BEFORE THE HON'BLE GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE,
ORIGINAL APPLICATION NO.40 OF 2025

IN THE MATTER OF :

GO GREEN FOUNDATION TRUST & ANR. …APPLICANTS

VERSUS

UNION OF INDIA THROUGH SECRETARY,
MoEFCC & ORS. ….RESPONDENTS

WRITTEN SUBMISSION ON BEHALF OF
ORIGINAL APPLICANT

NITIN LONKAR
ADVOCATE FOR APPLICANTS

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1. The present matter of gross intentional violations of environments norms by the Project Proponent with the active help of bureaucrats. The applicant is filing Written Submission for kind perusal of this Hon'ble Tribunal . The Applicant has done analytical exercise of the grounds of the OA and supporting statements and document from the concerned authorities.

2. That the Respondent No. 6-**M/s. Hilton Infrastructure- Project Proponent (PP)** for gross intentional violation of the EIA Notification, 2006 r/w Environment (P) Act, 1986, The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and Solid & Hazardous Waste Handling Rules for carrying out illegal building construction project/ activity in violation of terms & condition of EC, CTE & Occupancy without prior Consent to Establish and Operate (CTE & CTO) in its Residential and Commercial project "**Fuego**", situated at **CTS No.207, 1/207 & 208, at 122-138, Tardeo Division, D-Ward, 4042-46 & 4039, Shuklaji Street, Mumbai-400008 (MH)** within the limit and jurisdiction of Greater Mumbai Municipal Corporation (MCGM).
(property description in Pleading Page No.3 Para 3 and of O.A.)

3. The said construction is carried out by PP by infringing various environmental norms by not complying conditions imposed by SEAC-II in its 23rd meeting dated 13.02.2014, conditions imposed by SEIAA in its 82nd meeting dated 25.02.2015, the terms and conditions of CTE dated 19.08.2014, EC dated 30.03.2015, EC dated 22.09.2021, CTO- I dated 27.12.2021 and the same is evident from the Refusal of Consent to Operate issued y MPCB on 28.03.2023.
(pleadings at Pg No. 11-21, Para 6 &7 of O.A.)

4. The Applicants has filed the present Original Application u/s. 15, 18 and 20 of National Green Tribunal Act, 2010. The section 15 of the Act is as follow:

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

Considering the above the Applicants have prayed as follow in Para 8 on pg. 27 & 28 of the OA as there was violation of the Schedule I enactments:

A) *Original Application may kindly be allowed.*
B) *Direct Respondents/ Competent Authority to demolish the illegal construction carried out on RG Area (Open Space) and MCGM to recover the damages on account illegal construction on RG Area (Open Space).*
C) *Having regard to the damage to the public health, property and environment, principles of sustainable development and polluter pays principles, Direct the Respondent No. 6-PP to deposit a heavy amount of compensation (EDC) to the environment relief fund as well as Penalty for environmental violation.*
D) *Direct the Restoration & restitution of the Area damaged by the PP from the amounts recovered against the EDC & Penalty in stipulated time bound period.*
E) *Direct the PP to install the Environmental infrastructure (like STP, OWC, Solar System, RG Area to be provided on Ground excluding marginal Space) as per the Environment Management Plan (EMP) stipulated in EC's, CTE & CTO and further to continuous operations of same.*
F) *Direct MPCB & SEIAA to initiate criminal proceedings as per provisions of Water (P&CP) Act, 1974, Air (P&CP) Act, 1981 and Environment (P) Act, 1986.*
G) *Cost of this application may kindly be granted to this applicant*
H) *Pass any other just and equitable orders in the interest of environmental justice.*

5. Important dates and events

Anx	Date	Particulars	Pg No.
A-1	26.08.2011	PP procured Commencement Certificate from MCGM.	**@31-32**
A-2	13.02.2014	SEAC-II in its 23rd Meeting considered the project for appraisal of proposal and decided to	**@42**

		recommend the proposal for grant of EC on following condition *"1. PP to submit Debris management plan.* *2. PP to submit Dust suppression plan.* *3. PP to leave clear cut side margin of 6 m from the boundary of the plot and open space and RG area should be on ground as per the orders of Hon'ble Supreme Court."* **Point no. 9 –** Note on initiated work – 12,.272.39 Sq. M. Details of Green Belt Development **– Point no. 31- Species to be planted on RG area**	**@ 34** **@38**
A-3	28.02.2014	MoEF & CC issued notification for sub-delegation of powers grating powers to each SEIAA for taking action against the violation and for action to be taken U/s. 5 of Environment (Protection) Act, 1986.	**@ 43**
A-4	09.04.2014	PP procured commencement certificate from MCGM along with layout & building plan sanction.	@45-48
A-5	15.07.2014	SEIAA in its 71st meeting assessed the proposal in view of conditions imposed by SEAC-II, however, take note of Show Cause notice issued for starting construction without prior EC and recommended the proposal for further consideration of Environment Department (DoE).	**@49**
A-6	19.08.2014	(CTE) for construction of residential project having total plot area of 4245.86 M2 and TBUA 34196.36 Sq. Mt. **Validity for 5 years or till completion of construction whichever is earlier** The CTE expired on 18.08.2019 and the same is not revalidated till the date therefore there is gap of 1795 days from 18.08.2019 to 15.07.2024 i.e. Legal Notice was issued to PP.	@50-55 **(Para 1 @ 50)**

A-7	20.02.2015	SEIAA assessed the proposal in its 82nd meeting and taken note that the Show Cause notice issued by DoE is withdrawn vide letter dated 02.01.2015. That the SEIAA decided to grant the EC subject to compliance of abovementioned conditions imposed by SEAC-II and on further condition of PP undertaking on utilisation of excess treated water for gardening.	@56-64 @ 64
A-8	30.03.2015	SEIAA granted the ex-post facto Environment Clearance to the project as the constructed work is mention 12, 272.39 Sq. Mtr TBUA 34,196.36 Sq.Mtr+ Configuration of Building **Green Belt Development + RG area (318.96 Sq.Mt.+ Green Area 106.25 on upper floor** wherein SEIAA deliberately avoided to take action for starting of construction despite the power under MoEFCC notification dated 28.02.2014 and intentionally send the matter to the DoE having no powers under EIA Notification, 2006.	@ 65-78 **@ 66** **@ 69** Point 7-Validity-@ 77
A-9	30.07.2017	PP submitted its construction status report to the RERA Authority Wing-A1 & A2 are proposed to construct upto 23 floors having EC for construction of 16 upper floors. Also the Wing-C is constructed upto 9th floors having EC of only 8 Floor Configuration of Building in EC	**@ 79-83** **@ 80** **@82** **@66**
A-10	17.07.2019	PP submitted its construction status report to the RERA Authority Wing-A1 & A2 are proposed to construct upto 23 floors having EC for construction of 16 upper floors. the Wing-C is construction completed 9th floors having EC of only 8 Floors Configuration of Building in EC	**@ 84-88** **@ 85** **@87** **@66**

A-11	23.07.2019	PP procured revised sanction plan from MCGM. **@ Pg. 89** the RG area of 318.96 Sq. Mtr shown in upper left corner marked in green colour which is given on underground parking the plan of basement 1 and 2 is given **@ pg. 91 & 92** which is in violation of SEIAA condition Green area of 134.18 Sq. Mt given on 6th Floo**r @ pg. 96.** Further the side margin of 6mt. is not given by PP despite specific condition imposed by SEAC-II. **@ pg. 89**	@ 89-109
A-12	17.01.2021	PP submitted its construction status report to the RERA Authority Wing-A1 & A2 are proposed to construct upto 23 floors having EC for construction of 16 upper floors. the Wing-C is construction completed 9th floors having EC of only 8 Floors	@110-114 @.111 @113
A-13	16.07.2021	PP submitted its construction status report to the RERA Authority Wing-A1 & A2 are proposed to construct upto 23 floors having EC for construction of 16 upper floors. the Wing-C is construction completed 9th floors having EC of only 8 Floors	@115-119 @.116 @118
A-14	03.09.2021	SEIAA in its 229th Meeting assessed the proposal for expansion of project and decided to grant the EC for TBUA 43,225.41 Sq.Mtr @ pg, 124 Point 13 –RG area provided on ground 391.72	@120-124 @124 @121
A-15	08.09.2021	PP procured the commencement certificate from MCGM.	@125-127
A-16	09.09.2021	PP procured the revised registration from RERA Authority.	@128
A-17	22.09.2021	PP procured the revised Environment Clearance for expansion and modification in project Point no.4- TBUA- 43,225.41Sq.Mt	@179-187 @179 @180

		Point no.13- RG area- 391.72q.Mt provided on ground	
A-18	27.12.2021	PP procured the first consent to Operate (CTO-I) for completed BUA of 7249.69 M2 out of Total Construction BUA 34196.36 M2 as per EC granted 30.03.2015. Validity – 30.09.2022 – point no.1 TBUA – 7249.69 Sq. Mtr out of 34,196. 36 Sq. Mtr The PP was not having CTE for TBUA 43,225.41 Sq.Mt As per EC dated 22.09.2021 therefore supressed the fact of expansion EC is obtained for TBUA of 43,225.41Sq.Mt Point no.3 @ pg.188 and same can be seen from the Point no. 15 &16 @ pg. 189 &190 Moreover, this CTO-I was valid till 30.09.2022 and PP failed to obtain revalidation of CTO thereafter. Therefore, there is no CTO from 30.09.2022 to till date and there is **gap of 655 days** from 30.09.2022 to till 15.07.2024.	@188-194 @188
A-19	13.01.2022	PP procured the revised Commencement Certificate from MCGM.	@195-197
	14.12.2022	14.12.2022, MPCB issued show cause notice to the PP for refusal of Consent to Operate and PP has failed to submit reply @ pg 219 That the copy of this show cause notice is not available with Applicant and is in process of obtaining the same and will place on record once received. Details given @ pg 218 as reference no. 3	
A-24	28.03.2023 Cause of Action	MPCB issued final refusal of CTO Though all the details of CTE is given instead of CTO On ground on non submission of BG, no revalidation of CTE from 19.08.2019, no renewal of CTO after 30.09.2022 and non submission of	@218-219

		BG of CTO and non submission of CA certificate and Balance Sheet @ pg. 218	
A-26	14.06.2023	MCGM notice to PP for unauthorized construction	@225
A-27 A-29 A-30 A-31	11.07.2023 11.10.2023 11.01.2024 10.04.2024	PP submitted its construction status report to the RERA Authority which shows that the PP have carried out construction more than permitted as per CTE dated 19.08.2019 and failed to comply with condition No. II of EC dated 22.09.2021	@226-230 @232-236 @237-241 @242-246
A-28	04.09.2023	the Commencement Certificate (CC) granted by MCGM to PP vide dated 04.09.2023	@231
A-32	17.07.2024	Complaint/ Notice issued by the Applicant to the Government authorities informing blatant violation of the PP	@247-263
A-34	07.03.2025	MPCB website status for CTE/CTO. PP have not received renewal of CTE/CTO since 19.08.2019/30.09.2022	@265

6. FOLLOWINGS ARE THE GROUNDS OF OA AND FINDINGS/COMMENTS BY THE VARIOUS AUTHORITIES IN PARA 6 OF OA:

A) Para 6.1 & 6.2- (@ pg. 11) No CTE for after expiry of CTE dated 19.08.2014 and for expansion after EC Dated 22.09.2021

That the CTE dated 19.08.2014 was granted for TBUA - 34196.36 Sq.Mt.(@ pg 50) which was valid for 5 years or period upto commissioning of the project whichever is earlier and the same is expired on 18.08.2019. Though the construction of project is still going on without revalidating the CTE.

The PP have committed violation of the **condition No. II (@ pg. 186)** of EC dated 22.09.2021 stating that the PP shall obtain CTE if applicable and submit the copy to Environment Department before start of any construction work at the site.

The MPCB while issuing Refusal to CTO dated 28.02.2023 (**@ pg 218) in Point No.2** "*You have not obtained re-validation of consent to establish from 19.08.2019 onwards..*"

This Hon'ble Tribunal in the case of *Forward Foundation Vs. State of Karnataka; 2015 SCC OnLine NGT 5* in Para 44 specifically held that the 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. In the present case the CTE is granted under section 25 of the Water (Prevention and Control of Pollution Act, 1974 and u/s. 21 of the Air (Prevention and Control of Pollution) Act, 1981 and both the enactments are specified in the Schedule I of the NGT Act, 2010.

The Forward Foundation Judgment was challenged before the Hon'b1e Supreme Court in the matter of Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016 of 2016 reported in (*2019) 18 SCC 494* has specifically held vide judgment dated 5th March, 2019 and has confirmed the said judgment of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06.08.2019 and has thus become final and binding.

The Hon'ble Apex Court in the case of *Mantri Technoze Pvt. Ltd. Vs. Forward Foundation* discussed wide range of powers of this Hon'ble Tribunal for restoration of damaged property u/s. 15 of the NGT Act, 2010 as follow

> "**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 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. It is noteworthy that Sections 15(1)(b) and (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 jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.*
>
> **44.** *The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. ESI Corpn. 6, 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 specialised 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."

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B) Para 6.3 (@ pg. 12) No CTO from 30 .09.2022 after expiry of CTO dated 27.12.2021 Gap of 655 days (from 30.09.2022 to 15.07.2024)

The PP obtained CTO dated 27.12.2021 which was valid till 30.09.2022 as stated in the para no.1 of CTO-I (@ pg.188). However, PP failed to obtain the revalidation of CTO till date from 30.09.2022 to till 15.07.2024, i.e. till this notice. Therefore, there is gap of 655 days from 30.09.2022 to 15.07.2024 and these are violation days. The MPCB while issuing Refusal to CTO dated 28.02.2023 (@ pg 218) in Point No.3 "*you have not applied for renewal towards obtained part operate, which was valid up to-30.09.2022 & also not submitted B.G. of Rs.5.956 Lakhs which is to be forfeited.*"

C) Para 6.4 (@ pg. 12) No CTO from 30 .09.2022 after expiry of CTO dated 27.12.2021 Gap of 655 days (from 30.09.2022 to 15.07.2024)

That as per the formula set by the Hon'ble NGT & SC in Paryavaran Suraksha case, the EDC amount on account of not obtaining CTE & CTO is as below;

EC= PI X N X R X S X LF						**Total**
	PI	**N**	**R**	**S**	**LF**	
NO CTE	**100**	**1795**	**500**	**1.5**	**1.5**	201937500
NO CTO	**100**	**655**	**500**	**1.5**	**1.5**	73687500
PI	Pollution Index, as per CTE dated 19.08.2014, project is under red category					
N	Number of days for not obtaining CTE & CTO					
R	Factor in Rupees, considering the magnitude of the project and Minimum Rs. 100 to Maximum Rs. 500 scale. It will suggest amount of Rs. 500/- for this project & pollution heavy load in Mumbai city					
S	Factor for scale of operation, the unit is being Large Scale Industry-LSI, S=1.5					
LF	Factor based on Population of Mumbai, Population is between 1 Million to 5 Million, LF=1.5 for Mumbai City Population is more than 10 Million					

D) Para 6.5 (@ pg. 12) penalty for not obtaining prior CTO up till 15.07.2024:

That as per the Circular of the MPCB vide letter no. BO/MPCB/AS(T)/Circular/B-220712FTS0047 dated 12.07.2022 to discourage

the defaulting industries by adopting "Polluter Pays" principal by imposing appropriate cost of violation of provision of Environment enactments for violation;

Cost of Violation for CTE: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 292740 X (1795/365)] = Rs. 7920020.55/-

Cost of Violation for CTO: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 292740 X (655/365)] = Rs. 2626639.73/-.

E) Para 6.6 (@ pg. 13) Bank guarantee imposed in CTE & CTO-1 not submitted by PP:

The PP failed to submit the bank guarantee of following amount against the CTE & CTO and same fact has been pointed out in MPCB refusal of Consent to Operate Order dated 28.03.2023 Point no.1 and 4 (@ pg. 218)

CTE/CTO	**BG amount**
CTE-19.08.2014	Rs. 17 Lakhs **(@ pg. 54)**
CTO-27.12.2021	Rs. 17.959 Lakhs **(@ pg. 189, condition no.14 & @ pg.192 Schedule-III)**
Forfeiture of BG	Rs. 5.959 Lakhs **refusal of Consent to Operate Order dated 28.03.2023 Point no.1 and 4 (@ pg. 218)** PP have not submitted any BG, therefore, forfeiture is not executed.

F) Para 6.7 (@ pg. 13) no RG area on mother earth, encroachments in marginal space and obstacle for fire tender movement:

That as per the minutes of 23rd SEAC-II Meeting held on 13.02.2014 @ pg.42), minutes of 71st SEIAA Meeting held on 15.07.2014 (@ pg.49), EC dated 30.03.2014 (@ pg. 69), EC dated 22.09.2021(@ 180), PP have to provide the mandatory RG Area on Ground Floor without no overlapping of Marginal Space and not above basement. Distance between RG Area and Marginal space shall be of 6 Mtrs. from boundary wall. However, PP have not provided RG area in Mandatory marginal space as well as fire tender movement and on above basement. Distance between RG Area and Marginal space shall be of 6 Mtrs. from boundary wall. However, PP have provided RG area in Mandatory marginal space as well as fire tender movement and on above basement.

It is evident from the minutes of 23rd SEAC-II Meeting held on 13.02.2014 @ pg.42) that the PP to leave clear cut side margin of 6 m. from the boundary of the plot and open space and RG area should be on ground as per the orders of Hon'ble Supreme Court. The Hon'ble Supreme Court in Municipal Corporation

of Greater Mumbai and Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited and another, (2014) 4 SCC 538 (Kohinoor case) issued direction for minimum side margin distance requirement and Recreational area.

EC	**RG area on Ground**	**RF area on upper Floor/podium**
30.03.2015	318.96Sq. Mt.	106.25 Sq.Mt.
22.09.2021	391.72Sq. Mt.	0
Compensation for Deficient RG Area	=Deficient Area X Circle Rates for Open land =391.72M2 X Rs.81720/M2 = Rs.3,20,11,358.4/- (Three Crore Twenty Lakh Eleven Thousands Three Hundred & Fifty Eight Rupees Only)	

Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai and Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited and another, (2014) 4 SCC 538 (Kohinoor case) held as follow –

"**32.** *Therefore, after reflecting upon the legal position, we are clearly of the opinion that having 15%, 20% or 25% of the area (depending upon the size of the layout) as the recreational/amenity area at the ground level is a minimum requirement, and it will have to be read as such. We therefore, answer Issue (i) by holding that it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area."*

Further this Hon'ble Tribunal while passing the Order dated 13.09.2022 in Appeal No. 22 of 2016 has held that the RG area shall be provided on ground level which should not only open to sky but must also enable plantation of tree as follow

"In the light of above, we hold that RG has to be provided on ground to enable plantation. SEIAA, Maharashtra has thus to ensure availability of space as per above norms. The area has not only to be open to sky but must also enable plantation of trees. If the PP fails to provide RG as per norms, the project may not be allowed to proceed and till compliance, no third-party rights may be created. SEIAA, Maharashtra may verify facts on the ground and take its decision within one month from today."

The abovementioned Order dated 13.09.2022 was challenged before the Hon'ble Bombay High court in WP (L) No. 35671 of 2022 and vide order dt. 27.01.2023 directed SEIAA to decide EC proposals by applying provisions of DCPR 2034 or UDCPR.

The abovementioned Order dated 27.01.2023 passed by the Hon'ble High Court was challenged in Civil Appeal No. 343 of 2025 (then SLP (C) Diary

No. 11843 of 2023 and the Order of the Hon'ble High Court has been stayed by the Hon'ble Apex Court vide Order dt. 08.05.2023.

The SEIAA while granting EC dated 30.03.2015 imposed **Condition no. vi of General Conditions for pre-construction phase** (@ pg. 73) that *"PP has to abide by the conditions stipulated by SEAC & SEIAA."*

F) Para 6.8 (@ pg. 14) no prior NOC from CGWA is obtained by PP:

PP has not obtained prior Permission of CGWA for ground water extraction form **one bore well** and also carried out illegal construction of **two basements** for Residential & Commercial buildings which is in violation of **Condition No. xxiii (@ pg. 74)** of the EC dated 30.03.2015 that *"the Permission to draw ground water and construction of basement if any shall be obtained from competent authority prior to construction/operation of the project"*

Also it is in violation of the **Condition no. VIII (@ pg. 183)** of the EC dated 22.09.2021 that **"***Permission to draw ground water and construction of basement if any shall be obtained from competent authority prior to construction/operation of the project"*

G) Para 6.9 (@ Pg. 14) No preservation of top layer of fertile soil and no soil test for contamination:

PP failed to preserve the top layer of soil and also not carried out any test for its contamination and its amounts to the violation o**f Condition No. vi, vii, ix (@pg. 73**) of EC dated 30.03.2015.

"(vi)All the topsoil excavated during construction activities should be stored for use in ho1ticulture / landscape development within the project site.

(vii) Additional soil for leveling of the proposed site shall be generated within the sites (to the extent possible) so that natural drainage system of the area is protected and improved.

(ix) Soil and ground water samples will be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants."

and further th**e Condition No. XI, XII, XII (@pg. 183 & 184**) of EC dated 22.09.2021.

"XI. All the topsoil excavated during construction activities should be stored for use in horticulture I landscape development within the project site.

XII. Additional soil for levelling of the proposed site shall be generated within the sites (to the extent possible) so that natural drainage system of the area is protected and improved.

XIII. Soil and ground water samples will be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants."

Six-monthly compliance report:

The PP failed to submit the six-monthly compliance report as well as Yearly/ Half-yearly returns & compliance Reports to the MoEF & CC, SEIAA, MPCB and its amounts to the violation o**f Condition No. xxxvi (@pg. 75**) of EC dated 30.03.2015 that "*The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB."*

And the **Condition No. XII (@pg. 185**) of EC dated 22.09.2021 that " *Project management should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the MPCB & this department, on 1st June & 1st December of each calendar year."*

H) Para 6.10 & para 6.11 (@ Pg. 15 & 16): No installation of scientific STP on demarcated location and PP directly discharging untreated waste water to the MGMC sewer line and there is no treatment, no use of excess treated water for gardening:

PP has not installed Sewage Water Treatment Plant as per the EC dated 30.03.2015 and 22.09.2021 which is as per follow

EC	Sewage Generation	STP	STP Location	Actual Installation
30.03.2015	44/77 (@ pg.68)	50/90 (@ pg. 68)	1st Basement of Redevelopment Building And 2nd Basement of the Sale Building	No
22.09.2021	178 (Point no. 9 @pg.180)	50/160 (Point no. 10 @pg.180)	Under Ground of the Redevelopment building and 1st floor of the Sale Building	No

As per the condition no. xxii (@ pg. 74) of EC dated 30.03.2015 directed the PP that "*the installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the MPCB and Environment department before the project is commissioned for*

operation. Discharge of this unused treated affluent, if any should be discharge in the sewer line. Treated effluent emanating from STP shall be recycled/refused to the maximum extent possible. Discharge of this unused treated affluent, if any should be discharge in the sewer line. Treatment of 100% gray water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour problem from STP." And the same condition no. III of EC dated 22.09.2021 (@ pg. 184) Though the PP has failed to comply with the condition by not installing the STP as mandated by both ECs.

The SEIAA in its 82nd meeting held on 25.02.2015 imposed condition on PP for excess treated water utilization by PP for gardening purpose and PP undertaking for use of treated excess water (@pg. 64). However, PP is not treating sewage water nor using it for gardening and this waste water generated from the project is directly discharged to the MCGM sewer line and it is in violation of **Condition no. vi of General Conditions for pre-construction phase** (@ pg. 73) that "*PP has to abide by the conditions stipulated by SEAC & SEIAA.*"

I)Para 6.12 (@ Pg. 16 & 17): No installation of scientific organic waste converter (OWC) for solid waste treatment on demarcated location :

The PP is directed to install the OWC plant as follow, though PP has failed to install OWC plant:

EC/CTE/ CTO-I	Wet Waste	Dry Waste	STP Sludge	OWC	Location	Actual Installation
CTE dt. 19.08.2014 (@ pg. 51)	303	143	18	Not Disclosed	Basement	No
EC dt. 30.03.2015 (@ pg. 68)	303	143	18			No
EC dt. 22.09.2021 (@ pg. 180)	397	265				No
CTO-I dt. 27.12.2021 (@ pg. 189, Point no. 6)	66	99	6			No

J) Para 6.13 (@ Pg. 17): No tree plantation:

PP has been directed to plant the following no. of trees though PP has not undertaken the plantation of trees as per EC dated 30.03.2015 as no RG area is provided on the ground to enable the plantation of trees.

EC	No. of trees to be planted
30.03.2015	29 (@ pg.69)
22.09.2021	Not disclosed

K) Para 6.14 (@ Pg. 17): No installation of rain water harvesting (RWH) system: the PP shall erect tank of 152 KL (52KL for redevelopment building at underground level and 100 KL for Sale Building at 1st Basement level)) for Rain Water Harvesting (RWH) as per EC dated 30.03.2015 (2pg.67), and tank of 110 KL as per the EC dated 22.09.2021 though no building is mentioned. However, PP have not installed RWH System in redevelopment building and insufficient RWH tank in Sale building and the same is evident from the sanctioned plan @ pg. 91 &92) Therefore, PP have committed violation of terms & condition of all the ECs.

L) Para 6.15 (@ pg.18) No installation of solar water heaters & solar energy system:

The PP have under taken the energy saving to the extent of 19% of the total energy consumption from the project as per the EC dated 30.03.2015 (@ pg. 70) and 21% total energy saving in EC dated 22.09.2021 and with help of Solar is 5% (@ pg. 180) by installation of Solar Water Heaters, Solar Energy Generation for Common lighting etc.. However, PP is failed to install the energy saving system and committed violations of terms and condition No. xxviii of EC dated 30.03.2015 (@ pg.75) and condition no. 2 of SEIAA Condition (@ pg.183) and

M) Para 6.16 (@ pg.18) No turning radius of 6 mtrs. for easy access of fire tender movement from all around the building excluding the width for the plantation:

That as per the 23rd meeting of the SEAC (@ pg. 42), 71st meeting of SEIAA (@ pg.49)and per EC dated 30.03.2015 (@ pg.67) and its condition no. vi (@ pg.73), the PP ought to provide the 6 Mtrs of turning radius for easy access for fire tender movement, however, actual development , as per the sanction plan @ pg. 89, itself shows that the marginal space is less than 6 Mtrs and also, side margin spaces are affected by the building line/ basement line, RG are of the projects etc. and therefore, fire tender movement is adversely affected and not possible. Its violation of EC r/w SEAC & SEIAA conditions.

Considering the above facts, clearly establish that the PP have committed various serious environmental violations. Therefore, this Hon'ble Tribunal may be pleased to allow the Original Application.

Date: 07.08.2025
Place: Delhi

Advocate for Applicants

Applicant no.2

(2014) 4 Supreme Court Cases 538 : 2013 SCC OnLine SC 1123

In the Supreme Court of India

(BEFORE H.L. GOKHALE AND JASTI CHELAMESWAR, JJ.)

MUNICIPAL CORPORATION OF GREATER MUMBAI AND OTHERS . . Appellants;

Versus

KOHINOOR CTNL INFRASTRUCTURE COMPANY PRIVATE LIMITED AND ANOTHER . . Respondents.

Civil Appeal No. 11150 of 2013[†], decided on December 17, 2013

A. **Town Planning — High-rise/Multi-storeyed buildings — Minimum recreational/amenity open spaces at ground level as mandated under DCR 23 of 1991 DCRs — Reduction of recreational space area at ground level to only 7.7% of area as against required minimum in present case, of 15% — Impermissibility of — General issue regarding acute problem of excessive construction at the cost of minimum recreational space in Indian cities, considered**

— Held, DCR 23 r/w DCRs 2(64) & (83) of 1991 DCRs make it mandatory that recreational/amenity space has to be on ground level and has to be 15%, 20% or 25% of the area depending upon its size — Requirement of recreational space on the podium under DCR 38(34)(iv) of 1991 DCRs is discretionary — Provision under DCR 38(34) of 1991 DCRs cannot be read in derogation of requirement under DCR 23 of 1991 DCRs as it will result in serious erosion in basic requirements for a good life affecting the guarantee of right to life under Art. 21 of Constitution — Requirement of having trees and open land around them is necessary from an environmental point of view, since there is already excessive concretisation, and a very serious reduction in open spaces at the ground level — Hence, minimum recreational space as laid down under DCR 23 at ground level, cannot be reduced on basis of DCR 38(34) — Recreational space, if any, provided on the podium as per DCR 38(34)(iv), shall be in addition to that provided as per DCR 23 — Such declaration/changes however be implemented with prospective effect, namely, where commencement certificate (CC) has yet not been granted

— Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — S. 22(m) — Development Control Regulations for Greater Mumbai, 1991 — DCRs 23, 38(34) and 2(64) & (83) and 33(7), (9) & (10) — Primacy of DCR 23 over DCR 38(4) — Inapplicability of DCRs 33(7), (9) & (10) to projects/schemes other than those specifically covered therein

(Paras 19 to 32, 46, 71.2.1 and 71.3)

B. **Constitution of India — Art. 21 — Reiterated, the right to a clean and healthy environment is within the ambit of Art. 21 — Furthermore, the right to a clean and pollution free environment, is also a right under our common law jurisprudence — Common Law — Content of**

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Held :

The right to a clean and healthy environment is within the ambit of Article 21. Furthermore, the right to a clean and pollution free environment, is also a right under our common law jurisprudence.

(Para 30)

Amarnath Shrine, In re, (2013) 3 SCC 247; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647, *relied on*

The provisions of DCR 23 are mandatory. Besides, under sub-clause (*f*) of DCR 23 there is a requirement of keeping the recreational open space permanently open to the sky and trees are to be grown in that space as laid down i.e. five trees per hundred square metres of the recreational space within the plot. DCR 2(64) defines "open space" to mean an area forming an integral part of a site left open to the sky. A "site" is defined under DCR 2(83) to mean a parcel or piece of land enclosed by definite boundaries. These DCRs when read together, very much make it clear that the recreational/amenity space has to be on the land i.e. on ground level and it has got to be 15%, 20% or 25% of the area depending upon its size, as prescribed in DCR 23. The requirement of recreational space on the podium under DCR 38(34)(*iv*) is discretionary. Besides, as DCR 38(34)(*iii*) lays down, the podium shall be basically used for parking. Besides, DCR 38(34)(*iv*) does not contain a non-obstante clause to override the requirement under DCR 23 making it mandatory to provide recreational space on the ground floor. That being so, the provision under DCR 38(34) cannot be read in derogation of the requirement under DCR 23 or else it will result into serious erosion in the basic requirements for a good life affecting the guarantee of right to life under Article 21 of the Constitution of India. Therefore DCR 38(34)(*iv*) has to be read down as inapplicable and not excluding the mandatory provision under DCR 23.

(Paras 19, 27 and 28)

This position is not altered by the fact that the development schemes under DCRs 33(7), 33(9) and 33(10) provide for lesser recreational area/amenity spaces. For redevelopment projects under DCR 33(7) for reconstruction of cessed buildings, and for the urban renewal schemes under DCR 33(9), and for the slum rehabilitation projects under DCR 33(10), it is permissible to reduce the

recreational/amenity open spaces to the limit prescribed in the respective Regulations to facilitate these schemes. Thus, under DCRs 33(7) and 33(10) reduction in the amenity open space is permitted to make the project viable, but still minimum 8% of the project area is required to be maintained as amenity open space. Similarly, for the schemes under DCR 33(9) minimum 10% of the plot area is required to be retained as recreational space. However DCRs 33(7), (9) and (10) are not generally applicable, since in other properties, where there are no such constraints to make the development schemes of rehabilitation or reconstruction of old buildings or slums viable, there is no reason why the amenity open space at the ground level should be read as permissible, to be reduced. The only ground for reducing this mandatory open space at the ground level being given is that more parking and more accommodation may be provided, meaning thereby more construction, concretisation and financial expediency. Such a purpose cannot be read into the provisions as they presently exist, nor is it desirable to do so from the point of view of the requirement of minimum open spaces at the ground level. Besides, the requirement of having trees and open land around them is necessary from an environmental point of view, since there is already excessive concretisation, and a very serious reduction in open spaces at the ground level.

(Paras 20 and 29)

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Thus, having 15%, 20% or 25% of the area (depending upon the size of the lay out) as the recreational/amenity area at the ground level is a mandatory minimum requirement, and it will have to be read as such. Hence, it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area.

(Para 32)

C. **Town Planning — Development Control Regulations for Greater Mumbai, 1991 — DCR 43 — Construction of high-rise buildings — Fire safety requirements — Existing mechanism under DCRs, whether adequate and being implemented effectively — Invalidity of DCR 43(1)(A) for redevelopment proposals under DCR 33(7)**

— Held, whereas provisions for mid-rise buildings up to 13 floors are somewhat adequate, those beyond are required to be strictly implemented from within as well — Second proviso to DCR 43(1)(A) cannot stand scrutiny of minimum safety requirement — Not providing a minimum space of 6 m which makes room for the fire engine to access the building amounts to violation of right to life and equality of residents of these buildings —

Thus, held, second proviso to DCR 43(1)(A) is hazardous and discriminatory against occupants of the schemes under DCR 33(7) and is bad in law — Therefore directed, even for redevelopment proposals of plots up to size of 600 sq m under DCR 33(7), an open space of 6 m width within the property which is accessible from the road on one side, has to be maintained unless the building abuts roads of 6 m or more on two sides, or another appropriate access of 6 m to the building is available apart from the abutting road — Besides, Fire Department must insist from developer/society of all buildings to certify at least once in six months that access to the building, internal exits and fire-fighting arrangements are maintained as per expectations under DCR, norms of Fire Department, and must check them periodically, on its own — Such changes however to be implemented with prospective effect, namely, where the commencement certificate (CC) has yet not been granted — Maharashtra Fire Prevention and Life Safety Measures Act, 2006 (3 of 2007) — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966), S. 22(m)

(Paras 33 to 36, 43 to 46. 71.2.3 and 71.3)

Jayant Achyut Sathe v. *Joseph Bain D'Souza*, (2008) 13 SCC 547, *explained* and *distinguished*

D. **Town Planning — Development Control Regulations for Greater Mumbai, 1991 — DCR 31(1) and DCRs 33(7), (8) & (9) — High-rise buildings — Prescription of height of buildings vis-à-vis width of adjoining road — Relaxation of, in case of reconstruction and redevelopment of old buildings undertaken under Regulations 33(7), 33(8) and 33(9) resulting in extreme crowding, traffic congestion and additional pressure on existing infrastructure — Impact of such addition of FSI on traffic situation in Mumbai city, examined — Suggestions given to Government to be incorporated in new Development Plan for Greater Mumbai**

— Held, there must be a scheme-wise approach and proper supervision of the construction — These development schemes and additional FSI

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thereunder, should be examined locality wise — Impact of such high-rise buildings on the adjoining locality and on traffic, required to be examined before granting such permission — While preparing new development plan for the city of Mumbai, aspects concerning restrictions on blanket exemptions, contribution by existing occupants to the reconstruction schemes, locality wise consideration and impact of additional FSI on traffic, ought to be gone into — Government of Maharashtra, Development Plan Drafting Committee, and appellant Municipal Corporation shall consider these suggestions while framing new Development Plan for Greater Mumbai — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966), S. 22

(m)

(Paras 47 to 61 and 71.2.2)

E. **Town Planning — High-rise/Multi-storeyed buildings — In Mumbai — State Government constituted Technical Committee for High-Rise Buildings — Supreme Court reconstituting the Committee by appointing a new Chairman and inclusion of an architect as member and framing additional terms of reference of Committee — Government of Maharashtra directed to issue the necessary notification in this behalf — Appellant directed to render assistance and provide the required honorarium as ordered**

(Paras 62 to 69 and 71.4)

MCD v. *Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305, *considered*

F. **Town Planning — Development Control Regulations for Greater Mumbai, 1991 — DCR 33(24) [as amended w.e.f. 22-6-2011] — Overriding effect of, in respect of development approved prior to amendment — Extent of — Approval and commencement certificate granted for development of multi-storeyed public parking lot — Subsequent stop-work notice, asking respondent to modify its plans in consonance with new conditions under amended DCR 33(24) (vide Municipal Circular dt. 22-6-2011) limiting the height of public parking to 4 floors instead of 13 floors in deviation of permission granted earlier — Quashed by High Court — Subsequent memorandum of settlement entered into between the parties accepting Municipal Circular dt. 22-6-2011, confining the public parking building only to ground + 4 upper floors, confirmed in order dt. 25-7-2013, *Kohinoor*, (2014) 4 SCC 574, re-confirmed — Held, both parties shall act strictly in accordance with the settlement — Clarified, Municipal Circular dt. 22-6-2011 was not in any way held to be bad in law in order dt. 25-7-2013 arrived at on the controversy between the parties before the court, considering the acute problems in the city of Mumbai with respect to shortage of recreational space, fire hazards and high density of traffic, a further deliberation on the aforementioned issues was felt necessary and examined by Supreme Court — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966), S. 51**

(Paras 2 to 6, 71.1 and 71.5)

Municipal Corpn. of Greater Mumbai v. *Kohinoor CTNL Infrastructure Co. (P) Ltd.*, (2014) 4 SCC 574, *clarified* and *followed*

Kohinoor CTNL Infrastructure Co. (P) Ltd. v. *Municipal Corpn. of Greater Mumbai*, (2013) 1 Mah LJ 88 : (2013) 3 Bom CR 410, *referred to*

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Advocates who appeared in this case:

R.P. Bhatt, Senior Advocate (R.A. Malandkar, Ms U.H. Deshpande, Jernold Xavier, S. Sukumaran, Anand Sukumar, Bhupesh Kr. Pathak and Ms Meera Mathur, Advocates) for the Appellants;

Dr A.M. Singhvi, Joaquim Reis and Shyam Divan, Senior Advocates [Shivaji M. Jadhav, Brij Kishor Sah, Chirag M. Shroff, Abhishek Singh, Sanjay Kharde, Shubhangi Tuli (for Ms Asha Gopalan Nair), Anand Verma, Kedar Nath Tripathy, Gauhar Mirza, Ms Pragya Baghel, Ankur Saigal, Mahesh Agarwal, Rishi Agrawala and E.C. Agrawala, Advocates] for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2014) 4 SCC 574, *Municipal Corpn. of Greater Mumbai* v. *Kohinoor CTNL Infrastructure Co. (P) Ltd.* — 542*f*, 543*a-b*, 545*a-b*, 545*e-f*, 547*c*, 551*d*, 553*c*, 553*e*, 572*g-h*, 573*f-g*

2. (2013) 3 SCC 247, *Amarnath Shrine, In re* — 556*a*

3. (2013) 1 Mah LJ 88 : (2013) 3 Bom CR 410, *Kohinoor CTNL Infrastructure Co. (P) Ltd.* v. *Municipal Corpn. of Greater Mumbai* — 542*d-e*, 544*b-c*

4. (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305, *MCD* v. *Uphaar Tragedy Victims Assn.* — 548*b*

5. (2008) 13 SCC 547, *Jayant Achyut Sathe* v. *Joseph Bain D'Souza* — 560*e-f*, 562*a*

6. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* — 556*b*, 556*c-d*

The Judgment of the Court was delivered by

H.L. GOKHALE, J.— Leave granted. This appeal is directed against

the order dated 9-7-2012[1] passed by a Division Bench of the Bombay High Court whereby Writ Petition No. 143 of 2012 filed by the respondents was allowed, and which quashed the stop-work notice dated 22-12-2011 issued by the Executive Engineer (Building Proposal), City III, Municipal Corporation of Greater Mumbai, and order dated 27-4-2012 passed by the Additional Municipal Commissioner restricting to four floors the height of Wing C (providing for public parking lot — "PPL", for short) of the buildings being constructed on Plot No. 46 of Town Planning Scheme III, N.C. Kelkar Road, Shivaji Park, Dadar, Mumbai.

Dispute between the parties, settlement thereof and Part I of the order dated 25-7-2013[2]

2. This appeal was initially heard by a Bench of G.S. Singhvi and H.L. Gokhale, JJ. Mr Harish Salve and Mr R.P. Bhatt, both learned Senior Counsel appeared for the appellants, and Mr F.S. Nariman, learned Senior Counsel appeared for the respondent.

3. The appellants wanted to restrict the PPL up to four floors only, but before the issuance of the restrictive circular dated 22-6-2011, in this behalf, the respondents had already consumed higher FSI (floor space index) on the basis of the commencement certificates issued earlier. In view of the discussion in the Court however, a settlement was arrived at between the

appellants and the respondents on the controversy concerning the PPL. Before passing the order on the settlement, the Bench noted the backdrop of the facts and circumstances of the case in paras 2 to 5 in Part I of the order passed on 25-7-2013[2] (*per* Singhvi, J. as he then was). These paragraphs read as follows: (SCC pp. 576-78, paras 2-5)

> "*2*. The plans submitted by Respondent 1 for construction of Wings A, B and C of the building were sanctioned by the competent authority of the Municipal Corporation of Greater Mumbai (for short 'the Corporation') and intimation of disapproval was issued on 15-2-2006. After the Ministry of Environment and Forests, Government of India granted clearance for the construction of commercial building, the competent authority issued commencement certificated dated 13 -9-2006. The Joint Commissioner of Police (Traffic) issued NOC dated 11-12-2009 for the development of a multi-storeyed public parking lot and vide Letter dated 2-6-2010, the State Government granted in -principle approval under Clause 33(24) of the Development Control

Regulations (DCR) for Greater Mumbai, 1991 for construction of a multi-storeyed public parking lot. Thereafter, the competent authority issued the letter of intent dated 27-7-2010.

3. During the construction of the building, the Urban Development Department of the State Government sent letter dated 4-3-2011 to the Municipal Commissioner requiring him to submit a proposal for amendment of Clause 33(24) of DCR for limiting the height of parking towers to 4 floors and also for revocation of all sanctioned proposals where the commencement certificates had not been issued. In view of that letter, the Corporation issued circular dated 22-6-2011 prescribing certain conditions under sub-clause (*iv*) of DCR 33(24) and clarified that all proposals for public parking lots shall be considered subject to those conditions. The new conditions sought to limit the height of public parking to ground plus 4 upper floors and 2 basements.

4. As a sequel to the above changes, the Corporation issued notice dated 29-11-2011 to Respondent 1 under Section 51 of the Maharashtra Regional and Town Planning Act, 1966 requiring it to show cause as to why the commencement certificate may not be revoked. Respondent 1 submitted a detailed reply dated 14-12-2011 and pleaded that the amended DCR 33(24) cannot be made applicable to its buildings because substantial construction had already been made at a cost of Rs 167 crores. Thereafter, the Executive Engineer concerned issued stop-work notice dated 22-12-2011 and directed Respondent 1 to restrict the work of public parking to 4 floors instead of 13 floors. After about six months,

the Additional Municipal Commissioner passed an order dated 27-4-2012, the relevant portion of which is extracted below:

> 'As there is a substantial construction on the core part of the plot, PPL done in this part shall be allowed to the extent of already executed construction as per report dated 27-12-2011. In the remaining portion of the plot, where there is no substantial construction, PPL shall be limited to G + 4, the developer is to be asked to modify his plans in consonance with modified DCR.'

5. The respondent challenged the stop-work notice and the order of the Additional Municipal Commissioner in Writ Petition No. 143 of 2012, which was allowed[1] by the High Court in the following terms: (Mah LJ p. 94, para 18)

> '*18*. In the facts of this case, the admitted position as accepted

in the order of the Additional Municipal Commissioner indicates that the work of development had substantially progressed by the time a notice to show cause was issued under Section 51 of the MR and TP Act, 1966. The impugned order passed by the Additional Municipal Commissioner restricting the petitioners to a height of a ground floor and four upper floors in deviation of the permission granted earlier is thereafter contrary to law. Hence, the impugned order would have to be quashed and set aside and is accordingly set aside. The stop-work notice which has been issued to the petitioners on the basis of the notice to show cause dated 29-11-2011 is to that extent quashed and set aside. Rule is made absolute in these terms. There shall be no order as to costs.'"

4. The abovereferred memorandum of settlement arrived at between the parties contained Clauses 1 and 2 (*a* to *e*) and an annexure thereto with respect to the modus operandi in that behalf. Clauses 2(*a*) and (*b*) thereof are relevant for our purpose. They read as follows:

"2. In view of the peculiar facts and circumstances of the present case and without establishing any precedent, it is agreed between the petitioners herein and Respondent 1 (Kohinoor CTNL) as follows:

(*a*) In public interest, *public parking lot (PPL) will no longer be on ground + 13 upper floors* as initially approved under amended approval dated 21-9-2011 in Wing C of the development of composite building on Final Plot No. 46, *but on the ground + 4 upper floors in Wing C as well as in three level basement below Wings A, B and C i.e. entire basement*, and the captive parking shall be from 5th to 13th, upper floors in Wing C.

(*b*) It is also agreed that in the present case of FP No. 46, the PPL will be managed and operated by Petitioner 1 (MCGM) or its nominee(s) and common ingress and egress through the common entry/exit shall be provided in Wing C for PPL as well as captive parking for Municipal Corporation of Greater Mumbai and

Respondent 1 (Kohinoor CTNL). The modus operandi in that behalf is detailed in the annexure hereto."

(emphasis supplied)

5. Since the signed memorandum of settlement was filed in the Court, the Court passed the following operative order in para 9 of Part I of the said order dated 25-7-2013[2]:

"9. Accordingly, the memorandum of settlement signed by the representatives of the parties and their advocates on 18-4-2013 together with the annexure are taken on record. We note that this settlement is arrived at on the backdrop of the facts and circumstances of this case. *We clarify that we have not in any way held the Municipal Circular dated 22-6-2011 to be bad in law*. We direct that the parties shall strictly abide by the terms of settlement."

(emphasis supplied)

6. The settlement has brought about the change as desired by the appellants, while taking care of the interest of the respondents. The complex is going to be on the land which earlier belonged to Kohinoor Textile Mill at Dadar, Mumbai. Wing A is to consist of 3 basements + ground to 5 floors, and Wing B is to consist of 3 basements + ground to 48 floors with a total height of 195.90 m. Wing C was to be in two parts as originally proposed. Ground + 14 floors thereof, were to be meant for PPL, and 15 to 30 floors were to be kept for residential purposes. Under the Municipal Circular dated 22-6-2011 prescribing conditions under clause (*iv*) of DCR 33(24), the public parking building was to be confined only to ground + 4 upper floors. The settlement accepts this position, and now as per the settlement, public parking is going to be provided in the ground + 4 upper floors in Wing C and also in the three level basements below Wings A, B and C. The private parking shall be from 5th to 13th floors of Wing C.

Part II of the order dated 25-7-2013*[2] *framing four issues

7. Although the dispute between the parties was with respect to the height of the building consisting of the PPL, it was felt that the appellants had not applied their mind to some of the issues which, in fact, did arise in the matter of the grant of permission to this complex on the said Plot No. 46 in the heart of Mumbai City. It was noticed that as per the approved plan, the recreational space available at the ground level was reduced to only 7.7% of the area of the plot, as against the required minimum of 15% (where the area of the plot was between 1001 sq m to 2500 sq m as per DCR 23). In view of the reduction in the recreational area at the ground level, it was observed in para 13 of the said order as follows: (SCC p. 580)

"… We may add that since the petitioners and the respondents have arrived at a settlement, we do not propose to go into this issue with respect to the construction of the respondent. *We are, however, surprised that the Municipal Corporation did not look into the reduction in the recreational area at the ground level very seriously, probably because the rule permits recreational space on the podium. If this is treated as a*

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correct interpretation, then it is quite possible that the recreational area left at the ground level could simply be zero. It may leave no space on the ground floor for the residents/occupants of the apartments constructed in the particular building, and that will have serious adverse impact on the right to life not only of the residents/occupants of the apartments but also of the people in the adjoining areas because all of them will have to only fall back on the public parks or playgrounds and gardens for their minimum recreational requirements…."

(emphasis supplied)

It was, therefore, felt that it was necessary to examine the correlation between DCR 23, which provides for minimum recreational/amenity open spaces, and DCR 38(34) concerning the podium.

8. Secondly, it was noted that in the present matter a higher FSI has been given in lieu of making a provision for public parking, leading to a high-rise building. Such high-rise constructions bring along with them more population and more vehicles on the adjoining narrow roads and into an already congested area, and that aspect did not appear to have been examined by the appellant Municipal Corporation. In the instant case, the approved complex is bounded on four sides by four roads, and these roads are not, at all, wide. The height of the complex is going to be quite disproportionate to the width of these roads, but that has been permitted amongst other reasons in view of making a provision for public parking. Under DCR 31(1), the height of the building has to be in proportion to the width of the road which is adjoining a building, but the proviso to that DCR makes another exception to this rule with respect to construction schemes under DCRs 33(7), 33(8) and 33(9). DCR 33(7) is regarding reconstruction or redevelopment of cessed buildings in the island city, by cooperative housing societies, or of old buildings belonging to the Municipal Corporation or the Police Department, and it grants FSI of 2.5 plus incentive FSI as specified in Appendix III, whichever is more. DCR 33(8) is regarding construction for housing the dishoused, by the Municipal Corporation. DCR 33(9) is regarding reconstruction or redevelopment of cessed buildings or urban renewal schemes on extensive areas, where the FSI is 4. These constructions also add to the population and the vehicles in that very area. A question therefore arose as to whether these exemptions are justified, valid and legal?

9. Thirdly, the impact of construction of high-rise buildings in the thickly populated areas on the traffic in the city was also discussed during the consideration of the SLP. The Court noted in para 14 of the

order, that although additional space for public parking was being provided, simultaneously higher FSI was also being granted to the developer, on that count. Consequently, such high-rise buildings would add more number of vehicles on the adjoining streets. This required examination of the impact of additional FSI on the traffic situation, particularly in the island city of Greater Mumbai.

10. Lastly, considering that the height of the complex was going up to 198.50 m, it was decided to look into the issue of hazards due to fire which the occupants of such towers could face. It was noted that there were

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provisions with respect to the space to be kept around such buildings for the movement of fire engines within the compound of such buildings, but these provisions are not uniform. The fire engines, with their ladders, available with the Municipal Corporation, do not reportedly reach anywhere beyond 14th floor. It was also noted that recently the Secretariat Building of the State of Maharashtra (known as the "Mantralaya") was engulfed with fire. The building is only six storeys, and yet it took quite a few days to control the fire, and in that exercise a few lives were unfortunately lost. Therefore, the issue of safety of the occupants of such high-rise buildings, that of the residents in the neighbourhood, and the firemen, required urgent consideration.

11. Therefore, in Part II of its order dated 25-7-2013[2], the Bench framed four issues for further consideration. These issues read as follows: (SCC pp. 581-82, para 17)

> "*17.1.* (*i*) What should be the correlation between DCR 23 and DCR 38(34) regarding the recreational area? Is it permissible to reduce the minimum recreational area provided under DCR 23 on any ground?
>
> *17.2.* (*ii*) Whether the exemption from DCR 31(1) under DCRs 33 (7), 33(8), and 33(9) is justified, valid and legal particularly in the island city of Greater Mumbai? If so, to what extent and in which context?
>
> *17.3.* (*iii*) What is the impact of the addition of FSI in the island city on the traffic situation? How can it be controlled?
>
> *17.4.* (*iv*) Whether the present mechanism for protection against the fire hazards is adequate and is being implemented effectively? If not, what should be the mechanism for enforcement with respect to the provisions concerning the fire safety?"

12. For that purpose, affidavits were sought from the following:

"(*A*) From the Municipal Corporation:

(*i*) The affidavit of the Chief Engineer, Town Planning on Issues 1 and 2.

(*ii*) The affidavit of the Chief Engineer, concerning traffic on Issue 3.

(*iii*) The affidavit of the Chief Fire Officer on Issue 4.

(*B*) From the State of Maharashtra:

(*i*) By the Secretary, Urban Development Department on Issues 1, 2 and 3 above.

(*ii*) By the Commissioner of Police (Traffic) on Issue 3 above."

13. The excessive construction at the cost of minimum recreational space, as seen in the present case, required an immediate attention to be paid to Issue (*i*). Similarly, Issue (*iv*) concerning the fire hazards also required urgent attention, and it was thought that the Court should go into the legality

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of the relevant provisions in this behalf. As against that, examination of the other two issues was taken up for the reason that the development plan for the city of Mumbai is going to be revised shortly, and certain suggestions in that behalf could be made. Issue (*ii*) arising out of exemptions to the high-rise buildings under DCRs 33(7), 33(8), 33(9) and Issue (*iii*) concerning the impact on traffic, required a detailed deliberation.

14. At this point, it is relevant to mention that a similar approach has been adopted by this Court in *MCD* v. *Uphaar Tragedy Victims Assn.*[3] That case concerned the compensation to be paid to the victims of the fire in "Uphaar" Theatre at Delhi. This Court decided the issue of compensation in para 65 of the judgment. However, the Court could not ignore that the fire had resulted in the death of 59 persons and injury to 103 persons, and therefore, this Court observed in para 66 of the said judgment: (SCC pp. 530-31)

"*66*. Normally, we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice."

And then, the Court made a number of suggestions in para 75 of its judgment to the Government for its consideration and implementation.

15. Similarly, although a settlement is arrived at, on the controversy between the parties before the Court, considering the acute problems in

the city of Mumbai with respect to shortage of recreational space, the fire hazards and high density of traffic, a further deliberation on the abovereferred four issues was felt necessary.

16. Thereafter, the matter has been heard by the present Bench. Consequent upon the above order, the necessary affidavits were filed by the officers of the appellant as well as the State of Maharashtra. A number of interveners have also assisted the Court. The interveners include (*i*) The Urban Design Research Institute ("UDRI", for short) and others, (*ii*) Maharashtra Chamber of Housing Industry, (*iii*) Practising Engineers, Architects and Town Planners Association (India), and (*iv*) Property Redevelopers Association. They have all assisted in the examination of these four issues. We will deal with their submissions in the context of the Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act", for short), and the Development Control Regulations for Greater Mumbai, 1991, framed thereunder which govern these issues.

Issue (i) concerning the reduction in the minimum recreational space from the one as required under DCR 23

17. The Development Control Regulations are referable to Section 22 (*m*) of the MRTP Act. Section 21 of the said Act requires the Planning Authority i.e. the local authority (Appellant 1 in the instant case) to prepare a development plan for the local area within its jurisdiction. Section 22 of the

Act lays down what should be the contents of a development plan, and in that behalf it provides under sub-section (*m*) that it shall contain amongst others:

> "**22. (*m*)** provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority…."

The present DCRs for Greater Mumbai, 1991 were sanctioned by the State of Maharashtra on 20-2-1991 and are enforced from 25-3-1991. The new DCRs are shortly to be formulated for the next twenty years.

DCR 23 on recreational/amenity open spaces

18. DCR 23 with which we are concerned in the first issue reads as follows:

> "**23. *Recreational/Amenity Open Spaces***.—
>
> (1) ***Open spaces in residential and commercial layouts***.—
>
> (*a*) ***Extent***.—In any layout or sub-division of vacant land in

a residential and commercial zone, open spaces shall be provided as under:

(*i*) Area from 1001 sq m to 2500 sq m 15%

(*ii*) Areas from 2501 sq m to 10,000 sq m 20%

(*iii*) Area above 10,000 sq m 25%

These open spaces shall be exclusive of areas of accesses/internal roads/designations or reservations, development plan roads and areas for road widening and shall as far as possible be provided in one place. Where, however, the area of the layout or sub-division is more than 5000 sq m, open spaces may be provided in more than one place, but at least one such place shall be not less than 1000 sq m in size. Such recreational spaces will not be necessary in the case of land used for educational institutions with attached independent playgrounds. Admissibility of FSI shall be as indicated in Regulation 35.

(*b*) ***Minimum area***.—No such recreational space shall measure less than 125 sq m.

(*c*) ***Minimum dimensions***.—The minimum dimension of such recreational space shall not be less than 7.5 m, and if the average width of such recreational space is less than 16.6 m, the length thereof shall not exceed 2½ times the average width.

(*d*) ***Access***.—Every plot meant for a recreational open space shall have an independent means of access, unless it is approachable directly from every building in the layout.

(*e*) ***Ownership***.—The ownership of such recreational space shall vest, by provision in a deed of conveyance, in all the property owners on account of whose holdings the recreational space is assigned.

(*f*) ***Tree growth***.—Excepting for the area covered by the structures permissible under (*g*) below, the recreational space shall be kept permanently open to the sky and accessible to all owners

and occupants as a garden or a playground, etc. and trees shall be grown as under—

(*a*) at the rate of 5 trees per 100 square metre or part thereof of the said recreational space to be grown within the

entire plot.

(*b*) at the rate of 1 tree per 80 square metre or part thereof to be grown in a plot for which a sub-division or layout is not necessary.

(*g*) ***Structures/uses permitted in recreational open spaces***.—(*i*) In a recreational open space exceeding 400 sq m in area (in one piece), elevated/underground water reservoirs, electric substations, pump houses may be built and shall not utilise more than 10% of the open space in which they are located.

(*ii*) In a recreational open space or playground of 1000 sq m or more in area (in one piece and in one place), structures for pavilions, gymnasia, club houses and other structures for the purpose of sports and recreation activities may be permitted with built-up area not exceeding 15% of the total recreational open spaces in one place. The area of the plinth of such a structure shall be restricted to 10% of the areas of the total recreational open space. The height of any such structure which may be single storey shall not exceed 8 m. A swimming pool may also be permitted in such a recreational open space and shall be free of FSI. Structures for such sports and recreation activities shall conform to the following requirements—

(*a*) The ownership of such structures and other appurtenant users shall vest, by provision in a deed of conveyance, in all the owners on account of whose cumulative holdings the recreational open space is required to be kept as recreational open space or ground viz. 'R.G.' in the layout or sub-division of the land.

(*b*) The proposal for construction of such structure should come as a proposal from the owner/owners/society/societies or federation of societies without any profit motive and shall be meant for the beneficial use of the owner/owners/members of such society/societies/federation of societies.

(*c*) Such structures shall not be used for any other purpose, except for recreational activities, for which a security deposit as decided by the Commissioner will have to be paid to the Corporation.

(*d*) The remaining area of the recreational open space or playground shall be kept open to sky and properly accessible to all members as a place of recreation, garden or a playground.

(*e*) The owner/owners/or society/or societies or federation of societies shall submit to the Commissioner a registered undertaking agreeing to the conditions in (*a*) to (*d*) above.

(2) ***Open spaces in industrial plots/layouts of industrial plots***.—(*a*) In any industrial plot admeasuring 10,000 sq m or more in area, 10% of the total area shall be provided as an amenity open space subject to a maximum of 2500 sq m, and

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(*i*) such open space shall have proper means of access and shall be so located that it can be conveniently utilised by the person working in the industry;

(*ii*) the parking and loading and unloading spaces as required under these Regulations shall be clearly shown on the plans;

(*iii*) such open spaces shall be kept permanently open to sky and accessible to all the owners and occupants and trees shall be grown therein at the rate of 5 trees for every 100 sq m of the said open space to be grown within the entire plot or at the rate of 1 tree for every 80 sq m to be grown in a plot for which a sub-division or layout is not necessary.

(*b*) In case of sub-division of land admeasuring 8000 sq m or more in area in an industrial zone, 5% of the total area in addition to 10% in (*a*) above shall be reserved as amenity open space, which shall also serve as general parking space. When the additional amenity open space exceeds 1500 sq m the excess area may be used for construction of buildings for banks, canteens, welfare centres, offices, crèches and other common purposes considered necessary for industrial users as approved by the Commissioner."

The provision regarding the podium

19. As has been noted in para 13 of the order dated 25-7-2013[2], the appellants did not look into the issue of reduction in recreational area at the ground level very seriously, probably because the rule permits recreational space on the podium. Some of the interveners very seriously canvassed that in view of the provision concerning recreational space on the podium, the recreational/amenity open space at the ground level could legitimately be reduced. The provision regarding the podium is seen in DCR 38(34). DCR 38 lays down the

requirements concerning parts of buildings. DCR 38(34) reads as follows:

"**38. (34) *Podium***.—(*i*) A podium may be permitted on plot admeasuring 1500 sq m or more.

(*ii*) The podium provided with ramp may be permitted in one or more level, total height not exceeding 24 m above ground level. However, podium not provided with ramp but provided with two car lifts may be permitted in one or more level, total height not exceeding 9 m above ground level.

(*iii*) The podium shall be used for the parking of vehicles.

(*iv*) The recreational space prescribed in DC Regulation 23 may be provided either at ground level or on open to sky podium.

(*v*) Podium shall not be permitted in required front open space.

(*vi*) Such podium may be extended beyond the building line in consonance with provision of DC Regulation 43(1) on one side whereas on the other side and rear side it shall be not less that 1.5 m from the plot boundary.

(*vii*) Ramps may be provided in accordance with DC Regulation 38 (18).

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(*viii*) Adequate area for drivers' rest rooms and sanitary block may be permitted on podiums by counting in FSI."

20. As far as Issue (*i*) is concerned, this Court had sought the affidavit from the Chief Engineer, Town Planning of the appellant Municipal Corporation, and from the Secretary, Urban Development Department of the State of Maharashtra. Shri Manu Kumar Srivastava, Principal Secretary to the Government of Maharashtra in the Urban Development Department has filed an affidavit affirmed on 6-9-2013. In Para 4.4 he has stated as follows:

"(4.4) I submit that in quite a few cases, the requirements of captive parking for the building can be met only by providing the same in basement or on upper parking floors or podium, which in turn requires provision of access/ramps, etc. which often makes it difficult to provide the required recreational/amenity open spaces on the ground…."

Thereafter, he has stated that it is to overcome this difficulty that the DCRs have been amended with effect from 6-1-2012 to allow recreational spaces on podium in plots admeasuring 1500 sq m or

more. In his affidavit he has pointed out that in the redevelopment projects under DCR 33(7) for reconstruction of cessed buildings, and for the urban renewal schemes under DCR 33(9), and for the slum rehabilitation projects under DCR 33(10), it is permissible to reduce the recreational/amenity open spaces to the limit prescribed in the respective Regulations. He has stated that this has been done consciously to facilitate these schemes.

21. On behalf of the appellant Municipal Corporation, Shri Rajeev Kuknur, Chief Engineer (Development Plan) has affirmed his reply on 6-9-2013. In Para 6 thereof, he has also stated that the provision for parking on podium has been made to facilitate the requirement of parking. He has, however, added "in such situation it may not be possible for the planner to provide the entire recreational/amenity space on the ground". Later in Para 7, he has pointed out that in certain other situations the amenity open spaces are permitted to be reduced. Thus, under DCR 33(1) read with Clause 6.20 of Appendix IV which applies to the redevelopment schemes for slums, the amenity space can be reduced, but still a minimum of 8% of the amenity space shall be maintained. Clause 8 of Appendix III applies the same provision to the reconstruction/redevelopment of cessed buildings under DCR 33(7). As regards the development under DCR 33(9), Clause 12.14 of Appendix III-A concerning DCR 33(9), *states that*:

> "**12.14.** Even if the recreational open space is reduced to make the project viable, a minimum of at least 10% of plot area shall be provided as recreational open space. In addition to this 10% of plot area shall be earmarked for amenity space which can be adjusted against the DP reservation if any."

22. It was canvassed on behalf of Maharashtra Chamber of Housing Industry by Mr S. Ganesh, learned Senior Counsel that DCR 38(34) clearly provides under sub-clause (*iv*) thereof, that the recreational space prescribed in DCR 23 may be provided at the ground level or on open to sky podium. In his view, this will enable the developers to provide more parking spaces

within the plots concerned since nowadays, there is a demand for even two parking spaces per flat. He submitted that, in fact, this will give a large continuous open space on the podium and in view thereof the recreational/amenity space need not be at the ground level. He submitted that even trees would be planted on the podium, and movement on the podium will be safer for elderly people as well as for the children. The areas for parking and recreation on the podium can be

separately earmarked for that purpose. A few photographs of such arrangements were also brought to our notice. He submitted that in view of the necessity of having more accommodation and more parking spaces that this provision has been made, and it should be interpreted accordingly.

23. It is very relevant to note that although Mr F.S. Nariman, learned Senior Counsel appeared for the respondent Kohinoor, stated that after the order was passed by this Court on 25-7-2013[2], he was appearing to assist the Court on the four issues framed in Part II of that order as amicus curiae. He pointed out that sub-clause (*iv*) of DCR 38 (34) lays down that the recreational space "*may be provided*" either at the ground level or on open to sky podium. As against that the recreational/amenity open space contemplated under DCR 23 was mandatory. Clause (1)(*a*) of DCR 23 speaks of "*vacant land*" and the open spaces as far as possible "*shall be provided*" at one place. He, therefore, submitted that whereas the provision under DCR 23 is mandatory, the one under DCR 38(34) is discretionary, and it cannot prevail over DCR 23.

24. Similarly, though the learned Senior Counsel Mr Harish N. Salve, appeared for the Municipal Corporation, until the passing of the order dated 25-7-2013[2], as far as the issue of recreational spaces on podium is concerned, he submitted a separate note to assist the Court. He pointed out that as sub-clause (*iii*) of DCR 38(34) states, the podium shall be used for parking of vehicles. Sub-clause (*iv*) gives a further option to provide recreational space on the podium, but it links this recreational space on the podium to the recreational space prescribed in DCR 23, by stating that the recreational space under DCR 23, may be provided at the ground level, or on the open to sky podium. In his submission, if read as an alternative to the minimum recreational space on the ground floor, this provision will lead to the serious erosion of recreational space at the ground level, affecting the minimum necessities of life, and will therefore lead to violation of the right to life, and will have to be held as bad in law, as against the guarantee provided under Article 21 of the Constitution of India. As against that in his submission sub-clause (*iv*) can survive only if this sub-clause is read down as inapplicable and not excluding the recreational space provided under DCR 23. In other words, it makes an additional provision for recreational space, over and above the one at the ground level, and does not in any way reduce

the same. This is because the podium is basically meant to provide parking, as stated in sub-clause (*iii*). Any recreational space provided on the podium is entirely discretionary, and that being so it cannot be read to lead to a reduction in the mandatory provision under sub-clause (*iii*).

25. UDRI was represented by learned Senior Counsel Mr Shyam Divan. He pointed out that DCR 23 providing for recreational space at the ground level existed since the inception of DCR in 1991, and even prior thereto since 1967. It was always contemplated that the recreational space will be at the ground level, and not at an elevated level within buildings. This is clear from the provision with respect to the trees and playgrounds contained in DCR 23. Besides, he pointed out that sub-clause (*iii*) of DCR 38(34) clearly provides that "*podium shall be used for the parking of vehicles*", meaning thereby that it is essentially to be used for parking purposes. That apart, he submitted that there is clearly a risk involved in providing both parking as well as recreational space on the podium. DCR 38(34)(*iv*) has been introduced by way of an amendment only from 6-1-2012, and it does not contain a non obstante clause that the provision is notwithstanding the mandatory requirement under DCR 23. It cannot, therefore, be read in derogation of the main provision under DCR 23.

26. Mr Divan then brought to our notice the harsh reality of the open spaces becoming smaller and smaller in the city of Mumbai. He placed the following hard statistics for our consideration. Greater Mumbai has just 1.91 sq m of open space per person. Of this, less than 0.88 sq m per person is accessible for recreational purpose. This is woefully inadequate as compared to the norms of 3 sq m per capita as prescribed by the National Building Code of India, 2005 and of 11 sq m per capita recommended by the Urban Development Plans Formulation and Implementation Guidelines (1996) of the Ministry of Urban Affairs, Government of India. He pointed out that pouring of too much of cement and concrete is not conducive to good human living, and will ultimately affect meaningful "life" within the meaning of Article 21 of the Constitution. Recreational spaces are intended to ensure that there are green "breathing spaces" between buildings and properties in the built-up environment. Trees and the land around them at the ground level are necessary for controlling the air pollution from the point of view of health of human beings as well. The shifting of recreational space from the ground to podiums will result in higher level of concretisation, diminishing green cover, and buildings being too close to each other, leading to increased city temperature.

27. Having noted these submissions, it is seen that a podium is permissible only on plots admeasuring 1500 sq m or more. So this

provision is not applicable to plots smaller than 1500 sq m. As can be seen from DCR 23(1)(*a*), it speaks of a layout or sub-division of "vacant land" and open spaces. The open spaces "shall as far as possible" be provided in one place. If a layout or sub-division is more than 5000 sq m, open space can be provided in more than one place, but at least one such place "shall be of not less than

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1000 sq m". These provisions clearly show that they are mandatory. Besides, under sub-clause (*f*) of DCR 23 there is a requirement of keeping the recreational open space permanently open to the sky and trees are to be grown in that space as laid down i.e. five trees per hundred square metres of the recreational space within the plot. DCR 2 (64) defines "*open space*" to mean an area forming an integral part of a site left open to the sky. A "*site*" is defined under DCR 2(83) to mean a parcel or piece of land enclosed by definite boundaries. These DCRs when read together, very much make it clear that the recreational/amenity space has to be on the land i.e. on ground level and it has got to be 15%, 20% or 25% of the area depending upon its size.

28. As rightly pointed out by the learned Senior Counsel Mr Nariman and Mr Salve, the requirement of recreational space on the podium under DCR 38(34)(*iv*) is discretionary. Besides, as the abovereferred sub-clause (*iii*) lays down, podium shall be basically used for parking. Besides, sub-clause (*iv*) does not contain a non obstante clause to override the requirement under DCR 23 making it mandatory to provide recreational space on the ground floor. That being so, the provision under DCR 38(34) cannot be read in derogation of the requirement under DCR 23 or else it will result into serious erosion in the basic requirements for a good life affecting the guarantee of right to life, under Article 21 of the Constitution of India. We have therefore to read down sub-clause (*iv*) of DCR 38(34) as inapplicable and not excluding the mandatory provision under DCR 23.

29. It is also relevant to note that the development schemes under DCRs 33(7), 33(9) and 33(10) provide for lesser recreational area/amenity spaces. Thus, under DCRs 33(7) and 33(10) reduction in the amenity open space is permitted to make the project viable, but still minimum 8% of the project area is required to be maintained as amenity open space. Similarly, for the schemes under DCR 33(9) minimum 10% of the plot area is required to be retained as recreational space. In other properties, where there are no such constraints to make

the development schemes of rehabilitation or reconstruction of old buildings or slums viable, there is no reason why the amenity open space at the ground level should be read as permissible, to be reduced. The only ground being given is to provide more parking and more accommodation, meaning thereby more construction, concretisation and financial expediency. Such a purpose cannot be read into the provisions as they presently exist, nor is it desirable to do so from the point of view of the requirement of minimum open spaces at the ground level.

30. Besides, as pointed out by Mr Divan, the requirement of having trees and open land around them is necessary from an environmental point of view, since there is already excessive concretisation, and a very serious reduction in open spaces at the ground level. It must be noted that the right to a clean and

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healthy environment is within the ambit of Article 21, as has been noted in *Amarnath Shrine, In re*[4] in the following words: (SCC p. 258, para 12)

> "*12*. The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safety and in a clean environment."

The right to a clean and pollution free environment, is also a right under our common law jurisprudence, as has been held by this Court in *Vellore Citizens' Welfare Forum* v. *Union of India*[5] where this Court held: (SCC p. 660, para 16)

> "*16*. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment."

31. In the same judgment the Court emphasised the importance of sustainable development, and the need for a balance between development and ecological considerations, in the following words: (*Vellore Citizens' Welfare forum case*[5], SCC pp. 657-58, para 10)

> "*10*. The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer … 'Sustainable Development' as defined by the Brundtland Report means 'development that meets the needs of the present without compromising the ability of the future

generations to meet their own needs'. We have no hesitation in holding that 'Sustainable Development' as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists."

32. Therefore, after reflecting upon the legal position, we are clearly of the opinion that having 15%, 20% or 25% of the area (depending upon the size of the layout) as the recreational/amenity area at the ground level is a minimum requirement, and it will have to be read as such. We therefore, answer Issue (*i*) by holding that it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area.

Issue (iv) with respect to the protection against fire hazards

33. As stated earlier, this issue was decided to be gone into considering that the main building in the present complex is going to be of 48 storeys. This issue was decided to be gone into also in the backdrop of the recent fire that engulfed the six-storeyed Secretariat building of Maharashtra, in Mumbai. It took a few days to extinguish the fire which resulted into a loss of

lives. This Court sought the affidavit of the Chief Fire Officer of the appellant Municipal Corporation on this issue. Shri Suhas Vishnu Joshi, Chief Fire Officer, Mumbai Fire Brigade, has affirmed his reply on 15-9-2013. In Para 3 of his affidavit, he has stated that the Fire Brigade of the appellant Municipal Corporation has got special appliances such as aerial ladder platform which can reach up to the height of 70 m, and the Department is in the process of procuring special appliances which can reach up to the height of 90 m. In Para 4, he has accepted that in high-rise buildings above 90 m, the fire-fighting operations cannot be carried out from outside the building alone. They are also to be fought from inside the building with the help of fire safety and protection measures/installations provided in the high-rise buildings as per the building bye-laws. He has pointed out the passive safety measures as well as active fire safety measures necessary for the high-rise buildings in his affidavit. Amongst the fire safety measures, he has pointed out that the width of the access road and the open space for manoeuvrability of fire appliances has to be adequate.

34. It is also pointed out in this affidavit of the Chief Fire Officer that there is a State Act known as the Maharashtra Fire Prevention and Life Safety Measures Act, 2006 under which the developers/society in charge of the building have to maintain the fire prevention and life safety measures in good repair and efficient condition at all times. In Para 7 of his affidavit he has stated that for any high-rise and special type of buildings, no-objection certificate from the Chief Fire Officer is required at two stages viz. prior to the construction of the building and after the compliance of the requirement. Besides, for buildings having a height above 70 m, there is a High-Rise Technical Committee under the Chairmanship of a retired Hon'ble High Court Judge with other experts and the proposal for high-rise buildings has to be cleared by this Committee.

35. As far as the manoeuvrability of the fire appliances is concerned, fire protection requirements under DCR 43 become relevant. This DCR 43 is split in two parts (*1*) General, and (*2*) Exits for every building. It reads as follows:

> "**43. *Fire Protection Requirements***.—
>
> (1) ***General***.—The planning design and construction of any building shall be such as to ensure safety from fire. For this purpose, unless otherwise specified in these Regulations, the provisions of Part IV; fire protection chapter, National Building Code, shall apply.
>
> For multi-storeyed, high-rise and special buildings, additional provisions relating to fire protection contained in Appendix VIII shall also apply—
>
> (A) For proposal under Regulations 33(7) and 33(10), in case of rehabilitation/composite building on plots exceeding 600 sq m and having height more than 24 m, at least, one side other than the roadside, shall have clear open space of 6 m at ground level, accessible from the roadside:

> Provided, if the building abuts another road of 6 m or more this condition shall not be insisted upon:
>
> Provided further that in case of redevelopment proposals under DCR 33(7), for plot size up to 600 sq m, 1.5 m open space will be deemed to be adequate.
>
> (B) For the proposal other than (A) above:

(*a*) Buildings having height more than 24 m up to 70 m, at least one side, accessible from roadside, shall have clear open space of 9 m at ground level:

Provided, however, if podium is proposed it shall not extend 3 m beyond building line so as to have clear open space of 6 m beyond podium:

Provided, further, where podium is accessible to fire appliance by a ramp, then above restriction shall not apply.

(*b*) Buildings having height more than 70 m, at least two sides, accessible from roadside, shall have clear open space of 9 m at ground level:

Provided, however, if podium is proposed it shall not extend 3 m beyond building line so as to have clear open space 6 m beyond podium. No ramps for the podium shall be provided in these side open spaces.

Provided further, where podium is accessible to fire appliance by a ramp then above restriction shall not apply.

(*c*) Courtyard/ramp/podium accessible to fire appliance shall be capable of taking the load up to 48 tonnes.

(*d*) These open spaces shall be free from any obstruction and shall be motorable.

(2) ***Exits***.—Every building meant for human occupancy shall be provided with exits sufficient to permit safe escape of its occupants in case of fire or other emergency for which the exits shall conform to the following—

(*i*) ***Types***.—Exits should be horizontal or vertical. A horizontal exit may be a doorway, a corridor, a passage way to an internal or external stairway or to an adjoining building, a ramp, a verandah, or a terrace which has access to the street or to the roof of a building. A vertical exit may be a staircase or a ramp, but not a lift.

(*ii*) ***General requirements***.—Exits from all the parts of the building, except those not accessible for general public use, shall—

(*a*) provide continuous egress to the exterior of the building or to an exterior open space leading to the street;

(*b*) be so arranged that, except in a residential building, they can be reached without having to cross another occupied unit;

(*c*) be free of obstruction;

(*d*) be adequately illuminated;

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(*e*) be clearly visible, with the routes reaching them clearly marked and signs posted to guide any person to the floor concerned;

(*f*) be fitted, if necessary, with fire-fighting equipment suitably located but not as to obstruct the passage, clearly marked and with its location clearly indicated on both sides of the exit way;

(*g*) be fitted with a fire alarm device, if it is either a multi -storeyed, high-rise or a special building so as to ensure its prompt evacuation;

(*h*) remain unaffected by any alteration of any part of the building so far as their number, width, capacity and protection thereof is concerned;

(*i*) be so located that the travel distance on the floor does not exceed the following limits—

(*i*) Residential, educational, institutional and hazardous occupancies: 22.5 m.

(*ii*) Assembly, business, mercantile, industrial and storage buildings: 30 m.

Note.—The travel distance to an exit from the dead end of a corridor shall not exceed half the distance specified above. When more than one exit is required on a floor, the exits shall be as remote from each other as possible:

Provided that, subject to the provision under DC Regulation 44(5)(*a*) for all multi-storeyed high-rise and special buildings, a minimum of two enclosed type staircases shall be provided, at least one of them opening directly to the exterior, to an interior, open space or to any open place of safety.

(*iii*) ***Number and width of Exits***.—The width of an exit, stairway/corridor and exit door to be provided at each floor in occupancies of various types shall be as shown in Columns 3 and 5 of Table 21 hereunder. Their number shall be calculated by applying to every 100 sq m of the plinth or

covered area of the occupancy, the relevant multiplier in Columns 4 and 6 of the said Table, fractions being rounded off upward to the nearest whole number."

36. Now, what is seen here is that under Clause 1(B) of DCR 43, for buildings having heights of more than 24 m up to 70 m, at least one side accessible from roadside shall have clear open space of 9 m at ground level. For buildings which have a height of more than 70 m, at least two sides accessible from roadsides, shall have a clear open space of 9 m at ground level. In both these cases where podium is proposed, it shall not extend 3 m beyond the building line so as to leave clear open space of 6 m beyond podium. Similarly, Clause 1(A) lays down that in case of the proposals under DCR 33(7) (which are for the cessed building) and those under DCR 33(10)

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(which are for the slum rehabilitation), if the plot of the building exceeds 600 sq m and the building is having height of more than 24 m, at least one side other than the roadside shall have a clear open space of 6 m at ground level accessible from the roadside. The first proviso to Clause 1(A) makes an exception if the building abuts another road of 6 m or more. In that case this condition is not insisted upon. Thus, as can be seen, a minimum access of 6 m to every building from two sides is insisted i.e. from a roadside and from one side within the property, or from two roadsides so that the fire engine can approach the building at least from two sides. The second proviso under Clause 1(A) however states that if the redevelopment proposal is under DCR 33(7) i.e. for reconstruction or redevelopment of cessed buildings on plots of size up to 600 sq m, only 1.5 m side open space will be deemed to be adequate. This will mean a space of just about 5 ft or so, through which a fire engine can certainly not enter.

37. We asked Mr R.P. Bhatt, learned Senior Counsel appearing for the Municipal Corporation as to what would be the height of these buildings on plots up to 600 sq m, and his answer was that it will depend on the number of flats for the families to be accommodated in such buildings, and it may as well go up to 20 floors.

38. Mr Ganesh, learned Senior Counsel appearing for the Maharashtra Chamber of Housing Industry defended the existing provision on the ground of economic viability of such projects, and submitted that for such projects under DCR 33(7), the side space inside the property will have to be reduced on that count. He submitted that some of these plots are very small and are in congested areas, and

that these redevelopment schemes are carried out by private developers. Additional construction is required to be carried out to provide minimum accommodation to the existing occupants as well as for the newly entering occupants who pay higher amounts to buy the additional flats. He referred to and relied upon a judgment of a Bench of two Judges of this Court in *Jayant Achyut Sathe* v. *Joseph Bain D'Souza*[6] wherein the challenge to the 1.5 m open space (i.e. about 5 ft) in the schemes under DCR 33(7) came to be rejected.

39. On the other hand, Mr Nariman pointed out that although the ladders/snorkels which the Fire Department has are supposed to go up to the height of 70 m, the maximum reach of the snorkel depends on various factors such as wind velocity, availability of space, and tilt and angle of the approach. Thus, the reach is always less than the theoretical maximum height. Besides, there are 33 fire brigade stations in Greater Mumbai, 15 in the city, 12 in western suburbs and 6 in eastern suburbs. None of these stations have sufficient equipment (snorkels) in their stations since they are in limited numbers.

40. It was also pointed out by Mr Nariman that as far as the internal arrangement in the multi-storeyed buildings is concerned, a refuge floor is required to be provided above every 7 floors for buildings crossing the height

of 24 m. However, these refuge floors are very often not properly maintained, are not kept vacant, and are used for other purposes. The consequence is that the effectiveness of the fire protection from within the building remains in peril. He further pointed out that the Fire Brigade is supposed to check installations such as sprinklers and other fire-fighting equipment's as provided under Appendix VIII inside the buildings periodically, but the Department is understandably overworked, and therefore not in a position to effectively cover all the buildings in the city.

41. Mr Shyam Divan, learned Senior Counsel appearing for UDRI pointed out that the present fire protection requirements contained in DCR 43(1) if strictly complied with, could be considered as adequate for mid-rise buildings and structures up to 13 storeys. However, when it comes to the high-rise buildings, the fire safety requirements are primarily compromised by relaxation in the access under DCR 17 and the side open/setback spaces between the buildings under DCR 28. He submitted that the provision contained in the second proviso of DCR 43 (1)(A) could not be justified.

42. As far as the schemes under DCR 33(7) are concerned, Mr Shyam Divan, learned Senior Counsel appearing for UDRI has pointed out that there is already a criticism with respect to these schemes viz. that they are working more for the developers and for the private new entrants who buy the flats at higher cost, than for providing the accommodation to the existing occupants. The State Government is also raising its hands on the ground of financial difficulties to take up such schemes. Consequently, the inability of fire engines to go into such plots, and thereby permanently denying the occupants adequate fire protection is not the concern of either of them. Protection of the environment and human life are constitutional mandates, and even if the developers and the public authorities choose to ignore these essentials, this Court cannot.

Adequate access for the fire engines as an essential requirement

43. Having noted the submissions of all the counsel in this behalf, what we find is that whereas the provisions for the mid-rise buildings up to 13 floors are somewhat adequate, those beyond are required to be strictly implemented from within as well. The provisions for the refuge floor and various requirements from within have to be strictly scrutinised and insisted upon. That apart the second proviso to DCR 43 (1)(A) cannot stand scrutiny of minimum safety requirement. If the access of 6 m is required from at least one side within the property for the fire engine to enter and move inside, we fail to see as to how in redevelopment proposals under DCR 33(7) where the plot size is up to 600 sq m, open space of 1.5 m can be said to be adequate. As fairly pointed out by Mr Bhatt, the buildings on such plots can also go up to 20 floors, depending upon the number of flats for the occupants to be provided for. If that is so, it is necessary to have an open space of the width of 6 m within the property for the fire engine to enter the property at least from one side which is so provided for every other building.

44. It is true that in *Jayant Achyut Sathe*[6] the challenge to the five feet open space in the schemes under DCR 33(7), came to be rejected. However, as can be seen from para 49 of the judgment, it was principally rejected on the ground that the challenge was hopelessly delayed since this provision restricting the open spaces in these schemes had been in existence since 1984. The question of fire engines not being able to go inside such plots, was raised in the Bombay High

Court, but this Court has not gone into that aspect in the said judgment. We are looking into the issue of the side space on the backdrop of the failure of the Fire Brigade to quickly extinguish the fire even in the six-storeyed Secretariat Building in Mumbai, which has sufficient side spaces on all sides. Not providing a minimum space of 6 m which makes room for the fire engine to access the building amounts to violation of the right to life and equality of the residents of these buildings, by not providing the same standard of safety to them which is available to residents of all other buildings. It is true that some of these plots under the DCR 33(7) schemes are small plots and are in congested areas. But if that is so, nothing prevents the State Government from taking over such schemes for which it can finance from the overall cess collection. In such cases, it may have to accommodate only the existing occupants. This can also be achieved by calling upon such occupants to partly contribute towards the construction cost. But human life cannot be made to suffer only on the ground that in the redevelopment scheme sufficient access cannot be provided for the fire engine to enter within the plot even from one side.

45. We are, therefore, of the view that the second proviso to DCR 43 (1)(A) is discriminatory as against the occupants of the plots up to the size of 600 sq m and therefore violative of Article 14 of the Constitution of India. The provision is likely to lead to a hazardous situation, affecting the life of the occupants, and therefore violative of Article 21 of the Constitution. We, therefore, hold the provision to be bad in law. If the fire is to be extinguished at the earliest the fire engine must be able to reach the spot of fire, without any delay. Manoeuvrability of the fire engine is, therefore, of utmost importance. As such, most of the city roads are very narrow. On top of that if there is no adequate space for the fire engine to enter the property, the situation will become worse. We are clearly of the view that even for redevelopment proposals of plots up to the size of 600 sq m under DCR 33(7), an open space of the width of 6 m within the property which is accessible from the road on one side, will have to be maintained unless the building abuts roads of 6 m or more on two sides, or another appropriate access of 6 m to the building is available apart from the abutting road. This will be subject to the decision of the Chief Fire Officer in writing. Besides, we also feel that it is necessary to direct that the Fire Department must insist from the developer/society of all the buildings, to certify at least once in six months that the access to the building, the internal exits and the internal fire-fighting arrangements are maintained as per the expectations under the DCR, the norms of the Fire Department, and must check them periodically, on its own.

The decision on Issues (i) and (iv) to apply prospectively

46. Although, for the reasons stated above, we are of the view that the provision under DCR 38(34) cannot be read in derogation to the one under DCR 23 with respect to the recreational area, and also that the second proviso to DCR 43(1)(A) on fire protection requirements is hazardous and discriminatory against the occupants of the schemes under DCR 33(7), we do note the submission by the intervening Practising Engineers, Architects, and Town Planners Association that any such declaration/changes be implemented with prospective effect, namely, where the commencement certificate (CC) has yet not been granted.

Issue (ii) regarding height of the buildings vis-à-vis the width of the adjoining road, and Issue (iii) on the impact of additional FSI on the traffic situation

47. As far as Issues (*ii*) and (*iii*) are concerned, though they are, in a way, independent issues, they are interrelated also, and therefore, we will deal with them together. These are issues requiring wider consideration and consultation amongst planners, and as far as these issues are concerned, this Court will confine itself to making certain recommendations for consideration of the planners. This is because this Court is conscious of the fact that the new development plan for the city of Mumbai is in the process of being drafted. It is for the planners to examine these issues. However, since these issues have arisen in the context of the present matter, this Court has invited the response from the appellant Municipal Corporation as well as the State Government. The interveners concerned have also made their submissions. We shall look into the submissions in this behalf and make certain suggestions for consideration in the light thereof.

Issue (ii): Height of buildings vis-à-vis width of the roads

48. DCR 31(1) lays down that the height of a building shall not exceed one-and-a-half times the total of the width of the street on which it abuts. Issue 2 is framed in the backdrop of the fact that in the present case, a tower of the height of 195.90 m is being constructed. This tower is bounded by four roads and the height of the tower is disproportionately high, as against the width of the adjoining roads. The first proviso to DCR 31(1) lays down that this restriction shall not be applicable for the construction of buildings undertaken under DCRs 33(7), 33(8) and 33(9). Though, these DCRs are for the housing redevelopment schemes they also add to the population in the particular area as well as the vehicles. It is from this point of view that

the question has been framed as to whether these exemptions are justified, valid or legal?

49. DCR 31(1) reads as follows:

"**31. *Heights of buildings***.—

(1) ***Height vis-à-vis the road width***.—The height of a building shall not exceed one-and-a-half times the total of the width of the street on which it abuts and the required front open space. The restrictions of

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height of the building spelt out in Regulation 31(1) shall however, cease to apply in case where the plot fronts on road having width more than 18.00 m and where front marginal open space of 12 m minimum is observed, provided that open spaces as on other sides are made available as required from the fire safety point of view. For this purpose, the width of the street, may be the prescribed width of the street, provided the height of the building does not exceed twice the sum of the width of the existing street and the width of the prescribed and required open space between the existing street and the building. The latter width shall be calculated by dividing the area of land between the street and the building by the length of the front face of the building.

Explanations.—

(*i*) '**Prescribed width**' here means the width prescribed in the development plan or the width resulting from the prescription of a regular line of the street under the Mumbai Municipal Corporation Act, 1888, whichever is larger.

(*ii*) If a building abuts two or more streets of different widths, it shall be deemed for the purpose of this regulation to abut the wider street; the height of the building shall be regulated by the width of that street and may be continued to this height to a depth of 24 m along the narrower street, subject to conformity with Regulation 28:

Provided however, that restrictions on height spelt out in this regulation shall not be applicable for reconstruction and redevelopment of old buildings undertaken under Regulations 33 (7), 33(8) and 33(9) of these Regulations, which are not affected by Coastal Regulations Zone Notification dated 19-2-1991, issued by the Ministry of Environment and Forests, Government of India, and orders issued from time to time:

Provided however that restrictions on height spelt out in this

regulation shall not be applicable for construction of buildings undertaken under Regulations 33(10) and 33(14) of these Regulations for implementation of Slum Rehabilitation Scheme."

50. As far as this issue is concerned, response was sought from the Secretary, Urban Development Department, of the State of Maharashtra, and the Chief Engineer, Town Planning of the appellant. Shri Manu Kumar Srivastava, Principal Secretary, Urban Development Department, Government of Maharashtra has explained these exemptions in his affidavit. He has pointed out that these schemes under DCRs 33(7), 33(8) and 33(9) seek to achieve free of cost in situ rehabilitation of the occupants living in old and dilapidated buildings. Therefore, to make the scheme viable, incentive FSI is granted, which the developer uses to construct what is called as a "sale component" that is sold in the open market to recover the cost incurred by him for constructing the tenements for rehabilitation of the existing tenants. Therefore, the restriction on the height of these buildings vis-à-vis the width of the road, is required to be relaxed.

51. Shri Rajiv Kuknur, Chief Engineer, Development (Development Plan) in his affidavit on this issue on behalf of the appellants, reiterated that the exemptions under these DCRs are for accommodating existing tenants which is done with the participation of private developers. Mr Ganesh,

appearing for the Maharashtra Chamber of Housing Industry, has similarly justified granting higher FSI and construction of the high-rise buildings on that footing.

52. The State Government was represented by the learned Senior Counsel, Mr Shekhar Naphade. He pointed that the city was suffering from some basic constraints viz. on the one hand, the population was increasing, particularly in the suburbs, and on the other hand, the land resources were very limited. There was also the floating population moving from the northern suburbs to the city everyday and returning back by the evening. He submitted that one has to take into consideration the practical realities. At the time when the development plan was prepared in 1991, the appellant Municipal Corporation found that it could not acquire land for various public projects such as gardens and playgrounds and therefore, the concept of Transferred Development Rights (TDR) was introduced, whereunder the landowner surrenders the land required for gardens or playgrounds and gets the TDR in lieu thereof. He pointed out that the population density in

Mumbai was very high. It was 270 persons per hectare as against 106 of New York, 83 of Singapore and 64 of Hongkong. The Corporation had to adjust the competing interests and therefore, at appropriate places the high-rise buildings had to be permitted.

53. Mr Shyam Divan, on the other hand, submitted that these tall structures have affected access to natural light and ventilation and have created a number of health problems. In his submission, there should not be a blanket exemption for projects involving additional FSI from the height restrictions under DCR 31. There should be accountability on the part of the authority and the project developer to whom relaxation is granted. He submitted that some of these buildings which were reconstructed with high FSI under DCRs 33(7), 33(8) and 33(9), had been reduced to vertical slums. The developers do not bother to look into the maintenance of these schemes, the construction is poor and a large number of the occupants for whom these houses are constructed, sell them and the purpose of having the scheme, gets defeated.

Issue (iii) concerning impact of FSI on the traffic situation

54. As far as Issue 3 viz. impact of FSI on the traffic situation is concerned, Shri Manu Kumar Srivastava, has pointed that as per the census of 2011, 30.82 lakh people were staying in the island city. Due to the accelerated economic growth, there is a spurt in the vehicles of the occupants, as well as, those entering the island city. In Para 6.3, he has placed on record the steps taken by the State Government in this behalf. This Para 6.3 reads as follows:

> "*6.3* … * * *
>
> (*i*) Revising the captive parking requirements upwards for various categories of buildings.

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> (*ii*) Introducing instruments like Regulation 33(24) for creating public parking lots.
>
> (*iii*) Taking up construction of mass rapid transit systems like Metro Rail, Mono Rail, etc. so as to wean people away from the use of personalised means of transport."

In Para 6.4 he has referred to the suggestions made by a High-Powered Committee regarding traffic management and that steps were being taken according to those recommendations. In Para 7 of his affidavit, he has stated that the draft development plan for the period 2014-2034 is under preparation, wherein many of these difficulties will be taken

care of.

55. Shri R.C. Dixit, Chief Engineer, Roads and Traffic of the appellant Municipal Corporation has filed his affidavit on Issue 3. He has pointed out that the number of vehicles in Greater Mumbai has increased from 3.08 lakhs from 1981 to 19.38 lakhs in 2011, and the population has increased during this period from 82.43 lakhs to 124.78 lakhs. Out of this population, that of the island city is 31.06 lakhs. He has pointed out in Para 16 of his affidavit that the State Government has constituted a High-Powered Committee on 6-6-2012 to suggest corrective and remedial measures. It has also to prepare an action plan for recommendations up to 2016-2017. In Para 18, he has referred to various recommendations made by the High-Powered Committee and that the same are being followed.

56. Shri Vivek Phansalkar, Commissioner of Police, Traffic, Mumbai, has stated in Para 9 of his reply that as per information of the State Transport Department, on an average 450 new vehicles were being added to the road network every day. The vehicular population by January 2013 was nearly 21 lakhs. He has stated that Mumbai continues to have a high usage of public transport, yet there is a relatively sharp increase in use of cars in the last decade which has pushed Mumbai into a situation of a gridlock. Increasing vehicles on the roads have led to bottlenecks for traffic movement. In Para 13 he has stated that no definite findings can be arrived at without a comprehensive study of the impact of additional FSI in the island city of Mumbai on traffic density. He has however, accepted that periodical increase in FSI would result in more construction which, in turn, could lead to the higher tenement density, indicating an increase in traffic. In Para 14, he has suggested various measures to control the traffic congestion.

57. UDRI has made various suggestions. Its trustees include Mr Charles Correa, an eminent architect and town planner; Shri Dipak Parekh, an eminent economist; Shri D.M. Sukhtankar, retired Municipal Commissioner and former Secretary to the Government of Maharashtra and others. This institute has made a detailed study of the problems of the city. With respect to Issue 2, this institute has submitted as noted above, that there should not be a blanket relaxation for the high-rise buildings, and it should be examined locality wise. Absence of any check in this behalf, has resulted into very tall buildings with no open spaces on extremely narrow streets. It is often seen that whereas the ordinary FSI is 1.33, the minimum FSI available to the

schemes under DCRs 33(7), 33(8) and 33(9) is 2.5, and there is no upper limit. No assessment is made of the sustainable carrying capacity of the areas in which these projects are implemented. There is no transport impact assessment on the neighbourhood in such projects. A locality wise approach is therefore required.

58. In its submissions on the issues at hand, UDRI pointed out that whereas the total open space in Mumbai is 3.8%, if we compare it with another crowded area viz. Manhattan in US, there the public open space for recreation is 13.1%. The National Building Code (of India) requires 3 sq m per capita by way of open space. However, Greater Mumbai has just 1.91 sq m of open space per person, and of this less than 0.88 sq m per person is accessible for recreation. Each Manhattan resident occupies 11 times as much floor space as a Mumbai resident. Doubling or trebling Mumbai's FSI will only make it two or three times denser than Manhattan in regard to the number of people on the ground. Consequently, the open space available per person will become even less.

59. Since the project of respondent Kohinoor is going to be at a busy road junction near Shivaji Park in the Dadar area of Mumbai, it is pointed out by UDRI that Dadar, Mahim, and Matunga areas, are essentially residential areas. Various housing colonies were laid out, as per the Town Planning Scheme, such as Dadar Parsi Colony and Hindu Colony, etc. In fact, Mr Divan pointed out that the entire area around Shivaji Park was laid out systematically as per the norms, for a specified population, and it is like a heritage area. Requisite provisions for gardens, schools, roads, footpaths and playgrounds, etc. have been made for a certain density of population. Now with the reconstruction schemes being proposed, suddenly tall buildings are coming up even near the school buildings, and adding further to the density and pressure on the existing infrastructure. The roads having been laid out much earlier, and being in proper proportion to the height of the adjoining buildings, these new tall buildings coming up in the very area are causing congestion and greater traffic. This is affecting the life of the people around and even the school-going children, with increased traffic and parking on the roads. The roads which were adequate at one point of time, are now being found to be narrow. Plot No. 46, with which we are concerned, in the present matter, had a textile mill earlier, and now a huge commercial complex has been approved on it. But for this construction, there were no such large commercial complexes in this entire area. Earlier only those commercial activities were permitted which were necessary for the use of the residents. This huge commercial complex is going to add tremendous pressure on the traffic in the area and at an already busy junction.

Suggestions on Issues (ii) and (iii) for consideration when the New Development Plan is drafted

60. We have noted the submissions on both these issues, and what we find is that the exemptions from DCR 31(1) for schemes under DCRs 33(7),

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33(8) and 33(9), though apparently meant for laudable purpose, are very often resulting into extreme crowding, and traffic congestion. It is necessary that while granting exemptions from DCR 31(1), there must be a scheme-wise approach, and there ought to be a proper supervision of the construction. These development schemes and the additional FSI thereunder, should be examined locality wise. The impact of such high-rise buildings on the adjoining locality as well as on the traffic, is required to be examined before granting such permission.

61. In our view, there is a need to restrict the additional pressure on existing infrastructure so that it does not affect the quality of life. The existing social infrastructure like educational institutions, open spaces, hospitals, etc. and physical infrastructure like water supply and drainage is already overburdened. Therefore, wherever possible, the State Government, the Planning Authority, and the committee entrusted with drafting of the new plan should consider contribution by the existing occupants themselves to a good extent towards the construction cost, or the State should contribute through its agencies or from the amount of cess collected. This will result into curtailing the number of additional entrants and will not add to the density of the population. This approach should particularly be examined where the plots are small or are in congested areas, and particularly where the proposal is under DCR 33(7). The new development plan is to be prepared shortly, and while preparing the plan these aspects concerning restrictions on blanket exemptions, contribution by the existing occupants to the reconstruction schemes, locality wise consideration and impact of additional FSI on traffic, ought to be gone into. In areas where the old town planning schemes have prescribed a uniform layout, one can accept some buildings going up to a certain extent, if necessary, to accommodate the existing occupants in a reconstruction scheme. However, it should not result into a plethora of steeply rising buildings, to accommodate outsiders to the building, adding to the population and traffic, and disturbing the existing order of the layout completely.

Reconstitution of the Technical Committee for High-Rise

Buildings

62. It has been pointed out on behalf of the Municipal Corporation that subsequent to a PIL in the Bombay High Court in the case of Tardeo Haji Ali Residents Welfare Association, the State Government has constituted a "Technical Committee for High-Rise Buildings" (i.e. buildings exceeding 70 m in height):

62.1. As per the note submitted by the learned Senior Counsel for the Municipal Corporation, the terms of reference of the Committee are as follows:

"(*1*) The Committee shall be of advisory nature and it will advise the Municipal Commissioner regarding the feasibility of the development proposals that might be referred to it by the Commissioner.

(*2*) It will be open for the Commissioner to overrule the recommendations of the Committee, after giving a proper and reasonable

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justification in writing. Such powers will not be delegated to any subordinate officer.

(*3*) In specific cases, if the Chairman desires, any expert from other fields may be invited for the meeting of the Committee."

62.2. The note points out

(*1*) The building proposals which are to be referred to the Committee.

(*2*) The procedure to be followed by the Committee.

(*3*) The points to be considered by the Committee viz.

(*a*) ***Architectural points***:

(*1*) Clear width of access available.

(*2*) Location, width and number of staircase.

(*3*) Natural ventilation to staircase and common lobby.

(*4*) Whether benefit of DC Rule 33(24) is availed?

(*5*) The minimum net plot size for high-rise proposal is prescribed as 1000 sq m and 850 sq m for proposals under DCR 33(7).

(*6*) Depth and numbers of the basement.

(*7*) Area and location of the refuge floors.

(*8*) Open spaces, podiums, etc.

(*9*) Two-wheeler and four-wheeler parking provisions in the

building.

(*10*) Width of common lobby and ventilation.

(*b*) ***Structural and geotechnical points***:

(*1*) Soil report indicating soil strata, depth of the hard rock, etc.

(*2*) Type of foundation i.e. pile foundation or raft foundation or open foundation.

(*3*) Design base report (DBR) for the proposal.

(*4*) Various type of tests carried on site i.e. wind tunnel test.

(*5*) Gust factor and deflection.

(*6*) Details of the rock anchors, if any provided for basement.

(*7*) Details of the soil retaining methods.

(*c*) ***Environmental points***:

(*1*) Shadow analysis.

(*2*) Wind analysis.

(*3*) Heat analysis.

(*4*) Traffic study and traffic management.

(*5*) Ecological study (tree plantation, green area, etc.).

(*6*) Disaster management plan.

(*7*) Total water requirement.

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(*8*) Total waste water sewage generated and disposal (design of sewerage treatment plant).

(*9*) Effect of the construction material on environment.

(*10*) Rain water harvesting and storm water management.

(*11*) Air environment in construction and operation phase.

(*12*) Solid waste management.

(*13*) Energy conservation techniques.

(*d*) ***The point of view of the CFO***:

(*1*) Height of first refuge floor from ground floor and also height of subsequent refuge floors.

(*2*) Location of refuge area.

(*3*) Whether refuge area is cantilevered.

(*4*) Clear open space along with turning radius for movement of fire tender around the building.

(*5*) Width and gradient of ramp (one-way or two-way) leading to podium.

(*6*) Alternate provision for fighting the fire from ground.

(*7*) Driveway for fire tender movement on paved RG.

(*8*) Height of underpass in case fire tender moving below building.

(*9*) Podium line should be flush with building line on refuge facing area.

(*10*) Number of staircase and width of staircase.

(*11*) Distance between two staircases, through common lobbies/passages.

(*12*) Natural ventilation through sidewalls of basements.

(*13*) Compartmentalisation of the basements.

63. The first Committee was appointed by a resolution of the Urban Development Department dated 28-7-2004. The composition of the Committee has changed from time to time. We are informed that the term of the existing Committee, which is the third Committee, has expired. The Committee consists of six members and is headed by a retired Judge of the Bombay High Court, as the Chairman. It has two ex-officio members, namely, the Chief Engineer (Development Plan) of the appellant who is also the Member-Secretary, and the Chief Fire Officer of the appellant. There are three expert members. Following are the present expert members:

"(*1*) Prof. R. S. Jangid, Deptt. of Civil Engineering, IIT Bombay, as a Structural Engineering Expert.

(*2*) Prof. Abhay Bambole, Professor and Head of the Structural Engineering Department, VJIT, Matunga, as the Soil and Geotech Expert.

(*3*) Dr Rakesh Kumar, Director and Gr. Scientist and Head, NEERI Regional Centre as the Environmental Expert."

64. It has been suggested that we appoint a new committee, though the State Government has expressed its willingness to extend the term of the present committee. Mr Nariman has, in fact, suggested that the Committee should consist of members who will play a proactive role. Mr Divan submitted that it should be a development plan oversight committee, and it should at least look into the grievances with respect to the schemes under DCRs 33(7), 33(8), 33(9), and 33(10). Mr

Joaquim Reis, learned Senior Counsel instructing Dr Abhishek Singhvi, learned Senior Counsel appearing for the Property Redevelopers Association, suggested inclusion of an architect in the committee.

65. Considering that the architectural points as mentioned in the Municipal note, are also to be gone into by the Committee, the suggestion is quite apt. He suggested the inclusion of eminent architect Mr Charles Correa, who is associated with UDRI (and which is represented by Mr Divan). We are, however, not including his name only for the reason that we are informed that he is a very busy architect, though the Committee should certainly consult him whenever necessary. In his place, we include Shri Pankaj Joshi, Architect, Urban Researcher, and consultant to the appellant Municipal Corporation, whose name is suggested by Mr Divan. Thus, the assistance of an architect will also be available to the Committee. Having taken the consensus of the counsel appearing in the matter, we are effecting one more change in the Committee. We appoint Hon'ble Mr Justice P.S. Patankar, former Judge of the Bombay High Court, to be the Chairman of the Committee.

66. ***The Committee will now consist of the following***:

(*1*)	Chairman	Mr Justice P.S Patankar, former Judge of the High Court of Bombay
(*2*)	Member-Secretary	Chief Engineer (Development Plan) of Municipal Corporation of Greater Mumbai (MCGM)
(*3*)	Member (Structural Engineering Expert)	Prof., Department of Civil Engineering, IIT Bombay, Powai (presently Professor R.S Jangid or any other professor, with the required qualifications, nominated by the Director, IIT Powai)
(*4*)	Member (Soil, Mech. Geo Tech. Expert)	Prof. and Head of the Structural Engineering Department, VJTI, Matunga (presently Prof. Abhay Bambole or any other professor, with the required qualifications, nominated by the Principal, VJTI)
(*5*)	Member (Environmental Expert)	Director, Gr. Scientist and Head, NEERI Regional Centre (presently Dr Rakesh Kumar)
(*6*)	Ex-officio member	Chief Fire Officer of MCGM
(*7*)	Member	Mr Pankaj Joshi (Architect, Urban

	(Architect and Urban Researcher)	Researcher, and Consultant to MCGM)

67. ***The additional terms of reference for the Committee***:

67.1. As of now, all new building proposals where the height of the building exceeds 70 m is referred to the Committee. A scrutiny fee for Rs 50,000 per proposal is collected at the time of submission of the proposal. We have already referred to the existing terms of reference. In view of the discussion in this matter, in our view, it is desirable that the Committee be requested to look into two additional aspects which are as follows:

67.2. The Committee will also look into the grievances regarding construction and technical requirements of the development schemes under DCRs 33(7), 33(8), 33(9) and 33(10), whenever brought to the notice of the Committee by persons concerned.

67.3. The Committee may as well make recommendations to the State Government with respect to the new development plan which is under drafting.

68. The Committee will have to spend good time for this work. The honorarium paid to the Chairman is presently fixed at Rs 15,000 per month, and it was fixed much earlier. Now we are widening the terms of reference. Therefore, we direct that the appellant Municipal Corporation will pay an honorarium of Rs 50,000 per month to the Chairman. The other members will be provided with the conveyance charges and attendance charges to attend the meetings and for site inspections, as per the municipal rules. The Municipal Corporation will make available an appropriate room in its headquarters and secretarial staff for the working of the Committee.

69. The State Government shall issue necessary notification reconstituting the Committee, its terms of reference, and other aspects, such as honorarium, etc. within four weeks hereafter.

70. Before we conclude, we record our appreciation for all the learned counsel who have assisted us in deciding the issues, and particularly the Senior Counsel Mr Nariman and Mr Salve, who appeared for the respondents and the appellants respectively, at the stage of the earlier order which was passed on 25-7-2013, but assisted the Court in

deciding the four issues.

71. ***In the circumstances we pass the following order***:

71.1. The memorandum of settlement dated 18-4-2013, concerning the public parking lot (PPL) arrived at between the appellant Municipal Corporation of Greater Mumbai and the respondents was taken on record, as noted in Part I order dated 25-7-2013[2], in the facts and circumstances of the present case. Both the parties shall act strictly in accordance with the same. It is clarified that as held in the said order, the Municipal Circular dated 22-6-2011 is not in any way held to be bad in law.

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71.2. The four additional issues framed in Part II of the above order dated 25-7-2013[2] are decided as follows:

71.2.1. ***Issue (i)*** — The minimum recreational space as laid down under Development Control Regulation (DCR) 23, cannot be reduced on the basis of DCR 38(34). The recreational space, if any, provided on the podium as per DCR 38(34)(*iv*), shall be in addition to that provided as per DCR 23.

71.2.2. ***Issues (ii) and (iii)*** — The Government of Maharashtra, the Development Plan Drafting Committee, and the appellant Municipal Corporation shall consider the suggestions as contained in paras 60 and 61 above, while framing the Development Plan for Greater Mumbai.

71.2.3. *Issue (iv)* — The second proviso to DCR 43(1)(A), concerning fire protection requirements, is held to be bad in law. We hold that even for the reconstruction proposals of plots up to the size of 600 sq m under DCR 33(7), open space of the width of 6 m at least on one side at ground level within the plot, accessible from the roadside will have to be maintained for the manoeuvrability of a fire engine, unless the building abuts two roads of 6 m or more on two sides, or another access of 6 m to the building is available, apart from the road abutting the building.

71.3. The decision as contained in paras 71.2.1 and 71.2.3 above, will apply to those constructions where plans are still not approved, or where the commencement certificate (CC) has not yet been issued. All authorities concerned are directed to ensure strict compliance accordingly.

71.4. The Government of Maharashtra shall issue the necessary notification within four weeks of this order, reconstituting the "Technical

Committee for the High-Rise Buildings", as directed in paras 64 to 66, including the additional terms of reference, as mentioned in para 67 above. The appellant is directed to render assistance and provide the required honorarium, as mentioned in para 68 above.

71.5. In view of the settlement arrived at between the parties, as well as Part I order dated 25-7-2013[2] mentioned in para 71.1, and the determination on the four additional issues as in para 71.2 above, no further order is required on this appeal, and the appeal stands disposed of accordingly.

71.6. The parties will bear their own costs.

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† Arising out of SLP (C) No. 33402 of 2012. From the Judgment and Order dated 9-7-2012 of the High Court of Judicature of Bombay in WP No. 143 of 2012

[1] *Kohinoor CTNL Infrastructure Co. (P) Ltd.* v. *Municipal Corpn. of Greater Mumbai*, (2013) 1 Mah LJ 88 : (2013) 3 Bom CR 410

[2] *Municipal Corpn. of Greater Mumbai* v. *Kohinoor CTNL Infrastructure Co. (P) Ltd.*, (2014) 4 SCC 574

[3] (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305 : AIR 2012 SC 100

[4] (2013) 3 SCC 247 : (2012) 12 Scale 307

[5] (1996) 5 SCC 647

[6] *Jayant Achyut Sathe* v. *Joseph Bain D'Souza*, (2008) 13 SCC 547

2015 SCC OnLine NGT 5

Affirmed in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494

In the National Green Tribunal, Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M. AND PROFESSOR A.R. YOUSUF, E.M.)

In the Matter of:

Forward Foundation A Charitable Trust Having its registered office at 24/B, Haralur Village, HSR Layout Post Bangalore-560102 Through its Secretary and Others ... Applicants;

Versus

State of Karnataka, Vidhana Soudha Bangalore-560001 Through its Chief Secretary and Others ... Respondents.

Original Application No. 222 of 2014

Decided on May 7, 2015, [Reserved on: January 27, 2015]

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

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?

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* 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 530-625/2014 in 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, Karnataka State Fire & Emergency Services	'R25'
5	04.04.2013	BWSSB/EIC/ACE ®/DCE(M)-II/TA(M)-II/137/2012–13.	No Objection Certificate	Bangalore Water Supply & Sewerage	'R26'

				Board, Cauvery Bhavan, Bangalore	
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* v. *Sri. C. Kenchappa*, (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*, (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* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798.

26. In the case of *State of Bihar* v. *Deokaran Nenshi*, (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* v. *Union of India (UOI)*, (2011) 9 SCC 126, *Bal Krishna Savalram Pujari* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798, *G.C. Sharma* v. *Municipal Corporation of Delhi*, ILR 2 Delhi 771, *Kuchibotha Kanakamma* v. *Tadepalli Ptanga Rao*, 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*, (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* v. *Mattapalli, Raju*, AIR (1950) FC 1."

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*, 2006 (91) DRJ 324, *Bengal Waterproof Limited* v. *Bombay Waterproof Manufacturing Company*, (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, microorganism 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.* v. *A.P. Agencies, Salem* [(1989) 2 SCC 163]; *Bloom Dekor Limited* v. *Sujbhash Himatlal Desai* with *Bloom Dekor Limited* v. *Arvind B. Sheth* [(1994) 6 SCC 322]; *Kunjan Nair Sivaraman Nair* v. *Narayanan Nair* [(2004) 3 SCC 277]; *Y. Abraham Ajith* v. *Inspector of Police, Chennai* [(2004) 8 SCC 100]; *Liverpool and London S.P. and I. Asson Ltd.* v. *M.V. Sea Success I* [(2004) 9 SCC 512]; *Prem Chand Vijay Kumar* v. *Yashpal Singh* [(2005) 4 SCC 417]; *Mayar (H.K.) Ltd.* v. *Owners and Parties, Vessel M.V. Fortune Express* [(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, prerequisites 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*, (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 of the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/nongovernmental 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* v. *Shrikant Sharma*, 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 (Nitin Bassi *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 subsystems included Agara Lake System (Hulimavu, Doddabegur, Madiwala, Puttenahalli; Agara Kere); Hebbal System (Narasipura I and II; Dodda Bomassandra, Hebbal Kere, 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).

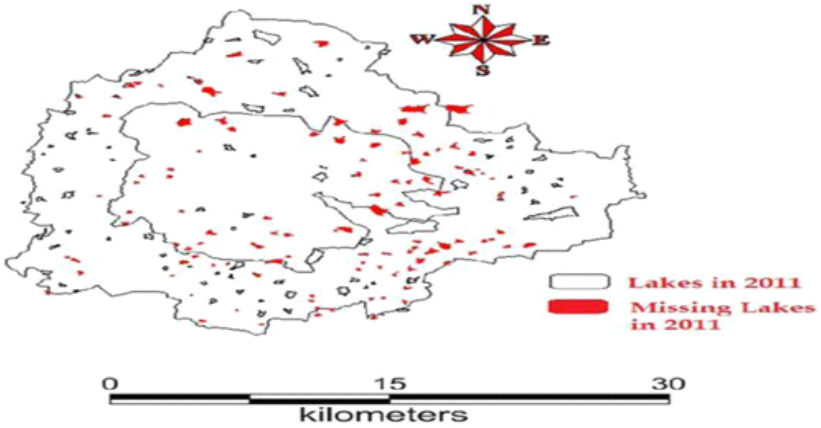

Figure 6: Lakes encroached by land mafia

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 infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	Agreed to comply.
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be	Execution of the project will necessarily sloping pattern of the project site and the natural

	maintained as it is to ensure natural flow of storm water.	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 *Sterlite Industries (India) Ltd.* v. *Tamil Nadu PCB*, 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* v. *The Commissioner, Pune Municipal Corporation*, 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*, (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* v. *The Commissioner, Pune Municipal Corporation*, 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.

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(2019) 18 Supreme Court Cases 494 : 2019 SCC OnLine SC 322

In the Supreme Court of India

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

MANTRI TECHZONE PRIVATE LIMITED . . Appellant;

Versus

FORWARD FOUNDATION AND OTHERS . . Respondents.

Civil Appeals No. 5016 of 2016[†] with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019

A. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of

— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT's direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government

— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy

of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22

(Paras 39 to 47 and 60 to 63)

[**Ed.** : Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

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B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope**

— Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100

(Paras 35 to 38 and 55)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

— It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100

(Paras 35 to 38)

D. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law —

Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of

(Paras 48 to 55)

E. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition**

— Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action of likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata

(Paras 56 to 59)

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The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would 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 the 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.

(Para 37)

Chunilal V. Mehta & Sons Ltd. v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, 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 reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT

Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

(Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal.

(Para 39)

The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised 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.

(Para 40)

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010.

(Para 41)

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 jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment.

(Para 43)

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. The existence of the Tribunal

without its broad restorative powers under Section 15(1)(c) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised 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.

(Para 44)

Kishore Lal v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, 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 NGT Act, 2010) 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.

(Para 45)

Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. 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.

(Para 46)

Section 33 of the NGT Act, 2010 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, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution 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 and waterbodies in contradiction with zoning regulations under these statutes or RMP.

(Para 47)

The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10.

(Paras 60 to 62)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*

Core Mind Software & Services (P) Ltd. v. *Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*

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Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 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 NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

(Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. 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.

(Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 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.

(Paras 52 and 51)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

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 report and the inspection note of the expert members. 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.

(Para 54)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010.

(Para 55)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 637, *referred to*

SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika

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S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*

2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*

3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*

4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*

5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*

6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as "Respondents 9 and 10"). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as "the applicants"). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short "the impleaded respondents").

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal

challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

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case of secondary Rajakaluves and 25 m 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 OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 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 "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 rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac 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 Appellant 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 Bellandur Lake and Agara Lake. Respondent 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 m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 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 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment 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 KSPCB to Respondent 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. The applicants further contended that Respondent 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

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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. Respondents 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 groundwater table and borewells 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 the Wetlands (Conservation of Management) Rules, 2010 (for short "the 2010 Rules").

8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 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 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km 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 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 waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that 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.

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10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be

created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 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 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 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 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 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 waterbodies.

11. Respondent 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 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. 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 m. The Project

was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of 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 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. 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 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 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 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. 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 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in

question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

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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 Respondents 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 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. 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 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 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 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. 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 Bellandur Lake and Agara Lake on 12-6-2013 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 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, 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

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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 waterbodies 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 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:

17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. 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?

17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. 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 Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

17.5. 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 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions : (*Forward Foundation case*[1], SCC OnLine NGT para 85)

"*85.* … (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.

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(*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 waterbodies, 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 Respondents 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 Respondents 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 waterbodies.

(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 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 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 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area Development Board to Respondents 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 waterbodies.

(11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both Respondents 9 and 10 are hereby restrained from creating any third 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 waterbodies 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 waterbodies in and around of the area in question.

(14) For the reasons stated in the judgment Respondent 9 is liable and shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum of Rs 22.5 crores respectively being 5% of the project value, within two weeks from today. The said amount would be paid to 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 unauthorisedly."

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order dated 20-5-2015[3] passed the following order : [*Core Mind Software & Services (P) Ltd. case*[3], SCC OnLine SC paras 2-5]

"*2*. 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 9 (the appellant in CA No. 4832 of

2015) and Rs 22.5 crores against original Respondent 10 (the appellant

in CA No. 4829/2015) is imposed.

3. 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.

4. 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[1] can also be raised.

5. 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 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under : (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

These applications have been filed on behalf of Respondents 9 and 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 MA No. 603 of 2015 and MA 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 4-5-2016[2] as under : (*Forward Foundation case*[2], SCC OnLine NGT)

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

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m 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 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 waterbodies/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 groundwater 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

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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 prerequisite 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 9 and 10, following specific conditions shall apply to Respondent 9:

(*i*) Reclaimed area of the lake to the extent of 3 ac 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 9 to the authorities concerned 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 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 Agara Lake and Belandur Lake, Respondent 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 metres in the depth range of 0 to 9 m. 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

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SEIAA 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 Department admeasuring 1 ac 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 of the judgment, we had heard the parties on all aspects but still we have

provided rehearing 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 9 calls for no variation and Respondent 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 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 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 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 judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

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

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

4. We hereby direct the State of Karnataka to submit a proposal

to MoEF for demarcating wetlands in terms of the Wetland Rules, 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and 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 Respondents 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 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. 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 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, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs."

(emphasis in original)

22. Appearing for the appellants in CA 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 "the 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 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012.

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 Sections 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 the 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 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, 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 NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. 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 waterbody 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 CAs 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. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in

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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 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 NGT to that extent is liable to be set aside.

28. The 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 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by 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 CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar 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 NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the

learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised 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

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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 jeopardised, 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 the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed

by Respondents 1 to 3 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 report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 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 fulfilment 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 "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. 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.

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

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

> "**22. *Appeal to Supreme Court***.—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the

statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment 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 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 *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under : (AIR p. 1318, para 6)

> "*6.* … 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 reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation 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 reappreciation 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 specialised 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 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. It is noteworthy that Sections 15(1)(*b*) and (*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 jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

Lal v. *ESI Corpn.*[6], 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 specialised 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 and 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 Sections 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 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, leave 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, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I 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 and waterbodies in contradiction with zoning regulations under these statutes or RMP.

48. The second question raised by the appellants is that the petition

is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been

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granted environmental clearance on 30-9-2013. 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. 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 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 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 11-1-2012 of the Chairman of 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 ac 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

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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[1] as under : (*Forward Foundation case*[1], SCC OnLine NGT para 72)

> "*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 operationalisation 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 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.

(6) Restriction in regard to extraction of groundwater 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 waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 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."

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53. In para 81, the Tribunal has observed as under : (*Forward Foundation case*[1], SCC OnLine NGT para 81)

"*81.* … Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by MoEF in its monitoring report dated 14-8-2013. 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 reappreciation 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, Respondents 12 and 13 filed Writ Petitions Nos. 3656-57 of 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 paras 47 to 51 of the order. There was no dispute insofar 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 genesis 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 : (*Forward Foundation case*[1], SCC OnLine NGT para 51)

"*51.* … For these reasons, we find no merit in this contention of Respondents 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 reagitating 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 insofar 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 Respondents 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 4-5-2016[2] : (*Forward Foundation case*[2], SCC OnLine NGT)

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

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m 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 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 waterbodies/lakes of Bangalore."

(emphasis in original)

61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed.

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

62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

———

† Arising from the Judgment and Order in *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)

[1] *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

[2] *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

[3] *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation*, 2015 SCC OnLine SC 1778

[4] *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 637

[5] *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

[6] *Kishore Lal* v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

Item Nos. 03 & 04 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

(By Video Conferencing)

Appeal No. 22/2016(WZ)
M.A. No. 198/2016(WZ) & M.A. No. 199/2016(WZ)

Anil Tharthare Appellant

Versus

The Secretary, Environment Dept.
State of Maharashtra & Ors. Respondent(s)

WITH

Appeal No. 23/2016(WZ)
M.A. No. 196/2016 & M.A. No. 197/2016

Vasundhara Sanwardhan Trust Appellant

Versus

Secretary, Envt. Dept., State of Maharashtra & Ors. Respondent(s)

Date of hearing: 13.09.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Appellant: Mr. Aditya Pratap, Advocate in Appeal 22/2016(WZ)

Respondent(s): Mr. Saket Mone, Advocate for R-4
Mr. Manoj Wad, Advocate for R-5
Mr. T.N. Subramanium, Advocate for R-6
Mr. Suneet Tyagi, Advocate for R-7
Mr. R.R. Mahabal, Advocate
Mr. Girish Utangale, Advocate for R-4 in Appeal 23/2016(WZ)

ORDER

The issue - validity of EC for housing project at Bandra, Mumbai

1. This order will deal with Appeal Nos. 22 and 23 of 2016(WZ) as both the appeals relate to the same project i.e. validity of the Environmental Clearance (EC) granted by SEIAA, Maharashtra on 22.03.2016 for proposed residential building on plot CTS No. 629(Pt), of Bandra, Mumbai by M/s Kalpataru Properties Pvt. Ltd. Details of the project mentioned in the impugned EC are :

. Estimated cost of the project is Rs. 299 crores.

. FSI, non-FSI and built up areas are:

FSI Area (Sq. mt)	***Non-FSI Area (Sq. mt.)***	***Total BUA Area (Sq. mt.)***
47,265.822	*32,799.83*	*80,065.652*

. Number of buildings and its configuration and number of tenants and shops:

“

xxx	***xxx***	***xxx***		
The above ground structures will comprise of:				
16	*Number of Buildings & its configuration*	*Building*	*No. of Wings*	*configuration*
		1 building	*Wing A & B*	*3 Basements + Stilt + 30 upper floors*
			Wing C	*3 Basements + Stilt + 22 upper floors*
17	*Number of tenants and shops*	*511 flats*		

2. The EC also mentions environmental management plan and budgetary allocation for the same. There is also mention of traffic management plan. General conditions for pre-construction and construction phase are also specified.

Case of the Appellants

3. Main grounds for challenging the impugned EC are that Recreation Ground (RG) has not been provided at ground level but on slab above the basement where plantation is not possible, in violation of judgement of the Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai and Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited and another,* (2014) 4 SCC 538 (Kohinoor case). Fire safety norms have been ignored. Setback for light and open spaces has not been provided as per Development Control Regulations (DCR). In the meeting of SEAC dated 25th to 27th June, 2014, recommendation was made to leave margin of 6m from boundary of the plot but the said condition has not been incorporated in the EC. The area exceeds 1.5 lakh sq. m. and thus, the project is 'B-1' category project but has been wrongly appraised as 'B-2' category project. Project wrongly provides for two rehabilitation tenements to each person instead of one.

4. The appeal came up for hearing on 05.05.2016 and notice was issued to the Project Proponent (PP), SEIAA Maharashtra, MHADA and the Group Housing Society. The contesting respondents have filed their respective replies.

Stand of the PP

5. Stand of the PP is that the judgment of the Hon'ble Supreme Court in Kohinoor case, supra, only deprecates practice of providing RG on

podium as per DCR 38 (34) and thus is not applicable as in the present case, podium has not been provided. Requirement of 6 meter open space is not binding as the Municipal Corporation has modified DCR 43 to the effect that open space of 6 meter will not be insisted if the building abuts road with width of 6 meters or more. In the present case, the plot under redevelopment abuts 3 roads having width more than 6 meters. Thus, as per relaxation in DCR 33(10), read with the Notification dated 6th December, 2008, provision for additional 6 meters open space is not binding. Out of 128 members, 104 members have already vacated their respective flats to enable the redevelopment. The appellant is a minority member who is creating hurdles in the redevelopment process.

Order of the Tribunal dated 4.7.2017

6. The matter came up for hearing on 04.07.2017 to consider the interim prayer to stop the ongoing project. The Tribunal rejected M.A. No. 75/2017 as follows:

> *"xxx ……xxx……xxx*
>
> *Undoubtedly, the* ***recreation ground area referred to at entry No.31 in the EC dated 22nd March 2016 is at the ground level. Informed decision apparently was taken by the SEIAA on the basis of lay out plan describing the recreational ground area, particularly it being on the basement and the specified the number of trees, shrubs and bushes would have in the recreational ground area. There is nothing before us to suggest at this stage that recreational ground area on the basement at the ground level with the trees, shrubs and bushes grown thereon will any way have any adverse impact on the environment. The recreational ground area i.e. the open area at the ground level will obviously be available to the occupants of the developed project****.*
>
> *Considering the balance of convenience, we are not inclined to grant stay to the ongoing construction.* ***M.A. No. 75/2017 therefore, is dismissed."***

The Tribunal recorded the statement of the PP as follows:

> *"xxx ……xxx……xxx*

> *... **the Respondent No.6-Project Proponent shall ensure that R.G. ground admeasuring 2672.50 sq.mtr. area shall be left open to the sky in the project and shall further ensure that the plan (trees, shrubs and bushes) as described in entry No.31 of the EC. dated 22nd March 2016 shall be successfully planted, nursed and grown in the R.G. area, and they shall take every care to see that the plantation grows wherever planted in the R.G. area."***

Consideration of the issue by the Tribunal

7. We find that only issue for consideration is the compliance of the condition of RG in terms of law laid down by the Hon'ble Supreme Court in Kohinoor case, supra. In the said case, the Hon'ble Supreme Court dealt with the issue of mandatory minimum RG to be provided in Mumbai in a housing project to give effect to the sustainable development principle of environmental law. Questions framed and answers given are as follows:

Questions

"*17.1.* (*i*) What should be the correlation between DCR 23 and DCR 38(34) regarding the recreational area? Is it permissible to reduce the minimum recreational area provided under DCR 23 on any ground?

17.2. (*ii*) Whether the exemption from DCR 31(1) under DCRs 33(7), 33(8), and 33(9) is justified, valid and legal particularly in the island city of Greater Mumbai? If so, to what extent and in which context?

17.3. (*iii*) What is the impact of the addition of FSI in the island city on the traffic situation? How can it be controlled?

17.4. (*iv*) Whether the present mechanism for protection against the fire hazards is adequate and is being implemented effectively? If not, what should be the mechanism for enforcement with respect to the provisions concerning the fire safety?"

Answers

71.2.1. ***Issue (i)*** — **The minimum recreational space as laid down under Development Control Regulation (DCR) 23, cannot be reduced on the basis of DCR 38(34). The recreational space, if any, provided on the podium as per DCR 38(34)(*iv*), shall be in addition to that provided as per DCR 23.**

71.2.2. ***Issues (ii) and (iii)*** — The Government of Maharashtra, the Development Plan Drafting Committee, and the appellant Municipal Corporation shall consider the

suggestions as contained in paras 60 and 61 above, while framing the Development Plan for Greater Mumbai.

71.2.3. *Issue (iv)* — The second proviso to DCR 43(1)(A), concerning fire protection requirements, is held to be bad in law. We hold that even for the reconstruction proposals of plots up to the size of 600 sq m under DCR 33(7), open space of the width of 6 m at least on one side at ground level within the plot, accessible from the roadside will have to be maintained for the manoeuvrability of a fire engine, **unless the building abuts two roads of 6 m or more on two sides, or another access of 6 m to the building is available, apart from the road abutting the building.**

71.3. **The decision as contained in paras 71.2.1 and 71.2.3 above, will apply to those constructions where plans are still not approved, or where the commencement certificate (CC) has not yet been issued. All authorities concerned are directed to ensure strict compliance accordingly.**

71.4. **The Government of Maharashtra shall issue the necessary notification within four weeks of this order, reconstituting the "Technical Committee for the High-Rise Buildings", as directed in paras 64 to 66, including the additional terms of reference, as mentioned in para 67 above. The appellant is directed to render assistance and provide the required honorarium, as mentioned in para 68 above**.

8. In the light of above, we hold that RG has to be provided on ground to enable plantation. SEIAA, Maharashtra has thus to ensure availability of space as per above norms. The area has not only to be open to sky but must also enable plantation of trees. If the PP fails to provide RG as per norms, the project may not be allowed to proceed and till compliance, no third-party rights may be created. SEIAA, Maharashtra may verify facts on the ground and take its decision within one month from today.

The appeals are disposed of.

All pending MAs will stand disposed of.

A copy of this order be forwarded to SEIAA, Maharashtra by mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

September 13, 2022
Appeal No. 22/2016(WZ)
M.A. No. 198/2016(WZ) &
M.A. No. 199/2016(WZ)
Appeal No. 23/2016(WZ)
M.A. No. 196/2016 &
M.A. No. 197/2016
DV

2023 SCC OnLine Bom 239 : (2023) 2 AIR Bom R 461

In the High Court of Bombay

(BEFORE S.V. GANGAPURWALA, A.C.J. AND SANDEEP V. MARNE, J.)

Naredco West Foundation and Another ... Petitioners;

Versus

Union of India and Others ... Respondents.

Writ Petition (L) No. 35671 of 2022

Decided on January 27, 2023, [Judgment Reserved On : 17 January 2023]

Advocates who appeared in this case:

Mr. Pravin Samdani, Senior Advocate, Mr. Karl Tamboly, Mr. Samit Shukla, Mr. Viraj Parikh, Ms. Saloni Shah, Ms. Shivani Khanwilkar, Mr. Abhishek Kothari i/b M/s. DSK Legal for the Petitioners.

Mr. Amogh Singh a/w Mr. Pranav Thackur for Respondent No. 1-UOI.

Mr. Milind V. More, Additioal GP for Respondent Nos. 2 and 5-State.

Mr. Vijay Patil for Respondent No. 3-SRA.

Mrs. Rupali Adhate for Respondent No. 4-MCGM.

Ms. Seema Sarnaik i/b Ms. Sangeeta Salvi a/w Ms. Kavita Yadav for the Applicant/Intervenor in IAL 730 of 2023.

The Judgment of the Court was delivered by

SANDEEP V. MARNE, J.:— Rule. Rule made returnable forthwith. By consent of parties, Petition is heard finally.

2. The Petitioner No. 1 is the Maharashtra chapter of the National Real Estate Development Council (NAREDCO) and claims to have more than 400 real estate developers as its members. Petitioner No. 1-NAREDCO is aggrieved by the inaction of Respondent No. 2-State Environment Impact Assessment Authority (SEIAA) in repeatedly deferring the proposals of members of Petitioner No. 1-Association for environmental clearance on the ground of receipt of email dated 23 September 2022 from Registrar of National Green Tribunal (for short 'the NGT') inviting attention of SEIAA to the judgment and order dated 13 September 2022 passed by the NGT in Appeal Nos. 22 of 2016. By that judgment, NGT has held that recreational ground has to be provided at the ground level which should not only be open to sky, but must also enable plantation of trees. The NGT has further directed that if any project proponent fails to provide recreational ground as per norms, the project may not be allowed to proceed.

3. Thus, on account of the judgment and order dated 13 September

2022 passed by the NGT, SEIAA has deferred various proposals for environmental clearance. By way of illustration it would be profitable to refer to the minutes of SEIAA held on 28 September 2022 in respect of proposal for environmental clearance for proposed redevelopment of residential cum commercial project 'Sagar Co-operative Housing Society Limited' at Condominium No. 8, Sector 10, Koparkhairane, Navi Mumbai by M/s. Maithili Builders Pvt. Ltd. in which SEIAA has deliberated and decided as under:

> *"Deliberation in SEIAA-*
>
> *Proposal is a new construction project. Proposal is recommended by SEAC-2 in its 184th meeting for grant of Environmental Clearance for total plot area of 8797.830 Sq. Mtrs., Total construction area of 67313.572 Sq. Mtrs. and FSI area of 42399.518 Sq. Mtrs.*
>
> *SEIAA is in receipt of Hon'ble NGT Judgment in NGT appeal no. 22/2016 communicated vide NGT registrar email dated 23.09.2022. SEIAA has perused the said judgment and more specifically para 8 of the said judgment and is of the opinion that, SEIAA needs to seek clarification whether the said judgment is applicable only to the specific case of NGT appeal no. 22/2016 or to MCGM or to all other local bodies wherein UDCPR is applicable. SEIAA after deliberation decided to defer the proposal for clarification required in the aforesaid NGT matter.*
>
> *SEIAA Decision-*
>
> *SEIAA after deliberation decided to defer the proposal."*

4. From the above deliberation and decision of SEIAA, it appears that no final decision rejecting proposal for environmental clearance is taken by SEIAA, but the proposal is merely deferred. According to the Petitioners the order of the NGT is not only *inter partes* but applicable only to projects which are governed by Development Control Regulations, 1991 (for short 'DCR 1991') and is not applicable to the projects which are governed by the Development Control and Promotion Regulations 2034 (for short 'DCPR 2034') and Unified Development Control & Promotion Regulation (for short 'UDCPR'). However, since there is no clarity on the issue, It appears that SEIAA has been deferring the proposals rather than taking any final decision on the same. The Petitioners are aggrieved by such an inaction on the part of the SEIAA.

5. Mr. Samdani, the learned Senior Advocate appearing for the Petitioner would invite our attention to the judgment and order dated 13 September 2022 passed by NGT in support of his contention that the said order merely follows the judgment of the Apex Court in *Municipal Corporation of Greater Mumbai* v. *Kohinoor CTNL Infrastructure Co. (Pvt) Ltd.*, (2014) 4 SCC 538. Mr. Samdani would

further submit that the judgment in *Kohinoor* (supra) is rendered by the Apex Court by interpreting the provisions of DCR 1991 and has no application to the projects which are governed by DCPR 2034 and UDCPR. He would further submit that DCR 1991 made it mandatory to provide recreational/amenity space at the ground level whereas DCPR 2034 and UDCPR specifically permit provision of some portion of recreational open spaces on podium area as well. Mr. Samdani would take us through a comparative chart between the provisions of DCR 1991, DCPR 2034 and UDCPR. He would submit that the judgment of the Apex Court in *Kohinoor* (supra) would have no application to the projects governed by DCPR 2034 and UDCPR as the Apex Court did not have an occasion to interpret the provisions of DCPR 2034 or UDCPR. He would further submit that even before NGT, the project in question was governed by DCR 1991 and not by DCPR 2034/UDCPR and therefore the order of NGT would not have any application to the projects governed by DCPR 2034/UDCPR.

6. Mr. Samdani would further submit that the judgment of NGT is otherwise in *personam* and not in *rem.* He would submit that the said judgment would only govern the parties before the NGT and the same cannot be construed as a general direction to SEIAA not to sanction any proposal for environmental clearance unless recreational ground is provided at the ground level.

7. Mr. Samdani would further submit that it is settled law that if the basis on which the judgment of a Court is altered by subsequent provisions of law, the judgment would not have application to the changed circumstances. In support of his contention Mr. Samdani would rely upon the judgments of the Apex Court in *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality,*, (1969) 2 SCC 283 and *Welfare Association ARP Maharashtra* v. *Ranjit P. Gohil*, (2003) 9 SCC 358.

8. Mr. Samdani would further contend that the Development Control Regulations are legislative in nature and is a piece of delegated legislation which is statutory in nature and binding on authorities dealing with. In support of his contention, he would rely upon judgment of this Court in *Janhit Manch* v. *State of Maharashtra,*, 2006 SCC OnLine Bom 1145 and *Janhita Manch* v. *State of Maharashtra*, (2019) 2 SCC 505.

9. Lastly, Mr. Samdani would contend that on account of the inaction of SEIAA in taking a final decision on proposals submitted by various projects for environmental clearance, several projects in the City of Mumbai and its vicinity have been held up, thereby resulting in enormous increase in the costs of construction.

10. Mr. More, the learned AGP appearing for the State Government would submit that SEIAA is felt bound by the directions of NGT which

appears to be in *rem*. He would submit that there is no clarity on the issue as to whether the order of NGT is applicable only to the projects governed by DCR 1991 or whether the same would also apply to the projects governed by DCPR 2034/UDCPR and therefore, SEIAA has rightly deferred various proposals till a clarity is achieved. Mr. More, however, fairly leaves it to this Court to clarify the issue so that SEIAA can proceed accordingly.

11. Mr. Amogh Singh, the learned Counsel appearing for the Union of India would oppose the Petition submitting that though Union of India does not have any particular stand with regard to the merits of the issue involved in the Petition, the Petitioners would have an alternate remedy before the NGT in respect of their grievance and that therefore, this Court would be loath in entertaining the present Petition.

12. Ms. Sarnaik, learned Advocate appearing for the Intervenor has opposed the Petition. She would submit that the Writ Petition is filed by the Petitioner No. 1-Association of Developers and M/s. Kalpataru Properties Pvt. Ltd., in whose case the NGT has passed the judgment and order dated 13 September 2022, is a member of the Petitioner No. 1-Association. She would submit that M/s. Kalpataru Properties has already challenged the judgment and order dated 13 September 2022 of NGT in separate proceedings which are being defended by the Intervenor. She would express an apprehension that the present Petition is filed to indirectly seeks stay of the judgment and order dated 13 September 2022 passed by NGT in M/s. *Kalpataru Properties* case. Inviting our attention to the prayers made in the present Petition, Ms. Sarnaik, would contend that this Court ought not issue directives to SIEAA to process proposals of members of Petitioner No. 1-Association by ignoring/not applying NGT's judgment and order as well as the judgment of the Apex Court in *Kohinoor* (supra)

13. The objection of Mr. Amogh Singh about alternate remedy is countered by Mr. Samdani submitting that an alternate remedy under National Green Tribunal Act, 2016 cannot be a bar to exercise writ jurisdiction of this Court. He would rely on judgments of the Apex Court in *Madhya Pradesh High Court Advocates Bar Association* v. *Union of India*, 2022 SCC OnLine SC 639, *Whirlpool Corporation* v. *Registrar of Trade Marks*, (1998) 8 SCC 1 and *Magadh Sugar & Energy Ltd.* v. *State of Bihar*, 2021 SCC OnLine SC 801. So far as submissions made by Ms. Sarnaik are concerned, Mr. Samdani would clarify that M/s. Kalpataru Properties is not a member of Petitioner No. 1-Association. He would further submit that the Petitioners are not seeking stay of the judgment and order dated 13 September 2022 of NGT in any manner. He would submit that the correctness of NGT's judgment and order would be determined in independent proceedings filed by M/s. Kalpataru Properties and that this Petition does not involve that issue. He would

submit that the present Petition is confined to inaction on the part of SIEAA in taking decision on the proposals submitted before it by project proponents by applying provisions of the DCPR 2034 or UDCPR.

14. Rival contentions of the parties now fall for our consideration.

15. Since the issue involved in the present Petition relates to the deferment by SIEAA of the proposals submitted by the members of Petitioner No. 1-Association relying upon the judgment and order dated 13 September 2022 passed by the NGT, it would be apposite to refer to the relevant portions of said judgment. In paragraphs 3 to 5 of its judgment, NGT has captured the submissions of the parties as under:

> *"3. Main grounds for challenging the impugned EC are that Recreation Ground (RG) has not been provided at ground level but on slab above the basement where plantation is not possible, in violation of judgment of the Hon'ble Supreme Court in* Municipal Corporation of Greater Mumbai *v.* Kohinoor CTNL Infrastructure Company Private Limited, *(2014) 4 SCC 538 (Kohinoor case). Fire safety norms have been ignored. Setback for light and open spaces has not been provided as per Development Control Regulations (DCR). In the meeting of SEAC dated 25th to 27th June, 2014, recommendation was made to leave margin of 6 m from boundary of the plot but the said condition has not been incorporated in the EC. The area exceeds 1.5 lakh sq. m. and thus, the project is 'B-1' category project but has been wrongly appraised as 'B-2' category project. Project wrongly provides for two rehabilitation tenements to each person instead of one.*
>
> *4. The appeal came up for hearing on 05.05.2016 and notice was issued to the Project Proponent (PP), SEIAA Maharashtra, MHADA and the Group Housing Society. The contesting respondents have filed their respective replies.*
>
> *Stand of the PP*
>
> *5. Stand of the PP is that the judgment of the Hon'ble Supreme Court in* Kohinoor case, *supra, only deprecates practice of providing RG on podium as per DCR 38 (34) and thus is not applicable as in the present case, podium has not been provided. Requirement of 6 meter open space is not binding as the Municipal Corporation has modified DCR 43 to the effect that open space of 6 meter will not be insisted if the building abuts road with width of 6 meters or more. In the present case, the plot under redevelopment abuts 3 roads having width more than 6 meters. Thus, as per relaxation in DCR 33(10), read with the Notification dated 6th December, 2008, provisions for additional 6 meters open space is not binding. Out of 128 members, 104 members have already vacated their respective flats to enable the redevelopment. The appellant is a minority member who is*

creating hurdles in the redevelopment process."

16. The NGT thereafter proceeded to decide the issue by rendering following findings:—

"7. We find that only issue for consideration is the compliance of the condition of RG in terms of law laid down by the Hon'ble Supreme Court in Kohinoor case, *supra. In the said case, the Hon'ble Supreme Court dealt with the issue of mandatory minimum RG to be provided in Mumbai in a housing project to give effect to the sustainable development principle of environmental law. Questions framed and answers given are as follows:*

Questions

"17.1.(i) What should be the correlation between DCR 23 and DCR 38(34) regarding the recreational area? Is it permissible to reduce the minimum recreational area provided under DCR 23 on any ground?

17.2.(ii) Whether the exemption from DCR 31(1) under DCRs 33 (7), 33(8), and 33(9) is justified, valid and legal particularly in the island city of Greater Mumbai? If so, to what extent and in which context?

17.3.(iii) What is the impact of the addition of FSI in the island city on the traffic situation? How can it be controlled?

17.4. (iv) Whether the present mechanism for protection against the fire hazards is adequate and is being implemented effectively? If not, what should be the mechanism for enforcement with respect to the provisions concerning the fire safety?

Answers

71.2.1. Issue (i) - The minimum recreational space as laid down under Development Control Regulation (DCR) 23, cannot be reduced on the basis of DCR 38(34). The recreational space, if any, provided on the podium as per DCR 38(34)(iv), shall be in addition to that provided as per DCR 23.

71.2.2. Issues (ii) and (iii) - The Government of Maharashtra, the Development Plan Drafting Committee, and the appellant Municipal Corporation shall consider the suggestions as contained in paras 60 and 61 above, while framing the Development Plan for Greater Mumbai.

71.2.3. Issue (iv) - The second proviso to DCR 43(1)(A), concerning fire protection requirements, is held to be bad in law. We hold that even for the reconstruction proposals of plots up to the size of 600 sq m under DCR 33(7), open space of the width of 6 m at least on one side at ground level within the plot, accessible from the roadside will have to be maintained for the manoeuvrability of a fire engine, unless the building abuts two roads of 6 m or more on

two sides, or another access of 6 m to the building is available, apart from the road abutting the building.

71.3. The decision as contained in paras 71.2.1 and 71.2.3 above, will apply to those constructions where plans are still not approved, or where the commencement certificate (CC) has not yet been issued. All authorities concerned are directed to ensure strict compliance accordingly.

71.4. The Government of Maharashtra shall issue the necessary notification within four weeks of this order, reconstituting the "Technical Committee for the High-Rise Buildings", as directed in paras 64 go 66, including the additional terms of reference, as mentioned in para 67 above. The appellant is directed to render assistance and provide the required honorarium, as mentioned in para 68 above.

8. In the light of above, we hold that RG has to be provided on ground to enable plantation. SEIAA, Maharashtra has thus to ensure availability of space as per above norms. The area has not only to be open to sky but must also enable plantation of trees. If the PP fails to provide RG as per norms, the project may not be allowed to proceed and till compliance, no third-party rights may be created. SEIAA, Maharashtra may verify facts on the ground and take its decision within one month from today.

The appeals are disposed of.

All pending MAs will stand disposed of.

A copy of this order be forwarded to SEIAA, Maharashtra by mail for compliance."

17. Perusal of the order of NGT would indicate that the same has squarely followed the judgment of the Apex Court in *Kohinoor* (supra), in which the Apex Court has held in paragraph 32 of the judgment as under:

"32. Therefore, after reflecting upon the legal position, we are clearly of the opinion that having 15%, 20% or 25% of the area (depending upon the size of the layout) as the recreational/amenity area at the ground level is a minimum requirement, and it will have to be read as such. We therefore, answer Issue (i) by holding that it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area."

18. We have gone through the judgment of the Apex Court in *Kohinoor* (supra), in which the Apex Court was essentially concerned with interpretation of provisions of DCR 1991. After interpreting the

provisions of DCR 23 dealing with recreational/amenity open spaces, the Apex Court held that the recreational/amenity area is required to be provided at the ground level. It appears that DCR 23 did not contain any specific provision for providing recreational/amenity open spaces at podium level and on the contrary it provided that the recreational space shall be kept permanently open to sky and trees shall be grown as per the requirements specified therein. It is on account of such provisions of the DCR 1991, that the Apex Court held that the recreational/amenity area is required to be provided at ground level.

19. The provisions of DCR 1991 came to be superseded/replaced by the provisions of the DCPR 2034 for areas within Greater Mumbai and the some of the principles enunciated in Regulation 23 of DCR 1991 *prima facie* appear to have been deviated in some of the provisions in Regulation 27 of DCPR 2034. While we do not propose to interpret the provisions of Regulation 27 of DCPR 2034, it would be apposite to reproduce Note 2 appended to Regulation 27 which reads thus:

> *"2. The minimum 60% of the required LOS shall be provided exclusively on the ground and at least 50% of this shall be provided on mother earth to facilitate the percolation of water and balance 40% of required LOS may be provided on podium area extending beyond the building line. The LOS on mother earth shall not be paved and all LOS shall be accessible to all the occupants of the plot/layout. Rest of the compound pavement other than stated above shall be paved with perforated paving having adequate strength, in order to facilitate percolation of rain water into the ground."*

20. Coming to the areas falling outside the limits of Municipal Corporation for Greater Mumbai, the provisions of Unified Development Control and Promotion Regulations also contain a provision in the form of Regulation 3.4.1 which apparently permits recreational open space being provided on terrace of podium in certain cases. Sub clause 3 of Regulation 3.4.1 of UDCPR provides as under:

> *"3. Not more than 50% of such recreational open space may be provided on the terrace of a podium in congested/non congested area subject to Regulation No. 9.13."*

21. Thus, both under the DCPR 2034 as well as in UDCPR there appears to be change in the provision relating to provision of recreational open spaces.

22. Thus there appears to be a deviation in the provisions of the Development Control Regulations applicable at the time of delivery of the judgment by the Apex Court in *Kohinoor* and the one which are prevalent now. This aspect is required to be considered by the concerned authorities.

23. Mr. Samdani has submitted that the proposals for development permission have already been sanctioned by respective planning

authorities and that the proposal for environmental clearance are required to be submitted only after grant of development permissions. He would submit that the proposals for development permission submitted by members of Petitioner No. 1-Association fully conform to the provisions of DCPR 2034 and UDCPR. This aspect would be considered by SIEAA while taking final decision on the proposals. Suffice it to say at this juncture that there appears to be some change in the provisions relating to the manner in which recreational open spaces are to be provided in the earlier Development Control Regulations as considered by Apex Court in case of *Kohinoor* (supra) and the one which are prevalent now. Mr. Samdani has relied upon the judgment of the Apex Court in *Shri Prithvi Cotton Mills Ltd.* (supra), in which the Apex Court has held in para 4 of the said judgment as under:

> *"4. … … … A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. … …"*

24. Again in *Welfare Association ARP Maharashtra* (supra) the Apex Court, referring to the judgment in *Shri Prithvi Cotton Mills Ltd.* (supra), has held in paragraph 46 as under:

> *"46. Thus, it is permissible for the legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement."*

25. From perusal of comparative chart of the provisions of DCR 1991 and DCPR 2034 as well as UDCPR, *prima facie* there appears to be deviation in the exact location at which open recreational spaces is to be provided. Therefore, SEIAA is required to take into consideration the provisions of DCPR 2034 or UDCPR as applicable, in order to determine permissibility of provision of open recreational spaces on podium level in a particular project. The judgment and order dated 13 September 2022 of NGT in case of *Anil Tharthare* v. *The Secretary, Environment Dept. State of Maharashtra* cannot be construed to mean a blanket prohibition to consider the proposals of the projects governed by DCPR 2034 or UDCPR.

26. The objections raised by the Intervenor about the Petitioners indirectly seeking stay of NGT's judgment and order is totally misplaced. Firstly, the Petitioners have not questioned correctness of NGT's judgment and order in the present Petition in any manner, nor we had gone into the same. Secondly, the Petition is confined only to

the issue of failure on the part of SEIAA to decide the proposals for environmental clearances. We have repeatedly clarified in the present judgment that we are not expressing any final opinion as to whether recreational spaces in a particular project can be provided at podium level or not. This is something which SEIAA will determine applying provisions of DCPR 2034 or UDCPR. All that we are directing the SEIAA is to decide the proposals for environmental clearances in accordance with the provisions of DCPR 2034 or UDCPR. Therefore, the objections raised and apprehension expressed by the Intervenor are totally misconceived.

27. We have, therefore, no hesitation in holding that SIEAA could not have deferred decision of proposals for grant of environmental clearances merely on the basis of the judgment and order dated 13 September 2022 of NGT. The said decision is rendered by NGT relating to inter-party *lis* involved in Appeal No. 20 of 2016. The same would not govern each and every proposal submitted before the SIEAA based upon DCPR 2034 or UDCPR.

28. So far as the objection about entertainability of the present Writ Petition in the light of availability of alternate remedy under the National Green Tribunal Act, 2016 is concerned, we have not gone into the merits of the issue as to whether environmental clearance *qua* particular project is grantable or not. All that we have dealt with in the present judgment is about the legality of action of SIEAA in deferring the proposals rather than taking final decisions thereon. Since entitlement of a particular project proponent for grant of environmental clearance is not an issue either raised in the Petition nor have we decided the same, the issue of availability of alternate remedy under the Act of 2016 becomes redundant. We are only issuing direction to SIEAA to take decisions on proposals submitted before it by applying and interpreting the provisions of the relevant DCPR 2034/UDCPR. Therefore, the objection of availability of alternate remedy is repelled.

29. We, therefore, proceed to pass following order:

ORDER

i) We direct that the judgment and order dated 13 September 2022 passed by the National Green Tribunal in Appeal No. 22 of 2016 shall not be an impediment for SIEAA to decide various proposals submitted by members of Petitioner No. 1-Association for grant of environmental clearances on its own merits.

ii) SIEAA, shall consider and decide each of the proposals for grant of an environmental clearance by applying provisions of DCPR 2034 or UDCPR, as the case may be.

iii) All questions on merits relating to permissibility of providing recreational open spaces at podium level in a particular project are left open to be decided by SIEAA on its own merits.

iv) Considering the fact that the proposals submitted by Petitioner No. 1 Association are pending since long, SIEAA shall proceed to take a final decision thereon as expeditiously as possible preferably within a period of eight weeks from today.

v) With the above directions, the Writ Petition is partly allowed. Rule made partly absolute in the above terms. No costs.

ITEM NO.24 COURT NO.17 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 11843/2023

(Arising out of impugned final judgment and order dated 27-01-2023 in WPL No. 35671/2022 passed by the High Court of Judicature at Bombay)

SAGAR DEVRE & ANR. Petitioner(s)

VERSUS

NAREDCO WEST FOUNDATION & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.86768/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.86765/2023-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 08-05-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s)
Mr. Ashutosh Ghade, AOR
Mr. Vivek Shukla, Adv.
Mr. Ashutosh Ghade, Adv.
Mr. Raj Awasthi, Adv.
Ms. Sneha Balapure, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Application for exemption from filing a certified copy of the impugned judgment is allowed.

Permission is granted to file Special Leave Petition.

Issue notice returnable on 31st July, 2023.

In the meanwhile, there will be stay of the directions contained in the impugned order passed by the High Court.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER