSSION ON ISSUES

Discussion on Issue Nos. 1 and 2.

1. **Whether the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof?**

2. Are the above Office Memoranda *ultra vires*, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder?

Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.

54. The decision on these issues would in fact be a linchpin of the entire judgment. If the Office Memoranda dated 12th December, 2012 and 27th June, 2013 are held to be valid and issued in exercise of the Executive Powers of the MoEF, then different consequences in law and on facts would follow. While a completely different set of consequences would ensue if a contrary view is taken.

55. According to the MoEF, these Office Memoranda are issued in exercise of its Executive Power. Some private Respondents supported this stand while others contend that these are the directions issued by the Ministry in terms of Section 3 and 5 of the Act of 1986. However, the MoEF and private Respondents commonly contend that these Office Memoranda are supplemental to and are intended to further the cause of the Notification of 2006.

In opposition to this, the Applicants contend that these Office Memoranda have been issued in exercise of the Administrative Power of the MoEF. They are *ultra vires* and violative of the Notification of 2006. They supplant the Notification of 2006 and defeat the very purpose of obtaining prior Environmental Clearance

for commencement of the projects of a like nature, as contemplated under the Notification of 2006.

56. Now, we may notice the historical background to the issuance of these impugned Office Memoranda. The Indian Parliament enacted the Act of 1986 to provide for the protection and improvement of the environment and for matters connected therewith. This law is enacted in furtherance to the decisions taken at the United Nations Conference on Human Environment held at Stockholm in June, 1972, to which India was a party. The object of the Act was to protect and improve environment and for prevention of hazards to human beings, other living creatures, plants and property. The term 'environment' in terms of Section 2(a) was defined to include 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. In exercise of the powers conferred by Sections 6 and 25 of the Act of 1986, the Central Government made the Environment (Protection) Rules, 1986 (for short 'Rules of 1986'). Further, in exercise of the powers vested in the Central Government under Sub Section 1 and Clause (v) of Sub-section (2) of Section 3 of the Act of 1986, read with clause (d) of sub-rule (3) of Rule 5 of the Rules of 1986, the Central Government issued the Environment Impact Assessment Notification dated 27th January, 1994. This Notification requires any person who desire to undertake any new projects in any part of India or the expansion or modernisation of any existing industry or project listed in Schedule I to make an application to

the MoEF in the proforma specified in Schedule II of the said Notification. Schedule I provides the list of the projects that requires Environmental Clearance from the Central Government. Under entry 18, all tourism projects between 200 metres and 500 metres of High Water Line and at locations with an elevation of more than 1000 metres with investment of more than Rs.5 crores required Environmental Clearance. Similarly, under entry No. 21, Highway Projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments, provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserves, Reserve Forests also required Environmental Clearance. Except these two entries, the construction projects of any other nature were not included in any entry of this Schedule. The Notification of 1994 in contradistinction to the Notification of 2006 had not specifically used the word 'prior Environmental Clearance'. The Notification of 1994 was issued by the Ministry after inviting objection from the public within 60 days from the date of publication of the Notification. Taking notice of lacunas, shortfalls and other practical aspects and difficulties while keeping in mind the interest of environment, the MoEF again issued a draft Notification dated 15th September, 2005 inviting objection and suggestions from all the persons likely to be affected by this draft Notification within a period of 60 days. The significance of this Notification was that the Union Cabinet had approved the National Environmental Policy on 18th May, 2006 proposing restrictions and

prohibitions to be imposed on new projects and activities and even on expansion or modernisation of existing projects or activities with reference to their potential environmental impacts which stated that the project and activity should not be undertaken unless prior Environmental Clearance has been granted in accordance with the objectives of the policy. After examining the objections and suggestions received, the Central Government on 14th September, 2006 issued a final Notification referred herein as the Notification of 2006 (supra). Clause 2 of this Notification required obtaining of prior Environmental Clearance from the concerned regulatory authority depending upon the nature of the project. Clause 2 of the said Notification reads as under:

> **"Requirements of prior Environmental Clearance (EC)**:- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be 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:
> (i) All new projects or activities listed in the Schedule to this notification;
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
> (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

57. Clause 4 of the Notification of 2006 contemplates that all projects and activities be broadly categorized into two categories -

Category 'A' and Category 'B', based on the spatial extent of potential impacts on human health and natural and manmade resources. Clause 4(iii) prescribes that all the projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities would require prior Environmental Clearance from SEIAA and prior Environmental Clearance is required even if there is a change in product mix except in the expansion carved out therein. Upon submission of the application for Environmental Clearance by the Project Proponent, the Expert Appraisal Committee is to follow four steps procedure i.e. Screening, Scoping, Public Consultation and Appraisal of the application. Environmental Clearance is to be applied for in the prescribed Form 1 under Appendix 1 and Form 1A in accordance with Appendix II to the Notification of 2006. Such application is to be filed for grant of prior Environmental Clearance before commencing any construction activity or preparation of land at the site by the Project Proponent in terms of Clause 6 of the Notification of 2006. It has to be noticed here that Form 1 and 1A require a lot of information to be supplied in relation to the project, land area and activity that is proposed to be commenced by the Project Proponent. Such information *inter alia* includes details of alternative site examination and whether the project requires Clearance under different laws including Forest (Conservation) Act, 1980, Wild Life (Protection) Act, 1972, Coastal Regulation Zone Notification, 2011, if any forest land is involved.

58. It also *inter alia* requires the information with regard to permanent or temporary change in the land use, land cover or topography, including increase in intensity of land use, pre-construction investigations like bore house, soil testing. Underground works, including mining or tunnelling, reclamation works, impoundment, daming, culvating, realignment and other changes to the hydrology of the watercourses or the aquifers, loss of native species or genetic diversity, details of vulnerable groups of people which could be affected by the Project, municipal details of municipal waste, sewage sludge, densely populated or build up areas, environmental sensitivity, information with regard to a risk of accidents during construction or operation of the projects which could affect human health and risk of contamination of land and water from releases of pollutants into ground water or coastal areas are also required to be furnished. The Notification of 2006 further spells out how the Screening, Scoping, Public Consultation and Appraisal are to be carried out by the authorities concerned. Further, the Terms of Reference (for short 'ToR') that are to be prepared on the basis of the information furnished in Form 1 and 1-A would become the very basis for consideration of the project of the Project Proponent. The Notification of 2006 states that ToR are to be conveyed to the Project Proponent by the Expert Appraisal Committee or the SEAC as the case may be, upon which an EIA report is to be submitted after holding public consultation. The nominated agency has to submit its report to the regulatory authority stating whether owing to the local situation and dealing

with the objections raised, in its opinion, the project should be recommended for Environmental Clearance or not. The agency has to further appraise whether the project site is proper or not. This entire process is required to be completed prior to grant of Environmental Clearance. Para 8 of the Notification of 2006 deals with the grant or rejection of 'prior Environmental Clearance'. Authorities are required to deal with the applications for grant of prior Environmental Clearance expeditiously and in any case within the time stipulated under the sub-clauses of Para 8. In terms of Para 8(iii), if the decision of the regulatory authority is not communicated to the Applicant within the period specified in sub-clauses (i) or (ii) of Para 8, the Applicant may proceed as if the Environment Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be. Therefore, the Project Proponent under the Notification of 2006 can commence its construction or activity only after the grant of Environmental Clearance. This Clearance is to be for a specific period, i.e. the validity period. The projects are supposed to be monitored by the authorities even post Environmental Clearance. This is the scheme and requirements of the Notification of 2006 that superseded the Notification of 1994.

59. On 16th November, 2010, the MoEF for the first time issued an Office Memorandum. Since the impugned Office Memoranda, including this Office Memorandum, have a significant bearing on

the matters in issue before us, it will be appropriate to reproduce this Memorandum at this stage:

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

Paryavaran Bhavan,
C.G.O Complex, Lodi Road,
New Delhi – 110003
Telefax: 24362434
Dated the 16th November, 2010

Office Memorandum

Sub: 1. Consideration of proposals involving violation of the Environment (Protection) Act, 1986 or Environment Impact Assessment (EIA) Notification, 2006 / the CRZ Notification, 1991, there under – Regarding.
2. Corporate Environment Policy – Regarding.

The Environment Impact Assessment (EIA) Notification, 2006 requires all new projects or activities and or expansion and modernization of those existing projects or activities listed in the schedule to the said Notification with capacity beyond the threshold limits prescribed there under, to obtain prior environmental clearance under the provisions thereof.

2. Instances have come to the notice of the Ministry of Environment & Forests where substantial physical progress relating to construction of the project has been made at site and significant investments have been made for setting up of new projects as also for the expansion components of various existing projects such as thermal power plants, integrated steel plants, mining projects etc. without obtaining a requisite prior environmental clearance as is mandated under the EIA Notification, 2006.

3. As per the existing practice being followed in the Ministry for considering such violation cases as and when these are submitted for environmental clearance, while environmental clearance is granted to deserving projects prospectively, based on their merit, in accordance with the recommendation of the Expert Appraisal Committees, simultaneously the concerned State Governments, under the powers delegate to them under the Environment (Protection) Act, 1986 are requested to initiate action against such units for the period these units have operated in violation of the said Act as per the procedure laid down.

4. The matter has been considered in the Ministry and it has been decided to follow the following procedure henceforth to deal with such cases of violations:

(i) All such cases of violation which are submitted to the Ministry of Environment & Forests / SEIAAs for environmental clearance would be referred to the respective Expert Appraisal Committee (EAC) /SEACs for their consideration based on merit of the proposal. After the EAC / SEAC have made its recommendations on the project, the proposal will be processed on file for obtaining the approval of the Competent Authority.

(ii) After the Competent Authority has approved the proposal for grant of environmental clearance, MoEF / SEIAA will send a communication to the Project Proponent informing that although the proposal has been approved by the Competent Authority, formal environmental clearance will be issued to the project only after the matter relating to the violations have been put up to the Board of Directors of the Company or to the Managing Committee / CEO of the Society, Trust, partnership / individually owned concern for consideration of its environment related policy / plan of action as also a written commitment in the form of a formal resolution to the submitted to MoEF / SEIAA to ensure that violations of the Environment (Protection) Act etc. will not be repeated. For the purpose, a time limit of 90 days will be given to the Project Proponent. In the mean time, the project will be delisted. In the eventuality of not having any response from the Project Proponent within the prescribed limit of 90 days, it will be presumed that it is no longer interested in pursuing the project further and the project fill will be closed, where after the procedure for obtaining environmental clearance will have to be initiated de-novo by such Project Proponents.

(iii) The respective State Government will be informed of the violation case for their initiating legal action against the Company as per the procedure prescribed.

(iv) The details of the Project Proponents and a copy of the commitment etc. mentioned at para 4(ii) above will be put on the website of MoEF / SEIAA for information of al / stakeholders.

This issues with the approval of the Competent Authority.

60. In para 2 of the above Office Memorandum, it was noticed that instances have come up to the MoEF where substantial physical progress relating to construction of the project has been made at site and significant investments have been made for setting up of new projects and also for the expansion of the components of various existing projects without obtaining mandated prior Environmental Clearance. Though, this Office Memorandum specifically notices that the Notification of 2006 mandates prior Environmental Clearance, however, the decision was taken that henceforth, all such cases of violation which are submitted to the Ministry would be referred to the EAC/SEAC and depending upon their recommendations, the proposals would be finally dealt with; provided other requirements of the Office Memorandum were satisfied. This Office Memorandum came to be superseded by another Office Memorandum of 12th December, 2012. Again, it was noticed in this Office Memorandum that all projects and activities beyond the threshold limits prescribed thereunder are required to obtain prior Environmental Clearance under the provisions of the Notification of 2006 or Notification of 2011 relating to Coastal Zone Regulation. Again, it noticed that the projects have been started without compliance to these requirements and in some cases, the applications have been pending before the Ministry/the authorities concerned, in terms of the Office Memorandum of 16th November, 2010. The Office Memorandum dated 12th December, 2012 reads as under:

"No. J-11013/41/2006-IAII(I)
Government of India

Ministry of Environment & Forests

Paryavaran Bhavan,
C.G.O Complex, Lodi Road,
New Delhi – 110003
E-mail: pb.rastogi@nic.in
Telefax: 011-24362434

Dated 12th December, 2012

OFFICE MEMORANDUM

Subject: Consideration of proposals for TORs/ Environment Clearance/ CRZ Clearance involving violation of the Environment (Protection) Act, 19861 Environment Impact Assessment (EIA) Notification, 2006/Coastal Regulation Zone (CRZ) Notification, 2011 - reg.

1. The Environment Impact Assessment Notification (EIA), 2006 and its amendments thereafter require all new projects or activities and / or expansion and modernization of existing projects or activities listed in the schedule to the said Notification with capacity beyond threshold limits prescribed thereunder, to obtain prior Environment Clearance under the provisions thereof. Similarly, CRZ Notification, 2011 imposes certain restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ.
2. Instances have come to the notice of this Ministry where without obtaining the required clearance under the aforesaid Environment Impact Assessment Notification, 2006 and / or CRZ Notification, 2011, the construction / physical operation activities relating to the projects have been started at the sites. Such activities amount to violations under the Environment (Protection) Act, 1986 / EIA Notification, 2006 CRZ Notification, 2011 (henceforth referred to as violations).
3. The cases for granting Environment Clearance / CRZ Clearance for such projects are at present being dealt with in terms of OM of even number dated 16.11.2010. Now, it has been decided in that in supersession of this OM, the procedure henceforth stated in this OM will be followed while dealing with such cases.
4. The violations could come to the notice of the Ministry at various stages of processing of the proposals, i.e.:
   i. Processing the case in the Ministry before referring the same to the Expert Appraisal

Committee (EAC) for TOR / Environment Clearance / CRZ Clearance;

ii. During the deliberations in the EAC meeting and recorded as such in the minutes of the meeting; and;

iii. Processing the case in the Ministry after the receipt of recommendations of the EAC but before granting TOR / Environment Clearance CRZ Clearance.

5. As soon as any case of violation comes/is brought to the notice of the Ministry EAC, the Ministry EAC will proceed to verify the veracity of the complaint through the concerned Regional Office of MoEF/State Government/CZMA. Of course, such a verification will not be required in case the Project Proponent does not contest the allegation of violation. Once the Ministry EAC is satisfied that it is a violation case, before proceeding any further in the matter, the following will need to be ensured in the matter:

i. The matter relating to the violation will need to be put up by the Project Proponent to the Board of Directors of its Company or to the Managing Committee/CEO of the Society, Trust, partnership /individually owned concern for consideration of its environment related policy/plan of action as also a written commitment in the form of a formal resolution to be submitted to MoEF to ensure that violations will not be repeated. For this purpose, a time limit of 60 days will be given to the Project Proponent. In the meantime, the project will be delisted. In the eventuality of not having any response from the Project Proponent within the prescribed limit of 60 days, it will be presumed that it is no longer interested in pursuing the project further and the project file will be closed, whereafter the procedure will have to be initiated de novo by such Project Proponents.

ii. The State Government concerned will need to initiate credible action on the violation by invoking powers under Section 19 of the Environment (Protection) Act, 1986 for taking necessary legal action under Section 15 of the Act for the period for which the violation has taken place and evidence provided to MoEF of the credible action taken.

iii. The details of the Project Proponent and a copy of the commitment, etc., mentioned at (i) above will be put on the website of MoEF for information of all stakeholders.

6. Once action as per para 5 above has been taken, the concerned case will be dealt with and processed as per the prescribed procedure for dealing with cases for

grant of TORs / Environment Clearance CRZ Clearance and appropriate recommendation made by the EAC/decision taken by the Ministry as per the merit of the case.

7. It may be clarified that the consideration of proposals for giving TORs Environment clearance/CRZ clearance for violation cases will not be a matter of right for the Project Proponent. In cases of serious violations, the Ministry reserves the right to outrightly reject such proposals and not consider the same at all.

8. The aforesaid procedure, as stated in para 4 to 7 above will apply mutatis mutandis to the cases handled at the State level by the State Environment Impact Assessment Authorities (SEIAAs)/State Level Expert Appraisal Committees (SEACs).

9. This issues with the approval of the competent authority."

This Office Memorandum deals with situations where violations have been committed by the Project Proponent and they have come to the notice of the MoEF at various stages of construction. It requires the Ministry to verify veracity of the complaint through the concerned regional office and once the Ministry is satisfied that it is a case of violation, then before proceeding any further, the steps contemplated under para 5 to 7 of this Office Memorandum would be taken. The two significant features of this Office Memorandum are that the Project Proponent is to file an undertaking to ensure that violations are not repeated and secondly it will not be a matter of right to the Project Proponent to claim Environmental Clearance and the MoEF can outrightly reject the proposal if it found the violations to be serious. Lastly, that the procedure under para 4 to 7, would apply *mutatis mutandis* to the cases handled by SEIAAs or SEACs. This was considered to be in conformity with the Notification of 2006.

61. Still another Office Memorandum was issued on 27th June, 2013 inserting sub-para 4 in para 5 of the Office Memorandum dated 12th December, 2012 which reads as under:

> "3. In view of the above, it has been decided to insert the following as sub-para (iv) below sub-para (iii) of para 5 of the aforesaid OM dated 12.12.2012:
>
> "(iv) Directions under Section 5 of the Environment (Protection) Act 1986 will be issued by MoEF to the Project Proponent in respect of the violations and compliance of Project Proponent obtained to such directions especially with regard to:
>
> (a) In case the project is at construction stage and the violation is on account of carrying out construction without valid EC/CRZ Clearance or in contravention of the conditions stated in the EC/CRZ Clearance, the construction activities will need to be suspended at the existing level till EC/CRZ Clearance is· obtained or the required amendment to EC/CRZ Clearance is obtained.
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> (b) In case the project is in operation and the violation is on account of enhanced production beyond the capacity stated in the EC/CRZ Clearance, the production will need to be restricted to the capacity stated in the EC/CRZ Clearance till EC/CRZ Clearance is obtained for enhanced capacity. In case of operation without a valid EC/CRZ Clearance, the production will need to stop till the required EC/CRZ Clearance is obtained.
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> (c) In case the violation is on account of carrying out modernization of existing project and/or change in product-mix in an existing manufacturing unit, the status quo as existing prior to such modernization and/or change in product-mix will be maintained till the required EC/CRZ Clearance is obtained for the modernization and/or change in product-mix.
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> In case of any violation to aforesaid directions, legal action as per the provisions of the Environment (Protection) Act, 1986 will be taken against the Project Proponent and the case of TOR/EC/CRZ Clearance summarily rejected.
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> This issues with the approval of the competent authority."

62. Under the terms of Office Memorandum dated 12th December, 2012, the Ministry took upon itself the obligation for issuing

directions under Section 5 of the Act of 1986 in each case, but subject to requirements of the impugned Office Memorandum. It may be noticed that such statutory power is specifically vested in the MoEF and the Office Memorandum could confer upon it no wider powers than the statutorily provided powers.

63. In this background thus, now we have to deal with the question as to in exercise of which power, executive, administrative and / or statutory, the impugned Office Memoranda have been issued by the MoEF?

64. Since the Office Memorandum of 16th November, 2010 stood superseded by the Office Memorandum of 12th December, 2012 which was further amended by the Office Memorandum of 27th June, 2013, the challenge in the present application, is thus, confined to later two Office Memoranda only. A bare reading of the above Office Memoranda clearly shows that the provisions of law under which the said two Office Memoranda have been issued are conspicuous by its very absence in the Office Memoranda. Of course, according to the stand taken by the MoEF, they have been in the exercise of its executive powers. As already noticed, this stand is partially supported by the private Respondents (Project Proponents) who have further added that these Office Memoranda are within the ambit of directions as contemplated under Section 3 and 5 of the Act of 1986. Refuting such contentions, the Applicant has submitted that it is an exercise of administrative power *simplicitor*.

65. There are three organs of the Government: the Legislature, the Executive and the Judiciary. Legislature enacts the laws, judiciary interprets the law and declares what the law is and the executive administers the law. In the present case, we are really not concerned with the scope of legislative and judicial powers. We have to only deal with the ambit and scope of executive or administrative powers exercisable by the Executive, under which the Office Memoranda have been issued. The Executive performs validated functions viz. to investigate, to prosecute, to prepare and to adopt schemes, issues and cancel licences. The Executive can also perform some delegated, legislative functions in relation to making rules, regulations, bylaws and fixation of prices etc. It may still exercise quasi-judicial powers to resolve disputes or fix penalties etc. Such functions have become the chief weapons in its administrative armoury. Functions performed by the Executive authorities can be classified into two different heads but the distinction among these is a very fine one. To state it with precision is very difficult. This distinction gets even finer when it comes to executive and administrative functions *simplicitor*. Even in the same proceedings, it is difficult that one act may be executive while other act or series thereof may be purely administrative yet such classification is essential for varied reasons. When the executive authority exercises quasi-judicial functions, it must follow the principle of natural justice. While this requirement need not be satisfied in the case of executive functions, though, different requirements like publication, laying on the table of the house may

have to be complied with. In case of a pure administrative action, even this would not be necessary. Administrative function can be delegated and administrative decision can be challenged as being unreasonable. Thus, it is proper to determine under what type of function an action is taken by the authorities and in furtherance to exercise of what power. There could be circumstances where even a single function may be partly legislative, partly executive, partly judicial and even partly administrative. This difficulty in construing what kind of function it is, can be overcome by analysing the function and determining its character in each case. For instance, the function of the Wage Board may be held to be legislative if future role of conduct is to be prescribed. It may be held to be judicial if the dispute is as to the relative rights of the parties as they rest on past or present circumstances. But, if there are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained, necessary for the practical effectuation of admitted rights, it can be said to be an administrative act (*Australian Boot Trade Employees' Federation v. Whybrow & Co.*, (1910) Io CLR 266 (317), *Express Newspaper (P) Ltd. v. Union of India*, AIR 1958 SC 578 (6IO).

66. The legislature enacts the legislation and that which the administration applies is administrative. Another way to look at it is by putting emphasis on the extent and applicability of law. Whereas legislative power is power to make rule for the subjects in general and for their prospective application, administrative power is applicable to such law to specific cases and to particular situations.

Administration again would normally indicate as to how the power should be exercised. Smith in 'Judicial Review of Administrative Action', (1980), states with elaboration the legal consequences that flow from the fundamental distinction between legislative and administrative actions:

1. "If an order is legislative in character, it has to be published in a certain manner, but it is not necessary if it is of an administrative nature.
2. If an order is legislative in character, the court will not issue a writ of certiorari to quash it, but if an order is an administrative order and the authority was required to act judicially, the court can quash it by issuing writ of certiorari.
3. Generally, subordinate legislation cannot be held invalid for unreasonableness, unless its unreasonableness is evidence of malafide or otherwise shows the abuse of power. But in case of unreasonable administrative order, the aggrieved party is entitled to a legal remedy.
4. Only in most exceptional circumstances can legislative power be sub delegated but administrative powers can be sub-delegated
5. Duty to give reasons applies to administrative orders but not to legislative orders."

67. The Supreme Court in the case of *Union of India (UOI) and Anr. v. Cynamide India Ltd. and Anr. etc.*, (1987) 2 SCC 720, summed up this fine distinction between legislative and administrative functions while observing that it was 'difficult in theory and impossible in practice', still, held that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and an administrative act is the making and issuance of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'; while questioning that it was a broad distinction, not necessarily always true. Sometimes administration and administrative

adjudication may also be of general application and legislation of particular application only.

68. In the case of *Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab*, AIR 1955 SC, 549, the Court observed that it may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily, the executive power connotes the residue of governmental functions that remains after legislative and judicial functions are taken away. Referring to various judgments, Justice C.K. Thakkar in his book 'Administrative Law', 2nd Edition, 2012, refers to the ingredients of administrative functions as follows:

> 1. "An administrative order is generally based on governmental policy or expediency.
> 2. In administrative decisions, there is no legal obligation to adopt a judicial approach to the questions to be decided, and decisions are usually subjective rather than objective.
> 3. An administrative authority is not bound by the rules of evidence and procedure unless the relevant statute specifically imposes such an obligation.
> 4. An administrative authority can take a decision in exercise of a statutory power or even in the absence of a statutory provision, provided such a decision or act does not contravene provision of law.
> 5. Administrative functions may be delegated and sub- delegated unless there is a specific bar or prohibition in the statute.
> 6. While taking a decision, an administrative authority may not only consider the evidence adduced by the parties to the dispute, but may also use its discretion.
> 7. An administrative authority is not always bound by the principles of natural justice unless the statute casts such duty on the authority, either expressly or by necessary implication or if it is required to act judicially.
> 8. An administrative order may be held to be invalid on ground of unreasonableness.
> 9. An administrative action will not become a quasi-judicial action merely because it has to be

performed after forming an opinion as to the existence of an objective fact.

10. The prerogative writ of certiorari and prohibition are not always available against administrative actions."

69. In the case of *Automotive Tyre Manufacturers Association v. The Designated Authority and Ors.*, (2011) 2 SCC 258, the Supreme Court elucidated the factors for determining whether the function was administrative, quasi-judicial or otherwise. These factors are: the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Besides this, it is a generally accepted principle of functioning of administrative authorities that guidelines should be provided for the rust exercise thereof and to prevent abuse of power and to ensure that it does not become a "new despotism". Various judgments of the Supreme Court, after enunciating the principles that control the application of these concepts, illustratively stated the cases of administrative function. For instances an order of preventive detention, an order setting up a Commission of enquiry, an order making or refusing to make a reference under the Industrial Dispute Act, 1947, an order granting or refusing sanction to prosecute public servant, an order of externment, power to issue licence or permit or even withdrawal from prosecution. Having examined the dimensions of the administrative actions of the State, now we will revert to the executive powers of the State. Subject to the provisions of the Constitution, the executive power of the Union

extends to all matters in respect to which the Parliament has power to make laws, while the executive powers of the State extends to all matters in respect to which the State Legislature has power to make laws. This executive power of the Union or of the State, broadly speaking, is co-extensive and co-terminus with its respective legislative power (*G.V. Ramanaiah vs. The Superintendent of Central Jail, Rajahmundry and Ors.*, (1974) 3SCC 531). Ordinarily, the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. The executive functions comprises both determination of policy as well as carrying it into execution (Wharton's Law Lexicon, 15th Edition, 2009). Since the governmental functions have increased, it is essential and inevitable for the Government to issue administrative instructions for the determination of policy and its uniform application. It is also a settled principle that these administrative instructions or regulations which have no statutory force, do not give rise to any legal right and can hardly be enforced in a Court of law against the administration. This is also not an absolute rule and is subject to certain exceptions. Administrative instructions in some cases confer a justifiable right in favour of an aggrieved party. The Executive power of the State is again of a very wide magnitude. In performance of the executive functions, public authorities issue orders which are not far from having a legislative colour and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character. In addition to these quasi-judicial and quasi-legislative functions, the

executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment legislative, executive and judicial characteristics. The Supreme Court in the case of *Jayantilal Amritlal v. F.N.Rana*, AIR 1964 SC 648, held that even this generic executive power of the State emanates from the provisions under our Constitution. Chapter I of Part V of the Constitution refers itself to the Executive of the Union of India. Article 53(1) of the Constitution states that executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 73 mandates that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. In terms of Article 77, all executive action of the Government of India shall be expressed to be taken in the name of the President. Further, Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in Rules. Once an order or instrument is authenticated in the prescribed manner, then it shall not be called in question on the ground that it is not an order or instrument made or executed by the President. The executive power of the State on the one hand is co-extensive with the respective legislative

power, while, it can supplement the statute on the other hand. The executive power would take within its ambit the power of sub-ordinate or delegated legislation. For instance, under an Act, the Central Government is empowered to frame regulations for effective implementation of an Act. This power can be exercised to supplement the provisions of the Act, i.e., the principle legislation or even for filling the gaps which appear in the main statute. However, the executive instructions or powers cannot be used beyond the power conferred by the main statute. The exercise of an executive power must have a source in law and should serve the ends of the principle Act. The executive power, where it is exercised generally with reference to Article 53 of the Constitution of India, must adhere to the constitutionally prescribed procedure.

70. Having dealt with the distinction between Legislative, Executive and Administrative Functions, generally, now, we would proceed to examine the specific contentions with reference to the impugned Office Memoranda.

71. First of all, we would deal with the contention whether the impugned Office Memoranda can be said to be issued under Section 5 of the Act of 1986? This question has to be answered in the negative for varied reasons. Firstly, it is not the case of the MoEF which has issued these Office Memoranda that they have been issued in exercise of the statutory powers vested in them under the provisions of Section 5 of the Act of 1986. Normally it is possible for a Court or a Tribunal to attach certain weightage to the author of the documentation in this regard. However, that cannot be the sole

consideration in answering such a question. The Tribunal has to analyse the order or document on its own merit. It is true that Section 3 empowers the Central Government to take measures to protect and improve the quality of the environment and that such measures can be in respect of all or any of the matters stated under Clause (i) to (xiv) of Sub-section (2) of Section 3 of the Act of 1986. However, none of the matters stated therein cover the impugned Office Memoranda in question. Furthermore, these Office Memoranda cannot be said to form the measures taken for protecting or improving the quality of the environment. Similarly, Section 5 of the Act of 1986 empowers the Central Government to issue directions to any person, officer or any authority. Such directions could be issued in exercise of its powers, performance of its functions of the Central Government notwithstanding anything contained in any other law but subject to the provisions of this Act of 1986. These directions include the power to direct the closure, prohibition or regulation of any industry, operation or process. It can also direct stoppage or regulation of the supply of electricity or water or any other service. Under Rule 4 of the Rules of 1986, it is required that these directions shall be in writing, shall specify the nature of action to be taken and the time within which it shall be complied with etc. In terms of Sub-rule 3(a) of Rule 4, a notice of not less than 15 days is required to be served upon the person to whom the directions is proposed to be issued, clearly notifying such direction to him and giving him an opportunity to file objections, if any. In terms of Sub-Rule 3(b) and 4, it is required of the authority

which proposes to issue direction for the stoppage or regulation of industrial operation or process or disconnect amenities like water and electricity etc. to issue notice to the occupier to file objections and upon receipt of such objections to decide the same within 45 days thereof. Thus, right of hearing and compliance to principle of natural justice is mandatory except in terms of proviso to Sub-Rule 3(b) and Rule 5 wherein compliance to the principle of natural justice and hearing can be dispensed with by the Central Government, where it is of the opinion that there is likelihood of grave injury to the environment and it is not expedient to provide an opportunity to file objections against the proposed direction. The directions passed under Section 5 have to be in strict compliance to the procedure laid down under the Rules of 1986 and by considering all relevant factors as stated therein. It is nobody's case, not even that of the private Respondents, that such compliance to the Rules has been made by the MoEF. The measures and the directions as contemplated under the Act of 1986 can only be taken after following the prescribed procedure and for the purposes as contemplated in law. From the record, it is clear that neither of these ingredients are satisfied in the cases in hand. Nobody intended to invoke these provisions and none complied with the requirements of law. A bare reading of the impugned Office Memoranda clearly shows that they are beyond the purview and scope of either Section 3 or Section 5 of the Act of 1986. Some of the Respondents have even taken the argument that if the Office Memoranda are treated to be directions or measures issued under

Section 5 of the Act of 1986, then an appeal would lie before the Tribunal in terms of Section 16(g) of the NGT Act, 2010 and which would in any case be barred by time as of today. Since we are of the considered view that these Office Memoranda have not been issued by the Ministry in exercise of its powers under Section 3 or 5 of the Act of 1986, the question of limitation as contemplated under Section 16 of the NGT Act would not at all arise. These Office Memoranda apparently do not show or make reference to the power in exercise of which they have been issued. They specifically mention the statutory requirement in terms of the Notification of 2006 to obtain *prior Environmental Clearance* before the commencement of any project or activity (emphasis supplied). What seems to have provoked the authorities to issue these Office Memoranda from time to time are the instances which have been brought to the notice of the Ministry, where, without obtaining required Clearances under the Notification of 2006, construction and/or physical operation/activities of the project had been started at the sites which amount to violation of the Act of 1986 and the Notification of 2006. These violations have come to the notice of the Ministry at different stages. These Office Memoranda presumably are intended to provide solution to this problem and save the proposed projects if they comply with the procedure prescribed under the Law. Rules of 1986 have been framed by the Central Government in exercise of its powers vested under Sections 6 and 25 of the Act of 1986 with a primary intention of carrying out purpose of the Act of 1986. The Notification of 2006 has been

issued under the provisions of the Act of 1986 and the Rules of 1986, again with the object of imposing certain restrictions and prohibitions on new projects or activities or expansion or modernisation of existing projects or activities for protecting the environment. Thus, it is evident that the Notification of 2006 is in the nature of a subordinate, delegated legislation and is a statutory document having the force of law and is enacted to serve the ends of the provisions of a Parliamentary enactment i.e. the Act of 1986. The Office Memoranda do not refer to the source of their power under the provisions of any Act, Rules, or Notification. They even do not satisfy the basic ingredients of an order or instrument having been issued in compliance to the prescribed procedure under Articles 53, 73 and / or 77 of the Constitution. They have neither been issued nor authenticated by a person authorized by the President of India and in any case, they have not even been issued in the name of the President of India. The contention raised on behalf of MoEF and some of the private Respondents that the issuance of impugned Office Memoranda is in exercise of the executive power, is therefore, not tenable. No documents have been placed on record to show that the ingredients of issuance of an executive order or exercise of executive power by the Union are satisfied in the present case.

72. It needs to be noticed at this stage that reference has also been made to Article 73 of the Constitution of India to contend that these Office Memoranda squarely fall within the executive power of the Union of India. This contention merits rejection. Even on the

bare reading of Article 73 of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive powers of the Union is co-extensive and co-terminus with legislative powers of the Parliament. In other words, exercise of executive power should have a direct reference to law under which it is being exercised. Certainly, it does not imply that the executive power of the State / Union cannot be exercised where the legislature has not enacted any law or that such power would be restricted only to that field, as held by the Supreme Court in the case of *Ram Jawaya Kapur* (supra). It is a settled principle of Constitutional jurisprudence that the entries in the Lists are merely fields of legislation. They identify the fields where the Union and the State Legislature or either of them would have the power to enact laws, individually or concurrently. Thus, every power exercisable by the Union or the State under the Constitution should be identifiable to the fields specified in the respective Lists or to any other law framed by the Competent Legislature.

73. We have already noticed that within the dimensions of the executive power, compliance to the constitutionally provided procedure would be a *sine qua non,* for it to have the force of law. In the case of *Gulf Goans Hotels Company Ltd. v. Union of India (UOI)*, (2014) 10 SCC 673, where the Supreme Court was dealing with the cases of demolition of properties in furtherance to the orders of demolition by the State authorities, it was held that a government policy to acquire the "force of law", need to confirm to a certain form

possessed by other laws in force and encapsulate a mandate and disclose a specific purpose. In terms of Article 77, all executive action of the Government of India shall be expressed to be taken in the name of the President, as this Article provides the form in which the Executive must make and authenticate its orders and decision. The burden of showing compliance with this requirement would be on the Government and it is also essential that what is claimed to be a law must be notified or made public in order to bind the citizens. It may be noticed that this compliance in a given case could be substantial compliance as opposed to strict or absolute compliance. In fact, in the case of *State of Uttaranchal and Anr. v. Sunil Kumar Vaish and Ors.*, (2011) 8 SCC 670, the Supreme Court even held that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the Rules, the same cannot be treated as an order on behalf of the Government. Similar approach was also adopted in the case of *Shanti Sports Club and Anr. v. Union of India and Ors.*, AIR 2010 SC 433. The Supreme Court had earlier also taken the similar view in the case of *Harla v. The State of Rajasthan*, AIR 1951 SC 467,

> "We hold that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative".

On the one hand, the impugned Office Memoranda do not specify the above essential ingredients for exercise of executive power. Thus, these Office Memoranda do not have any force of law

to be treated as integral part of the Notification of 2006. While on the other hand, they lack purpose, are not supplementary to or even furthering the cause of the Notification of 2006. This aspect we shall discuss in detail shortly.

74. We have deliberated at some length above what is an administrative action and its illustrations. That which the legislature enacts is 'legislative' and that which the administration applies is 'administrative'. Thus, an Act of Parliament is 'legislative' but an order of deportation based on such Act is 'administrative'. An administrative power is applicable to specific cases and particular situations. The executive functions comprise both, determination of policy as well as carrying it into execution. The other relevant considerations being, nature of power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. If we apply these tests in context of the orders already held to be administrative orders (supra) then, it would appear that the impugned Office Memoranda in substance are administrative orders. The impugned Office Memoranda have been issued under the umbrella of framing policy or taking policy decisions by the State. It is contended that these Office Memoranda are intended to implement the Notification of 2006. In exercise of its power under the Office Memoranda, Ministry has to take decisions in regard to examining each case and refer the same to the regulatory authority keeping in mind the stage at which the

applications for grant of Environmental Clearance are moved. These Office Memoranda provide benefit to the class of the project or activity owners who have started construction in violation of the law i.e., without obtaining prior Environmental Clearance. They do not deal with any subject in general but are applicable to specific case and particular situations. Decisions of the authorities in furtherance to these Office Memoranda are bound to be subjective in contradistinction to being objective decisions.

75. The impugned Office Memoranda by and large satisfy the tests and ingredients of an administrative order. They admittedly have not been issued in exercise of subordinate or delegated legislation. Indisputably, they have also not been issued under Sections 3 and 5 of the Act of the 1986. Apparently, they are not in compliance with the Constitutional requirements and other ingredients of exercise of executive power *simplicitor*. The obvious result thereto would be that these Office Memoranda have been issued by the Ministry in exercise of its administrative power and have to be construed as administrative orders alone.

76. Having held that the Office Memoranda are orders issued by the Ministry in exercise of its administrative powers *simplicitor*, we would now proceed to examine the legality and correctness of these administrative orders. We may clarify that for discussion on this issue, it would not be of much relevance whether these Office Memoranda have been issued by the authorities in exercise of their administrative or executive powers.

77. The Office Memorandum dated 12th December, 2012 and as amended by Office Memorandum dated 27th June, 2013 as already noticed have been issued as consequences of certain instances brought to the notice of the Ministry, that projects and activities have been started at site without obtaining prior Environmental Clearance. These Office Memoranda intend to provide the procedure which has to be followed while dealing with such cases. In these Memoranda it is specifically noticed that obtaining prior Environmental Clearance before commencement of a project or activities is mandatory and that the Applicants have violated the law and these violations have come to the notice of the Ministry at various stages of processing the proposals. They further contemplate that these applications have to be proceeded in accordance with the procedure prescribed under these Office Memoranda. The stages referred to in the impugned Office Memoranda are: processing the case in the Ministry before referring to the Expert Appraisal Committee for ToR/Environmental Clearance/CRZ Clearance; during deliberations in the EAC meeting and during processing the case in the Ministry after receipt of the recommendations of the EAC, but before granting ToR/ Environmental Clearance / CRZ Clearance. The authorities are expected to verify the veracity of the complaint unless Project Proponent does not contest the allegations of violations. Before proceeding any further in the matter, the Project Proponent is required to submit a written commitment in the form of a resolution to ensure that violations will not be repeated. For this purpose, 60

days time limit has been given to the Project Proponent. The project would be de-listed in the meantime and in the event of default, it will be presumed that the Project Proponent is no longer interested in pursuing the project further and the project file will be closed. The State Government will then be required to initiate credible action under Section 19 of the Act of 1986 for taking legal action under Section 15 of the Act of 1986 in relation to the violations. Upon completion of such action, the concerned case will be dealt and proceeded with as per the prescribed procedure in dealing with the cases of ToR / Environmental Clearance / CRZ Clearance and appropriate recommendations to be made by EAC and decision to be taken by the Ministry on merits of the case. A kind of proviso is added to the Office Memorandum of 12th December, 2012 that in case of serious violations, the Ministry reserves the right to outrightly reject such proposal and not consider the same at all. The procedure prescribed under the Office Memorandum of 12th December, 2012 is to apply to cases pending before the SEIAAs and SEACs as well. Office Memorandum dated 27th June, 2013 terms the procedure under the Office Memorandum of 12th December, 2012 as 'guidelines' wherein it was provided that in cases of violation, the Project Proponent needs to be restrained, through appropriate directions under Section 5 of the Act of 1986 from carrying out any construction or operation activity without obtaining required Clearance. Vide the Office Memorandum of 27th June, 2013, sub para (iv) below sub para (iii) of para 5 of Office Memorandum dated 12th December, 2012, was inserted whereby

the MoEF took on to itself the responsibility of issuing directions under Section 5 of the Act of 1986 for suspending the construction work if the project is operational, till grant of Clearance and if there is violation then, to take action as per the provisions of the Act of 1986. First and foremost, what these Office Memoranda seek to do is to condone the violations of law. These Office Memoranda deal only with the violators of law who have started the construction of their projects without obtaining prior Environmental Clearance, thus, in complete violation to the provisions of Act of 1986 and the Notification of 2006. The Office Memoranda which are stated to be guidelines as per their contents thus, have the effect of rendering an offence under law otiose, which is impermissible.

78. The Notification of 2006, under Para 2 mandates that certain project or activities which are listed in the Schedule shall require *prior Environmental Clearance* (emphasis supplied) from the concerned regulatory authorities, irrespective of whether they fall under Category 'A' or category 'B', as the case may be. Furthermore, Para 6 requires that *application seeking prior Environmental Clearance shall be made by the Project Proponent,* before commencing any construction activity or preparation of the land at the site by the Applicant (emphasis supplied). The Notification of 2006, a statutory document having the force of law has used the words '*prior Environmental Clearance*' 34 times and in addition thereto the expression 'prior' has been used six times to emphasise the need for obtaining Environmental Clearance prior to the commencement of any project activity. In other words, the

Notification mandates the requirement of 'prior Environmental Clearance' without exception. However the entire mandate of prior Environmental Clearance has not only been diluted but completely rendered infructuous or ineffective by issuance of these impugned Office Memoranda. Therefore, the Office Memoranda stated to be 'guidelines', are potently destructive of the Notification of 2006. The Notification of 2006 requires application for prior Environmental Clearance to be submitted in Form 1 and supplementary Form 1A, if applicable, under Appendix I and II respectively. These forms require information, details and scientific analysis in relation to the project and site, prior to commencement of any activity of the project or even preparation of land. We have in some detail above, noticed the requirements which are impossible of compliance once the project has been completed or substantial construction activity has been undertaken at the site in question. The impugned Office Memoranda do not even take note of this aspect and suffer from the infirmity of non-application of mind. Furthermore, the impugned Office Memoranda also offend the doctrine of "*Expressio unius est exclusion alterius*". Since the law provides performance of acts in a particular manner, the impugned Office Memoranda under the garb of 'guidelines', cannot be permitted to alter the same completely; being prejudicial to the principal law.

79. The impugned Office Memoranda do not even advert themselves to how the interest of the environment would be protected in cases where the projects have substantially progressed. It does not even refer as to how detrimental effects on environment

would be taken care of, if the Project Proponent is permitted to file an application and claim Environmental Clearance after the project is at a very advanced stage of completion.

80. The impugned orders have been titled as 'Office Memorandum' and content of the orders captioned as 'guidelines' but in fact, are Office Memoranda which directly vary the substantive law in force. This has been adopted by the Ministry as a via-media to bypass the statutory requirements of law or for truncating the prescribed process of environmental protection, in terms of Notification of 2006. These Office Memoranda not only substantially amend or alter its application but even frustrate the requirements of the existing law. The impugned Office Memoranda vest in the authorities an unguided and unfettered discretion, both in regard to processing of application and in condonation of violation already committed by the Project Proponent. It is a very pertinent defect in terms of administrative law jurisprudence. An unguided and unreasonable discretion is bound to result in arbitrary exercise of powers. The MoEF being the controlling Ministry, all the expert bodies under it would be duty bound to carry out its directives even if it is unreasonable and unjustifiable. The expression 'serious violations', which will entitle the Ministry to outrightly reject an application, has neither been defined nor explained in the Office Memoranda. It is left in the absolute discretion of the Ministry as to which cases would be permitted as cases of serious violations and exclude others. The foundation of these Office Memoranda being that projects which are already under way and even have

substantially progressed, can file an application for grant of Environmental Clearance, which has to be considered in accordance with these Office Memoranda, is an approach which is completely prohibited in terms of the Notification of 2006. The reservation of such unguided and absolute right by the Ministry in itself would necessarily have an element of discrimination and arbitrariness. The Office Memoranda do not spell out any rational or proper differential criteria for condonation or otherwise of the violations stated to have been committed by the Project Proponent.

81. The MoEF has issued three Office Memoranda dated 16th November, 2010, 12th December, 2012 and 27th June, 2013. All these Office Memoranda have the same feature, that is, instances of project commencement and their construction without obtaining Environmental Clearance, have been brought to the notice of the Ministry. There is no reason, much less a plausible justification recorded in any of these Office Memoranda, as to why such violations have been continued year after year. If the intention was to make it a one-time settlement, to serve the economic and public interest, then MoEF ought not to have issued any further extension to the Office Memorandum of 2010. Repetitive condonation of violation of law would only aim at encouraging violators to flout the law repeatedly. At this stage, we may also deal with the submission made on behalf of the Respondents that issuance of these Office Memoranda was justifiable on the basis of the doctrine of necessity or implied power. This submission is entirely ill-founded. Firstly, we fail to understand as to why the Ministry should take a step for

condoning violation of law which was not within its jurisdiction and secondly why should it prescribe a methodology contrary to law. Doctrine of necessity does not operate on the axis of illegality and violations. Even if the doctrine of necessity could have any application on the facts of the present case then, the necessity could be at best a onetime scheme rather than providing a regulatory and parallel mechanism in violation of the law in force, which would negate the substantive provisions of the law in fact. It is a settled canon of law that Government cannot issue directions which would encourage violation of law on the one hand and frustrate the object of law on the other. Mandatory principle of proper governance and even the law is that the authorities must enforce the law and ensure that the public respects the law. This is the fundamental essence of the Rule of Law. Even on this count, the Office Memoranda would amount to improper use of power, whether administrative or executive.

82. Upon proper analysis of the language of these Office Memoranda and the law (referred herein after), these Office Memoranda whether they be issued as administrative orders or issued in exercise of executive power, are not clarificatory or supplementary to the Notification of 2006. On the contrary, under no uncertain terms, they are supplanting the Notification of 2006 and are in complete derogation to the laws in force.

83. The Office Memoranda have been issued without proper application of mind, where casualty is the Notification of 2006 and the environment. The authorities have not even ventured to

examine that these Office Memoranda which allegedly take recourse to the Notification of 2006 are incapable of complying with the procedure of Screening, Scoping, Public Consultation and Appraisal even substantially. For instance, site selection itself is a part of this process and if the construction has already been completed substantially or otherwise, this criteria and other relevant considerations would be rendered irrelevant. Similarly the purpose of public hearing is to hear objections of the public at large in relation to all facets of the proposed project including site selection, its impact on environment, on their way of life and what directions are required to be issued to protect the environment and adjacent inhabitation or agricultural activities if any before any activity of the project is undertaken. All these requirements would be rendered otiose and irrelevant. Thus, even if the two most important aspects of the Notification of 2006 would not be complied with still the Office Memoranda would contemplate issuance of Environmental Clearance to these projects. This brings to the surface that the Ministry has not exercised its jurisdiction, even if vested in it, in accordance with law. The above are the few patent and serious infirmities in the Office Memoranda. An attempt is made to save them and their legality under the shelter of exercise of executive power. Certainly, the executive power of the Government is very wide. We have already dealt with the executive power by the State at some length above. Even if these instructions or orders are deemed to have been issued in exercise of executive power, even then, they have to be supplemental to and not to supplant, the law.

84. In the case of *Union of India (UOI) v. K.P. Joseph and Ors.*, AIR 1978 SC 303, dealing with the question whether Respondent No. 1 in that case was entitled to the benefit of ex-military personnel on re-employment, in view of the administrative instructions that had been issued in absence of rules framed under Article 309 of the Constitution, the Supreme Court while confirming the judgment o the High Court of Mysore held as under:

> "9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma v. State of Rajasthan and Anr. (1968) IILLJ 830 SC that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

85. The Supreme Court had also taken a similar view in the case of *Sant Ram Sharma v. State of Rajasthan and Anr.*, AIR 1967 SC 1910, where the Court clearly held that Government cannot amend or supersede statutory rules by administrative instructions, but, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Similarly, in the case of *M. Srinivasa Prasad and Ors. v. The Comptroller and Auditor General of India and Ors.*, (2007)10 SCC 246, the Supreme Court held that if the statutory rules in force are absent or are silent on an particular aspect, then, executive orders can fill up such lacunas. The administrative instructions would normally have no force of law

and would relate to matters procedural in nature, without affecting substantive rights or obligations.

86. The executive instructions too cannot go beyond the executive power, which can also not be beyond the statutory provisions under which they are exercised. Furthermore, such instructions should not be vague or uncertain and must provide proper guidelines. By executive instructions, the authority issuing them cannot open new heads. The executive instructions within these confines should be issued only when there are no statutory provisions on the subject. They would also be issued to supplement statutory provisions, to ensure their proper application. In the case of *Indra Sawhney etc. v. Union of India and others, etc.*, (1992) 3 SCC 217, Supreme Court mandated that such propositions are unexceptionable and executive instructions which go contrary to statutory provisions or the rules under Article 309 or any other statutory rules, shall not be operative to the extent they are contrary to the statutory provisions or rules. In the case of *M.C. Mehta v. Union of India (UOI) and Ors.*, (*Supra*), not only that the Court reiterated these principles but even questioned MoEF's intent to legalise the commencement or continuance of mining activity without compliance to the stipulations of the Notification of 2006. However, it was observed that in any case, a statutory notification cannot be notified by issuance of circular. Such actions demonstrate non-sensitivity of MoEF to the principles of sustainable development and the object behind the issuance of the notification.

These principles would be equally applicable to the exercise of administrative power either by issuance of guidelines or Office Memoranda. A Bench of this Tribunal while dealing somewhat similar situation in the case of *Himmat Singh Shekhawat v. State of Rajasthan and Ors.,* 2015 All (I) NGT Reporter (1) (Delhi) 44 held as under:

> "58. This power to issue guidelines is not a general power but is a specific power with inbuilt limitations. The limitations are that, such guidelines would alone be for the purposes of categorizing upon scrutiny of applications, projects that would fall under Category 'B1' and 'B2' respectively with specific exclusion of the projects specified under Item 8(b) of the Schedule. Restrictive power to issue guidelines, is further illustrated, by the fact that Clause 2 of the Notification of 2006 does not contemplate any such categorization except projects falling under Category 'A' and 'B' only. The purpose appears to be that the power of State Level Appraisal Committees to bifurcate projects into 'B1' and 'B2' categories respectively should not be unguided and unchecked. Prescription of such guidelines could be done by issuance of appropriate Office Memorandum or orders as the power to issue such guidelines has been vested in MoEF under the statutory provisions. But the greater part of such Office Order or Office Memorandum should be such that it would not vary the content or be contrary to the statutory provisions which are in place by virtue of enacting such provisions either by primarily legislative or delegated legislative power.
> 59. It is a settled principle that legislature can only delegate to an outside body subordinate or ancillary legislative power for carrying out a policy of the act. The body to whom such power is delegated is required to act strictly within the framework of such delegated powers. Such power is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself or by such delegation as is permissible. Unlike the situation the judges are not allowed to surrender their judgments to others. The legislature and executive can delegate powers within the framework of law. It is an axiom of Constitutional law that representative legislative bodies

are given the legislative powers because the representative Government vested in the persons chosen to exercise the power of voting taxes and enacting laws which is the most important and sacred trust known to civil Government. The Delegation has its own restrictions. For instance, the legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. A memorandum which is nothing but administrative order or instruction cannot amend or supersede the Statutory Rules adding something therein which would specifically alter the content and character of the Notification itself. It has been consistently reiterated with approval by the Hon'ble Supreme Court that administrative practice/ administrative order cannot supersede or override the statutory rule of Notification and it is stated to be a well settled proposition of law.

The delegated power is primarily for carrying out the purposes of the Act and this power could hardly be exercised to bring into existence a substantive right or obligation or disabilities not contemplated by the provisions of the Act or the primary Notification. A Constitution Bench of the Hon'ble Supreme Court in the case of *Sant Ram v. State of Rajasthan* AIR 1965 SC 1910, while dealing with the scope of executive instructions held that instructions can be issued only to supplement the statutory rules and not to supplant it. Such instructions should be subservient to the statutory provisions. They would have a binding effect provided the same has been issued to fill up the gaps between the statutory provisions and are not inconsistent with the said provisions. (Reference in regard to the above can be made In Re: *The Delhi Laws Act*, 1912 AIR 1951 SC 332, *P.D. Aggarwal and Ors. v. State of U.P. and Ors.*, (1987) 3 SCC 622, *Ram Sharma v. State of Rajasthan and Anr.*, (1968) I ILLJ 830 SC, *Mahender Lal Jaine v. State of Uttar Pradesh*, (1963) Supp. 1 SCR 912, *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431).

60. In the case before the Tribunal, specific challenge has been raised to the Office Memorandum dated 24th December, 2013 on the ground that it violates the above stated principles, in as much as by an Office Memorandum, guidelines for 'B1', 'B2' categories cannot be provided and thus, it runs contra to the statutory provisions. We may also notice here that vide this memorandum, besides providing guidelines for categorization of 'B1', 'B2' projects under Clause (iii) of paragraph 2, MoEF has taken a decision that river sand mining project with mine lease area of less than 5 hectares may not be considered for grant of

Environmental Clearance and river sand mining projects with mining lease areas of equal or more than 5 hectares but less than 25 hectares will be categorized 'B2', that too subject to the restrictions stated in that Office Memorandum. Though, the Applicants have primarily raised a challenge in regard to the former only, but bare reading of the Notification has brought before us the question in regard to the latter as well. Dealing with the former challenge afore-noticed, it is clear that Clause 7 of the Notification of 2006 provides for further categorization of projects falling under Category 'B' into 'B1' and 'B2'. Though Clause 2 of the said Notification does not contemplate any classification other than 'A' and 'B', but, there is no challenge raised before us to the Notification of 2006 and we see no reason to go into that aspect. The Notification of 2006 *ex facie* permits classification of Category 'B' projects and that discretion has been vested in State Level Expert Appraisal Committee, which, upon scrutiny of the applications has to take the decision. This discretion vested in the Committee is ought to be controlled by the issuance of guidelines by MoEF. MoEF had issued two guidelines, one on 24th June, 2013 and the other on 24th December, 2013 in relation to further classification and criteria which is to be adopted in that regard. Since the Office Memorandum dated 24th June, 2013, only relates to brick earth and ordinary earth and as per that Office Memorandum, such projects where the excavation area was less than 5 hectares were to be categorized as 'B2' projects, subject to the guidelines stated therein they were to be screened in accordance with the Notification of 2006. Under Paragraph 4(b) of this Memorandum, restrictions were laid down prohibiting any excavation of brick earth or ordinary earth within one km of national parks and wild life sanctuaries as well as it intended to elaborate the cluster situation. If the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B1' project in terms of the Notification of 2006 and such activity will be permitted only if the Environmental Clearance has been obtained in respect of the cluster. If we examine these two Office Memoranda in the light of the well settled legal principles that we have referred above, partially both these Office Memoranda cannot stand scrutiny of law. As far as guidelines or instructions in relation to classification of projects falling under Category 'B' into 'B1' and 'B2' is concerned, the exercise of such power would be saved on the strength of Clause 7(1) of the Notification of 2006 because it is an Office

Memorandum which provides guidelines for exercise of discretion by the State Level Expert Committee for such categorization. Thus, it is an exercise of executive power contemplated under the Notification of 2006. Hence the contention of the Applicant on that behalf cannot be accepted and deserves to be rejected. However, in so far as the Office Memorandum dated 24th June, 2013 placing a prohibition under paragraph 4(b) (i) is concerned, it apparently is beyond the scope of such guidelines. Prohibition of carrying on of mining activity or excavation activity which is otherwise permitted by the Notification of 2006 cannot be done by an Office Order, because it would apparently run contra to the provisions of Notification of 2006. In other words, such restriction is not only beyond the scope of the power vested in MoEF but in fact imposition of absolute restriction in exercise of delegated power is not permissible. Similarly, the Office Memorandum dated 24th December, 2013 in so far as it declares that river sand mining of a lease area of less than 5 hectares would not be considered for grant of Environmental Clearance is again violative of the above settled principles. No such restriction has been placed under the Notification of 2006 or under the provisions of the Act and the Rules of 1986.The executive therefore, cannot take away the right which is impermissible under the principle or subordinate legislation. Of course, part of the same Paragraph 2(iii), in so far as it categorizes 'B2' projects, covering the mine lease area equal to or more than 5 hectares but less than 25 hectares is concerned, the same cannot be faulted in view of the fact that it only provides a criteria or a guiding factor for determining the categorization of projects. It neither vests any substantive right, nor any obligation in relation to any matter that is not squarely or effectively covered under the Notification. This only furthers the cause of fair classification of projects, which is the primary purpose of the Notification. For these reasons, we quash paragraph 4(b)(i) of the Office Memorandum dated 24th June 2013 and part of paragraph 2(iii) in so far as it prohibits grant of Environmental Clearance to the mine area of less than 5 hectares as being violative of the Notification of 2006 and the Rules of 1986. The MoEF has no jurisdiction in exercise of its executive power to issue such prohibitions, impose restrictions and/or create substantive rights and obligations. It *ex facie* is not only in excess of powers conferred upon them, but, is also in violation of the Notification of 2006. As already noticed, this Notification has been issued by MoEF in exercise of powers conferred upon it under Clause 5 of sub section 2 of section 3 of the Act of 1986 read with

> sub rule 4 of rule 5 of the Rules of 1986.Vide this Notification, the Central Government substituted item no. 1(a) and entries relating thereto. A Clause stating that the projects relating to non-coal mine lease and where the mining area was less than 50 hectares equal or more than 5 hectares was to be treated as Category 'B' projects, in addition to that, the minor mineral lease projects, where the mine lease area was less than 50 hectares, were also to be treated as Category 'B' projects, also, the general conditions with provisos were also substituted. It is significant to note here that the Notification of 2006 had been amended by the Central Government by issuing a Notification dated 1st December, 2009 in exercise of its delegated legislative powers. While issuing this Notification, the Central Government had followed the procedure prescribed under Sub Rule 2 and 3 of Rule 5 of Rules of 1986. It had invited objections from the public and considered those objections as is evident from the very recital of the Notification where it recorded "and where as all objection and suggestions received in response to above mentioned draft Notification have been duly considered by the Central Government……." and then it published the final Notification. Vide the Notification dated 1st December, 2009, the Central Government had substituted item no. 1(a) and the entries relating thereto of the Schedule to the Notification of 2006 besides making other amendments as well in different entries. However, while making further amendments vide Notification dated 9th September, 2013, the Central Government did not follow the prescribed procedure under Rule 5. On the contrary it substantially altered, and in fact substituted, as well as made additions of a substantial nature in Clause 4 and Clause 5 of the Notification of 2006, where, for the first time, it added minor mineral mine leases of less than 50 hectares, and also added 'general conditions to apply except for the projects where the area was less than 5 hectares in relation to minor mineral lease' and provisos thereto. The period for applying for renewal of mine lease of one year was changed to two years under the Notification dated 9th September, 2013."

87. There could be a case of executive instructions being derogatory to the principal statute or a statutory notification, still there could be cases of executive instructions being *ultra vires* or violative of the statutory notification and still further there could be cases of conflict between the two. In either of them, the Court have

not tilted in favour of sustaining such executive instructions. In the case of *D.D.A. and Ors. v. Joginder S. Monga and Ors.*, (2004) 2 SCC 297, the Supreme Court held that only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. Executive instructions can supplement a statute, but they cannot run contrary to statutory provisions or whittle down their effect. In other words, executive instruction which is in conflict of and which whittles down the effect of the main Act would be liable to be struck down. When an executive instruction is beyond the power of the authority issuing the same, it would be *ultra vires* and whenever the instruction is found to be beyond the inherent jurisdiction, it would be wholly void. The delegatee can act only within the scope of delegation. The limitations are all with regard to the substance, procedure and form.

88. Another contention raised on behalf of the Respondent while relying upon the judgment of Supreme Court in the case of *Vineet Narain and Ors. v. Union of India (UOI) and Anr.*, (1998)1 SCC 226 and other cases, is that executive instructions are enforceable if they do not change the essentials of law. This contention cannot be accepted for reasons that are recorded in this part of the Judgment. By whatever nomenclature it is addressed, whether as executive instructions, policy decision or merely Office Memoranda issued in exercise of administrative power, their infirmities and lacunas of law would not alter. Favour of constitutionality is to be construed for such executive instructions. It is also the contention that these

instructions do not dilute the effect of law but make it more rigorous. Furthermore, it being a policy decision of the MoEF, the Tribunal should not interfere in it. We are also unable to appreciate as to how these Office Memoranda fill up the gaps in the Notification of 2006. An instrument which provides for disobedience of law and indiscriminately condones the violations of the substantive law in force, it cannot be termed as an instrument made to fill up the gaps. It would be an administrative order contrary to the statutory provisions. In fact, issuance of such kind of orders received judicial causticism and was deprecated by the Supreme Court in the case of *M.C. Mehta* (supra).

89. The impugned Office Memoranda are not only in conflict with the Notification of 2006, but in fact run contra thereto. What is not only intended but in fact is prohibited to be done, is being permitted by the impugned Office Memoranda. They have been issued without reference to any power or source of law and are neither pronounced nor authenticated in the name of the prescribed executive authority. Besides this, we have already noticed in great detail the various infirmities and defects from which these Office Memoranda suffer in fact and in law. This being the position of law in relation to issuance of executive instructions in exercise of executive power or delegated legislation, these Office Memoranda having been issued in exercise of administrative power, in any case, cannot withstand the legal scrutiny and resultantly, would be liable to be quashed.

Discussion on Issue No. 3:

3. Whether this Tribunal has no jurisdiction to quash both the impugned Office Memoranda?

90. Except the intervener Applicants namely M/s SPR and RG Constructions and M/s Dugar, none of the Respondents have raised any objection to the jurisdiction of the Tribunal and competence of the Tribunal to deal with impugned Office Memoranda in accordance with law. According to these Project Proponents, this Tribunal has no power or jurisdiction to quash the Office Memoranda; they having been issued in exercise of the Executive Power of the Union and forming a part of a policy decision. In support of their contention, they relied upon the judgment of the Supreme Court in the case of *Madras Bar Association v. Union of India*, (2014) 10 SCC 1 and *Union of India (UOI) v. R. Gandhi, President, Madras Bar Association*, (2010) 11 SCC 1. On the other hand, the Applicants have primarily contended in the main application that the impugned Office Memoranda are administrative orders and would be subject to merit review by the Tribunal and such a situation would not alter even if it was in exercise of Executive Power of the Union/State. This Tribunal has been vested with Original, Appellate and Special jurisdiction in regard to directing payment of compensation for damage to and for restitution and restoration of the environment. The legislature in its wisdom worded the provisions relating to the jurisdiction of the Tribunal (Sections 14 to 17 of the Act of 2010) very widely, and with a clear intent to provide this Tribunal with jurisdiction of a very wide magnitude. Upon reading the various provisions of the Act of

2010 cumulatively and in light of the underlying scheme of the Act of 2010, including the definition of 'environment' in terms of Section 2(c) of the Act of 2010, it is quite clear that this Tribunal is having all the trappings of a Court and is conferred with the twin powers of judicial as well as merit review. There is no provision in the Act of 2010 which curtails the jurisdiction of the Tribunal to examine the validity and correctness of a delegated legislation and/or administrative or executive order passed by the Government including any of its instrumentalities or authorities. The fundamental principle for invoking the jurisdiction of this Tribunal is that, the question raised should be a substantial question relating to environment and should arise out of the implementation of the enactments specified in Schedule I of the Act of 2010. It could even relate to enforcement of any legal right relating to environment with regard to these enactments. Delegated or subordinate legislation, executive orders and/or administrative orders in so far as they relate to the implementation of the Scheduled Acts would be open to challenge before the Tribunal and hardly any argument can be raised that the documents like Office Memoranda would not be subject to judicial scrutiny before the Tribunal.

In fact, such an argument that this Tribunal would not have jurisdiction to examine legality and correctness of such Office Memorandum is without substance and in fact should not detain us any further, in view of the judgment of the five Member Bench of this Tribunal in the case of *Wilfred J. and Anr. v. Ministry of Environment & Forests and Ors.*, 2014 ALL (I) NGT REPORTER (2)

(DELHI) 137, where this Tribunal was concerned with a question whether this Tribunal being a creation of a statute is not vested with the powers of judicial review, so as to examine the constitutional validity/vires of such instruments as it would be tantamount to enlarging the jurisdiction of this Tribunal. We may notice that the Tribunal deliberated on the issue at some length and also did a comparative study of the various Acts like Central Administrative Tribunal (CAT), TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL (TDSAT), Armed Forces Tribunal on the one hand and Act of 2010 on other hand. After referring to various judgments on the subject, Tribunal following the principles laid down by the Constitutional Bench of the Supreme Court in *L. Chandra Kumar v. Union of India and others*, (1997) 3 SCC 261 held as under:

> "85. The Courts and Tribunals that are engaged in judicial functions dispensing justice to the public at large are expected to have powers which are necessary to perform its basic functions. As already noticed, unless there is a specific exclusion, such normal powers stated to be inherent in its functioning. The Supreme Court in the case of *Grindlays Bank Ltd vs Central Government Industrial Tribunal And Ors. AIR 1981 SC 606* while dealing with the powers of the Tribunal in relation to setting aside *ex parte* award in absence of any such power and the award which has become enforceable as a result of its being published rejecting the contention that the Tribunal had become *functus officio*, Court held as under:
>
> > "We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice

> between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

86. From the above, it is clear that ancillary or incidentally powers which are necessary to discharge its functions effectively for the purpose of doing justice between the parties should be considered to be endowed. If the power of judicial review in its limited scope is not expected to be endowed upon the Tribunal then majority of the cases wherein Orders, Circulars, Notifications issued in exercise of subordinate legislation are challenged could not be fully and completely decided by the Tribunal, though they exclusively fall in the domain of the Tribunal.

87. Another very important aspect that cannot be overlooked by the Tribunal is that Article 226 of the Constitution of India is a discretionary jurisdiction to be exercised by the High Courts. It does not give an absolute right to a person. For variety of reasons, the High Court may decline to entertain a petition in exercise of its powers under Article 226 of the Constitution, while the NGT Act gives a statutory right to an Applicant, aggrieved person or any person to approach the Tribunal in all matters relating to Acts specified in Schedule I of the NGT Act. It is not a discretionary jurisdiction like under Article 226 of the Constitution of India.

88. On a comparative analysis of various provisions of the different Acts afore-stated, it is evident that power, jurisdiction, judicial independence, exclusion of jurisdiction and other determinative factors prescribed under the NGT Act are of wide connotation and are free of restrictions. Sections 14, 15 and 16 read co-jointly give three different jurisdictions to the Tribunal over all disputes and appeals relating to various fields of environment. The jurisdiction is exercisable in relation to the matters arising from any or all of the Scheduled Acts. Examined objectively, the provisions of the NGT Act are more akin to the provisions of the CAT Act, in contradistinction to the provisions of the TDSAT. The various features and aspects of the NGT Act that we have discussed above would bring the case before the Tribunal within the ambit of *L. Chandra Kumar* case (supra), as opposed to the case being covered by *BSNL* case (supra). We have already dealt above, in some

elaboration, the aspect as to how the cases relied upon by the Respondents do not apply to the facts of the present case, keeping in view the provisions and the legislative scheme of the referred Acts and various judicial pronouncements. At the cost of repetition, we may record here that the language of the various provisions of the NGT Act by necessary implication gives power of judicial review to the Tribunal. There is no specific or even by necessary implication exclusion of such power indicated in any of the provisions. Furthermore, in the scheme of various environmental acts and if the object and purpose of such acts are to be achieved then the power of judicial review would have to be read into the provisions of the NGT Act. If the notifications issued under any of the Scheduled Acts, by virtue of the powers vested by subordinate or delegated legislation, are *ultra vires* the Act itself or are unconstitutional as they violate Articles 14 or 19 of the Constitution of India, then it has to be construed that the Tribunal is vested with the power of examining such notifications so as to completely and comprehensively decide the disputes, applications, appeals before it. Of course, the powers of the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution of India have not been excluded under the provisions of the NGT Act, thus ensuring that the Tribunal performs supplemental functions and does not supplant the Higher Courts.

89. The Supreme Court in the case of *K.S. Venkatraman and Co. v. State of Madras,* (1966) 2 SCR 229, has stated the proposition that an authority or Tribunal constituted under an Act cannot, unless expressly so authorised, question the validity of the Act or any provisions thereof under which it is constituted. This is a sound principle and has been followed consistently. To put it in other words, a Tribunal or an authority constituted under an Act can even examine the validity of the provisions of the Act which created it, provided it is so expressly authorized by the Act itself. This Tribunal is not travelling into that realm of law, but is concerned with the validity of the notifications issued under the Acts other than the Act that created the National Green Tribunal. For this proposition, we have referred to various judgments above.

95. Reverting to the present case the CRZ Notification dated 19th February, 1991, which has been amended on 3rd of October, 2001, was issued in exercise of the powers conferred under Section 3(1) and Section (2) (v) of the Act of 1986 and Rule 5(3) (d) of the Rules of 1986, in declaring coastal stretches as coastal

> regulation zone and for regulating activities in the coastal regulation zone. The legislature has delegated legislative power to the Central Government to take all measures as it deems necessary or expedient for the purposes of protecting and improving quality of the environment and preventing controlling and abating environmental pollution. This is a very wide power, which has been vested in the Central Government by delegated legislation under these provisions. In the exercise of its powers and with the object of satisfying the stated purpose, the Notification of 2011 has been issued under the power of delegated/subordinate legislation. Thus, there cannot be any doubt that the Notification of 2011 in the case before us, is a piece of delegated legislation and its legality, correctness or otherwise can be questioned only on the limited grounds afore-stated.
>
> 96. To bring out this distinction illustratively and more clearly, we may refer to the power of the MoEF (Central Government) to issue Environmental Clearance in terms of the provisions of the Act of 1986 read with the Regulations of 2006. The order granting or refusing Environmental Clearance to a Project Proponent, is not an act of subordinate or delegated legislation but clearly is an executive act. The Central Government in exercise of its executive powers, passes an order whether or not a given project should be granted Environmental Clearance for commencing its operation. In passing such orders, the Central Government does not act in furtherance to the powers vested in it by virtue of delegated legislation. It is merely an executive act relatable to the statutory powers vested in the Central Government. The CRZ Notification issued by the Central Government is therefore an act of delegated legislation while passing of an order of Environmental Clearance is an executive order. This view finds support from the judgment of the Delhi High Court in the case of *Utkarsh Mandal vs. Union of India,* Writ Petition (civil) no. 9340/2009 which held that "grant of environmental clearance is an executive order which involves application of mind by the executive."

91. It is to be noticed at this stage that a Civil Appeal had been preferred before the Supreme Court of India against this Judgment in Civil Appeal No. 7884-7885 of 2014 titled as *Vizhinjam International Seaport Ltd v. Wilfred J. and Ors*. Hon'ble Supreme Court vide its order dated 21st January, 2015, stayed all further

proceedings before the Tribunal in that case but specifically allowed Tribunal to continue its exercise of such powers. Order of the Hon'ble Supreme Court is reproduced below:

> "Counter affidavit, if any, be filed by the Respondents within four weeks' time. Rejoinder affidavit, if any, in two weeks' time thereafter.
>
> In the meantime, both the sides are permitted to file additional affidavit(s).
>
> All further proceedings, qua the appellant(s) are stayed in Appeal Nos. 17 of 2014, 88 of 2014, 14 of 2014 and Original Application No. 74 of 2014 till further orders.
>
> We clarify that the National Green Tribunal shall continue to exercise its powers in terms of Sections 14, 16 and 18 of the National Green Tribunal Act, 2010 in other cases."

92. We may also refer to another larger Bench Judgment of the Tribunal in the case of *Himmat Singh Shekhawat v. State of Rajasthan and Ors.* (supra), where the Tribunal was dealing with a case challenging the validity of the Office Memoranda dated 9th September, 2013 and 24th December, 2013 issued by MoEF and other similar Office Memoranda issued the State of Rajasthan as well as other states as being violative of the provisions of the Act of 1986 and being in teeth of the Judgment of the Supreme Court in the case of *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629.

As stated above, the Tribunal had quashed the Notifications which were in violation to the Notification of 2006 and in teeth of the Judgment of the Supreme Court. It was held that the Notification of 2006 being a statutory law cannot be diluted, varied and frustrated in the name of supplying of gaps and/or framing the policy in interest of a group of people.

The Notification or orders whether issued by the principle or delegated authority, the principle that delegated legislation cannot be beyond the principle legislation equally applies to both. As discussed above, the body to whom the power is delegated is required to act strictly within the framework of such delegated powers. It is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself, it has to be ensured by the delegate authority that it exercises such power for carrying out the purpose and object of the Act and does not interferes with or offends the substantive provisions of the Act. The discipline and protocol prescribed in a statutory instrument ought not to be altered much less defeated.

93. In light of the above stated principles, now we would revert to the judgments of the Supreme Court relied upon by the Respondent nos. 7 and 8. Firstly, we are unable to comprehend as to how the said Respondents can derive any advantage from the two cited judgments. In the first case of *Union of India (UOI) v. R. Gandhi, President, Madras Bar Association* (supra) (2010 case), the Supreme Court was concerned with the constitutional validity of the provisions of the Company's Act, 1956. The Supreme Court stated that the legislature is presumed not to legislate contrary to the rule of law and therefore knows that where disputes are to be adjudicated by a judicial body other than Courts, its standard

should approximately be the same as to what is expected of the main stream judiciary. Rule of law is possible only where there is an independent and impartial judiciary to render justice. Further, the Supreme Court while declining to declare the Act and constitution of the National Company Law Tribunal as unconstitutional in Para 120 directed the defects in parts 1B and 1C of the Act relating to appointment and functioning of the Tribunal to be corrected / amended and then be made operational. The Supreme Court affirmed the view of the High Court that the constitution of the two Tribunals and vesting in them the powers of judicial review was not unconstitutional. However, it was subject to the observations made by the Supreme Court in paragraph 120 of the judgment.

Coming to the second case of *Madras Bar Association v. Union of India (UOI) and Ors.* (supra) (2014 case), where the Supreme Court was concerned with the question whether provisions of the National Tax Tribunal (NTT) Act, 2005 were *ultra vires* to provisions of Constitution including the 'doctrine of separation of power'. The Supreme Court held that since Sections 5, 6, 7, 8 and 13 of the NTT Act have already been held as illegal and unconstitutional, therefore the remaining provisions of the Act are automatically rendered otiose to the extent indicated in paras 136 and 137 of the Judgment. The Hon'ble Apex Court made the following conclusions:

> "134. (i) Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with an alternative court/tribunal. Exercise of such power by the Parliament would not per se violate the "basic structure" of the Constitution.
> 135. (ii) Recognized constitutional conventions pertaining to the Westminster model, do not debar the legislating authority from enacting legislation to vest

> adjudicatory functions, earlier vested in a superior court, with an alternative court/tribunal. Exercise of such power by the Parliament would per se not violate any constitutional convention.
> 136. (iii) The "basic structure" of the Constitution will stand violated, if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure, that the newly created court/tribunal, conforms with the salient characteristics and standards, of the court sought to be substituted.
> 137. (iv) Constitutional conventions, pertaining to constitutions styled on the Westminster model, will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced, are not incorporated in the court/tribunal sought to be created.
> 138. (v) The prayer made in Writ Petition (C) No. 621 of 2007 is declined. Company Secretaries are held ineligible, for representing a party to an appeal before the NTT.
> 139. (vi) Examined on the touchstone of conclusions (iii) and (iv) above, Sections 5, 6, 7, 8 and 13 of the NTT Act (to the extent indicated hereinabove), are held to be unconstitutional. Since the aforesaid provisions, constitute the edifice of the NTT Act, and without these provisions the remaining provisions are rendered ineffective and inconsequential, the entire enactment is declared unconstitutional."

From the above dictum of the Supreme Court, it is clear that the Parliament has power to enact legislations and to vest adjudicatory functions in the Tribunals which were earlier vested in the High Court. *Per se*, this would not be violative of the basic structure of the Constitution, once the framers of law take care and ensure that the statutorily created courts/tribunals conform to the salient characteristics and standards of the courts under the mainstream justice dispensation system, i.e. judiciary. If they are breached, it would generate the results of violation of doctrine of basic structure of the Constitution.

94. Before the Tribunal, no contention of this dimension has been raised. As already stated, the Tribunal has been created by a statute with all requisite safeguards and has been vested with complete adjudicatory powers as required under the mainstream justice delivery system in our country. The impugned Office Memoranda have been issued in exercise of administrative power which is presumably exercised in furtherance to the powers vested in the Ministry under the Act of 1986 and /or Notification of 2006. These Office Memoranda have been issued for the purposes of 'implementation of Acts mentioned in the Schedule' (emphasis supplied). Thus, we see no reason for accepting the contention that this Tribunal has no jurisdiction to examine the legality or correctness of these Office Memoranda. Furthermore, except these two Respondents, none of the other parties to the *lis* has even touched upon this objection.

Discussion on Issue No. 4

4. Are the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8 (iii) of the Notification of 2006 and if so, to what effect?

95. The submission on behalf of Respondent no. 7, 8 and 9 that they would be deemed to have been granted Environmental Clearance in relation to their projects on the strength of Para 8, of the Notification of 2006, can be bifurcated into two distinct classes. The first being with reference to the projects of Respondent no. 7 and 8 where the contention is that they had applied for obtaining Environmental Clearance for their project and the same had been recommended by the SEAC in its meeting dated 17th June, 2014

and 30th September, 2013 respectively. Despite such recommendation being in their favour, the SEIAA did not grant or refuse Environmental Clearance within 45 days of such recommendation as per Para 8(i) of the Notification of 2006. Therefore, as per Respondent 7 and 8 since the period of 45 days has lapsed, therefore, they would be entitled to the 'deemed sanction' of Environmental Clearance in terms of Para 8 of the Notification of 2006, the regulatory authority having failed to take any final view on the Project Proponent's application. It is their case that the 'deemed sanction' would follow in terms of Para 8(iii) and the view expressed by the SEAC would be deemed to have been accepted by the regulatory authority and therefore, the Applicant is entitled to be conveyed the said order in terms thereof.

The second class of contention would be with reference to the contention of Respondent no. 9 that it had applied for obtaining Environmental Clearance for its project in the year 2012, which application was re-filed in the year 2013. The SEIAA had failed to act within the time limit provided in Clause 8 (i) of the Notification of 2006, i.e. 105 days. This failure on the part of the SEIAA would result in grant of Environmental Clearance in favour of the Project Proponent on the principle of 'deeming fiction'. It is the case of Respondent no. 9 that SEIAA had only responded after two years by communicating that the operation of the impugned Office Memoranda has been stayed by the National Green Tribunal and therefore their application for Environmental Clearance has been delisted till further order by the Tribunal.

96. Contrary to the above, the Applicant contends that there is nothing in Para 8 of the Notification of 2006, which is remotely suggestive of any deeming fiction. It is a provision that merely prescribes a period within which certain acts are required to be done without specifying any consequences thereof. Furthermore, none of the Respondents have filed applications with all the relevant documents as required under law. They have not even filed their applications for Environmental Clearance complete in all respects. They have played a fraud with law and in any case misrepresented facts before SEIAA. Even after filing the application for Environmental Clearance, they have violated their undertakings to SEIAA and carried on with the constructions of their projects. This firstly would disentitle them from claiming any relief on the premise of 'deeming fiction' contained under Para 8 of the Notification of 2006, and in any case their acts and deeds would vitiate their entire application for grant of Environmental Clearance. The effect of 'deeming fiction' would thus never accrue in their favour. Once the provisions of the Notification of 2006 are not strictly complied with, the question of invoking 'deeming fiction' in terms of Para 8 of the Notification of 2006 would not even arise as these Project Proponents have not complied with the basic ingredients of these provisions.

97. We must make a note of the fact that none of the other parties, including the MoEF or SEIAA had raised the plea of 'deeming fiction' either in their oral or written submissions. Before adverting to the discussion on merits of these contentions, it will be

appropriate to refer to Para 8 of the Notification of 2006 which reads as under:

> "8.Grant or Rejection of Prior Environmental Clearance (EC):
>
> (i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.
> (ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the Applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the Applicant by the regulatory authority concerned within the next thirty days.
>
> (iii)In the event that the decision of the regulatory authority is not communicated to the Applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the Applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in

> terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned."

98. First and foremost we have to examine what is a deeming fiction, when it operates and what are its ingredients? The expressions 'deemed' and 'deeming fiction' have been described in P RAMANATHA AIYAR'S Law Lexicon 3rd edition, 2012 as follows:

> "Deemed: The word 'deemed' is used to impose an artificial construction of a word or phrase in a statute that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is impossible. *St. Aubyn (L.M.) v. A.G.*, 1952 AC 15
>
> Deeming fiction: A supposition of law that a thing is true without inquiring whether it be so or not, that it may have the effect of truth so far as it is consistent with justice.
>
> The word "deemed" is used in various senses. Sometimes, it means "generally regarded". At other time, it signifies 'taken prima facie to be', while in other case, it means, 'taken conclusively'. Its various meanings are, - 'to deem' is 'to hold in belief, estimation or opinion'; to judge; adjudge; decide; considered to be; to have or to be of an opinion; to esteem; to suppose, to think, decide or believe on considerations."

99. Deeming fiction in a provision of a statute is indicative of the intention of the framers of law that they expect compliance to the requirements of the provision in a prescribed time frame. In some cases, it may prescribe proper consequences of default while in others it may be just require compliance *simplicitor*. When such words are used in a statute, they would provide the meaning for some matters or things and the way in which it is to be adopted. Furthermore, every provision of a statute is brought into by

legislature with a particular object in mind; no word used by the legislature is therefore futile. Normally, such words should be interpreted with the aid of examining the whole scheme of an enactment, like the Notification of 2006 in the present case. Therefore, impact of the expression used under paragraph 8 should be examined and interpreted in light of the entire scheme of the Notification of 2006. The concept of 'deeming fiction' should be understood and interpreted by applying the principle of strict construction. Every requirement preceding the stage from which 'deeming fiction' operates must be specified in all respects and the principle of substantial compliance would have no application for determining the controversy in issue. A Bench of this Tribunal in the case of *M/s Laxmi Suiting v. State of Rajasthan and Ors.*, 2014 ALL (I) NGT REPORTER (2) DELHI 1, while dealing with the essentials and ingredients of 'deeming fiction' contained in Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'Water Act') held as under:

> "33. A deeming provision creates a legal fiction. When a statute enacts that something shall be deemed to have been done, which in fact and in truth has not been done, the court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried out to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone the fiction can operate. In other words, the facts and requirements of the fiction must be satisfied. It has, in fact, also been held by some courts that the word 'deemed' when used in a statute establishes a conclusive or rebuttal presumption, depending upon the context.
>
> 34. Another legal principle of construing the legal fiction is that the law cannot be extended beyond its purpose.

The Supreme Court, in the case of Bengal Immunity Co. Ltd. v. State of Bihar (AIR 1955 SC 661) stated that the legal fictions are created only for some definite purpose. A legal fiction is to be limited to that purpose for which it was created and should not be extended beyond that legitimate field. This approach was reiterated by the Supreme Court of India in the case of Union of India v. Sampat Raj Dugar (AIR 1992 SC 1417), wherein while dealing with Clause 5(3)(ii) of the Import (Control) Order, held that fiction created was for the proper implementation of the Import and Export (Control) Act, 1947 and to hold the licensee responsible for anything and everything that happens from the time of import till the goods are cleared through Customs and it was also held that the fiction cannot be employed to attribute ownership of imported goods to the importer in a case where he abandons them i.e. in a situation where the importer does not pay or receive the documents of title. Reference can also be made to the case of Rajkumar Khurana v. State of NCT of Delhi [(2009) 6 SCC 72].

35. Section 25(7) is intended to provide for the deemed fiction only where the law is complied with. The obvious reason for providing the deeming fiction under Section 25 of the Water Act is to ensure that the Board does not unduly withhold the application of an industry or a unit which has acted in accordance with the law and has moved the application for establishment/operation complete in all respects to the Board. The intention of the framers of law is to balance the relationship between the industry and the Board. It is not intended to give any undue or unlawful advantage to either of the two. The Board must not be able to frustrate the establishment of a project merely by delaying its decision on the application. It is also not intended to give any right to the industry to start its operation without obtaining consent of the Board or even making an application for that purpose. On the principle aforestated, it will not be permissible to stretch the provisions of Section 25 of the Water Act to give protection to the class of persons who are polluters and are even covered under the specified category contemplated under Section 25(5) supra.

36. In view of the above discussion, we are of the considered view that the Applicants are not entitled to the benefit or advantage of the deeming fiction of law contemplated under Section 25(7) of the Water Act inter alia but specifically for the following reasons:

(i) The Applicants did not submit applications, as contemplated under Section 25(2) of the Water Act, complete in all respects to the Board."

In the above backdrop, let us now examine as to what is the object and essential features contained in Para 8 of the Notification of 2006. The Notification of 2006 has been issued by the Ministry in exercise of the statutory powers vested in it under Section 3 of the Act of 1986 and Rule 5 of the Rules of 1986. The Notification has been issued for the purposes of effectively ensuring environmental protection and for implementing the provisions contained in the Principal Act. The purpose is to ensure that the project and the activities as stated in the Schedule to the Notification of 2006 only and only commence construction after the Project Proponent has obtained the Environmental Clearance and that is why Para 2 of the Notification of 2006 requires prior Environmental Clearance from the regulatory authority. The whole scheme of the Notification of 2006 does not postulate any relaxation of this mandatory requirement. Thus, there is unquestionable and undisputable legal obligation upon the Project Proponent to seek prior Environmental Clearance before the commencement of any activity in relation to the project in question. Such obligation is to be complied with as per Form 1 or supplementary Form 1A, as the case may be, to be submitted to the concerned regulatory authority. Form 1 has various columns which would be incapable of being filled and it will be impracticable, if not impossible, for an applicant to furnish the requisite data supported by appropriate analysis, as contemplated in the various columns of Form 1. Still further, the requirement on

the part of the Project Proponent would be to have a complete EIA report on the basis of ToR which again is relatable to the application (Form 1) submitted by the Project Proponent. The authorities are neither required under any law nor under any memorandum of practice to conduct any inspection to verify the contents of the application or the physical situation existing on the site. The averments in the application are normally taken to be correct. It is evident from the record before us that Project Proponents have violated the law and because of their intentional violation and illegal acts of the private Respondents, compliance to the provisions of Notification of the 2006, has been rendered impracticable. The provisions of Para 8(i) to 8(iii) would come into play only when an Applicant complies with his statutory obligations and satisfies the essential requirements of this provision strictly. Indisputably these private Respondents have not done so. Until and unless a complete, comprehensive application in accordance with Form 1 and supplementary Form 1A as per Appendix I and II of the Notification of 2006 respectively, complete in all respects, is submitted, nothing contained in these provisions would come into play much less than it would enable the Project Proponents to claim any advantage or benefit on the plea of deemed fiction.

100. There is a definite process required to be followed, i.e., Screening, Scoping and Appraisal, in addition to Public Consultation, which would lead to passing of an order granting or refusing Environmental Clearance in terms of the Notification of 2006, in cases where SEAC has recommended grant or refusal of

Environmental Clearance. The matter then has to be placed before the regulatory authority, i.e. SEIAA, which is empowered to alter such recommendation of SEAC, agree with the same or take completely contra view. However, where it proposes to disagree with the recommendations of SEAC, the SEAC would be required to give its views within 60 days from the date when the file was returned to it by SEIAA for reconsideration and intimation would also be given to the Project Proponent before it takes the final view. It is only when the requirements of Para 8(i) and (ii) have been complied with that any 'deeming fiction' in terms of Para 8(iii) can come into play. After the view of SEAC is considered by the regulatory authority, then it would convey its decision within next 30 days to the Project Proponent. It is only if the decision of the regulatory authority is not intimated that the Project Proponent may proceed as if the Environmental Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the EAC or the SEAC as the case may be. The word 'deemed' has to be construed differently with reference to the provisions of the Act where it is so used. When a statute enacts that something shall be deemed to have been done, which in fact and in reality was not done, the court is entitled and in fact bound to ascertain for what purposes and between what persons such statutory fiction is to be resorted to and full effect must then be given to the statutory fiction and it should be carried to its logical conclusion. It has been time and again emphasized in various judgments of various courts, including that of the Supreme Court, that the Court has to

ascertain the purpose of the legal fiction, as the term 'deemed' has been used for manifold purposes (Refer: *The State of Bombay v. Pandurang Vinayak Chaphalkar and Ors.*, AIR 1953 SC 244 and *B.B. Chibber v. Anand Lok Cooperative GRP Housing Society Ltd.*, AIR 2001 Delhi 348). These Principles were also reiterated by the Supreme Court in the case of *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.*, (2012) 5 SCC 661, where the Court held as under:

> "29. In *The Bengal Immunity Company Ltd.* v. *State of Bihar and Ors.* MANU/SC/0083/1955: AIR 1955 SC 661, the majority in the Constitution Bench have opined that legal fictions are created only for some definite purpose."

101. 'Deeming fiction' as an established concept of law, has to be construed strictly and completely according to the facts and circumstances of a case. The dimension of its application would depend upon the language of the provisions where 'deeming fiction' is contained, its purpose and the object sought to be achieved under those provisions and the attendant circumstances of a particular case. It is neither possible nor permissible to prescribe a strait-jacket formula for applicability of this fiction in law. Upon a bare reading of Para 8(i) of the Notification 2006, it is evident that it does not contain any 'deeming fiction'. On the contrary, it only prescribes a time period within which the application for grant of Environmental Clearance should be decided and order is to be communicated to the Project Proponent. This clause does not provide for any consequences if the said decision was not taken within the prescribed time.

102. Para 8 (i) provides that the regulatory authority has to convey its decision to the Applicant within 45 days of the receipt of the recommendation of the EAC or SEAC, as the case may be, or convey its decision within 105 days of the receipt of the final Environment Impact Assessment report. In case where Environment Impact Assessment is not required, then, within 105 days of the receipt of the *complete application with requisite document* (emphasis supplied). Para 8 (ii) further provides that the regulatory authority shall normally accept the recommendation of the EAC or SEAC but wherever it decides to disagree with such recommendations, regulatory authority shall request reconsideration by the EAC or SEAC as the case may be, within 45 days of the receipt of the recommendations made to it, along with reason for its disagreement. Such intimation of decision is also to be conveyed to the Applicant.

103. EAC or SEAC as the case may be, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of 60 days. Whereupon, the regulatory authority, after considering the view as furnished by the EAC or SEAC as the case may be, should take its decision, which shall be final and which would be conveyed to the Applicant within the next 30 days. In other words this entire exercise has to be completed within 135 days. Both these Paras i.e. 8(i) and 8(ii) do not provide for any consequences of default. It is Para 8(iii) of the Notification of 2006, which provides for a kind of deeming fiction. In terms of this Para, if the decision of the regulatory authority is not

communicated to the Applicant within the period specified in Para 8 (i) & (ii), the Applicant may proceed as if the Environmental Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the EAC or SEAC as the case may be. For the provision of Para 8(iii) to become effective the following conditions are required to be satisfied:-

(1) The application submitted by the Applicant to the SEIAA or the MoEF as the case may be, should be complete in all respects along with requisite documents.

(2) All the requisite proceedings contemplated under the Notification of 2006 must be completed, i.e. preparation of Terms of Reference (ToR) and submission of final EIA report.

(3) There should be unambiguous recommendation by the SEAC or EAC, for granting or refusing to grant the Environmental Clearance. After submission of the final EIA report (wherever required) and upon completing the procedure prescribed under Clause 8(ii), the matter should remain pending and the Applicant uninformed of the order, for the period of 105 days or 135 days, as the case may be.

104. It is only thereafter that the deeming fiction contained in Para 8(iii) can operate, but even then the clear mandate of the Legislature is that the Environmental Clearance to a Project should not be deemed to have been granted to the Project Proponent. It will only be the recommendation of the EAC or SEAC that would

enable the Applicant to proceed with his project in terms of the said recommendations. The limited operation of the deeming fiction under Para 8, is only the final recommendation of the EAC or the SEAC, as the case may be, that would operate by fiction of law as the order of the regulatory authority. It is because of the default on the part of the regulatory authority to pass the final order that results in invoking the principle of 'deeming fiction' as contemplated under Para 8(iii) of the Notification of 2006.

105. The Project Proponent has to mandatorily comply with the requirements of Para 8(i) and 8(ii) strictly. The principle of substantial compliance and/or inability on the part of the Applicant to file an application, complete in all respects, would not be a relevant consideration for invoking deeming fiction under Para 8 (iii) of the 2006 Notification. Like in economics, other things must remain the same for application of any principle of economics. Similarly, filling up details of Form-A completely and accurately is as essential before consideration of an application for grant of Environmental Clearance.

106. Now, let us examine whether any of the three Project Proponents, claiming advantage of the principle of 'deeming fiction' have satisfied the above stated requirements of law or not. It must be noticed here that any Applicant who seeks benefit under the law of deeming fiction has to satisfy the twin requirements of firstly doing the acts/activities which are lawful and secondly, he must comply with requirements of the provisions *stricto sensu*. In the present case all the three Project Proponents i.e. Respondent nos. 7,

8 & 9 have commenced construction activity of their Projects without even submitting the application for grant of Environmental Clearance. The Project Proponents have obviously not submitted an application complete in all respects and with requisite documents. We have already noticed that there are large numbers of columns in Form 1 and supplementary Form 1A under the Notification of 2006, which these Project Proponents have not and in fact could not have filled appropriately in the corresponding forms to be accompanied with the application for Environmental Clearance. These columns require them to submit data and analysis reports, which it was not possible for them to provide, having already raised huge constructions. Furthermore, all the three Project Proponents were sent different letters from SEIAA, asking them for additional documents and information in respect of their projects which their respective applications lacked. In this regard reference could be made to letters dated 22nd August, 2013, 28th April, 2014, 20th June, 2014, 19th May, 2014 and 17th June, 2014 to SPR & RG, letters dated 21st June, 2013, 08th August, 2013 and 10th September, 2013 to M/s Dugar Housing and letter dated 21st May, 2013 to SAS Realtors Ltd. In the letters addressed by SEIAA to these Project Proponents acknowledging receipt of their application for Environmental Clearance, it had clearly indicated that this does not vest any right in the Project Proponent and they should not start or carry on any construction activity until and unless Environmental Clearance was granted to them. The Project Proponents were permitted only to clear the site and raise

temporary structures for accommodation of labour along with basic facilities, as temporary arrangements. The Project Proponents violated the requirements of law and the undertaking given by them to SEIAA at the time of submission of application for Environmental Clearance. The Notification of 2006 contemplates prior Environmental Clearance to any structure or project activity. The Project Proponents having violated the law cannot be permitted to take advantage of their own wrong under the shelter of 'deeming fiction'. The conduct of these Project Proponents and serious violation of law committed by them *inter alia* disables them from claiming the benefit of 'deeming fiction' under Para 8 of the Notification of 2006 in the facts and circumstances of the case. Furthermore, it is not the case of anybody before us that SEAC had recommended the grant of Environmental Clearance to Project Proponents unconditionally. The recommendation was conditional and it was not grant of Environmental Clearance in fact and in substance. The Project Proponent was to first satisfy the regulatory authority that it had fulfilled the conditions that had been imposed in the recommendation of the concerned authority. In other words, it was not a case of clear recommendation for grant of Environmental Clearance which could have become operative upon expiry of the prescribed period. In the case of M/s. SPR & RG Construction Private Limited (Respondent No. 7) the SEAC in its meeting on 30th September, 2013 decided to recommend proposal only for grant of standard ToR and to conduct EIA study in addition to compliance to the conditions which were to be incorporated in

the ToR. One out of them related to NOC from Chief Controller of Explosives, adequacy feasibility and functionality of STP to be verified by the Tamil Nadu Pollution Control Board.

However, in its meeting on 17th June, 2014, the proposal of Respondent no. 7 was recommended for issue of Environmental Clearance, but only after considering the conditions imposed on the project. These conditions were as follows:-

1. "Project land area excluding landscape area not less than 15% shall be earmarked for green belt development.
2. The adequacy and feasibility of the STP proposed for the project shall be verified by Tamil Nadu Pollution Control Board as per the ToR condition.
3. Design of the rain water harvesting facility shall be done based on soil lithology study and the same shall be consulted with any Academic Institution.
4. Plan of solid waste management including disposal, in tie-up with local NGO shall be furnished.
5. Revised Budget Allocation (0.5% of the project outlay) & detailed work plan for the CSR Activities shall be furnished in an AFFIDAVIT Form."

107. There is nothing on record to show and is not even the case of the Project Proponent that the above conditions have been complied with and the Authorities referred herein further confirm non-compliance thereto. Thus, there was no unambiguous and unequivocal grant of Environmental Clearance recommendation to the Regulatory Authority by the SEAC.

From the above discussion it is clear that none of the Project Proponents satisfied the basic essentials or requirements of Para 8 of the Notification of 2006. Non-compliance to law, intentional violation of law and further, the illegal conduct of the Project

Proponent would disentitle them from getting any relief under Para 8 of the Notification of 2006.

Discussion on Issue No. 5

5. Whether the provisions of Notification of 2006 are mandatory or directory and consequences thereof?

108. Years back, Lord Campbell in *Liverpool Borough Bank v. Turner,* (1861) 30 LJ Ch 379 said, "no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered". These observations have stood the tests of time and even today the process of judicial interpretation has not favoured the enunciation of any universal rule or strait jacket formula. This question has to be decided with reference to the intent of the Legislature, and not the language in which the intention is clothed. In some cases, the courts have also taken the view that such intent can be derived from the nature and design of the statute and the consequences which would flow from construing it in the one way or the other. It will depend upon the findings of the court on these aspects that would finally determine whether the provision is mandatory or directory. The use of the words 'as nearly as may be' in contrast to the words 'at least' will *prima facie* indicate a directory requirement, negative words indicate a mandatory requirement, 'may' indicate a directory requirement and 'shall' a mandatory requirement. Illustratively it could be explained by taking an example of a set of service rules

which provide that adverse remarks shall be communicated to the civil servant concerned, ordinarily within seven months. The object of communicating the adverse remarks is to give an opportunity to the civil servant to improve his performance to make up the deficiency noticed in his work and to give him an opportunity to represent against the remarks, in case he disputes them, to the reviewing authority. In light of this object and having regard to the part adverse remarks play in the service career, the rules on a proper construction will require: (i) communication of the remarks to the civil servant concerned; (ii) communication within a reasonable time; and (iii) communication ordinarily within seven months. The first two requirements will be construed as mandatory and non-compliance of either of them will make the remarks as also any adverse action on their basis, invalid. The third requirement will be treated as directory and its non-compliance alone will not make the remarks invalid if the first two requirements are satisfied [Refer: Principles of Statutory Interpretation by Justice G.P. Singh, 13th Edition (2012)].

In either of these requirements, discretion or discretionary power hardly has a role to play. Even if a provision is being construed as directory, it has to be remembered that it leaves the donee of the powers, free to use or not to use it, at his discretion. A mandatory provision eliminates the element of discretion. A mandatory provision requires complete compliance. Non-compliance or disobedience thereto may render action invalid or nullity. In contradistinction thereto failure to obey directory

provision or its disobedience would not render the action a nullity. Another way to examine this distinction is that even non-compliance is capable of being waived and consequences thereof. The Hon'ble Supreme Court in the case of *State of U.P. v. Baburam Upadhyay*, AIR 1961 SC 751, culled out the criteria for deciding *inter alia* whether a statutory provision is to be taken as mandatory or directory. They are:-

> (a) "the nature and the design of the statute, and
> (b) the consequences which follow from construing it the one way or the other,
> (c) the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions,
> (d) the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and,
> (e) above all, whether the object of the legislation will be defeated or furthered."

109. However, subsequently, the Hon'ble Supreme Court in the case of *May George v. Special Tahsildar,* (2010) 13 SCC 98, expanded these principles and added the following:

> (a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;
> (b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;
> (c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;
> (d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

(e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;
(f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.
(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.
(h) The Court has to give due weight age to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

110. Sutherland *Statutory Construction,* Rev. Third Edn., 1943 (pg 640), mentions that "no statutory provisions are intended by the legislature to be disregarded". Therefore, each word in a statute has a referral meaning and it must be given its true interpretation and import.

111. In terms of interpretation of statutes, question whether a particular provision is mandatory or directory and the distinction between the two arises when a statute uses a language which imposes a duty and where a breach of that requirement renders an action void. In general parlance, in case of mandatory provisions, the act done in breach of the duty imposed is void, while in case of directory provision act done does not become void (although some other consequences may follow). [*Rani Drigraj Kuer v. Raja Amar Krishna Narain Singh*, AIR 1960 SC 444].

112. In an often quoted passage LORD CAMPBELL said, "no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by

carefully attending to the whole scope of the statute to be considered [Craies on Statute Law, 5th edition, at p. 242 and quoted in *Liverpool Borough Bank v. Turner*, (1861) 30 LJ Ch 379]. This view came to be approved by the Supreme Court in the case of *State of UP v. Manbodhan Lal Shrivastava*, AIR 1957 SC 912, wherein the court quoted Crawford on 'Statutory Construction' - art. 261 at p. 516, "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other...."

Maxwell on Interpretation of Statutes quotes Lord Penzance in the case of *Howard v. Bodington,* (1877) 2 P.D. 203 (211) – "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look into the subject matter; consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

113. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of the

enactment, the same will be construed as directory [Delhi Airtech Services Pvt. Ltd. and Anr. v. State of U.P. and Anr. (2011) 9 SCC 354].

114. In Re: Presidential Poll case [AIR 1974 SC 1682], the Seven Judge Bench of the Hon'ble Supreme Court observed:

> "13. In determining the question whether a provision is mandatory or directory, the subject matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending the whole scope of the provision to be construed. The key to the opening of every law is the reason and spirit of the law, it is the *animus impotentia*, the intention of the law maker expressed in the law itself, taken as a whole."

115. In the case of welfare statutes, the general rule of interpretation is that provisions should get that interpretation which would achieve the object of the enactment. Such statutes are to receive liberal construction but the same could not to be extended beyond the statutory scheme [*Ponni Sugars and Chemicals Ltd. v. Cauvery Sugar and Chemicals Ltd,* 2001 (2) MLJ 832; *Maruti Udyog Ltd. v. Ram Lal*, 2005 (2) SCC 638; *National Insurance Company Ltd. v. Arumugham*, 2006 (2) MLJ 564]. It is also a settled law that interpretation of a statute depends upon the text and the context thereof and the object with which the statute was made [*Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551].

116. In light of the above stated principles, now, we may examine the provisions of the Act of 1986 and the Notification of 2006. The Act of 1986 has been enacted for the protection and improvement of environment and the prevention of hazard to human beings, other

living creatures, plants and property. In light of the fact that the Article 21 of the Constitution of India includes the right to decent and clean environment, any of the provisions of the Act of 1986, in relation thereof, are a mandate of the Legislature. They do not provide discretion to a person to obey or not to obey the law and does not in any way permit dilution of the prescribed standards which are required to be adhered to by the person, who wishes to carry on any project or activity of any nature in the notified areas. The Notification of 2006 has been enacted to carry on the object and purpose of Act of 1986 effectively. The Notification as already noticed, applies not only to new projects but also to projects which propose to expand or even modernize the existing projects and are required to strictly comply with the environment standards prescribed under the Act of 1986 and the notification of 2006. We have also noticed above that the expression 'prior' appears as many as 40 times in the Notification of 2006. The expression 'shall' appears in all the relevant clauses where the Project Proponent is required to make the application and follow the prescribed procedure to obtain the Environmental Clearance prior to the commencement of any constructions work or preparation of land, except for securing the land.

117. The Notification of 2006 not only mandates an Applicant or Project Proponent to strictly comply with the provisions, but even requires the authorities to perform their prescribed functions and thus comply with the provisions within the time stipulated under those paragraphs of the Notification of 2006. It furthermore

provides the consequences of non-compliance by the authorities within the period statutorily prescribed. In terms of Para 3, it is not only the consequences of failure to comply on the part of the authorities that are prescribed, but it even specifies the rights that accrue to the Project Proponent. These private rights are definite in character and are of serious consequences. The required compliance has been stated with exactitude in the Notification of 2006, which provides a schedule stating category-wise those projects which require an Environmental Clearance and even the Form which a Project Proponent is required to furnish with complete details at the time of applying for Environmental Clearance.

118. If the application is not in Form 1 and does not provide complete details and documentation in support thereof in terms of the Schedule to the Notification of 2006, the authorities have the right to decline to entertain such an application.

119. Sections 3 and 5 of the Act of 1986 empowers the Central Government to take measures to protect and improve the environment and to issue directions of very wide magnitude, including directions in relation to closure, prohibition or regulation of any industry, operation or process. It can in all event also direct disconnection of electricity or water supply of such industry or operation or process. In exercise of its powers under Sections 6 and 25 of the 1986 Act, the Central Government has framed the Rules of 1986. The Notification of 2006 has been issued in terms of Rule 3(2) of the Act of 1986 as well as Rule 5(3) of the Rules of 1986. In

other words, these later enactments are integral part of the Act of 1986, their character being statutory and language of these provisions makes it obligatory upon every Project Proponent to obtain Environmental Clearance and comply with other environmental laws without default. Section 15 of the Act of 1986 provides penalty for contravention of the provisions of the Act of 1986, the Rules, orders and the directions passed thereunder. Interestingly, Section 15 of the Act of 1986 makes both non-compliance and contravention of the provisions of these enactments punishable. In other words, every default or violation and even non-compliance of the provisions has been made punishable. This necessarily implies the mandatory character of these provisions and statutory obligation on the part of the Project Proponent to comply with them.

120. We are unable to find any merit in the contention raised on behalf of the Project Proponent that the provisions of the Notification of 2006 are procedural. In our considered opinion, the provisions of this enactment are substantive and mandatory. These provisions do not admit of any substantial non-compliance or vest discretion with the authorities in relation to procedure prescribed under the Notification. They are couched in a language that is purely mandatory in character and is founded on the Precautionary Principle which is one of the statutory principles to be applied by the Tribunal in terms of Section 20 of the Act of 2010. If compliance is not made to the provisions of these enactments, it will totally frustrate the Precautionary Principle and thus the precautionary

principle can adversely impact the environment, protection of which is the sole object of the Act of 1986.

Thus, in view of the above discussion, it is clear that the requirements of the Notification of 2006 are mandatory in character. Their default or non-compliance is liable to be punished. The intention of the Legislature is to protect the environment for which words of specific nature like 'prior' and 'shall' have been used. The impact of non-compliance of these provisions would be of serious consequence, not only on environment but upon the society at large. All these enactments are unambiguous and framed in no uncertain terms and this conveys that projects commenced without obtaining Environmental Clearance would invite the penalty postulated under the Act of 1986.

Thus, we have no hesitation in holding that the provisions of Notification 2006 are mandatory and not procedural *simplicitor*.

Discussion on Issue No. 6

6. What is the status of structures raised by and conduct of the private Respondents and its effect upon the statutory provisions relating to environment?

121. The Applicants have contended that all the Project Proponents, (private Respondents) have violated the law and their acts before the statutory authorities and even before the Tribunal are full of falsehood i.e. *falsus in uno, falsus in omnibus*. It is their case that the private Respondents under the garb of a *bona fide* belief that Environmental Clearance is to be obtained before obtaining the Completion Certificate, have in fact, camouflaged compliance to the entire requirements of environmental laws. They, in fact, have

frustrated the very object and purpose of the Act of 1986, Rules of 1986 and the Notification of 2006. These Respondents, because of their illegal and unauthorised actions and activities undoubtedly and in fact undisputedly, have commenced construction activities and even completed substantial section of their projects, even prior to submitting their application seeking Environmental Clearance to SEIAA. What was required was that all these private Respondents must have first obtained Environmental Clearance prior to commencement of any construction activity at the site in question. As already noticed, the Notification of 2006 contemplates submission of various analysis data at a stage prior to commencement of any construction or activity of the project for which application is moved. When, these Respondents submitted applications for grant of Environmental Clearance, the competent authorities while acknowledging the receipt thereof had clearly commanded them not to continue with any construction activity unless the Environmental Clearance was granted. They had also called upon them to submit an undertaking to the respective authorities that they would not carry on any construction activity, which in fact they did. Despite, the above instructions, they continued the construction activity in an illegal and unauthorised way. The continuance of construction activity which was commenced thereto was itself illegal, constructed in totally unauthorised manner and was in complete violation of law. They failed to comply with the law at the threshold and violated the rules, the directions issued by the authorities at subsequent stages and

their own undertakings. Consequently, they have not only rendered themselves liable for the penal action as contemplated under Section 15 of the Act of 1986 but even the constructions raised by them are in total violation of the laws in force. Now, we may look at the stages of construction and the apparent violation by different Project Proponents and their present status. In the case of Mr. Y. Pondurai (Respondent No.3), the construction of the project started without even applying for grant of Environmental Clearance. The Project Proponent started the work of construction in full swing merely after getting the approval from the Government Housing and Urban Development Department of the State of Tamil Nadu in the year 2013. This Project Proponent submitted an application to SEIAA only on 21st February, 2014 and in the meanwhile continued with construction of the project despite a clear direction from the authorities as well as his own undertaking that he would not carry out any construction till the grant of Environmental Clearance. A Letter of Apology was also submitted by the Project Proponent on 21st March, 2014 and even then the Project Proponent continued with construction and raised substantial construction. A Show Cause Notice was issued to the Project Proponent by the TNPCB on 12th July, 2014 for carrying out construction work without obtaining Environmental Clearance. Again on 26th November, 2014, SEIAA informed Project Proponent not to continue the construction until Environment Clearance is obtained. Despite this, upon inspection of the site by TNPCB on 2nd April, 2015, it was noticed that construction work of 9 floors was over and interior works is

under progress. For its repeated violation, TNPCB issued a Stop Work Notice to Project Proponent on 4th April, 2015 as construction activities were continuing without obtaining EC. The Project Proponent had again assured the authorities that he was not carrying on any construction activity. However, when on 14th April, 2015, SEIAA inspected the work site, it was noticed that civil works of all blocks was completed and no work was being carried out at the time of inspection. This project is a commercial complex consisting construction of a main block – 2 basement + Ground floor + 10 floors; Service Block – Basement – Ground Floor + 2 floors and MLCP Block – 2 basement + Ground Floor + 4 Floors. On careful analysis of above two inspection reports it becomes clear that one floor was constructed by Project Proponent even after 2nd April, 2015, i.e. even after furnishing the above undertaking and issuance of Stop Work Notice. The photographs that were filed by the Project Proponent at the time of submission of applications itself show that the construction work was not completed and it was only in progress, in fact, large construction work remained to be completed. However, when the site in question was inspected by officers of TNPCB and SEIAA on 2nd April, 2015, it came to notice that not only the entire construction work had been completed but even the finishing work of the building has also been completed. Furthermore, comparing the photographs taken on both these different occasions clearly demonstrate that the Project Proponent has raised the construction by violating the law, his own undertaking, apology letter and direction of the authorities

concerned and have even completed the entire construction of the project. This construction is clearly illegal and unauthorised in the eyes of law. Cases of all the other Respondents are also on the similar lines. We have discussed them in detail in paragraphs 14 to 43 of the Judgment. As such, there is no need for repeating those facts.

122. What we need to notice here is that the compliance to the laws in force, submission of applications for grant of Environmental Clearance complete in all respects with necessary documents are the conditions precedent of consideration of such application by the competent authorities. It is imperative that the activity for which the Environmental Clearance is sought must be an activity started completely in consonance with law. Even the approval of the drawings and principal approval of the construction of the project from CMDA was subject to compliance with the laws in force. We do not agree to the argument propounded by the Project Proponents that the grant of principal approval *ipso facto* had the effect of granting other permissions to start construction without complying with other laws and permissions from the other authorities, particularly in face of the fact that a clause of this principal approval required the Project Proponent to obtain Environmental Clearance. All these Project Proponents are deemed to be in knowledge of the laws relating to construction of such projects i.e. Act of 1986, Rules of 1986 and Notification of 2006. The Project Proponents are persons in the business of building projects, having huge means and perspicacity. They cannot be even expected to take

up the plea that they were not aware of the provisions of environmental laws. It is in fact unfortunate that these Project Proponents have not only violated the laws and their own undertaking but in that process even made other innocent people invest their money into the project, being fully aware that the construction raised is completely illegal and unauthorised. The Constructions have been raised in complete and flagrant violation of law. This renders them liable to be prosecuted against in terms of Section 15 of the Act of 1986. The authorities have taken action against some of them, but that does not in any way by necessary implication or otherwise have the effect of regularising the construction that has been raised illegally, in an unauthorised manner and in violation of the principles of law. We must notice that these constructions are bound to have adverse effect on environment, ecology and biodiversity in the areas where they are located. Some of the environmental degradation and deterioration would be irreversible while other would be correctable to some extent either by demolition or by taking curative measures which we will hereafter discuss. Their illegal acts and unacceptable conduct has even rendered compliance to the provisions of the Notification of 2006 impracticable if not impossible.

123. Another plea advanced on behalf of the Applicants before the Tribunal is that the Office Memoranda are clearly in derogation and not in support of the substantive law, the attempt to condone violation would lead to compounding of offences and permitting what provisions of Notification of 2006 and Act of 1986 restricts.

The legislature in its wisdom has statutorily introduced the Precautionary Principle in terms of section 20 of the NGT Act, effect of which would stand wiped out in substance by these Office Memoranda. The contention of the Applicants is that the Office Memoranda are neither remedial nor solution to a problem. It is not one time settlement for the category of the persons who might have under some bonafide impression or mistake commenced the activity of the project without obtaining environmental clearance. Office Memoranda in their operation and effect are continuous and do not propose to cover a given situation. The Office Memoranda were issued right from the year 2010 and were amended from time to time, lastly in 2013. The Office Memorandum of 27th June, 2013 *ex facie* is a law in itself as it operates as the procedure for all future times giving substantive rights to parties and runs contra to the statutory provision and procedure established under substantive law. On the plain reading of the Notification of 2006, it is manifestly clear that it is the procedure prescribed therein besides being mandatory in character is also *sui-generis*. Once the law prescribes things to be done in a particular way then they must be done in that way alone or not at all. In *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295, the Hon'ble Supreme Court held "As a general rule, if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited."

124. From such matters or procedure to be performed differently the law must specifically contemplate that it is impermissible to draw such inferences by implication. Nothing has been brought to our notice neither in the Act of 1986, Rules of 1986 and the Notification of 2006 which in express terms or even by necessary implications permits the mandated provisions to be waived and in any case in the manner that would not prejudicially effect the environment and ecology.

125. On behalf of some of the Project Proponents, another argument is advanced to contend that the various authorities understood or interpreted the law to suggest that obtaining of Environmental Clearance prior commencement of project activity was not a condition precedent. The planning permission granted to the Project Proponents also contemplated that Environmental Clearance should be obtained by these Respondents prior to issuance of completion certificate. These Office Memoranda are therefore by themselves and on interpretation of law with the aid of doctrine of *contemporanea expositio* would operate in favour of the Project Proponents for continuing default, if any, on their part. The Project Proponents have relied upon the judgment of the Hon'ble Supreme Court in *K.P. Vargheese v Income Tax Officer & Ors., Ernakulam* 1981 4 SCC 173 in support of their contentions.

126. We are unable to find any merit in these submissions. The doctrine means that a construction which has been long adopted and publically acted upon will not be lightly disturbed by the courts.

127. The rationale behind the same is that judges who lived at/or about that time when the statutes were made, were best able to judge intentions of the makers at that time but where the wording of the statutes are plain, then its *contemporanea* interpretation cannot override the plain meaning of the words used in the statutes. The Courts do not apply this doctrine where the statute is comparatively modern**.** The Doctrine historically is founded on the principles that have been evolved by interpretation of ancient statutes or other documents that it has received from the *contemporanea* authority. The meaning publically given by the *contemporanea* or local usage is presumed to be true one even where the language has terminological or popularly a different meaning. It is obvious that the language of the statues must be understood in the sense in which it was understood when it was passed. (Ref: Interpretation of Statutes by P.M. Bakshi, 2013 Reprint edition and Maxwell on Interpretation of Statues 2013, 19th Impression)

128. *Contemporanea expositio a*s a rule for interpretation, cannot aid where there is no question of interpretation or giving a meaning to the language of a provision is concerned. It cannot be called in aid where an Office Memorandum creates a new procedure or parallel law in conflict with the substantive law. This Doctrine applies only to the construction of ambiguous language in the other statutes where one thing to take recourse to the practice and meaning given to the provisions generally and/or very particularly by the temporary authorities. In the case of *K.P. Verghese v. Income*

Tax Officer, Ernakulam (supra), the Hon'ble Supreme Court held that "it will settle that meaning prescribed by the authorities showing the notification is good guide to *Contemparian expositio* of the position of law." For application of this doctrine the meaning of statute has to be in doubt. If the language of the provisions admit of no ambiguity or doubt, the question of resorting to this doctrine would hardly arise. In our considered view, the Notification of 2006, does not admit of any ambiguity or doubt. We have already in some elaboration dealt with the provisions of the notification of 2006 that clearly contemplates obtaining of prior Environmental Clearance before commencement of any activity of the project. The Office Memoranda have the effect of wiping out the 40-times used expression, 'prior Environmental Clearance' in the Notification of 2006 and the very purpose of this Notification to protect the environment**.** The contention of the Project Proponents that impugned Orders are clarificatory in providing what the Notification of 2006 lacks or does not provide for and that the intention behind the issuance of Office Memoranda, is to remove the ambiguity or to provide resolution to the difficulties faced in implementing the Notification of 2006, does not have any merit, as even the stand of all the authorities i.e. MoEF, SEIAA and Pollution Control Board is that prior grant of Environmental Clearance before commencement of the project activity is mandated by the Notification. Particularly, author of the Office Memoranda in its affidavit has averred '*it is true that neither the act nor the EIA Notification, 2006 grant any relaxation on the requirements of the obtaining of prior Environmental*

Clearance before any construction work is commenced or any project scheduled therein……'. This is also completely substantiated by the opening language of the impugned Office Memoranda where it is said that it was obligatory upon the Project Proponents to obtain prior Environmental Clearance. SEIAA had categorically proscribed the Project Proponents from carrying on any construction activity till Environmental Clearance was granted and had asked them not to repeat the violation. This being the stand of the authorities, the impugned Office Memoranda do not clarify any linguistic or interpreted doubt in the notification 2006 and Act of 1986 but establish a new procedure contrary to the substantive law. It is abundantly clear that principle of *contemporanea expositio* cannot be said to have universal application, each case must be considered on its own facts and executive instruction is entitled to respect but it is not beyond the pale of judicial review. One of the examples cited more often than not is that rules made under the statutes are legitimate aid to the construction of statutes as *contemporanea expositio*. Such Office Memoranda which create a substantive right and obligation by themselves which patently are contrary to the substantive law cannot even be otherwise legitimized with the aid of this doctrine. The fundamental principle of construction is that rules made or directions issued under the statutes must be treated as exactly as if they were in the Act and are of the same effect as it contained in the Act, they cannot be contrary to the fundamental provisions of a statutory notification. Another settled norm is that maxim and precedents are not to be applied mechanically and they

are of assistance only in so far as they furnish guidance by compendiously summing up principles based on the rules of common sense and logic (Ref: *Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise, Baroda*, AIR 1991 SC 754).

In our considered opinion the Project Proponents cannot derive any benefit or advance its case with reference to doctrine of *contemporanea expositio*.

129. Equally, without merit is the other limb of the contention raised on behalf of the Project Proponents. The authorities issuing the planning permission to the Project Proponents had required the Project Proponents to obtain environmental clearance prior to the grant of completion certificate by the said authority. With reference to this term, the contention is that the Project Proponents were under a *bonafide* belief that they could start the construction without obtaining the Environmental Clearance which they were expected to obtain prior to grant of completion certificate only. This submission is fallacious at the face of it. Every person is expected to know the law. Ignorance of law cannot be a plea. The Project Proponents are not persons who can be presumed to be in ignorant of law, they are into this business for years and the Notification of 2006 came into the existence in the year 2006. All the projects in question commenced in the year 2010 and subsequent thereto. The mandatory character of the notification of 2006 obliged the Project Proponents of any project or activity to obtain prior Environmental Clearance before starting construction. They not only failed to do so but even started huge construction and moved the applications for

grant of Environmental Clearance at much subsequent stage. The terms and conditions of the planning permissions required the Project Proponents to comply with all the requirements of law including obtaining of Environmental Clearance for their respective projects. The terms and conditions of the planning permission clearly postulated that they would not even be granted completion certificate if they had not obtained the Environmental Clearance. Reading of the clause of the planning permission by the Project Proponents to take advantage of it is blatantly contrary to the very purpose of the said condition. The terms and conditions of the planning permissions are firstly to be read together, and secondly no document of this nature can be read to construe that it intends to cause waiver of any other requirement of law. All laws are to operate in their respective fields for obtaining the object of rule of law and not in favour of avoidance or dis-obedience to other laws in force. Therefore, we find no merit even in this submission of the Project Proponents.

Discussion on Issue No. 7:

7. The environmental impacts of the projects in question upon environment, ecology and biodiversity.

130. We have already held that comprehensive and definite compliance to the provisions of the Notification of 2006 have been made redundant by the unauthorised actions of the private Respondents as well as by the impugned Office Memoranda issued by the MoEF. Collection of certain data, scientific analysis, pre-construction environmental impacts of the project and other information which are pre-requisite for the submission of the

application in Form 1 or supplementary Form I-A of the Appendix II under the Notification of 2006, can neither be collected nor be provided as the projects have already come up substantially or otherwise have completed construction work extensively. Not only the environmental impacts of the projects cannot be examined fairly but even the matters like site selection and public hearing cannot be deliberated upon, thus frustrating the very object of public hearing. The provisions of the Act of 1986, Rules of 1986 and the Notification of 2006 are statutory documents having the force of law. Providing a mechanism in exercise of administrative or executive power in complete deviation or disregard to the law in force, would be contrary to the basic rule of law. Besides it being in derogation to the environmental jurisprudence, it would also have adverse impacts upon environment and ecology of the area. There is greater need for compliance to the statutory provisions. Such compliance would be essential in the interest of the environment. Therefore, we have to examine the various aspects of such non-compliance law and if there can be any tolerance to the breach of the statutory provisions. If so, its extent and impacts on matters of technical and environmental significance that would flow from such breaches or defaults. Let us now examine the requirements of law with reference to environment.

131. In recent past, building construction activities in our country have been carried out without much attention to environmental issues and this has caused tremendous pressure on various finite natural resources. The green cover, water bodies and ground water

resources have been forced to give way to the rapid construction activities. Modern buildings generally have high levels of energy consumption because of requirements of air-conditioning and lighting in addition to water consumption. In this scenario, it is necessary to critically assess the utilization of natural resources in these activities.

132. An application seeking prior Environmental Clearance for building construction project is required to be made in the prescribed Form 1 and supplementary Form 1A, after the identification of prospective site for the project to which the application relates, before commencing any construction activity or preparation of land, at the site by the Applicant. The Applicant is required to submit along with the application, in addition to Form 1 and the supplementary Form 1A, a copy of the conceptual plan of the project.

133. Apart from profile of the Project Proponent, name and contact address, implementing organization, organizational chart, project consultants etc., are to be mentioned clearly. After providing details of land (plot/ survey numbers, village, tehsil, district, state and area of the land), goal and objectives of the proposed project, significance of the project both at local and regional level, relevance of the project in light of the existing developmental plans of the region are required to be mentioned. Background information and overall scenario of the proposed activity in the Indian context, procedures adopted for selection, criteria for selection of the site for the proposed activity, such as environmental, socio-economic,

minimization of impacts, ecological sensitivity, impact of existing activities on the proposed activity, etc. is required to be spelt out. Resources and manpower requirements have to be detailed apart from time frame for project initiation, implementation and completion in following manner:

- Total site area
- Total built up area (provide area details) and total activity area
- Source of water and consumption
- Source of power and requirement
- Connectivity to the city centre, utilities and transportation networks community facilities
- Parking requirements
- Type of building material to be used
- Environmental liability of the site
- Existing structure / type of material – demolition debris, etc.

134. A map of the study area showing 500 meters from the boundary of the project area, delineating the major topographical features such as land use, drainage, location of habitats, major constructions including roads, railways, pipelines, and industries, if any in the area is required to be enclosed. A map covering aerial distance of 15 km from the boundary of the proposed project area delineating environmentally sensitive areas as specified in Form I of the Notification of 2006 is also to be annexed. In the same map, the details of environmentally sensitive areas present within a radial distance of 1 km from the project boundary are to be specifically

shown. Land use map of the study area is also required to be furnished.

135. Based on the examination of the relevant details, project specific Terms of Reference (TOR) are provided for the EIA studies. While awarding TOR for EIA studies, the points that are of concern include:

a. Likely alterations to the existing land use of the area;

b. Impact on the geomorphology vis-à-vis land disturbance resulting in soil erosion, subsidence & instability of the area;

c. Impact on the natural drainage systems, including wetlands;

d. Impact of the land use changes occurring due to the proposed project on the runoff characteristics vis-à-vis flooding or water logging of the area

e. Impacts of the proposed project on the ground water vis-à-vis pollution of land & aquifers;

f. Likely threats to the biodiversity, especially vegetation pattern and displacement of terrestrial and aquatic fauna;

g. Impact on the atmospheric concentration of gases and generation of dust, smoke, odorous fumes or other hazardous gases;

h. Likely impact on the transport system in the area, including the parking space for vehicles;

i. Impact on the noise levels and vibrations in the area;

j. Likely impact on the social structure of local communities, and likely disturbance to sacred sites or other cultural values.

136. It may be kept in mind that, prior to the grant of EC, concept of sustainable development and precautionary principles were the leading factors governing the environmental jurisprudence. The application of these Principles assumes that the impacts of any development on the environment and human health are difficult to predict with certainty, therefore, prudence requires that before embarking on the development project, we explore the possible alternatives to the project. Needless to say that exploring alternatives also includes exploring all the harmful actions which the project may cause, including such damages which may be completely irreversible. Equally important component of these Principles is, to place the burden of proof on the Project Proponents to highlight that the impact of the activity on the environment and the health of the people would be minimal and/or all precautionary measures have been adopted. While exploring alternatives with regard to siting the project and the technology of the project, exploring alternatives also includes "not taking up of the project as one of the alternatives".

137. The very purpose of awarding project specific TOR for EIA studies is that it is expected that the report furnishes balanced and credible information for environmental safeguard apart from other essential environmental studies and most importantly contains the

appropriate environmental management plan/s along with budgetary provisions that form integral part of the project cost.

138. This EIA report is subjected to appraisal by the Experts, prior to the grant of Environmental Clearance depending upon the nature and location specificity of the project. TOR assists the EIA consultant, prior to execution of project, to prepare an effective and user friendly report with relevant project specific data, which are easily implementable.

139. A typical EIA report, as per Environmental Impact Assessment Guidance Manual for Building, Construction, Townships and Area Development Project of MoEF, 2010, includes:

1. Description of the project site, geology, topography, climate, transport and connectivity, demographic aspects, socio, cultural and economic aspects, villages, settlements are also to be given. Historical data on climate conditions such as wind pattern, history of cyclones, storm surges, earth quake etc., is also looked into. Detailed layout plan of proposed project development, communication facilities, access/approach roads, landscape, sewage disposal facilities, and waste disposal etc. is also given. Layout plan for proposed development of built up areas with covered construction such as DG Set rooms, Administrative buildings, Utilities such as Main and Stand-by Power, Water supply installations etc. is furnished. Most importantly, requirement of natural resources and their sources are to be detailed out.

2. The environmental impacts of construction and operation are established during the early phases of site selection and planning. Planning, site selection and design form an important stage in the development of these projects and will determine their environmental impact(s). Environmental data to be considered in relation to such development pertaining to (a) land (b) ground water, surface water (c) air (d) biological environment (e) noise (f) socio economic environment. The first feature which influences the development of a new project is the existing land use pattern of the neighbourhood of the project, whether the proposed development conforms to the development for that area or not. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., provides the first insight to the likely impacts of the project. Geographical latitude and microclimatic factors such as solar access and wind loads also have major impact.

3. Identification of Project activities, including construction phase, which may affect surface water or groundwater have a direct relation to the estimated water intake requirements and identification of the source of water to be used. Description of water availability and sourcing plays a critical role in impact assessment. Baseline water quality from all sources such as ground water or municipal supply or surface water helps in proper assessment.

4. Climatological data, air and noise level pollution similarly plays an important role in assessing the likely environmental impacts and requires anti-pollution measures to be adopted.
5. Baseline information on the flora and fauna of the study area along with a description of the existing terrestrial, wetland and aquatic vegetation determines the environmental sensitivity and the need for environmental protection measures.
6. Details of solid wastes from construction sector can be categorized into two phases i.e. during construction & during operation. Details of the construction or demolition waste, i.e., massive and inert waste; Municipal waste, i.e., biodegradable and recyclable waste and hazardous & e-waste provide steps that are required to be adopted for its management.
7. Main anticipated impacts from building construction, which need to be addressed, are
    - Impact on the natural drainage system and soil erosion.
    - Loss of productive soil and impact on natural drainage pattern.
    - Study of the problem of landslides and assessment of soil erosion potential
    - Impact on air and noise quality during the construction and operation phase - the existing surrounding features of the study area and impact on them from various sources such as machinery, transportation, etc.

- Impact of construction and operational phases on the surface and ground water on account of the building construction
- Waste water generation its treatment and utilization
- Impact of project during construction and operational phases on the biological environment
- Predicted impact on the communities
- Impact of the project during construction and operational phases for generation of waste
- Energy requirements and infrastructure requirements needed for the activity
- Steps to be taken to integrate the needs of other stakeholders into the location and design of access infrastructure, to reduce and manage overall environmental impacts

8. Another important consideration pertains to requirements of building construction material and technologies to be used. Any project with proper TOR and EIA report would provide details of:

- Types of materials used in each component part of the building and landscape (envelope, superstructure, openings, roads and surrounding landscape)
- Plans and sections of buildings showing use of new technologies and nonconventional methods
- Plans and sections of building using new construction techniques

9. Similarly, it will also deal with energy conservation aspects in terms of:

- Use of alternate renewable resources such as solar / wind power etc.
- Options considered for supplying the power required for the Project and the environmental implications, including opportunities to increase the energy efficiency of the Project
- Details of U & R values
- Details of the renewable energy systems (sizing and design), building costs and integration

140. It is reported that approximately 50 percent of the energy use in buildings is devoted for producing an artificial indoor climate through heating, cooling, ventilation, and lighting. Water conservation and efficiency programs have begun to lead to substantial decrease in the use of water within buildings. Studies have shown that water-efficient appliances and fixtures can reduce consumption by up to 30 percent or more. As demand of water increases with urban growth, the economic impact of water conservation and efficiency will increase proportionately. Water efficiency not only can lead to substantial water savings, but it can also reduce the requirement for expansion of water treatment facilities. The building industry is slowly beginning to recycle its waste but there is a need to achieve significant waste reductions through more reuse of building material and adaptation, as opposed to demolition. Conventional buildings often fail to consider

the interrelationship among building site, design elements, energy and resource constraints, building systems, and building function. Green buildings, through an integrated design approach, take into consideration the effect these factors have on one another. Climate and building orientation, design factors such as day lighting opportunities, and building envelope and system choices, as well as economic guidelines and occupant activities, are all factors that need to be considered in an integrated approach. Application of new building concepts can yield for savings during the construction process. Measures that are relatively easy to implement can result in savings to natural resources in the following areas:

- Lower energy costs, by monitoring usage, installing energy-efficient lamps and fixtures, and using occupancy sensors to control lighting fixtures;
- Lower water costs, by monitoring consumption and reusing storm water and/or construction waste-water where possible;
- Lower site-clearing costs, by minimizing site disruption and movement of earth and installation of artificial systems;
- Lower landfill dumping fees and associated hauling charges, through reuse and recycling of construction and demolition debris;
- Lower materials costs, with more careful purchase and reuse of resources and materials;
- Possible earnings from sale of reusable items removed during building demolition.

141. Therefore, any project with proper filling of Form I would be awarded TOR specific to the project and thereby would have EIA report that deals with environmental concerns specific to the project prior to its execution along with the necessary management plan/s and budgetary provisions.

142. In view of the above, if the project execution is carried out at any stage prior to grant of EC, it would be detrimental to the environment as at the very outset even primary baseline information for filling up Form 1 and Form 1A would not be available for providing project specific TOR for the EIA studies and thus the EIA study would become irrelevant thereby making the appraisal of EIA report only a formality. In the whole process, even imposition of general and specific conditions in EC pertaining to construction phase of the project would be irrelevant. It is extremely important to note here that the major impacts of any building construction project (alteration to topography, water drawl, air pollution, etc.) are during the construction stage or are directly relatable to the construction of the project itself (provision of parking space, fire safety, rain water harvesting and recycling, storm water, construction methodology, enhancing energy efficiency, etc.). Lastly and most importantly, if the project layout plan requires certain changes in the layout plan on account of likely environmental concerns (such as fire safety, day lighting, seismic hazards, water conservation measures, number of basements, etc.), it would be practically impossible to do so.

143. The above discussion clearly demonstrates the intent of the framers of the law that the compliances under the Notification of 2006 will hardly have an application post-construction or after completion of projects or activities. The prescribed parameters, the documentation and data to be provided along with Form 1, in no uncertain terms oblige the Applicant not to commence any activity unless it has obtained the Environmental Clearance. The post-grant of Environmental Clearance will neither be in the interest of the environment nor would it serve the purpose of the Act of 1986 and/or the Notification of 2006. The primary data required to be submitted relates to pre-project situation and circumstances. Of course, it will also depend upon the nature of the project activity or development activity that the Project Proponent proposes to establish. The impact of building construction and the resultant concretization, particularly basement construction on the groundwater levels and flow directions can be a matter of serious concern. The manner in which the basements are being constructed, its impact on the groundwater table, in what manner how much groundwater is proposed to be extracted, would also be a relevant consideration. EIA Report prepared *ex-post-facto*, i.e. on completion of the project, would suffer from lack of due diligence and would foreclose the options for exploring alternatives. This will go against the fundamentals of the Precautionary Principle and Sustainable Development. Similarly, it will be very tedious and very difficult, if not impossible, to appropriately consider various components of the biodiversity at the site and alternative steps that

should be taken by the Project Proponent to protect any rare, endangered and threatened species at the site in question. In absence of such assessment, the opportunity of protecting the local ecology gets defeated and hence the goals of sustainable development. The cumulative effect of the above discussion would be that the illegal and indiscriminate development activity that has been carried out by the Project Proponents is bound to have serious impacts on environment, ecology and biodiversity and a very comprehensive and stringent study would be required to dilute or mitigate adverse environmental impacts of the projects in question.

Issue Nos. 8 and 9

8. **What relief, if any, are any of the parties to the present proceedings entitled to?**

9. **What directions, if any, need to be issued by this Tribunal in the peculiar facts and circumstances of the present case?**

144. In this main application, as well as in the applications filed on behalf of the Project Proponents/Respondents, we are concerned with the rival reliefs claimed by the respective parties. On the one hand, the Applicants pray for setting aside of the impugned Office Memoranda, issuance of directions to the Respondents to initiate prosecution and even to pass such other orders and directions as would be necessary for the facts and circumstances of the case. While on the other hand, the Project Proponents/Respondents pray for saving of the impugned Office Memoranda passed and constructions raised by them, as well as that delisting of their application by SEIAA was not called for and that SEIAA be directed

to consider their application on merits. It is also the contention of the Project Proponents that the relief claimed by them that they being mostly residential complexes are category 'B' projects and hence they are not required to obtain the Environmental Clearance. In view of the above discussion, we have answered the issues in favour of the Applicant and against the Respondents and having held that the Office Memoranda dated 12th December, 2012 and 27th June, 2013 are liable to be quashed, the Project Proponents through their own conduct, raising illegal and unauthorized constructions, without obtaining prior Environmental Clearance and having specifically violated the provisions of the Notification of 2006 and the directions issued to them by the authorities, are not entitled to any relief claimed by them.

145. After discussing the above mentioned issues we feel that still there are two questions remaining to be dealt with by the Tribunal. First, whether the Notification of 2006 applies to the residential complexes in terms of Schedule-I to the Notification of 2006. Secondly, the construction of the projects having been completed, where 3rd party interest have already been created, what are the appropriate directions that should be issued by the Tribunal in the interest of environment and ecology and for restoration and restitution of the same within the ambit and scope of Section 15 of the NGT Act, 2010.

146. The contention of some of the Project Proponents is that their projects are residential projects and therefore the Notification of 2006 is not applicable to them, thus, it is not necessary for them to

obtain Environmental Clearance. Some of them, particularly Respondent No. 9, has contended that these are category 'B' projects and therefore, no public consultation or EIA report is required. Therefore, their projects need to be cleared. The Applicants are developing multi-storey residential building. It is the case of this Project Proponent that the project does not fall within the ambit of Entry 8(a) and 8(b) of the Schedule of Notification of 2006. It only applies to industrial or commercial buildings. Furthermore, there is no valid basis for laying down the threshold limitation of 20,000 sq. mts in the Schedule. The reliance is placed upon the judgment of the Delhi High Court in the case of *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, LPA 895 of 2010 decided on 23rd January, 2012. While dealing with these contentions of private Respondents, we have already noticed that there is no specific challenge raised by these Respondents to the Notification of 2006. No such challenge was raised even during the course of the arguments. On the contrary, they have relied upon the impugned Memoranda issued in furtherance to the Notification of 2006.

147. The Notification of 2006 has a mandatory character and its requirements have to be satisfied in consonance with the provisions made therein. Prior Environmental Clearance from the regulatory authority is the condition precedent before any construction work or preparation of land by the Project Proponent is carried out except for securing the land. The project and activities as already stated above have been categorized into two categories; category 'A' and

category 'B'. All the projects and activities which have been specified in the Schedule to the Notification of 2006 required Environmental Clearance. In these cases, we are concerned with Entry 8(a) and 8(b) of the Schedule to the Notification that reads as follows:

(1)	(2)	(3)	(4)	(5)
"8		**Building or Construction projects or Area Development projects and Townships.**		
8(a)	Building and Construction projects		>20000 sq.mtrs and < 1,50,000 sq. mtrs. of built up area	The term "built up area" for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2.- "General Conditions" shall not apply.
8(b)	Townships and Area Development Projects		Covering an area of > 50 ha and or built up area > 1,50,000 sq. mtrs.	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project. Note.- "General Conditions" shall not apply.

148. The entry has been intentionally termed very widely by the framers. Any Building and Construction Project which has the built up area or covered area of more than 20,000 sq meters or less than 1,50,000 sq. meters would fall under Item 8(a) and Township and Area Development projects covering an area of more than 50 hectares and / or built up areas of more than 1,50,000 sq. meters would fall under Item 8(b). Both of these would be Category 'B' projects. These projects would be dealt with for grant or refusal of Environmental Clearance as per the procedure prescribed under the Notification of 2006. If we examine the scheme of the Notification of 2006 and its relevant provisions, particularly, Paragraphs 2, 6, 7 and 8, it is clear that the expression 'project and activity' are of very wide magnitude and would cover all kind of projects and activities. The definition of environment under Section 2(a) of the Act of 1986 read with definition of the same term under Section 2(c) of the NGT Act would clearly show that the 'projects' or 'activities' are not synonymous terms. What may not be covered specifically under the term 'project' may squarely fall within the ambit of 'activity'. These expressions, having not been specifically made exclusive, would be treated to be more generic and would apply to all kinds of projects and activities. Entry 8(a) talks of building and construction project only with reference to area and extent of construction. They do not even remotely suggest that such building or construction projects should be carried out for an industrial or any allied activity. Whether the complex is being constructed exclusively for residential purpose and/or for mixed use, it will not alter the situation, if

otherwise, it meets the threshold requirement of the area of construction. There is no occasion before the Tribunal to give undue narrow construction to these expressions which have been intentionally worded very widely by the framers of law. On the Rule of 'Plain Construction', these terms would include residential buildings or projects and the Notification of 2006 would be applicable to all the projects in question. The reliance placed by the private Respondents upon the judgment of the Delhi High Court in the case of *Delhi Pollution Control Committee* (supra), in our considered opinion, is misplaced. In that case, Delhi High Court was concerned with Section 25 of the Water Act. It is not necessary for us to discuss the judgment of High Court in any greater detail, primarily for two reasons, firstly, judgment relates to the provisions of the Water Act, in particular Section 25, the provisions of which are not *pari materia* to the provisions of the Act of 1986 and the Notification of 2006. These provisions are completely different from each other and have different parameters to satisfy. Second and most importantly, the High Court itself in paragraph 25 of the Judgment noticed that the reasoning given by the Learned Single Judge to expand the scope of Section 25(a) of the Water Act object of which was different, i.e., control of water pollution, in its wider magnitude, '*ignores*' (emphasis supplied) that the Act of 1986 deals with this larger issue in the context of 'environment' which has been defined therein to include water, air, land and interrelationship which exists among them and human beings and other living creatures, plants, micro-organism and property. The

said Act of 1986 and Rules framed thereunder are wide enough to cover exploitation of water and the impact thereof on the environment. Then the Supreme Court proceeded to hold that the Water Act would not apply to building, housing and residential apartment units as they may not be discharging trade effluents covered under the provision of that Act.

149. It is also not necessary for us to deal with the applicability of the Water Act to such buildings, as that question does not arise before us, hence we leave the question open. However, we have no doubt in stating that the said judgment of the High Court is of no avail to the private Respondents in the present case.

150. A Bench of this Tribunal had the occasion to examine the scope of the Entries in the Schedule to the Notification of 2006 particularly, Entry 8(a), 8(b) and 7(f) in the case of *Vikrant Kumar Tongad v. Delhi Tourism and Transportation Corporation and Ors.*, 2015 ALL (I) NGT Reporter (1) (Delhi) 244, the Tribunal held as under:

> "31. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment [*Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647].
> 32. The applicability of 'Principle of Liberal Construction' to socio-welfare legislation like the Act of 1986, thus, could be justified either with reference to the 'doctrine of reasonable construction' and/or even on 'constructive intuition'. In the case of *Haat Supreme Wastech Pvt. Ltd. v. State of Haryana and Ors*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal,

while dealing with interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of the suitability of the location of the bio-medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the Project Proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (Ref: Wharton's Law Lexicon, 15th Edn., 2012, Black's Law Dictionary 9th Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of *Kehar Singh v. State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts

of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors.*, (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgment of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended nor altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4th April, 2011. *Dehors* the ambiguities in these Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. 'Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors.*, (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a 'Township project' and 'Building and Construction project' and held that a 'Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development

project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other *civic infrastructure*, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological or botanical park or a recreational park etc. would fall within the category of Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

> "66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1, 50,000 sq mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. *To that limited extent* there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized *that the converse of the illustration given by Mr.Bhushan may not be true.* For example, a project which is by its nature and character *an "Area Development project" would not become a "Building and Construction project"* simply because it falls short of the threshold mark under item 8 (b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.
>
> 67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the *"Common Parlance" test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project".* But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres."

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla Bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by the State Government/MoEF, permitted continuation of the project, and held as under:

> "74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the Project Proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the sensitive and delicate ecological balance required for the sanctuaries.
> But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution"

36. The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one of the facets of 'Right to Life' as envisaged under Article 21 of the Constitution of India.

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean environment as an integral concept of our Constitutional Scheme. The project in question is construction of a 'Signature Bridge' over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area

> Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the 'Signature Project' is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.
>
> 38. Having held that the project in question is covered under Entry 8(b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the Applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14th March, 2007 had informed the Project Proponent that 'bridges' are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It is in the backdrop of these circumstances that the construction of the project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof."

151. These Entries thus need to be construed liberally and given a wider meaning. As already stated above, on their plain reading the projects of whatever nature they may be, but so far as they are covering an area of more than the threshold limit specified in these Entries, they would be covered under the Schedule for which it would be mandatory to obtain prior Environmental Clearance. The contention that the Notification of 2006 and the Schedule would not apply to such projects thus, cannot be accepted. The projects whether residential or multi-purpose would squarely fall within the ambit and scope of the Entries in the Schedule particularly when

neither the language of the Notification of 2006 nor the Entries anywhere suggests that the framers intended to exclude such building projects.

152. To obtain Environmental Clearance prior to commencement of any activity or project is the mandate of law. This language has to be given its proper and purposive meaning. It is undoubtedly mandatory. When the law mandates prior approval, it ought not to be averred as post activity approval or *ex-post facto* permission. In such cases, courts have to consider whether any remedial measures can be imposed or certain harsher directions are called for. The Supreme Court in the case of *A.P. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Ors.,* (2001) 2 SCC 62 was concerned with the interpretation of Section 25 of the Water Act which requires that no person shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land etc. The Supreme Court held that it was a condition precedent not only for operating the unit but even for establishment of an industry. While considering the aspect that on the basis of material before it, it would not be a fit case for directing no objection from the Pollution Control Board and that even it was not possible to hold that the safeguards suggested by the appellant Board will be adequate, in the light of the Reports. The Supreme Court held that plea of principle of 'promissory estoppel' would not be applicable and grant

of permission by other authorities would not accrue to the benefit of the industry in relation to grant of NOC. It will be useful to refer to the relevant paragraphs of the judgment of the Supreme Court:

> “54. On point a(ii), it referred to the definition of 'pollution' in Section 2(c) of the Water Act, Section 2(f) which defines 'sewage effluent' and Section 2(k) which defines 'trade effluent' and observed that the 'pollution potential' of the industry was to be assessed. After referring to the effluents -Commercial Castor oil, Bleaching earth, Activated carbon. Nickel catalyst, Hyflo supercel, Sulphuric Acid, Caustic Soda, Methanol, Calcium Oxide, Alum - in all 1463 MTs per month and noticed that the monthly requirement of Hydrogen was 76 500 NM. As the industry is coal based, large quantity coal is required. It would produce huge quantities of BSS, HCO, HSA, Methyl, Fatty acids, Epoxidise, Glyceren etc. Hydroxy Stearic Acid, methyl Hydroxy Stearic Acid and methanol are serious health hazardous. Items in part II list of Schedule I to the 'Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989' are the raw materials and RW2 (Dr. G.S. Siddhu) in his evidence agreed that these are hazardous (toxic) chemicals. The solid effluents generated every day are (i) spent bleaching earth 1250 Kgs, (ii) spent bleaching carbon 250 kgs, (iii) spent nickel catalyst '15 kgs. and (iv) sodium sulphate 3820 Kgs. (12-HSA) and 170 kgs. (from CME). Monthly turn out of effluents will be 400 MT. Every day 55 kgs. of nickel is consumed. Every day, 27,830 litres of water are to be used and normally the effluent will carry all these hazardous substances, including nickel. 'As it is, said that the water used could be reused for cultivation of lands in the premises of the industry, the toxic chemicals which get lodged in the surface layers of the soil will flow down in storm run offs or percolate into the ground water, to ultimately reach the water body of the two reservoirs. The NEAA further stated that Dr. Santappa in his evidence as RW-1 made admissions regarding gaseous effluents-fly ash, S02 CO2 Oxides of Nitrogen, Oxides of Sulphur and suspended particulate matter. The solid and liquid effluents could reach the lakes through seepage. The factory cannot be located in the catchment area because run-offs due to rain will carry hazardous material along surface and through seepage. The NEAA adverted to the 'Drainage Basic Analysis' by the Central Ground Water Board, to the effect that the Basin "has moderate run-off and moderately high permeability of the terrain. As such the amount of infiltration is considerably high". The

said Report shows that rainfall in 796 mm (heaviest being 1326 mm) and there is every likelihood of the solids being "transported down along the gradient". The said Report of Central Ground Water Board, referred to "dolerite dykes" in the vicinity and the possibility of flow even more. Having regard to the location of the dyke and the speed and angle, the polluted water could reach Himayat Sagar which is hardly 2 m bgl. since the dam height is 1763.50 feet. Satellite maps of NSRA were also examined and relied for this purpose. Among the substances stored are nickel, sulphuric acid, HCA, which are well-known 'hazardous' substances.

57. The NEAA, then took up issue (b) as to the likelihood of the industry affecting the sensitive catchment area. It referred to the Expert Committee Report of the HMWSSB and its recommendations which led to the issuance of the GO 192 dated 31.3.94 and GO 111 dated 8.3.96. The NEAA concluded that the "establishment of any chemical industry, carries with it, the imminent dangers of the chemicals or chemical effluents polluting the water of Himayat Sagar and Osman Sagar".

62. In the light of the above exhaust he scientific Reports of the National Environmental Appellate Authority, New Delhi the Department of Chemical Technology, Bombay University and the National Geophysical Research Institute, Hyderabad - it cannot be said that the two lakes will not be endangered. The package of the IICT - which did not deal with the elimination of effluent effects, the opinion of Dr. Santappa, the view of Director of Industries, and the view of the Government of Andhra Pradesh must be held to be base on insufficient data and not scientifically accurate.

63. It is no doubt stated by the 7th Respondent that it is prepared to adopt the safety measures suggested by the appellant Board on 1.7.97 and also those suggested by Dr. Bhowmick, by trying to see that during storage of raw materials and after release of the hazardous liquids, they are put in containers and removed.

64. In respect of these drinking water reservoirs which cater to the needs of about 70 or 80 lakhs population, we cannot rely upon a bare assurance that care will be taken in the storage of serious hazardous materials. Nor can we rely on an assurance that these hazardous substances would be effectively removed without spillage. It is, in our view, not humanly possible for any department to keep track whether the pollutants are not spilled over. This is exactly where the 'precautionary principle' comes into play. The chance of an accident, within such close proximity of the reservoirs cannot be ruled out, as pointed out in the

Reports. Thus, we are led to the inference that there is a very great risk that these highly hazardous material could seep into the earth and reach the tanks, after passing through the dolerite dykes, as pointed by the National Geophysical Research Institute, Our inference from facts and the reports is that of a reasonable person, as pointed out in the main judgment in A.P. Pollution Board v. Prof. M.V. Nayudu.

65. On the basis of the scientific material now obtained by this Court from three highly reputed sources, this is certainly not a fit case for directing grant of NOC by the Pollution Control Board. It is not also possible to hold that the safeguards suggested by the appellant Board - pursuant to the direction of the Government dated 3.7,97, will be adequate, in the light of the Reports. We therefore hold that in the facts of this case, the Board could not be directed to suggest safeguards and there is every likelihood that safeguards could fail either due to accident, as stated in the report, or due to human error. We, therefore, hold on point 3 against the 7th Respondent-industry.

66. This point deals with the principle of promissory estoppel applied by the appellate authority, on the ground that once building permission and permission for change of land use were granted, the appellant Board could not refuse NOC, The learned Additional Solicitor General, Sri R.N. Trivedi referred to the amendment to Section 25(1) in this connection.

67. Under Section 25(1) of the Water (Prevention and Control of Pollution) Act, 1974 as it original stood, Sub-section (1) thereof read as follows:

> Section 25(1): Subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well".

By Central Act 53/1988, the sub-section was amended and reads as follows:

> Section 25(1): Subject to the provisions of this section, no person shall, without the previous consent of the State Board - (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage) or (b) bring into use any new or altered outlet for the discharge of

> sewage, or (c) bring to make any new discharge or sewage"
>
> After the amendment, the prohibition now extends even to 'establishment' of the industry of taking of steps for that process and therefore before consent of the Pollution Board is obtained, neither can the industry be established nor any steps can be taken to establish it.
>
> 68. The learned Additional Solicitor General of India, Sri Trivedi is right in contending that the 7th Respondent industry ought not to have taken steps to obtain approval of plans by the Gram Panchayat, nor for conversion of land use by the Collector, nor should it have proceeded with civil work in a installation of machinery. The action of the industry being contrary to the provisions of the Act, no equities can be claimed.
>
> 69. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute. The industry could not therefore seek an NOC after violating the policy decision of the Government. Point 4 is decided against the 7th Respondent accordingly."

153. Wherever anyone violates the law and flouts the directions issued by the regulatory authority and other concerned authorities, commences construction without even applying for Environmental Clearance and completes the project or activity extensively, two fold consequences would follow. First, that it would render itself liable for imposition of penalties for contravention of the Act, Rules, Orders and directions in terms of Section 15 of the Act of 1986. The other, for issuance of directions in regard to the demolition or grant of consent subject to such conditions as may be considered appropriate by the authorities or the Tribunal. Tribunal exercising its appellate power and Original jurisdiction in terms of Section 14 and 16 of the Act of 2010, has the powers of merit and judicial review and is competent to issue such directions as it may deem

necessary in terms of the said provisions including Section 18 of the NGT Act, 2010. The Court and Tribunals, particularly, in such cases of *fait accompli* have adopted a more practical approach which would permit the remaining work of the project to be completed while providing stringent safeguards in the interest of the environment as well as issuing orders which would vest the Project Proponent with civil consequences. In the case of *Sterlite Industries (India) Ltd. v. Union of India (UOI) and Ors.*, (2013) 4 SCC 575, Supreme Court held that the appellant company was liable to pay compensation of Rs. 100 crores for polluting the environment and operating its industry without renewal of consent by the Board. In this case, industry had obtained consent to operate from the Board prior and subsequent to the period when it operated without consent of the Board. After passing of the judgment of the Supreme Court in this very case, the Tribunal directed the industry to take precautionary measures as well as directed the Pollution Control Board to impose more stringent conditions while permitting the industry to operate (*M/s Sterlite Industries (India) Ltd. v. Tamil Nadu Pollution Control Board*, 2013 ALL (I) NGT REPORTER (DELHI) 368).

154. Further, in the case of *Sarang Yadvadkar and Ors v. The Commissioner, Pune Municipal Corporation and Ors.*, 2013 ALL (I) NGT REPORTER (DELHI) 299, the Tribunal had passed remedial and prohibitory directions in the project underway. The Corporation was constructing elevated road n the floodplain. Major part of the project had already been constructed. The Tribunal directed partial demolition of the raised structure and further directed the

Corporation to construct the bridge on pillar so that there was no obstruction to the free flow of water and the course of the river was not adversely affected. This order of the Tribunal was challenged before the Supreme Court in Civil Appeal No. 3445 of 2015 and was dismissed by the Supreme Court vide its orders dated 12th February, 2015.

155. In somewhat similar situations like the one in hand, the Tribunal in the case of *Forward Foundation v. State of Karnataka and Ors.*, Original Application No. 222 of 2014 decided on 7th May, 2015, where the Project Proponents had raised the construction on the wet lands and the Rajakaluves (storm water drains), affecting the same, without obtaining prior Environmental Clearance. The Tribunal while appointing a special Committee referred to it various questions relating to environment and ecology and prohibited the Project Proponents from creating any third-party interests. The Tribunal further imposed 5 per cent of the project cost as environmental compensation on Project Proponent for degrading and damaging the environment and ecology of the area in question and had required the Committee to submit a report to the Tribunal. The Project Proponent in this case, had preferred a statutory appeal before the Supreme Court and *inter alia* took up the plea that they were not heard on merits and imposition of penalties was not proper. The Supreme Court vide its order dated 20th May, 2015 passed in the case of *Core Mind Software and Services Pvt. Ltd. v. Forward Foundation and Ors.*, Civil Appeal No. 4829/2015, granted liberty to them without setting aside the judgment and various

directions issued by the Tribunal and also to approach the Tribunal for recalling of Order and in the meanwhile stayed the direction pertaining to payment of compensation. The order of the Supreme Court reads as under:

> "O R D E R
>
> 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."

156. The Applicants filed an application before the Tribunal upon which notice was issued, whereby the Tribunal while continuing the

stay on the condition of payment of compensation, directed the Committee to file its report before the next date of hearing in terms of the judgment.

157. From the above judgments of the Supreme Court and the Tribunal, it is clear that in cases of the present kind, it would not be advisable to direct complete demolition of such properties. The Project Proponents claim to have invested huge amounts in raising these projects where it had obtained permission from other authorities and most importantly interest of 3rd party have been created in these properties. The Tribunal has to take a balanced approach while applying the principle of sustainable development and precautionary principle. Even in the case of *A.P. Pollution Control Board* (supra), the Supreme Court, laid great emphasis on the precautionary principle on the premise that it is always not possible to judge the environmental damage.

158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may still be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert major environmental problem before the most serious

consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigor particularly when the faults or acts of omission, commission are attributable to the Project Proponent.

The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgment of

the Supreme Court in the case of *M.C. Mehta and another vs. Union of India and others*, JT 1987 (1)SC 1, *Vineet Narain and Ors. vs. Union of India (UOI) and Anr.*, JT 1997 (10)SC 247 and *University of Kerala vs. Council, Principals', Colleges, Kerala and Ors.*, JT 2009 (14)SC 283.

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or non-compliance. The authorities have already initiated action against three of the Project Proponents and have taken proceedings in the Court of competent jurisdiction under Act of 1986. However, no action has been taken against other four Project Proponents as of now. Penalties can be imposed for violation in due course upon full trial. What requires immediate attention is the direction that Tribunal should pass for mitigating as well as preventing further harm. As far as further remedial measures, alterations, demolition or variation in the existing structure in the interest of environment and ecology which is required to be taken to preserve the

environment are to be suggested by the Committee that we propose to constitute. However, as far as damage that has already been caused to the environment and ecology by the illegal and unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

161. We may specifically notice here that all the Project Proponents had filed contentions and documents in support of their respective case. They addressed the Tribunal at length on factual matrix of the case as well as on law. Various contentions and claims raised by the Project Proponents before the Tribunal have been deliberated in detail.

162. In all cases, SEIAA has passed an order directing delisting of applications for Environmental Clearance which is sought to be questioned by the Project Proponents. We do not find any fault on the part of SEIAA and other official Respondents in delisting the applications for obtaining Environmental Clearance. Just one reason is enough to de-list and to reject these applications which is, that they started construction of their respective projects without obtaining Environmental Clearance and in some cases without even applying for grant of Environmental Clearance. All of them violated the direction of SEIAA as well as their own undertaking and apology to SEIAA that they would not raise any construction till grant of Environmental Clearance. There is more than ample evidence on

record that such violations have been committed. Projects are squarely covered under the Notification of 2006 and, therefore, we find no infirmity in the order of SEIAA in delisting applications of Project Proponents for grant of Environmental Clearance.

163. In view of the above detailed discussion, we pass the following order and directions:

1) We hold and declare the Office Memoranda dated 12th December, 2012 and 27th June, 2013 as *ultra vires* the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memoranda.

2) Consequently, the above Office Memoranda are held to be ineffective and we prohibit the MoEF and the SEIAA in the entire country from giving effect to these Office Memoranda in any manner, whatsoever.

3) We hold and declare that the resolution/orders passed by the SEIAA, de-listing the applications of the Project Proponents, do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and the Notification of 2006 and do not call for interference.

4) We hereby constitute a Committee of the following Members:

    a) Member Secretary of SEIAA, Tamil Nadu.

b) Member Secretary, Tamil Nadu Pollution Control Board.

c) Professor from Department of Civil Engineering, Environmental Branch, IIT Bombay.

d) Representative not below the rank of Director from the Ministry of Environment and Forest (to be nominated in three days from the date of pronouncement of this judgment).

e) Representative of the Chennai Metropolitan Development Authority.

5) Member Secretary of the Tamil Nadu Pollution Control Board shall be the Nodal Officer of the Committee for compliance of the directions contained in this judgment.

6) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. This comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would further deal with the installation of STP's and other anti-pollution devices by the Project Proponents, including the proposed point of discharge of sewage and any other untreated waste. The Expert Committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically and environmentally sensitive areas and details of alteration of

and its effect on the natural topography, the natural drainage system etc. The Committee shall also examine the adequacy of rainwater harvesting system and parking area and if at all they have been provided. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.

7) The Committee shall further report if the conditions stated in the planning permission and other permissions granted by various authorities have been strictly complied with or not.

8) The Committee shall also report to the Tribunal if the suggestions made by the SEIAA in its meetings adequately takes care of environment and ecology in relation to these projects.

9) What measures and steps, including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?

10) All the Project Proponents shall pay environmental compensation of 5 per cent of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the Respondents is as follows:

Mr. Y. Pondurai.: Rs. 7.4125 crores.

M/s Ruby Manoharan Property Developers Pvt. Ltd.: Rs. 1.8495 crores.

M/s Jones Foundations Pvt. Ltd.: Rs. 7 crores.

M/s SSM Builders and Promoters: Rs. 36 crores.

M/s SPR and RG Construction Pvt. Ltd.: Rs. 12.5505 crores.

M/s Dugar Housing Ltd.: Rs. 6.8795 crores.

M/s SAS Realtors Pvt. Ltd.: Rs. 4.5 crores.

11) The compensation shall be payable to the Tamil Nadu Pollution Control Board within three weeks from the date of the pronouncement of this judgment. The amounts shall be kept in a separate account and shall be utilised by the Boards for the above stated purpose and subject to further orders of the Tribunal.

12) The above environmental compensation is being imposed on account of the intentional defaults and the conduct attributable only to the Project Proponents. We direct that the Project Proponents shall not pass on this compensation to the purchasers/prospective purchasers, as an element of sale.

13) After submission of the report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.

14) All the project proponents are hereby prohibited from raising any further constructions, creating third party interest and/or giving possession to the

purchasers/prospective purchasers without specific orders of the Tribunal, after submission of the report by the Expert Committee.

The report shall be submitted to the Registry of the Tribunal within a period of 45 days from the date of pronouncement of this judgment. Thereupon, the Registry would place the matter before this Tribunal for further appropriate orders and directions.

Liberty to the parties to move the Tribunal for any further directions and/or clarifications, if they so desire.

164. The above Appeal and Applications are accordingly disposed of. However, in the facts and circumstances of the case, we leave the parties to bear their own cost.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

Mr. Bikram Singh Sajwan
Expert Member

New Delhi
7th July, 2015

ITEM NO.3+37 COURT NO.1 SECTION XVII

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

Civil Appeal No(s). 1119-1120/2016

SATILILA SEHKARI AWAS SAMITI LTD. Appellant(s)

VERSUS

UNION OF INDIA & ORS ETC. ETC. Respondent(s)

(with appln. (s) for ad-interim ex-parte stay and exemption from filing lengthy list of dates and office report)

WITH C.A. No. 7193-7194/2015
(With appln.(s) for modification of court's order and appln.(s) for stay and Office Report)

C.A. No. 9124-9125/2015
(With appln.(s) for directions and Office Report)

C.A. No. 13844-13845/2015
(With Office Report)

C.A. No. 7191-7192/2015
(With appln.(s) for modification of court's order and appln.(s) for permission to file additional documents and appln.(s) for stay and appln.(s) for clarification of court's order and Office Report)

C.A. No. 9108/2015
(With appln.(s) for may refer to remarks and appln.(s) for stay and Office Report and I.A. No.3 - Appln. For exemption from balance deposit of monies)

C.A. No. 5618/2015
(With Office Report)

C.A. No. 13842-13843/2015
(With Office Report)

C.A.D No. 7588/2016
(with appln. For permission to file appeal and office report

Date : 04/03/2016 These appeals were called on for hearing today.

Signature Not Verified
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Date: 2016.05.16 16:19:45 IST
Reason:

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)	Mr. Rajiv Dutta, Adv.
(CA 1119-1120/16	Mr. Satish Mishra, Adv.
	Mr. Shravan Kumar Yammanur, Adv.
	Mr. Daniel George, Adv.
	Kumar Dushyant Singh,Adv.
(CA 7193-7194/15&	Dr. A.M.Singhvi, Sr. Adv.
	Mr. Zaffar Inayat, Adv.
	Ms. Rohini Musa,Adv.
7191-7192/2015)	Mr. C.A.Sundram, Sr. Adv.
	MS. Rohini Musa, Adv.
	Mr. Zaffar Inayat, Adv.
(CA 9124-9125/15)	Mr. S.Guru Krishna Kumar, Sr. Adv.
	Mr. R. Chandrachud,Adv.
(CA 13844-13845/15	Mr. Kailash Vasdev, Sr. Adv.
& 13842-13843/2015)	Mr. R.Mohan, Adv.
	Mr. MSM Asaithambi, Adv.
	Mr. C.Kannan, Adv.
	MS. Sripradha K., Adv.
(CA 9108/2015)	Mr. Jaideep Gupta, Sr. Adv.
	Mr. K.S.Mahadevan, Adv.
	Mr. Krishna Kumar R.S., Adv.
	Mr. R.Nijay Anand, Adv.
	Mr. Rajesh Kumar,Adv.
(CA 5618/2015)	Mr. Mohan Parasaran, Sr. Adv.
	Mr. Rohan Chinan, Adv.
	Mr.Ashwin Kumar D.S., Adv.
	Mr. D. L. Chidananda,Adv.
CAD 7588/16	Mr. Amit Chadha, Sr. Adv.
	Mr. Ashwani Kumar, Adv.
For Respondent(s)	Mr. N.K.Kaul, ASG,
	Ms. Ritu Bhardwaj, Adv.
	Mr. R.M.Bajaj, Adv.
	Mr. Rahul Pratap, Adv.
	Mr. Niraj Kumar, Adv.
	Mr. N.K.Karhail, Adv.
	Mr. S.N.Terdol, Adv.
	Mr. Rajesh Kumar,Adv.
	Mr. T.V.S. Raghavendra Sreyas,Adv.
	Ms. Gayatri Gulati Syreas, Adv.

Ms. Rohini Musa,Adv.

State of Kerala Mr. Nikilesh Ramachandran, adv.
Mr. Pawan Kunud, Adv.

For CPCB Mr. Vijay Panjwani, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Civil Appeals No. 9124-9125 of 2015:

Mr. S.Guru Krishna Kumar, learned senior counsel for the petitioner submits that he has instruction to withdraw these petitions. The civil appeals are accordingly dismissed as withdrawn.

Civil Appeal No. D 7588 of 2016:

Mr. Amit Chadha, learned senior counsel for the appellant seeks leave to withdraw this appeal reserving liberty for the appellant to approach the National Green Tribunal for such redress as may be legally permissible. The civil appeal is dismissed with the liberty prayed for. We make it clear that we have not expressed any opinion as to the merits of any of the contentions that may be urged before the National Green Tribunal. We leave it open to the NGT whether any relief can or cannot be granted to the applicant in the peculiar facts and circumstances of the case. No costs.

Civil Appeals No. 1119-1120 of 2016, 7193-7194 of 2015, 13844-13845 of 2015, 7191-7192 of 2015, 9108 of 2015, 5618 of 2015, 13842-13843 of 2015:

Post again on Wednesday i.e. the 6th April, 2016.

Needful be shall be done by learned counsel for the parties in terms of our Order dated 22.01.2016, if already not done. Objections to all the pending I.As. be filed by learned counsel for the opposite.

Mr. Vijay Panjawani, learned counsel for the CPCB shall file a copy of the report submitted by the NGT in this Court with a copy to learned counsel for the opposite. A copy of the said report may be also be uploaded on the web-site.

(SHASHI SAREEN)
AR-CUM-PS

(VEENA KHERA)
COURT MASTER

(Two separate signed orders are placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. D 7588 OF 2016

M/S. ETA PROEPRTIES AND INVESTMENTS PVT. LTD. ... Appellant(s)

Versus

UNION OF INDIA AND ORS. ... Respondent(s)

O R D E R

Mr. Amit Chadha, learned senior counsel for the appellant seeks leave to withdraw this appeal reserving liberty for the appellant to approach the National Green Tribunal for such redress as may be legally permissible. The civil appeal is dismissed with the liberty prayed for. We make it clear that we have not expressed any opinion as to the merits of any of the contentions that may be urged before the National Green Tribunal. We leave it open to the NGT whether any relief can or cannot be granted to the applicant in the peculiar facts and circumstances of the case.

.....CJI.
(T.S.THAKUR)

.....J.
(R.BANUMATHI)

.....J.
(UDAY UMESH LALIT)

New Delhi,
Dated: 4th March, 2016.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEALS No. 9124-9125 OF 2015

M/S. SSM BUILDERS AND PROMOTORS ... Appellant(s)

Versus

S.P.MUTHURAMAN AND ORS. ... Respondent(s)

O R D E R

Mr. S.Guru Krishna Kumar, learned senior counsel for the appellant submits that he has instruction from the appellant to withdraw these petitions. The civil appeals are accordingly dismissed as withdrawn.

.....CJI.
(T.S.THAKUR)

.....J.
(R.BANUMATHI)

.....J.
(UDAY UMESH LALIT)

New Delhi,
Dated: 4th March , 2016.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 5618/2015

SAS REALTORS PVT. LTD. Appellant(s)

VERSUS

S.P. MUTHURAMAN & ORS. Respondent(s)

WITH
C.A. No. 7193-7194/2015

C.A. No. 7191-7192/2015

C.A. No. 9108/2015

C.A. No. 1119-1120/2016

C.A. No. 13844-13845/2015

C.A. No. 13842-13843/2015

C.A. No. 2522/2018

C.A. No. 3309-3312/2018

O R D E R

C.A. Nos. 7193-7194/2015 and C.A. Nos. 7191-7192/2015

Learned counsel for the appellants says that these appeals have become infructuous.

The civil appeals are disposed of on having become infructuous.

C.A. No. 2522/2018

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Date: 2019.07.19 15:17:12 IST
Reason:

One of the issues raised by the Union of India in this appeal is whether the National Green Tribunal has jurisdiction to strike

down subordinate legislation.

Appeal admitted.

Liberty to file a reply.

Rest of the cases

Subsequent to the order of the National Green Tribunal, a Committee has been constituted in terms of para 163(4). The Committee has also given a report which has been placed before the Tribunal.

Since the correctness or otherwise of the report is already before the Tribunal, we are not inclined to entertain these appeals.

The appeals are accordingly disposed of. However, in the appeal filed by the Union of India being C.A. No. 2522/2018, we will be considering the question whether the National Green Tribunal has jurisdiction to set aside the subordinate legislation.

The appellants may file impleadment / intervention applications in C.A. No. 2522/2018.

….....J.
[MADAN B. LOKUR]

….....J.
[DEEPAK GUPTA]

NEW DELHI;
July 17, 2018.

ITEM NO.20 COURT NO.3 SECTION XVII

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

Civil Appeal No(s). 5618/2015

SAS REALTORS PVT. LTD. Appellant(s)

VERSUS

S.P. MUTHURAMAN & ORS. Respondent(s)

WITH
C.A. No. 7193-7194/2015 (XVII)
(FOR MODIFICATION OF COURT ORDER ON IA 5/2016)

C.A. No. 7191-7192/2015 (XVII)

C.A. No. 9108/2015 (XVII)
(FOR ON IA 3/2016 FOR ON IA 5/2016)

C.A. No. 1119-1120/2016 (XVII)

C.A. No. 13844-13845/2015 (XVII)

C.A. No. 13842-13843/2015 (XVII)

C.A. No. 2522/2018 (XVII)
(FOR STAY APPLICATION ON IA 32145/2018
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 32147/2018
FOR PERMISSION TO FILE LENGTHY LIST OF DATES ON IA 32150/2018
FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS ON IA 32156/2018)

C.A. No. 3309-3312/2018 (XVII)
(IA No.44893/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.44888/2018-STAY APPLICATION and IA No.44891/2018-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.44894/2018-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 17-07-2018 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Appellant(s) Mr. Jogy Scaria, AOR

Mr. Ramesh Babu M. R., AOR

Mr. Mohan Parasaran, Sr. Adv.
Mr. Ashwin Kumar D.S., Adv.

Mr. D. L. Chidananda, AOR

Ms. Rohini Musa, AOR

Mr. Rajesh Kumar, AOR

Mr. Satish Mishra, Adv.
Mr. Kumar Dushyant Singh, AOR

Mr. Kailash Vasdev, Sr. Adv.
Mr. R. Mohan, Adv.
Mr. V. Balaji, Adv.
Mr. M.S.M. Asaithambi, Adv.
Ms. Sripradha Krishnanan, Adv.
Mr. Rakesh K. Sharma, AOR

Mr. Gurmeet Singh Makker, AOR

For Respondent(s) Mr. A.N.S. Nadkarni, ASG
Mr. Divya Prakash Pande, Adv.
Mr. Niraj Kumar, Adv.
Mr. S.S. Rebello, Adv.
Ms. Ridhi Kackkar, Adv.
Mr. Sanjai Kumar Pathak, Adv.
Mr. Ritesh Kumar, Adv.
Mr. Anmol Chandan, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. T. V. S. Raghavendra Sreyas, AOR
Ms. Gayatri Gulati, Adv.
Ms. Sneh Dhillon, Adv.

Mr. Sanjay Upadhyay, Adv.
Mrs. Lalita Kaushik, AOR
Mr. Prakhar Pandey, Adv.
Ms. Upma Bhattacharjee, Adv.

Ms. Anitha Shenoy, AOR
Ms. Srishthi Agnihotri, Adv.
Ms. Remya Raj, Adv.

CPCB Mr. Vijay Panjwani, AOR

Mr. Rahul Pratap, Adv.

Mr. K. Parameshwar, AOR

Mr. G. Prakash, AOR

Mr. Rakesh K. Sharma, AOR

Ms. Rohini Musa, AOR

Mr. K.S. Mahadevan, Adv.
Mr. Krishna Kumar, Adv.
Mr. Rajesh Kumar, AOR
Ms. Swati Bansal, Adv.

Mr. Avijit Roy, AOR

UPON hearing the counsel the Court made the following

O R D E R

C.A. Nos. 7193-7194/2015 and C.A. Nos. 7191-7192/2015

The civil appeals are disposed of on having become infructuous in terms of the signed order.

C.A. No. 2522/2018

Appeal admitted.

Rest of the cases

The appeals are disposed of in terms of the signed order.

The appellants may file impleadment / intervention applications in C.A. No. 2522/2018.

(MEENAKSHI KOHLI)
COURT MASTER

(KAILASH CHANDER)
COURT MASTER

[Signed order is placed on the file]

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5016 OF 2016

MANTRI TECHZONE PVT. LTD. ... APPELLANTS

VERSUS

FORWARD FOUNDATION AND ORS. ... 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

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ASHWANI KUMAR
Date: 2019.03.07
17:21:35 IST
Reason:

CIVIL APPEAL NOS.4923-4924 OF 2017

CIVIL APPEAL NO.14966 OF 2017

J U D G M E N T

S.ABDUL NAZEER, J.

1. 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 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 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 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 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 Bengluru.

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 plant 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."

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 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 sufficience 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 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 **Kishsore 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.

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 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 (xl) 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 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.

.....J.
(A.K. SIKRI)

.....J.
(S. ABDUL NAZEER)

.....J.
(M.R. SHAH)

New Delhi;
March 5, 2019.